



## Chief Justice Smirnov Visits JRCLS

"My dear colleagues, irrespective of your age, for we are colleagues! Time has but one capacity, it moves only forward. It is very, very good that, university wide, this is the first such lecture. It is with less pleasure that I recall my age at the moment, but nothing can be done; time is moving!

I must say that I am especially pleased to have this meeting with you. You have a university built up similar to higher educational establishments and schools of law in

### Editors Note:

*Last October, in an unprecedented visit by several of the highest judicial officials in the Soviet Union to the BYU Campus, Chief Justice Lev Nicholaiovich Smirnov of the Soviet Supreme Court addressed the law students in the Moot Court Room. In reviewing the video tapes made during that presentation, several difficulties were encountered in preparing a transcript for publication. Much of the translator's dialogue was choppy and contained only fragmented statements. Other comments during the simultaneous Russian/English delivery were virtually unintelligible. What follows, (so far as it is translated correctly) is a partially edited version of Mr. Chief Justice Smirnov's remarks. The editor accepts sole responsibility for glaring inaccuracies, and invites the attention of those seeking further light and knowledge to video tape #70 in the audio-visual office.*

other countries. I know that you approach your studies very seriously. I tell you that our profession is such that it can be treated either very seriously, or you should quit this job and go out into the crowds, or clean streets. Your university has a good reputation in the United States, and I want to tell you it is nice to meet you.

We have 29 questions (previously submitted) and we have little time at our disposal. We decided it would take about 24 hours to respond to all of them. I will pick out those questions which I feel have been most correctly formulated.

*(Question #1)* In the early days of the Soviet era, there was an understandable mistrust of the dead and unhealing hand of the law. Then a stream of decisions were rendered with more attention to then current foreign policy and administrative pressures than to natural readings of law and juridical precedence. We understand that since 1922 there has been more support for greater predictability and fairness of a rule of law, and that the legal profession within the USSR has enjoyed increasing status and independence. Is this view basically correct? If so can you give us illustrative examples?

Until 1953 there existed nothing. Some decisions were adopted, and they

formed the basis of law. Then something happened in 1953 and lawyers started to take their place. How this process will go further, the author of the question (above) doesn't know. The questions we have gathered, these were the questions that were of great value for the great founder of our country, Vladimir Ilyich Lenin. From the early days of soviet power he posed the question of, "What to be guided by?" Old laws? Could the old laws be taken intact completely? Probably not.

During the first days of soviet power, Lenin put forward the task to crush down

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completely the old judicial system; from the Senate, which was the Supreme Court of Tsarist Russia, down to the smallest cells which were the local courts. There were a lot of arguments about that time

Many of the members of our revolutionary movement, the Bolsheviks, told Lenin, "let us break down the Senate, let us think about the possibility of breaking down the old policies, but we will not touch anything in law, we will leave everything (the laws) intact. Because (otherwise) that may mean that anarchy and absence of law will begin." Lenin continued to insist on this point of view, and the old judicial system was broken from top to bottom.

Then of course extraordinary difficulties arose. There were other difficulties too, difficulties of legislation. I presume many of you remember the old world where lawyers made the norms of legislation. He would say that draft legislation should be very thoroughly prepared. It should be processed and worked out at the beginning because badly prepared drafts, after becoming law, begin slapping at the face of those who made this law. In those extremely difficult years of our country, years of civil war, the years of



such a state! We're not in such a state now. This (pointing) is the main law of our country, the Constitution recently adopted in 1977. You may know the first Constitution was in 1918, 1924 was the second Constitution, 1936 the third. This is the Constitution of 1977. When we speak about all of the administrative bodies, all organizations, all institutions, they must obey the Constitution.

The Soviet state and all of its bodies function on the basis of socialist law, insure the maintenance of law and order, and safeguards the interests of society and the rights and freedoms of citizens. State organizations, public organizations, and officials shall observe the Constitution of the USSR and Soviet laws. So its basic force predetermines any state or party organizations in our country. This is socialist law, the basis of which is our Constitution, The Constitution of the USSR.

