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“Too Much of a Good Thing? Assessing Access to Civil Justice in Russia”

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Assessing Access to Civil Justice in Russia
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by Kathryn Hendley¹

Institutions and their inhabitants often share organizing and self-justifying myths. Courts are no exception. The statues of a blindfolded lady justice holding a scale that greet visitors to courts around the world convey a universal aspirational myth of impartial and even-handed justice. But how courts go about doing justice varies, as do the ways that judges think about their lot in life. Likewise the image that judges have of themselves does not always match the vision society has for them (Markovits 1995).

Russia presents an intriguing case study of this phenomenon. The popular image of the Russian judicial system is dominated by two contradictory narratives. One emphasizes its dysfunctional elements, focusing on the public's distrust for the courts. This narrative delights in presenting high-profile cases in which the outcomes are blatantly dictated by the desires of the Kremlin as representative. The other looks more to the day-to-day reality of the courts, and stresses the burden on judges of the avalanche of cases bring brought to the Russian courts. There is a logical inconsistency to the two images.² Remarkably, both have more than a kernel of truth to them. To a considerable extent, they feed on one another. Overworked and exhausted Russian judges make mistakes that contribute to low public esteem for courts. Yet court administrators continue to push judges to absorb ever-greater numbers of cases as a way of proving the value of courts.

In this paper, I focus primarily on the second narrative, critically examining the workload of Russian judges. A reevaluation of the data convinces me that the burden on judges has been overstated. Indeed, I take the argument a step further, and put forward the controversial position that Russian civil justice is actually too accessible. I advocate for reforms to procedural rules and to the more amorphous legal culture that would remake the landscape of litigation.³

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²I have elsewhere addressed the question of why Russians continue to flock to courts that, according to public opinion polls, they do not trust. My analysis indicates that trust in the courts is not a key motivating factor for individuals or firms when deciding whether to take disputes to court (Hendley 2012d).

³My approach to this broad issue of access to justice goes against the grain. The first wave of Western scholarship on access to justice advocated for greater pluralism in the mechanisms for dispute resolution and for the expansion of access to legal professionals (Cappelletti, 1978, 1979). A revival of interest in this field looks beyond traditional legal

By limiting the analysis to civil justice, I am mostly sidestepping the issue of politicized justice in Russia. In doing so, I do not intend to deny the continuing existence of this phenomenon. Recent history has provided a series of cases – of which the cases involving Mikhail Khodorkovskii and the punk rock band Pussy Riot are only the most prominent – that can only be understood as Kremlin edicts.⁴ Nor am I denying the sad reality of the multitude of businessmen who have been jailed as a result of trumped-up cases brought by former business partners.⁵ The bulk of these cases involve criminal charges, though politics can certainly rear its head in civil cases.⁶ Regardless of whether these cases are civil or criminal, I would not be so bold as to suggest that any procedural rule could rein in the will of the politically powerful. At the same time, the vast majority of cases proceed through the Russian judicial system without any outside attention. These are the cases that interest me. Their sheer numbers are choking the system. The problem presents a classic quandary of how to find the equilibrium between justice and efficiency. On the side of justice is the goal of giving full access to the courts. On the side of efficiency is the necessity of limiting access in order to allow judges to have enough time to

institutions to explore problem-solving strategies more generally (Sandefur and Smyth 2011; Sandefur 2009). One continuing line of inquiry is the availability of legal information and representation, especially among the poor (Daniels and Martin 2009; Murayama 2009; Rhode 2005). Though I share the commitment to uncovering everyday law (Hendley 2011), this paper focuses on the impact of the basic policy choices on the sorts of cases brought to the courts (both the types of cases and the number of cases) and on the capacity of judges to manage them.

⁴For a thorough overview of the Khodorkovskii case, see Kahn (2011). On the case brought against the punk band, Pussy Riot, see Herszenhorn (2012). For an example of how the media generalizes from this very odd trial, see Gessen (2012). On the other hand, an August 2012 poll conducted by the reputable Levada Center showed that 44 percent of those polled felt that the trial had been conducted fairly. Only 17 percent were troubled by the process, with the remaining respondents declining to give an opinion.
<http://www.levada.ru/17-08-2012/tret-rossiyan-verit-v-chestnyi-sud-nad-pussy-riot>

⁵The defendants in such cases typically argue that the charges have been “ordered” (*zakaznye*) by their more politically powerful former business allies as a way to gain the upper hand. Iana Iakovleva, who has first-hand experience of this phenomenon, founded a non-governmental organization, Business Solidarity (*Biznes Solidarnost'*), in an effort to bring greater transparency to what is happening. See <http://www.kapitalisty.ru/> The memoir literature, which has begun to appear, paints a picture of a criminal justice system that can be manipulated by the powerful and wealthy (e.g., Romanova 2010; Iakovleva 2008). The criminalization of business disputes in Russia is beyond the scope of this article. Others have addressed it, though more work is needed (e.g., Firestone 2010).

⁶Lambert-Mogiliansky et al. (2007) have argued that bankruptcy cases are highly problematic due to corruption.

make a proper ruling. Hanging over all this are budgetary realities. Solving the problem by expanding the capacity of the courts by expanding the number of judges and courthouses becomes too expensive at some point.

This problem of courts drowning in cases is not unique to Russia. Interestingly, it has not attracted much attention among socio-legal scholars. Perhaps this is because the problem is less intense in the U.S. than elsewhere.⁷ Courts with civil law legal traditions in Europe, Latin America, and South America are more akin to Russia. The cost of going to court are often minimal (or even non-existent) and procedural rules are simpler, allowing disputants to engage the system on their own.⁸ As a result, the civil dockets can become overwhelmed by cases that could better be handled outside the judicial system.⁹

In this article, I focus on first-instance civil cases brought to the Russian courts. I begin by documenting the sheer number of cases. Because I am interested in civil justice, I will be looking at caseload data for both the economic or *arbitrazh* courts and the courts of general

⁷There is a robust literature on the nagging problem of delays within the U.S. system (*e.g.*, Heise 2000; Grossman et al. 1981). Though superficially similar to the problem I am investigating, in that it also addresses an overloaded judicial system, the very different institutional structures of the courts makes any comparison specious. In the U.S., the more complex nature of the procedural rules makes it incumbent upon litigants to engage counsel. Their ability (or willingness) to do so acts as a first filter, though Flango and Clarke (2011) advocate a more formalized triage system for deciding which cases deserve the courts' attention. In addition, the emergence of mediation and other mechanisms for alternative dispute resolution have helped rid the court of what Abel (1982: 302) characterized as "junk" cases: "matters that fail to use [judges'] legal skills and may even resist legal resolution, that appear politically, economically, or socially insignificant, or that have become highly repetitive." On appeal, however, courts in many advanced industrialized democracies struggle with how to discourage routine and pointless appeals (Svensson 2005; Greene et al. 1998; Wold 1978).

⁸The availability of legal assistance to Russians who lack the means to pay is an important issue, but is beyond the scope of this article. Criminal defendants are legally required to be represented and the state pays for attorneys for those who cannot afford to. The same courtesy is not extended to civil litigants. Whether the state should underwrite attorneys' fees in civil cases is being actively debated. See generally Ivanova 2011; Abrasomova 2010; Tarasov 2010. For a survey-based analysis of the attitudes of Russians towards the legal profession, see Kriuchkov (2011).

