RUSSIAN ADVOCATES IN A POST-SOVIE T WORLD: THE STRUGGLE FOR PROFESSIONAL IDENTITY AND EFFORTS TO REDEFINE LEGAL SERVICES

by

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A thesis submitted in conformity with the requirements for the degree of Ph.D.,
Graduate Department of Political Science,
University of Toronto

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ABSTRACT

“Advocates in a Post-Soviet World: The Struggle for Professional Identity and Efforts to Redefine Legal Services”

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This dissertation examines how the Russian bar (advokatura) and its members (advocates, or advokaty) shaped and were shaped by the first years of a significant political and socioeconomic transition (1985-95). It analyzes the bar’s role in the Russian legal reform process, as well as assesses the development of pluralism, civil society, and legal professions, particularly in their relations with the state.

This thesis argues that, beginning under Gorbachev, significant reforms of the advokatura’s organization occurred as a result of the initiatives of both state officials and advocates. The presence of competing national bar organizations, new bar associations (colleges), and various types of law offices represents a more pluralistic approach to the process of re-institutionalization in Russia. Moreover, colleges have gained more, though not complete, control over such professional issues as entrance and training, compensation, and the creation of new law offices.

Historical patterns of state-profession interaction and internecine conflict have reasserted themselves, however. First, justice officials continue to interfere in the advokatura’s efforts to build a professional program, particularly in the drafting of a revised law on the advokatura, and advocates have not strongly challenged the state’s actions. Second, internal divisions, as well as state intervention, have prevented the advokatura from becoming a unified interest group and monopolizing its control over the legal services markets in the 1990s. Advocates failed to reach compromises over major issues of self-regulation.
My dissertation has also shown how advocates now have a broader range of ways in which to represent and counsel clients. Findings on advocates' work in representing clients in appeals against state officials and agencies, in arbitration courts and business consultations, and in environmental and consumer protection cases show how advocates are enabling clients to assert their new civil and economic rights more effectively. On the other hand, revisions to the Criminal Procedure Code have not eliminated many of the traditional constraints that Soviet courts placed on defense attorneys. My findings on advocates' criminal defense work in regular courts and in jury trials in Moscow and Ivanovo indicate that advocates continue to encounter opposition to their expanded participation.
ACKNOWLEDGMENTS

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There is simply not enough room here to acknowledge all of the advocates, law professors, law students, judges, and procurators who were so giving of their time in their interviews with me. But I would like to thank specifically the advocates at Ecojuris, who met with me on several occasions and kept me up to date on their work even after I departed from Moscow; Diana Sork at the Confederation of Consumers Societies, who provided me with valuable materials and additional updates on changes in consumer protection law; and
advocates at the legal consultation bureau in the Moscow Regional Court, who guided me through their jury trials. During my stay in Ivanovo, advocate Liudmila Garanzha and her two children graciously hosted me; I cannot possibly express well enough in words the depth of gratitude I feel for their generosity and friendship.

Finally, I would like to thank members of my family -- and especially my husband, John McCannon -- for their understanding and support during this lengthy process.
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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AID</td>
<td>U.S. Agency for International Development</td>
</tr>
<tr>
<td>AL</td>
<td>Advocates' League (parallel college in Moscow)</td>
</tr>
<tr>
<td>AP</td>
<td>Advocates' Chamber (or <em>palata</em>, a parallel college in Moscow)</td>
</tr>
<tr>
<td>CEELI</td>
<td>Central and East European Law Initiative (American Bar Association)</td>
</tr>
<tr>
<td>CPSU</td>
<td>Communist Party of the Soviet Union</td>
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<tr>
<td>Ecojuris</td>
<td>Environmental law firm in Moscow</td>
</tr>
<tr>
<td>FSU</td>
<td>Former Soviet Union</td>
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<tr>
<td>GK</td>
<td>Civil Code</td>
</tr>
<tr>
<td>GPK</td>
<td>Civil Procedure Code</td>
</tr>
<tr>
<td>GKAP</td>
<td>State Committee on Anti-Monopoly Policy</td>
</tr>
<tr>
<td>Gosarbitrazh</td>
<td>The Soviet arbitration tribunals</td>
</tr>
<tr>
<td>GOSPLAN</td>
<td>State (Economic) Planning Committee</td>
</tr>
<tr>
<td>Gorkompartii</td>
<td>City Party Committee</td>
</tr>
<tr>
<td>GUO</td>
<td>The President's Main Security Administration</td>
</tr>
<tr>
<td>GPU</td>
<td>State Legal Administration</td>
</tr>
<tr>
<td>IGPAN</td>
<td>Institute of State and Law, Academy of Sciences</td>
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<tr>
<td>IOKA</td>
<td>Ivanovo Regional College of Advocates</td>
</tr>
<tr>
<td>ISAR</td>
<td>International Clearinghouse on the Environment</td>
</tr>
<tr>
<td>Ispolkom</td>
<td>Local Executive Committee of the CPSU'</td>
</tr>
<tr>
<td>KAM</td>
<td>College of Advocates of Moscow (parallel college)</td>
</tr>
<tr>
<td>KonfOP</td>
<td>Confederation of Consumers Societies</td>
</tr>
<tr>
<td>KZot</td>
<td>Labor Law Code</td>
</tr>
<tr>
<td>LCB</td>
<td>Legal consultation bureau (<em>iuriditcheskaia konsul'tatsiia</em>)</td>
</tr>
<tr>
<td>LOKA</td>
<td>Leningrad Association of Colleges of Advocates (parallel college)</td>
</tr>
<tr>
<td>MGKA</td>
<td>Moscow City College of Advocates (original college)</td>
</tr>
<tr>
<td>MGU</td>
<td>Moscow State University</td>
</tr>
<tr>
<td>MIKST</td>
<td>Illegal payments clients sometimes gave advocates in addition to regular fees</td>
</tr>
<tr>
<td>MOKA</td>
<td>Moscow Regional College of Advocates (original college)</td>
</tr>
<tr>
<td>Minpriroda</td>
<td>Ministry of Environmental Protection</td>
</tr>
<tr>
<td>Mosiurtsentr</td>
<td>Moscow Legal Center (parallel college)</td>
</tr>
<tr>
<td>MRKA</td>
<td>Inter-regional College of Advocates (original, but multi-regional college)</td>
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<tr>
<td>Minfin</td>
<td>Ministry of Finance</td>
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<tr>
<td>Minist</td>
<td>Ministry of Justice</td>
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<tr>
<td>MVD</td>
<td>Ministry of Internal Affairs</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>Narsud</td>
<td>People’s Court. Since 1992, also referred to as raionsud or mezhmunitsipal’nyi narsud (inter-municipal people’s court).</td>
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<tr>
<td>NII</td>
<td>Scientific research institute</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
</tr>
<tr>
<td>NRDC</td>
<td>National Resources Defense Council (a U.S. NGO)</td>
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<tr>
<td>OMON</td>
<td>Elite commando emergency forces</td>
</tr>
<tr>
<td>RF</td>
<td>Russian Federation</td>
</tr>
<tr>
<td>RSFSR</td>
<td>Russian Soviet Federal Socialist Republic</td>
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<tr>
<td>SIZO</td>
<td>Detention center</td>
</tr>
<tr>
<td>TETs</td>
<td>Thermo-electric power station</td>
</tr>
<tr>
<td>TOO</td>
<td>A private business with the status of a limited partnership</td>
</tr>
<tr>
<td>UK</td>
<td>Criminal Code</td>
</tr>
<tr>
<td>UPK</td>
<td>Criminal Procedure Code</td>
</tr>
<tr>
<td>ZhEKR</td>
<td>Government housing office</td>
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INTRODUCTION

Soviet legal specialists (called jurists, or \textit{iuristy}) were all required to complete law degrees, but after graduation they composed a set of separate legal occupations and identities. These included the advocate (\textit{advokat}), a practicing lawyer who represented clients in court and belonged to the bar (\textit{advokatura}); the jurisconsult (\textit{iuriskonsul'?), an in-house counsel for state enterprises; the judge (\textit{sud'ia}); the procurator (\textit{prokuror}), who both supervised the actions of courts and acted as prosecutor; the investigator (\textit{sledovatel\); the judicial official; and the legal scholar. This dissertation focuses its attention on members of the bar. Although they constituted only ten percent of jurists in the late Soviet era, advocates are playing a meaningful role in creating a new legal environment in post-Soviet Russia.

When Soviet advocates described their particular type of legal institution, they used such words as \textit{korporatsiia} (corporation) and \textit{professiia} (profession). In the Soviet Union, the term “professional” generally was more closely linked with the ways in which certain workers were following the dictates of the state in carrying out their specific tasks, than with seeking to fulfill the corporate ideals of Western professionals. These terms that advocates used, however, connoted more than just a fulfillment of state dictates; they also represented advocates’ struggles to retain their own unique professional identity, separate from that of the state, even in the Soviet era.\footnote{The “state” and state agencies that regularly interacted with members of the \textit{advokatura} and set and implemented certain Bar policies, differed across the tsarist, Soviet, and early post-Soviet periods. Relevant state agencies in the tsarist period included the offices of the tsar and his top officials; certain state ministries such as the Ministry of Justice and Ministry of Internal Affairs; and local councils and district court administrations. In the Soviet era, the parts of the state under discussion include the offices and local divisions of the Ministry of Justice (called by other names at certain points) and state organs governing higher education; local governing councils \textit{(souvet)} and their executive committees; the Ministry of Internal Affairs; and certain central and local organs of the Communist Party (CPSU). In the early post-Soviet era, the parts of the “state” relevant to the \textit{advokatura} are the same institutions mentioned for the Soviet era, but minus the CPSU and including the new State Duma and the president’s administration (such as the State Legal Administration or GPU). In addition, state legal professionals -- judges and procurators -- had a different kind of interaction with advocates across these three eras, due to their close working proximity to advocates. The Procuracy has supervised the actions of the court and prosecuted cases, and procurators have presented protests to the court concerning illegal decisions, judgments, decrees, and rulings. Investigators have worked closely with offices of the Procuracy in directing preliminary investigations and determined whether there is sufficient evidence to present an accusation to a court. The Procuracy has been criticized by advocates and other reformers for harboring a conflict of interest in fulfilling their dual role of prosecutor and supervisor of legality in criminal cases. See separate chapters for more discussion on the nature of the state.}
In the Gorbachev era (1985-91) and the early post-Soviet era (1992-95), many marked changes occurred to the structure of the *advokatura*, as well as to the way bar organizations interacted with state officials and the way advocates practiced. Such changes gave bar associations more autonomy from state interests than they had enjoyed in the late tsarist era; in addition, advocates created new law firms catering to certain types of clients and legal issues. These changes - many of which developed spontaneously -- have significant implications for strengthening the role of law and increasing political participation in Russia. At the same time, however, they threatened the *advokatura*'s cohesiveness as an institution. This dissertation concerns itself with how the professional organizations of the *advokatura* and individual advocates responded to and influenced aspects of this major political and socioeconomic transition which began to unfold in Soviet Russia in 1985. It enhances our understanding of the legal reform process in post-Soviet Russia, as well as sheds light on the development of professions, particularly in their relations with the state.

### Legal Professions as Institutions

Legal professions are intriguing subjects of study for social scientists for a number of reasons. First, they are a peculiar cross between state and societal institutions; as a result, their corporate bodies and members act upon and respond to both state and societal forces. Second, legal professions, particularly in liberal democracies, have been closely correlated with an understanding of how constraints are placed on governments and how the legal rights of citizens and groups are asserted. Third, legal professions are a part of a growing trend in this century of expert management over contemporary life.

Members of a profession then are distinguished by a particular kind of education, method of socialization, and set of norms. Their professional identity is developed and

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*Harley D. Balzer, “Introduction,” in *Russia’s Missing Middle Class: The Professions in Russian History*, ed. Harley D. Balzer (Armonk: M.E. Sharpe, 1996), 51 (FN 41). Professionalization then is a process by which a professional group attains a specific level of training and form of socialization, as well as learns to regulate the behavior of its members.*
maintained through institutional structures, such as universities, corporate bodies, informal groups, and professional journals. What is under dispute concerning the present study of professions and professionalization, though, are assumptions about their unique characteristics and aims. On the one hand, the structuralists or functionalists, whom Talcott Parsons best represents, argue that professions are validated through their special expertise and service-oriented goals and that they seek to avoid state intervention. Critics of the functionalists, often referred to as critical or “power-oriented” analysts, focus more on how professions try to dominate the markets for services, manipulate the state in achieving their goals, improve their status, and gain independence from societal interference. In general, the power-oriented analysts downplay the importance of expertise and public service in the development of professions.

Although both groups have taken the following list of ideal types into account when discussing the distinguishing characteristics of professions, the former group tends to assume that they are the legitimate goals of professionalization, while the latter tends to question whether they are realistic or even desirable. They include: 1) a highly specialized and advanced education; 2) an ethical code of conduct; 3) altruism and public service; 4) a rigorous approach to examinations and licensing; 5) high social prestige; 6) high

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1For an excellent background to this debate see Charles E. McClelland, The German Experience of Professionalization: Modern Learned Professions and Their Organizations from the Early 19th Century to the Hitler Era, Chapter Two (Cambridge: Cambridge University Press, 1992).
compensations; 7) a set career pattern or ladder; 8) monopoly over the services market; and 9) autonomy. 6

Autonomy is the most cited and debated ideal type, particularly when factoring in the level of bureaucratization of some professions. 7 It is best broken down into two parts -- the autonomy of a professional's individual actions when dealing with clients (the unbridled use of his or her expertise) and the autonomy of a profession's corporate bodies and their decision-making functions from state and societal agencies. Most studies confirm that the autonomy of professions is always constrained to some extent by exogenous forces, particularly by state agencies. In fact, in recent decades, scholars of professions have placed more attention on state-profession relations, particularly concerning countries in Central and Eastern Europe, where the state's role in regulating professional training and organizations, as well as reinforcing cultural patterns, is well established. 8

However, the state's interference in professional programs in some of these countries, such as Germany, has often enabled professionalization to occur. In Germany, professions have generally not perceived the state's interference as being against their interests. 9 For example, professions have requested that the state enforce higher standards of admission in order to insure that candidates are of a high caliber. Some professions profited from this form of state intervention and yet have remained autonomous in other ways. Practicing attorneys and doctors in particular achieved a relatively high amount of freedom from state control through the creation of a number of self-governing disciplinary bodies (Kammern). 10 In fact, in the Federal Republic of Germany, cooperation between the state and professions actually heightened, with neither side particularly benefiting at the cost of the other. 11

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6McClelland, 14.
9McClelland, 236-37. In the case of Germany, exceptions to the state's positive role in professionalization are the totalitarian policies of the Nazi regime and the Communist Party of the GDR.
10Ibid. 233.
11Ibid. 230.
Functionalists typically have used recent empirical data and power-oriented analysts critical historical methods to support their arguments about ideal types. However, it is better not to fit professions into rigid categories (although the categories need not be totally ignored), but to investigate more broadly their unique historical contexts and the coexistence of such presumed inconsistencies as professionalization and bureaucratization, autonomy and external control, and professionalization (self-aggrandizement) and citizens' interests (public service).\(^\text{12}\) This more fluid approach is crucial to examining legal professions, where certain other factors, such as the role of law in society and differences between civil law and common law traditions, strongly influence professionalization in a given society.

When studying the role of law and the way it is meant to order a society at a particular time, one must also incorporate the broader meaning of the state, its authority, and how it uses law to reach certain ends, whether it be to coerce and maintain obedience, or resolve conflicts and increase public participation in policy making. On the one extreme, countries whose state agencies use highly coercive means to gain their own ends -- the former communist regimes of Eastern Europe and the USSR, for example -- possess repressive legal orders. On the other extreme, countries described as having a "rule of law" state or having autonomous law -- Western European and Anglo-American countries, for example -- strive for legitimization, procedural fairness, universal adherence, and legal restraints; law is to be independent of politics.\(^\text{13}\)

While often referred to by scholars as an ideal type, a rule-of-law state is one in which the judicial system is relatively autonomous from ruling politicians, the state's actions are proscribed by laws which are not arbitrarily implemented, and the state is accountable to its citizens, whose basic rights are protected from encroachment. Group pluralism necessarily

\(^{12}\)Ibid. 241. E. Freidson similarly argues that a profession be "treated as an empirical entity about which there is little ground for generalizing as an homogeneous class or logically exclusive conceptual category. The task of a theory of professions is to document the untidiness and inconsistency of the empirical phenomenon and to explain its character in those countries where its exists." See E. Freidson, "The Theory of Professions: State of the Art," in Dingwall and Lewis, 33.

exists in some form, and there must be some kind of reliance on higher law (i.e., self-evident truths propounding individual liberties). It also assumes that citizens view the state as legitimate and permit it to proscribe their own actions somewhat. However, several countries, including Russia at present, have legal orders that resemble mosaics more so than any clear-cut modalities. Their intricacies illuminate how complicated a path many lawyers must take in their professional developments.

Legal professions are influenced also by either common or civil law traditions. Over the past few decades, theories on professions, including the ideal types listed above, tended to emphasize Anglo-American, or common law, traditions. But most countries, including France, Germany, Eastern Europe, and republics of the former Soviet Union, are a part of or partially adopted the civil (continental) law tradition. Differences between the two traditions are manifested in the structure of laws, procedural orientations, and the amount of state interference into the regulation of legal institutions. In the continental law tradition, laws tend to be strictly codified and based on the first Napoleonic codes, and the judiciary is responsible for applying them. In the common law tradition, as the name implies, judges’ rulings set precedents; thus they have more discretion and are de facto law makers themselves. Procedural orientations differ between these two traditions in that common law systems adopt an adversarial approach to criminal trials, while civil law countries adopt an inquisitorial approach. From this latter approach, court actors work to find the truth, beginning in the crucial preliminary investigation, whereas in the Anglo-American common law approach, an “objective” court resolves conflicts between two opposing sides. If greater

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14For a more thorough discussion of the meaning of rule of law, see Roberto Unger, Law in Modern Society (New York: Free Press, 1976), Chapter Two.
15There are elements of both traditions in each legal system, as some authors like John H. Merryman argue, and in some ways the two appear to be converging (i.e., more U.S. states are codifying their laws), but the differences on the whole continue to exist. For a classic treatment of the civil law tradition see John H. Merryman, The Civil Law Tradition (Stanford, 1983). Three edited volumes on lawyers in common and civil law countries and theories of legal professions offer the reader among the most comprehensive comparative treatments of these two traditions over the last few decades. See Richard L. Abel and Philip S.C. Lewis, eds., Lawyers in Society, vol. 1 on the common law world, vol. 2 on the civil law world, and vol. 3 on comparative theories (Berkeley: University of California, 1988 and 1989).
16For a thoughtful discussion of adversarial versus inquisitorial approaches, see Martin Shapiro, Courts: A Comparative and Political Analysis (Chicago: University of Chicago, 1981).
value is placed on oral testimony and cross-examination in criminal trials in common law countries, in criminal trials in civil law countries greater value is placed on written documents compiled by investigators in pre-trial stages; these documents form a "script" which prosecutors then use at trial. While in theory a number of positive aspects exist in the inquisitorial process, such as increased possibilities for falsely accused people to be released before the trials open, the investigator's discretionary powers tend to handicap defense attorneys.

In the common law tradition, legal professions have experienced more autonomy from the state with regards to their admissions policies and the decision making authority of corporate organs. Voluntary associations have been more central to private practitioners in their efforts to strengthen self-regulatory powers. In civil law countries, lawyers have been considered first and foremost state employees and separated into several occupational categories. Because of these distinctions, some scholars have hesitated to acknowledge that legal professions exist in civil law countries, where there is a long history of state agencies' creating and funding legal education, setting curricula, conducting entrance examinations, arranging apprenticeships, and establishing and regulating professional organizations. Attorneys in civil law countries, usually of smaller proportion to the population than attorneys in common law countries, typically are required to belong to local bar associations and receive licenses from the state. In Germany, each attorney, or Anwalt (private practitioner), must be a member of a Kamer, which is under the supervision of the province's department of justice. In France, avocats must belong to colleges. The state in these countries also by tradition has had control over attorneys' structures of practice; for example, not until the 1970s did the state permit partnerships and larger law firms to form.

Since the late 1970s, significant changes have occurred to the ways in which legal professions in France, Germany, England, and the U.S. are organized and regulated which weaken aspects of the common law/civil law dichotomies and hasten a more contextual approach to studying legal professions. First, as the numbers of attorneys grow around the
world, their preferences for working in certain types of law offices have changed. Many French lawyers (84 percent in 1981) still practice alone, although this trend has weakened in Germany, where attorneys are practicing more often in firms. In 1990, the largest German law firms were 40-50 strong, and since 1993 supra-regional partnerships have been developing. They are finding that they are at a better competitive advantage, especially on an international scale, in partnerships and large firms. Yet on the other hand, in some common law countries, like the U.S., where many attorneys have worked in legal departments of corporations and in large law firms, the trend has been toward more solo practice.

Second, since the 1970s, local bar associations and national bar associations in civil law countries have begun to assert their corporate demands and even further their own political interests. In Spain, for example, the Colegios of Madrid and Barcelona became opposition groups to Franco toward the end of his regime, and in Brazil the national bar association criticized military rule and became a force for democratization. In Egypt, where professional organizations and not political parties serve as opposition platforms, the bar association is one of the most vocal and influential organizations of dissent. In some countries, like Germany, national bar associations have gradually begun to usurp the authority over regulation that local bar associations once wielded, a development which has tended to formalize regulation.

