THE JURY SYSTEM IN RUSSIA:

PERCEPTIONS AND ATTITUDES TOWARD CRIMINAL TRIALS

by

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Abstract

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This study examines the perceptions and attitudes of judges, procurators, and defense attorneys concerning the use of the jury system in Russia. In this survey, 57 experienced lawyers were asked a series of questions that were used to determine basic demographic information and a series of questions designed to measure their perceptions of the jury system. The results demonstrated overall lawyers' support for the jury system. At the same time, this study found that defense attorneys held a much more positive opinion about jury trials than judges or prosecutors.

This research also found that the respondents favorably revised their overall perceptions of the legitimacy of the jury system after their experience with the system. One of the key findings of the research was that nearly half (44%) of lawyers completed jury trials with a more positive view of the process than they had beforehand.

The evidence that I have presented in this dissertation has not shaken my confidence in theories that try to account for the transition from one legal system to another. The work of three different scholars (Sachs, Kis, and Watson) was adopted as a conceptual framework for understanding the jury system. The results demonstrated

overall support for this approach, with Watson offering an explanation that also accounts for the selection of specific rules in the newly established system. Much of the evidence presented is of a qualitative nature, and it is a matter of individual judgment whether such evidence is sufficiently strong and clear-cut to support my general conclusion that Watson correctly emphasizes the role that legal elites play in deciding what to transplant.

The Kremlin and the powerful use the law as an instrument for manipulation in order to prevent the acquittal of anyone who has been charged. It seems that acquittals are reversed, and new trials continue until the defendant is convicted. Open-ended provisions of the penal law thus appear to have been deployed on behalf of dominant state interests. The deployment occurred, though, through judicial, not jury, decision making.

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INTRODUCTION

STATEMENT OF THE PROBLEM

The prestige of common law models increased in Russia after the demise of socialist law and trial by jury became one of many borrowings in post-socialist Russia. The first official approval of the idea of jury trial came in October 1991, when the Russian Parliament approved the "Concept of Judicial Reform" (O kontseptsii sudebnoi reformy [On Concept of Judicial Reform], 1991).[1] In introducing trial by jury as part of legal reform, reformers in Russia sought to transform the practice of their courts. The purpose was to promote the adversarial process, free the courts from political control, rid the judges of their strong pro-prosecution biases, and bridge the gap between citizens and legal institutions (Kontseptsia sudebnoi reformy v Rossiiskoi Federatsii [Concept of Judicial Reform in the Russian Federation], 1992). The jury was characterized as the democratic conscience that would maintain pressure on legal agencies and their officials for positive change, and guide the further process of reform. The idea of trial by jury was perceived by many as a cornerstone of Russian legal reform (Pashin, 1994; Karnozova, 2000; Dline and Schwartz, 2002; Melnik, 2003).

As a part of judicial reform in Russia, jury trials have been introduced in stages. As of November 1, 1993 jury trials were implemented in 4 regions; as of January 1, 1994 – in 5 more regions; as of January 1, 2003 – in 60 more regions; as of July 1, 2003 – in 14 more regions; as of January 1, 2004 – in 5 more regions (Spravka o rassmotrenii del sudami c uchastiem prisyazhnykh zasedatelei za 2003 god [The 2003 report on jury trial

[1] The full text of the Concept was published in 1992.

practice], 2004). Currently, jury trials operate in 88 of the 89 regions of the Russian Federation. On January 1, 2007 jury trials will be introduced in the Chechen Republic.

Following the approaches to study democratic transitions around the world in the twentieth century (Huntington, 1991), I use "waves" to examine the interaction of federal and regional elites in the process of regional jury-making. Each wave of regional jury-making is a group of processes that results in the establishment of jury-building within a specified period of time. A wave usually involves the establishment of infrastructure for jury trials, the adoption of the court internal regulations on trial by jury, and appointment of the justices. This wave may be followed by a reverse wave when politicians and law enforcement leaders make jury trials inoperative. Although any categorization of Russian regional jury-making is to some extent arbitrary, I propose the following periodization:

First wave of regional jury-making	1993-1994
First reverse wave	1994-2000
Second wave of regional jury-making	2003-2004
Second reverse wave	2004-

The first wave began in 1993-94 when jury trials began their work on an experimental basis in nine regions (the Ivanovo, Moscow, Rostov, Ryazan, Saratov, and Ulyanovsk provinces; the Altai, Krasnodar, and Stavropol Territories). Although the number of regions implementing such procedures was originally planned to expand quickly, budgetary problems consistently delayed the expansion. The first reverse wave began with the political opposition from the law enforcement agencies and regional politicians. In the words of the former acting Procurator General, Aleksei Ilushenko,

> We come out against attempts at the unthought out and hurried introduction of legal institutions, which work effectively in a developed law-based state but for which we have still not developed the necessary conditions and real opportunities… [For us] it may have negative

consequences (Podvedeny pervye itogi [First results have been analyzed], 1994).

On December 2, 1998, the governor of the Ryazan province issued a statement addressed to the chairman of the Russian Supreme Court, arguing that jury trials should be discontinued in the region. He wrote, "Jury trials have not met with the expectations, since they produced a large number of acquittals that invoked a strong negative response among the population of the region" (Finansovaya petlya dlya suda prisyazhnykh [Financial Millstone on Jury Trial], 1999). A similar position was expressed by the Altai politicians (Dline and Schwartz, 2002).

Recent years, however, have brought a new wave for the jury system. President Vladimir Putin, who took his office in 2000, has made legal reform one of the top priorities of his government. As a result, serious efforts have been made toward the completion and passage into law of the New Criminal Procedure Code that had been pending in the Russian Parliament for several years (Dline and Schwartz, 2002). The code became effective on July 1, 2002, with the exception of some provisions on jury trials that required more time to implement (2003-04 for most regions and 2007 for Chechnya).

However, even a major legislative victory, such as the passage of the new Criminal Procedure Code, did not by itself automatically resolve all the problems that have crippled the development of the jury system for so many years. Some judges and lawyers who are directly involved in jury trials state again and again that the country is not ready for the jury system. Such a position was publicly expressed by Oleg Gapchenko, the acting chairman of the Volgograd Supreme Court, in his press-conference in July 2004 (Press-conference with Oleg A. Gapchenko, 2004). The second

reverse wave continued with the strong opposition from law enforcement agencies. The security forces have urged the Russian Parliament to establish limits on jury trials by removing the right of defendants to jury trial in cases of treason and espionage. However, the Commissioner of the Russian Federation on Human Rights has argued that removing the right of defendants to jury trial would be premature (Sharov, 2004).

In the mid-2000s, 10 years after the country's first wave of trial by jury, Russian legal history is at a new turning point. One can expect a vigorous struggle between the friends and foes of trial by jury as they seek to support – or obstruct – the implementation of the expansion of the jury experiment. One of the most striking features of this struggle is the basic lack of evidence adduced to support either side. Arguments about jury trials tend to be based not upon what might be regarded as evidence but upon belief, opinion, hunch, or sheer prejudice. The particular value of empirical research is that it may impel the disputants to make more explicit the philosophical assumptions on which they found their beliefs.

This work examines the perceptions of professional participants in jury trials and their relationship to the decisions made by juries in actual trials. The central concern of the research discussed in this dissertation can be stated simply: it is to try to measure the professionals' views about the jury system. Another main interest lies in the evaluating the verdict itself. The method by which I examine this is based upon the views of key participants in the trial: to oppose the verdict of the jury against the verdict of others involved in the case. However, I use a qualitative method as well. The importance of examining jury trials lies in the fact that defendants' sentences and rates of acquittal are intimately related to decisions that defendants take prior to the trial, particularly the

decision taken by defendants with regard to avoid judge trial. Because my questionnaire was answered by judges, prosecutors, and defense lawyers, it is important to mention that I was merely able to determine what they thought of jury behavior, not how jurors actually behaved.

CONCEPTUAL FRAMEWORK

Before focusing on literature review itself, this chapter first places the Russian jury system within a broader context. Over the past few years, there have been published a series of articles arguing that the legal reform process in Russia has been too exclusively focused on the "supply" of law and that the equally important issue of "demand" for law has been neglected (Hendley, 1995, 1996, 1997, 1999). Their goal was to encourage foreign donors and Russian policymakers to devote more attention and resources to reforms that are spurred by the actual needs of ordinary citizens (as documented through empirical research), rather than presuming to know what is best for Russian society and proceeding in a top-down liberal fashion.

Over the past 10-15 years, the Soviet-era legislation and criminal justice system have been thoroughly overhauled, and a multitude of new laws and legal institutions, including the jury system, have been introduced. Most of the scholarly attention has been devoted to analyzing the content of these reforms, rather than to investigating their perceptions by law enforcement professionals or investigating their impact on the day-to-day lives of ordinary Russians. Such research on the "supply" of law is important but should be complemented by inquiries into the "demand" for law, e.g. the investigation of motives for instituting the jury system. In this context, "demand" also stands for the bundle of attitudes and behavior toward the jury system as affected by the Soviet legacy

and historical experience, both personal and societal. Attitudes and behavior vis-à-vis the jury system can be sometimes inconsistent. As a result, efforts to measure "demand" as an ongoing phenomenon are mostly futile. While some indicators of "demand" can be catalogued, such as the perceptions of the jury system, this sort of evidence is incapable of revealing how Russian society feels about the jury system more generally.

In this study I provide examples drawn from my field research in Russia in 2005. I mostly focus on one indicator: the perceptions and attitudes of trial participants as documented through typical cases. The result seems to be that the jury system simply lies dormant, not doing any obvious harm (as documented through survey data) but not performing the function(s) for which it was intended (as documented through a series of important trials). The juxtaposition suggests two Russias: a largely invisible one that is slowly adjusting to its Western transplant and a highly visible, anti-Western Russia that continues the country's tradition of autocratic rule. Apologists for the jury system would argue that my pre-selected important trials are not "typical" cases. I agree but I strongly believe that the strength of the system is best seen in the way it handles difficult cases where a lot is at stake.

In studying the role of law and the way it has affected Russian society, I have also incorporated the broader meaning of the state, its authority, and its use of law to meet certain ends (whether to maintain obedience or to increase public participation in policy making). On one extreme is a bureaucratic authoritarian state whose agencies use coercive means to gain their own ends. In this state repressive legal orders are the norm. On the other extreme is a liberal, "rule-of-law" state, which strives for procedural

fairness, universal adherence, and legal constraints. In that model state law is supposed to be independent of politics.

This notion of rule of law is central to my study because it was a goal of many Russian legal reformers in the 1990s. The result seems to be that law and legal practice are clearly not divorced from politics and the judiciary is not autonomous from ruling politicians in Russia. That represents a challenge to a principle central to liberal legal thought – the rule of law.

The theoretical framework for this study comes from three scholars who have used a broad perspective and have identified societal factors that may affect the relative success or failure of reforms in the transitional period. I will call these "transition theories" in that all three try to account for the transition from one legal system to another. Jeffrey Sachs (1998) analyzes the factors that affect economic success in transition nations. He explores the economic transition from Communism to capitalism. In contrast to this economic focus, Janos Kis (1998) proposed a non-economic theory that complements that of Sachs. He examines the political transition from Communism to democracy. Finally, Alan Watson (2001) offers us a theory of legal development, which suggests that law often fails to mirror society. He is mainly concerned to show that law travels between very different contexts – whatever happens to it afterwards.

All these theories are complementary; all offer societal explanations for the success or failure of legal reforms. This section will outline the Sachs, Kis, and Watson framework and provide the perspective from which the jury system in Russia will be analyzed.

Sachs' Self-Limiting State

Sachs' theory provides an economic analysis of factors that undermine or support a nation's success in a transition to capitalism. The traditional doctrine of capitalism, Sachs argues, is a paradox, since it requires a state that is both self-limiting and strong. In most countries, the paradox remains unsolved, because the state has not developed the strength to meet even basic needs, including the need for self-limitation. Thus, Sachs suggests a close relationship between the strength of a state and its ability to limit itself. The concept of a self-limiting state implies that the judiciary will play a major role in overseeing government action. In Sachs' opinion, bad government and poverty tend to reinforce each other and create a cycle that prevents capitalism from taking over.

Sachs believes that civil society is a necessary condition for the implementation of a functional capitalist system. According to him, the countries that have been successful in completing the economic transition from Communism to capitalism are those that have had, from the start, an essentially law-bound state. Sachs contrasts comparative success in Poland with relative failure in Russia and attributes Poland's success to its law-based state.

According to Sachs, the Solidarity trade union, the Roman Catholic Church, and various peasant movements provided a check on the Polish government and created an environment in which a law-based state was possible. On the other hand, in Russia the long tradition of authoritarian rule (under czarism and later the restrictive Communist regime) crushed the organized groups that might have preformed this function. The lack of organized groups in Russian society could not form the base that supports the self-limiting state, in which a market economy could flourish.

Kis' Theory of Coordinated Transition

Kis' theory examines the problem from a non-economic standpoint. It identifies factors that promote peaceful reform instead of revolution in certain societies. Kis uses the term "refolution" to encompass the path between reform and revolution that some nations followed in Europe and later adopts the phrase "coordinated transition" for clarity.

Kis states that dramatic changes took place in a short period of time, but these changes were somewhat short of revolution. In his opinion, both revolution and reform occur in a situation where the government's legitimacy is threatened by what he calls a "legitimation crisis." Revolution subverts the government, while reform preserves it.

When a government follows the middle path of coordinated transition, neither the regime nor the opposition is strong enough to avoid cooperation with the other. An agreement between the two provides a transition scenario. Based on the Hungarian transition from Communism to democracy, Kis develops a set of six factors necessary for the middle path of coordinated transition to succeed.

First, he argues, the ruling class must be divided over the legitimacy of the current regime. The split creates the conditions that force cooperation between opposing sides. Second, both the options of revolution and reform must appear to both sides to be risky. This occurs when the opposition is too weak to overthrow the current regime by force. Similarly, the state lacks power either to put down the opposition by force or to implement enforceable reforms through the legal process. Third, the opposition must be credible. Fourth, popular mobilization must be high. Fifth, there must be sufficient agreement on proposal for the future that the opposition and the current regime can

quickly reach a compromise. Finally, the idea of the transition achieved through negotiation must exist in public political culture.

Close examination of Kis' and Sachs' theories reveals a common theoretical framework. Kis' two factors deal with the popular consciousness. Kis notes that high popular sentiment is necessary to compel the old regime to change. He also states that the concept of transition will be difficult to invent if the idea does not exist in political culture. These Hungarian observations support Sachs' assessment of the Polish transition. The fact that opposition groups such as the Solidarity movement and the Roman Catholic Church remained in existence throughout the Communist period meant that the idea of transition was alive in the Polish political consciousness. This also identifies the role of credible opposition in negotiating a compromise at the beginning of the transition period so that government failure to adhere to the agreement was impossible.

Watson's Theory of Legal Development

Watson's theory shows that "at most times, in most places, borrowing from a different jurisdiction has been the principal way in which law has developed" (Watson, 2001, p. 98). Rarely, Watson argues, do legislatures and judges actually create new law; rather, they borrow from others. Watson shows how much legal transplants may owe to non-legal political factors. As he argues: "the factors which determine which system is borrowed from often have nothing to do with the needs of the borrowing society" (Watson, 2001, p. 98). Legal transplants, as Alan Watson has suggested, move from mature legal systems of high prestige to systems whose decision-makers perceive their systems as backward by comparison. Often there is little or no support in the larger culture receiving the transplant for the institution that is to be received. In the case of

Russia, for example, a jury system that presupposes a relatively involved citizenry was transplanted to a country with only a modest history of active civic engagement.

While further elaborating his thesis on borrowing, Watson argues that the persons with the power to change the law often do not do so for centuries even if the law is dysfunctional and harms these leaders. This is the case even in the most innovative systems when the elite are well aware that change would be helpful. Watson explains that legal culture resists many useful innovations in part because of the desire of legal actors to avoid radical change and in part because of inertia. Put differently, legal systems will tolerate inefficiencies before accepting change. Watson's transplant thesis is thus part of a more general claim about the relative autonomy of law. On Watson's analysis, the preferences of legal elites matter more in determining the content of law than do the customs of the social system served by legal rules.

Watson also offers us a theory of legal stagnation. He explains why law does not change, rather than telling us why it changed. Since so often law does not change, this is a remarkable contribution. All above-mentioned theories are complementary and provide a basic analytical structure from which to view the societal factors affecting institutional reform.

Chapter 2

LITERATURE REVIEW

LITERATURE REVIEW ON JURY TRIALS IN RUSSIA

Before turning directly to my literature review on jury research worldwide, it will be useful to look briefly at the nature and extent of the universe I am to study. It can be defined as criminal jury trials in Russia during the 1993-2005 years.

For ease of discussion, the literature is divided into three categories: (1) antecedents of judicial reform in Russia; (2) substantive and procedural laws; and (3) public opinion on criminal justice.

History

The jury trial is not an entirely new reform in Russia. The judicial reforms of the nineteenth century gave czarist Russia some experience with jury trials. The juries of that period (1864-1917), although containing a high percentage of illiterate people, were known for their progressive and democratic character (Kazantsev, 1991; Nemytina, 1999). Russia's previous experience with jury trials presumably made the jury proposal more attractive. Implementation of modern jury trials was based on a desire to recapture this period (Thaman, 1995; Reynolds, 1997). Although Russia had jury trials during the czarist period, there are few who could remember or revive the ideas of that period. This means that such ideas were not present in the Russian popular culture, and had to be invented from scratch.

Throughout the Soviet era, the court was little more than an extension of executive power. In theory, judges were independent and subject only to law; in practice,

they conformed to the expectations, and occasionally the explicit commands, of the Communist Party, the Procuracy, and the Ministry of Justice (Melnik, 2003). There was, therefore, much to be done to raise the authority of the courts in the new Russian legal system.

The introduction of the jury trial has been at the center of attempts to reform court procedure. For legal reformers, juries were necessary to break up the cozy relationship between procurators and judges, which had sustained for decades the accusatorial bias in Soviet criminal justice. By taking the decision on a verdict out of the hands of the professional judge, jury trials ensured that the court hearing would not be merely a cursory review of the results of the preliminary investigation but a fully adversarial contest between the sides (Pashin, 1994; Karnozova, 2000; Dline and Schwartz, 2002; Melnik, 2003).

In a seeming paradox, reformers have also supported an expansion in the role of the one-man bench in criminal cases where the sanction is five years or less, apparently as a means of eliminating the Soviet-style bench, with its two lay assessors and one professional judge (Huskey, 1997). The reform has been undertaken with the stated goal of bringing Russia into line with the practices and theories of other states (Pashin, 1994). President Yeltsin stated that he undertook his reforms of the legal system in the name of correcting Russia's "backwardness" and adopting the best practices of Western countries. As of mid-1990s, there was no public discussion of virtues and demerits of Anglo-American models over mixed panels in Germany or France. It was probably due in part to the desire of eliminating the Soviet-style bench and protecting the jury experiment from its critics until its effects could be felt.

Prior to recent reforms, criminal cases would be tried before a professional judge and two lay assessors. In Soviet days, the lay assessors were notoriously regarded as tools of the regime. They came to be known by the derogatory term "nodders" (*kivaly*). This nickname arose from their obvious intention to agree with whatever the judge said (Dline and Schwartz, 2002). Not all lay assessors were nodders; some acted independently. Nevertheless, nodders are no longer employed in criminal cases.

In the 1980s and early 1990s, district courts encountered increasing difficulty in recruiting citizens to serve as lay assessors in criminal and civil cases. According to Soviet criminal and civil procedure, many cases required two assessors to sit with the judge at trial. As a result, the shortage of assessors often caused courts to delay the hearing of criminal and civil cases for extended periods. Moreover, complaints were increasingly heard that lay assessors had come to comprise only people with no other diversion or an unhealthy interest in law enforcement and crime (Reynolds, 1997). Not surprisingly, serious opposition within the legal profession to the re-introduction of trial by jury came from those who questioned the ability of courts to secure a sufficient number of jurors on a regular basis (Boikov, 1994). Citing the problems experienced with the assessors, Boikov (1994) asked how courts unable to secure two assessors for criminal cases could be expected instead to secure twelve jurors. Because of the shortage of assessors, many courts have had to resort to semi-permanent lay assessors, often retirees or the unemployed, who sit on the bench for months at a time.

In Russia debates about the merits or disadvantages of jury trial take place with little understanding of how juries work, and little knowledge of the empirical evidence in other countries. The idea of trial by jury is regarded as a powerful democratic element in

the process of delivering justice and is based on the theoretical justifications for juries rather than empirical or practical concerns.

The suggestion that too many guilty defendants are acquitted has been powerfully urged on a number of occasions by law enforcement leaders. The best-publicized occasion for the expression of these views was words of the Minister of Internal Affairs, Victor Erin, "Crime is growing and becoming more brazen, but the judges frequently display liberalism, to put it mildly" (MVD Minister's list of 'unreliable judges' scored, 1993). A police inspection of the courts purported to reveal a widespread pattern of inappropriate acquittals in cases involving criminal gangs. On the basis of its statistical analyses, the Ministry of Internal Affairs compiled a list of 111 unreliable judges, "whose verdicts give rise to considerable … doubts" (MVD Minister's list of 'unreliable judges' scored, 1993).

Substantive and Procedural Laws

The very first jury trial took place on December 15, 1993, while the Russian Constitution was adopted on December 12, 1993. The Constitution states that: "Anyone accused of having committed a crime has the right to have the case against him heard by a court and jury as provided by federal law."[2] Some Russian judges and jurists have argued that all defendants who wish to have their case heard before a jury should be given a jury trial, that the opportunity for a jury trial should not depend on the mere fortuitousness of having a trial in one of the nine jury-trial regions (Lyakhov and

[2] Article 123 (4).

Zolotykh, 1997). Implementing jury trials in only a portion of Russia seems to violate the Equal Protection Clause of the Russian Constitution.[3]

In fact, the lack of access to jury trials for a large part of the population was one of the grounds cited by the Russian Constitutional Court in its decision of 2 February 1999 declaring the use of capital punishment unconstitutional. The Constitutional Court pointed out that five years had been sufficient time for authorities to create jury trials everywhere in the Russian Federation as required by the Constitution and that therefore the provision guaranteeing citizens a right to jury trial in capital cases (Article 20) should come into effect. Since it would be unfair to subject only the accused in jury trial regions to the possibility of the death penalty (while their counterparts elsewhere faced no such possibility), the Court declared that there could be no capital punishment unless the jury trial existed everywhere (Borin, 1999).

Although the Constitution of 1993 makes trial by jury into a right (for crimes established in federal law), the high organizational and financial costs have prevented the diffusion of the jury to other parts of Russia (Solomon and Foglesong, 2000). The cost of juror payments is very significant – jurors are compensated at a rate of one-half of the judge's daily pay. Jurors who are able to show that this amount is less than their own average earnings at their regular place of work for the same period are to be paid an amount equal to their own average daily rate of pay (Zakon, 1993 [the Jury Law]).

The drafters had originally suggested that all cases for which punishment of more that one-year imprisonment was possible should be eligible for jury trial. This would have required jury trials to be held in local courts throughout the country and those courts

[3] "Every citizen of the Russian Federation shall enjoy in its territory all the rights and freedoms and bear equal duties provided for by the Constitution of the Russian Federation." Sec. 1, ch. 1, art. 6 (3).

to be equipped with the staff and processing capacity for summons and selection, as well as the physical space for accommodation of the jury in the courtroom (Reynolds, 1997).

The restriction of the introduction of jury trials to the regional courts, justified on the absence of physical space capacity in the lower courts as well as budgetary grounds, limited trial by jury to 44 charges[4] for which the regional court serves as the court of first instance. Under the current Russian Criminal Code, the following crimes are triable by the jury court: capital murder, kidnapping, aggravated rape, terrorism, hostage-taking resulting in death, crimes of organized criminal gangs, hijackings, mass rioting, piracy, negligent operation of public transportation resulting in death, train-wrecking resulting in death, negligent operation of construction resulting in death, treason, espionage, attacks against government officials and the police, diversion, bribery, various types of obstruction of justice, war crimes, genocide, and ecocide. Before the enactment of the current Russian Criminal Code, juries also heard a smattering of cases involving passing counterfeit currency and having an accessory after the fact in the commission of a serious offense.