⁹Several intriguing studies were commissioned by the World Bank as part of its effort to improve court management (*e.g.*, World Bank 2004 [Brazil]; Svensson (2007) [Guatemala and El Salvador]. Svensson (2006) notes the increase in case filings across the European Union and suggest ways to ameliorate the problem.

jurisdiction.¹⁰ At first glance, the upward trends seem to substantiate the judges' self-image as victims. Upon closer analysis, however, the data reveal that a significant number of cases are being resolved in summary procedures, suggesting that the official figures for cases decided per judge each month are misleading, thereby undercutting the judges' narrative. Yet it persists. I argue that its purpose has less to do with empirics than with giving the judges a self-justifying myth to counter the popular view of them as corrupt and incompetent. Returning to the empirics, however, even when the caseload data are adjusted to reflect reality, they still suggest that the courts are badly overloaded with trivial claims. I conclude by exploring possible solutions to this dilemma.

The Evidence of Overworked Courts in Russia

The judges' rhetoric about being overworked appears to have a strong foundation in the official caseload data. Tables 1-3 present information about the number of cases handled by the Russian courts, and then break the data down to show the average monthly caseload for a single judge. In making sense of these data, it is important to recognize that the same judge handles the case from start to finish, and is expected to write a reasoned opinion that will be posted on the website of her court.¹¹

Table 1 focuses on the *arbitrazh* courts.¹² It documents the increase in cases decided over

¹⁰For an overview of the structure of the Russia judicial system, see Hendley (2002).

¹¹As of July 1, 2010, all opinions and other judicial acts are required to be posted on the internet (Federal'nyi 2008). The Foundation for Freedom of Information in St. Petersburg monitors and ranks the websites of courts as to openness (<http://www.svobodainfo.org/ru>). Other countries are less aggressive as to the requirement to publish opinions. In the U.S., many judicial opinions remain unpublished. The chief judge of the U.S. Court of Appeals for the Sixth Circuit commented on this practice: "Whereas academicians tend to see unpublished opinions as causing a variety of systemic problems, judges tend to see them as a necessary, and not necessarily evil, part of the job" (Martin 1999: 178-179). He saw choosing not to publish opinions as a way of dealing with the increasing number of appeals. In conversations with me, several Russian judges floated this idea as a way of lessening the pressure on them, saying that posting an endless number of opinions that are largely identical served no one's interests. The idea has not been taken up in the popular or scholarly press in Russia.

¹²The *arbitrazh* courts are the institutional successors in interest to "state *arbitrazh*," which were akin to administrative agencies that heard disputes between state-owned enterprises (Pomorski 1977). With the shift in status to a full-fledged court, the jurisdiction of the *arbitrazh* courts was expanded to include all types of disputes involving legal entities, including those involving the state as well as bankruptcy (Hendley 1998). In a 2009 interview, the head of the *arbitrazh* court for Nizhegorodskaja oblast', who had worked as an arbiter in the state *arbitrazh* system in the Soviet era, argued that the caseload of that system had been approximately the

the two decades of these courts' existence. Between 1994 and 2002, the docket experienced a threefold expansion. From 2002 to 2011, it doubled again. Yet the number of judges did not expand at the same rate. Only 48 judges were added, representing an increase of 1.8 percent. This explains why the average per judge workload exploded. In 2002, *arbitrazh* judges were expected to resolve about 32 cases per month. By 2011, this had grown to 52 cases. The regional data show remarkable variation and document the particularly heavy load carried by judges in the major commercial centers of Moscow, St. Petersburg, and Ekaterinburg.¹³ The Moscow City Court is the busiest court within the *arbitrazh* system.¹⁴ Not only does it hear cases arising within Moscow, but parties located elsewhere regularly opt for it in contractual forum clauses.¹⁵ It follows that it has the heaviest average monthly per-judge caseload. In 2011, Moscow judges were deciding an average of 94 cases per month, a 283 percent increase over its 2002 workload. More modest, but still significant, increases were experienced in St. Petersburg and Ekaterinburg.

Tables 2 and 3 center on the courts of general jurisdiction. Table 2 presents aggregate data for the courts. It shows that the total number of cases decided in these courts over the past decade has more than doubled, representing a pace of growth that is only slightly less rapid than that of the *arbitrazh* courts. When these data are broken down into the various types of cases, an interesting trend emerges. Belying the popular wisdom that the state is becoming more aggressive in pursuing criminal charges against its citizens, it is actually non-criminal cases that account for this growth spurt. The number of administrative cases grew by over 360 percent from 2000 to 2010, and the number of civil cases increased by over 275 percent during this period. The incidence of criminal cases, by contrast, witnessed only an 80 percent increase.

same as for the *arbitrazh* courts (Piskunova 2009: 102). Comparing the cases brought in the two systems is problematic. In the Soviet era, monetary damages were beside the point. More important were findings that excused parties from responsibility for late deliveries or poor-quality goods because these would explain an inability to meet the targets of the annual economic plan.

¹³Bol'shova, the former chairman of the Moscow City court, writing in 2010, comments on the differential burden: "in 12 courts of the subjects of the Russian Federation the work load on judges constitutes 80 to 100 cases per month, in 9 less busy courts, the workload was 35 to 47 cases" (2010: 86).

¹⁴In 2002, the Moscow City court accounted for 6.2 percent of the entire docket of the Russian *arbitrazh* courts. By 2011, this share had increased to 10.6 percent.

¹⁵In a 2011 interview, the current chairman of the Moscow City court, Sergei Iu. Chucha, bemoaned the disproportionate load being born by his judges, though he expressed full confidence in their ability to manage their cases. Before taking up his post in Moscow, Chucha had served as the chairman of the Omsk *arbitrazh* court, a much smaller court. He commented on the different challenge associated with managing several hundred judges (Piskunova 2011).

Table 3 bores in on the lowest level and busiest court in this hierarchy, the justice-of-the-peace courts (JP courts or *mirovye sudy*). It lays out the overall average monthly per judge caseload for Russian justices-of-the-peace (JPs) as well as the average number of civil and administrative cases decided by JPs in 2009 and 2011. During this period, the average JP decided over 200 cases every month, a pace that seems incredible. The bulk of these cases were not criminal, which reflects the jurisdictional realities of the JP courts. They are limited to criminal cases in which the maximum penalty is three years incarceration. By contrast, they hear virtually all administrative cases brought to the courts of general jurisdiction as well as three-fourths of all civil cases (Hendley 2012a: 17). To some extent, the regional variation is a function of the courts' jurisdictional parameters. The Central okrug, which includes Moscow, exhibits one of the lower per judge caseloads. When doing field work in 2011 and 2012, I found that the Moscow JP courts were idler than courts I observed in Pskov, Rostov-na-Donu, and Voronezh. The Moscow JPs with whom I spoke pointed to the statutory limit of 50,000 rubles for civil disputes, explaining that the higher cost of living in Moscow resulted in fewer disputes of this magnitude (Hendley 2012b). This helps make sense of the lower figures for civil cases, but does little to explicate the lower number of administrative cases. Traffic violations account for about a third of administrative cases and anyone who has visited Moscow would find it difficult to believe that Muscovites did not receive more than their share of traffic violations. Indeed, the reasons for the patterns exhibited in Table 3, such as why there are so many cases in the Far East okrug and so few in the Southern and Northern Caucasus okrugs, deserve detailed investigation. When these data are recalculated and normalized to reflect the population of the okrugs, the basic pattern does not change. The JP courts of the Central okrug remain the least busy and those in the Far East the busiest.¹⁶

Not surprisingly, the comparison of the workload of JPs over this rather short time period reveals more modest changes than seen in the data for *arbitrazh* judges. The total number of JPs expanded by only four. The number of JPs is controlled by statute, which dictates that there be a JP for every 25-23,000 citizens.¹⁷ Even so, the per judge caseload remained fairly steady between 2009 and 2011. Where changes are visible, they reflect downward turns. The reduction of the statutory cap for civil cases from 100,000 to 50,000 occurred in 2010, which may partially explain this trend (Federal'nyi 2010b). Yet the burden of administrative cases was also reduced during this period without any accompanying amendment to the jurisdictional boundaries. Since their creation, the JP courts have had primary responsibility for all administrative cases (Art. 3, O mirovykh 2011). Despite their penchant for tinkering with the jurisdictional limits of the JP

¹⁶In 2011, this recalculation for 2011 reveals that for civil cases, the per capita workload in the Central okrug was 0.002, whereas for the Far Eastern okrug, it was 0.024. For administrative cases, it was 0.00133 for the Central okrug and 0.0122 for the Far Eastern okrug (Hendley 2012b: Table 1).

