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The Unsung Heroes of the Russian Judicial System: The Justice-of-the-Peace Courts

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Abstract: Authorized in the late 90s as a way of relieving the pressure on trial courts, the justice-of-the-peace courts (JP courts) have become the entryway to the judicial system for millions of Russian citizens. They handle the bulk of civil and administrative cases as well as petty criminal offenses. This article documents the radical transformation of the Russian judicial system over the past decade. The author investigates the institutional structure of the JP courts and how their judges manage this immense caseload while maintaining an open-door policy to complaints. Judges have succeeded in handling cases efficiently through the creative use of new procedural mechanisms that allow them to accelerate the process of resolving simple cases.

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I. Introducing the JP Courts

The justice-of-the-peace courts (JP courts or *mirovye sudy*) represent one of the most ambitious innovations of the post-Soviet Russian judicial system.¹ Over the past decade, thousands of new courts have been created across the massive territory of the Russian Federation. They provide a new entryway for mundane claims of all varieties (*O mirovyykh* 2011).² Serious crimes and complex civil cases remain the province of higher courts, but almost all other cases originate with the JP courts. Those dissatisfied with the decisions of the JP courts can appeal to the district (or *raionnye*) courts. There is a JP court for every 15-23,000 Russian citizens. Each court covers a distinct geographic territory, known as a judicial district (or *sudebnyi uchastok*).

Though created with an eye to the tsarist past, the true purpose of the JP courts was to relieve the burden on the district courts. Over the decade of their existence, this goal has been achieved. Mundane cases have been diverted to the JP courts, leaving the other courts free to spend more time on the complex cases that need extra attention. Between 2001 and 2011, the caseload of the JP courts almost doubled. In 2011, the JP courts handled 14.5 million cases, which constituted almost three-fourths of all civil cases, about 45 percent of all criminal cases, and almost 95 percent of all administrative cases heard by the Russian courts.³ Despite the unmistakable importance of the JP courts, we know remarkably little about them.⁴ The

¹ *O mirovikh sudakh v Rossiiskoi Federatsii* [On justice-of-the-peace courts in the Russian Federation], Fed. Law No. 188-FZ (Dec. 17, 1998), SZ RF 1999, No. 51, item 6270. Subsequent to its adoption, this law has been amended sixteen times, most recently in March 2013. The current text of the law reflecting these amendments is available at <http://base.garant.ru/12113961/>, accessed on July 15, 2012.

² Russia has three distinct types of courts. The JP courts are part of the courts of general jurisdiction, which hear cases involving individuals. PETER H. SOLOMON, JR., AND TODD S. FOGLESONG, COURTS AND TRANSITION IN RUSSIA: THE CHALLENGE OF JUDICIAL REFORM (2000). The *arbitrash* courts are responsible for most cases involving legal entities. Kathryn Hendley, *Remaking an Institution: The Transition in Russia from State Arbitrash to Arbitrash Courts*, 46 AM. J. COMP. L. 93 (1998). The Constitutional Court deals with cases challenging the constitutionality of legislative and/or executive acts. ALEXEI TROCHEV, JUDGING RUSSIA, CONSTITUTIONAL COURT IN RUSSIAN POLITICS, 1996-2006 (2008).

³ *Statisticheskie svedeniia o rabote sudov obshchei iurisdiktsii za 2011 g. v sravnenii s 2010 g.*, available at <http://www.cdep.ru/index.php?id=79&item=836>.

⁴ For an early assessment of the JP courts and a Western perspective on the creation of their creation, see Peter H. Solomon Jr., *The New Justices of the Peace in the Russian Federation: A Cornerstone of Judicial Reform?*, 11 DEMOKRATIZATSIIA 381 (2003).

Russian scholarly literature is replete with articles about their creation,⁵ and several Russian research groups have polled users of the JP courts, finding high levels of satisfaction.⁶ These are, of course, important issues, but tell us little about the day-to-day realities of these courts. Making use of caseload data,⁷ both published and unpublished, and insights gleaned from field work carried out in 2010-12 in JP courts in Ekaterinburg, Moscow, St. Petersburg, Petrozavodsk, Pskov, Rostov-na-Donu, Velikie Luki, and Voronezh, I begin to fill this gap.

The creation of the JP courts was far from an overnight process. The 1998 federal law authorizing them required enabling legislation from every constituent part of the Russian Federation.⁸ Once the formalities were in place, court administrators⁹ faced the difficult task of recruiting justices of the peace (JPs or *mirovye sud'i*) and their staff, and the herculean task of

⁵ See, e.g. SERGEI A. PASHIN, STANOVLENIE PRAVOSUDIIA (2011); A.D. Popova, *Stanovlenie mirovoi justitsii: problemy proshlogo i dnia segodniashnego*, ROSSIISKII SUD'IA, No. 9 (2007), at 20; A.A. Gravina, *Pravooye problemy orginratsii i deiatel'nosti mirovykh sudei v Rossiiskoi Federatsii*, MIROVOI SUDI'IA, no. 3, 2004, at 2.

⁶ L. O. IVANOVA, PREDLOZHENIIA PO POVYSHENIIU DOSTUPNOSTI PRAVOSUDIIA Dlya MALOIMUSHCHIKH I SOTSIAL'NO NEZASHCHISHCHENNYKH GRAZHDAN—UCHASTNIKOV GRAZHDANSKOGO PROTSESSA (2011); SERGEI KRIUCHKOV, OTNOSHENIE GRAZHDAN K MIROVYM SUDAM (2010).

⁷ The statistical bureau within the Judicial Department of the Supreme Court of Russia collects and publishes data about the activities of the courts of general jurisdiction on its website: <http://www.cdep.ru/index.php?id=5> (accessed on July 20, 2012). The data aggregate information about trial-level cases, making it impossible to track the docket of the JP courts. Such data exist. I obtained them through a request to the statistical bureau. There are separate forms for administrative, civil, and criminal cases, which are prepared on an annual basis. There is also a form that reports on the average monthly workload for judges. These forms provide the basis for the tables as well as for statistics reported in the body of the article. For more information about the principles underlying data collection at the Russian courts of general jurisdiction, see I.N. Andriushenko & V.A. Niesov, *Aktual'nye voprosy sozdaniia i organizatsii ispol'zovaniia edinой sistemy klassifikatsii kategorii sudebnykh del v sudakh obshchei iurisdiktsii*, ROSSIISKOYE PRAVOSUDIE, No. 2 (2010), at 25.

⁸ NIKITA ALEKSANDROVICH KOLOKOLOV, MIROVAIA JUSTITSIIA (2011).

⁹ Each region set up its own centralized bureaucracy for managing its JP courts. The main task for these agencies was to keep the JP courts operational, which meant that they had to recruit and hire clerks and secretaries for the JPs, locate premises for the JP courts and maintain them, and meet the technological needs of the courts by obtaining computers and setting up wireless networks. As I traveled around the country, I found varying levels of commitment and competence within these agencies.

locating office space for the courts. This explains why the roll-out of the JP courts took place gradually. By 2003, 6470 JP courts had been authorized, and JPs had been appointed for about 80 percent (or 5248) of them.¹⁰ By the end of 2011, the number of JP courts had been increased by 23 percent to 7957, and JPs were in place in 92 percent (or 7308) of them. The selection process for JPs is analogous to that for other Russian judges. Vacancies are publicized and applications are reviewed by the qualification commission. As with other courts, those with experience in the judicial system as clerks (*pomoshchniki*), are the most likely to be successful. The precise mechanism for appointing JPs is laid out in regional law. Most regions followed the federal law and provided for executive appointment of JPs (on the recommendation of the qualification commission), though a few opted for legislative appointment.¹¹ As is true in countries with civil law traditions,¹² the Russian judiciary is a quasi-civil service system. Being appointed as a JP is seen as a first step in a judicial career. After getting through their three-year probation period, JPs are usually ready to move on to the district courts and beyond.¹³

In my field work, I found that the working conditions for JPs varied greatly.¹⁴ This makes sense given that the cost of establishing and outfitting

¹⁰ S.I. Potapov, *Problemy stanovleniya mirovoi iustitsii i puti ikh razresheniia*, MIROVOI SUD'IA, No. 2 (2007), at 2, 4.

¹¹ In contrast to judges for other Russian courts who enjoy life tenure, JPs have set terms and must be continually reappointed. The length of these terms varies from 5 to 10 years and is determined by regional law. See Kathryn Hendley, *Assessing the Role of the Justice-of-the-Peace Courts in the Russian Judicial System*, 37 REV. CENT. E. EUR. L. 377 (2012).

¹² JOHN HENRY MERRYMAN & ROGELIO PEREZ-PERDOMO, THE CIVIL LAW TRADITION (2007).

¹³ The higher courts bring higher salaries and greater prestige. They also allow judges to specialize, which makes it easier for them to keep up with changes in the law. I did encounter several JPs who had no interest in moving on. Some were energized by the wide variation in types of cases on their docket and by direct interaction with citizens. One JP in Voronezh confessed that she liked the independence of the JP courts and feared that she would be subjected to greater political pressure if she moved to a higher court.