Most of the charges on the list comprise serious violent crimes. Even a case of murder is eligible only if the charge is intentional murder with aggravating circumstances and only aggravated rape charges (e.g., of a minor under 14 years old, or resulting in severe injury) qualify. While there are a few charges, which do not fall into this category (e.g., treason, espionage), the vast majority of cases actually heard by juries concern violent crimes, especially aggravated murder and crimes of organized criminal gangs.

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[4] See Criminal Code of the Russian Federation - Articles 105 (2), 126 (3), 131 (3), 205, 206 (2, 3), 208 (1), 209-211, 212 (1), 227, 263 (3), 267 (3), 269 (3), 275-279, 281, 290 (3, 4), 294-302, 303 (2, 3), 304, 305, 317, 321 (3), 322 (2), 353-358, 359 (1, 2), 360.

The limitation of the cases eligible for jury trial to very serious or rare crimes heard at regional courts (or second-level courts) and the small percentage of eligible defendants who request juries has resulted in a relatively small number of trials. Table 1 provides a breakdown in terms of the number of jury trials and defendants in 1993-2003 (Shurygin, 1998; Obzor, 2003; Spravka, 2004).

Table 1. The number of jury trials and defendants, 1993-2003

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
# of trials	2	173	305	336	419	405	422	359	296	240	479
# of defendants	2	241	544	618	825	800	867	774	523	471	936

There is little evidence to indicate that the growth of jury verdicts in 2003 adequately reflected the expansion of the jury experiment throughout the Russian Federation. There is no huge difference between the number of jury verdicts in 1999 for 9 regions and the number of jury verdicts in 2003 for 83 regions (867 vs. 936, respectively). It is widely believed that some procurators and judges actively discourage defendants from choosing jury trials (Reynolds, 1997).

According to the Commissioner of the Russian Federation on Human Rights, of all the people of Russia who are tried by courts, conviction rates in jury trials have proven to be much lower (79%) than those in traditional trials (99.5%) (Sharov, 2004). A similar pattern has been reported by Thaman (2001). According to him, the acquittal rate in jury trials was 18.2 percent in 1994 and 14.5 percent in 1995, compared to general acquittal rates of 1.3 percent in 1994 and 1.4 percent in 1995.

Defendants requesting to be tried by a jury rose from 20.5 percent in 1994, to 30.9 percent in 1995, 37.3 percent in 1996, 36.8 percent in 1997, 43.2 percent in 1998, and 44 percent in 1999 (Shurygin, 1998; Thaman, 2001). Then the popularity of trial by jury among defendants fell to 33.6 percent in 2001, 31 percent in 2002, and 30 percent in 2003 (Obzor, 2003; Spravka, 2004). The data for 2000 have not been found from open sources.

It is therefore safe to conclude that the popularity of trial by jury is relatively stable (between 30 and 40 percent), which may reflect either a belief that jury trials are equally repressive or simply a lack of awareness that jury trials are available. Jury trials in general have not captured or focused the attention of the public and the press in the way that the emblematic trials of political or religious dissidents did in the pre-Revolutionary period. According to Reynolds (1997), this may be due in part to the small number of trials and to the nature of their subject matter.

Under the Russian Code of Criminal Procedure, if the defendant elects to waive his right to trial by jury and has a traditional trial, there is no extra punishment if the defendant is convicted. There is also no plea-bargaining system or equivalent. Thus, a defendant has no direct incentive to choose a traditional bench trial, where a chance of acquittal would be much lower than in a trial by jury. Since the popularity of trial by jury is relatively stable, this raises the question of whether there is disguised plea-bargaining in Russia.

Jury trials consist of 12 jurors and are presided over by one professional judge. Among other requirements, jurors are chosen from Russian citizens, who are between 25 and 70 years old, have knowledge of the Russian language, and do not have active

convictions. In cases provided for by law, some categories of people, such as invalids, can be excluded from jury lists. Although Russian law allows a defendant to plead guilty before the jury, the jury must still deliberate and decide the defendant's guilt. It is interesting to note that a jury acquitted a Russian man of capital murder and rape after his guilty plea (Thaman, 1995). Russia uses a simple majority rule for criminal cases and does not have a civil jury.

The jury decides the following questions: (1) were the acts charged in the indictment committed?; (2) did the defendant commit the charged acts?; (3) is the defendant guilty of the crime alleged?; and (4) does the defendant deserve leniency?[5] In addition, the questions for jurors may address circumstances that aggravate or mitigate guilt, or those that excuse or justify the defendant's actions. Questions may also address lesser included offenses.

The Russian Code of Criminal Procedure requires mandatory exclusion of inadmissible evidence in any trial. In other words, there are the same standards for admissibility in both traditional and jury trials. However, the reality of the law in action is different. According to Dline and Schwartz (2002), while judges routinely overlook "minor" procedural violations in traditional trials, they ruin a prosecution's case in jury trials by excluding illegally gathered evidence at the preliminary hearing.

The separation of the guilt question into three component parts permits implicit jury nullification by allowing an acquittal even though the jury determined that first two questions have been proved. According to Reynolds (1997), however, there has not been a single reported instance of a jury openly nullifying (answering all factual questions

[5] Code of Criminal Procedure, Article 339.

related to the charge in the affirmative, but nonetheless finding the defendant "not guilty"). Reynolds concluded that "the hopes of the reformers that juries would use their power of nullification to 'send a message' to law makers have not been fulfilled as yet" (Reynolds, 1997, p. 385).

There have been a number of cases in which juries found defendants guilty of only a much lesser included offense. Thaman (1995) reported that this happened in the very first jury trial in 1993, which then was widely publicized as evidence of the positive effect of the jury on evidentiary standards and also served to foster a general impression that a conviction is harder to get from a jury. The detailed special verdicts used in Russia enable the sentencing and appellate judges to divine the reasoning process of the jury. The judge's ruling following a guilty verdict must be based on the facts found to be true by the jury, which the judge then juridically qualifies before imposing sentence.

According to Vladimir Lukin, the Commissioner of the Russian Federation on Human Rights, of all the people of Russia who are tried by jury, about 21 percent are acquitted, as compared to 0.5 percent acquitted by traditional trials (Sharov, 2004). It is not hard to imagine what law enforcement leaders think about such liberalism. The rate of acquittals should be enough in itself to demand some kind of enquiry. However, no one has ever thought it necessary to make a full, practical and impartial investigation of the jury system that produces such results.

The Russian criminal trial never decides whether the accused is innocent. The question is whether, in accordance with the rules of evidence, the prosecution has proved that he is guilty. There may be all kinds of reasons why the jury do not think that the prosecution has proved guilt. The defense may raise some doubt or a piece of evidence

that would have the matter beyond doubt is excluded by the rules of evidence. There are many other possible explanations. However, every acquittal is a case in which either an innocent citizen has been put to the trouble and expense of defending herself or a guilty person has been allowed to go free.

There must be some rate of failure. We cannot always expect to convict the guilty or never to prosecute the innocent. According to Western standards, the acquittal rate of about 20 percent in jury trials in Russia is not too high. However, I doubt whether it would be tolerated in Russian society, compared to almost zero acquittal rate in traditional trials. As a matter of fact, acquittals by jury provoked an outcry from law enforcement agencies and the press has been flooded with publications scaring the public with images of criminals being released by jurors back onto the streets (Dline and Schwartz, 2002).

In the absence of any reliable research no one can say with any certainty why the acquittal rate is so different for jury and traditional trials. The conservative camp, mostly represented by law enforcement agencies, complains that jurors do not follow the law because they do not understand it and are incapable of understanding complex issues (Sadykov, 1997). The liberal camp, mostly represented by human rights activists and law professors, on the contrary, is delighted to see such results. According to liberals, the difference in acquittal rates is mostly due to investigators' and procurators' inability to meet the quality standards imposed on them by the jury system. They argue that mandatory exclusion of inadmissible evidence is practiced in reality only in jury trials while in traditional trials judges overlook procedural violations (Lyakhov and Zolotykx, 1997; Petrykhin, 2001). The moderate camp, mostly represented by judges, argues that

the difference is based on mistakes of judges with exclusion of admissible evidence and that the obstacles are mostly technical. They claim that the jury system is good but that the judges are not ready for it (Shurygin, 1998; Stepalin, 1998). Such a position is based on the high rate of reversed acquittals. This approach is perhaps questionable, considering that jury trials are hosted in Supreme province courts where there are much higher standards for judges than in district courts.

Public Opinion on Criminal Justice

In Russia in the 2000s, the fact that issues of crime and criminal justice are among the most salient common concerns of the citizenry and professionals can be easily established. Understanding the dimensions and form of public opinion on jury trials and the implications of these views for the development of rational and effective public policy in relation to crime and justice is the concern of this research.

The idea that public and professional sentiment about criminal justice system should be taken into account by governing officials has been a mainstay of citizen expectations in Russia for years. During the Yeltsin era (1991-1999) public opinion about the criminal justice system was mixed. A 1994 Institute of Sociological Research study of legal attitudes found that 8 percent of respondents rated the right to legal defense as one of the most important constitutional rights (Mikhailovskaia, 1995). On the other hand, these results also revealed a widespread belief in the mid-1990s that courts were more effective at fighting crime than at protecting due process rights. Respondents thought that a criminal going unpunished posed more danger than did an innocent person condemned.

In a 1995 survey of Moscow defense attorneys, 92 percent of respondents believed that investigators were at least sometimes violating their rights to defend clients.

84 percent of Ivanovo respondents, 85 percent of Stavropol respondents, and all Petrazavodsk defense attorneys voiced a similar opinion (Jordan, 2005). As a result, Jordan (2005) concluded that in the mid-1990s defense attorneys' influence on procedure in the pre-trial phases remained indirect.

The Yeltsin era saw only partial implementation of criminal justice reforms. Law enforcement agencies remained underfunded and understaffed. In a 1994 survey of Omsk residents, only 26 percent of respondents said that police work was "satisfactory," and 51 percent said that the police would probably not help them if they became crime victims (Goncharov and Kozhevnikov, 1996). In a 1995 survey, only 9 percent of respondents felt that law enforcement agencies defend "the interests of every citizen in equal measure" (Goncharov and Kozhevnikov, 1996).

Vladimir Putin became Yeltsin's successor to the presidency in December 1999. Putin's leadership objectives include improving the economy, centralizing control in the Kremlin, promoting a law-and-order agenda, and achieving a "dictatorship of law." According to Jeffrey Kahn (2002, pp. 4-5), "dictatorship of law" refers to Putin's goal to "recentralize authority by strengthening what he calls the 'vertical of executive power' in the Federation." Putin's vows to empower the Russia state through an observance of government decrees and federal legislation strongly appeal to many Russians. For example, in a Russian public opinion poll published in 2002, 78.6 percent of respondents agreed that "many people do not resort to the courts *because they do not expect to find justice there* [emphasis in original]" (Krasnov, 2002, p. 94).

There was a concern over the widespread perception that the public has of the jury system. The Levada Center, a well-known Russian survey research center, has conducted

the Justice Poll, a nationwide survey of citizen attitudes toward criminal justice policies and agencies, trial by jury, and related topics. In a 2004 national telephone poll of 1594 Russians, 34% of respondents rated the jury system higher than the traditional system; 29% of respondents said the traditional system was superior to the jury system; 23% of respondents rated both systems equally; and 14% of respondents answered "hard to say" (Levada Center, 2004).

Table 2. Public attitudes toward trial by jury

How would you rate the jury system, as compared to the traditional one?	%
The jury system has more justice and independence	34
The jury system suffers from incompetence, and jury verdicts cannot be unbiased	29
They are equally just and competent	23
Hard to say	14

Table 2 indicates that the public had not seriously questioned the legitimacy of the jury system. It seems that the public trusts that the jury system is not doing any obvious harm, as compared to the traditional one, and as such, render fair and principled verdicts. At the same time, many respondents (29%) still believe that jurors are frequently biased, incompetent, and apathetic, and as such, render verdicts that are unprincipled and often unjust.

However, rather than focus on the debates taking place in the media or on public opinion surveys which attempt to measure the views of the general public, a key element of this research is that it is based on major players' direct experience and involvement in

the jury system. It therefore provides a more "grounded" approach that examines the ways this experience influences confidence in the jury system.

LITERATURE REVIEW ON JURY RESEARCH WORLDWIDE

Jury research has dealt almost exclusively with the American system in which laypersons decide a verdict both for criminal and civil cases. However, there are different jury systems functioning around the world (Vidmar, 2001). Some of them follow the American system but with different variations, as in the case of Australia, Canada, England, and New Zealand, in which 6-12 citizens decide verdicts under a unanimity or non-unanimity rule. Other countries, such as most European countries (France, Germany, Italy, Portugal), adhere to the escabinado system, in which laypersons and professional judges together decide verdict and sentence, under a non-unanimous rule and only for criminal cases. Lastly, some countries (e.g., Russia and Spain) have recently adopted an Anglo-American (lay jury) system, but at the same time use some features of the escabinado system, including requiring the jury to answer a list of questions instead of reaching a single guilty/not guilty verdict (Thaman, 2001). In addition, Russia does not follow double jeopardy rules in that it allows prosecutors to appeal acquittals.

In this section I review previous literature on criminal jury trials worldwide. For ease of discussion, I limit the scope of inquiry to empirical studies that bear on what juries do and how they perform. I will not review literature on the use of "simulated" or "mock" juries that can be called experimental research.

In any literature review of empirical research on juries, the natural starting point is inevitably the monumental inquiries made in the late 1950s and 1960s by a team of researchers at the University of Chicago. Their research published under the title of *The*

American Jury by Kalven and Zeisel (1966) has been widely acclaimed a sociological classic (Grieew, 1967). The study was designed to illuminate the behavior of the American criminal jury by comparing the jury verdict in a particular case with the verdict that the trial judge would have given. For 3,576 criminal trials, judges filled out mail questionnaires about the trial characteristics and its outcome. The judge stated his verdict and, if the jury's verdict differed, his view of the reason for the disagreement.

The result was that in 78 percent of the cases the judge and jury agreed on the verdict. Judge-jury disagreement occurred in 22 percent of the cases, consisting of 19 percent in which the jury acquitted where the judge would have convicted ("normal disagreement") and 3 percent in which the jury convicted but the judge would not ("cross-over" cases). The authors then proceeded to investigate the reasons that, according to the judges' view, influenced the jury to disagree with the judge. They indicated that evidence factors explained 54 percent of the disagreements, sentiments on the law accounted for 29 percent, and sentiments about the defendant were involved in 11 percent of the disagreements (p.115).

A central point in their discussion of the jury's role in considering issues of evidence is the idea of the "liberation hypothesis" (p.164). Specifically, most disagreements occurred in the presence of evidentiary difficulty and the jury's uncertainty liberated them to invoke various sentiments to resolve their doubts. Other reasons for judge-jury disagreements on the evidence included (1) the differential credibility of defendants without record who took the stand, the "credibility hypothesis," (2) random disagreements on the evidence, and (3) the jury's greater tolerance for reasonable doubt, the "reasonable doubt hypothesis."

Kalven and Zeisel's study is now as noteworthy for the basic errors in its methodology as for any contribution it may have made to our knowledge about juries. The errors relate to the different questionnaires that the authors administered to judges. Several critics have suggested that Kalven and Zeisel inexplicably changed mid-way through the research (Bottoms and Walker, 1972). Other critics have pointed out that a sample of judges is methodologically suspect (Baldwin and McConville, 1980; Kaplan, 1967). Specifically, these critics have mentioned that the self-selection of the judges into the project resulted in half of the case sample being attributed to fifteen percent of the judges and nine percent of the sample representing one percent of the judges. According to Becker (1970), the errors of Kalven and Zeisel also relate to an unstated, but readily apparent, bias in favor of jury trial.

Some critics of the project have suggested that the sample of trial types is methodologically suspect. Drugs offences were, for instance, considerably over-represented and burglary offences under-represented (Bottoms and Walker, 1972). Walsh (1969) has pointed out that there was no control over the time period in which the cases were tried. Walsh (1969) has also argued that Kalven and Zeisel were seriously misleading in their interpretation of judges' answers to essentially descriptive questions, and their inferences unjustified given the nature of the information with which they were dealing.

The principal weakness of Kalven and Zeisel's study is that it is based on the problematic assumption that jurors ought to be deciding cases in ways that judges would decide them. To say that judges agree with the verdicts of juries in 78 percent of all cases does not mean that the juries in question must have reached the right verdict in these

cases, as Kalven and Zeisel infer from their data. The errors considerably reduced the value of the study. However, it would be foolish to dismiss the study because of this.

Two other studies, both conducted by researchers in England, have adopted the same basic method employed by Kalven and Zeisel. However, they have been concerned exclusively with the straightforward policy question of whether too many defendants are being acquitted by juries. This question was originally raised by Mark, the former Metropolitan Police Commissioner, who argued that "the proportion of those acquittals [by jury] relating to those whom experienced police officers believe to be guilty is too high to be acceptable" (Mark, 1973, p. 10).

The study carried out by McCabe and Purves (1972) was based upon the views expressed by counsel, solicitors, and sometimes judges. The main focus of it was on 115 jury acquittals. However, it is not easy to make any evaluation of the study since the authors provide very few details of the methods used. For example, no information is given on how many respondents returned the questionnaires for the jury acquittals. The conclusion was that the main reason for the acquittals was "the failure of the prosecution (normally the police) to provide enough information, or to present it in court in a way that would convince both judge and jury of the defendant's guilt" (p. 11) and not the result of any failing on the part of the jury.

The study conducted by Zander (1974) was designed to test the assertion that professional criminals represent a significant proportion of all acquitted defendants and they are more likely than other defendants to avoid convictions. The author found that professional criminals are wrongly acquitted only on rare occasions. This study gave important support for McCabe and Purves (1972) and increased confidence in the jury

system as a trier of fact. Some critics, however, have been critical because of certain methodological limitations including the definitions of "professionalism" (based on the length of a defendant's criminal record) and of serious crime that are adopted (Baldwin and McConville, 1974).

The results of both studies in England must be taken as being extremely favorable to the jury.[6] However, the general approach based on the views of other key participants as a method of evaluating the verdicts of juries needs to be examined more critically. The principal weakness is that, as Bankowski and Munghan (1976) have argued, it often leads researchers to make many assumptions that are problematic. It is not possible to determine what constitutes the "good juror," whether or not the verdict of the jury is to be preferred, when there is disagreement between the view of respondents and the verdict of the jury, and whether the nature and extent of disagreement are excessive. Baldwin and McConville (1979) appropriately note that the assumption that jurors and lawyers ought to be deciding cases in similar ways is questionable.

In a review of major empirical studies of jury behavior in the United States, Simon and Marshall (1972) concluded that in the last two decades the juries' verdicts were consistent with those that judges claim they would have reached and that the jury system worked well (pp. 229-230). Later, however, the whole empirical line concerning jury trials was subjected to severe criticism. Bankowski and Munghan (1976), for example, have argued that the methodological basis of jury studies is inadequate and that researchers have been asking the wrong questions about juries. The main fallacy, according to them, is that jury studies, which seek to dissect the jury system, ignore the

[6] It is important to note that in both studies in England the jury system has not been scrutinized for an alleged waste of time and money.

crucial dimension of the trial itself (p. 207). They found that jurors are much influenced by the judge's directions and by the way in which the trial is conducted (p. 211).

There is much truth in this critique. The answer, however, is that any verdict should be evaluated against as many criteria as possible. Doing that, Baldwin and McConville (1979) collected information from judges, defense and prosecuting solicitors, and police officers about the outcome of cases tried by jury. Their respondents expressed considerable dissatisfaction about many of the verdicts delivered by juries in England. The proportion of acquittals regarded as questionable by respondents was much higher than that noted by other researchers. The judges and the police appeared to be wholly satisfied with the verdict in only 61.9 percent and 47.8 percent of the cases respectively (p.45-46).

In the 1980s the results of studies on judge-jury agreement were helpful in attempting to understand the dimensions of the innocent conviction problem. In a survey conducted by Huff, Rattner, and Sagarin (1986), more than 70% of the criminal justice officials who provided an estimate believed that false convictions occurred in less than 1% of all cases (6% believed that false convictions never occurred while 23% thought they occurred in 1% to 10% of all cases). Whether the respondents were giving their opinions with respect to convictions following trial or were also including those convictions which were entered as the result of a plea is unclear. Courts can accept pleas despite a defendant's claim of innocence, and a rational defendant who is likely to be convicted may choose the lesser sentence resulting from a plea bargain rather than risk erroneous conviction.

Given that judges or other law enforcement professionals (viewed as the experts) agree with the jury's decision in about three-quarters of the cases, the conclusion reached by Kalven and Zeisel in 1966 that juries do a very good job remains either unchallenged (Baldwin and McConville, 1979) or affirmed by the few empirical studies (McCabe and Purves, 1972; Zander, 1974; Hans and Vidmar, 1986; Huff, Rattner, and Sagarin, 1986) done since that time. Moreover, as Vidmar (1998) has pointed out, "*The American Jury* continues to be cited as a leading study of civil as well as criminal juries…" (p. 32).

Although all above-mentioned studies shed some light on the efficacy of the jury, what is missing from the debate is actual statistics about how often judges overturn jury verdicts. There are some statistics about the success of appeals in general, but appeals are granted for a variety of reasons, so this does not necessarily reflect badly on the jury's work. One such study of appellate reversals (this is all reversals, so it includes reversals of jury trials and judge trials, not just the reversals of jury decisions) in the U.S. Court of Appeals for the Second Circuit during the two-year period July 1, 1989 - June 30, 1991 rendered the following: "For the two-year period there were 2025 appellate decisions and 491 reversals (in whole or in part), for an overall reversal rate of 24%…The largest category of reversals consists of interpretations of a written document, usually a federal statute…" (Newman, 1992, p. 629). This study indicates that reversals are more often about the interpretation of laws or statutes, but this statistic includes bench trials and jury trials. There are no separate statistics about reversals of jury trials, and thus, no separate statistics about reversals based on the jury's competence as fact-finders. In fact, from the limited empirical evidence available, it appears that when verdicts are reversed it is

usually because a later court determines that the law has been misapplied. But the application of the law is the purview of the judge, not the jury.

The accepted division of labor in a jury trial is that the jury decides the matters of fact, and the judge decides the matters of law. So appellate judges are more often overturning the interpretation of the law made by other judges than setting aside the factual findings of the jury. The data that would cite how often the jury gets the verdict "wrong" is difficult to find because the data relating to when judges specifically find fault with the jury's work is not extrapolated from that larger body of statistics regarding appeals in general.

However, some law review articles did discuss the ability of a judge to set aside the verdict of a jury. According to the literature and supported by the relevant case law, this rarely happens (Powers, 1997). One reason for this is the guarantee in the Seventh Amendment to the Constitution of the United States that:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

According to Powers (1997, p. 1699), who studied judges and juries in the Texas Supreme Court,

> A court can properly overturn a jury's finding and enter the j.n.o.v. only if there is no legally sufficient evidence—that is, only if there is no evidence more than a scintilla to support the verdict…A hallmark of this entire body of law, however, is extraordinary deference to juries.

Thus, it appears that the work of a jury is protected, if not almost revered. This examination of the efficacy of juries has revealed that while the critics of the jury system rely on some generalized misperceptions, the available evidence is that the outcome of

juries matches what the judge (expert) would decide as much as 78% of the time (Kalven and Zeisel, 1966). Thus, given that the empirical evidence has revealed that juries agree with expert opinion more than three-fourths of the time, and given the adversary system in Great Britain and the USA, one can conclude that there are good reasons to keep the jury system in common law countries. According to many sources, the adversary system is in no small measure the result of the existence of the jury (Thayer, 1898; Nokes, 1956; Morgan, 1956; Cornish, 1968).