There are many questions here concerned with the Constitution. There is one for example "is there any collision between the Constitution and the laws of the Soviet Union?" Here we must say that the unconditional law is the Constitution. If a law contradicts the Constitution, it must be eliminated. I'm asked, "who does that?" This is done by the Supreme Soviet of the USSR. We stand on the position of legal interpretation of law. The Procurator-General and constituent departments all have the power of what we call legislative initiative. We attract the attention of that legislative body to the fact that a certain law contradicts a provision of the Constitution. Then our presentation is analyzed; sometimes it is agreeable, sometimes it is not agreeable, but that is a matter for the Supreme Soviet. At this stage we must end discussion. After some time,

point or question may be raised again by the Supreme Court of the USSR, the Procurator-General, a member of the parliamentary body, or a member of the Supreme Soviet. The Chief Justice is a member of the Supreme Soviet, and as an individual member of the Supreme Soviet, he can raise the question. What is called a Constitutional court, we are not that kind of court. Though during the first years of its existence the Supreme Court of the USSR fulfilled those functions.

Now about the Supreme Court itself, and what is that? My friends, it is not a big court, it's a small court. The session of the Supreme Soviet of the USSR elects for a period of five years nineteen members of the Supreme Court including the chairman, two deputy chairmen, and three branches that settle matters on criminal, civil, and military matters.

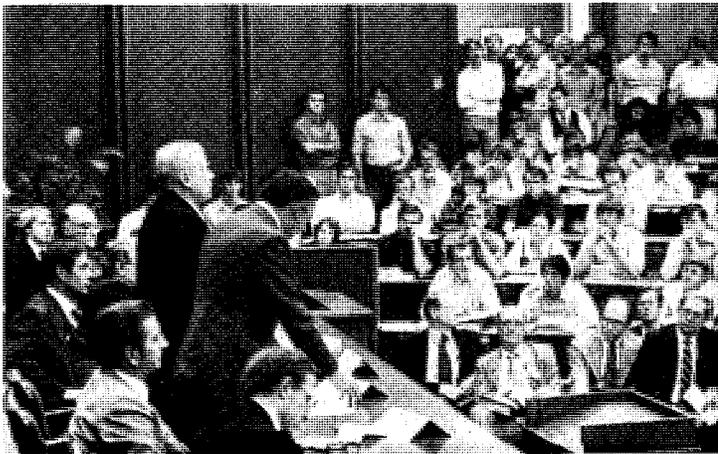
The Supreme Court of the USSR (in addition to the 19 elected justices) includes 15 more men. These are the Chairmen of the Supreme Courts of the constituent republics. Mr. Justice Karamazov is at this same time the Chief Justice of the Supreme Court of the Georgian Republic and a member of the Supreme Court of the USSR. Mr. Justice Smirnov (translator speaking in third person) for ten years was the Chief Justice of the Supreme Court of the Russian Federation. Of course that is a big republic with a big population, 132 million in population; and he was a member of the Supreme Court of the USSR. This participation of the Chief Jus-



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intervention, the years of hunger, the years of disorder in the economy, Lenin insisted on creating new legislation. It was created during a comparatively brief period of time. Those Codes appeared in 1922, and they were tested by life. Lenin said that the basis of judicial activity must be obligatory fulfillment and mandatory observation of the laws unconditionally. But he used to say, "the judges are local people!" They would individualize the responsibility of a defendant, and this would give (the judge) the possibility to make the just decisions. This is from 1922 to 1924.

In 1926, a revised code was adopted, but there never existed such a state (of disorder). Justice in the Soviet Union was in darkness. An understanding Russian poet used to say, "to shout 'safe!' when you got into the fog, you don't have to be too clever to do that." We were never in



tics of the republics in the Supreme Court of the USSR gives us much, because we have here real experience, and we have learned to process and put aside the mistakes of the lower courts in our hearings of the Supreme Court

I want to pay attention to the application of the law, that is the third item I want to do here. The matter is that some (political) scientist somewhere wanted to give to

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us, to give to the courts, legislative powers. As a plenary session, we would (be able to) get together and discuss, and then publish a law. That would have been very dangerous because that would have created an absence of law. The matter is the right application (of law), that is our task.