¹⁴ In published interviews, JPs often report on their facilities. For example, a JP from the Plesetskoi district of Arkhangel'skoi oblast' spoke of her dream of having a new building for her JP court in the next five years. N. Latysheva, *Piat' let ispolnilos' sudebnym uchastkam mirovykh sudei Plesetskogo raiona*, MIROVOI SUD'IA, No. 4 (2007), at 23. A.V. Raspopova, *Razreshite podelit'sia opyтом stanovleniya mirovoi iustitsii v Tul'skoi oblasti, a takzhe temi problemami, kotorye vstali na puti stanovleniya instituta, stol' neobkhodimogo Rossii*, MIROVOI SUD'IA, No. 3 (2004), at 29 (reporting on the lack of creature comforts, such as toilets and telephones, in some JP courts).

the courts is born by regional rather than federal authorities. Over the decade of their existence, the conditions for the courts have improved consistently. In Velikie Luki, as in many locales, the JP courts initially shared space with district courts, but now have their own facilities. At the outset, the plan had been for each JP court to be located on its own in its judicial district. Doing so would have served the goal of facilitating easy access to the court. But finding space proved difficult, especially in urban areas. As a result, multiple JP courts often share a building. The number of judicial districts consolidated into a single building varied from a few up to several dozen. This allows for economies of scale in that fewer bailiffs (*sudebnye pristavy*) are needed to provide security. It also builds an *esprit de corps* among the JPs. In my interviews, judges uniformly favored this arrangement, commenting that it allowed them to learn from one another. Recently appointed judges were particularly pleased to have more experienced colleagues nearby. In some regions, such as the cities of Moscow and St. Petersburg, each JP has her own courtroom. In most places I visited (Ekaterinburg, Petrozavodsk, Pskov, Rostov-na-Donu, Velikie Luki, Voronezh), JPs shared courtrooms. They heard most cases in their offices and used the courtrooms only when there were too many participants to accommodate in their office or when they heard criminal cases in which the defendant had to be restrained.

II. The Workload of JP Courts

I spoke to dozens of JPs in the course of my field work. Without exception, every judge brought the conversation around to workload concerns. Not only did they note that keeping up required them to work nights and weekends, but they also bemoaned the “conveyor belt” nature of the justice dispensed. This theme also echoes through interviews with JPs published in the Russian mass media and in the scholarly literature.¹⁵ The existence of deadlines for resolving cases in the various procedural codes gives JPs a strong incentive to keep up. Court administrators keep records and JPs who fail to comply with the deadlines are last in line for promotion and raises. Table 1 lays out the average monthly caseload for JPs for 2009 and 2011, broken down by federal okrug. At first glance, these data appear to lend credence to the JPs’ complaints. Indeed, as

¹⁵ See, e.g. *Zaiavlenie v mirovoi sud mozhno budet podat' po elektronnoi pochte*, STAVROPOL'SKAIA PRAVDA (Feb. 17, 2011), available at http://www.stapravda.ru/20110217/zayavlenie_v_mirovoy_sud_mozhno_budet_po_dat_po_elektronnoy_pocht_51443.html (interview with the head of the office that manages the JP courts in Stavropol krai); M.N. Raznikova, *Interv'iu s mirovym sud'ei sudebnogo uchastka No. 7 Sovetskogo raion g. Voronezha Kudrinoi Galinoi Vasil'evnoi*, MIROVOI SUD'IA, No. 3 (2004), at 32.

Table 1:
**Average number of cases resolved by
Justices of the Peace each month**

Federal Okrug	2009			2011			
	Total number	Per capita	Civil	Administrative	Criminal	Civil	
	Total number	Per capita	Total number	Per capita	Total number	Per capita	
Central	78.7	.0021	84.7	.0023	6	75.8	.002
North-Western	142	.0105	71.2	.0053	4.6	135.4	.0101
Far Eastern	187.9	.0291	93.5	.0145	6.4	166.4	.024
Southern Caucasus	107.3	.0047	71.2	.0031	4.6	111.5	.008
Northern Caucasus*					57.8	.006	
Volga	184.4	.0061	91.3	.003	6.9	144.6	.0048
Siberian	141.6	.0072	92.2	.0047	7.4	139.9	.0073
Urals	126.8	.0103	99.3	.0081	8.4	131.3	.011
Russian Federation (aggregate)	130.7		80.9		6.3	117.2	
						64.5	5.8

* In January 2010, the Southern okrug was divided, thereby creating a separate okrug for the northern Caucasus.

Sources: SLUZHEBNAYA NAGRIZKA MIROVYKH SUDEL, 2010-2011 (on file with author); SLUZHEBNAYA NAGRIZKA MIROVYKH SUDEL, 2009-2010 (on file with author); REGIONY ROSSI. OSNOVYYE Kharakteristiki SUB”EKTOV ROSSISKOI FEDERATSII (2011); REGIONY ROSSI. OSNOVYYE Kharakteristiki SUB”EKTOV ROSSISKOI FEDERATSII (2009).

president, Medvedev supported legislative reforms designed to ease the workload of the JP courts.¹⁶

The table shows that the dockets of JP courts are dominated by civil and administrative cases. Criminal cases are something of an afterthought. This is a natural consequence of the jurisdictional parameters. JP courts hear criminal cases for which the maximum penalty is up to three years of incarceration.¹⁷ As a result, JP courts are mostly limited to petty theft and battery cases where the damage caused is minor.¹⁸ The more serious crimes, such as murder, rape, robbery, and extortion, are heard by the higher courts.¹⁹ The same principle applies to civil cases, a majority of which are cases brought by one private party (individual or entity) against another. The JP courts handle disputes on the simpler end of the spectrum, such as divorces in which child custody is not at issue, recovery of child support, non-payment of rent, and personal injury. If the amount at issue is greater than 50,000 rubles, then the district court takes jurisdiction.²⁰ By

¹⁶ Mikhail Podzniakov, *Potogonnai sudebnaia sistema*, VEDOMOSTI.RU (Feb. 16, 2012), available at http://www.vedomosti.ru/opinion/news/1505100/potogonnaya_sudebnaya_sistema.

¹⁷ *O mirovikh*, *supra* note 2, art 3. Initially, the JP courts were limited to hearing cases for which the maximum penalty was two years of incarceration. In 2005, the law was amended to relax this requirement to three years. *O vnesenii izmenenii v stat'iui 3 Federal'nogo zakona "O mirovikh sudakh v Rossiiskoi Federatsii"*, [On amending article 3 of the Fed. Law "On justice-of-the-peace courts in the Russian Federation], Federal Law No. 2-FZ (Feb. 14, 2005), ROSSIISKAIA GAZETA, Feb. 14, 2005, available at <http://www.rg.ru/2005/02/17/sudii-doc.html>.

¹⁸ *Ugolovnyi Kodeks Rossiiskoi Federatsii* [Criminal Code of the Russian Federation], Fed. Law No. 63-FZ (June 13, 1996), SZ RF 1996, No. 25, item 2954, as amended (hereinafter the RF Criminal Code), arts. 111, 112, 158. The text of the RF Criminal Code with amendments through April 19, 2013, is available at <http://www.consultant.ru/popular/ukrf/>.

¹⁹ See *id.*, arts. 105, 106, 131, 161. Crimes are divided into four groups according to their gravity (*tiazhest'*). Almost all (94 percent) of the JP courts' criminal docket falls into the lowest category (*nebol'shaya tiazhest'*), with the remainder in the next highest category (*srednaia tiazhest'*).

²⁰ *O mirovikh*, *supra* note 2, art. 3. The parameters of the jurisdiction of JP courts in civil cases has been tinkered with repeatedly. Hendley, *Assessing the Role of the Justice-of-the-Peace Courts*, *supra* note 12. In an earlier iteration, the cap was 100,000 rubles, but it was reduced in 2010. *O vnesenii izmenenii v stat'iui 3 Federal'nogo zakona "O mirovikh sudakh v Rossiiskoi Federatsii" i stat'iui 23 Grazhdanskogo protsessual'nogo kodeksa Rossiiskoi Federatsii* [On amending article 3 of the Federal Law "On justice-of-the-peace courts in the Russian Federation and article 23 of the Civil Procedure Code of the Russian Federation], Fed. Law No. 6-FZ (Feb. 11, 2010), SZ RF 2010, No. 7, item 701. This law is available at <http://www.rg.ru/2010/02/15/miroviye-dok.html>.

contrast, JP courts hear virtually all administrative cases, which are cases initiated by the state under the administrative procedure code.²¹

The raw numbers set forth in Table 1 are hard to interpret on their own. In an effort to make them more comprehensible, I calculated a per capita caseload for civil and administrative cases for the okrug data, leaving out criminal cases because they are so few. Whether in aggregate or per capita form, Table 1 shows remarkable variation. The Far East okrug emerges as the busiest. Precisely why is unclear. This part of Russia has long had a reputation for lawlessness based on the rumors of high levels of organized crime activity. Yet these data suggest that its residents are the most likely to go to court. This is a puzzle worthy of further investigation. Judges in the Far Eastern okrug were called upon to resolve at least 14 cases every workday in 2009. By 2011, the pace had decreased slightly to 13 cases per day. The Central okrug is the least busy. At first glance, this seems surprising, given that Moscow lies within its territory. When asked about this, Moscow JPs explained that the decision to limit the jurisdiction of JP courts to civil cases involving less than 50,000 rubles has left them with fewer cases than elsewhere. In their view, the higher salary structure within Moscow gives the cap a differential impact. The source for Table 1, which includes the monthly averages for each region, bears out this explanation. In 2011, Moscow JPs handled an average of 47.7 civil cases and 29.5 administrative cases each month. By contrast, their colleagues elsewhere in the okrug were managing a much heavier burden. In Kurskia oblast', for example, JPs heard 130.1 civil cases and 61.8 administrative cases per month in 2011. When adjusted to reflect their respective population bases, it turns out that the Kurskia JPs dealt with twice as many administrative cases as their Moscow counterparts and an almost unbelievable 28 times more civil cases, confirming that the 50,000 ruble cap makes a difference.