Reliance on the jury in civil law countries with the non-adversary system can provoke vigorous opposition, given the fact that the non-adversary system is not tolerant of evidentiary barriers limiting the search for the truth. Damaska (1972-1973, p.588), comparing the two systems of criminal procedure, has pointed out that "the non-adversary system in its continental variant is indeed more committed to ascertain historic verity." A statement made by another eminent comparative law scholar, after long and careful study, is instructive: he said that if he were innocent, he would prefer to be tried by a civil law court, but that if he were guilty, he would prefer to be tried by a common law court. This is, in effect, a judgment that criminal proceedings in the civil law world are more likely to distinguish accurately between the guilty and the innocent (Merryman, 1985).

Chapter 3

RESEARCH DESIGN AND METHODOLOGY

RESEARCH QUESTIONS

This research looks into the current dynamics and trends in the development of the Russian jury system, with a focus on various issues and problems faced by the jury-trial system, the factors causing these problems, and possible ways to resolve them.

The objectives of the research are:

- to investigate general attitudes of Russian judges, prosecutors, and defense attorneys towards the jury system;
- to identify the problems which members of legal profession experience during the trial process; and
- to describe judges', prosecutors', and attorneys' reactions to, and concerns about, their experience as key participants in the trial.

My main research interest is to find out how judges, prosecutors, and defense attorneys perceive the legitimacy of the jury system and what they feel about the outcome of cases tried by jury. My goal is to build up a comprehensive view of each case. The point is that if one gets views from as wide a spectrum as possible, evaluation of the jury's verdict and the Russian jury system as a whole is more secure.

The degree to which juries' verdicts accord with the views of judges and experienced trial lawyers is a matter of importance because it provides a yardstick by which the jury's performance can be measured. It is important to emphasize that I have only perceptions of Russian judges, prosecutors, and defense lawyers to report, not actual jury behavior. However, I strongly believe that the fate of Russian jury reform is more

likely to hinge on the perceptions of the key players I interview than it is on actual jury behavior.

If one looks at the history of trial by jury, it is clear at least in the case of England that official policy decisions affecting the jury have been to a large extent influenced by various untested assumptions (Baldwin and McConville, 1979). According to many sources, adoption of the jury-trial system in Russia in 1993 was based more on political rationales than on empirical advantages of Anglo-American tradition over Continental European one (Thaman, 2001; Martin, Kaplan, and Alamo, 2003). By focusing attention on how judges, prosecutors, and defense attorneys perceive the jury system and its task in Russia, I hope to contribute to a greater understanding of Russian jury reform and to present a factual framework that at present is largely absent from the discussion. Without the evidence on the perceived effectiveness, decisions taken about the continuance of jury trial in Russia are as likely to be based upon a false premise as upon a sound one.

The following are the study's central research questions:

- What determines the level of confidence in the jury system among judges and experienced trial lawyers?
- Based on the degree to which juries' verdicts accord with the views of the professionals, is the verdict acceptable or unacceptable?

Other concerns this study addresses are: what the respondent thinks is the most important problem facing the jury system, whether there is a relationship between the respondents' demographic background and their perception of the verdict, and whether there is specific relationship between the respondents' perception of the verdict and their perception of the jury system overall.

The dissertation involves a combination of three research methodologies: the historical study, the case study, and the comparative study. The historical study concentrates on an analysis of the role played by the jury system in various stages of its development. The historical study also reviews the impact of the political circumstances surrounding the formation of the post-socialist Russia on the establishment of the jury system.

While the historical method deals with the "dead past," the case study is preferred in examining contemporary events, when two sources of evidence not usually included in the historian's work are used: direct observation and systematic interviewing. The case study represents a comprehensive description and explanation of a certain social situation, in which the researcher collects and examines as much data as can be found on the research subject. The case study has been defended as a methodology for jury research (Levine, 1996). However, the weakness of this approach is lack of internal and external validity. As Levine (1992, p. 128) pointed out: "One must always be cautious in making too much out of findings from one or two settings."

The third method is used to do a comparative analysis of one institution – the jury system – through the prism of two different groups of regions, the "pilot" regions with jury trials since the 1993-94 period vs. the "regular" ones with jury trials since the 2003-04 period.

METHODOLOGY

The key question that guides the research is whether direct involvement in a jury trial tends to improve legal professionals' confidence in the jury system. The research also examines levels of satisfaction with the jury system and what judges, prosecutors,

and defense attorneys feel about the outcome of cases tried by jury. The questionnaire, therefore, includes questions that would facilitate an examination of the expectations that the key participants bring to court; how they are modified in the process of carrying out their duties; and how this affects their overall confidence in the jury system. Similarly, a range of personal factors, such as previous experience with the jury system, as well as key participants' age, ethnicity, and gender, together with their political orientation, are also explored to establish whether different roles bring, and leave with, different perceptions, confidence and levels of satisfaction.

This research project arose in response to two related developments. First of all, there has been a growing concern about what is perceived as a "crisis of legitimacy" in the criminal justice system. The crisis was based in part on skepticism about Soviet legal tradition in modern Russia. Secondly, there has been a growing interest and discussion about the jury system and its role. The combination of these two concerns prompted an investigation into the operation of the jury system that would consider how the experience of being a major player affects levels of legitimacy or confidence.

It has been widely reported in research literature that public confidence would be affected by the perceptions of those involved and by the verdicts and outcomes of jury trials (Matthews, Hancock, and Briggs, 2004). There have been a number of cases in Russia reported in recent years in which verdicts and outcomes of jury trials are seen to be inappropriate or unacceptable by the press and these reports can affect confidence (see Dline and Schwartz, 2002).

The specific aim of the research is to examine key participants' experience of the jury system and in particular, to examine their confidence in the jury system. While

previous research has tried to measure public opinion through the analysis of national survey data (Levada Center, 2004), this project aims to extend this knowledge to provide a more "grounded" and detailed form of enquiry.

In order to achieve this objective it is important that the questions posed to the key participants are not too general, or lacking in context. The instruments needed to be more specific to uncover the extent to which opinions are constructed and changed. That is, it is essential that data collection methods can recognize the nature of the complexities of people's responses. For example, it is necessary to distinguish between support for the jury system overall and support for particular verdicts. The questionnaire is discussed further below (see also Appendix A).

The Questionnaire

Each respondent in the study filled out a questionnaire in Russian (Appendix B). *The first section* in the questionnaire dealt with general opinions about the jury system ("How significant are juries to our system of justice?"; "What is your view of the jury system in general?" – questions 1.1 and 1.2). The respondents were invited to rank various positive/negative characteristics of the jury system by importance ("Which of the following do you see as positive features of trials by jury, as compared to trials by a professional judge alone?"; "Which of the following do you see as serious problems with trials by jury, as compared to trials by a professional judge alone?" – questions 1.3 and 1.4). Nine additional questions (1.5.A-1.5.I) examined perceptions of the jury system.

The respondents were also asked whether any changes in the jury system are desirable (1.6.). Furthermore, the respondents were asked to state their preference for decision-makers and were offered three comparisons (the jury v. a professional judge

alone, the jury v. professional tribunal, and the jury v. mixed tribunal – questions 1.7-1.9).

Some questions were asked in the form of quotations (1.10.A-1.10.F). Respondents were asked to agree or disagree with several statements about the Russian jury system. Since some respondents could base their answers in part on their views of the authors I quoted, I did not mention my sources in the questionnaire. The quotations were selected according to two main criteria. First, if a statement reflects a view that is typically held by a significant number of people; second, where a statement helps to explain or clarify a particular point. That helps to address both the concerns of anti-modernizers when they criticize jury trials and the concerns of modernizers when they are delighted with jury trials. My final product would be sharper once I take these concerns into account.

The last questions (1.11-1.13) in this section were entirely open-ended. They invited respondents to write comments about any aspect of the jury system which, in their opinion, had not been addressed adequately in the questionnaire.

The second section in the questionnaire dealt with respondents' perception of jurors' behavior and verdict. A variety of questions (2.1-2.7) were asked in the initial stages of this section to provide the background details of each criminal case. More detailed questions on the legal characteristics of cases tried by jury could have been included, but that would have made the questionnaire too complex or too long.

Respondents were then asked questions designed to uncover their feelings about the actual processes they had been faced with while carrying out their duties in the courtroom. Respondents were asked to comment upon their perceptions of the trial and its

outcomes (2.8-2.12). I treated opinions on convictions the same way as those on acquittals (no strong view expressed that the verdict was not justified, some doubts, serious doubts – question 2.8). It is important to note that the measures in this area are intended to examine the extent of personal agreement/disagreement with individual case decisions made by the court. This section of the questionnaire was also intended to explore the extent to which respondents' ideas and impressions about trial by jury, and their confidence, have changed as a consequence of their engagement with this aspect of the criminal justice system (2.13).

In the real world people have attitudes that are very often ambiguous and at times contradictory on complex issues. The research methodology needs to accommodate this diversity, rather than attempt to reduce these complex opinions into a number of pre-selected 'boxes' or treat them as one dimensional and entirely consistent viewpoint. The failure to develop such a methodology will result in danger of distorting and restricting the nature of public opinion. In order to try to overcome these difficulties the methodology used here placed a significant emphasis on the qualitative information and as far as possible aimed to let judges, prosecutors, and defense attorneys speak for themselves (2.14-2.16). For example, respondents were asked about their disagreement with the verdict, if any, and to identify the topic of disagreement. Consequently, there is a greater use of quotations from respondents in this study than is normally the case, but it is felt that it is necessary to bring out not only the range and level of responses, but also to convey the tone, intensity and depth of responses.

The third section dealt with the respondents' demographic characteristics (ethnicity, age, gender, political orientation – questions 3.1-3.4). Questions were also

asked about their graduation year, their current role in the criminal justice system, the length of their service in this occupation, the city, and the number of criminal cases tried in the jury system last year (3.5-3.10). Respondents were finally asked to respond to a specific situation - placing themselves in a falsely accused defendant's shoes (3.11).

Hypotheses

Determining the nature of confidence in the jury system is the main focus of this study. Confidence is perhaps bound up with levels of satisfaction that individuals reached in the process of carrying out their professional duties. Previous experience, if any, of being a key participant, also may influence confidence in the jury system. In the course of the analysis, however, it is necessary to distinguish between "increasing" or "decreasing" confidence in the system as a result of engaging in jury trials and having confidence in the jury system overall.

In order to measure how the experience of being a key participant has affected their confidence in the jury system, respondents were asked the following question: "Do you feel that your level of confidence in the jury system is higher, the same, or lower as a result of being personally involved in the jury system?" The hypothesis is that perceived legitimacy of the jury system changes after the individuals' experience with the jury system (Hypothesis 1). If the experience with the jury system raises perceptions of the legitimacy of the system, a good step towards success of criminal procedure reform has been made. Raised perceptions of the legitimacy of the system after the experience with it are an indicator of the effectiveness of system. Stable perceptions or lowered perceptions may indicate the ineffectiveness of the reform.

I predicted that respondents would have higher levels of confidence in the jury system overall if they were more satisfied with the fairness of the individual trial (Hypothesis 2) and the correctness of the verdict (Hypothesis 3). Respondents answered questions regarding the fairness of the trial and the correctness of the verdict, including: How fair do you think this trial was, on a scale of zero (Very Unfair) to ten (Very Fair)? How correct do you think the verdict was, on a scale of zero (Very Incorrect) to ten (Very Correct)? I predicted that respondents would rate a trial as fairer if it resulted in a not guilty verdict that if it resulted in a guilty verdict (Hypothesis 4). However, I predicted that respondents would rate a guilty verdict as more correct than a not guilty verdict (Hypothesis 5).

I also looked closely at the hypothesis that experienced lawyers and juries disagree in their handling of questions of fact because they make different judgments as to the credibility of given kinds of evidence (Hypothesis 6). The disagreement between experienced lawyer and jury over the evidence may arise because of what might be called the differential gullibility of the jury. I sought to locate any systematic differences in response to particular items of evidence. For some reason the jury may tend to believe certain evidence more than does the experienced lawyer, or conversely to disbelieve it. The weakness of this approach is that different conclusions can be drawn from the same information. In the words of British scholar Patrick Devlin (1959, p. 21), jurors who want to acquit take a "merciful view of the facts." To put it differently, the overlap between facts and values cannot be completely ignored.

The hypothesis that the role in the criminal justice system is an important factor affecting opinion about the jury system was also tested (Hypothesis 7). I predicted that

defense attorneys have a much more positive opinion about the jury system than judges or prosecutors do. At the same time, I expected that prosecutors would have a much more negative opinion than either judges or attorneys.

Hypothesis 1: Perceived legitimacy of the jury system changes after the individuals' experience with the jury system.

Hypothesis 2: Confidence in the jury system overall will be positively correlated with the perceived fairness of a trial.

Hypothesis 3: Confidence in the jury system overall will be positively correlated with the perceived correctness of a verdict.

Hypothesis 4: The perceived fairness of a trial will be positively correlated with a not guilty verdict.

Hypothesis 5: The perceived correctness of a verdict will be positively correlated with a guilty verdict.

Hypothesis 6: Experienced lawyers and juries will disagree in their handling of questions of fact because they make different judgments as to the credibility of given kinds of evidence.

Hypothesis 7: The role in the criminal justice system is an important factor affecting opinion about the jury system.

The Sample

I wanted a sample of 20 cases and I simply took as my sample all cases that had been recently contested in selected regions until I reached the number. Cases that ended in convictions, as well as acquittals, were included in my analysis.

It must be admitted that I anticipated difficulty in reaching co-operation with some respondents. Pressures of various kinds are likely to be experienced in some degree by virtually any judge and prosecutor in modern Russia. Some respondents may fear that discussing a case may lead to some problems in their careers. Apart from certain factual questions, I wanted to ask each respondent whether he agreed with the verdict of the jury

and to give reasons for his opinion. The proposed line of inquiry was troublesome, and the delicate business of negotiation took some time.

Copies of the draft questionnaires I was hoping to use were sent to the Volgograd Supreme Court, the Volgograd Province Procurator Office, and the Volgograd Bar Association for their comments. I was assured of full support from Volgograd Law Academy as a research center for my study. Before starting the main field work in different regions, I conducted a pilot study in Volgograd and was able, after its completion, to clarify some of my research proposals and to refine the questionnaires I wanted to use.

Data Analysis

The survey collects data of both a quantitative and qualitative nature, which is necessary to reflect the 'extensive' and 'intensive' nature of opinion formation. I employ the protocols common to most quantitative research in social science. Relations between variables were analyzed using SPSS 10.0. Data were 'indexed' and 'charted' by myself to explore the key themes this research is concerned with, to identify association and to facilitate the development of explanations for the patterns generated by the data. It was anticipated that the research strategy outlined above would provide a more nuanced account of key participants' perceptions and experiences involving a combination of both quantitative and qualitative data.

It is well to bear in mind that statistics on the outcome of jury trials are difficult to interpret. Different commentators, discussing the same set of Russian statistics, have reached fundamentally opposed conclusions. What, for example, Kislov (1998) and Zykov (1998) saw as an unacceptably high rate of acquittal by jury was regarded as

unexceptionable by judges, researchers, and others (Lyakhov and Zolotykx, 1997; Shurygin, 1998; Stepalin, 1998; Petrykhin, 2001). The more important difficulty is the scope that exists for disagreement over what is actually meant by an acquittal. Defendants commonly face more than one charge and sometimes are acquitted only of some of the charges. It is unclear from Russian official statistics whether such "split" verdicts are regarded as an acquittal or as a conviction. Indeed, the way this issue is resolved has a direct bearing on the results that are obtained by the Russian Federation Supreme Court.

There is no obvious or right answer for split outcome cases. As Baldwin and McConville (1979) mentioned in their research, the English official statistics treat a split case not as an acquittal for more serious crime but as a conviction for lesser crime. I think it better not to adhere to such statistical classifications that in several cases seem to me unnecessarily strict. I think it appropriate in the case of Russia to classify them, simply on an intuitive basis, as cases that are primarily convictions or acquittals.

I decided to adopt a working definition of questionable verdicts as being those in which at least two respondents thought that the verdict was not justified. I know from the work of previous researchers that there is an almost infinite range of possible explanations for any given verdict, and I attempt to provide in advance for the more important. To ensure a measure of comparability, I sought from each respondent his explanation for the verdict in a relatively structured way, although each questionnaire also contained open-ended questions. I presented each group of respondents with a set of possible factors that may go some way to explain the verdict.

Respondents were asked to indicate which, if any, of this list of possible factors in their opinion may have explained the verdict and, where more than one factor is

identified, to say which factor is in their view dominant. The factors presented to all groups of respondents fell into two broad groups – legal or evidentiary and extra-legal or non-evidentiary. Legal or evidentiary factors comprise those that lawyers would regard as proper and relevant considerations in any verdict, relating for instance to the performance of key witnesses or the strength of the evidence presented. The extra-legal or non-evidentiary would be viewed as irrelevant in a strict legal sense and not appropriate considerations to influence a jury's deliberations.

The official view is that the jury's function is to try the facts. On that view all disagreement would arise over differences in the response of jury and other key participants to the evidence. Evidence would be the sole explanatory category. However, it is not clear that anyone in Russia has ever taken so literally the official view of the function of the jury. There would be disagreements in which issues of evidence play no role at all. For example, in America, Kalven and Zeisel (1966) reported that some 24 per cent of all normal disagreements arose from disputes over values alone.

The legal and extra-legal factors as the reasons for disagreement can be also re-categorized as facts and values. Despite its simplicity, such refinement gives focus to a general theory of lawyer-jury disagreement. Kalven and Zeisel (1966) reported that, apart from evidence difficulties, the primary sources of disagreements were jury sentiments about the law and about the defendant. Their research brings me to the answer to my exploratory questions: how much disagreement is there between lawyer and jury in criminal cases? And, what are the reasons or sources of this disagreement?

The reasons of this disagreement fall into these categories:

- Evidence factors and understanding of the law (Facts);

- Jury sentiments about the individual defendant (Values);
- Jury sentiments about the law (Values).

Evidence factors cover the instances in which the jury evaluates key witnesses or specific items of evidence differently from the respondent. Jury sentiments about the individual defendant cover the personal characteristics of the defendant such as human personality, background, credibility, sympathy, and conduct. Jury sentiments about the law include criticism of the law.

In the USA, Kalven and Zeisel (1966) have found that the trial judge would have acquitted in about 3 per cent of cases where the jury convicted. I think it probable that few, if any, convictions would be seriously questioned in Russia because of the high standard of proof that the prosecution must discharge in criminal cases. It would also be unlikely because of a cultural tendency to assume guilt.

Selection of Courts

The strength of the project is that it permits multiple lines of inquiry. While I consider that lawyers' perceptions of the legitimacy of the jury system central to my study, this line of inquiry was complemented by other lines. The research also examined levels of satisfaction with the jury system and what judges, prosecutors, and defense attorneys felt about the outcome of cases tried by jury.

The research began in the Volgograd province. The selection of this region was a result of the study of the Russian jury system undertaken at Volgograd Law Academy pursuant to a grant from the American Councils for International Education.[7]

[7] The Grant # 305001-104432 ends after the completion of the Spring 2006 semester. Funds are available for this purpose, and the highest priority on allocating funds will be given when home country

Instead of having reports from key participants on all criminal jury trials in the Russian Federation during the study period, I planned to have reports on only 20 or so trials. In these 20 or so cases I relied on face-to-face contacts rather than on mail questionnaires. I confronted at the outset the question of how I can be sure that what I discovered about this small minority of cases is applicable to the larger universe that, in the end, is the true subject of this inquiry. But I will show why the sample finally emerges as quite reliable and merits in fact great confidence for the purposes of this study.

It is important to note that the 89 units, or "subjects of the Russian Federation," vary in their constitutional status: 32 of them (21 republics,[8] 10 autonomous districts,[9] and 1 autonomous province[10]) are ethnically defined, while the remaining 49 provinces,[11] 6 territories,[12] and two federal cities[13] are almost entirely populated by ethnic Russians.[14] Although all regions possess equal constitutional rights, republics have the most power.[15]

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institutions have a strong commitment to the participant, and has been permitted by the U.S. host institution to participate substantially in dissertation development and oversight.

[8] Adygeya, Altai, Bashkortostan, Buryatia, Chechnya, Chuvashia, Dagestan, Ingushetia, Kabardino-Balkaria, Kalmykia, Karachayevo-Cherkessia, Karelia, Khakasia, Komi, Mariy El, Mordovia, North Osetia-Alania, Sakha (Yakutia), Tatarstan, Tuva, and Udmurtia.

[9] Aginsko-Buryatsky, Chukotsky, Evenkiysky, Khanty-Mansiysky, Komi-Permytsky, Koryatsky, Nenetsky, Taymyrsky, Ust-Ordynsky, and Yamalo-Nenetsky.

[10] Jewish.

[11] Amur, Arkhangelsk, Astrakhan, Belgorod, Bryansk, Chelyabinsk, Chita, Irkutsk, Ivanovo, Kaliningrad, Kaluga, Kamchatka, Kemerovo, Kirov, Kostroma, Kurgan, Kursk, Leningrad, Lipetsk, Magadan, Moscow, Murmansk, Nizhny Novgorod, Novgorod, Novosibirsk, Omsk, Orenburg, Oryol, Penza, Perm, Pskov, Rostov, Ryazan, Sakhalin, Samara, Saratov, Smolensk, Sverdlovsk, Tambov, Tomsk, Tver, Tula, Tyumen, Ulyanovsk, Vladimir, Volgograd, Vologda, Voronezh, and Yaroslavl.

[12] Altai, Krasnodar, Khabarovsk, Krasnoyarsk, Primorsky, and Stavropol.

[13] Moscow and St. Petersburg.

[14] Ethnic republics and autonomous regions are designated for one or more of the minority groups in the federation. However, not all ethnic jurisdictions have the population of the titular group larger than the population of Russians.

[15] For example, the 1993 Russian Constitution grants republics the right to establish an official "state language" (Article 68.2).

However, all 89 regions are equal in terms of the constitutional right to a jury trial, and they also have no own Criminal Codes.[16]

Russia consists of 7 administrative districts (Center – 18 regions, Northern West – 11 regions, South – 13 regions, Volga – 15 regions, Urals – 6 regions, Siberia – 16 regions, and Far East – 10 regions). The last three administrative districts represent Asian part of Russia and its population has suffered a net loss that is projected to continue at least through the first decade of this century. The Asian districts are much bigger than European ones in terms of territory but represent only about one fourth (26.9 per cent) of the population of the Russian Federation (Statistical Office of Russia, 2002a).

I decided to exclude all remote Asian regions, all ethnic jurisdictions, one enclave (Kaliningrad), two 100%-urban jurisdictions also known as "two capitals" (Moscow City, St. Petersburg City), and their surrounding areas with relatively low percentage of urban population (Moscow province, St. Petersburg province) as atypical. This left us with 34 regions (16 Central regions, 5 North-Western regions, 5 Southern regions, and 8 Volga regions). I also decided to exclude relatively small regions with a population less than 2 million people to secure enough jury trials for my study in medium-size regions.[17] This left me with 10 final regions (1 Central region, 4 Southern regions, and 5 Volga regions).

I deviated further from the ideal random process of selection by utilizing, wherever possible, extra help or contacts to secure cooperation from a particular region. I was able to find good contacts in 4 out of 10 selected regions (Rostov and Volgograd on South; Nizhny Novgorod and Saratov on Volga). Two of them (Rostov and Saratov) have had jury trials since the 1993-94 period.

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[16] Under the Russian Constitution, there is only federal criminal jurisdiction.
[17] The population of the Russian Federation is 145 million people.

A survey was administered to trial participants in three regions (Rostov, Tambov, and Volgograd). I deviated from my original plan (four regions – Nizhny Novgorod, Rostov, Saratov, and Volgograd) because it was impossible to reach agreement with respondents in Nizhny Novgorod and Saratov. Presiding judges in these cities feared that discussing cases might lead to some problems in their careers. After some consultation, however, it was decided to focus the research on the third city since the delicate business of negotiation became successful in Tambov.