Third, competitors outside the established bar encroach on attorneys’ functions, underlining how precarious is the aim of monopolization for any law profession. Competitors, such as notaries, tax specialists, and accountants, appeared in France and Germany who attempted to encroach upon the bars’ services. In Germany, the “Statute on

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19In 1994 the government arrested several lawyers for what they claimed were militant Muslim activities, and security guards attacked a march of 2,000 lawyers protesting against the death of a lawyer while in custody. “Egyptian Authorities Arrest Five Lawyers,” The New York Times, 16 June 1994, 7.
Legal Counseling" failed to reserve the growing counseling market for attorneys.21 In France, more counsils juridique, who were legal counselors, than avocats, who had a legal monopoly over oral arguments in courts of general jurisdiction, were benefiting from the 1971 law on the legal profession, because laws constrained the latter more than the former. Then two 1990 reform laws allowed avocats to form partnerships and abolished the legal counselors. Although these laws regulated avocats even more, for the first time they could perform contract work outside their law offices.22 Therefore, in many countries, reforms concerning legal professions were implemented as intended only part of the time, and often some part of the profession lost more of its self-regulatory powers in the process. Clearly, reforms did not always improve professional autonomy or cohesiveness.

Fourth, competition also appeared among attorneys themselves over determining boundaries of practice. It appears to be more a myth than a reality that western bars are unified professions which have consolidated as institutions. They are dynamic institutions that constantly are reshaping and reacting to internal and external pressures. In England, over the past decade solicitors successfully gained more control over legal services by adopting some responsibilities of barristers. They accomplished this with the help of the Lord Chancellor, who in 1990 supported the adoption of the "Courts and Legal Services Act" which awarded greater rights of audience to solicitors ostensibly to enhance consumer choice.23 In France, two competing national bar organizations argued over what sphere avocats should concentrate their efforts in, criminal and civil court cases or in counseling business people.24

Fifth, attorneys in both common law and especially civil law countries, where they tend not to earn as high salaries, have suffered from a lack of prestige, illustrated by the public’s mistrust of and lack of respect for legal institutions. Civil litigation rates are low in many civil law countries, as people cannot afford lawyers and lack confidence in the judicial

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21Schack, 200.
system because they find it slow and arbitrary. In the U.S., the jury system is under fire, as are tort lawyers known for cashing in on others’ misfortunes. Average citizens in these countries appear to resent lawyers more than to admire them.

Finally, legal aid is one service which over recent decades has placed lawyers in both common and civil law countries in a compromising position with state officials. In France, for example, lawyers worried that the state would eventually usurp control over all fee schedules once they began to supervise legal aid services to indigents. But more recently rural French avocats have become dependent on state-funded legal aid programs for half of their caseload. In the mid-1990s in the U.S., the American Bar Association (ABA) tried to lobby against the Republican Congress’ plans to cut all federal funding to the Legal Services Corporation, an agency which funds around 300 legal aid organizations across the country which represent indigents in civil cases, including politically controversial class action suits.

To sum, no legal professions or legal practices, even those in common law countries, are driven solely by issues of professional autonomy and supply and demand. Bar organizations over recent decades have both reacted to exogenous changes and have taken their own reform initiatives. State officials in all countries have at times intervened to control aspects of legal professions, but intervention has not always contradicted the interests of legal professions.

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25Ibid, 27. Abel discusses how, in Catholic countries where divorce is illegal or rare, the incidences of civil litigation are low. In other civil law countries, such as Japan, divorce is common but is usually settled outside of court. According to Konrad Jarausch, the social status of German advocates was mixed. Konrad H. Jarausch, The Unfree Professions: German Lawyers, Teachers, and Engineers (New York: Oxford University Press, 1990), 217.


Lawyers as Practitioners

Practicing lawyers, namely those who call themselves “advocates” (or a derivative of that term), have formal credentials that permit them to represent clients in courts and counsel them in the law. The work of practicing lawyers contains a necessary element of personal autonomy, because of the trust they must earn from clients in order to maintain their practices and appear as a separate side in court. In their individual work life, lawyers act as conduits between state and societal forces. In essence, they stand somewhere between the state and society. However, the boundaries between state and societal forces are not always drawn clearly, but differ depending on the particular conditions and the historical contexts surrounding them. This dissertation focuses on one group of lawyers, as a way in which to explore questions about how state and societal forces interact and shape each other during a specific political and socioeconomic transition.

Such issues of state and societal interaction are linked to a popular notion presently under discussion in relation to post-authoritarian contexts: civil society. A civil society is often defined as having a separate sphere of independent group activity that stands apart from the interests of the state. Lawyers’ work in certain western countries has served both to

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23The word *advocatus* in Roman law referred to one who was summoned or called upon to plead another person’s case and to act as that person’s voice. In modern usage it has continued to mean just that, but the term also has a connotation of public service and independence from the state, particularly in civil law countries. Brian L. Levin-Stankevich, “The Transfer of Legal Technology and Culture: Law Professionals in Tsarist Russia,” in Balzer, 230; and Abel, “Lawyers in the Civil Law World,” vol. 2, 20.


25One institutionalist recommends analyzing the mundane details of legal processes, and the relationship of state and society acting on the other, from a historical perspective to better understand how the state is composed of various “structural effects.” See Timothy Mitchell, “The Limits of the State: Beyond Statist Approaches and Their Critics,” American Political Science Review 85:1 (March 1991), 77-96.

26The notion of a civil society first was alluded to by Locke and Hobbes, and a bit later by such 18th century political philosophers as Adam Smith, Adam Ferguson, and David Hume, when describing groups of individuals involved in private business. The capitalist system based on impersonal laws and rules of behavior which were to be adhered to by state and citizen alike was to support the creation of a separate sphere of activity apart from the state. In the twentieth century, intellectuals such as Antonio Gramsci have written about civil society from a class perspective. See David Forgacs, ed., A Gramsci Reader: Selected Writings 1916-33 (London: Lawrence and Wishart, 1988); and also Goran Therborn, “The Rule of Capital and the Rise of Democracy,” New Left Review 103 (1977), 30. The concept of civil society in the latter half of this century more often has been used to describe political interests groups in general in democratic, capitalistic societies. See John Keane, ed., Civil Society and the State (London: Verso, 1988).

27In post-communist and other non-western contexts, however, the recent scholarly emphasis has been on the creation of organizations and associations formed independently of the state: the revolution “from below.” See, for example, S. Frederick Starr, The Soviet Union: A Civil Society,” Foreign Policy 70 (Spring 1988), 26-41; and Alfred Stepan, “State Power and the Strength of Civil Society in the Southern Cone of Latin America,” in Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds., Bringing the State Back In (Cambridge:
strengthen the viability of independent groups, from non-profit organizations to corporations, as well as to mediate between state prerogatives and individual or group interests. Now in this work an assumption has been raised that lawyers in post-communist countries have a similar opportunity to strengthen the viability of civil society.

A list of lawyers’ possible functions (see footnote) reveals that their expertise is not necessarily learned exclusively in law school but corresponds specifically to the context -- the actors, structures, and circumstances -- under which they are working. Some specialists on legal professions discourage the field’s fixation on these universalistic functions and instead emphasize more concrete and historical treatments of lawyers’ work. Recent debates have centered on how lawyers’ roles affect society. To many, lawyers sell unique techniques of language to clients. Some scholars argue that, in using these skills, lawyers play a major role in ordering society by maintaining the existing forms of political power. These “post-modernists” criticize Parson’s normative and functionalist approach for assuming that lawyers’ expertise simultaneously maintains the rule of law, protects private interests, and acquires professional power; moreover, they doubt whether clients’ and a political system’s particular interests can actually be pinpointed.

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Cambridge University Press, 1983), 317-46. While their emphasis is understandable (i.e., states in these cases previously disallowed a private sphere from forming), it tends to neglect the sphere of interaction between state and societal forces, an element of civic society. In a civic society, independent groups and citizens cooperate with the state in setting and implementing policies, and exhibit a more give and take relationship in which the state plays an intermediary role and respects the legitimacy of the private sphere. For a more thorough discussion of civil versus civic society, including recent works which focus on these topics, see Harley D. Balzer, “Conclusion: The Missing Middle Class,” in Balzer, 300-303.

*These possible functions include: 1. Providing knowledge about law in helping clients plan future behavior. 2. Providing knowledge about contacts with influential people. 3. Speaking for clients, using rhetorical skills and technical knowledge to address adversaries, negotiating partners, judges, legislators, and administrators. 4. Engaging in therapy with clients. 5. Performing formulaic acts and utterances in order to produce legal results. 6. Constructing narratives. 7. Transforming their clients’ objectives and strategies by telling clients what they can obtain from the legal system. 8. Intensifying or moderating legal conflict or encouraging clients to comply with or evade the law (this point is controversial). 9. Defining problems narrowly or broadly. Robert Abel and S.C. Lewis, “Putting Law Back into the Sociology of Lawyers,” Abel and Lewis, vol. 5, 490.


*Maureen Cain and Christine B. Harrington, “Introduction,” in Cain and Harrington, 5. Rueschemeyer names mediating, translating (i.e., meanings of laws to fits clients’ understanding and clients’ words into legal language), and advising as roles central to lawyering in “Comparing Legal Professions Cross-Nationally: From a Professions-centered to a State-centered Approach,” 445.


*Harrington, 53 and 59.
Whether described cynically as guns for hire or more idealistically as watchdogs for a freer society, though, lawyers cannot but be considered to some extent defenders of their clients’ rights and interests. They facilitate private transactions and other efforts to mobilize law in the civil sphere to fulfill their clients’ expectations. Depending on the constraints placed on them by the structure and traditions of a particular legal system, however, they are sometimes given more or less creative license in their approaches to representation. Neither lawyers nor courts -- in any country -- can bring about social or political change without the support of government officials, administrators, organized interests, and public opinion. Thus, there are limits to what can be expected of lawyers’ effectiveness in conflict resolution and policy making.

Evaluating the general effectiveness of lawyers in a legal system is quite difficult. For example, it is often impossible for researchers to observe the work of lawyers in certain contexts (such as confidential meetings with clients and other parties), and it is difficult to establish a direct causal link between the performance of a lawyer in court and the outcome of a trial, particularly when a jury is involved. Often a lawyer’s job performance has been evaluated on the basis of what was deemed to be in the best interests of society at large.

In criminal cases in particular, defense attorneys in many countries have confronted sharp criticism for protecting the interests of alleged criminals to the detriment of public safety. Defense attorneys in democratic countries, such as the U.S. or Britain, have dealt with such obstacles to their work as more discretionary approaches to searches and seizures and interrogations of suspects by law-enforcement officials. In activist systems (i.e., communistic or authoritarian models in which the state is highly interventionist), the defense’s

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39 Gerald N. Rosenberg argues this point in his book on the limits of court effectiveness in the U.S. In one chapter, he notes that the right to counsel in U.S. criminal courts (established in a number of Supreme Court rulings over the second half of this century) is still not fully realized, particularly when factoring in the effectiveness of court-appointed lawyers. Gerald N. Rosenberg. The Hollow Hope: Can Courts Bring About Social Change? (Chicago: University of Chicago Press, 1991), 329-34.
subordination to the state’s prerogatives is even more entrenched: the defense counsel is supposed to aid the court in reaching the correct policy outcome, as opposed to defending a client’s interests exclusively. In this context, individual rights play a secondary role to more immediate goals set by the state, such as fighting crime.

The practice of lawyers has always been subject to change, as it has paralleled the processes of socioeconomic and political development inside countries. Research on lawyers in Western countries shows that the development of a market economy and the bureaucratization of political rule tend to lead to the growth of a legal profession. In these countries, a whole new regime of economic rights and interests developed as a partial consequence of the assistance of lawyers. In countries with command economies, on the other hand, lawyers’ roles in the economy have remained limited, because market mechanisms are generally non-existent and the state controls most business transactions.

In addition, many lawyers in western countries tend to specialize as much in clients as in practice. The German Supreme Court in 1990 approved the creation of four areas of specialization: criminal, family, economic, and European Union law. As a result, many attorneys who earlier were generalists began to bill themselves as specialists in civil matters.

14 Miriam Damasca, The Faces of Justice and State Authority: A Comparative Approach to the Legal Process (New Haven: Yale University, 1986), 174-75. He argues that a defense attorney in some activist states can simultaneously remain loyal to his or her client and promote more remote, or long-term state objectives by focusing on the accuracy of outcomes instead of the conflict between individual and state interests. Legal scholar and advocate, Iuri Stetsovskii, expressed this sentiment in ‘Avokaty v ugolovnym sudopriazdite’ (Moscow, 1972), 3, 413.

14 Dietrich Rueschemeyer, Lawyers and Their Society: A Comparative Study of the Legal Profession in Germany and the United States (Cambridge: Harvard University, 1973), 3; and Abel and Lewis, vol. 3. According to Rueschemeyer, private attorneys do best in modern societies where government regulates indirectly; routine administration is separate from the political process; social integration is achieved through market exchange, autonomous voluntary organizations, and contractual relations in general; there is partisan loyalty to clients; and conflict between autonomous parties is viewed as routine. He argues that “Of all the professions, the legal profession is most likely to participate in the exercise of power in any modern society.” Ibid., 68.

14 Deng Xiaoping’s China, however, may prove to be an exception. China’s recent plunge into a socialist market has resulted in a proliferation of new commercial laws and practicing lawyers. There now are close to 200 private law firms charging up to $200 an hour, and law faculties are receiving many applications. The Communist Party, still very much in command, recently acknowledged the need for defendants to have wider access to lawyers. Moreover, some Chinese citizens and organizations are using lawyers to plead their cases concerning environmental protection and consumer protection issues. China even has a law permitting citizens to sue the government. What all these legal developments show is that, despite the fact that Chinese rule is still authoritarian and dissidents continue to be persecuted, such factors as the economy, international trade, and the Communist Party’s recent campaign to gain citizens’ trust have enabled legal practice to expand and gain prestige. Dorinda Elliot, “A Land with Lawyers -- But Not Enough Law,” Newsweek, 1 April 1996, 30.

particularly tax law, as businesses demanded more legal direction and legal representation in order to survive.\textsuperscript{13} American lawyers in particular distinguish themselves by their specialties and clients. Many scholars who study the roles of American lawyers in civil practice emphasize their dependency on corporations for sustaining their high status and paychecks. They also focus on their role as corporate lobbyists in governmental organs who advise their clients on possible policy directions.\textsuperscript{16} At the same time, they have found that these attorneys tend to have a good amount of leeway in making policy (translating the demands of clients into legal discourse) and in inventing relationships and even new institutions, from holding companies to the International Monetary Fund.\textsuperscript{17}

One of the strongest contemporary factors acting on western attorneys in recent years has been the world stage -- the international legal services markets as well as the regulations of international agreements. English solicitors have been forming law firms which cater to the interests of international finance houses and corporate productive capital.\textsuperscript{18} Lawyers are also \textit{effecting} changes on the international level. According to some observers, they are inventing "a new kind of political expression" inside the politics of the European Union, and are involved in the "harmonization" of laws affecting trade.\textsuperscript{19} In other words, to interpret the EU's and other international laws, business people have come to depend on the expertise of lawyers. Some lawyers, however, have shunned international opportunities. Many German lawyers, for example, more feared the competition of the international market than rejoiced in the possible expansion of their practice.\textsuperscript{20} The idea of losing professional ground to foreign lawyers was a salient threat.

\textsuperscript{13}Haimo Schack, "Private Lawyers in Contemporary Society: Germany," \textit{Case Western Reserve Journal of International Law} 23(1993), 197.
\textsuperscript{18}Cain, "The symbol traders." 31.
\textsuperscript{19}Ibid., 35-36. According to \textit{The Economist}, we are living in "a world run by lawyers." "Handle with Care," \textit{The Economist}, 4 December 1993, 11.
\textsuperscript{20}Schack, 205.
It appears from these studies of lawyers that although they are dependent on capital and the state in regulating their professional boundaries, many actors in the market economy and political institutions must rely upon lawyers' expertise and networks of acquaintances to make their empires function more predictably. On more mundane levels, parties to typical civil suits often lack the tools of legal discourse and procedure to communicate in courts. According to some scholars, "The discourse of law does not correspond with everyday thought except in those areas of life, such as the stock exchange, where the legal form has constituted what is everyday." Lawyers therefore are hired by clients not only to act as their voices but to invent the very words and interpretations which in theory secure their clients' interests.

Conversely, legal discourse and court procedure are usually underdeveloped in the areas which affect the lives and interests of less advantaged people. In other words, relations between capital and law are more elaborately defined, and consequently protected, than are relations between the poor and the law. Indigent people more often come in contact with the law either as crime victims or as alleged perpetrators, under circumstances in which law enforcement officials possess a great deal of discretion. But most capitalistic, democratic systems have constructed avenues for the disadvantaged to seek redress, whether as consumers or as victims of maligned actions of state officials. In doing so, lawyers have helped make law more accessible to certain clients; they therefore have acted as gatekeepers. A segment of lawyers in a number of countries exists to serve these clients and guard against fraud. In some instances, they work for non-profit organizations which cater to the civil litigation needs of indigent people. Lawyers also work for consumer and environmental organizations and provide services to individuals who file complaints. Their work has supported an alternative form of political participation for people who may otherwise not have had a voice.

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52 Cain, "The symbol traders," 41-43.
53 Hendley, 16. 120.
54 For example, in the U.S., the NAACP Legal Defense Fund, the Office of Economic Opportunity, and the American Civil Liberties Union have offered this alternative. Nonet and Selznik, 96.
These and other pieces of evidence suggest that lawyers' expertise at times has served broader social interests, although many lawyers indeed have been motivated by narrow power-oriented goals or have represented exclusive business interests. By means of their differing roles and work with various kinds of clients, individual lawyers and legal professions in western countries have helped develop and maintain certain democratic, capitalistic principles and institutions. Among them are included freedom of expression, habeas corpus, contract and private property rights, free market practices, and a civil society. But how might lawyers shape and be shaped by major political transitions, particularly those in which some of these democratic, capitalistic principles and institutions may be forming? One way to tackle this question is to examine legal professions in countries whose authoritarian regimes have collapsed over the past 25 years.

Professionals and Political Change: The Case of Lawyers

During significant political transitions, the rules of the game are not defined: the institutional framework is fragile, laws are constantly being revised, and public space is being restructured. Under such conditions, professionals, the organized experts of society, sometimes have acted as dynamic forces. Lawyers in particular have often been poised to take part in transitions because of their special expertise in law and their proximity to certain kinds of political elites.

For example, in Spain at the end of Franco's rule, during the late 1960s and early 1970s, lawyers and judicial elites acted as a dynamic force in hastening his political demise. Lawyers pushed to increase Spain's formal ties with the world economy and to modernize the court system. In addition, an increasing amount of pluralism and orientation cleavages were evident in judicial ranks beginning in the late 1960s; their goals further diversified as political and economic conditions changed.55 In some Latin American countries during the

1970s and 1980s, professions -- including lawyers’ associations -- were given the opportunity to redefine their functions and relations to state officials, as processes of liberalization unfolded.  

Similarly, as Soviet-type regimes began to democratize and eventually collapse at the end of the 1980s, the profession-state relationship underwent a “western Europeanization”: the profession and state maneuvered for control, but with less day-to-day state interference with respect to the work or views inside the professions. In Poland by the end of the 1980s, for example, the dependence of professions on the state for resources and prestige began to undermine the system’s capacity to innovate. Circumstances arose whereby occupational groups, particularly engineers and physicians, were able to gain autonomy from the state and affiliate themselves with the Solidarity movement in helping to transform power relations.  

Legal professions in Soviet-type systems, although informed by civil law traditions, experienced their own unique relations with communist regimes until the late 1980s. Political elites, often mid-level justice and Communist Party officials, tended to allow lawyers’ corporate entities a semblance of autonomy in order to maintain a semi-autonomous legal services market. These elites, however, continued to control access to the professions, define what their main objectives were, and monitor the behavior of their members. The administration of criminal justice adopted more severe inquisitorial postures than those in many other civil law societies, and as a result further weakened the role of defense attorneys.

Finke’s and other articles in the same issue urging more people to pay attention to the political and social role of lawyers in “Introduction: The Impact of Political Change upon Law, Courts, and Judicial Elites.” See also Jose J. Toharia, “Judicial Independence in an Authoritarian Regime,” Law and Society Review 9:3 (1975), 475-96, for a similar argument about how judicial elites effected change in Spain.  

For a brief discussion of how transition from authoritarian rule in Latin American countries led professionals to articulate broader interests, see Guillermo O’Donnell and Philippe Schmitter, Transitions from Authoritarian Rule: Tentative Conclusions and Uncertain Democracies (Baltimore: Johns Hopkins, 1986), 33.  


In the case of the Soviet Union's democratization in the late 1980s, Communist Party (CPSU) general secretary, Mikhail Gorbachev, and some of his close advisors began to perceive that professions could potentially act as agents of transformation, because of their expertise in law, science, technology, and administration. In Gorbachev's attempts to convince professionals of their new role, he facilitated a more open environment. But he, like some of his Eastern European counterparts, had not anticipated that some professionals would attempt to formulate and implement their own approaches to restructuring their organizations. In some cases, the legal professions took unilateral steps to distance themselves from the state during the period of transition from communist rule. Using their existing structures of organization, special rhetorical abilities, and contacts with reformers within the regime, the media, and academia, advocates seemed particularly poised to challenge some of the boundaries that the Soviet state had imposed on them.

The Theoretical Framework

This study of the advokatura is examined through the prism of a neo-institutional approach called historical institutionalism. Neo-institutionalists do not view institutions as static entities acted upon by individuals. Rather, they emphasize how the histories, rules, procedures, cultures, and structures of institutions influence or even determine the choices of decision makers. As two pioneers of neo-institutionalism argue, human rationality is "bounded," or constrained, within bureaucracies and organizations. Neo-institutionalists differ, however, over the extent and nature of this limitation. Those who espouse historical institutionalism occupy the middle ground between rational-choice institutionalists and sociologists. They use the comparative method to explain how

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intermediate state and societal institutions “shape how political actors define their interests and structure their relations of power with other groups.” In their world view, institutions are dynamic arrangements which are not necessarily defined by the same rules, norms, and customs. These factors instead often change over time. Critics contend that this approach is weak in placing specific individuals into an institutional context, but it is strong in its analysis of institutional development and policy making. It allows social scientists to explore the general patterns of an institution’s political history and the relations between members of that institution and others with which it must interact.