We have a special Department of Generalization and Analysis of the Judicial Practice consisting of experienced lawyers and members of the Supreme Courts from the Republics. They follow and discuss the documents that we adopt and those explanations of how to apply them. We have one more branch which is the Scientific and Consultive Council consisting of 40 leading theoreticians and practicing lawyers, which also takes part in the discussions. Some of the points you hear are being expressed by outstanding lawyers, or by the single fact that this point of view they express is their scientific dissertation. They stand for this point of view or defend this dissertation because

it is theirs up to the end of their lives. The work of this council is a great help to us. These are known people, intelligent people, great experts who know the terminology and the language of the law, who know very well the juridical language, not as other lawyers who speak nothing but the language of a dead fish!

We have limited the competence of the Supreme Court, we cannot hear all of the cases. We hear either the cases that were presented to the Supreme Courts of the constituent Republics as original cases. We take them by way of supervision. Another group of cases are the cases that have gone through all the instances from the very lowest courts to the plenary session of the Supreme Court of the USSR. That is why sometimes in the plenary sessions of the Supreme Court there will be a case seemingly very small. The press in the Soviet Union reported that the Supreme Court had taken up the case of a lady who was fired from her job and moved out of her apartment. We restored her in her job and gave her back her apartment, but that was not available so

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we arranged for a better one. After six months, she retired. In the law of our country, we do not consider these such a small matter, because sometimes on these small cases we make big conclusions. You have precedence here, but we do not have that. Our decisions serve as examples for the lower courts who must take them. The

publication of our Supreme Court, the reports, is not an adventure book. It is a pocket size series and has a circulation of 130,000 copies. All of the law magazines published by the government are very important as a second source.

The last thing I want to say, some lawyers have the impression that we do nothing but hear cases in the first instance. But the Supreme Court hears such cases only when they are very serious. This is something that is qualified in the legislation about the Supreme Court as cases of superior state importance. The less cases we have, the better it is, because usually they involve very grave crimes. For example, such cases as theft in big amounts. But quite recently we had a peculiar case, a case I had never seen before. That was a case of three lawyers that got together and created an underground illegal enterprise in the production of fur coats from beaver and expensive furs. For a year and a half they happened to steal 1½ million rubles. We did not take it because still we thought it was not so significant, but we changed that. It seemed dangerous to us; that was quite a new specialization of lawyers, specializing in furs, that seemed a new step in the profession.

The most important task to do is to know what is going on judicially between the Baltic and the Pacific Coast. There is 11,000 km if you measure from the Arctic Ocean to the Pamir Mountain Range in Central Asia. To be knowledgeable of what is happening and the ability to extract at a given moment an explanation that will deal with the drawbacks of a case, that is what is most important. That covers the main functions of the Supreme Court of the USSR.

Dear colleagues, in every country there exists this evil. In some ways we are in a better position because we don't have drugs or narcotics, bad things like heroin. I have just published a book about the

Tokyo Trials of the war criminals I was a participant; where such matters were known as to what makes a drug addict. We have one drug in our country known as marijuana. In your country it is hashish, in the orient it is also cannabis. In prisons of our country it is called grass simply. I know that some of the jurists want to make smoking marijuana legal. What can be done about the fact that smoking it has very grave affects on young people. Besides marijuana, we don't have anything except a negligible number who would take amphetamines. They're negligible. Some might get opium. Our young people have come to know LSD, and that is an evil too.

We are worried by another matter; we are worried about vodka! I checked the judicial statistics. 52% of all criminal cases were done in a state of drunkenness. It goes without saying that such greater crimes as murder, etc. about 80% of such crimes are committed in a state of drunkenness. Those who have gone through what a very famous lawyer has referred to as our prison universities, these persons have learned that killing a wife out of jealousy will not be considered a great crime. So then when he asks his wife for more money to get drunk, and she refuses, he will kill her and say that it was out of jealousy and avoid the penalty for the grave crime he has committed.