¹⁷Originally the law mandated a JP for every 15-30,000 citizens. The adjustment was made in 2006 due to the undue burden on some JPs in heavily populated regions (Federal'nyi 2006).

courts, legislators have left this part of the law alone (Hendley 2012: 7).

When the time period under review is expanded, a different picture emerges. Though I do not have the full unpublished workload data for the JP courts for years before 2009, glimpses of the situation during these years is provided through the scholarly literature. In an interview, the head of the department that manages the JP courts in Stavropol krai, Valerii A. Budko, revealed that the average monthly per judge caseload across Russia was 65 in 2002 (Mirovaia iustitsiia 2009). The tripling of the burden on JPs between 2002 and 2011 is akin to the upward curve for the *arbitrazh* courts. At the same time, the limited regional data suggest that there was considerable variation. For example, JPs in Samara oblast' heard 119 cases per month in 2003 (Tkchaev 2004: 2), while JPs in Kamchatka heard 211 cases per month in 2006 (Iusupova 2006: 30).

In interviews, court administrators and judges regularly allude to the caseload data. Sometimes they even argue that these data fail to fully capture the horror of their situation. For example, Boris A. Balandin, the chairman of the *arbitrazh* court for Nizhny Novgorod, commented that the official per month figure of 89 cases did not take into account the fact that *arbitrazh* judges regularly cover for their colleagues who are on vacation. He estimated the actual monthly burden as 100-150 cases (Piskunova 2009: 98). Noting the high turnover, Anton I. Ivanov, the chairman of the Higher *Arbitrazh* Court remarked: "Judges are voting with their feet" (Shiniaeva 2012). Alla Bol'shova, the retired chairman of the Moscow city court, posed the rhetorical question of whether *arbitrazh* judges could make good decisions given the heavy caseload. Her emphatic response: "alas, no!" (*uvy, net!*) (2010: 86). Since 1995, I have spent many summers observing the work of *arbitrazh* courts. Over that time, I have seen a wide variety of styles of judging and have had the good fortune to witness numerous changes in procedural rules. What has not changed, irrespective of time or place, is the *arbitrazh* judges' self-image as overworked and under-appreciated. In my conversations with them, many lamented their inability to spend more time on cases, telling me that they felt themselves to be little more than conveyor belts of justice.¹⁸ Their sarcastic tone indicated their ironic use of the word "justice." As I will discuss in more detail below, judges feel obliged to handle cases, not just because they want to provide timely service to litigants, but more importantly because the Russian procedural codes prescribe the time allowed for resolving the various categories of cases.

¹⁸Similar sentiments were expressed by trial and intermediate appellate court judges in California due to the influx of cases in which the outcome was evident from the outset. One appellate judge said that such cases "just clog up the whole process" (Wold 1978: 62). Speaking of first-instance cases, the senior judge at a municipal court described his job: "Every morning you come here and take your pitchfork, I take my pitchfork. There's a big pile of manure, and we pitch it all out and when we're through we go home. And tomorrow there's going to be another pile of manure. ... Somebody's got to do it" (Wold and Caldeira 1980: 339). Many judges felt that the cases deemed worthy of their attention were mostly routine and tedious. Some judges reported that they had considered resigning from the bench to avoid the monotony (*ibid.*: 344-45).

My field research in the JP courts began only in 2010. But I was immediately struck by the similarity in the rhetoric of the judges. Like their colleagues in the *arbitrazh* courts, JPs expressed dissatisfaction at the necessarily quick pace of their work. They are also called upon to pick up the slack for their co-workers on vacation or on maternity leave, meaning that the reported data are likely to under-report the number of cases they actually handle. In interviews published in the scholarly press, JPs pulled no punches. One JP from Kamchatka estimated that he handled five or six cases per day, and noted that he put aside Fridays to deal with administrative cases, and usually had about seven (Iusipova 2006: 30). Another from the town of Kameshkogo in Vladimirskaya oblast' commented: "the post of judge doesn't allow for any free time or a personal life – the workload is insane (*sumashedshaia*)" (Trunina 2004: 30). A Voronezh JP joked that the workload would be manageable if only there were 48 hours in a day (Raznikova 2004: 32). It is important to remember that judicial hearings account for only part of the workday of judges. The Kameshkogo judge reckoned that he spent about 40 percent of his time in the courtroom. He spent more time (50 percent) working with documents, *e.g.*, preparing for hearings or writing opinions. The rest of his time is split between organizational tasks and working with his staff (Trunina 2004: 31).

Recent sociological research among judges in the courts of general jurisdiction confirms that many feel overwhelmed.¹⁹ Slightly less than half of the judges surveyed (46.5 percent) considered their workload too high. Only 2.2 percent said it was too low. A bare majority (51.3 percent) characterized it as normal (Volkov et al. 2012: 46). This, of course, may reflect the internalization of unreasonable expectations. To that end, the surveyed judges reported receiving thirty new cases each week. A quarter of these judges said that they handled between 11 and 20 cases per week. Another 20 percent said they managed 21-30 cases, while 30 percent claimed to have handled more than 30 cases on a weekly basis. Remarkably, about 12 percent said they heard more than 50 cases each week. A minority of 22 percent said they dealt with less than ten cases per week (*ibid.*: 45). Reports of having to take work home were routine (*ibid.*: 47). This study properly stresses that the pace of work greatly outstrips that recommended by the norms established for judges in 1996 by the Ministries of Labor and Justice (*ibid.*: 46).

Taken at face value, the evidence on the workload of Russia's judges cries out for institutional reform. Policy makers have taken note of the problem. In late 2010, then-President Medvedev issued an order to explore methods to remedy the workload on judges (O khode 2011). The Council of Judges, which took up this challenge (see below), had already adopted a decree that prioritized the need for legislation that would standardize norms for judicial workloads (O neobkhodimosti 2010). A year later, in October 2011, at a meeting with top judicial officials, Medvedev laid down the gauntlet: "I would like to hear your proposals on how to lower the workload on justices-of-the-peace with regard to civil cases." He suggested adjusting the jurisdictional boundaries by lowering the threshold value for property disputes or

¹⁹The survey included 759 judges, of which about 43 percent were from the JP courts. The remainder were from higher courts within the courts of general jurisdiction. For more information on the methodology of the research, see Volkov et al. 2012: 10-11.

rethinking the procedures for tax cases, but made it clear he was open to all ideas. He intimated that the previous changes made along these lines (such as reducing the threshold amount from 100,000 to 50,000 rubles) had not yet solved the problem, noting that “on average each month a JP handles 44 civil cases” (Medvedev 2011).²⁰ Several months later, at a celebration of the 20th anniversary of the founding of the *arbitrazh* courts, Medvedev got an earful about the workload of *arbitrazh* judges. Veniamin Iakovlev, the former chairman of the Higher *Arbitrazh* Court described the courts as overworked, and pushed for legislative reforms. Vera Iashina, the chairman of the Riazin *arbitrazh* court echoed his sentiments: “the workload data show 16 cases per month, but we don’t have a single judge that has such a workload. It is two or three times greater” (Sidibe 2012). Whether Putin will share Medvedev’s concerns about the burden on judges and will continue to push for reform is unclear.