Although the per capita calculation helps put the data into context, the fact remains that even if this adjustment shows that fewer cases are being brought in an okrug, the JPs still have to manage the actual cases brought. The Volga okrug provides a good example. Though the per capita figures indicate it is one of the least busy okrugi, the raw numbers tell a different

²¹ Precisely what constitutes an administrative case is specific to Russia. Some types of cases that would be deemed criminal in the U.S., such as drunk driving, are labeled as administrative in Russia. Likewise, some cases that would be seen as administrative in the U.S., such as failure to pay taxes on time, are deemed civil cases in Russia. The *arbitrazh* courts hear administrative cases involving legal entities. For many years, there has been a lively debate as to whether Russia should create a separate hierarchy of courts devoted solely to administrative cases. N.I. Iaroshenko, *Osnovye napravleniya reformirovaniia sudov obschei i spetsial'noi jurisdiktsii*, ZHURNAL ROSSIJSKOGO PRAVA, No. 4, 2012, at 64; S.V. Komlev, *Nekotorye dovody v pol'zu sozdaniia v Rossii sistemy administrativnykh sudov*, ROSSIJSKII SUD'IA, No. 4, 2008, at 33.

story. JPs in these regions had to clear about 14 cases per day in 2009 and 11 cases in 2011 to keep up.

Such calculations raise a concrete question. How do JPs maintain this frenetic pace? Having reviewed these data before embarking on my field work, I expected to find JP courts to be a whirlwind of activity. Imagine my surprise when I arrived at JP courts to discover that only a handful of cases were on the docket. This was not an isolated occurrence, but was the norm in all the venues I visited. Indeed, sometimes I would arrive at a building that housed multiple JP courts only to spend the day in a futile search for live hearings.

The answer to this puzzle lies in several practical realities. First, not showing up for scheduled hearings is commonplace, especially among insurance companies and housing management companies. They submit their written documents and then leave it to the court to resolve. In many of these cases, the outcome is a foregone conclusion and the absent party reasons that oral arguments are superfluous. The hearing can go forward without the defendant if notice has been served. About 10 percent of the JP courts' decisions were made in the absence of the defendant. These are known as "zaochnye" cases, alluding to the absence of the defendant. Such cases can be appealed to the JP that decided them if the defendant alleges that notice was never received.²² In interviews, JPs told me that they err on the side of nullifying these decisions in order to ensure that defendants have the chance to air their arguments. The cases are then reheard on their merits. JPs report that the outcome is usually the same, but they do not begrudge the time lost because it is in the pursuit of justice.

Second, a significant percentage of civil cases are resolved by judicial order (*sudebnyi prikaz*).²³ This is a procedural tool that allows the JP to decide a case based solely on the complaint.²⁴ The plaintiff has to request that the case be resolved via judicial order, thereby waiving its right to a hearing. In an effort to encourage its use, filing fees are reduced by half when a plaintiff opts for a judicial order.²⁵ The use of this mechanism is permitted for a narrow set of cases in which there are no facts at issue, such

²² *Grazhdanskii Protsessual'nyi Kodeks Rossiiskoi Federatsii* [Civil Procedure Code of the Russian Federation], Fed. Law No. 138-FZ (Nov. 14, 2002), SZ RF 2002, No. 46, item 4532 (hereinafter the GPK) (with amendments through May 19, 2013), ch. 22 available at <http://www.consultant.ru/popular/gpkrf/>.

²³ GPK, arts. 121-130.

²⁴ M.A. CHEREMIN, PRIKAZNOE PROIZVODSTVO V ROSSIISKOM GRAZHDANSKOM PROTSESSE (2001); S.K. Zaginova, *Ob osnovykh tendentssiakh razvitiia prikaznogo protzvodstva*, MIROVOI SUD'IA, no. 4 (2007), at 15.

²⁵ GPK, art. 125.

Table 2:
**Overview of the docket of Justice-of-the-Peace
Courts for civil disputes**

Type of case	Total civil cases resolved (2009)	Total civil cases resolved (2011)	As % of total civil cases	% of cases in which decision was issued	% of cases resolved through judicial order	Success rate for plaintiffs*	% of cases that violate time deadline
Total	10220011	9165323		94.4	71.2	92.2	0.85
Family disputes	981464	944203	10.3	88.3	29.9	98.6	1.0
Labor disputes	598499	451896	4.9	99.5	99.5	57.3	0.1
Disputes involving personal injury (including traffic accidents)	1692251	239224	2.6	91.7	0.8	98.4	3.3
Housing disputes	1873025	1912387	20.9	92.6	57.4	97	0.9
Tax disputes:							
<i>initiated by state</i>	4566383	3838734	41.9	98.5	93.5	50.7	2.3
<i>initiated by taxpayer</i>	5238	4384	0.04	98.5	92.5	82.2	0.5
Disputes over credit contracts	590243	495315	5.4	96.8	77	97.2	0.8

* Denominator leaves out cases resolved via judicial order on the rationale that the plaintiff always prevails in such cases.

Sources: OTCHEТ О РАБОТЕ СУДОВ ОБШСЧЕИ ИУРИСДИКТИВ ПО ПЕРВОИ INSTANTSII PO RASSMOTRENII GRAZHDANSKIH DEL ZA 12 MESIATSEV 2011—SVODNYI OTCHET PO VCEM MIROVEM SUD'IAM V ROSSISKOI FEDERATSII (on file with author) [Otchet civil 2011]; OTCHEТ О РАБОТЕ СУДОВ ОБШСЧЕИ ИУРИСДИКТИВ ПО ПЕРВОИ INSTANTSII О RASSMOTRENII GRAZHDANSKIKH DEL ZA 12 MESIATSEV 2009—SVODNYI OTCHET PO VCEM MIROVEM SUD'IAM V ROCCHISKOI FEDERATSII (on file with author) [Otchet civil 2009].

as enforcing child support orders, seeking back pay, and failure to pay taxes. When the defendant is sent the order, she has the right to challenge it within ten days.²⁶ If she does, then the court automatically revokes the order, which puts the ball back into the plaintiff's court. It can decide whether or not to ask for a hearing on the merits. Challenging these orders is not the norm. In 2011, only 6.8 percent were disputed. Table 2 corroborates the critical role played by *sudebnye prikazy*, indicating that, in 2011, over 70 percent of all civil cases were handled this way. The table further documents that judicial orders are used as a matter of course in some categories of cases, and are rarely used in other categories.

Table 3 provides more information. Judicial orders are more likely to be employed by the state or by corporations. These tend to be experienced litigants who understand how to use the procedural rules to their advantage.²⁷ In 2011, the state used *sudebnye prikazy* in nine out of ten actions brought against individuals. When individuals initiate cases, the story is quite different. Many individual litigants are coming to court for the first time. Many are unrepresented. They may be unaware of this tool. Cases seeking child support are an exception. The parent with custody (mostly mothers) often has to sue repeatedly. They are forced to learn the procedural tricks of the trade and, as a result, judicial orders are employed in over three-fourths of these cases. These cases account for 80 percent of the total cases brought by one individual against another that use this mechanism, as reported in Table 3.

Table 4 reports on regional trends in the use of these *prikazy* for 2010 and 2011. To some extent, this is an artifact of the sorts of cases that arise in these jurisdictions rather than a self-conscious choice of JPs. The Leningrad oblast' JP courts, which are located in the environs of St. Petersburg, are a good example. The high incidence of *sudebnye prikazy* can be explained by the fact that the docket was dominated by tax collection cases, almost all (98.5 percent) of which were handled through this tool. These cases accounted for almost three-fourths (72.6 percent) of all the cases heard by the Leningrad oblast' JP courts, whereas when the Russian JP courts are aggregated, they account for only about 40 percent of their docket. But the willingness of petitioners to use this mechanism, which may be a function of the strength of their case or their sense of the openness of judges to it, can also play a role. In Sverdlovsk oblast', which includes the large industrial city of Ekaterinburg, the use of judicial orders is substantially lower than the national norm. As would be expected, the data reveal several categories for which the incidence of *sudebnye prikazy*

²⁶ GPK, art. 128

²⁷ Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC'Y REV. 95 (1974).

is unusually low, *e.g.*, tax collection,²⁸ credit contracts,²⁹ and payment for communal residential services.³⁰ It is possible that JPs may be resisting entreaties to use this mechanism. After all, the civil procedure code leaves the final decision as to whether to use *sudebnye pristavy* with the judge. My field work in the JP courts of Ekaterinburg revealed no such prejudice, but I may not have encountered the culprits.