Based on the Human Development methodology, which indicates the quality of life in regions, the selected regions can be considered as typical ones for the Russian Federation. According to the United Nations Development Programme (UNDP, 2005), in the 1990s and to early 2000s these regions were neither leaders nor outsiders. Table 3a presents a regional comparative analysis of socio-economic conditions via the Human Development Index (HDI) for selected regions of the Russian Federation.[18] The table also indicates the changes in the HDI ranking over time. The HDI is an average of the sum of three indicators (income index, life expectancy index, and education index). The HDI has been chosen by the Russian government as one of the key indicators for measuring progress against national socio-economic goals and objectives. The UNDP initiates the production of similar reports in many countries of the world.

[18] Tiny ethnic regions (most of them with the population less than 100 thousand people) have been excluded from the reports by the UNDP.

Table 3a. Population and Human Development (rank among 79 regions)*

Region	Population in millions, 2002	Population rank (among 89 regions)	Human Development Rating, 2002	Human Development Rating, 2001	Human Development Rating, 1994
Nizhny Nov-gorod Region	3.524	10	22	18	11
Rostov Region	4.404	6	41	33	36
Saratov Region	2.668	19	31	34	20
Tambov Region	1.178	46	53	45	37
Volgograd Region	2.699	17	29	29	22

*The lower the number, the better the quality of life in the region
Sources: UNDP, 2005; Statistical Office of Russia, 2002a.

Table 3b gives details of demographic and socio-economic situation in the regions.

Table 3b. Features of Russia's Regions for Field Research, 2002

Region	Share of Urban Populatio n(%)	Share of Ethnic Russians, (%)	Gross Regional Product Per Capita (purchasing power parity), (in US dollars)	Life Expectanc y(in years)	Literacy, (%)	% of students in the age range of 7-24	Human Developm ent Index
Nizhny Novgorod	78.2	95.0	7179	64.45	98.9	73.2	.758
Rostov	67.6	89.3	4572	66.23	99.1	72.0	.742
Saratov	73.6	85.9	5112	65.80	99.2	75.1	.749
Tambov	57.2	96.5	4657	65.34	98.1	74.6	.739
Volgograd	75.2	88.9	5567	66.19	98.9	70.1	.750
Russia	***73.3***	***79.8***	***7926***	***64.82***	***99.0***	***73.5***	***.766***

Sources: UNDP, 2005; Statistical Office of Russia, 2002b.

Russians constitute about 79.8 percent of the population of the Russian Federation, and they dominate virtually all regions of the country except for the North Caucasus and parts of the middle Volga region. The major ethnic minorities are Tatars

(3.8 percent), Ukrainians (2.0 percent), Bashkirs (1.2 percent), Chuvash (1.1 percent), Chechens (0.9 percent), and Armenians (0.8 percent) – each ethnic group has a population of more than 1 million people (Statistical Office of Russia, 2002b). Russia is unique in terms of the complexity of its structure and multi-ethnic composition due to Soviet and Tsarist legacies (Ovsepyan, 2001). The variation in ethnic composition across the Russian Federation is very big. The percentage of Russians in selected regions is slightly higher than the national mean. But it is because of some outliers: In some regions the population of the titular group (e.g., Tatars in Republic of Tatarstan) is larger than the population of Russians.

Economic indicators of selected regions are slightly lower than the national mean because of outliers (two biggest cities and few oil/gas regions). Unfortunately, the median rate is not available. Therefore, the most sophisticated data available come from the UNDP.

Chapter 4

DATA ANALYSIS

Chapter three presented an overview of the methodology designed to guide this study. An analysis of the quantitative data gathered in this design is presented in this chapter.

For ease of analysis, this chapter is divided into three sections: (1) introductory section in which I explain how legal elites decided, on the basis of the prestige of the Anglo-American model, to transplant some elements of that model to Russia while retaining other elements of the civil law system; (2) attitudinal survey in which I examine how legal subordinates (the judges, procurators, and defense lawyers) have, through their contact with the new jury system, developed positive and negative attitudes about it; and (3) summary in which I explain how my material on the attitudes and perceptions of legal subordinates relate to theories that try to account for the transition from one legal system to another.

INTRODUCTION

Before focusing on quantitative analysis itself, this section places the Russian jury system within a broader context. In the 1980s scholars proposed different solutions to the problem of the dependent Soviet judiciary and the resulting criminal justice abuses. However, the fall of the Soviet Union left legal reform without an institutional patron. To fill this vacuum, legal reformers close to Yeltsin began to create a new engine of legal reform, this time in the Kremlin. The driving force behind the revival of a headquarters for legal reform was Sergei Shakhrai, the first legal counselor to Yeltsin (Huskey, 1997). At Shakhrai's urging, Yeltsin formed within the presidency a State-Legal Administration

(SLA), which had responsibility for the oversight of legal institutions. One of the SLA's subdivisions, the Department for Court Reform and Court Procedure, has as its explicit mission the transformation of the Russian trial system. The main proposed solution was the establishment of a jury system in Russia.

The Head of the Department, Sergei Pashin, only 29 years old at the time of his appointment, was part of the Shakhrai's network of clients in the Russian executive. He was Shakhrai's electoral agent in the Russian parliamentary elections of 1990 (Huskey, 1997). Pashin is perhaps best known for his authorship of the Conception of Judicial Reform, an agenda for adoption of the jury system. His 8 co-authors were mainly scholars, many of them were specialists in criminal procedure. According to Solomon and Foglesong (2000), all of them were radical reformers. The Conception has not, however, been without its critics. Boikov (1994) attacked the document – "prepared by a small group of scholars in absence of glasnost" (p.14) – for ignoring Russian national traditions and awkwardly combining elements of Anglo-American and Continental law.

The Conception placed the blame for the deformations of the courts directly on the misuse of judicial power by a state that was "a hostile force in relation to civil society and the individual" (On Conception of Judicial Reform, 1991). According to Solomon and Foglesong (2000), radical reformers were especially delighted to see the establishment of trial by jury with considerable aid from Western countries. However, in September 1995 a group of liberal jurists met in Moscow to announce the death of legal reform in Russia. The fatal blow, in their view, was not the rejection of the Conception but the elimination of the SLA's Department of Court Reform and the resignation of its head, Sergei Pashin (Huskey, 1997).

The issues of bureaucratic power rather than legal policy may explain the destiny of Pashin and his colleagues. In March 1995 Pashin made a direct, and successful, appeal to Yeltsin to officially designate his office as the head agency for judicial reform, circumventing the established lines of bureaucratic authority in the presidency. It provoked, according to Huskey (1997), "furious resistance" from Pashin's immediate superior, Ruslan Orekhov, the head of the SLA, who initiated the immediate dismissal of 5 Pashin's subordinates (out of 18) and finally the resignation of Pashin. As a result, legal reform was left again without an institutional patron. All the above-mentioned events demonstrate a close relationship between law and legal elites, which supports Watson's thesis.

According to Watson, we must seek the link between law and lawyers as opposed to one between law and society, as suggested Sachs and Kis. To put paid to this idea it should be enough to see how much the preferences of legal elites matter more in determining the content of law than does Russian previous history.

It is important to note that Russia turned to the prestige of the common law jury model but transplanted this into a civil law system of rules in which fact-finding at the trial level is subject to re-examination at the appellate level. To use the image of medical transplants, the jury system was an organ transplant with only limited means of sustenance. Russia adopted the common law model of jury decision-making without adopting one of its key supporting rules – the prohibition against double jeopardy. This rule might protect citizens from oppression by ensuring that the State cannot keep prosecuting a citizen until finally convicted. The lack of a double jeopardy protection in

the Constitution[19] and the Criminal Procedure Code has been partly shaped by the inquisitorial approach to criminal justice anchored in the Continental law tradition: court actors search for the truth, and the contest between the sides at trial is a less important dynamic than it is in common law systems. As a result of this legacy, Russian law enforcement agencies view any measures trying to remove the objective truth doctrine as obstacles to fighting crime.

According to the objective truth doctrine, investigators would gather all evidence relevant to a case in an objective manner. The Criminal Procedure Code calls for an "all-sided, full and objective investigation into the circumstances of a case." But in practice investigators do not act objectively. The evidence they gather is typically incriminating. The objective truth doctrine further postulates that there is only one correct decision in a criminal case – namely, one based on the investigator's report, which the procurator and judge often refer to at trial. By using a single report as the sole source of evidence, this approach is inherently accusatorial in nature.

The Russian uniquely inquisitorial approach limited defendants' rights more than did criminal justice systems in Continental Europe. For example, in Soviet times

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[19] The Russian Constitution guarantees that "no one may be convicted twice for one and the same crime" (Article 50.1). This double jeopardy clause, however, does not protect an acquitted defendant from being retried.

The Russian Constitutional Court recently heard a case calling for the interpretation of the double jeopardy provision of the Russian Constitution in relation to acquittals. In that case, three defendants were acquitted by a jury verdict, and judgment in the Moscow Regional Court and the Cassation Chamber of the Supreme Court upheld the verdict and judgment of the regional court, making it a final judgment. The prosecutor then filed a protest with the presidium of the Supreme Court, which overturned the final judgment entered by the Cassation Chamber and remanded the case for a new trial (O'Malley, 2006).

The Russian Constitutional Court issued a decision stating that a new trial would be unconstitutional. Although this decision seems like a triumph for acquitted defendants, it has limited applicability. The court focused on whether a final judgment of acquittal could be appealed. In this case, the Russian Constitutional Court found that the verdict only had the force of law when the Cassation Chamber upheld it. Any verdicts that are reached in lower courts that have not yet been ruled on by the Cassation Chamber are not final within the meaning of Russian law. Therefore, the decision seems to leave room for a large number of appeals of acquittals to the Cassation Chamber (O'Malley, 2006).

investigators were not subject to judicial control as they were in Western European countries like Germany and France; instead, Soviet investigators worked under the supervision of the Procuracy or the Ministry of Internal Affairs, agencies not known for respecting due process rights (Butler, 1988). Notably, the procurator's office prosecuted the case at the same time that it supervised the legality of the procedure.

It is important to note that the Double Jeopardy Clause in the Fifth Amendment to the U.S. Constitution prohibits anyone from being prosecuted twice for the same crime. Many of the American rules that have been developed for the conduct of criminal trials reflect two obvious propositions: that the power and resources of the State as prosecutor are much greater than those of the individual accused and that the consequences of conviction are very serious.

On Watson's analysis, the preferences of legal elites matter more in determining the content of law than do the customs of the social system served by legal rules. According to Watson, rather than coming from a country that will receive the transplant, the impetus usually comes from legal elites in the transplant system. In our case, Russia's westernizers were eager to import a jury system that has flourished, though with substantial variations, for more than three centuries in common law jurisdictions.

The result of the operation seems to be that the jury system simply lies dormant, not doing any obvious harm but not performing the functions for which it was intended. Perhaps the current jury system in Russia can be compared with the appendix in the human body.

The six years since President Vladimir Putin arrived in the Kremlin have been a time of deeply conflicting signals. On the one hand, Russia has seen a young, educated

and dynamic leader pledge to modernize the country, and particularly to bring its law enforcement and judicial practices into line with international legal norms. On the other, the new president has apparently stood by while his ex-colleagues in Russia's FSB security service — the domestic wing of the former KGB — have launched a series of dubious espionage cases against environmentalists, scientists, and journalists[20]. It is also important to note that the popularity of the Kremlin's war in Chechnya boosted the unknown Vladimir Putin, the FSB director, to the presidency.

The institution of jury trials that Putin had expanded beyond the few provincial courts to the rest of the country became a novelty in post-Soviet Russia, considered a victory for the rule of law after decades of "telephone justice" in which judges would obediently produce whatever verdicts were ordered by the Communist Party leadership. However, someone who hoped that the introduction of jury trials would build a genuinely independent judiciary would be disappointed. According to Baker and Glassner (2005), "the system Putin had built was based not on the rule of law but the rule of the state" (p. 242). Some trials have been twisted in so many directions to reflect the political moods that by the end few took them seriously.

There is also inherent distrust for the jury system, especially among criminal justice professionals. Many fear that a jury system is more likely to release criminals into the streets. Others argue that jury trials would lengthen proceedings and increase the possibility of bias by laypeople. More interestingly, Russia's Supreme Court seems to be afraid of jury nullification that demonstrates structural disrespect for jury verdicts.

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[20] The most worrying cases (though human rights workers point to many more) are those of navy captain-turned-environmentalist Aleksandr Nikitin, military reporter Grigory Pasko, diplomat Valentin Moiseyev, arms control specialist Igor Sutyagin, and physicist Valentin Danilov. All have been charged with "treason in the form of espionage" and tried in closed courtrooms.

It is probably safe to conclude that Russia's Supreme Court is willing to correct verdicts where procurators find tiny or doubtful procedural violations in order to overturn unpleasant rulings. It is striking that the appellate chamber of the Russian Supreme Court is still reversing a substantial number of acquittals, 17.3 percent of those appealed in 1995, 30.7 percent in 1996, 48.6 percent in 1997, 66 percent in 1998, 43 percent in 2001, 32.4 percent in 2002, and 24 percent in 2003 (Thaman, 2001; Obzor, 2003; Spravka, 2004). The data for the 1999-2000 years are not available from open sources. It is interesting enough that the Russian Supreme Court reversed acquittals more often than convictions. Stepalin (1997) and Petrukhin (2001) pointed out that the Russian Supreme Court reversed only 20.6 percent of the convictions in 1996 and 16 percent in 1997, compared to 30.7 percent and 48.6 percent for acquittals. This can perhaps be explained as an inquisitorial reaction of the Russian Supreme Court to an excessively lenient jury system or another sign of structural disrespect for jury verdicts. It is partially supported by the fact that the Russian Supreme Court reversed many cases on issues not briefed by any of the parties (Thaman, 2001).

Much of the evidence presented is of a qualitative nature, and it is a matter of individual judgment whether such evidence is sufficiently strong and clear-cut to support my general conclusion that Watson correctly emphasizes the role that legal elites play in deciding what to transplant. The following section - my quantitative analysis - will argue that Russia has achieved significant success in implementing jury trials throughout the nation.

ATTITUDINAL SURVEY

This section is focused on a general picture the respondents projected about typical jury trials and the relationship between some of the specific issues related to the work of jurors and the respondents' overall opinion about the jury system. This section also describes the population of the study.

The sampling procedure included the use of a survey/questionnaire. Questionnaires with cover letters explaining the purpose of the study and the utility of the study were hand-delivered to authoritative judges and chief prosecutors with a request that they identify other judges and prosecutors who had experience with jury trials. The selected trustworthy people were encouraged to identify other individuals in their offices to complete and return the questionnaires. It was highly recommended to obtain permission to distribute questionnaires from the president of each court. In all cases the president or vice president of each court at least unofficially approved the study. A few days later I picked up the questionnaires and checked them for completeness. Some questionnaires were returned individually in preaddressed stamped envelopes provided because some judges and prosecutors were on their vacations.

A list of all defense attorneys who had recently participated in jury trials in three regions was obtained from the secretary of each court. At my request, the president of each bar association provided contact information for them if I did not have it on the court file. A questionnaire accompanied with a cover letter was mailed to defense attorneys. In some instances judges or prosecutors made phone calls to them in which they indicated their support for the study and invited defense attorneys to participate in it.

Each questionnaire was returned individually in a preaddressed, stamped envelope provided. Follow-up postcards were sent to defense attorneys one week after the mailing day to thank those that had responded and to remind those who had not. A letter and replacement questionnaires were mailed to non-respondents three weeks after the date of the original mailing.

The researcher received 60 returned questionnaires from the total of 94 questionnaires hand-delivered or mailed. As a result of the study requirement to use only jury trial participants, three returned questionnaires from defense attorneys (one - in Tambov, and two – in Rostov) who in fact did not participate in jury trials were excluded. Therefore, after removing those individuals, my final sample size for each region was as follows: Volgograd N=21, Rostov N=18, Tambov N=18 (Total N=57).

I used 57 returned questionnaires from the total of 94 questionnaires hand-delivered or mailed, yielding an overall rate of return of 60.6 percent. Of this total, 21 of the returned questionnaires were from Volgograd (6 judges out of seven, 5 prosecutors out of five, and 10 defense attorneys out of twenty one), 18 were from Rostov (6 judges out of ten, 5 prosecutors out of seven, and 7 defense attorneys out of eighteen), and 18 were from Tambov (5 judges out of five, 4 prosecutors out of four, and 9 defense attorneys out of seventeen). Table 4 summarizes the rate of return.

Table 4. Questionnaire response rate

	Volgograd	Rostov	Tambov	Total
Judges	6 out of 7 (85.7%)	6 out of 10 (60%)	5 out of 5 (100%)	17 out of 22 (77.3%)
Prosecutors	5 out of 5 (100%)	5 out of 7 (71.4%)	4 out of 4 (100%)	14 out 16 (87.5%)
Defense attorneys	10 out of 21 (47.6%)	7 out of 18 (38.9%)	9 out of 17 (52.9%)	26 out of 56 (46.4%)
Total population	21 out of 33 (63.6%)	18 out of 35 (51.4%)	18 out of 26 (69.2%)	57 out of 94 (60.6%)

General opinions about the jury system are probably not only a consequence of direct experience with jury trials but also of what is learned through socialization into the legal culture. The expectation is, for example, that the respondents who were lawyers evaluated the jury system on the basis of not only their personal experience and what they were taught in law school but also on the basis of what they have learned while being socialized into different legal institutions (e.g., either as crime-fighters or as defenders).

The analysis starts with the determination of the respondents' general opinion about the jury system. The possible influence of various factors (e.g., the respondents' role in the criminal justice system, region, and the respondents' demographic characteristics) is discussed. Furthermore, it is hypothesized that the respondents' general opinion is related to their opinions on other, more specific issues.

The reasons for the expressed opinion are discussed from the perspective of positive and negative features of jury trials. As a result of their general opinion, respondents suggested what the future of jury trials should be and how jury trials, if necessary, could be improved. Finally, jury trials are compared with other forms of legal decision-making (a professional judge alone, mixed tribunals, and professional tribunals).

General Opinion

This subsection starts with the examination of the respondents' general opinion about the jury system. The question was worded as follows: "What is your view of the jury system in general?" The offered answers were ranged from "strongly negative" to "strongly positive" on an eleven-point scale (0-10). The results showed that the majority of respondents in all groups had a favorable opinion about the jury system. In order to provide a more detailed analysis of general opinion about jury trials, several factors are examined. These include, on the group level, the role in the criminal justice system (judges, procurators, defense attorneys), region (Volgograd, Rostov, Tambov), and, on the individual level, age, gender, length of service, and political ideology.

The role in the criminal justice system was an important factor affecting opinion about jury trials. Defense attorneys in this study tended to have a more positive opinion about the jury system (6.77) than prosecutors did (4.36). Not surprisingly, judges (6.29) had a better opinion than prosecutors (4.36) but the results for them were not statistically significant. Region itself was not a powerful factor. Respondents from the Rostov region had a slightly more positive opinion about the jury system than respondents from two other regions but the results were not statistically significant.

Table 5. General opinion by region and role in the criminal justice system (ANOVA)

Negative-Positive 0-10	Volgograd	Rostov	Tambov	Judge	Prosecutor	Defense attorney
Mean	5.71	6.39	6.06	6.29	4.36	6.77
Total N=57	21	18	18	17	14	26
Significance	the difference of means is not significant			significant at the .05 level		

What are the influences of gender, age, ideology, length of service, and the perceived importance of the jury system on the respondent's general opinion about the jury system? For each of these variables, the data were first compared for all respondents, regardless of their role in the criminal justice system. Next, if appropriate, respondents were divided into groups according to their role in the criminal justice system.

Male and female respondents were equally likely to say that their opinion about the jury system was positive; gender was not an important factor in explaining differences of opinion, regardless of whether the respondents' opinion was analyzed together or separately for each role in the criminal justice system.

Table 6. General opinion by gender

Sex	Mean (Negative-Positive 0-10)	Std. deviation	N=57
Male	6.05	2.78	39
Female	6.00	2.91	18

n.s.

Age showed an interesting property: when the answers by all respondents were pooled, there was a clear record indicating how age and opinion about jury trials were related; when the answers within each group were compared, the pattern completely disappeared for judges and procurators. The overall pattern seems to be that, as the respondents' age increased, the opinion about jury trials became more positive.

However, it is important to keep in mind that not all roles in the criminal justice system were equally represented in my sample. The differences by age may have been detected simply because defense attorneys as a group had a more positive opinion about jury trials than procurators and judges did. To shed further light on the matter, separate analyses were conducted for each of the three groups (judges, procurators, and defense attorneys).

There were no statistically significant differences among opinions of procurators of different ages, nor were significant differences present for judges. However, defense attorneys' answers showed positive correlation with age.

Table 7. The relationship between the role in the criminal justice system and age

	Judges	Prosecutors	Defense attorneys	Overall
Pearson Correlation	-.089	.366	.354*	.241*
Sig. (2-tailed)	.744	.219	.076	.077
Valid N	16	13	26	55

*correlation is significant at the .10 level

My study found that liberalism was a strong determinant of positive attitudes toward the jury system. Respondents who expressed liberal views had more positive attitudes toward the jury system than those who did not. Hence, there appears to be a direct association between conservative values and negative attitudes toward the jury system.

Table 8. The relationship between the general opinion about the jury system and ideology

	Q1.2. What is your view of the jury system? (Values: 0-10, Negative-Positive) by Q3.4. Political Views (Values: 0-10, Conservative-Liberal)
Pearson Correlation	.300**
Sig. (2-tailed)	.025
Valid N	56

**correlation is significant at the .05 level

When the answers to the question about general opinion were compared based on the length of service, the conclusion was that the length of service was not an important factor for the opinion about jury trials held by respondents. In general, lawyers who had been in their current positions five years or longer had a more positive opinion about jury trials than lawyers who had been in their current positions for less than five years. However, the difference was not statistically significant.

Table 9. General opinion by experience

Experience	Mean (Negative-Positive 0-10)	Std.deviation	N=57
Less than 5 years	5.58	2.98	12
5 years or longer	6.16	2.78	45

n.s.

It must be noted that judges and procurators who responded to this study were overwhelmingly experienced lawyers. Based upon those who responded, certain statistical tests and analysis that were planned could not be completed. The sample contained only one judge and two procurators with experience less than 5 years.

Table 10. The length of service by role in the criminal justice system

Experience	Judge	Procurator	Defense attorney	N=57
Less than 5 years	1	2	9	12
5 years or longer	16	12	17	45

The length of service was not important even for defense attorneys. In general, defense attorneys who had been defense attorneys five years or longer had a more positive opinion about jury trials than defense attorneys who had been defense attorneys for less than five years. As a matter of fact, while most defense attorneys with experience of more than five years had a positive view of jury trials (13 out of 17), most defense attorneys with experience less than five years had a negative opinion about jury trials (5 out of 9). However, the difference was not statistically significant because of the small sample.

Table 11. Defense attorneys: General opinion by experience (Chi-square test)

	Less than 5 years	5 years or longer	N
Negative opinion (1-4)	5 (55.6%)	3 (17.6%)	8
Neutral opinion (5)	0	1 (5.9%)	1
Positive opinion (6-10)	4 (44.4%)	13 (76.5%)	17
N	9	17	26

n.s. (p=.122)

General opinion was related to the perceived importance of the jury system; the respondents who had a more favorable opinion about the jury system in general were more likely to say that the jury system was more important than the respondents who had a more negative opinion about the jury system in general.

Table 12. General opinion by the perceived importance of the jury system (ANOVA test, p<.01)

Importance	*MEAN:* What is your view of the jury system? (Values 0-10: Negative-Postive)	Std.deviation	N
Not at all	1.80	2.17	5
A little	4.31	2.08	19
Quite a lot	7.09	1.65	23
Very much	9.00	1.56	10
TOTAL	6.04	2.80	57

Features of Trials by Jury

The results of the previous subsection showed that most of the groups of respondents expressed a generally positive opinion about jury trials. What factors would they emphasize as positive or negative features of jury trials in comparison with trials conducted by a professional judge alone? Respondents were asked about the features of jury trials they found to be the most positive and the most negative. These features, which were enumerated in the questionnaire, are based on the positive and negative features of jury trials discussed in Chapter 2. Respondents were asked to select the positive features of jury trials they considered to be the most important. The question was worded as follows: "Which of the following do you see as advantages of trials by jury, as compared

to trials by a professional judge alone? Put "1" next to the most positive feature, "2" next to the next most positive, etc., to the feature you see as the least positive." The answers were intended to capture the essence of the positive features typically used to advocate the use of lay people in legal decision-making: "the public is involved in the work of the criminal justice system," "they educate the public about the criminal justice system," "they are a good way of introducing community values into the criminal justice system," "the decisions are more acceptable to the defendant and/or victim," "the decisions are more acceptable to the public," "the criminal process is democratic," "they protect the defendants against potential tyranny by government officials," and "other" (with the option of filling in other positive features).