Reevaluating the Evidence of Overwork in the Courts in Russia

These data, which are regularly cited by judges when putting forward their narrative of exploitation, are problematic. The per judge workload figures are grounded in an assumption that cases are fungible. Anyone who has spent time at a court or has read case decisions appreciates the fallacy of that assumption. Cases vary in terms of their complexity, which can arise either from underlying law or from the tangled web of facts alleged. Complexity matters because it will affect the time needed to resolve the case. In the U.S., many jurisdictions weight their cases to account for differing levels of complexity. Not only does this help calculate more accurate workload statistics, but it also assists in allocating cases among judges. The intake forms for the Russian courts, from which caseload statistics are derived, focus on objective facts, such as the type of case and the amount sought.²¹ The sort of information that would be needed to index cases by complexity, such as the clarity of the facts or the amount of evidence that will have to be assembled, is not sought. To introduce it would require subjective assessments that may be beyond the abilities of the staff members who typically handle intake, most of whom have little more than a high-school education. The idea of weighting cases has not been much discussed in the Russian scholarly press.²²

Some scholars have paid lip service to the existence of relatively simple cases on the

²⁰For a video of Medvedev’s remarks, see <http://www.1tv.ru/news/polit/187650>.

²¹When writing about the challenges of aggregating judicial data, the head of the statistical department for the Judicial Department, which handles the courts of general jurisdiction, emphasized the importance of standardizing the data to be inputted (Andriushechkina and Niesov 2010).

²²In a 2012 interview, the chairman of the Moscow city *arbitrazh* court alludes to the need to take account of specifics of cases when figuring out whether the time spent on the cases was justified (Belousov 2012: 83). Weighting cases in addressing court management has become fairly standard in the U.S., but is less common in Europe (Lienhard and Kettiger 2011).

docket of Russian courts (Volkov et al. 2012: 46), but no one has attempted to address this question systematically. The way in which these data are collected do not make it easy. They group cases by subject-matter, which limits their usefulness.

In my field work in the *arbitrazh* courts, judges repeatedly identified several categories of cases as being “empty” (*pustoi*). By that, they meant that there was no real dispute, *i.e.*, the basic facts were not at issue. As I have argued elsewhere, Russian economic actors have grown accustomed to using the courts as a debt collection agency (Hendley 2004). The low costs, measured in terms of money, time, and relational damage, have discouraged them from turning to alternative mechanisms of resolving these disputes. Judges and their staff often grumbled to me that the cost of revving up the judicial machinery was more than the amount at stake in many of these cases. They were even more annoyed by the time lost to handling these cases. Frequently they waited in vain for anyone to show up for scheduled hearings. The defendants rarely put in an appearance or bothered to respond in writing to the complaints. Judges felt handcuffed by the strictures of the procedural code.

As a crude way of estimating the incidence of “empty” cases, I analyzed two categories of contractual disputes – insurance and energy supply. Not only do judges complain about these types of cases, I also witnessed first-hand what happened during my field work. The defendants rarely showed up or offered any affirmative defense in writing.²³ Indeed, often neither side appeared in person. Table 4 shows that insurance complaints have grown exponentially as a percentage of the total contractual cases heard by the *arbitrazh* courts. This trend is particularly noticeable in the larger financial centers. For example, the percentage of such cases in the Moscow City court increased from 0.8 percent in 2003 to 11.4 percent in 2007 and then to 37.5 in 2011. A similar trajectory is evident in St. Petersburg and Ekaterinburg. On the other hand, the growth of cases dealing with non-payment of utility bills is more startling in the hinterlands than in the center. There are, of course, many explanations for these increases. My point is simply that the significant number of cases in which there is no real dispute should cause us to reevaluate the common wisdom that Russian judges are badly overworked.

Within the courts of general jurisdiction, the official caseload data provide a better window into the incidence of “empty” cases. Such cases are handled in a summary fashion through the use of a “judicial order” (or *sudebnyi prikaz*). This procedural mechanism was introduced through a 1995 amendment to the civil procedure code (O vnesenii 1995).²⁴ When

²³When I asked *arbitrazh* judges why these cases were brought, they usually shrugged and said that they were not sure. When pressed, they typically said that they thought it was a strategy designed to put off paying what was owed. Given that both sides were insurance companies, that logic made little sense. They might make out in cases where they were the defendant, but would be disadvantaged when they were the petitioner.

²⁴For a fuller discussion of the history of the use of judicial orders in Russia, see Cheremen 2001: 24-54.

confronted with a case that presents no real controversy,²⁵ judges are empowered to resolve it solely on the basis of the pleadings, without convening a hearing on the merits, through a judicial order. Plaintiffs who want to go this route must so indicate in their complaint. The judge has to resolve these cases within five days of filing (Art. 126, GPK RF). The order is then sent to the defendant, who has ten days to lodge a protest (Art. 128, GPK RF). If a defendant does so, then the order is automatically vacated (Art. 129, GPK RF). The court does not inquire into the basis for the objections (Zagainova 2007: 15). The plaintiff is notified, who has the option of requesting a hearing on the merits. A financial incentive for using *sudebnye prikazy* is embedded in the procedural code. Those who do so pay only half the filing fees that would normally be due (Art. 123, GPK RF). Issuing a judicial order takes much less time than resolving a case on its merits. The suitability of the petition for this procedure has to be verified, following which the order is prepared. Though the judge has to review and sign the final document, the actual work can be done by staff. In my field work in the JP courts of Ekaterinburg, Moscow, Petrozavodsk, Rostov-na-Donu, St. Petersburg, Velikie luki, and Voronezh, the story was consistent. The heavy lifting of *sudebnye prikazy* is done by the staff based on form documents.

From the outset, litigants embraced this new procedural mechanism. During the first half of 1996, immediately after it was created, over 15 percent of all cases were decided via judicial orders. For the first half of 1997, that percentage shot up to 40.9 (Cheremen 2001: 3). My more recent data, laid out in Table 5, document the continuing popularity of *sudebnye prikazy*. I focus on the JP courts.²⁶ Rather than calculating the use of judicial orders as a percentage of all cases, I look only at civil cases. More than half of the civil cases decided between 2008 and 2011 made use of this procedural tool. Because the simpler cases are concentrated in the JP courts, it is no surprise that *sudebnye prikazy* are most often used there.²⁷ Over this three-year period, more than 70 percent of all civil cases resolved by the JP courts went this route.

The data for 2010 and 2011 reveal some regional variation in the use of these *prikazy*. To some extent, this is an artifact of the sorts of cases that arise in these jurisdictions rather than a studied policy among the JPs. The Leningrad oblast' JP courts 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

²⁵For a list of the causes of actions that can be resolved via judicial orders, see Art. 122, GPK RF. Looking to the experience of other former Soviet countries, Zagainova (2007: 16) advocates expanding the types of cases for which judicial orders can be used.