The use of *sudebnye prikazy* allow many categories of civil cases to be processed more quickly. JPs have developed forms that can be filled out by their staff based on the complaint. This sort of rote work is much quicker than holding one or more hearings and writing a reasoned opinion. The embrace of this procedural tool by JPs is a way of managing the never-ending crush of new cases. It stands in contrast to the reticence of their colleagues at the *arbitrazh* courts, who have resisted an analogous procedural mechanism.³¹

Third, the emergence and growing popularity of a form of plea bargaining (*osobyi poriadok*) has allowed JP courts to work through their criminal docket more expeditiously.³² Criminal defendants are offered an opportunity to acknowledge their guilt and to forego a full-fledged trial.³³ Defendants who take this option also waive their right to appeal their conviction. They can only do so after consulting with a lawyer (*advokat*). A hearing is held where the JP confirms the voluntariness of the confession and the willingness of the prosecutor to have the case resolved through *osobyi poriadok*. The defendant is asked to describe his actions. Typically, the JP queries the defendant as to his attitude about the crime and his plans for the future. The JP then passes sentence. As Table 5 shows, 60 percent of all criminal cases used this tool in 2011. Though not as quick as a judicial

²⁸ Judicial orders were used in 84 percent of such cases, as opposed to 93.5 percent for all Russian JP courts.

²⁹ Judicial orders were used in 64.1 percent of such cases, as opposed to 77 percent for all Russian JP courts.

³⁰ Judicial orders were used in 33.5 percent of such cases, as opposed to 56.3 percent for all Russian JP courts.

³¹ Kathryn Hendley, *Accelerated Procedure in the Russian Arbitrazh Courts: A Case Study of Unintended Consequences*, 52 PROBS. POST-COMMUNISM 21 (2005).

³² *Ugolovno-Protsessual'nyi Kodeks Rossiiskoi Federatsii* [Criminal Procedural Code of the Russian Federation], Fed. Law No. 174-FZ (Dec. 18, 2001), SZ RF 2001, No. 52 (part I), item 4921, (with amendments through May 7, 2013), ch. 40-1, available at <http://www.consultant.ru/popular/upkrf/>.

³³ Peter H. Solomon Jr., *Sdelka s pravosudium po-russki: znachenie osobogo poriadka sudebnogo razbiratel'stva*, SUD'IA, no. 9 (2011), at 48; V.V. Konin, *Osobyi poriadok rassmotreniya ugolovnykh del: problemy zakonodatel'stva i sudebnoi praktiki*, ROSSIISKII SUD'IA, no. 3 (2010), at 18.

order, the *osobyi poriadok* eliminates the need for a lengthy proceeding and thereby helps clear the docket.

Table 3:
Civil cases decided by the Russian Justice-of-the-Peace
Courts broken down by type of litigant

Nature of the parties	Total civil cases resolved (2009)	Total civil cases resolved (2011)	As % of total civil cases	% of cases in which decision was issued	% of cases resolved through judicial order	Success rate for plaintiffs*	% of cases that violate time deadline
Individual vs. individual	1297958	1160999	12.7	87.1	30.8	97.3	1.6
Individual vs. legal entity	915991	991481	10.8	90.9	50.8	92.9	2.1
Individual vs. state institution	107326	82346	0.9	89.7	32.2	95.5	1.0
Legal entity vs. individual	3668975	3138855	34.2	94	67.9	95.7	1.0
State institution vs individual	4288630	3776822	41.2	98	90.7	68.1	0.2
Legal entity vs legal entity	1131	14760	0.16	93.2	85.8	94.6	0.5

Source: Otchet civil 2011, *supra* Table 1; Otchet civil 2009, *supra* Table 1.

Table 4:
Use of judicial orders (*sudebnye prikazy*) by the Russian JP courts

	2009	2010	2011			
	% of civil cases resolved by judicial orders	% of cases using judicial orders challenged	% of civil cases resolved by judicial orders	% of cases using judicial orders challenged	% of civil cases resolved by judicial orders	% of cases using judicial orders challenged
All courts of general jurisdiction	61.8	5.6	63.2	6.5	56.7	6.8
All JP courts	74.2	5.6	76.9	6.5	71.2	6.9
Moscow City JP courts			61.1	6.7	65.5	5.8
Rostovskaya oblast' JP courts			68.3	6.1	69.1	5.6
St Petersburg JP courts					71.7	5.6
Leningradskaya oblast' JP courts					90.3	4.7
Sverdlovskaya oblast' JP courts					59.9	3.8
Pskovskaya oblast' JP courts					81.5	6.2

Sources: OTCHET O RABOTE SUDOV OBRASHCHELI TURISDIKTSII PO PEROVOM INSTANTSII O RASSMOTRENII GRAZHDANSKIKH DEL ZA 12 MESIATSEV 2011, available at <http://www.cdep.ru/index.php?id=79&archive=2011>; OTCHET O RABOTE SUDOV OBRASHCHELI TURISDIKTSII PO PEROVOM INSTANTSII O RASSMOTRENII GRAZHDANSKIKH DEL ZA 12 MESIATSEV 2010, available at <http://www.cdep.ru/index.php?id=79&archive=2010>; OTCHET O RABOTE SUDOV OBRASHCHELI TURISDIKTSII PO PEROVOM INSTANTSII O RASSMOTRENII GRAZHDANSKIKH DEL ZA 12 MESIATSEV 2009, available at <http://www.cdep.ru/index.php?id=79&archive=2009>. Otchet civil 2011, *supra* Table 1; Otchet civil 2009, *supra* Table 1. Regional statistical caseload reports on file with author.

Table 5:
Overview of the docket of Justice-of-the-Peace Courts for administrative disputes

Type of alleged violation	Total admin. cases resolved (2009)	Total admin. cases	As % of total admin. cases	<i>As % of total admin. cases</i>	Nature of punishment (as % of total found liable)		
		resolved (2011)	Cases in which accused is found liable		Written warning	Fine	Admin. arrest
Total	5389481	4872128	84.1	2.1	51.7	24.6	21.6
Traffic violation	2187694	1691204	34.7	81	.03	15.4	19.9
Hooliganism	603417	439983	9	90.6	.009	36.9	63.1
Public drunkenness	401375	311090	6.4	91.3	.008	41.5	58.5
Narcotics-related violation	111681	112765	1.4	92.4	0	41.3	58.7
Tax violation	325694	303603	6.2	83.5	12.7	87.3	.006
Non-payment of admin. fine	741141	102099	20.9	87.8	.02	77.9	22.1
Failure to comply with order of admin. agency	298874	386439	7.9	79.1	8.9	81.6	9.5

Source: OTCHET O RABOTE SUDOV OBSHCHEI IURISDIKTSII PO PERVOI INSTANTSII O RASSMOTRENII ADMINISTRATIVNYKH DEL ZA 12 MESIATSEV 2011—SVODNYI OTCHET PO VCEM MIROVEM SUD’IAM V ROSSIJSKOI FEDERATSII (on file with author); OTCHET O RABOTE SUDOV OBSHCHEI IURISDIKTSII PO PERVOI INSTANTSII O RASSMOTRENII ADMINISTRATIVNIKH DEL ZA 12 MESIATSEV 2000—SVODNYI OTCHET PO VCEM MIROVEM SUD’IAM V ROSSIJSKOI FEDERATSII (on file with author).

These three mechanisms help explain how JPs are able to handle so many cases. The initial assumption that full hearings are being held in every case turns out not to have been true. Court officials and legislators have worked creatively to develop procedures that allow judges to manage the seemingly overwhelming caseload. At the same time, neither *sudebnye prikazy* nor *osobyi poriadok* are cost-free. They require careful supervision and, if mismanaged, can backfire on JPs.

In March 2013, the Russian legislature took action to ameliorate the pressure on the JP courts. Recognizing that the geographic structure of the JP courts can result in an uneven distribution of cases, the chairmen of district (*raionnye*) courts have been authorized to reassign cases.³⁴ The sole purpose of such actions is to even out the workload among JPs. Though this change undermines the original concept of the JP courts as institutional members of local communities, it may relieve the burden on JPs who sit in judicial districts with large shopping centers, busy highways, or bank headquarters who tend to be overwhelmed. It also risks making district court chairmen more of a presence in the lives of JPs. Many scholarly commentators and retired judges have been very critical of the heavy hand of chairmen as a constraint on judicial independence.³⁵

The other change goes to the requirement that judges must prepare a fully-reasoned decision to flesh out the rationale behind their initial rulings. The general rule that JPs, like all Russian judges, must announce their decisions following the hearing on the merits remains unchanged. This is known as the “resolution part” (*rezoliutivnaia chast’*). But an exception for the JP courts has been written into the law. They are now required to write out the full decision—the so-called “motivated decision” (*motivirovannoe reshenie*)—only if the parties specifically request it.³⁶ Though this reform

³⁴ *O vnesenii izmenenii v otdel’nye zakonodatel’nye akty Rossiiskoi Federatsii*, ROSSIISKAIA GAZETA, March 6, 2013, available at <http://www.rg.ru/2013/03/06/sudju-dok.html>.