Almost all respondents (94.6%) thought there were advantages of jury trials in comparison with trials by a professional judge alone. The primary choice of the respondents was the answer "the criminal process is democratic" (28.6%), that is, a political function. The other two popular answers were "they protect the defendants against potential tyranny by government officials" (21.4%) and "the public is involved in the work of the criminal justice system" (14.3%). It seems that the respondents were not too concerned with either the acceptability of the decisions or the introduction of community values into the criminal justice system. They also did not feel that educational role was an important function of jury trials.

Table 13. Positive features of jury trials

Positive features of jury trials	N	%
Democratic	16	28.6
Safeguard	12	21.4
Public involved	8	14.3
Education	7	12.5
Community values	5	8.9
Acceptability for public	3	5.4
Acceptability for defendant and/or victim	2	3.6
No advantages	3	5.4
TOTAL	56	
Missing	1	

Jurors are usually attacked by the opponents of the jury system for numerous reasons. Negative features of lay participation were discussed at length in Chapter 2. Respondents were asked to specify which of these problems they considered to be the most important. The question was worded as follows: "Which of the following do you see as serious problems of trials by jury, as compared to trials by a professional judge alone? Put "1" next to the most serious problem, "2" next to the next most serious problem, etc., to the feature you see as the least serious problem." The offered answers were "jurors are less able to understand the law and to weigh evidence properly than professional judges," "the jury system is too costly," "jurors are more likely to be influenced by personalities of various parties involved in the case than professional judges," "jurors are likely to base their decisions on prejudice or bias," "citizens are too often disillusioned or bored by their service as jurors," "jurors suggest very different decisions in similar cases, i.e., they are inconsistent," "the selection system for jurors is

very poor organized and inefficient," and "other" (with the option of filling in other negative features).

The results suggest that the respondents did not think about jury trials in "black and white" terms. A large percentage of respondents perceived jury trials as simultaneously having both positive and negative features. It is quite remarkable that respondents most frequently emphasized the same major problem – "jurors are less able to understand the law and to weigh evidence properly than professional judges" (40.4%). Furthermore, among the three groups of respondents this criticism of the jury system was their primary choice.

Among frequently selected answers was the usual argument that "jurors are more likely to be influenced by personalities of various parties involved in the case than professional judges" (24.6%). The third frequently selected criticism of jury trials was that "citizens are too often disillusioned or bored by their service as jurors" (12.3%).

Table 14. Negative features of jury trials

Negative features of jury trials	N	%
Understanding of the law and evidence	23	40.4
Personality influence	14	24.6
Boredom	7	12.3
Too costly	5	8.8
Prejudice, bias	4	7.0
Poor selection	2	3.5
Inconsistency	1	1.8
Other	1	1.8
TOTAL	57	

During informal discussions with procurators at the Volgograd Office, I have learned that, in their opinion, some groups – particularly unemployed people – were overrepresented in comparison with the general population and that people with steady jobs were not genuinely interested in participating. It was clear from these discussions that the selection system had a negative impact on attitudes toward the quality of trials by jury. In many cases, jurors simply stopped showing up without even reporting the reason and had to be changed somewhere in the middle of the process. Sometimes trials had to be started over when the number of jurors became less then twelve. The court system responded by securing 18 jurors for each trial as a regular practice (twelve plus six in reserve) while the Russian Code of Criminal Procedure still suggests using only 14 jurors (twelve plus two in reserve).

In 2003, the first year of the jury experience in Volgograd, procurators did not pay much attention to the professional composition of the jury panel. As a result, they were very surprised to receive a non-guilty verdict in the case of bribery where the evidence clearly suggested that the defendant, a college professor, received marked bills from a group of students in exchange for not failing them. Four out of twelve jurors were current or past teachers or college professors and, in the procurators' opinion, jurors simply showed solidarity with the their underpaid colleague. It is important to note that bribery in Russian higher education is widespread and almost socially acceptable because the educational system in general does not provide adequate wages in comparison with other occupations with similar qualifications.

However, it is important to keep in mind that, though noted as possible sources of some concern, the selection process as well as bias and prejudice were not perceived by

respondents as very important in comparison with other negative features of trials by jury.

Future of Trial by Jury

Despite theoretical support for the jury system, lawyers were generally aware that the jury system had been experiencing many problems in practice. As mentioned earlier, while most of the authors who wrote about jury trials in Russia discussed negative characteristics of trials by jury (Demichev, 2002; Kurchenko, 2004; Ovsyannikov and Galkin, 1999), they agreed that the political function of jury trials by itself was so important as to merit introduction of the jury system as a part of the criminal justice system. This did not mean, of course, that it was generally believed that the jury system could not have been improved. The need for modification was expressed by many authors (Demichev, 2002; Kurchenko, 2004).

The question about the future of the jury system was worded as follows: "What course of action about the jury system would you like to see?" The question asked respondents to state their opinion on whether jury trials should retained as a part of the criminal justice system, changed slightly or drastically, or abolished completely. The expectation was that lawyers would be more likely to suggest drastic changes or abolition. The reason for this hypothesis was that lawyers are more likely to perceive themselves as more competent to decide legal cases than lay people. Approximately two thirds of lawyers (66.7%) suggested that the jury system should be changed drastically or abolished altogether.

Table 15. Future of jury trials

Trial by jury should be	N	%
Abolished	12	21.1
Changed drastically	26	45.6
Changed slightly	16	28.1
Remain unchanged	3	5.3
TOTAL	57	

Not surprisingly, the results showed that the respondents who had a more favorable general opinion about the jury system were more likely to suggest that the jury system should remain the same or be changed only slightly.

Table 16. Relationship between the general opinion about the jury system and suggested changes to the system (ANOVA test, p<.01)

Trial by jury should be	N	Negative-Positive view (0-10) Mean
Abolished	12	2.42
Changed drastically	26	6.23
Changed slightly	16	7.94
Remain unchanged	3	8.67
TOTAL	57	6.04

Interestingly, while the opinion about the changes was highly predictable for the respondents who had a negative opinion about the jury system in general (94.7% suggested drastic changes or abolition of the system), the answer was not as clear for the respondents who had a positive opinion about the jury system – approximately one-half of them (46.9%) voted for the abolition of the system or for drastic changes, while the other half (53.2%) preferred not to change it dramatically.

Table 17. Relationship between the general opinion about the jury system and suggested changes to the system (Chi-square test, p<.01)

Trial by jury should be	Negative	Neutral	Positive
Abolished	11 (57.9%)	1 (16.7%)	0 (0%)
Changed drastically	7 (36.8%)	4 (66.7%)	15 (46.9%)
Changed slightly	1 (5.3%)	1 (16.7%)	14 (43.8%)
Remain unchanged	0 (0%)	0 (0%)	3 (9.4%)
Total (N=57)	19	6	32

When their answers were analyzed separately, the same general conclusion regarding the relationship between the general opinion about the jury system and suggested changes to the system persisted for defense attorneys and judges, but not for procurators (Tables A, B, and C, respectively). Procurators were less likely to have a positive opinion about jury trials in general, and were thus more likely to suggest drastic changes.

Table 18-A. Defense attorneys: Relationship between the general opinion about the jury system and suggested changes to the system

Trial by jury should be	Negative	Neutral	Positive
Abolished	4	0	0
Changed drastically	3	0	5
Changed slightly	1	1	11
Remain unchanged	0	0	1
Total (N=26)	8	1	17

Table 18-B. Judges: Relationship between the general opinion about the jury system and suggested changes to the system

Trial by jury should be	Negative	Neutral	Positive
Abolished	2	0	0
Changed drastically	2	2	6
Changed slightly	0	0	3
Remain unchanged	0	0	2
Total (N=17)	4	2	11

Table 18-C. Procurators: Relationship between the general opinion about the jury system and suggested changes to the system

Trial by jury should be	Negative	Neutral	Positive
Abolished	5	1	0
Changed drastically	2	2	4
Changed slightly	0	0	0
Remain unchanged	0	0	0
Total (N=14)	7	3	4

In answering the questions, respondents could add their own comments and specify how they would change jury trials ("What would you suggest as the most important improvement to the jury system?"). One of the procurators from Volgograd suggested detailed changes in this direction: "It is necessary to exclude people with a law degree from juries because their specialized knowledge would help them to dominate and manipulate the other jurors." In one particular case, in a procurator's opinion, the jury returned a non-guilty verdict mainly due to the foreman who graduated from law school.

When respondents commented on this question, they frequently mentioned that the selection process should be organized in a manner that would eliminate the possibility of selecting jurors who are not genuinely interested in participating in the criminal justice system and are thus very likely not to contribute to the trial actively. The selection system for jurors and the difficulty of questions for them were among the most frequently mentioned problems the respondents saw in their practice and commented on.

One of the defense attorneys from Rostov explained why he believed it was important to increase the educational level of jurors: "I believe that jurors frequently do not have the most elementary level of knowledge to decide a particular case. I think that they are absolutely unimportant for the course of the trial."

Lawyers targeted not only the low education of jurors but also their lack of legal knowledge. Not surprisingly, procurators were more explicit in advocating this point. One of them from Tambov stated: "Trials by jury do not fulfill their function primarily because jurors do not have adequate general education and knowledge of criminal law and procedure."

A small number of respondents said that they would like not only to see an increase in the educational level of jurors in general but to introduce short seminars about the criminal law and procedure as well. Some procurators said that they would like to see more thorough explanations by judges about legal issues in the case. Interestingly enough, no one suggested to broaden the jurisdiction of jury trials, as has been suggested by some reformers in 1990s, while a small number of respondents said that they would like to restrict the jurisdiction of jury trials to either homicide cases only or life imprisonment as a possible punishment.

These suggestions are very revealing and the results suggest that there is agreement among lawyers that some improvements are needed to the jury system. However, it is probably safe to conclude that respondents felt that these improvements should not be too radical. A popular direction selected by some of respondents was that thorough explanations by judges would be beneficial for jurors since lay people have problems in understanding and evaluation of evidence. Most respondents were not as concerned about the selection process (which takes place before jurors arrive in the courtroom) as they were about potential problems during trials themselves (e.g., problems in understanding and evaluation of evidence).

Jurors and Other Decision-Makers

Despite numerous suggestions about the improvements to the jury system, the majority of respondents expressed a positive opinion about jury trials. Generally, lawyers suggested some changes to the jury system. Would some respondents go as far as suggesting the replacement of jurors with some other types of decision-makers? To address this issue, respondents were asked in a series of questions to state their preference

between the jury and a professional judge alone, professional tribunals, and mixed tribunals, respectively.

Respondents were first asked "who is more likely to reach a just and fair verdict, jury or judge, or are they equally likely?" The expectation was that lawyers would prefer trials by a professional judge alone over trials by jury since they would probably reason that professional judges are better fact-finders and are better equipped to apply the law. As expected, the majority of lawyers favored trials by a professional judge alone over trials by jury (47.4% v. 10.5%). It may be the case that lawyers, at least to some degree, accepted and advocated the view that they are the only ones who can make high-quality legal decisions regarding the facts, the law, and the decision. At least, the surveyed lawyers sent a clear message about their views on who legal decision-makers should be. However, unexpectedly, a very significant percentage of respondents favored jury trials and professional judges equally (42.1%). Interestingly enough, all groups of lawyers including defense attorneys favored professional judges.

Table 19. The jury *v.* a professional judge alone

Who is more likely to reach a just and fair verdict?	N	%
Judge	27	47.4
Both equally	24	42.1
Jury	6	10.5
TOTAL	57	

The expectation for the respondents who preferred trials by a professional judge alone is that they would be more likely to vote for the abolition of jury trials or drastic

changes. When asked specifically about the future of the jury system, not surprisingly they voted for abolition or drastic changes in the criminal justice system (81.4% altogether).

Table 20. Relationship between the preference and suggested changes to the jury system

Trial by jury should be	Favor a judge	No preference	Favor the jury
Abolished	11 (40.7%)	1 (4.2%)	0 (0%)
Changed drastically	11 (40.7%)	14 (58.3%)	1 (16.7%)
Changed slightly	4 (14.8%)	8 (33.3%)	4 (66.7%)
Remain unchanged	1 (3.7%)	1 (4.2%)	1 (16.7%)
TOTAL N=57	27	24	6

Following the same logic, the expectation was that lawyers would prefer professional tribunals to trials by jury. The corresponding question was worded as follows: "Who is more likely to reach a just and fair verdict, jury or professional tribunal, or are they equally likely?" As expected, all groups of lawyers favored professional tribunals (47.4%).

Table 21. The jury *v.* professional tribunals

Who is more likely to reach a just and fair verdict?	N	%
Professional tribunal	27	47.4
Both equally	23	40.4
Jury	7	12.3
TOTAL	57	

Finally, respondents were asked to compare the jury to mixed tribunals: "Who is more likely to reach a just and fair verdict, jury or mixed tribunal, or are they equally likely?" The expectation was that lawyers would prefer trials by mixed tribunals, albeit for different reasons. It was assumed that judges would tend to prefer mixed tribunals to the jury because the former system (unlike the latter) presented judges with an opportunity to exert direct influence over lay judges' opinion during deliberation. The other two groups would tend to prefer the system of mixed tribunals because that system is more familiar to them then the jury system.

The results support the hypothesis: respondents slightly favored mixed tribunals over the jury (33.3% v. 31.6%, respectively). However, the most frequently selected answer by respondents was that they favored both systems equally (35.1%).

Table 22. The jury *v.* mixed tribunals

Who is more likely to reach a just and fair verdict?	N	%
Mixed tribunals	19	33.3
Both equally	20	35.1
Jury	18	31.6
TOTAL	57	

Opinion about the jury system differed by the type of experience. It seems that defense attorneys reported a more positive view on the majority of issues, in comparison with judges and procurators. It is logical that defense attorneys suggested no changes or only minor changes to the jury system, while judges and procurators were more critical.

Table 23. Relationship between the type of experience and suggested changes to the jury system (Chi-square test, p<.01)

Trial by jury should be	Judge	Procurator	Defense attorney
Abolished	2 (11.8%)	6 (42.9%)	4 (15.4%)
Changed drastically	10 (58.8%)	8 (57.1%)	8 (30.8%)
Changed slightly	3 (17.6%)	0 (0%)	13 (50%)
Remain unchanged	2 (11.8%)	0 (0%)	1 (3.8%)
Total (N=57)	17	14	26

Regional differences were not important. In general, respondents from the Rostov region had a more positive opinion about jury trials than other respondents. However, results were not statistically significant. It is quite possible that the length of experience with jury trials may have influenced general opinion about the jury system. At this point, however, one can only speculate that respondents become more optimistic about the jury system as they gain more experience.

Table 24. Opinion about the jury system by region

Who is more likely to reach a just and fair verdict?	Volgograd	Rostov	Tambov
Favor a professional judge	52.4%	50%	38.9%
No preference	42.9%	33.3%	50%
Favor the jury	4.8%	16.7%	11.1%
Favor professional tribunals	57.1%	50%	33.3%
No preference	38.1%	27.8%	55.6%
Favor the jury	4.8%	22.2%	11.1%
Favor mixed tribunals	47.6%	33.3%	16.7%
No preference	28.6%	33.3%	44.4%
Favor the jury	23.8%	33.3%	38.9%
TOTAL N=57	21	18	18

Used in isolation, my interview data are of limited scientific value because my samples are small. Whenever I surveyed judges, procurators, and defense attorneys in different regions, I knew I was collecting opinions, perceptions, and experiences that could not necessarily be extrapolated to others. Basically, my data act as supplements to the published research I collected: they helped me create more lively narratives about lawyers' experience with jury trials.

Increasing and Decreasing Confidence

Determining the nature of confidence in the jury system was originally the main focus of this dissertation. In the course of the analysis, however, it became necessary to distinguish between having confidence in the system overall and "increasing/decreasing" confidence in the system as a result of engaging in jury trials.

In order to measure how the experience of being a trial participant had affected their confidence in the jury system respondents were asked the following question: "Do you feel that your level of confidence in the jury system is higher, the same, or lower as a result of being personally involved in the jury system?" Among the respondents, 44% reported a higher level of confidence while 35% said it remained about the same and 21% said that their confidence in the jury system had diminished.

Table 25. Change in confidence in the jury system following jury trial experience

Change in lawyers' confidence in the jury system	N of lawyers	% of lawyers
Higher	25	44
No change	20	35
Lower	12	21
Total	57	100

Although these findings show a generally positive response, it should be noted that a "lower" level of confidence does not necessarily mean that confidence was "low." In some cases, people may have initially had a very high level of confidence in the jury system, which decreased as a result of engaging in jury trials. Similarly, those who had a high (or low) level of confidence to begin with and who left with the same degree of confidence, would show no overall change.

In an open-ended question 2.14 lawyers were asked to identify those factors that influenced their confidence. Some lawyers referred to both positive and negative factors and despite these apparent tensions and what may appear to be inconsistencies, a number of key factors emerged. In Table 26 are listed the responses which were put forward by those interviewed; the positive factors have been listed in order of significance.

Table 26. Factors promoting confidence

Factors promoting confidence	N of lawyers (N=57)
Fairness	17
Professionalism and competence	8
Due process (rule following, respecting rights and so on)	6
Other	4
No positive response or no response at all	22

By far the most positive factor identified was the perceived "fairness" of the process with approximately one in three lawyers considering this to be the most important factor affecting confidence. Other factors, which were considered significant, were the professionalism of the jury and respecting the rights of defendants. Where these factors were absent, confidence was undermined or reduced.

Many lawyers made reference to the "democratic" element associated with jury trials and how this was a key factor that generated confidence, often through the fairness it represented. The importance of being "tried by your peers" and the belief that "twelve heads are better than one" were comments that were made frequently. The following quotation represents these views: "They are everyday people from different backgrounds and you cannot get any fairer than this." Fairness was also seen as being linked to honesty and the openness of the jury system. As one defense attorney put it: "I am quite confident that the defendants receive a fair trial and that enough time was given to bring across any important points or evidence." For other lawyers, fairness meant keeping an open mind and the absence of bias and discrimination. The significance of the absence of

any signs of corruption was also seen to be important: “I would say that the jury system is one of the most difficult systems to corrupt and that is one of the real strengths.”

Many respondents said that the commitment of jurors impressed them and enhanced their confidence. The two following quotations of different judges represent these views: “I was impressed by the fact that most of the jurors took their role seriously,” and “I have seen the care that’s taken by the jury.”

The importance of due process is reflected in the following quotation of one defense attorney: “The jury system was new to me and I was impressed with the independence of the court from the procurator. I appreciated the process more and felt that the rights given to me as the defense were very well worked through.” Another defense attorney said: “The trial felt fair as I felt that everyone was playing by the rules.”

Thus, it can be seen that a number of factors combine and overlap to produce a sense of fairness, professionalism, and respect for the rights of defendants; and that these factors serve individually and collectively to increase confidence in the jury system. There were, however, a number of countervailing processes that undermined levels of confidence.

Some lawyers noted that there were problems associated with jury trials and made reference to one or more negative aspects associated with the jury system. The following quotation is illustrative of a procurator who reported that his confidence was now: “Lower, as jurors deal with matters not professionally. I am not happy with this system as I feel it is a waste of time and money.”

While many respondents said that the commitment of jurors impressed them and enhanced their confidence, it was clear that the opposite was the case in the experience of

some lawyers. One procurator made allusions to what he considered to be inappropriate attitudes and behavior of jurors: “My confidence is lower, partly because jurors did not take their role as seriously as they should have.” One common response to the perceived inadequacies of jurors was to advocate some form of stricter test for selecting jurors or to include more qualified people.

The main factors reducing lawyers’ level of confidence in the jury system were inefficiency, inclusion of ordinary crimes, and lack of juror commitment or competence.

Table 27. Factors reducing confidence

Factors reducing confidence	N of lawyers (N=57)
Inefficiency	9
Inclusion of ordinary or routine cases	6
Lack of juror commitment or competence	5
Other	4
No negative response or no response at all	33

Frequent reference was made to the cost of trials and some judges and procurators were quite concerned about what they saw as time and public money being wasted. Linked to the notion of wasting time through delays were a number of comments about the protracted nature of the process and the feeling that some cases could be processed much more quickly. Probably those who experienced a “disjointed” first, or only, trial were more likely to leave court with a lower level of confidence.

Comments on ordinary or routine cases were also made relatively frequently. As one procurator put it: “I feel some of the cases could have been dealt without a jury but it

is defendant's prerogative to have trial by jury." In another case one judge emphasized the costs involved: "I feel this system loses a lot of money with just ordinary crimes."

One of the negative remarks, which went to the discussion of juror understanding and competence, was the relative advantage of having cases heard by a judge on his own, without recourse to a jury. Some respondents favored this option and felt that only trained professionals who had the capacity to fully understand the evidence and arrive at a sound verdict should hear cases. For example, one procurator explained: "Why bother having a jury and not permit the judge to decide? The judge is in a better position to give a verdict. We have people who do not know anything about the law along with those who do not wish to be there. Some jurors feel very bored and wish they were not there. And I believe that the jury is not the best system."

Another group of respondents felt lay assessors, as "semi-professional judges," should be put back in place since they might have a better understanding than the typical juror. One judge explained: "There were certain jurors who said things which shocked me. It is a complicated procedure with reading out charges, some of which are very complicated. Some jurors are arriving at a view without understanding the information, whereas lay assessors would have understood what was going on and would know points to select which are more relevant to reaching a verdict."

This, however, was very much a minority opinion and most of those interviewed felt that the diversity of the jury and the ability to assess evidence from different perspectives was a more reliable and appropriate way to come to a verdict. Repeatedly, throughout the questionnaires, respondents stressed that the jury system, with all its imperfections, was the fairest way to decide on the outcome of a case. One judge

explained: “I feel that the jury system is well worthwhile, although there are a lot of individuals who do not wish to be involved, but it is a very valuable system, or have something similar, so that it is not all left to the professionals. It was a positive experience although I was not in agreement with all the decisions the jury made, but when I look at it objectively and not subjectively I feel that a good job was done.” One defense attorney stated: “I think juries are fair. I am sure they make mistakes, but this is through evidence presented to them. I would not wish to see the jury system replaced with anything else.”

What is clear from the above discussion is that lawyers’ perceptions were complex, often combining the factors that both promoted and undermined their confidence. It also suggests that those who expressed considerable support for the jury system did so with qualifications or negative comments and those whose confidence was diminished because of personal experience recognized the qualities and the strengths of jury trials. There were a number of instances where tensions and ambivalence were evident. This illustrates the significance of a methodology that can uncover layers of meaning and make sense of the mixed views that reflect the varied experience of most trial participants. Data collection methods that rely upon simple yes/no responses or provide little space for lawyers to explain their attitudes are therefore likely to mislead and misrepresent.

For example, a defense attorney made the following comments about the factors that affected her confidence: “The way it is organized with the judge, prosecutor and the overall view of it gives you confidence. They were not too technical and were

understandable. The only thing is when the judge does his summing up; it can be repetitive or go on for quite a long while, but he has to do this."

The evidence discussed in this section also emphasizes the importance of researchers and policy makers being alive to distinctions between outcomes and processes when examining or devising mechanisms to promote confidence. Of course, outcomes (verdicts), and the belief that the right ones were reached, and that "justice was done" were clearly important for lawyers' confidence. "For me the verdicts were the right ones, which is fundamental to why you are there in the first place." However, in this case, the procurator also commented that his confidence was: "The same as before I went. I had confidence in the court system that the *process* works and I still feel this but in a different way [italics added]."