Historical institutionalism provides for a comprehensive examination of how the Russian bar developed as a legal profession since the late nineteenth century and how historical legacies are now influencing the ways in which the advokatura’s organizations and advocates’ practices are changing. This dissertation recognizes that it is important to treat the historical context as a significant variable because institutions, including legal professions, may readjust to conditions resulting from political and socioeconomic crises but are never recast in a vacuum. Historical institutionalism also allows for an emphasis on the dynamic interaction between the state and advocates (autonomy and cooperation), advocates and clients (the legal services they provided), and among advocates themselves (their professional identity and goals) in the turbulent first years of the socioeconomic and political transition in Russia.

Sociologists focus on larger environmental factors, such as culture, social norms, and conventions. They argue that structural and political “embeddedness” greatly limits individual action and is an effect of long-established social, economic, and political relationships beyond their control; therefore, no one can act rationally. See Mark Granovetter and Richard Swedberg, eds., The Sociology of Economic Life (Boulder: University of Colorado Press, 1992); Walter W. Powell and Paul J. DiMaggio, eds., The New Institutionalism in Organizational Analysis (Chicago: University of Chicago Press, 1991); Koellble, “The New Institutionalism.”

Main Research Questions

Professions, like any type of institution, must respond to exogenous circumstances as well as internal demands and conflicts. It is not often, however, that they are faced with such formative and formidable regime changes as those that occurred as a result of the USSR’s collapse. In the first half of the 1990s, the advokatura struggled to find a new vision that would unify its ensuing ideological and structural factions. This dissertation takes as its central question the following: By what means and to what extent were advocates, as members of a profession whose mandate was to defend the rights of citizens, shaping and being shaped by a significant political and socioeconomic transition? The advokatura at this time still largely was composed of the original building blocks of the Soviet-era Russian bar: the colleges of advocates (kollegii or bar associations) and legal consultation bureaus (iuridicheskie konsul'atsii or LCBs). But certain other elements were changing or beginning to be added by the late 1980s. These included revised criminal and civil procedure codes, national bar organizations, new bar associations and law offices, and new types of legal services.

Several clusters of supporting questions serve to clarify the nature of state-profession relations, how advocates provided legal services (including their relations with court colleagues and clients), and internal bar conflicts and coalitions. These factors were driving some of the structural changes listed above and simultaneously constraining the implementation of certain reforms. Where appropriate, the questions also take into account historical variance (across the late tsarist era, 1864-1917; the Soviet era, 1917-91; and the early post-Soviet era, 1992-95), changes in the type of state, and regional differences.

Specific questions focusing on state-profession relations ask why professions rely on the state (justice and CPSU officials) for validation on the one hand, and strive for a certain amount of autonomy on the other. Autonomy in this respect refers to the level of self-regulation advocates enjoyed inside their corporate bodies, particularly concerning the formulation of goals and objectives, overseeing admissions policies and training, and disciplining members and monitoring their behavior. Was the bar cooperating with state
officials more often than challenging their authority? How did the amount of autonomy the *advokatura* had from state officials influence its professional identity across the three periods? How distinctive have the Russian bar's relations with the state been compared to state-bar relations in Western countries, such as Germany, France, England, and the U.S.?*

The second cluster of questions this dissertation poses concerns how advocates provided legal services and their rapport with clients and court colleagues. These questions focus attention on the way the work of advocates affects society and how closely advocates identify with their clients' interests and rights. They address the more general study of how law matters in a "reciprocal" sense "that acknowledges the existence of both state and society as participants in the creation and maintenance of a legal regime." Concerning legal services and advocates' relations with clients and the Russian public, the following questions will be posed: How effective were the tsarist and Soviet bars at providing legal services to different kinds of clients? And did the Soviet *advokatura* 's more fragmented replacement from 1992-95 provide an improved vehicle for satisfying the demands for legal services in a more economically stratified society? In what ways did advocates assist societal actors against state officials on new playing fields?

Research on advocates' work in Soviet courts has shown how investigators, procurators, and judges often discounted the role of advocates in the justice system, particularly in criminal procedure. Investigators especially were known to discriminate against advocates by preventing them from taking part in preliminary investigations. Then, in the Gorbachev era, laws were passed which granted defense attorneys earlier access to their clients and case materials and reintroduced jury trials in some regions of Russia. It may be assumed that such laws -- and a more open political environment -- would provide advocates with more opportunities to influence court outcomes. However, in the early 1990s, did these laws *fundamentally* change the way that other court actors interacted with advocates and the extent to which they took into account advocates' arguments and petitions?

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53The three defining elements of reciprocity are legitimacy, accessibility, and efficacy. Hendley, 3-4.
The third cluster concentrates on the issues of internal bar politics and the identity, values, and goals of advocates. Such questions help articulate how members of legal professions attempt to define their own goals and maintain their corporate organizations in the face of divisive internal forces. What impact did internal conflicts over the creation of new bar organizations and the revising of a law on the *advokatura* have on the bar’s professional development in the early 1990s? How politicized were advocates as a group of professionals across the three periods? Finally, what role in the legal system did advocates perceive themselves as playing, and did their perceptions change across the three periods?

**Hypotheses**

The following hypotheses have been designed to address phenomena related to how legal professions and the practices of lawyers develop in response to changes in their political and socioeconomic environment. The three major sources of variance are time, external factors (state and societal influences), and internal factors (conflicts and rivalries). The first hypothesis concerns how external change influences internal institutional structure and behavior. The second hypothesis is about internal behavioral change, as it relates to protecting boundaries of legal practice. The third and fourth hypotheses concern how internal changes affect lawyer-client relations. Finally, the fifth hypothesis concerns the determinants of change to a legal profession. Some of the hypotheses have been adapted from earlier works on legal professions, as cited, as a way in which to compare the experiences of a number of other legal professions with that of the Russian *advokatura*.

1. The more rapidly economic and political conditions change and the scope of allowable activity widens, the more diverse lawyers’ goals and organizational structures become.

This hypothesis concerns how external change influences internal (institutional) structure and behavior. This hypothesis is based on the assumptions Finkele and Downs make in their works on the behavior of jurists in Spain at the end of Franco’s regime and on the
rational behind general bureaucratic behavior during periods of transition, when the *status quo* is ruptured, respectively. As outlined earlier in this introduction, Finkele argues that in late Francoist Spain, an increasing amount of pluralism and orientation cleavages were evident in judicial ranks beginning in the late 1960s; their goals further diversified as political and economic conditions changed.⁴¹

Beginning in the late 1980s, the Soviet Union began to undergo drastic political and socioeconomic reforms, and eventually the Soviet state started to lose its legitimacy. Various independent groups formed and challenged the old order of authoritarian control. In the case of the *advokatura*, I have made the assumption that, once unstable political conditions provided them with the opportunity in the late 1980s, advocates began to take steps to distance themselves from justice officials and CPSU organs and create new options for practice and organization. In so doing, the *advokatura* would begin to lose its organizational cohesiveness and divide along generational and locational lines, as well as lines of specialization and ideology.

2. Some lawyers react to the expansion of their profession by defending the established boundaries of practice rather than expanding the scope of legal services.

This hypothesis involves behavioral change as it relates to how advocates’ preferences for practice differ. This hypothesis addresses how certain individuals within a profession are inclined to maintain present conditions, or exhibit a monopolizing mentality, as a way in which to guard against outside “invasions.” Some West German advocates, for example, reacted negatively to the influx of new members in the 1980s and worked to prevent the creation of a wider range of legal services involving advocacy. They acted this way because of institutional constraints, particularly the German historical legacy of legal elites being civil

⁴¹Finkele, 297.
servants first and counsels for clients second, and the state's having strong supervisory control over legal training and entrance into the profession.53

This dissertation examines the reasons behind why some Russian advocates in the early post-Soviet period guarded against the expansion of their traditional practices. In the Russian context of the late 1980s and early 1990s, I am assuming that some advocates would have stronger incentives than others to expand their practices in order to serve nascent capitalists. I also am assuming that some advocates would resent the increase of new entrants into colleges of advocates, for fear that their volume of work would decrease. This work will further explore the reasons behind why, in the early 1990s, some advocates were motivated to change their work and forms of organization while others preferred to maintain the old order.

3. Lawyers' ways of organizing and approaches to practice diversify as identification with their clients' interests strengthens. Partially as a result, a legal profession tends to lose its effectiveness as an interest group and its leaders lose their ability to guide members.

This hypothesis is based on Rueschemeyer's arguments about the strength of clients' interests as a variable in determining the ways in which lawyers structure their practices.66 It involves changes to lawyer-client relations, and in turn, how these changes affect the cohesiveness of the legal profession. In the past couple of decades, clients' interests, particularly in international trade and finance, have significantly impacted on the work of lawyers in western countries.

For example, since the 1980s, in England, large groups of solicitors and barristers -- sometimes mixed, sometimes separately -- have formed large law firms catering to the needs of corporate clients. The work of solicitors has begun to overlap with that of barristers, which has caused the legal profession to become more, not less, heterogeneous in terms of its various

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66"The ability of a heterogeneous bar to provide guidance and oversight to its members or to act as an effective interest group may be significantly impaired...where identification with client interests is strong and the heterogeneity of the bar is great." Rueschemeyer, "Comparing Legal Professions: A State-Centered Approach," 314.
relations with the state and clients and in terms of its professional interests. In actuality, over the past two decades, English solicitors themselves have divided into various groupings depending on their client base, as well as outlook, firm structure, and income. In France, two competing national bar organizations formed; members of these organizations confronted each other about what kinds of clients they should serve most regularly, those needing representation in courts, or those needing counsel in business matters. While the idea of a cohesive profession is one which has concerned many professional over the past one hundred years, a divided profession -- one with various corporate structures and leaders, for example -- need not connote a weak profession in society. The American bar, as disjointed as it is organizationally, is an influential profession in U.S. society which enjoys a great deal of autonomy from government officials and high levels of remuneration.

This dissertation posits that the collapse of the Soviet regime enabled advocates to identify more closely with their clients' interests, to the detriment of the bar's original cohesiveness. The assumption here is that, beginning in the late 1980s, as justice and CPSU officials lessened their amount of supervision over bar activities and ceased to define advocates' work objectives, advocates had more discretion over which kinds of clients they would serve. This discretion would cause them to organize in various ways on both the national and regional levels.

4. The expansion of the practice of lawyers into the economic sphere results in an increased neglect of indigent clients requiring legal assistance in civil matters.

This hypothesis is a subset of the previous one, in that it addresses how lawyers' dependence on certain types of clients for their livelihoods, namely those whose legal matters offer the most lucrative monetary rewards, undermines the interests of other clients. Legal aid to indigent citizens has long been a divisive issue in many western countries and has involved lengthy negotiations between lawyers and state officials over how best to provide it. In the

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5 Glasser, 8-11.
past two decades, members of the English bar have become concerned about whether the expansion of legal services in the commercial law sphere would hamper the range of services available for legal aid purposes. In the U.S., where legal aid and public defender programs often are implemented unevenly on local or county levels, the legal needs of many indigents continue to be neglected.

This dissertation posits that, because of the growth of nascent business classes in Russia in the 1990s, advocates have had more incentives to work for business clients than their traditional pool of clients, citizens from the lower and middle classes. In addition, by the mid-1990s over 3,000 out of 21,000 advocates belonged to new colleges of advocates, many of which catered to business clients. Advocates working in legal consultation bureaus in the original colleges were forced to accept the bulk of legal aid cases. Most of these cases involved legal defense work, and were court-appointed and low-paying. But often neither local officials nor colleges of advocates paid them in full for their services. Advocates handled many small legal aid matters in the civil sphere without expecting to be compensated. I am assuming that, because of the lack of monetary reward, advocates less often accepted the civil cases of indigent clients. In addition, I am assuming that many people from less advantaged backgrounds who were confronting court action avoided hiring advocates, fearing high fees.

5. The development of an institution like a legal profession is likely to be influenced more strongly by external factors than by internal ones.

This hypothesis focuses on the actual determinants of change. It mirrors the popular assumptions of some scholars of Central European professions that the "professionalization project" concerned the exogenous construction of professions, namely that state and societal demands dictated the goals of professionals. It is juxtaposed with the popular assumptions about the stronger autonomy of Anglo-American professions and their ability to devise their own goals and be motivated by internal professional ideals such as monopoly over the labor

"Glasser, 9.
market and control over entry (see earlier in this introduction). Hans Hesse, for example, argued that the German professions were constructed "from the outside," to serve the interests of political, social, or economic forces.\textsuperscript{71} On the other hand, Charles McClelland, in his book on German professions, argues that this assumption "underestimates the degree of self-actualization present in the empirical history of many individual professions."\textsuperscript{72} He advises students of professions to investigate both the internal and external factors which influence the construction of professionalization projects.

I expand this hypothesis about Central European professions to include the Russian bar as it developed across three phases (the late tsarist, Soviet, and early post-Soviet era), to ascertain the extent to which external and internal factors influenced its professional development. I expect to find the most crucial variance in the bar's development across these three periods in the area of state-profession relations. The assumption is that in the late tsarist and early post-Soviet eras the \textit{advokatura} had more (internal) control over its professional program than it had in the Soviet period, when state and societal demands more strongly dictated its objectives and forms of practice. Moreover, this work will investigate whether, in the early post-Soviet period, internal factors -- internecine conflicts, changes in corporate structure, changes in the scope and nature of legal practice, and changes in goals -- influenced the professional program of the \textit{advokatura} more than or the same as external factors -- the policy preferences of state officials and their need to maintain control over the profession.

\textbf{Chapter Design}

In explaining the reasons behind the mixtures of pattern and change in this professional institution, I construct a chapter design which combines a historical analysis, in which aspects of the professional identity of the tsarist, Soviet, and post-Soviet bars are

\footnotesize{\textsuperscript{71}Hans Albrecht Hesse. \textit{Beruf im Wandel, Ein Beitrag zum Problem der Professionalisierung} (Stuttgart, 1968); and McClelland, 13.}

\footnotesize{\textsuperscript{72}McClelland, 13.}
compared, with case studies of contemporary transitional conditions surrounding the corporate organization of the late-Soviet and early post-Soviet bar (1985-95) and legal services provided by its members. General themes in the historical analysis (Chapter One) include the professional identity of advocates in the first two eras and how it was affected by state-profession relations, public opinion, and internecine conflict; the extent to which the tsarist and Soviet bars became politicized; and the way in which advocates used laws and legal procedure to benefit different kinds of clients. Chapter Two, "On the Eve of a Collapse: The Advokatura in the Gorbachev Period," focuses specifically on how the Soviet bar responded to legal reforms instituted from above by Party and justice officials and also why they unilaterally initiated their own professional programs in the Gorbachev era.

Center-periphery differences are elucidated in the last three chapters through a study of bar organizations and advocates' daily work in Moscow and Ivanovo in 1994-95. Moscow was chosen as the main research location for several reasons. First, in the Soviet period, the original Moscow college of advocates acted as the de facto leader of the bar, particularly concerning structural arrangements and trends in advocacy. Today the largest number of advocates, new colleges, and law offices are concentrated in the capital. Second, certain important sources, such as the Russian Ministry of Justice, central archives with materials about the advokatura, and several libraries are located there. Third, it is in Moscow that advocates' practices are most significantly affected by the many new laws in the economic sphere. Lastly, part of the research entailed observing how advocates participated in committee hearings in the State Duma on the fate of the profession. Ivanovo, containing over 500,000 inhabitants and now facing a severe economic depression, was chosen because it appears to be a typical Russian provincial city in terms of its population and infrastructure. In addition, it was one of five initial locations for jury trials beginning in late 1993. Such a comparison allowed me to assess the extent to which environmental factors, such as monetary...

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73 See Sources Consulted at the end of this dissertation for a listing of specific research materials.
and political resources, determine the organizations and role of advocates in a time of transition.

The design of the remaining three chapters is drawn from case studies of bar organization structures and members' behavior, as well as aspects of advocates' legal practices. Chapter Three, "The Struggle for Control over the Re-Institutionalization of the Russian Advokatura, 1989-95," elaborates on the reasons why the structure and professional identity of the early post-Soviet advokatura disunified and weakened so quickly and to the detriment of the bar's "establishment." Case studies center on the formation histories of new national bar associations, colleges, and law offices, as alternatives to the old configuration of Soviet-era colleges and legal consultation bureaus. Particular attention is paid to how advocates and state officials negotiated over the status of these new organizational structures and legal services providers.

I break down a study of the operations of a number of new and original colleges in Moscow and Ivanovo into eight categories: physical conditions (resources); leadership structures; background of members; entrance requirements and training; development of professional standards; goals and attitudes of members; relations with state officials; and public relations. The section of Chapter Three which highlights the operations of a number of different law offices in Moscow and Ivanovo focuses on such topics as physical working conditions; backgrounds and attitudes of members; payment arrangements and monthly earnings; management practices; and the types of legal services offered (including legal aid to indigents). The final section of this chapter focuses on two particular efforts by advocates to strengthen their professional identity: their negotiations with state officials over a new law on the advokatura and their attempts to reshape the training of new entrants.

As a student of post-communist politics, I set out in this dissertation to explore the potential for new political conditions to develop which may indicate a more pluralistic
approach to political participation. More specifically, in the final two chapters my attention shifts to the actual practices of Russian advocates, in light of legal reform efforts. These chapters attempt to ascertain changes in the emphases of advocates' practices and the effects advocates' expertise and networks of contacts had on state and society relations in particular.

Chapter Four, "Gauging Change in Practice: Advocates' Involvement in Criminal Cases," emphasizes advocates' role in criminal procedure as voices for the accused. It examines the reasons why many elements of criminal procedure remained in place after the USSR's collapse (i.e., continuing accusatorial bias in a strongly inquisitorial system) and how those circumstances affected advocates who were defense attorneys, as well as why certain reforms benefited advocates and the accused, especially in political cases and jury trials. In addition, it highlights a number of trends in criminal justice affecting the work of advocates -- the increase in court-appointed legal aid cases; the rise in economic crime and juvenile crime; and the incidence of necessity defense; and renewed efforts to strengthen victims' rights. Finally, this chapter attempts to construct more concrete ways to measure the effectiveness of advocates' defense work.

In the civil sphere of practice during the first half of the 1990s in Russia, the scope of legal services expanded in tandem with the development of a market economy and such capitalistic notions as private property and contract law. An argument is posed in Chapter Five, "Gauging Change in Practice: Advocates' Involvement in the Civil Sphere," that advocates participated in the development of a nascent civil society through their work in the civil sphere. I explain how advocates working in different types of law offices assisted a wide spectrum of clients in civil matters. Special emphasis is placed on formal complaints against state officials and agencies, arbitration cases, approaches to counseling business clients, and consumer and environmental protection advocacy. I explore how advocates' efforts in these

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For a more elaborate discussion of how scholars must examine the subjective factors of political development (i.e., principles, norms, and customs), such as "the development of political methods of conflict and interest adjudication," to better understand the whole process of political change in Russia today, see Richard Sakwa, "Subjectivity, Politics, and Order in Russian Political Evolution." *Slavic Review* 54:4 (Winter 1995), 943-64.
areas provided clients with new playing fields of interaction with state officials and with new societal actors.

In the conclusion of this dissertation, implications of this work for literature on the Russian bar and legal system, for a better understanding of post-Soviet politics, for the literature on legal professions and their relations with the state, and for the historical institutionalism approach are outlined. Lastly, I comment on what the immediate future may bring for the organizations of the _advokatura_ and advocates as practitioners.
CHAPTER ONE
THE RUSSIAN AND SOVIET BARS:
A HISTORICAL PERSPECTIVE 1864-1985

We are knights of the living word, more true today than the press. --V.D. Spasovich, well-known Russian sworn attorney, on the advokatura’s position in society in 1873.

You must rule advocates with an iron hand and place them in a state of siege, for this intelligentsia scum often plays dirty. -- Vladimir Lenin, in a letter written to Bolshevik comrades in a Moscow prison in 1903

Not the judge, but the advocate became the central figure of Russian judicial reform [in the late tsarist period]. -- Igor Petrukhin, Vam nuzhen advokat

There are several reasons why a study of the early post-Soviet Russian advokatura should begin in the nineteenth century. First, a significant number of institutional patterns, structures, and actors within the tsarist advokatura carried over into the Soviet period. Second, a number of these elements and qualities have persisted in the early post-Soviet Russian advokatura. Third, many Russian advocates and legal scholars consider the tsarist advokatura and the 1864 reforms, particularly regarding jury trials, to be important subjects of study today.

According to one recent treatment of tsarist professions, “Russian professionals perceived the state to be simultaneously a greater obstacle to organizing independent professional groups and a more important partner in fulfilling their aspirations for social and economic development.”¹ This double-jointed quality of state-professional relations applied equally well to the legal profession during this period, although certain types of lawyers advanced their claims to corporate autonomy better than others.

This chapter is structured around a number of themes related to the advokatura’s development, including how parts of the advokatura interacted with the state in carrying out their professional program. Another theme focuses on advocates’ daily practices in the criminal and civil spheres, advocates’ relations with clients, and the public opinion of lawyers. The third theme centers on internal relations within the bar, including differences among advocates and how these differences affected legal practice.

The Pre-Revolutionary *Advokatura* (1864-1917)

The first Russian *advokatura* was established in 1864 by the legal reforms of Alexander II, and represented the first self-governing organization in Russia. The bar added something of an adversarial element to a formerly strong inquisitorial system, although the autocrats by no means wanted to see it become a liberal, government opposition group. As will be shown, the 1864 legal reforms, while progressive under the circumstances of Russian autocratic rule, did not establish a monopoly of the bar over legal services. The state put pressure on the bar to conform to its specifications, and counter-reforms in 1874 served to weaken the profession even further.

The 1864 reforms failed to create a uniform orientation toward law: both private (reformed) and public (traditional) law jurisdictions operated simultaneously. The former jurisdiction, which comprised civil, commercial, and some criminal law, allowed for lawyers’ participation. The latter excluded lawyers and consisted of administrative and military tribunals, as well as other boards and committees that arbitrarily resolved disputes and prosecuted the accused. The jurist therefore did not have a monopoly over the knowledge base of the law.