²⁶The appropriateness of this procedural mechanism for the JP courts is reflected in the fact that, in the law authorizing these courts, cases involving *sudebnye prikazy* are singled out as being within the jurisdiction of the JP courts (Art. 3, part 1(2), O mirovykh 2011).

²⁷More than 99 percent of all *sudebnye prikazy* were issued by the JP courts in 2008-11.

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', 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* 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 judicial orders would not affect the analysis of workload if these cases boomeranged back to the JP courts. Table 5 shows that less than seven percent of *sudebnye prikazy* are challenged. A full explanation of why is beyond the scope of this paper. The available data provide only the total number of challenges, they are not broken down by type of case. Nor do the data reveal whether or not the parties have the benefit of legal counsel.³¹ Leaving aside the question of why these orders are not being challenged more often, the bottom line is clear. Judicial orders constitute a powerful weapon in the battle to lessen the burden on JPs. When taken into account, they drastically alter the picture, chopping the workload by over two-thirds.

Why court officials and judges themselves overstate their burden is ultimately unknowable. But their tendency to puff up their contributions may be part of an effort to distract public attention from the narrative popularized by the mass media, which places them in a much less flattering light. The emphasis on the sheer quantity of cases may serve as a counter to press accounts that call the quality of the work into question by stressing high-profile cases with political overtones.

Alleviating the Heavy Workload on Russian Judges

Even if the official workload data make the situation for judges out to be worse than it is,

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

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

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

³¹In a 2010 study that monitored the activities of JP courts in Leningrad oblast' and Perm krai, researchers found that about one-third of plaintiffs were represented and one-seventh of all defendants (Ivanova 2011: 18-19).

no one questions that Russian judges are probably handling too many cases. Their self-image as besieged by endless paperwork is exaggerated but not inaccurate. This basic fact has not gone unnoticed. A number of institutional reforms have been undertaken to ameliorate the situation.³² Others are in the planning stages. They hold out great promise. But absent deeper changes in behavior within the judicial system and in legal culture more generally, they are unlikely to be permanent solutions.

The JP courts are a perfect illustration of the quandary. Rolled out in the early years of the 21st century as a way of lessening the burden on the *raionnyie* courts, who were then the first port of entry for the courts of general jurisdiction, the JP courts have now become part of the problem. They are prisoners of their own success. The existence of a court to handle trivial claims has attracted more and more such claims. Now the same officials that put forward the JP courts as a way to solve the workload problem for the *raionnyie* courts are puzzling over how to deal with this avalanche of cases.

Along similar lines, merely increasing the number of judges and building new courthouses is only a stopgap measure. The crumbling nature of many of the courthouses inherited from the Soviet period necessitated an upgrade. The gleaming new buildings that now dot the Russian landscape provide modern facilities and arguably make a political statement about the commitment to the importance of the courts.³³ The continuing spectacle of politicized justice in high-profile cases reveals the shallowness of the commitment to the full independence of the courts in Russia. Putting that aside, these new palaces to justice cannot possibly keep up

³²A change to the rules for several categories of administrative cases is a good example. As the chairman of the *arbitrazh* court for Nizhny Novgorod explained: “The court has been freed from a huge quantity of tax cases. Previously all tax collection cases case proceeded through the court. The amount at issue could be 50 kopeks, yet the tax inspection would put in a complaint. In reality, these cases lacked any real dispute (*besspornye*). The taxpayers clearly understood that they owed the state 50 kopeks, but didn’t want to wait in a long line to go pay their debt. Now the tax inspectorate can simply send a bill for these trivial amounts. If the taxpayer feels that his rights have been violated, he can appeal to the court and challenge the bill. But almost no one makes such challenges.” He goes on to note that an analogous reform has been undertaken with respect to claims brought by the pension fund. He draw a parallel between the approach reflected by these reforms and the way similar questions were handled in the Soviet era (Piskunova 2009: 98).

³³Traditionally parties have been allowed to roam freely throughout Russian court facilities. This facilitated *ex parte* communications that created an appearance (and perhaps the reality) of favoritism (Popova 2012). As new buildings are being designed, many have segregated the offices of judges and their staff into a secure portion of the building, thereby limiting the opportunities for *ex parte* communication. Older facilities remain the norm in much of the country. Frequently judges do not have their own courtroom, requiring them to hear cases in their offices, and making it easy for litigants or their lawyers to stop in for a quiet word.

with the societal demand.

As I noted above, in late 2010, then-President Medvedev challenged the judicial establishment to think outside the box to relieve the pressure on judges. In response, the staff of the Higher *Arbitrazh* Court, working in cooperation with the Council of Judges, drafted legislation that was sent to the Duma on May 4, 2011 (Proekt 2011a).³⁴ Reasoning that higher costs will likely drive down demand, the legislation calls for an increase in filing fees for the appeals of certain types of cases.³⁵ The failure to raise fees for bringing initial claims reflects a reluctance to risk compromising access to the courts, but it will do little to reduce workload. In an effort to give judges more time to focus on trials, the draft law empowers their clerks (*pomoshchniki*) to handle pretrial hearings.³⁶ The most controversial element of the legislative proposals are two articles that provide for judges and their staff to be paid more when they have to handle an unreasonably large number of cases.³⁷ The Council of Judges parted company with the Higher *Arbitrazh* Court on this question, refusing to endorse these two articles of the proposed legislation (O khode 2011). Despite public agitation for lengthening the deadlines for deciding cases (Neobkhodimo 2012; Latysheva 2007), the draft was silent on this issue. The draft has already languished in the Duma for more than a year, raising doubts as to whether it will be passed.

Taking inspiration from the courts of general jurisdiction, the procedural code governing the *arbitrazh* courts was amended in 2002 to introduce an accelerated procedure (*uproshchennoe*

³⁴For the video of the discussion of the draft law by the Presidium of the Higher *Arbitrazh* Court, see http://www.youtube.com/watch?v=5_gzU8wefpE&lr=1&uid=tLNGnI50YhKjxNClq1pnmw&no_redirect=1 and <http://www.youtube.com/watch?v=d5dUDkNfDh8&lr=1&uid=tLNGnI50YhKjxNClq1pnmw>

³⁵In a February 2012 press conference, the Chairman of the Higher *Arbitrazh* Court reiterated his support for higher filing fees, but noted that it was not a politically popular position (Shiniaeva 2012). The chairman of the Moscow City *arbitrazh* court echoed these sentiments in a December 2012 interview. He argued that filing fees ought to increase as one moves up the judicial hierarchy. He expressed concern over the current burden on the Higher *Arbitrazh* Court (Belousov 2012: 83).

³⁶This idea is similar to the policy adopted within the California courts of appeals when they were faced with too many routine appeals. Permanent staff attorneys drafted opinions for the cases they deemed to be noncontroversial, which were usually adopted with only minor changes by the panel assigned to the case (Wold and Caldiera 1980: 342).

³⁷The draft law provides that judges who deal with more than the number of cases approved by the Council of Judges are to receive an additional one percent of their salary for every additional five percent of cases they handle (Art. 1, Proekt 2011a).

proizvodstvo) to be used for the simple cases that were clogging the docket (Chap. 29, 2012 APK). The then-chairman of the Higher *Arbitrazh* Court, Veniamin F. Iakovlev, sang its praises in an on-line interview from February 2003:

It is a shorter and simpler procedure, that can take place even without a hearing on the merits, but only on the basis of written documents. But this form is permitted only if the parties do not object or with regard to undisputed and trivial cases. For example, an energy supply company supplies energy, but the customer fails to pay. Where's the dispute? The customer will say that he has no money. Everything is clear but even so, we handle these sorts of cases according to general procedural rules, which is rather complicated and difficult. Now everything proceeds differently. As a result, the resolution will be quicker for simple or trivial cases, consequently freeing up judges' time for dealing with more complicated cases (Internet-interv'iu 2003).