For most lawyers, the factors that they identified as being instrumental in raising their confidence were explicitly related to process, as I have shown. Of course, there is interconnectedness between process and outcome, which is associated with the widely held belief that correct and appropriate process will result in the "correct decision." First-time participants, of course, are unaware of the nature of the process, or hold views that are influenced by their colleagues, which are often modified in the course of their personal involvement. As one judge who reported that his confidence was higher put it: "Higher as I have had first-hand experience of it rather than it just being something to read or see." Those who have experienced jury trial in the past, as I have seen, are more likely to hold the same degree of confidence.

I present below evidence that examines the relationship between the perceptions of the jury system overall and the perceived fairness of the trial as well as the perceived accuracy of the jury's decision.

Table 28. General opinion by the perceived fairness and accuracy

	Q1.2. What is your view of the jury system? (Values: 0-10, Negative-Positive) by Q2.11. How FAIR do you think this trial was on scale of 0 (very unfair) to 10 (very fair)?	Q1.2. What is your view of the jury system? (Values: 0-10, Negative-Positive) by Q2.12. How CORRECT do you think the verdict was on scale of 0 (very incorrect) to 10 (very correct)?
Pearson Correlation	.414***	.284**
Sig. (2-tailed)	.001	.032
Valid N	57	57

**correlation is significant at the .05 level; ***correlation is significant at the .01 level

As the empirical evidence presented here indicates, judgments of fairness and accuracy in particular trials are related to perceptions of the jury system overall. The findings reported in Table 28 indicate that respondents who were impressed by the fairness of a trial had more positive attitudes toward the jury system. A similar pattern of views can be observed among the respondents who were impressed by the correctness of a verdict. The results of Table 28 show that those who were impressed by the correctness of a verdict had more positive attitudes toward the jury system. Put differently, the perceived legitimacy of the jury system is enhanced when the procedures used to produce the verdicts are viewed as fair, and the verdicts are viewed as accurate.

The fact that the correlation is stronger for fairness than for correctness has important implications for policy and research. Looking ahead, future legal reforms need

to place a premium on increasing fairness in the criminal justice system. Law enforcement professionals should develop strategies to cultivate a fair atmosphere during the criminal justice system-citizen encounter. Researchers should be aware that the focus on providing information about outcomes, so that the public is better informed about such matters as the numbers of people found guilty and sentences, misses important aspects associated with criminal procedure itself.

My study also shows that people are more willing to accept that verdicts are correct when they perceive those verdicts as having been produced by fair procedures. I found a correlation between the perceived fairness of the trial and the perceived accuracy of the jury's decision. It suggests that the level of satisfaction people feel with the verdict of a jury is strongly influenced by their perceptions of the fairness of the procedures used in the jury trial.

Table 29. The relationship between the perceived fairness of the trial and the perceived accuracy of the verdict

	Q2.11. How FAIR do you think this trial was on scale of 0 (very unfair) to 10 (very fair)? by Q2.12. How CORRECT do you think the verdict was on scale of 0 (very incorrect) to 10 (very correct)?
Pearson Correlation	.653***
Sig. (2-tailed)	.000
Valid N	57

***correlation is significant at the .01 level

Agreement and Disagreement with Juries' Verdicts

Before describing the overall findings of the research with respect to agreement and disagreement with juries' verdicts, it is important to give some details of the cases within the Volgograd, Rostov, and Tambov samples. My inquiry examined 36 verdicts,

occurring in 17 separate trials or cases (6 - in Volgograd, 6 - in Rostov, and 5 - in Tambov). There are no serious differences in the types of case tried by juries in three regions. All cases, except one trial of white-collar crime (mostly bribery) of police officer in Volgograd, were capital murders. Many of them included other related crimes such as robbery, kidnapping, and crimes of organized criminal gangs.

Table 30 provides a breakdown in terms of the number of defendants involved in each trial. And Table 31 provides a breakdown in terms of outcome for each defendant.

Table 30. The number of cases tried by jury in Volgograd, Rostov, and Tambov

Region	N of trials	N of verdicts	N of verdicts in each trial
Volgograd	6	19	1, 1, 2, 3, 4, 8
Rostov	6	8	1, 1, 1, 1, 2, 2
Tambov	5	9	1, 1, 2, 2, 3
Total	17	36	

Table 31. The outcomes of cases tried by jury in Volgograd, Rostov, and Tambov

Verdict	Volgograd	Rostov	Tambov	Total N (%)
Not guilty	4	2	1	7 (19.4%)
Guilty	15	6	8	29 (80.6%)

Table 30 also shows that a much higher proportion of defendants was charged with offences in Volgograd than were the cases in Rostov and Tambov. However, only

one trial was responsible for such an uneven pattern. In October, 2002 eleven skinheads committed three murders of natives of Middle Asia states in various districts in Volgograd. One was kicked and the two others were beaten to death with baseball bats, sticks and fragments of pipes. All three victims were migrant workers from Uzbekistan and Tajikistan. None of them was robbed; rather, they were beaten to death separately in a killing spree that lasted several days in October, making it likely that the killings were hate crimes.

Ironically, it happened in the city where the Red Army victory proved a decisive block, most historians agree, to the Nazi advance through Europe and the Soviet Union made perhaps its greatest contribution to world history. Sixty years before that hate crime, the Nazis surrendered in Stalingrad, as the city then was known, after one of the most desperate and costly battles in the annals of warfare.

The trial of a group of young people charged with murdering three natives of Middle Asia states started in the Volgograd regional court in July 2003. There were eleven defendants at the beginning. The criminal case was closed with respect to three of them (charged with "hooliganism" under Article 213 of the Russian Criminal Code) in October 2004 because of changes in the legislation, so the defendants became eight. They all were vocational school students and were charged with murder under Part 2, Article 105 of the Russian Criminal Code. The defendants all were members of the local "Volzhsky Front" organization (Front on the River Volga), however they were not charged with setting up a nazi organization.

In April 2005 the jury returned a guilty verdict for seven defendants and acquitted one in the "skinhead" trial. The only acquittal was due to some technical mistakes on the

prosecutor's side, as the head of the Trial Department at Volgograd Procurator's Office pointed out (personal communication, 2005).

That trial is also a good illustration how slowly one case may go through the criminal justice system. If there are many participants (for example, several defendants or witnesses or defense attorneys) in a case, it takes a lot of time to try the case in a court system. There would be many delays because defendants' lawyers participate in other trials. Witnesses may also be very busy due to different legitimate reasons such as business trips or vacations.

Table 32 shows respondents' opinion on juries' verdicts (N=104 opinions on 36 verdicts). In four cases I was unable to receive defense attorneys' feedback. However, in these cases other participants agreed with juries' verdicts. The main finding can be stated as follows: there was considerable satisfaction expressed by respondents about many of the verdicts delivered by juries.

Table 32. The opinions of respondents on juries' verdicts

The jury's verdict was	N	%
Without any merit	13	12.5
A tenable position for a jury to take, though not for you	20	19.2
Quite correct	71	68.3

Respondents raised some complaint in approximately one third of the verdicts examined, though this does not necessarily mean that they were fully in disagreement with the verdicts returned. The reasons of disagreement were mostly evidence factors such as defendant's explanation, performance of key witnesses, and weakness or strength

of 'hard' evidence (e.g., blood, sperm, DNA, gun). For instance, jury sentiments about the law were never mentioned. In very few replies respondents mentioned jury sentiments about the individual defendant or different performance of lawyers as the main reason for jury's verdict. Therefore, it is probably safe to conclude that serious disagreement arose over differences in the response of the jury and other trial participants to the evidence.

I decided to adopt a working definition of questionable verdicts as being those in which at least two respondents thought that the verdict was not justified ("not quite correct"). This produced 4 questionable verdicts (2 - in Volgograd, and 2 - in Rostov). Table 33 sets out the results on this question (N=36 verdicts).

Table 33. Questionable verdicts

The jury's verdict was	Volgograd	Rostov	Tambov	Total N (%)
Questionable (without any merit or tenable)	2	2	0	4 (11.1%)
Quite correct	17	6	9	32 (88.9%)

Table 33 shows that the jury's verdicts seem to enjoy the confidence of the trial participants. The jury appears to return verdicts that are generally deemed reasonable by judges, procurators, and defense attorneys. The results that I presented above (in no fewer than 32 of the 36 verdicts at least two out of three respondents supported the jury assessment; 68.3 per cent of respondents did not question verdicts at all) do not necessarily demonstrate that trial by jury produces an insupportable level of injustice, nor should they be taken to show the opposite. It may be the case that the system reaches a right and just determination as often as can reasonably be expected of any tribunal and that Russian society must live with a proportion of failures.

On a personal note, I found a surprising degree of support of individual jury verdicts from respondents. Although this might be expected because research in England and in the United States has, as I have noted earlier, overwhelmingly shown the jury in a favorable light, I was skeptical in the case of Russia.

Hypotheses Tested

The purpose of this research was first to test the hypothesis that perceptions of the legitimacy of the jury system change after the individuals' experience with the system (Hypothesis #1) and second to assess the role of the perceived fairness of a trial and the perceived correctness of a verdict in the overall view of the jury system (Hypotheses #2-3). In addition, the issues whether the perceived fairness and correctness are related to the type of verdict were tested (Hypotheses #4-5). Then, the hypothesis that experienced lawyers and juries disagree in their handling of questions of fact was tested (Hypothesis #6). Finally, the hypothesis that the role in the criminal justice system is an important factor affecting opinion about the jury system was also tested (Hypothesis 7).

One indicator of perceptions of legitimacy was utilized: Do you feel that your level of confidence in the jury system is higher, the same, or lower as a result of being personally involved in the jury system? Raised perceptions of legitimacy would indicate the effectiveness of the jury system as defined by Russian reformers and lowered perceptions its ineffectiveness. Stable perceptions of legitimacy although not as desirable as raised perceptions would still be rather to the advantage of the system to the extent that it does not create negative feelings toward itself. Statistical test (one-sample t test) was utilized to test for differences in perceptions between the mean (5.9) and the unchangeable level of confidence in the jury system (Do you feel that your level of

confidence in the jury system is lower (0-4), the same (5), or higher (6-10) as a result of being personally involved in the jury system?).

The respondents had more positive attitudes toward the jury system after their personal experience with the system. Specifically, the mean value of the attitudes towards the confidence in the jury system after the individuals' experience with the system was 5.9; the value of the unchangeable attitudes was 5. The difference of means of perceptions is significant at .01 level.

Summarizing the findings reported above, it can be said that since the changes are significant, the personal experience with the jury system seems to play a significant role in changing the respondents' perceptions of legitimacy of the jury system. In other words, the data do support the hypothesis that personal involvement may create more positive feelings toward the jury system.

Having found significant changes in perceptions of legitimacy of the jury system over time, I then ask whether perceptions of the jury system are related to the perceived fairness of a trial (Hypothesis 2) or the perceived correctness of a verdict (Hypothesis 3). Specifically, the questions are whether respondents who experience more fairness and correctness view the jury system in a more positive manner. In order to assess the role of perceived fairness and correctness in overall perceptions, correlation tests were performed for different respondents.

The findings reported in Table 28 indicate that respondents who were impressed by the fairness of a trial had more positive attitudes toward the jury system. A similar pattern of views can be observed among the respondents who were impressed by the correctness of a verdict. The results of Table 28 show that those who were impressed by

the correctness of a verdict had more positive attitudes toward the jury system. It could be stated the other way around – that those had more positive attitudes were more likely to think the trial was fair and the verdict was correct.

The type of verdict itself created neither feelings of injustice nor increased feelings of fairness of the system (Hypothesis #4). Participants did not rate the trial resulting in an acquittal as significantly fairer (the mean fairness rating was 5.86) than when it resulted in a conviction (the mean fairness rating was 5.73). Thus, respondents did not view a not guilty verdict more favorably than a guilty verdict (the difference of means was not statistically significant).

As with the fairness ratings, I found that the type of verdict had no significant effect on the perceived correctness (Hypothesis #5): the not guilty verdict was not rated as more correct than the guilty verdict, with a mean correctness rating of 4.48 for an acquittal versus a mean correctness rating of 5.40 for a conviction. Again, an acquittal was not favored over a conviction (the difference of means was not statistically significant).

Experienced lawyers and juries disagreed in their handling of verdicts (Hypothesis #6) because they made different judgments as to the credibility of given kinds of evidence. About 12.5% of verdicts were seen without any merit. At the same time, there was considerable satisfaction expressed by respondents about many of the verdicts delivered by juries (68.3 per cent were seen as quite correct and 19.2 were seen as tenable). However, these results do not demonstrate that trial by jury produces an insupportable level of injustice, nor should they be taken to show the opposite.

The role in the criminal justice system was an important factor affecting opinion about jury trials (Hypothesis #7). Defense attorneys in this study tended to have a more positive opinion about the jury system (6.77) than prosecutors (4.36) or judges (6.29) did (see Table 5 for details).

SUMMARY

Relying solely on quantitative data is highly problematic. When trial participants are angry at one another or at the verdict, this dissatisfaction (or satisfaction) may transform itself into assessments of the quality of the jury system (both real and perceived). Thus, the number of perceptions and attitudes represents the tip of an iceberg of the real situation, the true dimensions of which can be fleshed out only through detailed socio-legal research.

This is not to say that quantitative information is unimportant in understanding the jury system. Rather, my contention is that it is only one part of the story and must be placed in context to understand just what it means. When placed in context, quantitative data can be helpful. The data have allowed me to document various trends in the attitudes toward jury trials, such as the difference between procurators and defense attorneys. I always took care to present these data as pieces of puzzle, not as the whole picture. To be sure, they show that the jury system is being used with the desire to solve short-term domestic criminal justice problems and to catch up to the West in terms of legal infrastructure, but whether this has a broader spillover effect, in other words, whether it translates into a change in the underlying attitudes toward the entire criminal justice system, is less evident.

No doubt in Russia part of the perceptions and attitudes of judges, procurators, and defense attorneys stems from overly idealistic expectations of the judicial process. Although professionals and laymen often expect justice, the reality is different. The evidence on the question of whether policy makers (both those in the legislative and executive branches) are taking greater care to incorporate the needs and interests of the ultimate users of law in their work gives less reason for optimism.

The study of legal transplants is heavy with legal policy. Most reformers are interested in how to make a success of legal adaptation. Such implication is carried by the common use of the metaphor of legal transplant – with its reference to deliberate attempts to graft foreign bodies from one place to another. But the apparently straightforward idea of success in cases of medical transplants is much more problematic in the case of adapting legal institutions.

The problem here has to do with the sort of exercise we are engaged in. The use of the term "success" has strong evaluative overtones. It gives the impression of endorsing one outcome rather than another. However, we could speak about the success of a transplant whilst being opposed to it, or unhappy about the result. So it is more difficult to decide what baseline we should use for determining whether a transplant has been successful.

It is perhaps plausible to assume that the legal transplant must achieve the aims of reformers. However, the legal transplant does not have to achieve the same results in the society of adoption as in the society of origin. According to Watson, subsequent development of a legal institution in a way that does not parallel developments in its original society should not be confused with rejection (Watson, 1974).

It is important to notice that the question of success can arise in more than one stage of the transfer of legal institution. We may be concerned with how a legal transplant emerges – the choice of law – or with the way it exerts its influence – the results of a given operation. Our way of explaining the first of these matters may well be different from the second, likewise our assessment of what "success" means in each case.

The notion of success is normally linked to showing how the transplant fits its new environment. In this sense, the result of legal reform in Russia can be described as a relative failure, which supports Sachs' and Kis' theory. The success or failure of a transplant hinges not just on the factors unique to its being a transplant, but on the society's attitude toward law and public participation in enforcing the law.

The expectations of reformers were to transform institutions rather than influence individuals. In this way they hoped to use the jury system as a means of overcoming current problems. However, the jury system had contradictory effects. The transplant worked at one level (commanded the confidence of professionals who at first were not well acquainted with it) but failed or caused problems at another level (unhappy appellate system reviewing all possible errors and reversing many acquittals).

Since the jury system was not itself a goal, but a means that allows a court to fulfill its essential functions, including the rendering of impartial decisions, the legal reforms implemented since the 1990s were mostly window dressing. Prominent trials seem to show that Russia is a Potemkin society, with a facade of the jury system that displays much talk about the changing nature of courts. However, at least in ordinary criminal cases lawyers may arrive at more favorable views of the jury once they have

experience with it, suggesting a gradual process of acculturation and professional socialization.

The most fundamental question here is who gets to determine what is meant by success. What some observers and participants will see as success others may well see as failure. What some describe as "failure" may be lauded by others as successful "resistance." Success will then turn on the ability to impose one's aims or interpretation of the outcome of a particular transplant – to tell a convincing story of what has occurred. It may depend on the ability to impose a particular interpretation of what success means or the way it should be measured. In this sense, the Kremlin and the RF Supreme Court can be described as "double agents" because at the same time as participating in the process of exportation they help define the criteria according to which the success of the transplant is to be defined (e.g. the presence of the jury system in all 89 regions).

In a seeming paradox, my dissertation has supported Watson's theory on the link between law and elites as well as Sachs' and Kis' ideas on the relationship between law and society. In terms of the choice of institution, Watson was absolutely right in arguing that the preferences of legal elites matter more in determining the content of reform than do the customs of the social system served by legal rules. At the same time, in terms of the result of a given transplant, it seems that Sachs and Kis were absolutely right in arguing that we need to pay more attention to the relationship or "fit" between law and society. Not all goals of reformers have been achieved. Criminal procedure has become more democratic while the court system has not become more independent.

My research demonstrates that Sachs', Kis', and Watson's theories aid in predicting the success or failure of reform proposals. In terms of the Sachs and Kis

theories, some results of the jury experiment in Russia were predictable. According to Sachs and Kis, Russia has not been successful in achieving the rule of law. Years of authoritarian rule had eliminated not only the opposition groups but also the idea of peaceful political transition. Therefore, Russia had to attempt to invent the concept in order to begin its transition period.

The Russian institution was not firmly grounded in legal authority, nor was it supported by societal factors. The introduction of the jury institution in Russia did not coincide with the other social conditions mentioned by Kis. Although the Communist period had ended, it could not seriously be said that there was a split in the legitimacy of the Russian regime in 1994. In fact, a state of emergency existed to suppress Yeltsin's opponents. The Yeltsin group was still strong enough to put down any opposition group. Thus, there was no Russian institution that was strong enough to create credible opposition to the Yeltsin regime. There was no Solidarity movement in Russia, nor was the Russian Orthodox Church strong enough to ally with the Yeltsin's opponents. Finally, since the idea of democratic transition and reform was simply not part of Russian culture, Yeltsin's opponents may have been unable to mobilize the population to transition.

By the 1990s, Russia's opposition groups had been extinguished by centuries of czarist rule, followed by a repressive seventy-year period under the Soviet regime. Russia does not have a history of strong opposition to government. As a result, a population cannot be quickly mobilized to support an idea it does not understand. Thus, Russia may not yet be on the path to Kis' coordinated transition, since it is only through compromise and dialogue between opposition and the government that such transition can occur. As

the theories of Sachs and Kis explain, countries are driven toward peaceful transitions where a repressive government faces strong and credible opposition.

According to Sachs and Kis, the threat of the opposition protects against abuses. The lack of strong and credible opposition cannot prevent abuses in Russia. Juries might be unable to have any real impact on human rights violations as well. Pretrial abuses would be simply beyond the jury's direct control. However, there are some indirect ways in which juries might protect defendants. First, by strengthening the court's power for judicial review, juries might allow the courts to supervise Procuracy misconduct better. Second, the jury system could independently police the Procuracy by throwing out cases where evidence was insufficient or illegally obtained.

Reformers now have reason to fear that the institution of the jury will sometimes undermine rather than legitimize the court system. If juries are going to be guided by militarism, xenophobia and other popular prejudices rather than by the facts before them, the path of legal reform is going to be even longer and harder than expected. If juries are going to be guided by Russia's biased Supreme Court[21], the path of legal reform is going to be endless. It seems obvious that the reformers probably underestimated some negative aspects of jury trials for certain political situations (e.g. the institution of jury can undermine the overall reputation of courts for fairness and justice). And it is absolutely clear that the reformers overlooked the internal organizational mechanisms protecting accusatorial legal tradition.

On the whole, the jury system is working as planned. Mistakes have been made, but there are many examples of good verdicts. However, I do not see the political will to

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[21] According to judicial reform scholar Ludmila Karnozova, the Supreme Court has its own politics, and their politics in connection with acquittals appears biased (O'Malley, 2006).

carry this idea out to the end so that the jury would function at the district level, as was planned. It turned out that only a very few people who framed the concept of the judicial reform were really interested in carrying it out. The judges were also interested to some extent. But the public and the authorities do not support this idea actively. They do not see the benefits it promises Russia.

What has happened to the jury as an institution? At first, there were joyful expectations and public inspiration, and verdicts of "not guilty" were passed. But recently the euphoria has given way to disappointment. Unexpectedly, the jury system has not prevented very harsh sentences in the most recent cases of Igor Sutyagin[22] and Zarema Muzhakhoeva[23], while the persons involved in the Ulman case[24] have been acquitted.

In essence, high profile cases share one cause: the mindset of Russian courts which prevents judges from acquitting anyone who was charged. Juries alleviate this a bit, but in some cases (such as of Sutyagin, a defense analyst convicted for espionage) judges dismiss juries who look like potentially pro-defendant and call new ones with abnormally high percentage of former governmental, security and defense officials. In other cases (such as of Muzhakhoeva, a Chechen woman convicted for terrorism, who cooperated with the investigation) the jury found no mitigating circumstances and said that the 24-year-old woman did not deserve leniency[25]. In cases, such as that of captain Ulman, charged with war crimes in Chechnya, acquittals are reversed, and new trials continue until the defendant is convicted. Virtually the only way to ensure an acquittal is

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[22] For details see Russiajournal.com (2004).

[23] For details see Alekseev (2004).

[24] For details see International Helsinki Federation for Human Rights (2005), Grani.ru (2004, 2004b, 2005), and Yuzhny (2004).

[25] Some critics speak about prejudice and bias, which allegedly prevents jurors from dispensing the expected democratic justice. According to O'Malley (2006), the law allows the judges to manipulate the system to get their desired jury and outcome.

to prove oneself not guilty before prosecution, before the indictment. Otherwise one is guilty.

The anxieties I expressed about the above-mentioned prominent cases have not so much to do with the jury (it's a majoritarian institution that's likely to be biased toward the state) but instead with the absence of judicial independence in interpreting the penal law. From what I can tell, the trial judges in each case failed to take seriously defense objections, based on the penal law, to the very possibility of a criminal indictment.

As a result of all the deformation and renunciation of the ideas of judicial reform, instead of "telephone justice" we now have what is called "basmannoe justice," named after the Moscow district court which constantly supports the authorities in all legal disputes. Taking a closer look at it, we shall see that the idea of independent judges has been buried with its help. It seems judges are irremovable, but as a matter of fact they must please the higher-ups. Under the present law, the judges are put in such situation that, if they want to remain in the judicial system, they have to consider the wishes of others. Many believe that the independent judges are ousted from the judicial community.

To be strong, any criminal justice system has to be built on a trial system in which it has confidence. While it is naïve to think that a jury system or any other trial system can cure societal problems such as a national crime problem, pronounced economic disparities, or ethnic divisions among citizens, the lack of a strong trial system can easily aggravate and exacerbate these problems. In serious cases especially, citizens need to feel confident that the jury trials will determine guilt or innocence with a high degree of accuracy and fairness.

Some categories of crimes test the strength of a Russia's trial system: these are the treason cases, the terrorism cases, and other prominent cases. Many of these may turn out to be high profile cases in which a broad segment of the public relies on the criminal justice system for a fair trial and a just verdict. A strong criminal justice system needs a strong jury system for these sorts of cases.

Unfortunately, despite all the time and resources that have been lavished on Russian jury system, Russia lacks a strong trial system. The public has come to realize this in prominent jury trials over the last several years. Open-ended provisions of the penal law appear to have been deployed on behalf of dominant state interests. The deployment occurred, though, through judicial, not jury, decision making. It had to do with the rules determining what would be presented to a jury, not with the jury's deliberations about guilt and innocence.