During the late tsarist period, the *advokatura* was referred to as a *soslovie* and a *korporatsiya*. The former term, literally defined as estate, came to mean in this particular case

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2Sudebnye ustavy 20 noyabria 1864, articles 333-406 established the Russian bar.
4As defined here, the “state” in the late tsarist period consisted of the autocracy itself (the tsar and his closest advisors), bureaucrats in the Ministry of Justice (Minist), procurators, and local court officials located within the sudebnaya palata.
5Levin-Stankevich, 223.
a stratum of lawyers which possessed its own approach to learning and behavior and performed a unique social function. Soslovie, as well as the second term, korporatsiya, implied the existence of self-governing organizations. But these terms accurately described conditions only in St. Petersburg, Moscow, and Kharkov, which acted as leaders for subsequently formed bars. But, at the same time, the Russian advokatura was marked by internal conflicts and an inability among members to reach compromises and come to a consensus about what their main goals were. As a result, internal weaknesses prevented advocates from displaying a unified face to the state as a powerful corporate force. The bar's problems were not unique. For most professions in the tsarist era, "It was easier to unite an occupation against a common enemy like the state...than it was to create a high level of cohesion supporting a positive program of professional activity."6

A. Structural Divisions within the Tsarist Advokatura

Among all jurists -- from state legal professionals to advocates who were sworn attorneys (pristazhnye poverennye) or even less qualified practicing attorneys -- there was little sense of unity. Sworn attorneys, however, did experience the same legal education and later belonged to the same law societies and shared the same law journals. In addition, some career mobility existed, but it mainly involved state legal professionals moving into the bar and not vice-versa.7

Among practicing lawyers, pristazhnye poverennye stood at the top of the career and status ladder. Those sworn attorneys who practiced in the three main cities enjoyed a semblance of organizational autonomy. Pristazhnye poverennye had the most rigorous entrance requirements, including a formal legal education and a five-year apprenticeship, and had the most prestigious practices in the three main cities. Initially, however, many

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6Kendall E. Bailes, "Reflections on Russian Professions," in Balzer, 46.
7Levin-Stankevich, 230, 242-43. Levin-Stankevich argues that such societies better resembled western professional organizations than bar councils did, mainly because they transmitted legal culture more effectively (shared ideas, formulated responses to draft legislation, expressed views on legal problems, reinforced ethical standards) and did not face a significant amount of interference from the state.
bureaucrats without suitable educational or training qualifications became sworn attorneys to improve their financial standings. Most practiced alone and gained notoriety for defending political dissidents and earning the highest salaries. They also have received the most scholarly attention both in Russia and in the West.

The practice of *prisiazhnye poverennye* was dominated largely by civil cases. Sworn attorneys' main emphasis was on strengthening capitalist principles, not necessarily civil rights. Lawyers' work benefited from drastic reforms in civil law, which moved toward a recognition of unlimited individual property ownership and relied upon courts to adapt new legislation to a changing political and economic milieu. According to some sources, sworn attorneys deserved much of the credit for establishing a more stable environment for business ventures in the late tsarist period. On the other hand, sworn attorneys were not always respected at the time. Some members of the general population, for example, regarded sworn attorneys to be more like merchants than lawyers, because of their connections with financial institutions. Others criticized the *advokatura* for being parasitic on society.

At the beginning of the twentieth century, some *prisiazhnye poverennye* were criticized also for advertising their services, for idle talk, and for accepting only winnable cases, criticisms not unlike those leveled at western lawyers.

While most of their cases encompassed new areas of civil law, many sworn attorneys still worked on criminal defense and were often appointed by courts to represent the accused. In general, criminal practice was neither prestigious nor lucrative, except in high-profile jury trials of the 1870s, when their prestige improved. Defense attorneys often gained acquittals in political trials, with the help of jurors who tended to have a pro-defense bias. A result of

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9Lawyer bashing has not been a social phenomenon restricted to Russia, however. As far back as the sixteenth century western Europeans criticized the work of lawyers. William J. Bouwsma, "Lawyers and Early Modern Culture," *American Historical Review* 78:2 (April 1973), 314.

10Pomeranz, "The Emergence and Development of the Russian Advokatura," 37, 146, 133.


12Pomeranz, "The Emergence and Development of the Russian Advokatura," 278.
the 1864 reforms, jury trials captured the public's interest. Organs of the *advokatura* often published defense speeches for public consumption.\(^\text{13}\)

The Russian court system adopted adversarial elements through its jury trials, although vestiges of the Continental system remained, such as in preliminary investigations, which lacked the presence of defense attorneys. Judicial officials and judges were not comfortable with the heightened role of the advocate in jury trials. For example, in 1904 a chief justice of a circuit court removed a defense attorney (*zashchitnik*) from the court during a hearing for informing jurors that they had the right to acquit.\(^\text{14}\)

The 1864 statutes provided for the organizational structure under which sworn attorneys operated: regional bar associations which consisted of a general assembly (*obschee sobranie*) and a Council of the Bar (*sovet*) elected by the former. Sworn attorneys more often compared themselves to their French counterparts, rather than to American attorneys, whose national bar association was undergoing a process of deprofessionalization in 1878.\(^\text{15}\) The local *sudebnaia palata*, the highest district court, allowed groups of more than 20 licensed sworn attorneys to form local bar associations up until 1874. Between 1874 and 1904, however, the state prevented all other bar associations from forming, and only those in Moscow, St. Petersburg, and Kharkov possessed any characteristics of a *korporatsiya*. As a result, local courts supervised more than half of sworn attorneys.

Sworn attorneys provided only part of Russia's total legal services. Private attorneys (*chastnye poverennye*) were created by counter-reforms in December 1874, initially as a temporary measure.\(^\text{16}\) To become a private attorney no law degree or any training classes were required. The district court and the Ministry of Justice (Miniust) supervised the private

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13Kazantsev, 18.
15Comments by William Pomeranz in his presentation, "Professional Identity and the Estate Paradigm: The Case of the *Advokatura*," on a panel on Russian lawyers held at the 1995 AAASS Convention.
16Pomeranz (1990), 226. The statute pertaining to the private attorneys was *Uchrezhdennia sudebnikh ustanovlenii*, Article 406.
attorneys and issued them licenses for practice. They could serve as legal representatives, although they were not appointed by the court to represent the accused.

The creation of private attorneys ostensibly was meant to have reduced the number of striapchie, or the underground (podpol'naia) advokatura known for swindling clients. Striapchie were the dominant legal practitioners before 1864; many were noblemen, land owners, or former bureaucrats who were ignorant of legal practices. They handled cases involving inheritance disputes, property and land disputes, bankruptcy, divorce, passports, and personal injury. The creation of the private attorneys failed to remove the underground practitioners. There is little doubt, however, that private attorneys were also created to offset the growing political influence of the sworn attorneys. People soon mistook private attorneys for sworn attorneys, despite their vast differences in training.

Finally, the status of advocates-in-training, or pomoshchniki, was not clearly outlined in the 1864 statutes, and this ambiguity served as a point of friction among different elements within the soslovie. As a result, inconsistent methods for supervising their training beyond the five-year apprenticeship emerged across bar associations. In addition, any market power pomoshchniki may have had before 1874 was limited after that year by private attorneys. This position, however, proved to be a long-term means of employment for Jewish jurists, who were regularly denied full entrance into the bar.

B. State-Profession Relations: Their Impact on Professional Identity and Legal Services

Like members of other tsarist professions, lawyers (namely sworn attorneys) tried to gain a certain amount of autonomy from state officials, but also cooperated with them in strengthening professional standards, such as licensing and codes of conduct. The tsarist state first bolstered the advokatura and the other professions, as a way to match the economic

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2Kucherov, Courts, 159.
3This was especially true in the provinces, where the courts supervised both types of attorneys.
4Levin-Stankevich, 231.
development levels of Russia’s European neighbors. But the state only reluctantly granted them further concessions. Those who drafted the 1864 reforms set out to create a self-governing profession of prisiazhnye poverennye, but they did not want to see it become an organized political force. The authors of the regulations avoided making a blueprint of ethics for sworn attorneys, and this evasion hurt the organization of the profession. The state created an ambiguous position for advocates, who would continue to work under a compartmentalized system of criminal and civil courts and poorly implemented laws.

The breadth of the practice of the prisiazhnye poverennye was limited by the fact that they were not allowed to serve in volost’ (rural) lay courts, thus leaving open a large part of the legal services market to striapchie. The 1874 statutes set out to curb the power of the soslovie by creating another, albeit inferior, group of attorneys. Apart from the state’s animosity toward self-governing associations, these counter-reforms were a result of the advokatura’s poor reputation among the press, a general apathy towards supporting the original legal reforms, and the persistent presence of the striapchie.

Although their procedural rights in court were limited, sworn attorneys still participated in the undermining of the autocracy’s authority through their corporate organizations and in their daily practices. Particular tensions between state and profession arose over the organization of the bar, admittance and education requirements, supervision, and daily practice. The Councils of the Bar in the three main cities had to answer to government authority. For example, decisions on admittance into or expulsion from the advokatura could be appealed to the sudebnaia palata, which had the final word on the matter. The sudebnaia palata also had general control over the Council in its region, and the local procurator’s office had to be informed of all disciplinary decisions the Council made.

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22Balzer, “Introduction,” 15; and Bailes, 45.
23Levin-Stankevich, 236.
25Ibid, 63.
Miniust’s approach to legal education encouraged law faculties to be less rigorous than they should have been, leaving *pomoshchniki* unprepared for their professional work.27

Miniust officials continually tried to deprive sworn attorneys of their procedural rights, including the right to petition in the late 1870s.26 The Councils of the Bar could not regulate their *korporatsiya* due to Miniust interference, and their membership had to be approved by it.29 Magistrates often had strained relations with *prisiaznye* as well and referred to advocates as a “bearable evil.”10 Of course, in provincial regions without Councils, both sworn and private attorneys were supervised by district courts. The Ministry of Internal Affairs (MVD), particularly during V.K. Pleve’s tenure, also disapproved of the soslovie’s goal to strengthen legality and individual rights. For example, the Ministry rejected a November 1904 resolution of the Moscow Bar Council about these topics.11

Despite these and other state controls over the soslovie, sworn attorneys actually benefited from certain structural norms that state officials enforced. For example, the rule that limited the location of a Council of the Bar only to the jurisdiction of a *sudebnaja palata* granted the Councils more independence. The *sudebnaja palata*’s jurisdiction did not match that of the district or provincial administrative boundaries, and this freed members of the bar and its organs from certain aspects of administrative supervision.22 As a result, Councils enjoyed relative autonomy in matters of admittance and discipline and even submitted recommendations to Miniust concerning fee scales.

Councils also assigned members to legal aid cases.33 For many professionals, including many young sworn attorneys and *pomoshchniki*, the main ethos defining their roles was in

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27Pomeranz, “The Emergence and Development of the Russian Advokatura,” 174. State officials refused to share governing responsibilities with professors, thereby stunting the growth of an institutionalized university autonomy and weakening their ability to respond more effectively to rapidly changing conditions in Russian society through educational programs. Samuel Kassow, “Professionalism Among University Professors,” in Balzer, 215.


29Levin-Stankevich, 232.

28Gessen, 407.

31Ibid, 411-16.

32Levin-Stankevich, 232.

33Russia never had a state organization of public defenders, but moneys which covered the work of appointed sworn attorneys in legal aid cases came from the Miniust budget. Ibid (FN 36) and Kucherov, Courts, 182-96.
Sworn attorneys opened the first legal aid consultation bureau (konsul'tatsia) in 1870 in St. Petersburg and ran it on a fee-for-service basis. Notably, the district consultation bureaus were created on the initiative of the advokatura, not the state. The ability of the St. Petersburg Bar to take such an initiative indicated that advocates in the Russian capital had relative autonomy from state officials at the time. Such a move also showed how advocates were attempting to weaken the striapchie. Those sworn attorneys who worked in consultation bureaus reviewed and wrote appeals in peasant cases in volost courts which were formerly off-limits to them. In such a way, legitimate attorneys were reforming procedures for the redress of grievances in peasant courts through informal mechanisms.

As time passed, more pomoshchniki than prisiazhnye poverennye began to work in consultation bureaus, and peasants comprised the highest percentage of clients. The former tended to identify more with the interests of workers than capitalist enterprises, and up through 1905 the bureaus were politicized. After 1905 konsul'tatsii more often handled both property rights and workers' rights cases, which were dual and conflicting goals that worked to depoliticize the bureaus. Ultimately only some konsul'tatsii were successful at fulfilling the need for legal services in their areas and therefore did not influence changes in legal consciousness greatly. They also faced opposition from local administrations who often tried to prevent them from opening.

In 1878, individual sworn attorneys were deprived of their most public platform when the government moved all political trials to closed military tribunals. No sworn attorneys could defend clients in political trials for another 25 years. Throughout the late tsarist period, in ordinary as well as political trials, sworn attorneys could not take part in preliminary

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44 Bailes, 32.
45 William Pomeranz, “Legal Assistance in Tsarist Russia: The St. Petersburg Consultation Bureaus,” University of Wisconsin International Law Journal 14:3 (Spring 1996), 1-26. Levin-Stankevich states that the zemstva in the 1860s were the first to call for legal aid clinics to be formed, 239.
46 Pomeranz, “Legal Assistance in Tsarist Russia.”
48 Gessin, 392.
investigations, to the further detriment of their defense strategies. In an attempt to compensate, *zashchitniki* at times argued successfully for further investigations during the trial phase. Also, the government limited some of the *advokatura's* control over fees and slapped tariffs on certain types of suits, although, for the most part, sworn attorneys and their clients negotiated their own pay agreements.

State officials, in an attempt to limit social mobility of certain groups in society, targeted certain groups in the *advokatura* by restricting their membership. Clearly the most pronounced breach of civil rights at this time was against the Jewish population. In 1889, the government restricted additional Jews from entering the bar, and forced them to practice only as *pomoshchniki, chastnye poverennye, or striapchie.* Women were prevented from practicing law in Russia until after the February Revolution in 1917. While the 1864 reforms did not prevent them from becoming *pristazhnye poverennye,* women were forbidden from attending university law lectures.

As the high-profile criminal jury trials in the 1870s attest, a number of sworn attorneys struggled for civil rights and liberties against barriers state officials erected. But it was not only state officials who disliked lawyers. Although in narrow circles of Russian liberalism, law was valued as something in need of defense, Russian society in general lacked a liberal tradition which would have embraced both individual and property rights and not viewed them as contradictory notions. In fact, not all sworn attorneys agreed with the ideas

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4 The one exception enacted by law in 1897 was that minors could be represented by defense attorneys during this phase. Eugene Huskey, “The Politics of the Soviet Criminal Process: Expanding the Right to Counsel in Pre-Trial Proceedings,” *The American Journal of Comparative Law* 34 (1986), 97.

5 Gessen, 405.


8 Researchers on professions have found a correlation between the predominance of women in a profession (such as teaching or nursing) and its lower status. See Scott J. Seregny, “Professional Activism and Association Among Russian Teachers, 1864-1905,” in Balzer, 170; and Amitai Etzioni, ed., *The Semi-Professions and Their Organization: Teachers, Nurses, and Social Workers* (New York: Free Press, 1969), especially the preface.

of liberals. Their profession was a microcosm of the differences of opinion about political and socioeconomic developments found around the turn of the century in the general population.

C. Dynamics Inside the Tsarist Advokatura

The advokatura was weakened and compromised from the inside as well, due to these differences of opinion on ideology and on what the major goals of the profession were. First, the way in which the Councils controlled the entire membership often led to resentment among the rank-and-file members. Despite the 1864 statutes, Councils lacked clear standards, and internal friction ensued. Council chairmen acted as links between the advokatura and the state, but bar leaders in Moscow, St. Petersburg, and Kharkov did not always rule in accordance with the general membership's preferences. Types of disciplinary infractions committed by members which Councils investigated and punished covered all spheres of their members' behavior, with the exception of private family life.

On the other hand, not everything Councils did was detrimental to the soslovie. For example, although they were paternalistic and based their disciplinary rulings on both formal and informal (moral) principles, members of the Moscow Bar Council in the early 1900s attempted to inculcate in its membership a sense of collective responsibility, a corporate identity, and a new professional culture. The Council's annual reports of transgressions concerned abandoning the defense or breaching the obligation of secrecy. The dominant position that this and the other two main Councils exercised over their general membership began to weaken around 1900 when permanent and ad hoc commissions of sworn advocates and the general assemblies began usurping some of the Councils' control. As will be shown, these changes were a part of the politicization of the advokatura.

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14The St. Petersburg Bar Council noted that private family life was the only sphere it refrained from investigating, Gessen (vol. 2), 312.
15Burbank, 60-61.
17Huskey, Russian Lawyers, 27.
As new political conditions developed, the professional attitudes of sworn attorneys and their attitudes toward political action fell into three main groupings. First, a good number of sworn attorneys were "careerists," in the sense that they were not active in the bar organizations, and therefore apolitical, but wanted to protect the status quo and their personal job security.\textsuperscript{30} An example of their influence came in 1889, when members of the soslovie did not rally against the state's anti-Semitic quotas, but actually sided with it to further restrict entry into the profession.\textsuperscript{31} Second, some were "missionaries," who sought to use law as a way in which to weaken the autocracy's authority. Out of this category sprang the radicals, who wanted to see the autocracy's authority dissolved. The third category, the "culturalists," supported the measured responses of due process to direct political action; usually older, they tended to uphold the western-oriented legal knowledge base and respect the traditions of the pravovedy, the idealistic early School of Jurisprudence graduates.\textsuperscript{32}

Generational differences reshaped the outlook and structure of the advokatura. After over two decades during which it was not involved in political trials or issues, the advokatura underwent a rapid politicization in the early years of the 20th century, due largely to the efforts of the young sworn attorneys and pomoshchniki. These groups learned about social reform working in the konsul'tatsii and moved from there to direct political activism, not unlike members of the medical profession a few years earlier.\textsuperscript{33} Sworn attorneys once more were given a chance to represent political defendants, beginning in 1901, when Flevc returned political cases to regular courts. The older generation of liberals preferred to concentrate on individual rights, rule of law, and gradual change. The young sworn attorneys defended social groups, including revolutionaries, and formed their own groups and parties in the main cities.

\textsuperscript{30}Levin-Stankevich, 239.

\textsuperscript{31}Pomeranz, "The Emergence and Development of the Russian Advokatura," 81; Gessin, 278-81.

\textsuperscript{32}Levin-Stankevich, 239.

In the fall of 1904 through 1905, Russians prepared for political upheaval against the autocracy. Most, if not all professions, in fact, were affected by and took part in the revolution of 1905 in a bid to transform the autocratic government into one more conducive to a liberal society; this year marked the high watermark of their separate politicization processes. Thereafter, none of the professions, not even the sworn attorneys, remained as well-coordinated nationally or as poised to take political action. In November 1904, the St. Petersburg and Moscow prisiazhnye poverennye, led by the Council, called for an overhaul of the political system. Sentiments at that meeting, however, were based on what the older generation supported, which consisted mainly of gradual changes.

In their meetings two months later, younger members of the St. Petersburg Bar called for an all-member strike in opposition to the government’s actions on Bloody Sunday. Senior members on the St. Petersburg Council, however, strongly opposed the measure, as their consciousness rested with professional duties. Over the next few months, the young advocates gained influence within the korporatsiya. Due to their efforts, more radical resolutions were approved and the anti-Semitic faction on the Council lost control.

In their foremost display of national unity, 200 sworn attorneys met in March 1905 at the first All-Russian Congress of Advocates, organized by the recently created Union of Advocates, the political voice of the advokatura. They met to call for the institution of a constituent assembly and a Russian Constitution. Unity for advocates, though, proved to be illusive. The first Congress, which allowed pomoshchniki equal status with prisiazhnye, was dominated by political issues, and Union leaders called for a more radical platform. At this point, however, factions began to emerge among members of the younger generation, and members of the Moscow and St. Petersburg Councils reacted to the political developments

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55 Professions regarded such congresses as crucial displays of professional development. Balzer, “Introduction,” 12. The Union of Advocates belonged to the Union of Unions, and was around 2,500 strong in 1905. Membership included a “broad cross-section of attorneys,” but was dominated by younger advocates and members of the Moscow and St. Petersburg Bars. Pomerantz, “The Emergence and Development of the Russian Advokatura,” 303.
differently. At two subsequent Congresses and later Union meetings that year, dissension spread and more attention was turned to professional matters (such as legal aid and codes of ethics). After 1905 meetings of Councils of the Bar no longer focused on political issues, and the broad coalition of the Union of Advocates dissolved. During the last months of 1905, individual sworn attorneys turned their attentions to political parties, particularly the liberal Cadets, and contested Duma seats.37

D. On the Eve of the Bolshevik Revolution: The Tsarist Bar’s Final Years, 1906-17

In the years leading up to the Bolshevik Revolution, the number of specialists increased, and they played a more central role in the political process. A conservative social structure and internal cleavages, however, prevented what otherwise could have been unified political action.38 Individual sworn attorneys were making their reputations in the Duma and in criminal trials representing revolutionaries. In some ways, the prisiazhnye poverennye were gaining influence in the constitutional monarchy and strengthening their identity as a soslovie, at least in large urban areas. From 1905 to 1917, however, the state continued to repress advocates.39 The arrest and exile of advocates became routine, and many of their appeals remained unanswered.40 Despite the numbers of sworn attorneys in the Dumas, members of the press expressed doubt about the compatibility of the role of the deputy with that of the advocate.41 Moreover, private attorneys and striapchie were still practicing.

The February Revolution in 1917 brought renewed hope for a liberal democracy among sworn attorneys, some of whom joined the Duma (including a certain Alexander Kerensky) and were appointed to ministerial positions and administrative provincial posts. In addition, women were permitted to enter the advokatura. Recognizing the advokatura’s

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39Huskey, Russian Lawyers, 29.
40Gessin, 447.
41They were especially critical when a deputy-advocate represented an unpopular defendant. Gessin, 422.
importance in a liberal democracy, a drafting subcommittee of the Provisional Government composed of several sworn attorneys set out to write a new law on the *advokatura*.