³⁵ See VADIM VOLKOV, ARINA DMITRIEVA, MIKHAIL POZDNIAKOV, AND KIRILL TITAEV, ROSSIISKIE SUD’I KAK PROFESSIONAL’NAIA GRUPPA: SOTSIOLICHESKOE ISSLEDOVANIE (2012), available at <http://pravo.ru/store/doc/doc/Pozdnyakov.pdf>; Peter H. Solomon, Jr., “Informal Practices in Russian Justice: Probing the Limits of Post-Soviet Reform,” in RUSSIA, EUROPE, AND THE RULE OF LAW (2007); Stanislaw Pomorski, “*Justice in Siberia: A Case Study of a Lower Criminal Court in the City of Krasnoyarsk*,” 34 COM. AND POST-COM. ST. 447 (2001). For the views of retired Russian judges, several postings on the PublicPost website are instructive. E.g., Maria Eismont, “Muki sovesti sud’i—eto strashnye muki,” May 30, 2012, available at http://publicpost.ru/theme/id/1516/muki_sovesti_sudi_eto_strashnye_muki/.

³⁶ “O vnesenii izmenenii,” *supra* note 35.

was introduced after my field research, I have no doubt that it will be welcomed by JPs. Many grumbled about the futility of writing decisions that no one read. It may allow them to avoid the overtime hours that most said was devoted to writing out these opinions. On the other hand, it reflects a move away from the goal of full transparency that motivated the requirement for judges to post all decisions on court websites. The law is silent on whether these abbreviated decisions will be available on-line.

III. The Docket of the JP Courts

The JP courts hear three types of cases: civil, criminal, and administrative. Cases are categorized according to the nature of the claim and the law relied upon in bringing the claim. Civil cases dominate the docket, representing 63.3 percent of all cases brought in 2011. Administrative cases constitute 33.6 percent of the docket. Criminal cases are much fewer, representing only 3.1 percent of the JP courts' workload. The situation in individual courts may vary. Because each court covers a distinct geographic territory, the sorts of cases naturally depend on the specific features of that territory. For example, if a JP court's district includes a large grocery store, then its incidence of petty theft is likely to be higher than the norm. Along similar lines, the dockets for districts that are primarily residential tend to be dominated by family law matters and disputes between neighbors.

Civil Cases. The official statistical forms delineate among more than 50 categories of civil cases, leaving about 8 percent in an ambiguous "other" category. In Table 2, I have aggregated these into the most common types of cases, and have included information about the procedural history of these categories of cases. Table 3 reorganizes the data according to the types of parties involved. A review of these tables shows that individuals are more likely to be defendants than plaintiffs in the JP courts. This is consistent with socio-legal theory, which predicts that those who are unfamiliar with the procedural rules will tend to avoid the courts.³⁷ Bringing in a lawyer can act to equalize the odds, but lawyers are the exception rather than the rule in civil litigation in Russian JP courts. To this end, Table 3 shows that individuals initiated less than 30 percent of the civil cases decided in 2011. Individuals are particularly reticent about suing the state. Such cases account for less than one percent of civil cases. The state, by contrast, is not shy about exerting its will on its citizens. They initiated over 40 percent of all civil cases. Legal entities are likewise enthusiastic litigants. Their cases against individuals represented about a third of all civil cases.

³⁷ Galanter, *supra* note 28.

As a general matter, this table shows that almost all (94.4 percent) civil cases heard by the JP courts culminate in a decision. This suggests that Russian litigants rarely initiate cases as a scare tactic to force payment, as is the norm in the U.S.³⁸ In the U.S., most cases settle fairly early in the process. Not so in Russia. Less than one percent of cases are settled by the parties.³⁹ Proceedings are terminated by the court in about four percent of cases, usually at the request of the plaintiff. This is most common in divorce proceedings, where second thoughts are to be expected. Indeed, the law requires the JP to give the parties time to reconcile if either side thinks this might be possible.⁴⁰ Almost 14 percent of divorces are abandoned. Couples with children are more likely than those without to abandon their divorce proceedings and try to make a go of their marriages. For couples with children, the rate of termination is 14.4 percent. For those without, it is 12.5.

Table 2 seems to indicate that civil cases are handled quite promptly. Violations of the two-month deadline are reported in less than one percent of all civil cases.⁴¹ Because violating this deadline has such dire consequences for JPs in terms of their careers, they work hard to meet it. The fact that notice of hearings has to go out by mail complicates matters due to the poor quality of the Russian postal service. JPs compensate by including a list of all the documents that need to be presented with the notice. If a second hearing is required, they post that notice on the court's website, which allows them to expedite the additional hearings. Even so, two months is a relatively short period, and judges struggle to meet the deadline. In my conversations with JPs, I was educated on the myriad of

³⁸ Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 463 (2004) (finding that less than two percent of all civil cases filed in the U.S. federal courts are resolved through a trial). Herbert M. Kritzer, *The Trials and Tribulations of Counting "Trials,"* 63 DEPAUL L. REV. 415 (2004) (cautioning that determining what constitutes a trial can be difficult).

³⁹ Settlement rates are driven partially by the cost of litigating, calculated in terms of time and money. In the U.S., trials can drag on for years. Most litigants are represented by counsel, which makes going to court extremely expensive. This creates a strong incentive to settle. George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984). In Russia, the process is quicker and many forego legal representation, especially in the JP courts. This is a partial explanation of the much lower rate of settlement. A full analysis is beyond the scope of this paper.

⁴⁰ *Semeinyi Kodeks Rossiiskoi Federatsii* [Family Code of the Russian Federation], Fed. Law No. 223-FZ (Dec. 29, 1995), SZ RF 1996, No. 1, item 16, (with amendments through Dec. 1, 2011), art. 22, available at <http://www.consultant.ru/popular/family/>.

⁴¹ GPK, *supra* note 23, art 154.

procedural tricks that can be used to comply with the letter of the law, even though the cases drag out beyond the deadline. For example, adding another party to the lawsuit acts to restart the clock. Judges told me that they often encourage litigants to bring in other parties even when they are peripheral to the matter at hand for this very purpose. The clock is tolled when evidence is sent out for expert evaluation. These are just a few of the tricks used to get around the rule. Recognizing that this was happening, the statistics department at the Judicial Department included a new question for 2011. They began to keep track of the total amount of time a case between the filing and the disposition of a case. When the question is asked in this way, it turns out that four percent of civil cases take longer than two months, rather than the reported 0.85 percent.

The role of judicial orders comes into clear focus in Table 2. In several categories of cases, they are used as a matter of course. The common feature of these categories is the absence of any factual dispute. For example, the JP courts hear claims for back wages. Almost without exception, these are cases where employers have failed to pay wages due to a lack of assets. Their liability is clear. Tax claims, regardless of whether brought by the state or the taxpayer, are also fertile ground for judicial orders because the basic facts are seldom in dispute. Cases that deal with loan agreements are less clear-cut. When banks or credit-card companies seek repayment, they often opt for *sudebnye prikazy* because the failure to pay is well-documented. But as Table 2 indicates, almost a quarter of such cases are resolved through full hearings. The JP for the Moscow district that houses the headquarters of Sberbank, one of Russia's largest banks, told me that it prefers to go through the regular judicial process; it does not use *prikazy*. Not surprisingly, claims involving personal injuries are rarely appropriate for judicial orders. Each side inevitably has its own version of what happened. Sorting that out necessitates a hearing, as is reflected by the fact that less than one percent of such cases are resolved through *sudebnye prikazy*.

By definition, those who opt for judicial orders prevail. But what about the other cases? Tables 2 and 3 report on the success rates for plaintiffs. The story is remarkably consistent. Plaintiffs tend to win. Cases initiated by the state against taxpayers constitute an exception. The authorities prevail in only half of their cases, as opposed to the 92 percent success rate in tax cases brought by taxpayers. This is an unanticipated result. Tax law is notoriously dense. Taxpayers would be expected to struggle. Perhaps it can be explained by the consistently high turnover rate within the legal department for the state tax service. In interviews, JPs frequently cited these lawyers' lack of experience of as the main reason for the state's poor track record. Table 3 suggests that the problem may not be limited to the tax authorities. As an overall matter, the state wins only about two-thirds of its cases, as opposed to a win rate of over 90 percent for other plaintiffs.

Administrative Cases. The state is always the initiator in administrative cases.⁴² The full statistical tables for 2011 list 186 categories of cases, which represents an increase from 2009 when there were 154 categories.⁴³ Cases are divided according to the section of the administrative procedure code that is at play. Unlike civil and criminal cases, where the jurisdiction of the JP courts is circumscribed, the JP courts hear almost all types of administrative cases. Table 5 includes the main categories of cases.