Initially some judges embraced this new tool eagerly. In three regions, about 30 percent of cases used this accelerated procedure, and an additional eleven courts used it in 15 to 25 percent of all cases (Iakovlev 2004). But this initial enthusiasm was not widely shared and, even where it was, it proved short-lived. As Table 6 shows, by 2011, less than two percent of the cases heard by the *arbitrazh* courts used *uproshchenoe proizvodstvo*. The differing receptivity to summary procedures is intriguing. Why judges in the courts of general jurisdiction have proven more willing to make use of available mechanisms for accelerating the handling of cases is not entirely clear. No doubt the difference in the population of users for the *arbitrazh* courts and the JP courts plays a role. The jurisdiction of the *arbitrazh* courts is limited to legal entities, who tend to be more sophisticated and capable of understanding and mobilizing their rights. The JP courts are the dominion of the ordinary citizen, who may be flummoxed by the technical language of the *sudebnyi prikaz*, and may fail to act in a timely fashion.

The seeds of the decline in the use of *uproshchenoe proizvodstvo* were embedded in the language of the statute. In my field work soon after the law was changed, I found that many judges were apprehensive about this new mechanism (Hendley 2005). Confusion reigned over the proper interpretation of a key provision, which said that the accelerated procedure could be used "if the defendant raised no substantive objection ..." (Art. 229, 2012 APK). Some felt that silence on the part of the defendant was sufficient evidence, whereas others felt that an affirmative declaration from the defendant was needed (Piskunova 2009: 98; Belousov 2012: 83). The latter interpretation was safer. It also rendered the new mechanism largely unuseable. The sorts of cases where *uproshchenoe proizvodstvo* would be helpful are precisely the cases in which defendants rarely participate. Even though holding a hearing on the merits usually resulted in a one-sided hearing (or a hearing where neither side showed up), judges still preferred it. The one-sided nature of the accelerated process spooked them. They worried that defendants would challenge decisions reached through *uproshchenoe proizvodstvo*. If this happened, the case would have to be reheard on its merits, almost certainly resulting in a violation of the statutory deadline for resolving the case. Judges worked hard to avoid such violations. Their reputation and their chance for advancement depended on managing their docket efficiently. The risk-averse tendencies of *arbitrazh* judges contributed to their unwillingness to try this new procedural tool. These uncertainties sabotaged the efforts by top court officials to stem the

pressure on trial judges.

Well before Medvedev's call to action, the staff of the Higher *Arbitrazh* Court was busy working on amendments to make accelerated procedure more user-friendly. The draft legislation was discussed by the Presidium of the Court in December 2010,³⁸ and a resolution endorsing the proposal was adopted by the Court's Plenum in March 2011 (Postanovlenie 2011). Its goal is to spur greater use of *uproshchenoe proizvodstvo* by minimizing judicial discretion. Rather than opening the door for judges to use this mechanism as the prior law did, these new provisions mandate its use in specified categories of cases, including claims for damages and for administrative fines that are less than 100,000 rubles. Though the draft lays out the mechanisms for providing notice to the parties, concerns were raised about the possibility that their rights could be compromised. Ivanov defended the changes: "Unquestionably, accelerated procedure lowers the guarantees for litigants. But we have to remember that we are introducing this not as a way to improve life, but as a way to deal with the overwhelming workload" (Shiniaeva 2012). This legislative proposal has yet to be acted upon by the Duma. If adopted, it is unlikely to reduce the number of cases brought to the *arbitrazh* courts, but it ought to allow the many *pro forma* or "empty" cases to be resolved expeditiously, thereby freeing up trial judges to concentrate on the complex cases that deserve greater attention. In other words, the effect of these amendments would be akin to what is already happening in the JP courts thanks to the use of judicial orders.

This tinkering with the rules, while helpful and perhaps even necessary, is unlikely to provide a permanent solution to the problem. For the most part, the reforms are designed not to discourage Russians from going to court, but rather to introduce new procedural tools that allow cases to be decided more quickly. When I ask why Russians persist in bringing simple cases to the courts when the result is clear from the outset, the answer is always the same. I am told that this is their right under Russian law. Fair enough, but that is not responsive to the question.³⁹ My conversations with Russian judges and court officials reveal a hesitancy to create

³⁸For the agenda of that meeting, see <http://www.arbitr.ru/vas/presidium/prac/31264.html>. The discussion was recorded and posted on youtube in five parts. <http://www.youtube.com/watch?v=y2v-6t9r18g&feature=relmfu>; <http://www.youtube.com/watch?v=QSYIb9Qvz70&feature=relmfu>; <http://www.youtube.com/watch?v=1td9nxySd6c>; <http://www.youtube.com/watch?v=ykGs6eYvxd0&feature=relmfu>; <http://www.youtube.com/watch?v=atU3fsegQMA&feature=relmfu>.

³⁹Russians may have a variety of motivations for using the courts. Many come to resolve concrete disputes with family members, neighbors, or business partners, while others come to deal with administrative problems, ranging from getting divorced to responding to traffic summons. Yet others are dragged to court to respond to civil complaints or to answer criminal charges. In Russia, as elsewhere, going to court can be a way of gaining societal recognition of being wronged. The precise reasons for going to court are beyond the scope of this paper.

disincentives to using the courts. They are justifiably proud of the low barriers to access to justice in Russia. To increase filing fees or require litigants to use lawyers when bringing claims is distasteful to them. Once again, this may have its roots in the desire to prove the value of the courts in light of the counter-narrative that paints them as politically pliant, corrupt, and incompetent. When talking to several high-level judicial officials about the public opinion polls that seem to document low levels of trust in the courts,⁴⁰ they pooh-poohed them, drawing my attention instead to the caseload data. They argued that these data document the eagerness of Russians to turn over their disputes to the court, which they see as more compelling evidence of trust than polls.

The introduction of mediation offered the possibility of Solomonic solution. The law, which went into effect at the beginning of 2011, permitted judges to bring in neutral third parties to help the disputants find a way out of their problems (Ob al'ternativnoi 2010). Many judges and court officials were hopeful that mediation would lessen the pressure on judges (Krasnopevtsev 2011; Bol'shova 2010; Samsonova 2008; Fedorenko 2007). Yet Russians have resisted its lure, preferring to stick with the courts for dispute resolution. I have analyzed the reasons for this elsewhere (Hendley forthcoming). A full rehashing of them here is not feasible. In short, it is a combination of a lack of familiarity with the general idea of alternative dispute resolution and a lack of incentives to bypass the courts. As to the latter, the story is familiar. Litigants are loathe to go around the court when it provides a quick and cheap way to resolve disputes (Lazarev 2010: 117; Opros 2010).⁴¹

A generalized resistance to settling cases constitutes a key stumbling block.⁴² This aversion helps explain the failure of mediation to catch on. It also helps us understand why

⁴⁰Despite the variation in how polling organizations pose their questions, the bottom line is the same. The polls indicate low levels of trust in the courts. For example, in a poll fielded by the Foundation for Public Opinion in October 2011, only 16 percent of respondents saw the courts in a positive light. <http://bd.fom.ru/pdf/d11orrs11.pdf> In a June 2012 poll of the Levada Center on trust in various state institutions, only 21 percent of respondents said the courts deserved their trust. <http://www.levada.ru/print/02-11-2012/doverie-institutam-vlasti> In a country with three different hierarchies of courts, simply asking about courts may produce more noise than information.