Let me say finally, when we were coming to your university, I was very favorably impressed that at your university you don't drink and you don't smoke. You agree not to drink and not to smoke

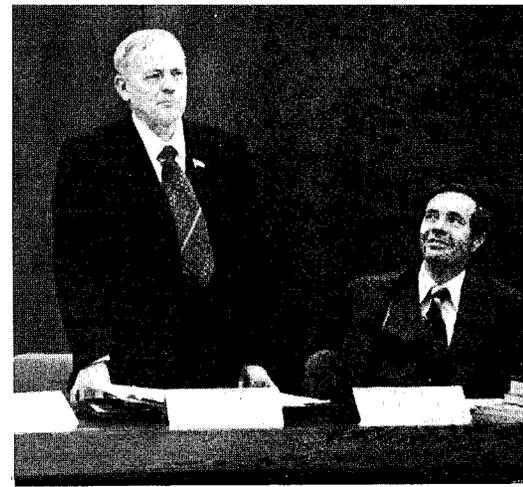


while you are attending, this is extremely important. Because if vodka appears, there is a moral and ethical climate that contributes to new crime. Second, I think that your teachers do the very right thing when they pay so much attention to the problems of the family. You see, at our present time when in a family both the husband and wife work; you probably have the same situation, we have a tendency to lay too much responsibility on the school. Very often schools may give knowledge, may give some educationally minimal knowledge, done in a new fashion. I look at the miracle of my grandson. He is seven years now, and he thinks that soon he will do things you were taught in high mathematics. He is in the first grade now. They become even clever; but they grasp the knowledge! But something that should make human beings human, very often the school is not capable of giving. It just cannot do that because you cannot place all the responsibility on the schools. In our country, great work has been done by the pioneer groups, the young organizations. We have created a lot of schools where they can develop their talents. A common picture in the streets of Moscow would be a small boy or girl who, after his

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ordinary school, would go to the musical school for continuation of his studies. But in the family there is drunkenness. It ruins the child. It is simply just not under our protection. The classical picture of this typical situation would be the father who comes home from his work and will sit down, and the child will come up to him and he (the father) will say, "don't bother me! I am tired!" The great attention that you are paying generally in this state to your family, and which I understand is one of the basic principles of your organization, this is a very important point.

Maybe the last point concerning criminal offenses is that we do too little to find out those who involve juvenile delinquents in criminal activity. For a big country like ours, we have 3,200 such particular cases of involvement. We think it is not real. I was amused by another figure, the great American writer, Mark Twain, who said there are three types of lies; simple lies, the violation of oath, and statistics,



the latter being the worst kind. I remembered that because I had to go two times through the statistical data.

My colleagues will answer other questions, but first, I want to say a few things. During the war, I was among those who were fighting against the Nazis, and during the severe months of the siege of Leningrad I stayed all those months in Leningrad. Then I was asked to investigate the Nazi crimes; violations of law and crimes against people. Treblinka, Mauthausen, Dachau, Concentration camps. Then later on in another part of the world, I was in the Tokyo Tribunal, together with my American colleagues, I was prosecuting Japanese war criminals. Now, why I recall this; not to deal with the facts of my authority. I tell you that I have seen in my lifetime a great deal of violence, a great deal of human death. I saw the results of the last atomic bomb dropped on Hiroshima. That was awful. That was something that is now considered to be one bullet in the present thermonuclear arsenal. There are devices a thousand times stronger than that one. I don't know if I should believe it or not but sometimes it is claimed that our planet can be destroyed not once, but several times over and there would be no auditoriums, no lecturers coming from other countries, there are professors at Moscow University who may never get here! I am saying this because we are now struggling for a coefficient of nuclear weapons, with SALT II as part of it. I should think that it would be a great step forward in the survival of our countries if we do this. I'm saying this is not because I came, and not to convert you, but as a participant in the second world war which you will remember has taken over 50 million lives, which in our country was over 20 million lives. During the mass killing by the Nazis, that figure was 12 million.

I think that everybody must do everything he can to prevent nuclear crisis. The preservation of peace is for our profession perhaps the greatest of all responsibilities."