The brief Provisional Government period provided a break from the bar’s typically more confrontational relationship with the state. But soon even the non-autocratic provisional authority could not distance itself from the earlier failures of the autocracy to accept limitations on its power or the legacy of the autocracy’s persistent efforts to inhibit the creation of viable institutions outside its own purview. Neither the middle class, nor professions in particular, could prevent what was to come.

The *Advokatura* in the Soviet Period, 1917-85

The new Soviet era ushered in disorganized deprofessionalization policies across Russia, but did not represent a total restructuring of the *advokatura* or a completely new relationship between lawyers and the state. Both the tsarist and Soviet bars were organized by locality and lacked a centralized apparatus and platform which might have more strongly challenged tsarist or Soviet policies. And both had to contend with justice agencies’ control over their operations and accusatorial bias. Both, ultimately, were dependent on the state to define their responsibilities and rights. Concerning internal dynamics, the presidiums of the regional bar associations in the Soviet period dominated over the rank-and-file advocates, just as the Councils had done through most of the late tsarist period. In addition, there was a mutual lack of consensus about what ethical standards were.

A. The Civil War Period (1918-21)

During the Civil War period, many Bolsheviks viewed law, the legal system, and legal workers as temporary annoyances, and forced organizations to function under their mandates. The *advokatura* was no exception. According to Eugene Huskey, as a bourgeois profession, the bar did not fit into the Bolshevik vision of protecting class interests or consolidating Bolshevik

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power. As a result, the Imperial Russian bar was dissolved by decree on 22 November 1917. As stipulated in the decree, just about anyone who had the right political consciousness hereafter could act as a defense attorney. The Bolsheviks also began their attempts to impersonalize the relationship between client and attorney. During this period, the number of advocates decreased precipitously, from 13,000 in 1917 to only 650 by 1921. Yet most people who defended the accused at this time (pravozashchitniki) continued to be advocates trained before the Revolution.

The Bolsheviks did not have a clear idea of how to structure policy on the bar, particularly regarding fees. This was largely because the advokatura was placed low on the priority scale, so bureaucrats and Communist Party (CPSU) members were coordinating efforts in a disinterested fashion and expending little of their resources. As a result, the traditional economic relationship between advocates and clients remained in some regions. On the other hand, advocates were among the most vocal groups of professionals who stood against the new regime. They spoke out against the Cheka, the first Bolshevik secret police agency. Some participated with other jurists in a boycott of their labor in the courts in the first weeks of Bolshevik rule. In Belorussia, many pristazhnycy poverennyc refused to comply with Bolshevik rules in 1918 and participated in open rebellions. Not without basis then, many Bolsheviks recognized the bar as a potential political opposition group, particularly in the way its members continued to defend their clients in court against the state.

During the first months of Bolshevik control, some advocates practiced as they always had, mainly on an individual basis; others transferred to enterprises. Those advocates who had criminal practices, though, initially were the most affected by the regime change. Laws passed in 1920 excluded zashchitniki from the investigation and liquidated tsarist colleges and jury trials. In the immediate years following the Bolshevik Revolution, action was taken to

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65 Huskey, Russian Lawyers, 63.
66 Huskey, “The Russian Bar and the Consolidation of Soviet Power,” 120.
defeat some rebellious elements in the bar. Some advocates were physically harmed, and others were thrown into concentration camps created to isolate and introduce representatives of the higher classes to physical labor. Luckier ones were deprived of the right to practice in courts or became office workers. Local executive committees drew up lists of eligible zashchitniki, who then received their wages from the state.

Many sworn attorneys fought hard to remain independent practitioners, and they were the last professional group to be assimilated (not until the late 1930s). Yet it is difficult to generalize about the dynamics between the advokatura and the new regime in 1918, since the bar was composed of separate local organizations. Even the nature of relations between the bars and local authorities in Moscow and Petrograd differed somewhat.

B. Revival under NEP

Despite their initial rhetoric about the withering away of law, the Bolsheviks allowed advocates to help develop a semi-market economy under Lenin’s New Economic Policy (NEP). They were supervised only loosely by local courts and the People’s Commissariat of Justice after colleges of defenders were instituted in 1922. In effect, they became the charges of these second-level officials after Lenin’s death and were virtually ignored at high-level Communist Party meetings. The semi-autonomous nature of the bar’s organization at this time resulted partially from the fear officials had that the stripchic, most of whom served poorer clients in rural areas, would be difficult to suppress. This fear was justified, as most legitimate lawyers tended

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68Igor Petroshin, Vam nuzhen advokat (Moskva: Progress, 1993), 16.
71Huskey, Russian Lawyers, 224–25. The People’s Commissariat of Justice was renamed the Ministry of Justice in 1946. In 1936 Khrushchev eliminated the central apparatus of the Ministry of Justice, and, within the next few years, it was eliminated altogether. Courts and law-enforcement agencies were delegated additional functions. In 1970 the Ministry of Justice was re-established. See Eugene Huskey, “The Administration of Justice: Courts, Procuracy, and Ministry of Justice,” in Executive Power and Soviet Politics: The Rise and Decline of the Soviet State, ed. Huskey (Armonk, NY: M.E. Sharpe, 1992), 221–46.
to avoid practicing in rural areas and refused to move there voluntarily.\textsuperscript{72} Debates continued among officials concerning payments to lawyers, but officials tolerated private practice until the late 1920s. Some colleges of defenders made it clear at the time that they would not accept dictates from the center.\textsuperscript{73} In these years, some advocates worked in state-initiated consultation offices serving a less advantaged public.\textsuperscript{74} The bar and jurisconsults,\textsuperscript{75} lawyers who worked full-time in enterprises, aided the "Nepmen" in their civil contracts and advised them on business issues.

While advocates were serving private business interests, they also continued to defend the accused, but under growing structural constraints. To begin, advocates had no access to cases or clients during the important preliminary investigation. Furthermore, even the participation of the zashchitnik at trial was open to the discretion of the court (as long as a prosecutor was not appearing, in which case defense participation was obligatory). Through legislation and encouragement from CPSU' apparatchiks, judges were permitted to mistreat defense attorneys at trial and to make decisions without input from either defense or prosecution.\textsuperscript{76} These measures by themselves established the Soviet criminal court as a particularly authoritarian inquisitorial system, dominated by the investigation and heavy hand of the judge. In addition, because legal practice during NEP tended to favor the more affluent, the poor and the unemployed often could not afford lawyers.\textsuperscript{77}

On the local level, CPSU' members attempted to infiltrate bar organizations during NEP. Also, executive power in the ispolkomy (executive committees of the Party) and justice departments continually retained veto power over decisions of colleges regarding admittance and removal, subjected advocates to disciplinary measures ostensibly for inappropriate

\textsuperscript{72}Huskey, \textit{Russian Lawyers}, 81; A. Smirnov, "Podpol'naja advokatura," \textit{Revoliutsionnaja zakonnost} 15-18 (July 1926), 80-81.
\textsuperscript{73}Huskey, \textit{Russian Lawyers}, 121.
\textsuperscript{74}Ibid., 130.
\textsuperscript{76}Huskey, \textit{Russian Lawyers}, 136 and 150.
\textsuperscript{77}Ibid., 134.
conducted and misdemeanors, and controlled the norms of fee payments. Most advocates were non-Party members during the NEP period, and communists often had to form coalitions inside presidiums to influence decision making. By the mid to late-1920s CPSU' members tended to control presidiums by a margin of one, but colleges lacked an effective chain of command with which to organize and discipline the rank and file.78 Not surprisingly, the state's concept of supervision was more coercive than constructive.79

Soviet law lacked clear definitions for what advocates' ethics should be, specifically regarding relations between advocate and client, advocate and judge, and advocate and procurator or investigator. A few books on ethics were published in the 1920s, but until the 1970s the ultimate source for ethics would be the Party itself.80 The Bolsheviks abolished law faculties in 1919 and replaced them with faculties of social science (FON), some of which offered law courses. By 1924, most FON were dissolved, and beginning that year law faculties at Moscow State University and a number of other universities across the USSR opened.81

C. The Advokatura in the Stalin Period

Advocates suffered when the scope of their practices decreased, as dispute resolution in civil cases shifted from the courts in the NEP period to government bureaucracies. In addition, the liberties that advocates had once taken in their practices during NEP soon dissolved by 1927, when the state began to collectivize the bar. The state placed special emphasis on increasing the number of advocates in villages and opening more legal consultation bureaus (LCBs).82 The poorest advocates went willingly into legal collectives, but those with more lucrative urban practices entered into them in 1929 only when threatened

78Ibid. 115-16, 120.
79As defined in the Soviet period, the "state" refers to CPSU' officials charged with supervising the functioning of the advokatura, officials in the Justice Commissariat or its later equivalents, and members of the Procuracy who also supervised advocates during court cases. Judges and investigators, although they fell into the same category as advocates ("jurists"), were still arms of the state, as they received dictates from the state which discriminated against advocates in court.
82Martinovich, 58.
with a purge. As with the large-scale collectivization of the countryside, the collectivization of advocates was not a unified effort, but one dominated by regional interests and actors. By January 1930, however, most advocates were collectivized, which meant that they worked in loosely supervised groups of single practitioners.

The RSFSR Justice Commissariat dissolved the regional collectives and authorized the opening of self-governing bodies on the regional level. Ironically, however, this “collectivization” did not imply state dominance, since political supervision over bar structures remained weak at the district (oblast) level. There was a retreat from collectivization in 1931 and a resurgence of private practice in provincial areas: the public initially demanded the services of underground advocates over those of collectivized ones because they wanted to have the freedom to choose their counsel.

In the early 1930s, the Justice Commissariat continued to give unclear orders about collectivization of the bar to regional levels, which confused the implementation process, and gave more discretion to judges, who tended to discriminate against advocates based on class antagonism. Most defense attorneys were not accustomed to a class (i.e., Marxist) approach to their defense; instead they usually focused on the rights of individuals. To retain their jobs, they were forced to adapt to the new style. But advocates did not have as much work as they had before the Bolshevik Revolution. On the whole, zashchitniki were only admitted to trials when procurators were present, which amounted then to around 5 percent of cases.

In the first half of the 1930s, advocates suffered from legal nihilism from outside the bar as well as within. This lack of respect for law and popular disdain for lawyers would continue throughout the Soviet period, but would never again be as low as in its first two decades. When Stalin restored the status of law by 1934, however, a law on the advokatura

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53See Huskey, Russian Lawyers, 149-65, for a thorough explanation of how the bar was collectivized.
54Ibid., 163.
55Ibid., 153.
56Ibid., 178.
57One joke about advocates recounted how a visitor to a cemetery stood near a gravestone which read: “Here lies an advocate and honorable person,” and wondered how two people could fit into such a small space. See Y. T. Goliakova, ed., Zashchita po ugozovnym delam (Moscow: Izd. M.iu., 1948), 11.
was in the works, and the bar was at least supposed to have the trappings of a legitimate organization. Debates on the law began that year. Within the next few years, Procurator General Vyshinskii himself encouraged the revitalization of the bar as a tool in protecting the interests of the state. Above all, he wanted the *advokatura* to act as a check on local political and legal officials.\(^6^8\)

In 1935, the bar suffered from a nation wide purge, which had varying effects on the local colleges. But in November 1936, perhaps in recognition that lawyers were permanent fixtures, a department of legal defense was established inside the new USSR Commissariat of Justice. There was also an unsuccessful campaign to increase the numbers of advocates, particularly from the working class. This campaign proved to be less than successful, as many advocates were still bourgeois specialists. Some Justice Commissariat officials disapproved of the 1937 draft law, believing it had undertones of a *soviet*. After a shakeup in leadership in the Commissariat of Justice in 1938, the conservatives took control. A second purge that year again failed to create a realignment of social forces in the profession, and it failed to facilitate a major increase in CPSU influence.\(^6^9\) Clearly the structure of the bar, and its emphasis on the rank and file's power to select its own members of presidiums and chairmen, made supervision difficult.

Then in January 1939, open elections in colleges were suspended, and CPSU members were forced into the bar.\(^7^0\) On 16 August 1939 the USSR Council of Ministers approved the "Statute on the *Advokatura,*" to regulate the work of only 8,000 advocates in a population of 191 million.\(^3^1\) The statute replaced the colleges of defenders with colleges of advocates, eliminated loose collectives, and forced advocates into LCBs subordinated to managers (zaveduiushchic) and college presidiums.

\(^6^8\)Huskey, *Russian Lawyers*, 190.
\(^6^9\)Ibid., 195-97, 199-200, 208.
\(^7^0\)Ibid., 203.
While no doubt the models for these bureaus were based on the pre-revolutionary forebears, the stronger mechanisms for their control were Stalinist. Managers were to answer directly to presidiums, not to the general assemblies. No more private practice was allowed, except in special circumstances in rural areas, where doctors and teachers could also practice. Advocates even lost some of their control over setting payments, as the Commissariat of Justice had the power to issue instructions on fee schedules. Moreover, political qualifications of advocates were to be paramount considerations in their evaluations.\textsuperscript{92} From then on advocates had extra incentive to join the CPSU, even if their ideological preferences were at odds with it.

In fact, most individuals were still attracted to the \textit{advokatura} because of their belief in \textit{zakonnost} (legality), rather than \textit{partiinost}?\textsuperscript{93} In the remainder of the Stalin period, the Commissariat of Justice continued to wrest more control from the bar, one instruction at a time.\textsuperscript{91} This rule by decree reflected the way the entire Soviet political system functioned.

The Stalin leadership expanded the definition of anti-state activities and often placed the burden of proof on the defendant. The 1936 Constitution, under Article 111, mentioned the right to defense, but it was open to interpretation. The results of these changes nearly translated into the demolition of the defense attorney's role -- particularly in cases concerning political crimes (Article 58 on anti-state agitation was employed). During the Great Purges, 1936-38, three-man special sessions of the OGPU regularly confirmed the fate of political defendants without legal representation.

Only a limited number of advocates was chosen by the presidiums of colleges (in consultation with the KGB) to have special clearances.\textsuperscript{95} Some advocates, in trying to gain the

\textsuperscript{92}Huskey, \textit{Russian Lawyers}, 216-21.

\textsuperscript{93}Ibid., 221.

\textsuperscript{94}The following granted more power to the Commissariat: To regulate the election of presidiums, by Order of the People's Commissariat of Justice, October 26, 1939, no.98; to supervise the admission to colleges by Order of April 22, 1941, no. 65; to establish pay scales by orders of October 2, 1939, no. 85, September 25, 1940, order no. 29, and January 24, 1941, no. 18; to regulate the training of young advocates by instruction of April 23, 1940, no. 47; and to regulate disciplinary proceedings by order of April 11, 1940, no. 47 (advocate could appeal disciplinary decision to the Commissariat/Ministry). See Kucherov, "The Legal Profession in Pre- and Post-Revolutionary Russia."

favor of members of the regime, sought harsher punishments for their clients, though they proved to be the exception. If a defense attorney was present during criminal proceedings of a regular criminal trial, however, he was obliged to acknowledge the guilt of his client.96 Liberal legal scholars tried to counteract these developments. In 1939, they led debates on whether to allow the zashchitnik earlier access to a criminal case, but their drafts of a revised Criminal Procedure Code (1939-40 and 1946-49) were never adopted.97

The bar continued to occupy an inferior position in the Soviet legal system, even after World War II, when the regime further tolerated professions, particularly the notion of "scientific" professionalism.98 Eugene Huskey argues that, despite the bar's inferior position, its members' loyalties were not transferred to the state on the whole. In fact, barring the existence of a national organization, the bar still retained much of its corporate identity and had limited autonomy, especially in the areas of discipline and fees.99

In 1951, the Moscow City College of Advocates (MGKA) created a number of internal departments, including one on speech-making, one on criminal practice, and one on civil practice, to develop their own approach to studying these topics. Like the tsarist sworn attorneys before them, Soviet advocates, even under Stalin, had an interest in presenting the court with thoughtful, eloquent oratory (krasnorechie).100 But this approach was not to be confused with the pre-tsarist speeches, according to one lawyer, who warned that advocates in tsarist times used sentimentality as a tactic, but in Soviet times they used facts and not bourgeois diction.101 Advocates at this point still were studying western forensics and the most celebrated advocate speeches of the tsarist era.102

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99Huskey, *Russian Lawyers*, 221.
100See V.G. Viktorovich and M.M. Obolovskii, "Iz istorii sektii kul'tury rechi pri presidiume moskovskoi gorodskoi kollegii advokatov," in *Advokatura i sovremennost* (Moscow, 1987), 132-36.
102Ibid., 120, 151-52.
During the war years, much of advocates' work was on hold, as a significant number of young advocates died at the front. Young specialists replaced the dead, but numbers dwindled, and many of the replacements had poor educational backgrounds. As a result, the quality of legal practice suffered. But by the late Stalin period, the role of defense attorney usually was played by an advocate, not a lay person. The regime at this time considered advocates to be social actors who aided the state, as well as defenders of citizens' legal interests. "Before everything, an advocate must deepen his political knowledge," according to one legal scholar.\(^{103}\) In acting as assistants to the court, an advocate's duty was to point out the inaccuracies or failings of procurators and investigators, though within constraints.\(^{104}\)

In 1932, 53 percent of Moscow advocates had received their higher legal education during the tsarist era, and only 14 percent completed their law degrees in Soviet institutions.\(^{105}\) Then, in the mid-1930s, higher legal education underwent an expansion. On 5 March 1935 legal education was reorganized through a Joint Decree of the Central Executive Committee and the Council of People's Commissars. Law institutes, including branches of the All-Union Legal Academy, were created at this time; they were formed at the expense of law faculties and placed under the supervision of the Justice Commissariat. In 1936, the Justice Commissariat assumed responsibility for organizing legal education, appointing directors, and preparing syllabi and textbooks.\(^{106}\) The emphasis on political qualifications over educational ones, as well as the purge of the *advokatura*'s ranks, resulted in a decline in educational standards.\(^{107}\)


\(^{104}\) One example was of an advocate's pointing out the incompetence of the court assessors on a criminal case who did not know the court's language. Golikova, 136. Court assessors were lay judges who typically were incompetent in legal matters and let the judges make their own decisions.

\(^{105}\) Huskey, *Russian Lawyers*, 163.


\(^{107}\) In 1938, 53.3 percent of Soviet advocates had a higher education, but in 1939 only 14 percent had. Huskey, *Russian Lawyers*, 218. Compare these figures to those on judges, however. In 1936, less than 6.7 percent of judges had a higher legal education and more than 50 percent of judges had no legal education at all that year. Butler, *Soviet Law*, 68.
In the post-war period, despite the attempt by the regime to present future jurists with a higher level of education, many future legal officials (typically judges, procurators, and law enforcement officials) opted for correspondence schools, which opened in 1936. By 1950, all advocates, as a minimum, were to have completed the bachelor's equivalent of a law degree.\textsuperscript{108} The numbers of advocates had been growing since 1938, although the bar was not the most coveted legal occupation because many law students viewed it as financially risky.\textsuperscript{109}

D. Khrushchev's Campaign to Strengthen Legality: The \textit{Advokatura}'s Role

After the Stalin era, the \textit{advokatura} was considered by state officials to be a legitimate and permanent institution, but, like all others, one that needed to be watched.\textsuperscript{110} Nikita Khrushchev aimed to give law and legal professionals a stronger role in the construction of socialism. At a USSR Supreme Soviet session in 1957, an official speech was given about how advocates would assist in strengthening “socialist legality.”\textsuperscript{111}

Liberal jurists, including some advocates, worked on drafts of the Fundamentals of Criminal Procedures and struggled against conservatives in the law-enforcement agencies, including the Procuracy, and in the Central Committee apparatus. These debates revived the conflict about the right to defense that had first appeared in the late 1930s under Stalin.\textsuperscript{112} Advocates were among the most reform-minded jurists and supported legal scholars in these debates.\textsuperscript{113} The dynamics of the debates initially worked in favor of conservatives in the legal

\textsuperscript{108}Martinovich, 79.
\textsuperscript{109}In 1938, the bar consisted of 6,000 advocates; by 1947 it had 13,000. Huskey, \textit{Russian Lawyers}, 217. Former Moscow advocate, Ilya Kaminetsky, commented on the bar's popularity among law students in the early 1950s. Interview on July 7, 1994 in Chicago, Illinois.
\textsuperscript{110}Yuri Luryi, Review of \textit{The Soviet Lawyer and his System} by G. Cameron, III, in \textit{American Journal of Comparative Law} 28 (1980), 698.
\textsuperscript{111}Zasedania Vystroekhogo Soveta SSSR chetverogo sozyva (the sixth session) (Moscow, 1957). Mentioned in Yuri Stetskovt, \textit{Sovetskaia advokatura} (Moscow: Vyshaya shkola, 1989), 18.
community (law-enforcement officials). They used direct channels of appeal to CPSU' organs otherwise inaccessible to most reformers, who publicized their views in legal journals.\textsuperscript{114}

As it turned out, however, the liberals gained certain concessions, thanks to CPSU’ officials who were prepared to implement such reforms. Revisions in the 1958 USSR Fundamentals of Criminal Procedure and the separate republic-level criminal procedure codes allowed the zashchitnik to represent minors, handicapped people, and people who did not speak the language used in court (namely Russian) from the beginning of the preliminary investigation (Article 22 of the USSR Fundamentals on Criminal Procedure). For defense attorneys who were representing all other clients, they now could enter at the end of the preliminary investigation; they were also permitted to review the investigative record and to submit to the investigator or procurator petitions requesting a supplemental investigation or the dismissal or alteration of a charge. This enabled the defense to take action before a case reached trial.\textsuperscript{115} In 1961, the USSR Supreme Court issued a decree on more specific procedures, which included an open trial heard by full court and adequate time for the defense to prepare for trial.\textsuperscript{116} In practice, these reforms did not eliminate the tendency towards accusatory bias, because investigators, procurators, and judges still had discretion over whether to implement them. For the defense, though, they did represent a move in the direction of greater access.