⁴¹The staff of the Higher *Arbitrazh* Court has proposed legislation that would allow retired judges and other courthouse personnel to act as mediators (Proekt 2011b). See generally Solokhin (2012).

⁴²A crude marker for settlement is the incidence of cases resolved through “peaceful agreements” (*mirovye soglashiia*). For 2011, these accounted for 2.7 percent of cases at the *arbitrazh* courts, and 0.7 percent of cases at the JP courts (Tables 1 and 2, Hendley forthcoming). The Russian experience is a direct contrast to the U.S. experience. As Galanter (2004) has documented, the vast majority of cases filed in the U.S. are settled.

Russian litigants go to court even when the inevitable outcome is apparent to all. This antipathy for settling cases is deeply rooted in Russian legal culture (Lazarev 2011; Reshetnikova 2011). Once again, the low costs associated with litigation facilitate this behavior, but cannot fully explain it. A greater willingness to settle either before initiating a lawsuit or before the hearing on the merits would do wonders to alleviate the workload problems of the Russian courts. But there is no easy reform to stimulate settlements. Though material incentives are key, there are many other factors at play, including the way law is taught (which does not emphasize the value of settlement); the fee structure for trial lawyers (which typically pays them by the judicial hearing, thereby creating an incentive to go to court and to drag out the process), the widespread perception of settlement as revealing weakness, and the relative simplicity of the procedural rules (which allow laymen to represent themselves).

The behavioral changes needed to reduce the number of cases heard by the courts are not limited to litigants and their lawyers. Trial-level judges need to toughen up their stance toward disputants who are unable to sustain their burden of proof. The procedural codes embrace adversarialism, and require parties to produce sufficient evidence to convince the court that they should prevail (art. 12, GPK). These codes also give judges the right (arguably even the obligation) to dismiss cases when plaintiffs fail to live up to this duty. In my field work in both the *arbitrazh* courts and the JP courts, judges consistently told me that they rarely do so.⁴³ They are convinced that the appellate courts will overturn their rulings on the grounds that dismissal precluded the parties from having the opportunity to present relevant evidence. This fear causes trial judges to grant numerous extensions and to tell them what sorts of evidence to present (rather than waiting for them to figure this out for themselves as the adversarial model would seem to require). Typically judges lose patience as the statutory deadlines approach, but by that time, they may have held two or three unproductive hearings. Not only does this take up valuable time and waste state resources, but it also sends a clear message to litigants that judges will turn a blind eye to sloppy preparation.

Russian trial judges continue to feel a quasi-pedagogical responsibility that dates back to the Soviet era (Berman 1963).⁴⁴ Over and over again, judges told me of their commitment to ensuring an even playing field. When the parties were patently unequal, either due to the fact that one was represented and the other was not (or both were represented, but the lawyers were clearly operating at different skill levels) or due to the fact that one was simply more attuned to the requirements for winning the case, judges felt obliged to step in. Sometimes this amounted to granting multiple continuances. In other instances, it took a more substantive form, as judges strongly urged the weaker side to engage legal counsel or even gave such parties mini-tutorials in

⁴³I previously analyzed this issue (Hendley 2007). My recent field work convinces me that little has changed, either in terms of attitude or behavior.

⁴⁴Markovits (1985) research on East Germany suggests that this pedagogical element was exported to Eastern Europe as part of a Soviet-style legal system.

the underlying law.⁴⁵ Though this might be viewed as a violation of the principle of an independent judiciary, judges were motivated by a desire to ensure justice, which they felt required a relatively even playing field.⁴⁶ This practice demonstrates the limitations of having the “right” law on the books. The law clearly empowers trial judges to dismiss cases when parties show up empty-handed, and it just as clearly limits the right of appellate judges to rethink findings of fact. But the reality is different. To change these behavioral patterns would require, in the first instance, a recognition of the problem. Then it would require top judicial officials to support trial-level judges when they crack the whip.

The Russian judicial system exists in a no-man’s land between adversarialism and inquisitorialism. Its civil law heritage gives judges a strong commitment to the principle that their job is to uncover the truth. To do so requires a full airing of both sides of civil disputes. If the parties themselves are not capable of doing this, judges feel an obligation to help. Though they pay lip service to the rule forbidding them from giving advice to litigants, the line often grows blurry in practice. Adversarial principles clearly take a back seat. The combination of their deep theoretical belief in the courts’ obligation to find the truth and their practical need to get cases resolved within the statutory deadlines provides powerful incentives for judges to continue to run the show in court.

Further complicating the situation is the practical reality that Russian judges are evaluated based on their ability to manage their docket efficiently. Statistics are kept that show the percentage of cases in which judges have taken longer than the statutorily-mandated period and the percentage of cases in which judges’ decisions have been overturned (Piskunova 2009: 101). Both are seen as black marks.⁴⁷ As these percentages rise, a judge’s chances for promotion to a higher court and for increases in her salary recede. These features are, of course, commonplace for countries like Russia that have a civil law legal tradition (Merryman and Perez-Perdomo 2007). But the effect on Russian judges is to make them extremely risk-averse. In order to avoid violations of the statutory deadlines, judges aggressively manage the pace of the cases, and often

⁴⁵In a carryover from the Soviet era, Russian judges continue to hold regular “office hours” (*priemye chasi*), during which their doors are open to citizens. Though judges uniformly told me that they stop short of offering legal advice in these sessions, my observations suggest that they often forget themselves in their eagerness to help. Popova (2012: 129) argues that meetings held between judges and those appearing before them under the guise of “office hours” can compromise judicial independence.

⁴⁶The differing attitudes of Russian and American judges towards this question illustrates how the concept of “judicial independence” is inevitably colored by local legal culture. In the U.S., it is taken as an article of faith that parties are rarely equally well-prepared for legal battle, and that judges should not intervene to equalize the two sides. See generally Galanter (1974) and Felstiner et al. (1980-81).

⁴⁷For a historical perspective on the use of such indicators, see Solomon (1997: 247).

give parties a detailed list of the evidence to be presented (Hendley 2007). The implicit violation of the principles of adversarialism is a small price to pay for preserving their reputation, according to the judges with whom I spoke. Along similar lines, judges bend over backwards to avoid being reversed. In order to change the sense of fear that underlies the behavior of trial judges, these incentives for survival and advancement in the Russian judicial corps will have to be rethought. The 2010 law, passed in response to criticism from the European Court of Human Rights, that allows litigants whose cases have been unduly delayed to seek compensation from the courts has only redoubled judges' obsession with handling cases expeditiously (Federal'nyi 2010a).

Prospects for the Future

Can courts be too open to civil disputants? The very idea seems absurd. Surely courts should be available to everyone who needs help. Yet the reality is that courts provide a finite resource, namely the time and attention of judges and their staffs. If the doors are thrown open to all comers, then judges may be overwhelmed by trivial claims and lack the time needed for thorny disputes that have defied the disputants' efforts to resolve. Comparative experience shows that many countries have created barriers to the use of courts that have had the effect of discouraging the filing of lawsuits over petty disputes. Russia demonstrates what happens when policy makers take the opposite approach. The costs of using the courts have been kept low as part of a deliberate effort to maximize accessibility. Many Russians have grown accustomed to dumping their troubles on the courts. The result is a civil docket that is clogged and an overwhelmed judicial corps.