The poor state of legal sociology in Russia today makes it difficult to make broad claims about the results of the jury experiment. On the one hand, dire predictions based on difficulties with lay participation have been supported, which is consistent with Sachs' and Kis' ideas on the relationship between law and society. Courts have been reporting difficulty in obtaining a sufficient number of potential jurors to seat a bench (Sharov, 2004). Some of the unwillingness to appear for jury duty despite the high rate of pay must be attributed to the inconvenience it entails and the lack of public experience with such procedures.[26]

On the other hand, the lack of direct nullifications upheld by Russia's Supreme Court and limited use of leniency findings in verdicts, as Reynolds (1997) pointed out,

[26] The penalty for a juror's non-appearance is merely a minor fine. The judge has no power to jail a recalcitrant prospective juror.

might result from the nature of the cases that juries can hear. Serious violent crimes are not the type of cases in which jurors are likely to be tempted to nullify or strongly identify with a guilty defendant and on this basis decide for leniency.

It is true that the jury system acting alone can be only minimally effective. Russians need to recognize that the jury system depends on acceptance and enthusiasm by the public to function effectively. The increased activity of NGOs and human rights groups suggests that ideas of democratic change have begun to take hold in the popular consciousness of Russia. The jury system is a reform that might, over time, have the result of shifting popular consciousness. Therefore, jury trials might serve a useful purpose in Russia at some point in the future.

Trial by jury is still a hope of Russian justice. Of course, mistakes can be made by it because people make the judgment, not God. But it is better to deal with the mistakes of the jury than the abuses of officials.

Chapter 5

INTERPRETATION OF FINDINGS AND CONCLUSION

INTERPRETATION OF FINDINGS

This study expands the scientific knowledge base concerning the perceptions of the jury and jury trials by the professional participants. Previous efforts primarily examined qualitative data, or certain legal cases. As a result, there was little emphasis placed on quantitative analysis, or perceptions of the jury system. In other words, there was little emphasis on the trial participants involved. Trial participants are judges, prosecutors, and defense attorneys who make the jury system work with lay people. These lawyers may very well make the final decision regarding the future of the jury system.

The scholarly community is split as to the effectiveness of the jury system. Due to the nature of the issue, it may never be possible to answer the effectiveness question. Even if a defendant demands a trial by jury, a victory in the courtroom cannot be definitely attributed to the use of a jury. Even though questions such as this are extremely difficult to answer, attempts to do so in a scientific manner must still be made.

Despite the fact that jurors are frequently criticized for being unable to critically evaluate evidence and understand the law, positive features of lay participation prompted satisfaction with the jury system in Russia. Results of this study suggest that lawyers (professional judges, prosecutors, and defense attorneys) were not impressed with jurors' ability to understand the law and evaluate evidence. Rather, they perceived that jurors

rarely understood the legal issues in the case and had problems in evaluating evidence. However, professional lawyers voiced support for the jury system.

Although this study generally found that defense attorneys held a much more positive opinion about jury trials than judges or prosecutors, all professional lawyers expressed a positive opinion about jury trials and reported that trials by jury had positive features. However, the majority of these lawyers at the same time reported that they preferred professional judges alone or professional tribunals to the jury. These discrepancies may be partially driven by self-serving bias. As trial participants who enjoy higher status, professional lawyers have the tendency to evaluate jurors' contribution and ability as lower as their own. The discrepancies in the estimates of the importance of jurors' participation and their ability to evaluate evidence may reflect different perspectives on what the key issues in the case are and how to evaluate them. Professional lawyers, being skilled professionals, may have believed that all lay people should follow the legalistic approach. In other words, the stereotypes which maintain that only skilled professionals are able to make legal decisions came to the surface.

It was evident that a significant percentage (44%) of those who participated in jury trials left with a higher degree of confidence. Significantly, only 21% left with a lower degree of confidence. This did not mean that they did not have confidence in the jury system in general, but that certain aspects of their experience have decreased their level of confidence.

These findings add a new dimension to existing research on confidence in the criminal justice system as far as Russian lawyers are concerned. I found that the experience of the jury system, as a judge, procurator or defense attorney, is predictive of

higher confidence, particularly in respect of the system's fairness. Fairness was important in this study, but other factors strongly affected lawyers' attitudes and confidence in the criminal justice system. This study supports the conclusion that lawyers tended to be less critical of the jury system after their personal involvement in jury trials.

The important analytical and methodological point is that a significant percentage of respondents identified both positive and negative factors that influenced their view of the jury system. It suggests that a clear distinction needs to be made in future research between increasing the "level" of confidence and "having" confidence. Confidence is not an either/or category. Lawyers, as I have seen, are able to identify and weigh a range of competing factors that embody tensions and ambiguities. It is therefore important that future research on confidence is designed in such a way that it is able to capture these different dimensions. Having noted this important methodological consideration, it should be emphasized that on the basis of this analysis, participation in the jury system is conducive to enhancing public confidence in the jury system.

The findings of the research can be divided into two separate but related sections involving internal and external processes. The internal aspects of the jury system involve the procedures and processes that lawyers experience in the course of jury trials. The external aspects are concerned with the wider social dynamics relating to criminal justice reform. Each of these dimensions will be examined in turn.

There were a number of internal processes affecting lawyers' perceptions. Some of the points raised by the respondents included technical and organizational issues, while others referred to procedures. One of the main internal points that emerged from the

interviews was that those who participated in jury trials were generally impressed by the new system.

It should be noted, however, that although the vast majority of lawyers expressed support for and confidence in the jury system, their support was not without some qualifications. Among those who stated that their confidence decreased, there was often a clear recognition of the qualities and benefits of trial by jury. Rarely were attitudes one-dimensional or without qualification.

It became evident in the course of this research that there are considerable differences in public attitudes between studies which are decontextualized and those which are grounded. Typical public attitude surveys are likely to miss the richness and variability of public attitudes, or at worst to distort such attitudes by forcing them into either/or dichotomies. Future research on public confidence and public attitudes needs to reflect on these methodological considerations. The reservations and ambiguities that respondents express are an important consideration when assessing results of this kind and for developing policy.

The main factors that promoted confidence were a sense of fairness, professionalism, and the adherence to due process. By the same token where these qualities were absent, confidence tended to be adversely affected. The main factors reducing lawyers' level of confidence in the jury system were a sense of inefficiency, inclusion of ordinary cases, and lack of juror commitment or competence.

Overall, despite various reservations, 57.9% of those interviewed considered juries very important or quite important to Russian system of justice (question 1.1). The

number of respondents made reference to the inconvenience associated with rescheduling of jury trials because of deferrals and excusals.

Apart from various internal processes that affect lawyers' perceptions and confidence, there are a number of broader processes, which are in operation. These external processes involve notions of social inclusion and legal reform. That is, the jury system provides a unique experience in modern Russia in which the promotion and reinforcement of social solidarity takes place. In Russian society characterized by increasing individualism, participating in jury service provides an opportunity for people to perform a useful civic duty and to fulfill their social responsibilities.

The support for the jury system among lawyers suggests that this system could produce positive outcomes in many cases. The fact that many people perform jury service each year means that as a social process which generates greater support for the court system among professionals, it could also generate support for the criminal justice system among many lay people.

A number of lawyers made explicit statements indicating the ways in which personal involvement in jury trials increased their confidence in the court process. Given that trial by jury for the majority of participants is such a positive and socially valuable experience, on the one hand, and that the jury system can be easily manipulated, on the other hand, the strategic questions that arise are: what could be done to overcome some of the limitations that have been mentioned and to increase the social and legal utility of the jury? Or perhaps, should the right to a jury trial be abrogated?

The jury system in Russia may have difficulties grappling with some issues, but these are usually overcome, except in political cases. Therefore, the right to a jury trial

should not be abrogated. Serious changes to the present system are not necessary or desirable. Removing the right of defendants to a jury trial would be premature. The results of this research have highlighted the need for improvements in the way that the juror selection process is organized, and a number of changes to courtroom practice have already happened. There is a real need to increase the quality of jurors by requiring able people to serve. This implies the ability to defer service and also to enforce penalties for those who fail to answer the jury summons.

There is evidence other than this research that indicates that when juries make mistakes in deciding complex cases the mistakes can be due to problems in understanding judicial instructions or to the error of judges or counsel, rather than difficulty in understanding the implications of complex or massive amounts of evidence. Therefore, we should wait to see the effects of these improvements before taking the drastic step of limiting the right to jury trial.

One consideration that supports trial by jury is the role of the jury in publicly validating verdicts. This helps maintain the legitimacy of the criminal justice system. Trial by jury is also a way of ensuring lay participation in the administration of justice. As a matter of general principle, it is important to use juries in those trials where the matters alleged are most serious and most grievously offend community values. There is a very powerful community interest in having this type of crime judged by members of the community.

In terms of qualitative data, it is important to note that from my informal conversations with judges I learned that in general procurators are unwilling to have cases considered by a jury because it might become evident that some cases are very

shaky. If so, they would have to release defendants and get busy looking for the real criminals. That's why in some situations procurators qualify an offense in a way that justifies submitting the case for consideration to a district court without a jury. The following case is a good example of this strategy.

In summer 2004, the Komsomolsky District court in the city of Togliatti[27] considered a complaint filed by the lawyer of the family of Alexei Sidorov, editor-in-chief of the newspaper Togliattinskoye Obozreniye (Togliatti Review), assassinated in 2003. The law enforcement agencies were pinning the blame on a man living next door, Yevgeny Maininger, even though, according to the Glasnost Defense Foundation (2004), "the defendant's lawyers have gathered ample proof that he had nothing whatever to do with the murder." Mr. Sidorov's parents were also convinced that the defendant was innocent because the newspaper was known for its articles against local criminals and corrupt businessmen working in the auto industry.

This case has created an unheard-of precedent because the interests of Mr. Maininger and the murdered journalist's family were represented in court by lawyers from the same law firm. The murdered journalist's father, the defendant, and their lawyers have suggested re-qualifying the category of crime Mr. Maininger is accused of, and bringing more serious charges against him ("capital murder"), in which event he would automatically be entitled to a jury trial and might hope for a fair verdict ("not guilty") to be passed by the independent-minded jury members.

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[27] The city is situated in the center of the Western Russia on the banks of the Volga river. Togliatti is home to nearly 700,000 residents and the part of Samara region. The city has almost a 300-year history. In 1964, the city was given the name Togliatti – in honor of Palmiro Togliatti, who was the leader of Italian Communists. Togliatti is known for its automobile factory that produces the most popular Russian car, the Lada.

In detail, they urged the court to re-qualify the offense as a "particularly cruel" (with more than 15 knife stabs inflicted on the victim) act of "premeditated hooliganism" (contrary to the official version of a spontaneous quarrel). Thus, Mr. Maininger could be accused under Article 105(2) of the RF Penal Code (in contrast to the current charges punishable under Part 1 of the same article). The procurator replied by stating that an investigator is entitled to independently decide how to qualify an offense. As a result, the judge turned down the re-qualification request and ruled to submit the case for consideration to a district court (Glasnost Defense Foundation, 2004). However, the district court acquitted Mr. Maininger in July.

It appears that juries in Russia are unrepresentative of certain groups, notably minorities and, possibly, some occupational groups. As a result, this potentially threatens the public's faith in the legitimacy of the legal system and its outcomes.

What is the evidence that a failure to achieve ethnically representative juries affects perceptions of fairness and legitimacy of the jury system? We have seen observers blame controversial verdicts in well-publicized cases (e.g., so-called Chechen cases) on the failure of those juries to represent their communities accurately. In these cases, the focus has been primarily on ethnicity, implicating it, either explicitly or implicitly, as a salient feature. Many believe that the ethnic composition of the jury in these cases negatively affected both the juries' decision-making processes and the legitimacy of the verdicts.

The problem of legitimacy has not been well articulated in Russia due to the short history of the current jury system. However, the U.S. Supreme Court has recognized that trial by jury not only provides a forum for the resolution of disputes between parties, but

also plays a legitimizing role for the justice system. To the extent that the jury legitimizes the verdict to the public, it builds public respect in the criminal justice system as a whole. For example, in *Taylor* the Supreme Court wrote: "Community participation in the administration of the criminal law … is also critical to public confidence in the fairness of the criminal justice system" (Taylor v. Louisiana, 1975, at 530). In its opinion in *Batson*, the Court discussed the impact of representativeness on the perceptions of the justice system: "In view of the heterogeneous population of our Nation, public respect for our criminal justice system and the rule of law will be strengthened if we ensure that no citizen is disqualified from jury service because of his race" (Batson v. Kentucky, 1986, at 99). In its opinion in *Powers*, the Court argued that "the purpose of the jury system is to impress upon the criminal defendant and the community as a whole that a verdict of conviction or acquittal is given in accordance with the law by persons who are fair" (Powers v. Ohio, 1991, at 413). Therefore, we have to regard the public validation aspect as being very significant in Russia. I assume that what applies in the USA also pertains in Russia because the public validation aspect is a goal of many Russian reformers today and it is perceived as a potential public good.

For the last decade the Russian public has been told over and over by political leaders as well as bar leaders that the trial system is basically sound and that whatever problems have emerged in recent trials are isolated occurrences that can be attributed largely to human error (Shurygin, 1998; Stepalin, 1998). This dissertation has shown readers that some of the problems in the system are structural. They are not going to go away by themselves. In this section, I want to review some of the structural problems in the system and discuss the issues that must be faced if Russians are to reform it.

One structural element that needs to be reconsidered is the role expected of trial judges. A Russian jury trial seems to be intended to accomplish many things, including punishing the police in order to deter violations of criminal procedure, assuring defendants a fair trial, and assuring the public that criminals will be made to answer for crimes they have committed. Obviously, no jury trial system can expect to do all these things at the same time, at least to do them all equally well. It is difficult for a judge to control a trial without a clear understanding of where it should be going.

The jury system is confused about what it wants trial judges to be doing at trial, in part because it is unsure about what trials are supposed to accomplish. One of the problems is a disastrous appellate system that insists on reviewing all possible errors that occurred at trial and that orders new trials for what would be considered minor errors in other legal systems as well as in the traditional Russian trial system without juries. It seems that the Russian appellate system does not review convictions as often as acquittals. In the end, the jury system ends up emphasizing what the Russian appellate system emphasizes – procedure above all else, not substantive accuracy.

The second structural element that needs to be reconsidered is that the Russian jury system is extremely difficult for citizens with other obligations and responsibilities to serve on a jury because it is hard to estimate how long the trial may take, particularly if the case is an important one.

In Russia people tend to view juries as a cross section of the community that goes into the jury box and applies the law to the facts as they find them. However, jurors have not been much of a cross section of the community. In recent years juries were handpicked by the court clerk and were clearly groups of Slavic people from which

minorities were excluded. It is important to note that although in theory Russian jury system is open to all citizens, it is probably disproportionately weighted in favor of individuals without daily responsibilities. Many citizens with responsible positions – physicians, business executives, middle- or high-level government employees – cannot afford to serve on a jury if the trial is likely to last two weeks or three, let alone a few months. The trial judge therefore permits them to opt out of jury service. At the present time many citizens called for jury service are opting in another way – by just not showing up. Complicating this issue is the uncertain duration of Russian criminal trial. A scheduled five-day trial may end up taking two or three weeks, which discourages citizens who could serve on a one-week trial jury from attempting to serve.

There is no leadership from the bar for the sort of structural reforms the system needs today. Part of the problem is that while many Russian lawyers know that something is wrong with the system, they are unaware of exactly what the problems are and thus uncertain where to begin.

But there is a second reason why no one is doing much about reform in Russia despite cases that often fairly scream out for it: it is easy to get discouraged about reform when any proposed change is likely to conflict with the approach of the Supreme Court or the Kremlin.

Sadly, the legal community often has a defeatist attitude toward reform. Although many lawyers freely acknowledge the need for change, they see no way to achieve it in the current situation. I have made it plain that I think the Supreme Court over the last decade has never understood its limitations. This has led to some unwise highly proceduralized decisions that have weakened the jury system. Looking at the system as a

whole, I need to recognize that the jury system has produced mixed results: the treatment of suspects is better in many ways, but the Russian trial system has not become stronger. It has even become a bit of an international embarrassment at this point.

Some prominent trials seem calculated to undermine the Kremlin's stated democratic goals. While spies undoubtedly exist, and it is the job of security agencies to catch them, the wave of treason trials in Russia increasingly looks like a Soviet-style official campaign to intimidate critics and harshly discourage intellectuals from making normal contacts with their foreign counterparts.

Russia has no institution ready to consider the sort of broad reforms the criminal justice system needs, therefore Russia needs to create one. There are models Russia can adapt to its purposes. One way to do that is to set up an institution to examine the system with an eye to reform. England seems to do this by setting up a Royal Commission of highly respected individuals, charged with the task of examining a particular problem. The United States seemed to do this by setting up in the past the so-called Kerner Commission, which issued a powerful report on the causes of civil disorders and warned of a country pulling apart on the issue of race.

CRITICAL LESSONS

This section will apply the Sachs, Kis, and Watson framework to identify critical lessons derived from the Russian transition experience. It will evaluate the relationship between societal factors and the result of reform.

For several reasons, Russia has not developed a popular consciousness that would allow jury trials to work effectively. First, Russia’s tradition does not support the concept of a state ruled by law. It also did not support the notion of public participation in

enforcing the law. Russia's regime was totalitarian in nature for seventy years. This means that the ideas of negotiated transition is not present in the Russian popular culture, and must be invented from scratch before change can be effected in Russia. Russian juries thus might be unprepared for their responsibilities.

Societal factors should be emphasized and reform programs should be tailored to build on concepts already present in society. Social factors, rather than the structure of institutions, determine the success or failure of transitions. As Sachs and Kis point out, the fact that the concept of a transition governed by law existed in the Polish consciousness meant that Poland did not have to invent these notions from scratch. The Sachs and Kis theories provide more than a mere justification of predictions about the success or failure of transition. The theories also provide a context in which to place proposed reforms to evaluate the potential of each reform individually. By examining each reform within its societal framework, we view the broader range of factors that will actually affect the reform's success. Reforms that build on conditions already present in society will be successful, while those that make false assumptions about a society's capabilities will not. The Sachs and Kis framework reminds us not to hastily transfer a reform from one society to another without an analysis of societal factors.

Jury trials are unquestionably one mechanism for bringing the public into close involvement with the law, and this is a desirable effect. If, however, jury trials are implemented in the hopes of cultivating notions of law in the popular consciousness, the reform seems to be premature. Russia might better divert its resources toward reforms that would be less costly and more effective.

On Watson's analysis, change is very difficult in Russia due to the legal culture's resistance and inertia. It is hard for lawyers to change their ways, harder for the criminal justice system to change its mission and culture, and complex for everyone in a nation encompassing eleven time zones to discard former routines and norms in exchange for new ones, especially when the final goal of the new norms remains unclear. Keeping this in mind makes it easier to recognize the accomplishments achieved in Russia with the introduction of the jury system and allows one to remain optimistic about its future. Such optimism is tempered, however, by the balance of power that still heavily favors the executive branch.

I argue that the legal reforms implemented since the collapse of the Soviet Union were mostly window dressing. I believe that Russia has a Potemkin judiciary, with a facade of the jury system that displays much talk about the changing nature of courts. Peer behind this façade of the criminal justice system, though, and I suggest you will find the true Russia, much the same as it has always been.

De facto, the authorities consider the jury system to be simply the façade in the chain of the criminal justice system. The Kremlin considers the jury system to share the common task with other agencies – fighting crimes – and it is simply obliged to provide the last and most democratic stage in this struggle against crime, which is proclaimed as the basic goal of criminal justice.

The result of Russian legal reforms including the introduction of the jury system was a neo-inquisitorial system with some elements of adversarialism. As a native Russian, I sympathize with the aspirations of reform-minded jurists in Russia but at the

same time recognize that a transformation of any system of criminal justice cannot be achieved quickly and without the cooperation of its actors, as Sachs and Kis also suggest.

The near-term forecast for justice and independent judiciary in Russia seems uncertain. Nevertheless, it is fair to say that there is a certain level of optimism, however skeptical, to be gleaned from my research. While the criminal justice agencies and officials discussed in this dissertation retain elements of their role in the totalitarian past, the Soviet era has passed. What the general effects of Putin's legal reforms will be cannot be foretold. This has the effect of making one less optimistic about the future of Russian judiciary.

One of the goals of this dissertation has been to suggest that Russians rethink the role of citizens in the criminal justice system. One of the ironies of the Russian trial system is that while Russian leaders proclaim the importance of citizens in the system, that importance has been increasingly diminished except for a small percentage of cases. The average criminal case is a bench trial worked out by the professionals: the judge, the prosecutor, and the defense attorney. Most Russian prisoners were incarcerated without any citizen participation in the process, while in the past nonprofessionals participated even in the sentencing decision deciding what sentence was appropriate for those who went to prison.

LIMITATIONS OF THE STUDY

My aim throughout this study has been to provide a factual framework, based upon the empirical analysis of a considerable number of lawyers' opinions, which might serve to inform discussions about the future of trial by jury. The framework I have sought to provide is limited both in the sense that it is not strictly relevant to some of the issues

in the jury debate (such as jurors' satisfaction with the experience of engaging in jury service), and in the sense that the research methods employed were of necessity indirect and the material gathered susceptible to differences of interpretation. Moreover, I fully recognize that the whole question of trial by jury is one that raises strong emotions and that views about the value of the jury are unlikely to be much affected one way or the other by the evidence of empirical research. Nevertheless, I think it better that such views be informed by the available evidence rather than allowed to pass in ignorance of it.

One of the limitations of the study is the target sample and the response rate. Only professional lawyers who participated in jury trials in three regions were selected. This of course leaves out professional lawyers who did not participate in jury trials, jurors, and all trial participants outside the three selected regions. This study was designed to answer some basic research questions, and begin building a knowledge base concerning the jury system in Russia. In that regard it has been successful. It is not possible, however, to generalize these results to all judges, prosecutors, or defense attorneys throughout the Russian Federation.

Critical to the success of any survey is the response rate. As noted previously, the response rate for this study was 60.6 percent. However, the response rate for defense attorneys was 46.4 percent. While this is generally lower than expected for mail surveys[28], it must be noted that a mail survey of defense attorneys is a difficult task. While surveys can be found with a higher response rate, there are many examples in the literature of low response rates when attempting to survey lawyers. This issue must be

[28] According to Maxfield and Babbie (2001, p.261), "a response rate of at least 50 percent is adequate for analysis and reporting."

given additional thought in future research attempts, and strategies created to increase attorney participation in mail surveys.

Finally, it must be noted that those who responded to this study were overwhelmingly Russian. Based upon those who responded, certain statistical tests and analysis that were planned could not be completed. The final results contained only five non-Russians (2 Ukrainians, 1 Tatar, 1 Armenian, and 1 Jew). Based on the overwhelming representation of Russian respondents in the survey, it was not possible to determine if the views of minorities differed in opinion to Russians to any degree of certainty or reliability.

CONTRIBUTION TO THE LITERATURE

The case of Russia is interesting for two reasons. First, it is a surprising reversal, as Thaman (2001) put it, in the long-term world trend toward the elimination of the classic jury in favor either of 'mixed courts' in which professional judges and lay assessors collegially decide all questions, or of courts composed exclusively of professional judges. Secondly, Russia has become a large-scale borrower of Western models (Ajani, 1995) that raises some questions on the effects of that borrowing. This concern is related to the aptitude of the jury system to match the needs of modern Russian society.

My study offers an example of current debates over the possibility of adapting legal cultures (Nelken and Fest, 2001). It deals with the notion of a legal transplant, the context into which the transplant has been placed, the reasons why the transplant was undertaken, and the effects of the transplant. Cotterrell (2001) indicates that the first condition for effectiveness of the transplant is that the source of law must be prestigious

and that it has to be congruent with aspects of the society's heritage. It is probably safe to say that Russia has this condition. However, the success of legal interventions depends also on many other circumstances, such as the type of law being transferred and the parties being involved. There are many difficulties in making law effective in situations of legal transplants. While some of them derive from the wider social context in which legal transplants take place, others may derive from the lack of coordination between different elements of the already existing criminal justice system. For example, the lack of plea-bargaining in Russia may burden judges with administrative issues that would normally be outside of their concern. The Russian legal reform should be consistent, otherwise both the jury institution and people involved in its implementation risk being rejected by the system.