In addition to the work that advocates of the criminal section of the MGKA did on drafts of the Criminal Procedure Code, from 1956 to 1958, advocates who belonged to the civil section of the MGKA participated in the proceedings of a sub-committee of the Supreme Soviet that revised the RSFSR Civil Code and Civil Procedure Code.\textsuperscript{117} As of 1959 most cases brought before People’s Courts were civil and often involved limited personal property rights (including intellectual property), monetary savings, housing issues, subsidiary holdings, the

\textsuperscript{115} Ibid.
\textsuperscript{116} Butler, Soviet Law, 315.
\textsuperscript{117} Zaitsev and Poltorak, 74.
personal use of state materials, and the right to inheritance. Proportionally, however, advocates appeared in only a minority of them.

In the 1950s, advocates' participation in criminal and civil proceedings was no longer questioned. They were even tolerated in courts of cassation (appeals), although most of their petitions on this level were not satisfied by the court. A typical Soviet account of a defense attorney's role in court at this time involved how a zashchitnik clarified the sociopolitical meaning of the case, evaluated the approved evidence in court, characterized the personality of the accused, and articulated his own understanding of the measure of the crime or called for the acquittal of the accused. This role differed markedly from the role of American attorneys, who neither comment on the sociopolitical meaning of the case nor act as court assistants, but serve merely as voices for their clients. Many advocates were CPSU' members by the 1950s. Party membership secured careers in the advokatura, although CPSU' membership often continued to be an inaccurate expression of ideological leanings.

Apart from legislative reforms regarding the role of defense, the advokatura, approximately 12,828 strong out of a Soviet population of 191 million, also experienced changes in its own regulations in the early 1960s. In 1961, the city colleges of advocates in Moscow and Leningrad replaced general membership meetings with meetings attended by representatives of LCBs. This change narrowed the scope of influence the rank-and-file advocates had over issues crucial to the profession; it was confirmed later in the 1980 RSFSR Statute on the Advokatura. The 25 July 1962 RSFSR "Statute on the Advokatura" revised part of the 1939 law. Apart from a new requirement that advocates obtain a higher legal education, this was not a reformist statute, because Minist (and when that agency was

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118Ibid. 215-21.
119Ts. A. Perlov, Sudebnye prenija i poslednee slovo postgradimogo v sovetsknom iogolovnom protsesse (Moscow: Gosuizdat, 1957), 100.
120This is according to Ilya Kamenetsky; Dmitri Kipnis (interview on July 10, 1994) who practiced in Lutsk, Ukraine; and Semyon Zelvinsky (interview on July 12, 1994) who practiced in Moscow.
121See Berman and Luryi, 267.
122Ved. Verkh., Sov. RSFSR, no. 29 (1962), item 450. See translated text in Ziles, 368-70; an article on a comparison of the Stalinist law with the 1962 statute by Gutsenko, "Novoe zakonodatel'stvo soiuznykh respublik ob advokature," Sovetskoe gosudarstvo i pravo 3 (1962), 56-64; and Barry and Berman, 14.
dissolved, judicial commissions, executive committees, and local councils or sovety) was charged with the "overall direction of the colleges."

This duty included setting the schedule of fees and establishing rules regarding evaluations and probation periods. In July 1955, Minist began to receive progress reports from the presidiums of colleges on individual advocates' behavior and practice and the functioning of ICBS. In them information which dealt with attorney-client relations was revealed. There was no article within the statute which protected the advocate from having to testify against a client; instead, the advocate was only allowed to withhold information 'in the given case.'

Still other factors decreased the influence of the advocate. In his campaign to construct socialism and appeal to the people for more active participation, Khrushchev revived comrades' courts, as well as the practice of recruiting lay prosecutors and defenders to assist at trial. A number of criminal trials were conducted outside courts in the community or factories, in an attempt to bring law to the people. Until 1964 trials involving parasite charges were not attended by counsel, and the accused had to fend for themselves. There were informal links among legal personnel, especially in village courts, and criminal procedure was flexible. But one observer in the early 1960s noted how defense attorneys seemed to be the most skilled and best-composed in court.

Legal education went through a radical restructuring in the late 1950s, which included the establishment of a uniform five-year curriculum, the publishing of new textbooks, and a more rigorous and "scientific" approach. This move was a part of a more extensive program that the Khrushchev regime set forth to decentralize the state after Stalin's death. Better-trained jurists were given more responsibilities in this restructured system.

The new uniform curriculum established in 1955 by the Ministry of Higher Education

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124Martinovich, 89.
125Berman and Luryi, 279.
127ibid., 239, 280, 311.
included a broad range of course requirements, such as the history of the CPSU, a modern foreign language, political economy, and public law of bourgeois countries. In later years, students were required to take courses more specific to their degrees, and electives were available in the fifth year. The number of law students rose to about 45,000 (60 percent were still enrolled in correspondence courses) by the 1950s. The number of people entering legal occupations was increasing faster than the population growth, and better educated jurists were filling new posts.128

Upon graduation, law students received three-year assignments through a raspredelenie (a competitive state assignment process), which did not guarantee one’s place preferences. Before becoming full advocates, they needed to serve first as stazheri (attorneys-in-training) for at least six months. Due to a neglect of particular instructions on advocates’ practice in law faculties, however, the Leningrad Regional College of Advocates offered five-day courses to young advocates on raising standards of the profession.129 A number of other colleges later followed suit.

There was some mobility between legal occupations, especially the movement of former procurators and judges into the advokatura.130 While not all of these former procurators or judges were inept, they did sometimes lower the standards of practice. As happened throughout the late Soviet period, there was in some cases a discrepancy in the quality of training and practice between those advocates who attended full-time law schools, such as the law faculty at Moscow State or Leningrad Universities, and those who attended correspondence or night schools, as many former government officials turned jurists were

129Zaitsev and Pohorak, 83.
130Sometimes these transfers were a result of poor performances, as decided by government supervisors. In others, as in the case of Dmitri Kipnis, it was because of anti-Semitism. Kipnis, a Ukrainian Jew, was ostracized on several occasions during his tenure as a procurator. He confronted little anti-Semitism in the advokatura.
prone to do.\textsuperscript{131} By the late 1950s, the number of day division students was curtailed, as a result of Khrushchev's orders.\textsuperscript{132}

As a result of the revamping of legal education, as well as the strengthened role of defense outlined in criminal procedure codes, more people were trying to become advocates during the Khrushchev period. The state's control over the numbers of advocates, a practice which originated in the tsarist era, prevented a rise that would have met the actual demand. Despite the fact that his motives and objectives were not always clear, and in spite of the fact that he seemed to take a step backwards in strengthening parasite laws and lay persons' participation, Khrushchev set in motion a growing acceptance of legal norms from which advocates benefited.

E. Stagnation and Change under Brezhnev

The legal reform process that Khrushchev instituted did not take a linear path during the Brezhnev years. Jurists, advocates included, felt more assured now that they could campaign more vociferously for legal reforms without receiving harsh retributions. In addition, jurisconsults, the less prestigious lawyers who worked as in-house counsel in larger work places, were given more responsibilities with the introduction of the Kosygin reforms. Advocates who served as counsel for work places that did not have internal legal offices most likely benefited from this measure as well.\textsuperscript{133} At the same time, however, in 1965, the State Committee on Labor and Wages of the USSR Council of Ministers and the All-Union Central Council of Trade Unions further circumscribed advocates' control over their pay scales by adopting revised instructions on fees incurred for various types of legal services and clients.\textsuperscript{134}

\textsuperscript{131}Zile, "Soviet Legal Education," 176-77. Graduates of evening and correspondence schools were not subject to state assignments.

\textsuperscript{132}Khrushchev claimed that too many jurists were being produced. Ibid. 172.

\textsuperscript{133}Although Zile mentions that "advocates are concerned with encroachment of jurisconsults," because of their growing numbers and due to increased demand for legal services in the economic sphere. Zile, "Soviet Advokatura Twenty-five Years After Stalin," in Soviet Law After Stalin, part III, ed. Donald Barry and others (Alphen aan den Rijn, The Netherlands: Stijhoff and Noordlinger, 1979), 208.

During the late 1960s, in particular, several advocates and other reform-minded jurists campaigned for increased rights of the defense in the pre-trial phases. Some of them represented dissidents in high-profile political trials and put their careers on the line. In 1968, for example, advocate Boris Zolotukhin was disbarred from MGKA because of his work on one such case (In 1988, the MGKA presidium voted to reinstate his membership, and he later became a Duma deputy). These combined efforts led some western observers to view the *advokatura* as a part of a nascent interest group in Soviet politics. But most of revisions in the early 1970s provided only an appearance of reform, without a lessening of the investigator and procurator’s discretion. In an attempt to correct this accusatorial bias, members of the USSR Supreme Court at this time sometimes acknowledged the incompetence of law-enforcement officials in their rulings. Many of the successful appeals dealt with either a lower court’s refusal to grant the accused’s request for a particular advocate or the inadequate preparation of the advocate, due to the neglect of the court to hire one earlier in the case.

In the area of economic law, the responsibilities of advocates actually expanded because of the state’s initiatives, although the majority of civil cases at this time were heard without an advocate present. On 23 December 1970, the Central Committee and the Council of Ministers issued a joint decree, “On Improving Legal Work in the National Economy,” as a stop-gap measure allowing enterprises which had no full-time jurisconsults to contract advocates. On 8 December 1972, the USSR Ministry of Justice gave the *advokatura* a retainer contract for legal services at enterprises, institutions, and other organizations (except

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collective farms). In the following year, advocates were allowed to provide services to collective farms. Advocates' contracts with enterprises also included their work as representatives before Government Arbitration Boards (Gosarbitrazh). In addition, some advocates signed part-time contracts with ministries.

Other experiments with advocates' functions were underway in the 1970s, including work at special consultative desks at houses of culture, polyclinics, city soviets, and comrades' courts. Advocates also were expected to act as “social workers” for clients who were given suspended sentences or on probation. But despite their new functions, advocates were still expected to inform clients about the law, not advise them on how to handle their business concerns or reinterpret laws to fit their clients' needs, both of which are common practices among American lawyers. The Soviet planned economy automatically dictated the boundaries of their practices.

The official institutional identity of the advokatura was further established by law in the late 1970s and early 1980s. The 1977 Brezhnev Constitution outlined the right to a defense attorney (Article 158) and acknowledged colleges of advocates (Art. 161) as constitutionally protected bodies. On the other hand, by its inclusion in the Constitution, hardly a revered document, the advokatura appeared as more an arm of the state than as a semi-autonomous profession. The 1980 RSFSR “Law on the Advokatura” (adopted after the all-Union version was approved in 1979) outlined the bar's revised rights and responsibilities. At the same time that this document apparently granted the bar increased legitimacy, it also emphasized its dependence on Ministry.

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10 From the lack of available sources, assessing the weight of advocates' effect on the operations of these enterprises is difficult. Zile, “Soviet Advokatura Twenty-five Years After Stalin,” 222. See also article by William Butler in same publication, “Some Reflections on the Soviet Advokatura: Its Situation and Prospects,” 239-43, in which he argues that the profession could become more influential given their increased responsibilities in the economic sphere.

11 Former Moscow advocate, Zelvinsky, worked part-time for the Ministry of Foreign Trade under Brezhnev and was present at a number of trade meetings in Eastern Europe.

12 Zile, 228. See also K.N. Apraksin, et. al., Advokatura v SSSR (Moscow, 1971), 220.

13 Barry and Berman, 13.
Colleges of advocates were defined as "voluntary organizations," but they could only be formed after meeting the approval of local government agencies and the republican justice ministry. For decades, government officials had been keeping the number of advocates at a low level -- only one per 13,000 people -- and they continued to supervise individual advocates through keeping tabs on their files and sometimes monitoring their courtroom behavior. In addition, advocates still were obliged to give public lectures about socialist legality, reconfirming their duty to disseminate state propaganda. In 1983, advocates gave 284,000 lectures, as a response to a USSR Ministy resolution of 8 July 1983, which called on legal workers to strengthen the "socialist discipline of labor." Such regulations angered some advocates, while other advocates actually favored the justice organs' parental role.

There were several improvements in the status of the *advokatura* in the revised statute, however. For example, advocates had an expanded right to make inquiries and request documents during the preliminary investigation. According to Article 16, an advocate could not be forced into interrogation as a witness during trial or in pre-trial proceedings related to circumstances which became known to him while fulfilling his duties as a representative in civil cases or as defense counsel. Unfortunately, in reality, investigators sometimes pressured defense counsel during interrogations to drop their cases. But nevertheless this statute granted a broader lawyer-client privilege than previous ones had, even though advocates were supposed to persuade clients they believed were guilty to repent in court. In addition, before the 1980 statute, the RSFSR Ministry of Justice and executive committees of

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144Berman and Luryi, 273.
145Referred to in a *spravka* (informational letter) written by the RSFSR Ministry of Justice's Department of the *Advokatura* (undated). Located in the Russian Ministry of Justice Archives, Otdel advokaty, delo 07-09, 1984, str. 30. The USSR Ministy resolution was released in accordance with decisions made at the June 1983 Central Committee plenum. At the time justice officials from the Department of the *Advokatura* and Administration of Cadres were stressing the importance of conferences advocates were required to attend on their continuing legal education and methods for correcting the "undignified" behavior of some of their fellow cadres.
146Some advocates of the two Moscow area collegia voiced their concern over the possible founding of a union, as they did not want to lose their informal connections with state officials by having to comply with mass interests across the USSR. See Jean-Guy Collignon, *Les Juristes en Union Soviétique* (Paris: Editions du Centre National de la Recherche Scientifique, 1977), 228. Only the Lithuanian college of advocates had a code of ethics, perhaps due to its distance from Moscow. Butler, *Soviet Law*, 88.
147Berman and Luryi, 278.
148Ibid.
local soviets could impose disciplinary penalties, including expulsion, on advocates. In the 1980 statute, only the presidia of colleges could enact such measures, although Ministy and justice sections of soviet executive committees could still request that a presidium initiate a disciplinary case against an advocate.\textsuperscript{119}

Organs of the CPS| also continued to supervise the actions of the bar and made decisions on its functions through decrees. On all accounts, colleges of advocates could not make major policy decisions affecting their organization without the participation of state officials.\textsuperscript{130} The improvement with the most potential for increasing the influence of advocates in the legal system was the granting of their right in Article 19 to represent clients in disputes against administrative agencies before administrative tribunals.\textsuperscript{131} But even in the 1990s, few advocates were accepting administrative cases. It appears then that with every seeming improvement, there were certain structural impediments or disincentives to its becoming a permanent practice. Such roadblocks were due to the continuing discretion of state officials and other court actors over the corporate organization of the bar and the scope of advocates' influence in court cases.

According to Louise Shelley, the power of jurists was derived from their proximity to the Soviet state, not from any valuation of their particular forms of expertise.\textsuperscript{132} Because individual advocates were considered the most autonomous of legal actors in relation to their daily functions, their alignment with the state's interests was weaker than that of most other legal actors. For example, advocates' effectiveness in court always was limited to some extent by the state's interest in securing high conviction rates and by their lack of access to clients and case files before (and sometimes during) trial. Investigators and procurators generally

\textsuperscript{119}Ibid, 293. For information on disciplinary procedures from a Soviet perspective, see Iurii Stetsouievskii, Svetskaja advokatura (Moscow: Vyshaya Shkola, 1989), 162-76.

\textsuperscript{130}Butler, Soviet Law, 87. State advisory organization for advocates were called councils for advocates' affairs.

\textsuperscript{131}Berman and Luryi, 286; and Luryi's review article in the American Journal of Comparative Law, 700.

\textsuperscript{132}Louise Shelley, "Lawyers in the Soviet Union," in Professions and the State: Expertise and Autonomy in the Soviet Union and Eastern Europe, ed. Anthony Jones (Philadelphia: Temple University Press, 1991), 85. At the same time, however, because advocates were not powerful actors in courtrooms, they did not experience the state's direct interference into their daily work life as judges sometimes did, particularly involving "telephone law" (Party members' practice of phoning judges to order their preferred outcomes).
had the upper hand in that process, especially in pre-trial stages. Advocates appeared in court in 70 percent of criminal cases, but were present only for one-third of the preliminary investigations.\textsuperscript{153} Ministy statistical data show that from 1970 to 1980 in the RSFSR investigators declined more than 70 percent of petitions and declarations filed by advocates.\textsuperscript{154}

On average, courts acquitted defendants in only 1.1 percent of criminal cases in the 1970s.\textsuperscript{155} Full acquittals (acquittals on all charges) were rare, and to compound the impediments standing in the way of a sufficient defense, advocates were paid less for their work in preliminary investigations than for trial work, owing to a Ministy decision.\textsuperscript{156} Moreover, the payment scheme for court-appointed criminal defense was set up in such a way that advocates were better compensated when the accused were convicted.\textsuperscript{157} Most zashchitniki, out of fear of being cut from cases all together, did not risk confrontations with law-enforcement officials over their clients' mistreatment while detained. Such an acknowledgment of law-enforcement's upper hand illustrated advocates' recognition, if not acceptance, of the "statist orientation" of Soviet political culture.\textsuperscript{158} Although the late Soviet criminal procedure codes did not explicitly place the burden of proof on the accused, in practice a presumption of innocence was lacking in Soviet criminal courts, and its absence gravely impeded the standing of advocates.\textsuperscript{159}

These negative aspects of an advocate's practice, however, did not always translate into total failure. Zashchitniki had opportunities to gain at least partial acquittals, such as a return for supplementary investigation, a reduction of the charge, or a more lenient sentence. Many

\textsuperscript{153}Butler, \textit{Soviet Law}, 89.
\textsuperscript{154}A. G. Toriannikov, \textit{Advokat v usolyovnom protesse} (Moscow, 1987), as reviewed by M. Gotshtein in \textit{Sovetskaja iustitsiya} 21(1989), 31.
\textsuperscript{155}Huskey, "Lawyers in the Soviet Union," 6.
\textsuperscript{156}Peter Solomon, Jr., "The Role of Defence Counsel in the USSR: The Politics of Judicial Reform Under Gorbachev," \textit{Criminal Law Quarterly} 31:3 (December 1988), 82.
\textsuperscript{157}In cases when the accused was found guilty, advocates were more likely to be paid at a higher rate established by the courts from the convicted persons' properties and their future wages earned while in prison. Berman and Luryi, 291. See article 322 of the early 1980s version of the RSFSR Criminal Procedure Code (UPK), and Yuri Luryi, "The Right to Counsel in Ordinary Criminal Cases in the USSR," in \textit{Soviet Law After Stalin, Part II}, ed. Donald Barry and others (Alphen aan den Rijn, The Netherlands: Sijthoff & Nordhoff, 1979). 113-14.
advocates "came to treat these outcomes as 'victories' and worked hard to achieve them." At times, advocates gained these small victories through personal contacts with legal officials and found that they could rely on judges more often to grant their requests.

F. Summary of the Organization and Legal Practices of the Late Soviet Advokatura

Below is a synopsis of how the advokatura was organized and how advocates practiced until the late 1980s.

1. Organization

One unique aspect of this Soviet institution was that it functioned within a semi-autonomous market. Advocates, who accounted for only around 10 percent of the entire legal profession, competed for clients on a fee-for-service basis and were required to belong to one of the 163 Soviet colleges of advocates, which were organized on the oblast level. Twenty to thirty percent of an advocate's pay went to college funds and legal aid funds.

Colleges were partially regulated by the Department of the Advokatura in Minjusl, which supervised pay scales until the late 1980s, oversaw the process of admittance and disbarment, and reviewed reports of cases and activities of the members of each college. But colleges had a semblance of control over admissions, disbarment, professional conduct, and fee schedules. The RSFSR Ministry of Justice authorized the local ispolkom to implement its policy on the advokatura. CPSU officials in the administrative organs section (otdel administrativnykh organov) of oblast (obkom) or city (gorkompartii) Party committees monitored bar activities. Local CPSU officials in Moscow often gave presidium members instructions, such as regarding whom to fire.

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161 Minjusl's control over the advokatura became a point for reformist jurists to rally against in the Gorbachev period. See G.K. Sharov and B.A. Dashchinskii, "Nekotorie voprosy obshchego rukovodstva advokaturny," Advokatura i sovremennost', 14-19. The courts also were subordinate to Minjusl, which had the power of "organizational guidance" and served as a "transmission belt" to the courts for the CPSU's and the government's policies. Hendley, 123.
Every three years, the general assembly of each college (composed of a certain quotient of the membership) elected a presidium, which appointed managers (zaveduiushchie) of LCBs, assigned them new members -- with Miniust's approval -- and monitored the conduct and discipline of its members. Most Soviet colleges lacked ethical codes and were forced to rely on CPSU' and Miniust instructions. The 1980 RSFSR Statute on the Advokatura, however, did offer Russian advocates guidelines pertaining to conflicts of interest, client-lawyer confidentiality, and the right not to appear as witness against one's client. Typically the general assembly had little influence inside a college compared to the presidium, whose members had direct ties to CPSU' and government officials.

The number of legal consultation bureaus (LCBs) actually grew between 1976, when there were 2,263, and 1986, when there were 2,962. But in 1984, 92 districts in the RSFSR had none. In terms of their facilities, LCBs were not comparable to most western law offices. Those located in cities usually were better equipped than those in the provinces, but this difference may have only entailed a few more rooms and central heating. Inside LCBs there were no distinctions of rank or pay depending on age, years of practice, or experience, although managers earned the highest salaries. Managers were CPSU' members and influential in their colleges. Their responsibilities included assigning advocates in their bureaus to cases, supervising advocates' files, arranging payments schedules, and monitoring the standards of practice. They were the legal equivalents to factory heads (nachal'niki) who supervised levels of production.