Those accused of administrative offenses do not always appear for their hearings. JPs are, of course, unable to predict whether they will show up. This affects their scheduling strategy. In most courts I visited, JPs put aside a day for hearing administrative cases. They scheduled a case every ten minutes, reasoning that most would be no-shows. If everyone had shown up, then it would have turned into a free-for-all, but I never saw this happen. On numerous occasions, I did experience the opposite, where none of the alleged offenders appeared. Failing to show up does not slow down the judicial process. JPs simply decide the case on the basis of the material available to them. Typically this is the complaint submitted by the state agency. This helps explain why more than 80 percent of all offenders are found guilty. If anyone shows up, it is the accused. According to the JPs with whom I spoke, the representatives of the state, such as traffic policemen, rarely appear. They prefer to let their documents do their talking. If the judge or the accused has questions, then the judge will set a time for another hearing and ask the state representative to attend.

The deadlines for dealing with administrative cases depend on the nature of the case. The general rule is two months.⁴⁴ According to the official data, the JP courts violate this deadline in less than one percent of

⁴² O.S. Zakharova, *Poniatiye administrativnogo sudoproizvodstva po delam ob administrativnykh pravoyerusheniiakh*, ROSSIISKII SUD'IA, no. 7 (2008), at 34.

⁴³ As a result of this expansion, there is no residual “other” category for administrative cases, as there is for civil and criminal cases.

⁴⁴ *Kodeks Rossiiskoi Federatsii ob administrativnykh proavonarusheniiakh* [Code of the Russian Federation on Administrative Violations], Fed. Law No. 195-FZ (Dec. 30, 2001), SZ RF 2002, No. 1 (part 1), item 1 (hereinafter the KoAP], (with amendments through July 10, 2012), art. 29.6, available at <http://www.consultant.ru/popular/koap/>. This rule was changed in 2010. Traditionally, administrative cases had a 15-day deadline. Recognizing its impracticability, the deadline was extended to two-months for most cases. *O vnesenii izmenenii v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii v sviazi s priiniatiem Federal'nogo zakona “O kompensatsii za narushenie prava na sudoproizvodstvo v razumnyi srok ili prava na ispolnenie sudebnogo akta v razumnyi srok,”* Fed. Law No. No. 69-FZ (April 30, 2010), SZ RF 2010, No. 18, item 2145, available at <http://www.rg.ru/2010/05/04/volokita-dok.html>.

cases.⁴⁵ The deadline is accelerated for cases considered more pressing. For example, cases related to election violations are supposed to be heard within five days. Cases in which a person is being threatened with jail must be heard immediately.⁴⁶ Typically, the police bring the accused to the chambers of the JP in whose district the offense occurred, where the case is heard in short order. Because administrative offenses requiring immediate hearings can happen anytime, a JP can be called to duty in the evenings or on weekends. An informal practice has developed in which JPs in contiguous judicial districts trade off being on call.

The administrative procedure code empowers JPs to impose a variety of sanctions, including written warnings, fines, confiscation, termination of rights, and administrative arrest. As would be expected, the punishment depends on the offense.⁴⁷ Table 5 documents that fines are assessed in about half of all administrative cases. Not surprisingly, the punishment for traffic-related cases is more likely to be a loss of driving privileges, whereas for the failure to file tax forms on time or the non-payment of fines, JPs tend to impose fines. Jail time is the norm for hooliganism, public drunkenness, and narcotics-related offenses, though many offenders (likely first-timers) get away with simply paying fines. Sometimes the offender is offered a choice between a fine and jail time. In my time at the JP courts, where I observed scores of administrative cases, only a few people opted for jail. Their reasoning was clear—they lacked the resources to pay the fine. If an offender fails to pay the assessed fine in a timely manner, this constitutes a new administrative offense.

Traffic-related cases constituted a third of all administrative cases heard by the JP courts in 2011.⁴⁸ Given that cases are heard wherever the offense occurred,⁴⁹ the proportion of traffic cases can be even higher in judicial districts that include well-traveled highways or problematic intersections. The categories of case in which the accused is most likely to plead their case in person (or through a lawyer) are those that carry the automatic penalty of the loss of driving privileges. This includes anyone found guilty of driving while

⁴⁵ Prior to the reform that extended the deadline to two months, the courts did not keep records of how often the 15-day deadline was violated. They did, however, keep track of how often cases had to be abandoned due to the expiration of the statute of limitations, which is another way of gauging delays. In 2011, 1.3 percent of administrative cases were dismissed on this basis. In 2009, it was 2.5 percent.

⁴⁶ KoAP, *supra* note 45, art. 29.6.

⁴⁷ KoAP, *supra* note 45, chs. 3, 4.

⁴⁸ A. Iu. Sokolov & G.A. Shevchuk, *Nekotorye problemy rassmotreniya mirovymi sud'iami del ob administrativnykh pravonarusheniiakh v oblasti dorozhnogo dvizheniya*, ROSSIISKI SUD'IA, no. 11 (2009), at 11.

⁴⁹ KoAP, *supra* note 45, art. 29.5.

intoxicated as well as those found to have been driving erratically. In my field work I observed numerous such cases. Those charged with driving under the influence typically attacked the paperwork of the traffic police.⁵⁰ In several cases, technical shortcomings allowed them to escape liability. More often, however, JPs seemed to give the police the benefit of the doubt. The conviction rate for drunk driving was 86 percent, which is higher than the overall conviction rate for traffic offenses (81 percent). By contrast, the police were less successful in cases alleging that the accused was driving on the wrong side of the road, an offense that carries a punishment of a loss of driving privileges for four to six months. These cases typically arose when the accused drivers were passing slower cars. The police prevailed in only 63 percent of such cases. Unlike drunk driving, which can be substantiated (or not) through medical evidence, whether a driver was driving safely when passing another car is less clear cut, leaving room for the accused to convince the court of their version of events.

Criminal Cases. As Table 1 documents, the JP courts hear relatively few criminal cases. Their jurisdiction is limited to cases that arise under the Criminal Code for which the maximum penalty is three years of incarceration. By definition, these are less serious crimes. The fact that less than two percent of the JP courts' cases involve defendants who have to be restrained while in court confirms that hardened criminals are generally directed elsewhere.⁵¹ All criminal defendants are required to be represented by *advokaty*.⁵² If a defendant is indigent, the state provides an attorney.⁵³

⁵⁰ If found guilty, a driver loses his license for six months to two years for a first offense, and for three years for a second offense. KoAP, *supra* note 45, art. 12.5.

⁵¹ The facilities needed for hearing cases involving defendants who have been held in pretrial detention are different. A courtroom with a "cage" (*kletka*) in which the defendant can be placed during the hearing is required. In my experience, most courtrooms used by JPs lacked "cages." Often there were one or two courtrooms with "cages" that were allocated according to need. In Rostov-na-Donu, a facility housing six judicial districts had no such courtrooms. When a case arose that required a "cage," the JP and her staff had to relocate to the district courthouse.

⁵² Like other European countries, Russia has a divided bar. Lawyers who represent clients are divided into *advokaty* and *iuristy*. Traditionally, *advokaty* handled courtroom work, while *iuristy* were transactional lawyers. This partition was strictly enforced during the Soviet period, but has since dissolved. *Advokaty* retain their monopoly on representing criminal defendants, but litigants are free to hire anyone of their choice in other cases. PAMELA A. JORDAN, DEFENDING RIGHTS IN RUSSIA: LAWYERS, THE STATE, AND LEGAL REFORM IN THE POST-SOVIET ERA (2005). As a result, *iuristy* frequently represent clients in the JP courts in civil or administrative cases.

⁵³ The 600 ruble (about \$20) per case fee paid by the state does not attract the most experienced or competent *advokaty*.

The small number of cases does not necessarily mean that JP courts devote little time to criminal cases. Indeed, the percent of criminal cases that take more than the six weeks allowed is 12.5, significantly higher than the delay rates for either civil or administrative cases. When the cases resolved through a form of plea bargaining that naturally accelerates the process are removed from the calculation, the delay rate jumps to 30 percent. Most (66 percent) of these cases end up being resolved within three months. The slower pace is to be expected in criminal cases. Not only do the cases tend to be less cut-and-dried, but the court has to accommodate the schedules of defense attorneys and prosecutors. As has been discussed above, civil and administrative cases are often pro forma and litigants are not required to be represented.

Plea bargaining is a big part of the story of the criminal docket of the JP courts. A majority (60.6 percent) of criminal cases are resolved through a “special process” (*osobyi poriadok*) that obviates the need for a full trial.⁵⁴ This plea bargaining type of procedure is used when the defendant, after consulting with a lawyer, acknowledges his culpability. The prosecutor must also sign off on its use. The resulting hearing does not require a parade of witnesses to prove what happened. Instead, the purpose of the hearing is to verify the voluntariness of the defendant’s plea. Needless to say, *osobyi poriadok* has operated as a major time saver for the JP courts. Table 6 lays out the use of *osobyi poriadok* for various categories of cases. It documents its use across the board (with the exception of so-called “private prosecutions,” which are discussed below). Indeed, in cases of theft, fraud, and the omnibus “other” category, this type of plea bargaining is used more than 70 percent of the time.