To take a leaf from Shakespeare, the analysis of the caseload data suggests that Russian judges and judicial officials "doth protest too much." The raw data clearly supports the judges' self-image of civil servants drowning in a sea of paper. Yet the reality of "judicial orders" in the JP courts and "empty" cases in the *arbitrazh* courts paint a different picture. When the data are adjusted to reflect the true reality, the number and types of cases reflects considerable dysfunction. The number of cases may not be as extreme as it seems. But the real problem is that the courts are inundated with niggling claims. This raises serious questions about whether state resources are being used as effectively as they could be. Russians have grown accustomed to using the courts for the sorts of cases that, with a bit of effort, could easily be settled by the parties. Yet the low filing fees, combined with impressive ability of judges to resolve cases within the statutory deadlines, have made going to court a low-cost option. In a weird twist of fate, the Russian courts are a victim of their own success. Though those familiar only with the high-profile cases of politicized justice might resist the positive spin on the Russian judicial system, the very fact that more and more people are using these courts brings the common wisdom about the hopelessness of the courts into question. Russian authorities are deeply committed to an open-door policy at the courts. Changing that attitude will not be easy. As a result, ratcheting up the filing fees, which any student of supply and demand would recommend as the way to reduce the number of cases, is politically unappealing. The other changes that could ameliorate the situation, such as a greater commitment by disputants to settling cases and a willingness by judges to toss out cases when the parties fail to sustain their burden of proof, will

happen only if and when the legal culture dampen undergoes profound changes. At present, the political will for such changes seems to be absent.

Both judges and the society they serve seem unable or unwilling to critically reevaluate the story they tell themselves about the courts. Judges harp on the caseload data to tell their tale of woe. When I suggest that the data may be overstating their plight, most resist this reinterpretation. A few credit the point, but most are openly offended by any intimation that they are not badly overworked. The cynical among us might argue that these judges are posturing to ensure a steady increase in funding for the courts. The Cassandras within the leadership of the Russian judiciary are almost certainly politically motivated, but I doubt that trial-level judges are. Instead, they are simply trying to justify their lives. Their reputation among ordinary Russians as corrupt, craven, and incompetent only seems to redouble their commitment to a self-image as martyrs committed to doing justice.

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Table 1: Trajectory of caseload at the Russian *arbitrazh* courts.

	2002				2011			
	No. of judges	Monthly per judge caseload	Cases decided	Change in docket: 2002 cases decided as % of 1994 cases	No. of judges	Monthly per judge caseload	Cases decided	Change in docket: 2011 cases decided as % of 2002 cases
All <i>Arbitrazh</i> Courts	2710	32.3	697085	334	2758	52	1403706	201.4
Moscow City Court	157	33.2	43089	247.3	160	94	149541	347.1
St. Petersburg & Leningrad Oblast' Court	94	43.5	37737	423.3	99	75	73673	195.2
Sverdlovsk Oblast' Court	61	49.9	25519	349.7	90	64	57015	223.4
Saratov Oblast' Court	34	44.1	14370	389.8	47	61	27923	194.3
Omsk Oblast' Court	28	45.7	12338		37	51	18420	149.3

Table 2: Trajectory of caseload at the Russian JP courts.

	Total Cases: 1995	Total Cases: 2000	Total Cases: 2005	Total Cases in 2005 as % of Total cases in 1995	Total Cases: 2010	Total Cases in 2010 as % of Total cases in 2000
Total Cases	6194600	8795900	14118500	227.9	20422100	232.2
Criminal	1074900	1330500	1148200	106.8	1065200	80
Civil	2806600	5057400	5212600	185.7	14045800	277.7
Administrative	1927300	1464300	4287600	222.4	5311100	362.7
Other	385700	942100	1582100	410.2	N/A	N/A
All Non-Criminal	5119600	7463800	12230500	238.9	19356900	259.3

Table 3: Average monthly per judge caseload in the Russian JP courts.

	2009				2011				
	Total judges	Total cases per judge	Total civil cases per judge	Total admin cases per judge	Total judges	Total cases per judge	2011 total as % of 2009 total	Total civil cases per judge	Total admin cases per judge
Russian Federation	7444	217.9	130.7	80.9	7444	200.9	92.2	117.2	64.5
Central okrug	1855	145.7	78.7	61.6	1858	140.6	96.5	75.8	51.1
Northwest okrug	708	232.7	142	84.7	708	236.5	101.6	135.6	79.5
Southern & N. Caucasus okrug	1205	183.1	107.3	71.2	740	191.7		111.5	62.7
N. Caucasus okrug*					466	113.4		57.8	49.1
Volga okrug	1583	282.6	184.4	91.3	1583	250.7	88.7	144.6	69.7
Siberian okrug	1079	241.2	141.6	92.2	1079	229.1	95	139.9	64.9
Urals okrug	621	234.5	126.8	99.3	621	232.2	99	131.3	74.8
Far East okrug	389	287.8	187.9	93.5	389	275.4	95.7	166.4	84.2

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

Table 4: The incidence of cases involving energy supply and insurance as percent of all contractual cases heard by the Russian *arbitrazh* courts.

	2003		2007		2011	
	Energy supply cases as % of all contractual cases	Insurance cases as % of all contractual cases	Energy supply cases as % of all contractual cases	Insurance cases as % of all contractual cases	Energy supply cases as % of all contractual cases	Insurance cases as % of all contractual cases
Moscow City Court	2.6	0.8	3.6	11.4	3.2	37.5
St. Petersburg & Leningrad Oblast' Court	5.7	1.2	6.3	2.9	5.3	31.1
Sverdlovsk Oblast' Court	8.8	0.4	18.3	5.6	17.7	20.9
Saratov Oblast' Court	12.4	0.1	13.9	1.6	19.5	5.7
Omsk Oblast' Court	10.4	0.9	3.6	3.6	24.8	5.1

Sources: For the data on all *arbitrazh* courts: Iakovlev (2004); Statisticheskie pokazateli (2008); Analiticheskaja zapiska (2011: 4). For the data on regional courts, annual unpublished reports on their activities available from the author.

Table 5: 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
Rostovskaia oblast' JP courts			68.3	6.1	69.1	5.6
St Petersburg JP courts					71.7	5.6
Leningradskaia oblast' JP courts					90.3	4.7
Sverdlovskaia oblast' JP courts					59.9	3.8
Pskovskaia oblast' JP courts					81.5	6.2

Table 6: Use of the mechanism for accelerated procedure (*uproshchennoe proizvodstvo*) at the Russian *arbitrazh* courts.

	2003		2007		2011	
	Number of cases in which accelerated procedure was used	As % of all cases	Number of cases in which accelerated procedure was used	As % of all cases	Number of cases in which accelerated procedure was used	As % of all cases
All <i>Arbitrazh</i> Courts	67000	8	36485	6.7	19999	1.8
Moscow City Court	8266	16.3	2307	3.4	752	0.6
St. Petersburg & Leningrad Oblast' Court	1969	4.8	2268	4.1	286	0.5
Sverdlovsk Oblast' Court	7366	24.2	813	2.5	1191	2.6
Saratov Oblast' Court	55	0.6	1040	4.7	0	0
Omsk Oblast' Court	1875	18	1875	13.5	3	0.02

Sources: For the data on all *arbitrazh* courts: Iakovlev (2004); Statisticheskie pokazateli (2008); Analiticheskaja zapiska (2011: 4). For the data on regional courts, annual unpublished reports on their activities available from the author.