2. Legal Practice

In the Soviet era, advocates had a monopoly over legal practice, but not over the right to represent someone in court. The legal practice of advocates was more prestigious and lucrative (usually because of MIKST, the extra payments from clients) than of juriskonsults,

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162 Stetsovskii, 73.
163 Berman and Luryi, 283. See also Sovetskaia justitsiia 17(1984), 4.
164 Butler, Soviet Law, 83.
who appeared more often in arbitration cases and worked full-time for state enterprises. Advocates were perceived as being better educated and more articulate in court. Generally, certain informal practices that advocates adopted, such as accepting MKST, were overlooked, until some kind of graver transgression was made, at which point sometimes even the KGB would intervene.

The majority of advocates' daily matters fell into the civil sphere, involving housing issues, family law, employee complaints, pensions, patents, copyrights, inheritance, and residence permits (propiski). Some advocates spent most of their time in court and in counseling clients during walk-in hours in LCBs. Others signed part-time contracts with state enterprises to work on particular civil and arbitration cases.

The majority of the court cases in which advocates participated, however, was criminal. While some advocates specialized in certain areas, like criminal or transport law, most dabbled in both the civil and criminal spheres of practice. Criminal cases involved anything from petty theft and hooliganism (involving alleged violations of the rules of morality and social behavior) to crimes against the state, including economic crimes which sometimes held the death penalty. Clients from all social strata frequented LCBs for free legal advice, but the majority tended to come from the middle and lower classes. Advocates were expected to represent their clients and to serve their needs only within the boundaries established by Soviet law. Their officially-sanctioned duties in court were not so much related to defending the due process rights of the defendant as they were to revealing procedural errors.

3. Differences in Outlook, Opinion, and Treatment

Differences in outlook and opinion among advocates were drawn along lines of age, status, education, location (urban versus rural), gender, and ethnicity. Status differences, such as those between rank-and-file members and those who sat on the presidiums or were managers, also persisted. The quality of training differed depending on the type of law
programs advocates attended. Concerning location, the practice of urban advocates tended to be far more lucrative and involved a wider spectrum of issues and cases.

During the Soviet period, discrimination along gender and ethnic lines disappeared in theory. In practice it did not. The number of female advocates rose through the years, although they did not occupy many college leadership positions. In 1975, only 29.2 percent of the managers of LCBs were women, although women advocates made up 44.5 percent of the full population of advocates in the RSFSR and 41.4 percent of advocates in the entire USSR. In the late 1980s, they were 40 percent of the advocate population. In 1990 they composed 50 percent.

Discrimination against Jewish advocates continued, albeit more subtly, during the Soviet era. In fact, in 1974, there were cases involving Jewish lawyers who were forbidden to represent political defendants in trials in Leningrad. CPSU authorities in Moscow sometimes refused the membership of Jewish candidates to the advokatura. In the case of his candidacy, Jewish advocate Mikhail Barshchevskii was admitted to MGKA in 1979, only because of a special compromise made between the MGKA presidium and the Moscow Gorkompartii. MGKA agreed to admit a candidate whom it had originally rejected to appease members of the committee; in turn, the Gorkom allowed for Barshchevskii to enter MGKA. Boris Abushakhmin, a member of the MGKA presidium from 1977 to 1990, described relations between the two bodies as an “undeclared war,” and accused the Gorkom of consciously banning the most talented candidates from entering the bar.

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166 Butler, Soviet Law, 87.
167 Petrukhin, Vam nuzhen advokat, 27.
168 Luryi, “The Role of Defence Counsel in Political Trials,” 308. Luryi also told Huskey (FN #60 in “Between Citizen and State: The Soviet Bar (Advokatura) Under Gorbachev,” Columbia Journal of Transnational Law 28:95 (1990), 108) that “in the decade after World War II, wounded Jewish lawyers, unable to join the bar formed their own legal cooperatives under the auspices of the Leningrad city government.”
169 Interviews with Barshchevskii (24 March 1995) and Abushakhmin (29 April 1995).
4. Education and Training

In order to be eligible to join a college of advocates, an applicant needed to fulfill three requirements. First, he had to have successfully completed a five-year law school program, either in a law faculty of a university, a legal institute, or a legal correspondence school. To be admitted into a school of their choice, students sometimes acquired recommendations from CPSU organizations inside their schools or work units; sometimes they bribed admissions committees. Typically, full-time law students who attended classes during the day had better job opportunities than part-time, night, or correspondence students, and only they were assigned positions through a raspredelenie, organized by the Ministry of Higher and Specialized Secondary Education and GOSPLAN. Full-time day programs were of a more rigorous academic nature than the other programs, which emphasized rote memorization. The Ministry of Higher and Specialized Secondary Education, in conjunction with the Ministries of Justice and Internal Affairs, largely dominated the process of legal education policy and implementation, including course requirements. Curricula tended to be broad in the first years, with emphasis on CPSU history and Marxism. Most law faculties lacked specific courses geared towards training future advocates, however.

Second, to compensate for this, a new graduate needed to complete a training period (stazhirovka) up to a year in length in an LCB, government agency, or enterprise. This clinical instruction typically was not very instructive or well-organized. Third, a candidate needed to pass an entrance exam (this was not strictly enforced until 1989, and then only sporadically, although it was outlined in the 1980 RSFSR statute). The majority of law graduates competed for jobs in law enforcement agencies. On the other hand, because there were so few spots in colleges of advocates earmarked for new entrants each year, gaining entrance into the advokatura was highly competitive. Exceptions to these admissions rules often were made

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171Ibid. 207.
for former judges, investigators, and procurators, who were permitted to transfer directly into a college of advocates.

Conclusion: A Comparison of the Two Eras

This chapter has illustrated how several patterns, structures, and actors of the Russian bar were carried over from the tsarist to the Soviet period. The development of the advokatura in both eras was characterized by a general lack of unity, a lack of shared goals and clear ethics instructions, and continual tensions between the bar and state officials. The lack of unity was not exclusively a result of the different distinctions marking various lawyers; lawyers in many western countries have been functionally separated. It also stemmed from the fact that boundaries of practice were weak, conflicting opinions among members surfaced, and state officials exploited these internal rifts.

In the cases of both the tsarist and Soviet-era bars, state officials insured a lack of unity by preventing the formation of a national organization of advocates. In the tsarist era, the divisions among practicing attorneys and existence of the underground lawyers hampered any possible unified effort on the part of the whole bar against the state. In the early Soviet era, educated advocates had to contend with underground legal practitioners and lay defense attorneys. Throughout the Soviet era, advocates’ relations with other jurists were not collegial, apart from their relations with reform-minded legal scholars, so there was little sense of a unified legal profession.\textsuperscript{173}

In both cases, legal officials, especially those in Minist or its equivalent, set regulations on the profession, which weakened its profile as a self-governing organization. But also in both cases, the state failed to control the bar completely. Certainly in the pre-revolutionary period, sworn attorneys in St. Petersburg, Moscow, and Kharkov accurately described themselves as being relatively autonomous. With respect to bar organization,

\textsuperscript{173}Huskey explains relations among jurists as “institutional rivalries,” based on the various interests jurists had depending on their institutional affiliation (i.e., the Procuracy, the law-enforcement agencies, the judiciary, the advokatura, etc.), in “The Politics of the Soviet Criminal Process,” 93.
advocates in these three Russian cities in some ways surpassed bars in Western Europe. Their behavior and position in jury trials enhanced their reputation and influence in the legal system, and the structure of a typical practice (one-person law firms) made state supervision over them difficult. Moreover, they created legal aid bureaus on their own initiative, not the state's. Their counterparts in the provinces, on the other hand, could not be described as relatively autonomous because of their dependence on local judicial authorities. Finally, in the Soviet period, any description of the advokatura as being a self-managing organization was rhetoric. But in comparison to many other occupations, advocates had more personal control over their daily functions. The reason that Soviet officials maintained a relatively weak corporate supervision over the colleges at certain points, however, may have involved their assumption that lawyers had negligible influence in courts and therefore could do little harm to the state.

Still, state officials took precautions to insure that advocates would not gain any more influence than they already had. Both tsarist and Soviet advocates were pitted, often unequally, against investigators, procurators, and judges in the criminal process. Such actors often disdained advocates' participation in pre-trial stages. Even in jury trials, tsarist advocates were forced to contend with judges who resented their influence over juries. Under Soviet power, the autonomy of advocates as individual practitioners was further constrained. Soviet advocates were torn between their position as defenders of the accused and their position as court assistants.

The authoritarian practices of both the Russian autocracy and of the Soviet regime limited the scope of the bar's organizational potential and advocates' areas of practice. Philosophical and institutional support for legalism (as opposed to statism) remained weak in the Soviet Union even into the early 1990s.174 The tension between the state officials and

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174 Statism implies an emphasis on particularistic central directives imposed by bureaucrats on society, whereas legalism implies a universal adherence to and respect for more permanent laws, values, and norms, and an ordering of relations among individuals in a less coercive manner. A third orientation, nihilism, stained Russian and Soviet legal history. Eugene Huskey, "A Framework for the Analysis of Soviet Law," Russian Review 50 (January 1991), 53-70.
advocates never dissolved. On the one hand, legal institutions like the *advokatura* were necessary as a part of maintaining the state's legitimacy. On the other, legal institutions also supported environments which created opportunities for advocates to challenge political power, particularly in criminal courts.\footnote{Barry and Berman, 40.}

The comparison between the two *advokatury* does not stop at their relations with the state, however. As in the pre-revolutionary period, Soviet advocates always were struggling against a reputation problem due to the popular view that they swindled money and obstructed criminal justice.\footnote{George Ginsburgs, review of *Les Juristes en Union Sovetique*, by Jean-Guy Collignon. In *The American Journal of Comparative Law* 28(1980), 689-91.} That lack of respect for due process and the rule of law impacted on the organization of the *advokatura* itself. In both, the ruling councils or presidiums often monopolized control over internal politics and policy-making, contrary to its internal guidelines. Moreover, society at large, as well as the bar, sometimes discriminated against certain populations, such as Jews and women. The Bolsheviks allowed women to enter the *advokatura*, but female advocates were not proportionally represented in its leadership.

Finally, some individual advocates, throughout the late tsarist period and Soviet period, risked their careers and sometimes personal safety to campaign for increased rights of the accused and more professional autonomy. Often their efforts were in vain, particularly in the Soviet period. Instead of establishing a set of laws as the legal foundation of a society, political elites continually remade the rules in the Soviet system in response to their changing interests. Then, in the late 1980s, the *advokatura* responded in its own way to the major political and socioeconomic reform efforts affecting all of Soviet society. Like its western counterparts, the Russian bar was evolving away from the state and towards relative self-management.
CHAPTER TWO
ON THE EVE OF A COLLAPSE:
THE ADVOKATURA IN THE GORBACHEV PERIOD

This chapter will explore what changes occurred in the Soviet advokatura’s organization and in its members’ legal practices during the Gorbachev period (1985-91). Legal reforms in this period included the strengthening of the bar as a self-regulating institution. In addition, advocates were meant to play a more substantive role in preliminary investigations, including earlier access to their defendants and case files, as well as in trials. They were also supposed to educate the population about the legal reforms of perestroika. But not all that was planned was what transpired. More specifically, this chapter will answer why the Gorbachev regime’s goals for the advokatura were not always consistent with the actual developments which took place. It also will examine the extent to which advocates themselves actively participated in general political developments during this time.

Perestroika, Legal Reform, and the Role of the Advokatura

Initially, Gorbachev’s economic and political reforms were to have accelerated certain forces that had been set into motion during the late Brezhnev, Andropov, and Chernenko periods, in order to decentralize the unwieldy government bureaucracy, improve the production and efficiency of the Soviet economy, and increase the accountability of managers and bureaucrats. Perestroika, as is well known, was not conceived as a total overhaul of the

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political and socioeconomic system; nor was it a well-articulated reform package. In its first three years, perestroika was a scheme of limited reforms articulated from above. The CPSU leaders were largely setting new economic policies and expecting certain segments of society to fulfill their dictates.

By the summer of 1987, Gorbachev -- hoping to appeal to a wider mass of people about his reforms -- began to speak in public forums about the positive aspects of pluralism, albeit, "socialist pluralism," as it related to a freer press and an acceptance of at least some amount of open criticism about Soviet society. It was only beginning around 1989, when CPSU leaders allowed members of the first Congress of People's Deputies to exhibit a "pluralism of opinion" and fragments of "civil society" began to appear and assert themselves -- environmental groups, new societal associations, political factions, and cooperatives, to name a few -- that the transformation of Soviet society took on momentum from below. In Gorbachev's attempts to convince professionals of their new roles as supporters of the reform process, he facilitated a more open environment. In fact, professional groups began to normalize contacts with international professional communities. At this point as well, the terms glasnost (openness of opinions) and demokratizatsiya (democratization) were being widely used by Gorbachev and other CPSU leaders. Democratization involved the greater involvement of management and work forces in the running of enterprises and other

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6Robert V. Daniels discusses the three phases of perestroika, with 1991 a period of swift collapse, in Soviet Communism from Reform to Collapse, ed. Daniels (Lexington: D.C. Heath, 1993), xxiii. S. Frederick Starr was one of the first western scholars to point out this nascent development. See "Soviet Union: A Civil Society," Foreign Policy (Spring 1988), 26-41. Richard Sakwa, on the other hand, argues that no civil society existed in the Gorbachev period, but that the activities of certain groups and individuals "merely represented patterns of subjectivity at variance with those espoused by the old regime and they were neutral as to what sort of social order might replace the regime." Richard Sakwa, "Subjectivity, Politics and Order in Russian Political Evolution," Slavic Review 54:4 (Winter 1995), 956.
organizations, as well as a greater participation of constituencies, such as in more open elections.\footnote{The Central Committee meeting of 27-28 January 1987 has been referred to as the “Democratization Plenum” because it was there that the political foundations for the law on the state enterprise was laid. Feldbrugge, 59.} In turn, this process was supposed to revive the Soviet state’s dwindling legitimacy.

So, as the 1980s concluded and Eastern European countries were rejecting communism, Gorbachev and his supporters in the Party and government were forced not only to accelerate the pace of economic reforms, but to radicalize many political reforms as well. In part, they chose to use the 1977 USSR Constitution -- a legal document which formerly played little to no role in how the Soviet political system operated and political conflicts were resolved -- as an instrument for placing checks on the Party’s power and for empowering otherwise weak institutions like legislatures to set public policy. From 1988 to 1990, they amended the Constitution to allow for, among other changes, contested elections to legislatures on all levels of government, a president to be appointed, and limitations to be placed on the CPSU’s dominant role in Soviet life. But these changes were not smooth, nor were they universally accepted. Gorbachev struggled to retain support for his reforms among factions who felt he was proceeding too slowly towards democracy and a market economy and tried to placate others who believed that his reforms were dismantling Soviet power. The reform process was hardly taking a linear path: many CPSU’ apparatchiki and government officials fought to prevent too much of their power from devolving any further in the late 1980s and early 1990s.

A. Why Legal Reform?

Since the Stalin period, CPSU’ and bureaucratic officials treated law in the Soviet Union as an instrument of power that insured the fulfillment of official plans and objectives, helped to legitimate the state in the eyes of the masses, and contributed to conflict resolution in the civil sphere. Gorbachev, who received a legal education in the law faculty at Moscow State University in the early 1950s, believed that the most likely way to insure the implementation
of *perestroika* was through the initiation of a new set of long-term rules. In his book, *Perestroika*, Gorbachev discusses the importance of observing law, particularly as a way to guard citizens from abuses of power.9 Instead of a system run by countless, and often contradictory, short-term administrative orders (which by the mid-1980s were perceived to be part of the reason for the Soviet system's failures), the daily workings of the Soviet political and economic system would be based on laws, whose observance served the interests of citizens and bureaucrats alike. These laws would make citizens and bureaucrats more accountable to one another and insure that the Soviet system would run more efficiently, if not more humanely, too. Legal reform was in principle supposed to “construct an institutional and regulatory framework for *perestroika.*”10

During *perestroika* the Soviet Union still lacked the three main components of rule of law, as developed in contemporary western political regimes: a government of laws, not of arbitrary rule by those in power; due process guarantees; and a legal culture which supports legal institutions and processes.11 Bureaucrats were not the only actors who did not respect law in the Soviet Union. Average citizens also saw law as something that was to be circumvented. Citizens were more attuned to appealing to certain key personalities of the moment -- local administrators or Party officials, for example -- instead of to the courts and laws, which were more impersonal. Thus the third part of the equation, a legal culture, was not going to just suddenly materialize once legal reforms were implemented.

*Pravovoe gosudarstvo* (law-based state), however, was never before mentioned by CPSU or government officials -- considered too bourgeois -- or allowed to be discussed thoroughly by legal scholars and journalists until the Gorbachev era.12 Never had previous

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10White, Gill, and Slider, 212.
law-reform movements in the Soviet Union focused on individual rights or had state officials been tolerant of such severe criticism of the existing system. The results of several interviews of advocates and judges I conducted in 1994-95 show that the law-based state concept is now associated with the optimism of the Gorbachev era and not considered attainable until well into the next century. At the time, however, its very discussion represented a willingness on the part of Gorbachev and other CPSU leaders to take into account the opinions of legal professionals and to take specific actions in the area of legal reform. Instead of focusing exclusively on “socialist legality,” a Soviet-era term that denoted collective mass adherence to rules of the state, this newly-introduced term indicated that political elites were prepared to circumscribe their own power and strengthen individual rights -- not just citizens' duties, obligations, and restrictions.

The drive for legal reform in the Gorbachev period actually began in early 1986, with journalists who boldly exposed a series of abuses in the administration of justice, legal scholars, particularly those from the Institute of State and Law of the USSR Academy of Sciences (IGPAN), also were leaders in the call for legal reform. Scholars from IGPAN

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Literaturnaja gazeta. 28 June, 1989. 2. FBIS-SOV-89-133 (13 July, 1989), 79; A. Vaksburg. "Terminy, kotoroe reshuiut vse," Literaturnaja gazeta. 3261 (27 Sept., 1989), 10; Iu. Feotanov (interview with V. Lakowlev). "How the Judicial Reform is Going," Izvestija. 1 December, 1989. 4. FBIS-SOV-89-24 (19 December, 1989), 100; Iu. Feotanov. "Limits on Power," Izvestija. 24 November 1989, 3. FBIS-SOV-89-242 (19 December, 1989), 106. Donald Barry. "Introduction," in Barry, xiii-xiv. 14Feldbruge, 68. One indication that Gorbachev was taking the idea of law seriously in mediating conflicts, at least towards the end of his regime, was a Central Committee directive “On the Creation of Legal Services in Party Committees and Organizations under their Jurisdiction,” signed by N. Kruchina and A. Pavlov on 19 July 1990 (FBIS 89, opis 21, delo 15, TsKhSD). The Central Committee had been studying this issue since at least the spring of 1990 because members viewed the creation of such services to be supportive of “strengthening the welfare of their activities and the defense of the rights and legal interests of Party organs and their workers.” Not only is this document interesting because it reveals a concern over the waning authority of the Party; it also shows that the law was seen as a potential way in which to protect Party property. As the Central Committee authors noted, “A number of Party organs are becoming co-founders of various organizations, associations, and joint ventures using Party property. A necessity is arising under these circumstances to increase legal defense of property and other legal interests of Party organs and workers.”


16Academicians V. Kudriavtsev and A. Lakowlev were particularly vocal about eliminating Party intervention in court decisions. “Pravo i demokratija (Interv’iu Iu. Feotanov s akademikom V. Kudriavtsevym),” Izvestija, 4
completed work on a “Theoretical Model of the Criminal Procedure Code” in the spring of 1988. The authors of this document called for a higher degree of legislative formalization of judicial discretion, including increasing the number of court assessors; the elimination of the death penalty; an assertion of the presumption of innocence; and a strengthening of the accused’s rights. Moreover, most of these calls were not left unheeded by political elites this time.

Before any legislative actions were taken concerning reforming the general judicial system in the early part of the Gorbachev era, high CPSU organs first issued statements about their intentions to initiate reform. In the first years of the Gorbachev period, journalists and legal scholars first exposed inadequacies in the legal system and proposed changes, but only the Party could enact actual legislative revisions. The CPSU had not yet lost its monopoly on political control, as outlined in Article 6 of the USSR Constitution.

The first wave of legal reform proposals came between 1986 and 1988, hopeful years when the economic reforms were just beginning to be implemented. During his speech at the 27th CPSU Congress in February 1986, Gorbachev called for reform of the judiciary and law-enforcement organs. He also noted the importance of observing the law and the equality of all Soviet citizens before the law. Three Central Committee decrees were released between 1986 and 1988 concerning the long-term strengthening of socialist legality and the preservation of legal rights and interests of citizens. But the 19th CPSU Conference in June -


18 Frances Foster-Simons, “Towards a More Perfect Union?”, 337. Article 6 was amended in March 1990.

19 M.S. Gorbachev, Opening Speech XXVII S’ezd Komunisticheskoi partiisovetskogo soiuza: stenograficheskii otchet (Moscow: Izd. politicheskoi literatury, 1986), 84.

July 1988 marked a turning point for judicial reform, as well as for electoral reform and government and CPSU' relations.

Reforms of the court system were linked with Gorbachev's efforts to end corruption, and namely forms of personalized power, in the Party's ranks. Gorbachev's regime aimed for courts to become more independent from local state and CPSU' bodies. Local CPSU' organs sometimes intervened in cases they considered to be of particular concern. This interference, often described as "telephone law," weakened the legitimacy of the Soviet courts. But local justice departments posed the larger threat to judges' independence. The court system had fallen under the partial jurisdiction of the Ministry of Justice (Minjust); it had not been a separate branch of judicial power. Courts and judges were dependent on local justice officials for various resources, including facilities and housing.