The overall conviction rate of 97.4 percent would seem to confirm the common wisdom that acquittals are as rare as hen’s teeth in Russia.⁵⁵ The reality is, however, more complicated. When defendants who have conceded their guilt are pulled out of the calculation, the adjusted conviction rate is 89 percent. At the same time, the conviction rates for the more serious crimes heard by the JP courts (e.g., theft, fraud, battery) still exceed 99 percent. A conviction does not necessarily translate into jail time. Only about 11 percent of convictions result in imprisonment. Far more common are mandatory work details (36.3 percent), fines (25.9 percent), or some sort of monitored release (26.8 percent).

⁵⁴ UPK, *supra* note 33, arts. 318-323.

⁵⁵ Peter Finn, *Fear Rules in Russia’s Courtrooms, Judges Who Acquit Forced Off Bench*, WASH. POST, Feb. 27, 2005, at A1.

Table 6:
Overview of the docket of Justice-of-the-Peace Courts for criminal disputes.

	Total criminal cases resolved (2009)	Total criminal cases resolved (2011)	As % of total criminal cases	% of cases decided by verdict	% of cases terminated short of verdict	Acquittal rate	% of cases resolved through plea bargaining
Total (35)	496142	455731		60.8	36.4	2.6	60.6
Stealing (7)	102216	100679	22.1	65.7	29.6	.04	77.3
Fraud (8)	18434	14185	3.1	64.3	32.4	.09	75.1
Battery (3)	23417	21630	4.7	51.4	45.8	.2	63.2
<i>Private Prosecutions:</i>							
<i>brought by victim (no involvement of law enforcement organs)</i>	72044	73512	16.1	26.4	71.4	34.9	5.9
<i>brought after official law enforcement finding</i>	43098	33182	7.3	47.8	50.1	.44	56.5
“Other”	187999	175400	38.5	72.2	25.1	.14	71.4

Sources: OTCHET O RABOTE SUDOV OBSHCHEI IURISDIKTSII PO PEROVINSTANTSII O RASSMOTRENII UGOLOVYKH DEL ZA 12 MESIATSEV 2011—SVODNYI OTCHET PO VCEM MIROVEM SUD’IAM V ROSSIJSKOI FEDERATSII (on file with author); OTCHET O RABOTE SUDOV OBSHCHEI IURISDIKTSII PO PEROVINSTANTSII O RASSMOTRENII UGOLOVYKH DEL ZA 12 MESIATSEV 2009—SVODNYI OTCHET PO VCEM MIROVEM SUD’IAM V ROSSIJSKOI FEDERATSII (on file with author).

A quick glance at Table 6 confirms that cases of “private prosecution” (*chastnoe obvinenie*) are outliers. Without exception, every JP with whom I spoke described these cases as the bane of their existence. These are criminal cases that the prosecutors have declined to pursue.⁵⁶ In about 30 percent of these cases, the victim appeals to the police for help. The police issue a report that damns the alleged perpetrator, but choose not to initiate a criminal case due to the trivial nature of the claim. In the remaining 70 percent of cases, the victim either bypasses the police or is met with complete disinterest. Notwithstanding that setback, the victim presses on.

Because most victims are unschooled in the law and lack the resources to hire a lawyer, the onus falls on the judge to manage the case. The JP is put in the uncomfortable position of being the investigator, while still being obliged to maintain neutrality as the arbiter of the case. Not only does this present a moral quandary, it also translates into a lot of work for the judge. These cases arise from squabbles that devolve into fisticuffs in which the injury sustained is not serious enough to warrant the interest of the police. The close living quarters of most Russians can give rise to misunderstandings that can escalate into more serious disputes, and so many of these cases pit family members, friends, or neighbors against one another.⁵⁷ The prevalence of alcohol in Russian daily life only exacerbates matters in altercations between friends and relatives as well as those in which there is greater social distance between the parties. One of the hallmarks of *chastnoe obvinenie* cases is a lack of clarity about what actually happened. Each side has his own view, which naturally tends to preference his interests. If there are no witnesses, then the JP is left to sort through the swamp of a “he said, she said” type of situation. Russian judges, including JPs, are uncomfortable assessing the credibility of witnesses. They prefer to base their rulings on documentary evidence, which is usually minimal in these cases. They can call character witnesses, but they tend to cancel each other out, as each side marshals their

⁵⁶ Article 22 of the Criminal Procedure Code (UPK) authorizes private prosecution for minor offenses akin to battery, pursuant to articles 115, part 1, and 116, part 1, of the Criminal Code (UK). See, UPK, *supra* note 33; UK, *supra* note 19. A mere insult (*kleveta*) or slander (*oskorblenie*) of another could give rise to this sort of case until late 2011, when the law was changed to shift these claims to the administrative code. Ekaterina Butorina, *Oskorblitel’nye popravki*, VREMIA NOVOSTEI, no.94 (June 2, 2009), at 2. Slander was added back to the Criminal Code in the summer of 2012. JPs told me that these changes were largely irrelevant for their purposes; most *chastnoe obvinenie* cases were grounded in claims of physical assault, which remained in the Criminal Code.

⁵⁷ See, e.g. OLGA SEMYONOVA TIAN-SHANSKAIA, VILLAGE LIFE IN LATE TSARIST RUSSIA (1993); Beatrice Farnsworth, *The Litigious Daughter-in-Law: Family Relations in Rural Russia in the Second Half of the Nineteenth Century*, 45 SLAVIC REV. 49 (1986) (describes analogous cases in the tsarist period).

supporters to the ramparts. If there are witnesses, then the JP has to round them up and bring them to court, a time-consuming task that can give rise to multiple delays in order to accommodate the schedules of the witnesses and the parties.

The JPs with whom I spoke shared a common attitude toward these cases. Once they got past their initial annoyance at having to deal with them, their goal was to work out a settlement between the parties. The procedural codes encourage judges to promote settlements in all cases, but judges truly take heed of this advice with respect to cases of *chastnoe obvinenie* for several reasons. The first is selfish. JPs are preoccupied by clearing cases within the prescribed deadlines. The extra work required for cases of *chastnoe obvinenie*, including the need to ferret out the truth through testimonial evidence, makes resolving them in a timely fashion almost impossible. Moreover, the time devoted to these cases is time taken away from other cases. The second reason is more altruistic. If these cases proceed to verdict and the defendant is found guilty, then this conviction will haunt both the defendant and his family forever. Many civil service jobs (including judge) are foreclosed to those who have a criminal record or to those who count such a person within their immediate family. JPs use this harsh reality to push victims to go along with a settlement rather than insisting on seeing the case through to the bitter end. Judges adopted different strategies. Some allowed the parties to air their complaints fully, hoping that getting their proverbial day in courts would satisfy them. Others tried to nip the disputes in the bud, fearing that rehashing what had happened would simply get everyone's juices going again and would complicate efforts at settlement.

The propensity to settle is clear from two statistics reported in Table 6. Most revealing is the percentage of cases dismissed, *i.e.*, terminated before verdict. This happens in about 36 percent of all criminal cases, but when cases of *chastnoe obvinenie* are singled out, the rate rises to 65 percent. It is more likely (71 percent) in cases brought by individuals who have not sought help from the police than in cases in which the police have issued a finding (50 percent). For this category of cases, the most likely cause for halting the proceedings is a victims' withdrawal of the charges. The flip side of this story is the percentage of cases that go to verdict. Table 6 documents that *chastnoe obvinenie* cases are the least likely to get to this stage.

When the cases involve those with preexisting relationships, getting the parties to see reason can be extremely difficult. As a rule, the physical injuries that are the pretext for these cases have faded in importance by the time they are in court. Instead, it is the wounds to dignity that arise from the insults that precede the physical altercations that propel the cases forward. The precipitating event may seem trivial, but acts as the last straw. There

may have been months or years of minor irritations that led up to the eruption.⁵⁸ In many of the cases I observed, women faced off against their mothers-in-law. Years of living on top of each other in small apartments had taken their toll, leading up to incidents in which the older women suffered physical injuries. Equally common were cases between fellow long-term residents of communal apartments. JPs' knowledge of the technicalities of the law took a back seat to their skills as informal mediators as they work to find a resolution that is satisfactory to all interested parties.⁵⁹ Among the relatively few cases in this category that proceed to verdict, defendants' odds of conviction were about even (53 percent).⁶⁰

Judges seemed to have an easier time with parties who had no preexisting relationship. The emotional element was more muted in such cases, easing the way to financial settlements. A case I observed in Pskov is a good example. A cab driver brought charges after a drunk passenger hit him and refused to pay the fare. At the hearing, the judge jumped right into the negotiating process. In fairly quick order, the cabby agreed to drop the charges in return for a payment of 3000 rubles (about \$100), which compensated him for the unpaid fare as well as the other fares lost due to the injury. Afterwards, the JP told me that he finds that if the parties recite their tales of woe, their anger is reinvigorated, complicating the settlement process. But he emphasized that cases in which the parties do not know each other tend to be easier to manage because they boil down to money. He did caution me that, as a general matter, the lack of personal ties meant that the fear of ruining the defendants' lives through criminal convictions was ineffective in dissuading victims from pressing forward.