The study of jury trials in Russia has several important implications. First of all, most research on jury trials has been focusing on Anglo-American countries. Very few academic efforts have been made from other countries, especially from countries in transition. Furthermore, trial by jury in other cultures has hardly been explored. Since Russia is quite different from Anglo-American countries in terms of culture, history, and legal and political system, it may provide a valuable model to prove or disprove the thesis on the jury system as a phenomenon occurring in limited countries or cultures. By exploring and analyzing the nature and implication of the jury system in Russia, in addition, this study can be helpful to understand better one's own jury system and improve it. Since every jury-trial system has its strengths and flaws, a look into other systems for an alternative surely has benefits. It provides an opportunity to compare with one's own system and improve it.

It should be clear that my research in no sense finally "proves" or "disproves" anything about the idea of trial by jury. Instead I offer my findings as illustrative material, in order to bring more sharply into focus some of the comments I make about the current condition of jury research.

Arguments about the abolition or retention of the jury are primarily political in nature. Since the function of the jury is in part political (Levine, 1992), the simple criteria correct or incorrect, right or wrong, do not apply. In the words of British scholars Baldwin and McConville (1979, p. 36), "whether respondents agree or disagree with the verdict of the jury does not make the verdict justifiable or unjustifiable: it is simply evidence that the verdict (to others) is acceptable or unacceptable."

FUTURE AREAS OF STUDY

Much of the evidence presented is of qualitative nature and it is a matter of individual judgment whether such evidence is sufficiently strong and clear-cut to support my general conclusion that trial by jury is an unpredictable business. The evidence that I have presented in this dissertation has not shaken my confidence in the community participation in the administration of justice, though it is not my view that the jury system is the best available system.

Decisions about the continuance of jury trial, or about modifications to existing procedures, are in the end political decisions and the researcher is in no better position than anyone else to make recommendations about such questions. Nevertheless I would argue that it is time that the deliberations of the jury were examined by researchers. I believe that my inquiry has raised a sufficient number of important questions about the precision of trial by jury to justify giving researchers access to the jury room under

specified conditions. I believe that the air of mystery that surrounds the deliberations of juries needs finally to be swept away. It is in the interests of justice itself that this be done.

Future areas of study are virtually unlimited concerning the use of the jury system in criminal trials in Russia. While this study has added to the scientific body of knowledge, there is still much to be learned. Topping the list for future areas of study is the effectiveness issue. While this study provided insight as to the importance and legitimacy of the jury system from the perspective of a group of professional lawyers, more work needs to be done. Additional areas of study include additional surveys of judges, prosecutors, and defense attorneys.

Future studies also need to explore this topic from the viewpoint of jury members and minorities to see if they differ from professional lawyers and from Russians. It cannot be assumed that their viewpoints would be similar or different from the ones presented here.

Because of the size of the data set used for this study, it is impossible to analyze all the information it contains in a single dissertation. It is hoped that the variables that I have isolated and analyzed have added to our understanding of perceptions of the jury system. I hope that the analyses of the other parts of the data will add more to our knowledge of perceptions of the jury system.

The study concerning the jury system could focus on whether more crimes should be eligible for jury trials. This could add to our knowledge of how much the Russian citizens trust the criminal justice system with adequately protecting them. All these

should complement our present knowledge and broaden our perspectives on public opinion on the criminal justice system.

It would be also very useful to analyze the opinion of the respondents as they concern the other parts of the criminal justice system. Those questions that address the prisons and sentencing in Russia should add to our knowledge of the criminal justice system, since the country has one of the highest prison population rates in the world.

Appendix A
Questionnaire for Criminal Jury Cases
Respondent Number _____

We are conducting a survey of people's opinions about the jury system in Russia. We would appreciate your assistance in answering the following questions.

Section I. Perceptions of the jury system overall

1.1. On the basis of your experience how significant are juries to our system of justice?

- Very much
- Quite a lot
- A little
- Not at all

1.2. Here is an eleven-point scale on which the perceptions on the jury system overall that people might hold are arranged from strongly negative on one end to strongly positive at the other end. Please tell me the number best describes where you would place yourself.

What is your view of the jury system in general?

Strongly Negative					Neutral					Strongly Positive
0	1	2	3	4	5	6	7	8	9	10

1.3. Which of the following do you see as advantages of trials by jury, as compared to trials by a professional judge alone? Put "1" next to the most positive feature, "2" next to the next most positive, etc., to the feature you see as the least positive.

- __ the public is involved in the work of the criminal justice system
- __ they educate the public about the criminal justice system
- __ they are a good way of introducing community values into the criminal justice system
- __ the decisions are more acceptable to the defendant and/or victim
- __ the decisions are more acceptable to the public
- __ the criminal process is democratic
- __ they protect the defendants against potential tyranny by government officials
- __ other

  _____

1.4. Which of the following do you see as serious problems of trials by jury, as compared to trials by a professional judge alone? Put "1" next to the most serious problem, "2" next to the next most serious problem, etc., to the feature you see as the least serious problem.

- __ jurors are less able to understand the law and to weigh evidence properly than professional judges
- __ the jury system is too costly
- __ jurors are more likely to be influenced by personalities of various parties involved in the case than professional judges
- __ jurors are likely to base their decisions on prejudice or bias
- __ citizens are too often disillusioned or bored by their service as jurors
- __ jurors suggest very different decisions in similar cases, i.e., they are inconsistent
- __ the selection system for jurors is very poor organized and inefficient
- __ other _____

1.5. Do you think each of the following items is *a serious problem, somewhat of a problem, a minor problem,* or *not a problem at all* in the jury system? (Check one)

	serious	some-what	minor	not at all
A. Trials that do not treat minorities as well as they treat Russians				
B. Trial decisions that are influenced by political considerations				
C. Trials that disregard defendants' rights				
D. Trials that disregard the interests of crime victims and community values				
E. Verdicts that are excessively lenient				
F. Jurors consider speculations over testimony, and emotions above facts. They reach verdicts that are arbitrary				
G. The selection system for jurors is very poorly organized and inefficient				
H. The jury system is too costly				
I. Trials that are excessively lengthy				

1.6. What course of action about the jury system would you like to see?

- trial by jury should be <u>abolished</u>
- trial by jury should be <u>changed drastically</u>
- trial by jury should be <u>changed slightly</u>
- trial by jury should <u>remain unchanged</u>

1.7. Who is more likely to reach a just and fair verdict, <u>jury or judge</u>, or are they equally likely?

- Jury
- Judge

- Both equally

1.8. Who is more likely to reach a just and fair verdict, jury or professional tribunal, or are they equally likely?

- Jury
- Professional tribunal
- Both equally

1.9. Who is more likely to reach a just and fair verdict, jury or mixed tribunal, or are they equally likely?

- Jury
- Mixed tribunal
- Both equally

1.10. Here is an eleven-point scale on which your thoughts on some statements might be arranged from strongly disagree on one end to strongly agree at the other hand. Please tell me the number best describes where you would place yourself.

Strongly Disagree — Neutral — Strongly Agree

0 1 2 3 4 5 6 7 8 9 10

	Number (0-10)
A. The resurrection of trial by jury in post-Soviet Russia is an important and huge achievement.	
B. I am sure that trial by jury came to Russia forever.	
C. The jury system constitutes the best available trial method.	
D. Jury trials have not met with the expectations.	
E. Reversed acquittals are an inquisitorial reaction of the Russian Supreme Court to an excessively lenient jury system.	
F. Russia has not developed a popular consciousness that would allow jury trials to work effectively.	

1.11. What would you suggest as the most important improvement to the jury system?

_____

1.12. How have jury trials helped the criminal justice system, if any?

_____

_____

1.13. How have jury trials hurt the criminal justice system, if any?

_____

_____

Section II. Perception of the case

If you have ever participated in a jury trial, please answer the following questions about the most recent case. If not, please skip to the third section.

2.1. Length of the trial (in days) _____

2.2. With what crime(s) was defendant(s) charged? (List in order of severity; specified degree and other qualification: e.g., aggravated assault, rape, etc.)
How many defendants? ___
1st defendant: No.1_____ No.2_____ No.3_____
2nd defendant: No.1_____ No.2_____ No.3_____

2.3. Please give a description of the case:

_____
_____

2.4. What was the jury's verdict? (Circle one)

1st defender			2nd defender		
No.1	Guilty	Not Guilty	No.1	Guilty	Not Guilty
No.2	Guilty	Not Guilty	No.2	Guilty	Not Guilty
No.3	Guilty	Not Guilty	No.3	Guilty	Not Guilty

2.5. Length of jury deliberations in ___day(s) or ____ hour(s)

2.6. What sentence did the defendant(s) receive?
1st defendant:
- None, was acquitted
- Imprisonment: fixed term for __ yrs. ____mos.
- Other (e.g. fine, penalty suspended, or defendant put on probation)

2nd defendant:
- None, was acquitted
- Imprisonment: fixed term for __ yrs. ____mos.
- Other (e.g. fine, penalty suspended, or defendant put on probation)

2.7. Was the case tried equally well on both sides? (If applicable, please rate yourself).

for 1st defendant		for 2nd defendant
__	Yes	__
__	No, prosecutor was better	__
__	No, defense lawyer was better	__

2.8. Did you feel that the jury's verdict(s) was: (Check one)

for 1st defendant		for 2nd defendant
__	without any merit?	__
__	a tenable position for a jury to take, though not for you?	__

- __ quite correct? __

2.9. How would you have decided the case had you tried it without a jury? (Circle one)

1st defendant			2nd defendant		
No.1	Guilty	Not Guilty	No.1	Guilty	Not Guilty
No.2	Guilty	Not Guilty	No.2	Guilty	Not Guilty
No.3	Guilty	Not Guilty	No.3	Guilty	Not Guilty

2.10. What penalty would you have set (if you had tried the case without jury)?

- None, would have acquitted
- Imprisonment: fixed term for __ yrs. ____mos.
- Other (e.g. fine, suspended penalty, probation)

2.11. How fair do you think this trial was, on a scale of zero (Very Unfair) to ten (Very Fair)? *regarding 1st defendant* *regarding 2nd defendant*

Very Unfair					Neither Fair Nor Unfair					Very Fair	*(number)*
0	1	2	3	4	5	6	7	8	9	10	__

2.12. How correct do you think the verdict was, on a scale of zero (Very Incorrect) to ten (Very Correct)? *regarding 1st defendant* *regarding 2nd defendant*

Very Incorrect					Neither Correct Nor Incorrect					Very Correct	*(number)*
0	1	2	3	4	5	6	7	8	9	10	__

2.13. Do you feel that your level of confidence in the jury system is lower, the same, or higher as a result of being personally involved in the jury system?

Much lower					The same					Much higher
0	1	2	3	4	5	6	7	8	9	10

2.14. Please describe how your perception of the criminal justice process was affected by your participation in a jury trial?

_____

2.15. What in your opinion was the main reason for jury's verdict? Put "1" next to the most important reason, "2" next to the next most important reason, etc., to the explanation you see as the least important reason.

1st defendant 2nd defendant

- __ __ defendant's explanation (unconvincing or credible/coercive)
- __ __ performance of key witnesses (unreliability or reliability of witnesses and/or their absence)
- __ __ weakness or strength of 'hard' evidence (e.g., blood, sperm, DNA, gun)
- __ __ different performance of lawyers
- __ __ sympathy with defendant and antipathy to victim, or vice versa

- __ __ other (e.g., criticism of the law), specify_____

If you disagreed with the jury, please explain why? You may comment on the above- mentioned factors.

_____
_____

2.16. SPACE FOR FURTHER COMMENTS (e.g., comments on the overall organization of the trial):

_____
_____

Section III. Yourself

Finally, we'd like to ask you some questions about yourself.

3.1. Which of the following describes your ethnic group?

- Russian
- Other, specify _____

3.2. Your sex

- Male
- Female

3.3. How old are you? _____ years.

3.4. Here is an eleven-point scale on which the political views that people might hold are arranged from very conservative on one end to very liberal at the other end. Please tell me the number best describes where you would place yourself.

0	1	2	3	4	5	6	7	8	9	10
Very Conservative				Neither Conservative Nor Liberal						Very Liberal

3.5. Employed as

- Judge
- Prosecutor
- Defense lawyer

3.6. How long (in this occupation)? _____ years.

3.7. City _____

3.8. When did you graduate from law school? _____ (year)

3.9. Have you had any direct experience with the jury system either as a judge, prosecutor, counsel, witness, victim, juror or observer during the past 12 months?

- Yes
- No

3.10. If so, please give details (e.g., your role and how many cases)?

_____

3.11. If you were wrongly accused, how much confidence would you have that the jury would reach the right result?

- Very much
- Quite a lot
- A little
- Not at all

That completes the survey. Thank you for your cooperation!

Appendix B ***Questionnaire for Criminal Jury Cases (in Russian)***

Номер респондента _____

Мы проводим опрос "Суд присяжных глазами российских юристов-практиков". Будем признательны, если Вы ответите на наши вопросы.

Часть 1. Отношение к системе судопроизводства с присяжными заседателями

1.1. Насколько важен, по Вашему мнению, суд присяжных для российской правовой системы?

- Чрезвычайно важен
- Важен в значительной степени
- Важен в небольшой степени
- Не важен

1.2. По шкале от 0 до 10, выразите свое отношение к суду присяжных в целом. Обведите соответствующую цифру.

0	1	2	3	4	5	6	7	8	9	10
Негативное отношение					Нейтральное отношение					Позитивное отношение

1.3. Каково, по Вашему мнению, главное преимущество суда присяжных, по сравнению с единоличным рассмотрением дела судьей? Отметьте цифрой 1 самую главную причину, цифрой 2 – вторую по важности и т.д.

- __ участие общественности в осуществлении правосудия
- __ присяжные получают представление о работе правоохранительных органов и суда
- __ привнесение моральных ценностей общества в судопроизводство
- __ вынесенные вердикты и приговоры воспринимаются подсудимыми и потерпевшими как более справедливые
- __ вынесенные вердикты и приговоры воспринимаются общественностью как более справедливые
- __ судопроизводство более демократично
- __ подсудимые лучше защищены от произвола властей и правоохранительных органов
- __ иное (укажите причину) _____

1.4. Каков, по Вашему мнению, главный недостаток суда присяжных, по сравнению с единоличным рассмотрением дела судьей? Отметьте цифрой 1 самую главную причину, цифрой 2 – вторую по важности и т.д.

- __ присяжные хуже понимают нормы права и разбираются в доказательствах, чем судьи
- __ финансовые затраты на суд присяжных слишком велики

- __ присяжные в большей степени, чем судьи подвержены эмоциям
- __ присяжные в большей степени предвзяты и руководствуются стереотипами
- __ присяжные часто с неохотой выполняют свои обязанности
- __ присяжные выносят разные решения по похожим делам; они непоследовательны
- __ отбор присяжных неэффективен и плохо организован
- __ иное (укажите причину) _____

1.5. Оцените, пожалуйста, серьезность/несерьезность следующих проблем для системы судопроизводства с участием присяжных (отметьте галочкой √ для каждого утверждения один ответ)

В процессах с присяжными…	очень серьезная проблема	значительная проблема	небольшая проблема	не является проблемой
А. к этническим меньшинствам относятся предвзято				
Б. на решения оказывается давление власть имущих				
В. нарушаются права подсудимых				
Г. нарушаются права потерпевших и не учитывается мнение общественности				
Д. вердикты необоснованно снисходительны				
Е.руководствуются эмоциями,а не факта- ми; как результат вердикты произвольны				
Ж. отбор присяжных плохо организован и неэффективен				
З. финансовые затраты для общества слишком велики				
И. судопроизводство слишком продолжительно по времени				

1.6. В каком направлении, по Вашему мнению, целесообразно развивать систему судопроизводства с участием присяжных заседателей?

- ее следует отменить полностью
- ее следует серьезно изменить
- ее следует незначительно изменить
- ее следует оставить без изменений

1.7. Кто, по Вашему мнению, может выносить более справедливые решения по уголовным делам, присяжные или судья единолично?

- присяжные
- судья единолично
- присяжные и судья единолично в равной степени

1.8. Кто, по Вашему мнению, может выносить более справедливые решения по уголовным делам, присяжные или коллегия судей?

- присяжные
- трое профессиональных судей коллегиально
- присяжные и трое профессиональных судей коллегиально в равной степени

1.9. Кто, по Вашему мнению, может выносить более справедливые решения по уголовным делам, присяжные или судья с двумя заседателями?

- присяжные
- судья с двумя заседателями (как это было недавно)
- присяжные заседатели и судья с двумя заседателями в равной степени

1.10. По шкале от 0 до 10 оцените, пожалуйста, степень своего согласия/несогласия со следующими утверждениями. Обведите соответствующую цифру.

0 1 2 3 4 5 6 7 8 9 10

Несогласен — Нейтральное отношение — Согласен

	Цифра (0-10)
А. Возвращение суда присяжных в Россию – важное и значительное достижение.	
Б. Уверен, что суд присяжных пришел в Россию навсегда.	
В. Суд присяжных – это лучшее из имеющихся видов судопроизводства.	
Г. Суд присяжных не оправдал возлагавшихся на него ожиданий.	
Д. Пересмотр оправдательных приговоров Верховным Судом России – это его реакция на слишком снисходительное отношение присяжных к преступникам.	
Е. Россия пока не имеет правовой культуры, позволяющей суду присяжных эффективно работать.	

1.11. Как, по Вашему мнению, можно улучшить работу судов присяжных? Какое самое важное изменение нужно произвести?

_____

_____

1.12. Как, по Вашему мнению, суды присяжных изменили российскую правовую систему в лучшую сторону (если такие изменения произошли, по Вашему мнению)?

_____
_____

1.13. Как, по Вашему мнению, суды присяжных изменили российскую правовую систему в худшую сторону (если такие изменения произошли, по Вашему мнению)?

_____
_____

Часть 2. Отношение к конкретному делу, рассмотренному с участием присяжных

Если Вы лично когда-либо принимали участие в процессе с присяжными заседателями, пожалуйста, ответьте на вопросы о самом недавнем процессе с Вашим участием. Если – нет, переходите к третьей части настоящего опроса.

2.1. Продолжительность процесса _____ (дней)

2.2. Предъявленные обвинения (количество и их содержание, например, статья УК)

Количество подсудимых _____

1-ый подсудимый: 1-ое обв._____; 2-ое обв._____; 3-ее обв._____

2-ой подсудимый: 1-ое обв._____; 2-ое обв._____; 3-ее обв._____

2.3. Краткое описание фактических обстоятельств дела

_____
_____
_____

2.4. Каков был вердикт присяжных?

	1-ый подсудимый	2-ой подсудимый
1-ое обв.	Виновен/ Не виновен	Виновен/ Не виновен
2-ое обв.	Виновен/ Не виновен	Виновен/ Не виновен
3-ее обв.	Виновен/ Не виновен	Виновен/ Не виновен

2.5. Продолжительность вынесения вердикта присяжными (в часах или днях) _____

2.6. Какой приговор был вынесен

1-му подсудимому:

- Оправдательный

- Связанный с лишением свободы (____ лет)
- Не связанный с лишением свободы (например, условный, с отсрочкой исполнения)

2-му подсудимому:

- Оправдательный
- Связанный с лишением свободы (____ лет)
- Не связанный с лишением свободы (например, условный, с отсрочкой исполнения)

2.7. В ходе судопроизводства обе стороны выглядели одинаково подготовленными к процессу (отметьте отдельно по каждому подсудимому)

	по1-му подсудимому	по 2-му
• Да	___	___
• Нет, сторона обвинения была подготовлена лучше	___	___
• Нет, сторона защиты была подготовлена лучше	___	___

2.8. По Вашему мнению, вердикт присяжных в целом был:

	по1-му подсудимому	по 2-му
• Абсолютно не обоснован	___	___
• Закономерен для присяжных, но не для Вас лично	___	___
• Совершенно обоснован	___	___

2.9. Если бы не было присяжных, и Вы лично должны были бы определить виновность или невиновность подсудимого по данному делу, какой вердикт Вы бы вынесли?

	1-ый подсудимый	2-ой подсудимый
1-ое обв.	Виновен/ Не виновен	Виновен/ Не виновен
2-ое обв.	Виновен/ Не виновен	Виновен/ Не виновен
3-ее обв.	Виновен/ Не виновен	Виновен/ Не виновен

2.10. Если бы не было присяжных, и Вы лично должны были бы определить наказание по данному делу, какой приговор Вы бы вынесли?

1-му подсудимому:

- Оправдательный
- Связанный с лишением свободы (____ лет)
- Не связанный с лишением свободы (например, условный, с отсрочкой исполнения)

2-му подсудимому:

- Оправдательный
- Связанный с лишением свободы (____ лет)
- Не связанный с лишением свободы (например, условный, с отсрочкой исполнения)

2.11. Насколько честен и справедлив по шкале от 0 до 10, по Вашему мнению, был судебный процесс?

По 1-му подсудимому *По 2-му*

(цифра)

Несправедлив Был обычным Справедлив _____

0 1 2 3 4 5 6 7 8 9 10

2.12. Насколько точен и аккуратен по шкале от 0 до 10, по Вашему мнению, был вердикт присяжных?

По 1-му подсудимому *По 2-му*

(цифра)

Неточен Был обычным Точен _____

0 1 2 3 4 5 6 7 8 9 10

2.13. Чувствуете ли Вы, что Ваше доверие системе судопроизводства с участием присужных уменьшилось, осталось таким же, или увеличилось после того, как Вы лично соприкоснулись с ней?

Намного уменьшилось Осталось таким же Намного увеличилось

0 1 2 3 4 5 6 7 8 9 10

2.14. Пожалуйста опишите, как Ваше отношение к систему судопроизводства с участием присяжных изменилось после Вашего непосредственного соприкосновения с ней?

_____

_____

2.15. Какова, по Вашему мнению, была главная причина, лежащая в основе вердикта присяжных? Отметьте цифрой 1 самую главную причину, цифрой 2 – вторую по важности и т.д.

для 1-го подсудимого *для 2-го*

__ __ объяснения подсудимого

__ __ показания свидетелей

__ __ другие доказательства (например, анализ крови, спермы, ДНК, найденное оружие)

__ __ разная степень подготовки к процессу обвинения и защиты

__ __ симпатия к подсудимому и/или антипатия к потерпевшему, или наоборот

__ __ иное (например, скептицизм по отношению к уголовному закону), укажите причину

_____

2.16. Дайте любые комментарии по судопроизводству с участием присяжных (например, по организации процесса), не нашедшие отражения в Ваших ответах на предыдущие вопросы

_____

_____

Часть 3. Данные о респонденте

3.1. Ваша национальность

- Русский (ая)
- Другая, укажите какая _____

3.2. Пол

- Мужской
- Женский

3.3. Возраст ____ (полных лет)

3.4. По шкале от 0 до 10 оцените, пожалуйста, степень либеральности/консервативности своих взглядов. Обведите соответствующую цифру.

0 1 2 3 4 5 6 7 8 9 10

Слишком консервативен Средне Слишком либерален

3.5. Род деятельности (должность)

- Судья
- Прокурор
- Адвокат

3.6. Стаж работы в этой должности ___ (лет)

3.7. Город, где Вы работаете в настоящее время _____

3.8. Год получения диплома о высшем юридическом образовании _____

3.9. Имели ли Вы непосредственный опыт работы с судом присяжных за последние 12 месяцев как судья, прокурор, адвокат, потерпевший, присяжный заседатель или свидетель?

- Да
- Нет

3.10. Если – да, укажите подробности (например, в каком качестве и сколько дел)

_____

3.11. Если бы Вы лично оказались на скамье подсудимых, какая бы степень уверенности у Вас была бы в правильности вердикта присяжных?

- Очень большая
- Значительная
- Небольшая
- Нулевая

Спасибо за Ваше участие в опросе!

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