The sorts of case that arise under the *chastnoe obvinenie* rubric as well as the behavior of JPs in response to them are reminiscent of the Soviet-era

⁵⁸ When police decline to prosecute, domestic violence victims can use this mechanism. Some argue that, in the face of official refusal to prosecute domestic violence, victims are left to resort to *chastnoe obvinenie*. See, e.g., Elena Kukhtenkova, *Svezhaia golova*, ROSSIISKAIA GAZETA, no. 149, July 3, 2012, at 16. Unfortunately, the data do not allow for sorting on this basis.

⁵⁹ A. Balashov & G. Mergalieva, *Pravovaia priroda primireniia po delam chastnogo obvinenia*, MIROVOI SUD'IA, no.8 (2007), at 5.

⁶⁰ Some attribute the differential conviction rates to the judges' deference to prosecutors. Ella Paneiakh, *Prokuror ne dopustit*, NOVOE VREMIA, no. 12, Apr. 5, 2010, at 13, available at <http://newtimes.ru/articles/detail/18847/>. This explanation gives short shrift to the circumstances underlying cases of *chastnoe obvinenie*, such as the deeply conflicted versions of events presented to judges.

comrades' courts.⁶¹ Yet JPs consistently recoiled in horror when asked about this apparent parallel. As full-fledged judges within the state judicial system, they were offended by being compared to an institution that imparted community-based judgments that were not required to be grounded in the law. They were, of course, correct to note the institutional differences between JP courts and comrades' courts. On the other hand, as I observed the procedural informality of the JP courts, watching disputants venting their spleens at one another without restraint, I was reminded of the stories from Feifer's field work in the comrades' courts of the 1960s.⁶²

This category of cases would seem to be well-positioned to take advantage of the legalization of mediation in early 2011.⁶³ The law allows courts to divert cases to trained third-party mediators, who work with the parties to find a mutually acceptable resolution. Given that JPs are already acting as quasi-mediators and are deeply resentful of the time needed for this approach, turning these cases over to mediators would seem to be in everyone's best interest. Indeed, JPs successfully experimented with the use of mediation in cases of *chastnoe obvinenie* to good effect before the law was finalized.⁶⁴ In an odd twist of fate, the law that supposedly promoted mediation forbade its use in criminal cases. No one questions that mediation would be inappropriate for serious crimes, but the blanket rule has nipped in the bud a way to avoid expending the resources of the judicial system on cases of *chastnoe obvinenie*.

IV. Preliminary Conclusions

Over the past decade, the Russian JP courts have quietly become the workhorses of the judicial system, and JPs the unsung heroes. They handle an enormous number of cases with great aplomb. But JPs are certainly not martyrs. They regularly sound off about being overloaded. The raw data appear to support their complaints. Yet my analysis reveals a more complicated picture in which judges are less overloaded than the data would suggest. Creative procedural tools have evolved to help judges manage the deluge. The development of judicial orders in civil cases and plea bargaining

⁶¹ Yoram Gorlizki, *Delegalization in Russia: Soviet Comrades' Courts in Retrospect*, 46 AM. J. COMP. L. 403 (1998).

⁶² GEORGE FEIFER, JUSTICE IN MOSCOW (1964).

⁶³ *Ob al'ternativnoi protsedure uregulirovaniia sporov s uchastiem posrednika (protsedure mediatsii)* [On an alternative procedure for the resolution of disputes with the participation of mediators (mediation procedure)], Fed. Law No. 193-FZ (July 27, 2010), SZ RF 2010, No. 31, item 4162, available at <http://www.rg.ru/2010/07/30/mediacia-dok.html>.

⁶⁴ Aleksandr Kliuchnikov, *Dazhe khudoj mir luchshe dobrogoo prigovora*, AIF NA DONU (Nov. 3, 2010), available at http://www.rostoblsud.ru/ne_4570962.

in criminal cases allow many cases to be resolved without the full rigmarole of a hearing on the merits. Juggling all these cases is not easy. JPs manage their dockets effectively and with little official recognition.

Though the focus of this article has not been on the attitude of litigants towards the JP courts, it should be noted that the indicators are generally positive. In a 2009 survey, over 80 percent of those with experience at the JP courts described themselves as satisfied with the process.⁶⁵ The rate of appeals is a cruder measure of litigants' experience. Given that a party can lose and still find the process to be fair, it is not a perfect reflection of overall attitudes. At the same time, the extremely low rate of appeal in civil cases suggests that litigants are generally satisfied. Less than two percent of civil judgments were appealed in 2011.⁶⁶ Of those, the judgment of the JP court was reversed about eleven percent of the time. Not surprisingly, the harsher penalties in criminal cases contribute to making appeals more common. About 20 percent of the criminal judgments of the JP courts are appealed. Given that both prosecutors and defendants have the right to appeal, this higher rate is to be expected. No doubt the persistent confusion among many Russians about the role of the key players in the criminal justice system also played a role.⁶⁷

The analysis also shows that private plaintiffs, whether individuals or entities tend to prevail in civil cases in the JP courts. In an odd twist that confounds the common wisdom as to the supposedly unchecked power of the Russian State, governmental institutions have proven to be markedly less successful in these courts. A full explanation of the reasons why are beyond the scope of this article.⁶⁸ But the high levels of turnover among

⁶⁵ The survey was fielded in Nizhninovgorodskia oblast', Rostovskia oblast', and Leningradskia oblast'. About half of the 1200 respondents had been to the JP courts. 54.4 percent described themselves as completely satisfied. 26.7 percent reported being partially satisfied. KRIUCHKOV, OTNOSHENIE GRAZHDAN *supra* note 7.

⁶⁶ The appellate court affirmed the ruling of the JP court in almost 90 percent of appeals. In the U.S., by contrast, about 15 percent of general civil trials concluded in 46 large counties between 2001 and 2005 were appealed. THOMAS H. COHEN, APPEALS FROM GENERAL CIVIL TRIALS IN 46 LARGE COUNTIES, 2001-2005" (*Bureau of Judicial Statistics Special Report*, June 2006), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=378>. The reversal rate among the appeals resolved on their merits was about 33 percent. Many cases did not proceed to this stage because the participants had reached a settlement. The fact that the Russian statistical bureau does not collect data on settlements tells us that it is an infrequent occurrence.

⁶⁷ Irina G. Smirnova, *Obshchestvennoe mnenie ob ugolovnom sudoproizvodstve: o chem govoriat tsifry?*, ZHURNAL ROSSIJKOVO PRAVA, no. 5 (2011), at 57, 59.

⁶⁸ For more on litigation involving the state in Russia, see MARIA POPOVA, POLITICIZED JUSTICE IN EMERGING DEMOCRACIES: A STUDY OF COURTS IN RUSSIA

state bureaucrats as well as informal policies that require all cases to be litigated (regardless of their individual merits) may explain the state's woeful record. It certainly calls into question the presumption of many that the courts are incapable of bucking the state. It points to the existence of a dualistic system in which judge's rule by law in mundane cases, while still kowtowing to the state in cases with political overtones.⁶⁹ The more stellar record of private litigants is equally intriguing. Individuals and companies may be less quick on the draw; limiting themselves to sure-fire cases. This raises a larger policy concern about why such cases are ending up in court rather than being resolved between the parties. The defendants may be seeking additional time before paying what they owe. Though the requirement that losing parties pay filing fees (*gosposhlina*) means that such a strategy inevitably ends up costing more, the additional amounts may not be enough to create an incentive to avoid litigation. The reluctance to settle is likely a function of the relatively low costs associated with litigating in Russia. Whether the legalization of mediation as an alternative to court in early 2011 will have the desired effect of spurring more settlements remains to be seen.

The more difficult question is whether these "slam dunk" cases belong in court at all. Arguably the time of judges could be better used. Indeed, this was the basis of the argument for creating the JP courts, namely to free the district judges of mundane cases in order to give them sufficient time to handle complex civil litigation and serious criminal cases. To go down this road again with the goal of reducing the caseload of the JP courts would require a rethinking of the fundamental of question of who should have access to the courts in Russia. Traditionally, top priority has gone to accessibility. Filing fees have stayed low and the requirements for filing a case are minimal and comprehensible to laymen. Judicial culture likewise is skewed towards openness. Judges are forgiving when parties show up empty-handed, permitting multiple continuances. If the rules were to become more demanding and judges were to become less forgiving, the number of cases decided would drop, but so too would the level of accessibility of the Russian courts.⁷⁰

AND UKRAINE (2012); Alexei Trochev, *Suing Russia at Home*, 59 PROBS. POST-COMMUNISM 18 (2012); Timothy Frye, *Capture or Exchange? Business Lobbying in Russia*, 54 EUR.-ASIAN STUD. 1017 (2002); Kathryn Hendley, *Suing the State in Russia*, 18 POST-SOVIET AFF. 122 (2002).

⁶⁹ Kathryn Hendley, "Telephone Law" and the "Rule of Law" The Russian Case, 1 HAGUE J. RULE L. 261 (2009).

⁷⁰ Kathryn Hendley, Too Much of a Good Thing? Assessing Access to Civil Justice in Russia, SLAVIC REVIEW (forthcoming).