Earlier in the 1980s, Chairman of the USSR Supreme Court Terebilov led reforms of the practices of appellate courts in an attempt to administer justice more impartially. While this effort reaped positive results, in 1988, the government initiated more reforms aimed at increasing judicial independence. The USSR Supreme Soviet adopted the "Law on the Status of Judges," which expanded a judge's tenure to ten years. It also stipulated that the legislative body at the next higher territorial level select trial judges. This procedure was initiated to prevent judges from becoming dependent on the same local officials for appointment, as well as housing and other benefits. Also, the main function of Minjust vis-à-vis the courts was limited to their "organizational maintenance," instead of their "organizational guidance"; this change was supposed to signify how Minjust's role would be more administrative. A number of other laws on the judiciary were passed in 1989 and 1991, and, in 1992, the Russian Supreme Soviet passed a new law on the status of judges, establishing the principle of

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21 Mark Beissinger, "Transformation and Degeneration: The CPSU Under Reform," in Millar, 220. See also Solomon article in Millar.
24 Hendley, Trying to Make Law Matter, 126.
life appointments.\textsuperscript{25} There is strong evidence to suggest, however, that the Gorbachev reforms may have improved the status of people’s court judges somewhat, but they did not lessen their dependence on justice officials or their direct superiors in the courts.\textsuperscript{26} Nor did they cause judges’ attitudes and court practices to change overnight.

B. The Role of the Advocate: Old Model and New Views

Advocates were not top judicial elites in the USSR; their position as opponents of the state insured that. In some ways, advocates were treated like any other work force in the Soviet system: a production unit to be harnessed and directed to meet whatever needs existed at the time. In the Brezhnev era, advocates’ work-force numbers were figured regularly by GOSPLAN and the State Planning Committee, as well as the Ministry of Justice.\textsuperscript{27} But advocates were considered by the Gorbachev regime to be well-educated specialists with particular skills that equipped them better than perhaps any other professionals to participate in the reform process.

Gorbachev looked to the \textit{advokatura} and advocates as possible role models of a new civic virtue in the age of \textit{glasnost’}, by socializing their clients to appreciate how laws would now, at long last, work in their favor. As a part of the “Over-all Program for Goods Production of the People’s Demand and the Sphere of Services, 1986-2000,” the Soviet government envisioned a widening of the network of legal consultation bureaus (LCBs) and better access to legal services to the population.\textsuperscript{28} Coupled with their mandate to increase the number of law offices which served the general public was advocates’ expanded role in the judicial system. For example, they would be permitted to participate more fully in the process of criminal procedure. Finally, they would act as instruments of democratization.

\textsuperscript{27}P.D. Barenboim, “Puti sovershenstvovaniia advokatury.” \textit{Advokatura i sovremennost’} (Moskva: IGPAN, AN SSR) 21.
(demokratizatsiia) in Soviet society; their bar associations would experience less interference from CPSU' and government officials in order to allow advocates to supervise their own professional behavior to a certain extent and to participate in a number of new legislative drafting procedures.

I. Advocates in Criminal Courts

As discussed in Chapter One, judges and law enforcement officials viewed advocates as assistants to the court. Defending clients was accomplished through the detection of mistakes, minor and serious, in the preliminary investigation, not the inclusion of advocates' own materials. Criminal procedure codes excluded the right of defense attorneys to collect and present their own evidence. This emphasis on the detection of mistakes in the investigative report followed from the general trends formed in the late Stalin era of assigning blame for inadequacies and of an obsession with court statistics (the number of acquittals, petitions granted to advocates, etc.) as qualitative measures of court efficiency.29 It also followed from the inquisitorial court procedure practiced in the Soviet Union and other civil law countries. But the amount of energy expended on detecting mistakes and scientific statistics-gathering did not in the long run improve the administration of justice or the rights of the accused in Soviet courts.

A group of legal scholars and a few advocates gathered in 1985 to talk about improving the role of the advokatura in rendering legal assistance.30 They discussed the prestige and popularity of the defense lawyer (zashchitnik), ways to improve the defense lawyer's role in guaranteeing the rights of the accused, and ways to improve the work of LCBs. This forum marked a turning point in the campaign for rights of the accused and more professional autonomy of the advokatura. On 13 February 1986, Professor Fiskotin, a main organizer of the roundtable, sent the then RSFSR

29 See Peter Solomon, Jr., "The Bureaucratization of Criminal Justice Under Stalin," prepared for the Conference "Administration of Justice and Judicial Reform in Russia, 1864-1994" Toronto, March 30-April 2, 1995. Such an approach to gathering legal intelligence, however, was not unique to the Soviet case.
30 Reported in "Materialy 'Krugogo stola' na temu 'Povyshenie roli advokatury v okazanii iuridicheskoi pomoshchi naseleniiu. Sovetskoе gosudarstvo i pravo 2(1985), 83-99; and responses to the round table discussion, Sovetskoе gosudarstvo i pravo 3(1985), 73-78.
Minister of Justice, A. Ia. Sukharev, a letter requesting that his ministry comment on the discussion. He asked the ministry specifically to address important issues affecting the **advokatura** and legal defense, such as membership ceilings, the protection of attorney-client confidentiality, and the strengthening of the university education of future advocates.

V.T. Gubarev, head of the Department of the **Advokatura** of the RSFSR Ministry of Justice at the time, responded defensively on 15 August 1986. He immediately referred to the decisions of the 27th CPSU Congress in June 1986, which had “laid out the tasks for increasing the volume and improving the quality of legal services to the population,” and to the fact that the recommendations of Ministry had been taken into account at a recently-held All-Union Meeting of Chairmen of the Presidiums of Colleges of Advocates. While acknowledging that increasing the number of advocates was one such important task, Gubarev claimed that Ministry was acting in accordance with the governmental policies on “the economy of human resources.” The ministry had decided to structure an expansive program on improving the quality of defense of citizens’ rights in courts and reprimanded the **advokatura** for the way that consultations to nearly 4 million citizens annually were not being reported on properly.

In the Gorbachev era, advocates were still required to submit reports outlining the kinds of errors advocates detected. For example, presidiums of colleges of advocates (kollegii) sent to Ministry special annual reports on the violations of legality that advocates exposed in specific cases. At the same time, however, a notion was beginning to form that **advokaty** were to protect the interests of citizens as well. Part of the credit for this shift must be given to academicians V.N. Kudriavtsev and A.M. Iakovlev, who, with the support of the Chairman of the USSR Supreme Court, V.I. Terebilov, proposed in their articles from the fall of 1986 that the rights of the defense counsel (zashchitnik) be expanded. Kudriavtsev and Iakovlev stressed that the presumption of innocence be recognized more formally in legislation and that the principle of **sostiazatelnost**

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13O.V. Orlova and N.N. Deev, 11.
14For more discussion, see Peter Solomon, “The Role of Defence Counsel in the USSR,” 85-86.
(adversarial competition), be strengthened as well in trials when both procurators and advocates were present.\textsuperscript{53} Suffering from a crisis of legitimacy, state officials could present to the public tangible evidence that at least some of their promises -- such as the protection of individual rights and affordable legal aid -- were being fulfilled.\textsuperscript{56}

On 30 November 1986, legal reformers in the CPSU took action regarding the 

*advokatura* by releasing a Central Committee decree calling for the defense counsel to be admitted into the preliminary investigation.\textsuperscript{57} For all intents and purposes, this was only a ceremonial step. It was not being upheld consistently by investigators in all criminal cases (at most for those involving the disabled and minors) and did not become a part of the "USSR Fundamentals of Criminal Procedure" until 1990. But, at the very least, it indicated that CPSU officials intended to see some changes in advocacy take place.

By the second year of the Gorbachev regime, as *glasnost* was taking hold, members of the presidium of the Moscow City College of Advocates (MGKA) were already openly criticizing law enforcement organs. In a published letter to the editors of *Literaturnaja gazeta*, they noted how law enforcement workers considered advocates' work as an "undermining of justice."\textsuperscript{58} In early 1987, a group of legal scholars from IGPAN and advocates from MGKA and the Moscow Regional College of Advocates (MOKA) published a set of articles entitled *Advokatura i sovremennost* on issues affecting the bar. *Advokatura i sovremennost* was at certain points critical of Ministy's role in regulating the bar.\textsuperscript{59}

Instead of reprimanding advocates for publishing this work, some Party officials actually supported it. A Central Committee decree in June 1987 briefly outlined the urgency of expanding the role of defense counsel, and Anatolii Lukianov, the Party secretary for legal

\textsuperscript{53}Advocates were present in approximately 30 percent of criminal trials in the late Soviet era. Petrukhin, *Vam nuzhen advokat* (Moscow: Progress, 1993), 114.

\textsuperscript{56}For insight into how Cuban political elites sought legitimacy through the creation of a national bar association and low-cost legal services, see Raymond J. Michalowski, “Between Citizens and the Socialist State: The Negotiation of Legal Practice in Socialist Cuba,” *Law and Society Review* 29:1 (1995), 73, 99.


\textsuperscript{58}*Literaturnaja gazeta*, 23 April 1986.

\textsuperscript{59}*Advokatura i sovremennost* (Moskva: IGPAN, AN SSSR, 1987). This collection is the most definitive document of the early Gorbachev period on the state of the *advokatura* and will be referred to throughout this chapter.
affairs, spoke in favor of such a reform before a group of Procuracy leaders. At the 19th CPSU Conference in June 1988, Gorbachev pledged to raise the status of advocates. He called on Minitst to lead the effort. The “Resolution on Legal Reform” passed by the conference delegates supported the expansion of defense attorneys’ participation in preliminary investigations and court proceedings.” This expansion was to be completed through subsequent legislative action.

Demands by advocates, legal scholars, and journalists to strengthen the role of defense in criminal cases were met by two pieces of legislation passed by the USSR Supreme Soviet in late 1989 and early 1990. In fact, Professor A. Iakovlev, himself a deputy in the Congress of People’s Deputies, recommended to the Supreme Soviet Committee on Legislation that the “Fundamental Principles of the USSR and the Union Republics on the Judicial System” be revised to guarantee that the accused receive the right to counsel from the earliest possible stage. After the committee agreed on his proposal, Iakovlev introduced the proposal as a resolution to the Supreme Soviet. The first resolution, passed unanimously by 389 members of the USSR Supreme Soviet on 13 November 1989, revised the “Principles of Legislation of the USSR and the Union Republics on the Judicial System.” The stipulations went into effect on 1 December 1989, meaning that they were supposed to be written into every criminal procedure code, or UFK, and adopted in each of the 15 republics (although this task was not happening in due haste).

Among the main legislative supporters of the resolution were People’s Deputies Fedor Burlatskii, Anatolyi Sobchak, and Andrei Sakharov. Through their continued pressure, articles in legislation were molded to reflect a recognition of the presumption of innocence; this principle was specifically noted in Article 14. What most legal scholars came to recognize,

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11 Pravda, July 5, 1988, 3. A law-based state, on the other hand, does not assume such a level of group pluralism or adherence to a higher law.
12 For discussion, see Peter Solomon, Jr. “Reforming Criminal Law under Gorbachev.” in Barry, 237-38.
however, was that including the words "presumption of innocence" in a piece of legislation did not guarantee a decrease in the level of accusatory bias in judicial procedures. On the other hand, they thought, a recodification of the defense attorney's role vis-à-vis the investigator and prosecutor might catalyze change.

The amendments to the principles approved in November 1989 were the general foundations on which court procedures for all Union republics were to be based. For the first time in Soviet history the accused, no matter what his crime, theoretically had a legal right to counsel. Under Article 7, a citizen was guaranteed the right to be defended from illegal activities of government organs. Also, Article 14 reaffirmed that a suspect, an accused, or a convicted person has the right to a defense which is secured by the participation of a zashchitnik from the moment of seizure, arrest, or presentation of charges. This article was a substantive change from earlier legislation; not only did it state that a defense attorney had the right to represent her or his client during the preliminary investigation, but that she or he could be present even at the arrest scene or moment of seizure. Reaction among members of the legal community to this legislation on the independence of the court system was positive. However, some people, including advocates themselves, commented on the additional demands that the zashchitniki now had to face.

MGKA, the most influential territorial bar association in the Soviet Union, proposed changes of its own to the fundamentals in February 1990. The chairman of MGKA's presidium, F.S. Kheifets, outlined the main proposals in a letter sent in February 1990 to the USSR Supreme Court. These included adhering to international laws on human rights; strengthening advocates' access to evidence; preserving the rights of suspects and the accused to choose and meet with counsel; establishing a clear manner of paying for the labor of advocates who were appointed by investigators and courts in criminal cases; and legally

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4 Jury trials, however, did not begin until after the collapse of the USSR. Articles 420-462 in the Russian Criminal Procedure Code (UFK) outline the new jury system. They were added on 16 July 1993. See Vedomosti Sêzda narodnykh deputatov RF i Verkhovnogo Soveta RF, 1993, no. 33, 1313.
defining the meaning of advocate-client confidentiality and advocate immunity. 15 Through this proposal, the bar was attempting to indirectly influence the legislative process proceeding in the Supreme Soviet. While it did not have a right to legislative initiative, its colleges could recommend revisions to legislation directly to the Supreme Court of the U.SSR, which did have legislative initiative. As will be shown below, not all of Kheifets’s proposals were adopted.

On 10 April 1990, the U.SSR Supreme Soviet passed a resolution, “About the Changes and Amendments to the Foundations of Criminal Procedure of the U.SSR and Union Republics,” which established the new procedures, rights, and responsibilities of defense attorneys. 16 The resolution contained compromises, to insure that conservative legislators and CPSU leaders would at least support its more modest stipulations. Defense attorneys were now allowed to represent suspects from the moment that charges were presented (s momenta pred’ialveniia obvineniiia). The resolution also stipulated that defense attorneys would be permitted to participate in court hearings taking place during the pre-trial phase, pose questions to investigators, attend interrogations of clients (not only those who were infirm or did not know the court language), and meet at any time and for any duration with clients who were under custody once the first interrogation, or dopros, was completed. These stipulations were significant for their time because they did not require the permission of the investigator, as was the practice.

Although it granted defense attorneys more rights and access (dopusk) to clients and case materials than in any previous versions of this legislation, the resolution was in some ways a disappointment to many advocates and other reform-minded members of the legal community. First, it diluted the November 1989 legislation in relation to the meaning of access. In the November 1989 legislation, defense attorneys had been permitted to represent

15”Spravka o praktike raboty advokatov kollegii po vyialedeniium i ustrannieniu narushenii zakonnosti po ugolovnym delam za 1989 r.” 10 April 1990. Archives of the U.SSR Ministry of Justice. Many thanks to Todd Fogelsong, for providing me with a copy of this document.
16”O vnesenii izmenenii i dopolnenii v osnovy ugolovnogo sudoprievodstva SSSR i soiuznykh respublik,” Izvestia, 15 April, 1990, 1.
clients from the moment of seizure. In the April legislation, Article 22 allowed investigators to interrogate suspects without the presence of advocates for up to twenty-four hours.

Second, the April resolution failed to include a much anticipated "Miranda v. Arizona" stipulation, based on the 1966 U.S. Supreme Court landmark case, whereby arresting officials would have to announce to suspects their rights. Under Article 22, the suspect would still carry the burden in, first, having knowledge that he or she was able to have an attorney at a certain point in the proceedings, and, second, securing an attorney for a defense. If the suspect could not find an attorney, the court would be bound to find him or her one; but time would have passed during which the suspect could have received representation.

Third, the authorities now had the option to postpone the release of all documents and evidence until after the preliminary investigation. Whatever informal arrangements for early access that had developed among advocates and investigators in Moscow in cases where the accused was an adult also fell into jeopardy. Participants at an all-union conference of advocates that was held around the time the revisions were passed decided to bring a complaint to the Committee on Constitutional Supervision. They alleged that this abridgment of access violated the constitutional right of defense. 17 Coupled with the possible postponement of releasing documents was the potential abuse of pretrial detention, of which there were no clear limits. Fourth, the legislation did not outline the defense counsel's right to question witnesses and collect evidence on his or her own. While this practice was never outlawed, it was not considered to be a part of criminal procedure in the USSR's inquisitorial system, in which the investigator was supposed to be a neutral actor in search of facts.

Lastly, in the section in Article 22 on payment for advocates, much of the burden for paying advocates in court-appointed cases would be placed on the colleges of advocates and their member LCBs, or on convicted persons themselves (out of prison wages). The convicts' payments proved to be as unreliable a method as the others, for they reached advocates only after certain other categories of payment were distributed. Ministy determined the

17 Solomon, "Reforming Criminal Law under Gorbachev," 238.
compensation that advocates received for court-appointed cases, as stipulated in Article 32 of the 1980 RSFSR “Statute on the Advokatura” (henceforth, “the 1980 RSFSR Statute”), “Relations of the Ministry of Justice of the USSR with the Advokatura.” Compensation in court-appointed cases had been very low in comparison to cases which were made by agreement with clients. Typically, the presidium of a college or the manager of an LCB waived fees for certain categories of accused people in cases of financial hardship, as stipulated in Articles 47 and 49 of the RSFSR Criminal Procedure Code (UPK).16 A college’s presidium paid advocates out of funds which it received from government budgets. Usually, though, the amount of state funding, which varied across regions of the USSR, was insufficient to cover all of these cases.19

2. Advocates as Public Educators on Legal Reform

Apart from their role as defenders, Soviet advocates were also expected to act as educators, informing the public about “socialist legality.” They educated their clients about the law and presented public lectures as well. As outlined in Article 34 of the 1980 RSFSR Statute, advocates were to “participate in legal propaganda.” In the 1980s, the lectures that advocates presented, often at work sites, were arranged through organizations called Knowledge Societies. Colleges of advocates then were required to report the numbers of lectures their members completed to the Department of the Advokatura of the USSR Ministry of Justice.

A typical example of the way state officials defined the bar’s goals as legal educators in the years leading up to the Gorbachev era is a document written in 1984 as a report on the

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16 Articles 47 (Participation of the Defense Counsel in Judicial Proceedings) and 49 (Obligatory Participation of Defense Counsel) of the RSFSR UPK, which were revised in 1992, stipulate for advocates to be appointed by investigators or procurators to represent indigent clients in pre-trial phases and the trial phase in cases when their participation is obligatory. Obligatory participation applies when a government or societal prosecutor participates (which is quite often in criminal cases); when a juvenile is accused; when certain types of disabled people are accused; when someone who does not know the court language is accused; when someone is accused of a crime which contains a capital punishment; and when an accused’s interests are in contradiction with those of another accused (many trials have more than one accused person involved).

19 On average, advocates receive only 50-60 percent of the funds which were to be guaranteed them in appointed criminal cases. Petrukhin, Vam nuzhen advokat, 115-16.
advokatura by the Department of the Advokatura of the USSR Ministry of Justice. In accordance with a resolution of the USSR Ministry of Justice dated 8 July 1983 and a joint Central Committee, USSR Soviet of Ministers, and the All-Union Central Trade Union Council (VTsSFS) Resolution from 28 July 1983, colleges of advocates would be required to conduct scientific-practical conferences to instruct advocates on how to fulfill their legal education work. The Department of the Advokatura noted in this document that advocates were given specific tasks at these conferences, including analyzing the conditions of legal education work the colleges conducted. At the time, advocates gave approximately 284,000 public lectures in 1983 across the USSR.

Now, in the Gorbachev era, advocates would be expected to increase their public appearances, in an effort to propagandize the message of perestroika and legal reform. In his speech to the 19th CPSU Conference on 29 June 1988, Gorbachev exclaimed that "the broad masses of workers [must] master basic legal knowledge to strengthen law and order in our country." Although the message that advocates were intended to convey was to have changed from earlier Soviet eras, in order to reflect a new emphasis on individual rights and economic efficiency, advocates would continue to receive decrees from above instructing them on how to conduct their propaganda efforts.

In the late 1980s, however, public legal education went into decline: advocates were presenting fewer public lectures. As the grip of the state over the bar lessened, so did the pressure advocates felt in fulfilling their propaganda duty to the public. In fact, in the 1991 annual progress reports (otchet o rabote kollegii advokatov) colleges of advocates submitted to Minist, the section on advocates' propaganda work completed in previous years was deleted all together. Since they were already an overburdened work force, due to their low numbers, most advocates refused to make extra work for themselves by presenting public

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lectures. This tendency to avoid the public lecture circuit, with the exception of some advocates, would continue into the 1990s.

Changes in the Regulation of Colleges of Advocates

When justice officials began to restructure elements of the legal system, they found themselves in a paradoxical bind concerning the advokatura's organization. They were willing to give some further degree of autonomy to the colleges in order to improve the quality of legal services. However, they did not want to see advocates gain complete autonomy from the state in setting admissions policy, establishing payment schedules, training and disciplining members, or establishing and communicating professional standards and goals. That justice and Party officials did not trust advocates to implement their own professional program even in the Gorbachev era is not surprising. Conservative elements remained in the CPSU' and government organs, and they continued to wield influence over policy making and implementation on all levels and concerning all kinds of issues, including the Soviet bar.

The measures that the CPSU' and Minist took in the late 1980s to refine their relations with the colleges of advocates illustrate revolution from above in the legal system. One reason that the CPSU' continued to have some control over the advokatura's internal affairs was that, until the end of 1989, the CPSU' retained control over appointments. There is evidence that some rank-and-file members opposed the methods of electing college leaders and managers of LCBs, and that intervention in the internal organization of the bar had varied annually. But Party as well as Minist officials continued to make use of their mandated control.

Most advocates, even in the Gorbachev period, were not completely against Party intervention. In 1985, 57.9 percent of advocates were members of the CPSU'. Party cells remained intact in LCBs until the end of 1991. One advocate-interviewee who led the Party cell in an LCB said that all of her tasks involved raising morale. In reality, however, these cells

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52Huskey, "Between Citizen and State." 106.
53Petrukhin, Vam nuzhen advokat, 26.
were set up to monitor whether or not advocates who were members of the CPSU were acting within the boundaries of appropriate communist behavior. A deputy chair of the MGKA presidium, Boris Abushakhmin, became more critical of the Party's role. He described that, up until the end of the 1980s, when the Union of Advocates was formed, local CPSU organs (Gorkompartii or City Party Committee) interfered in admittance policies:

The presidium always had to go through the Moscow Gorkompartii to get a candidate accepted. It was especially hard for Jewish candidates. There was an undeclared war between the MGKA presidium and the Party committee, which did not on principle want to see the most talented candidates admitted into the MGKA. Compromises always had to be reached. Sometimes presidium members tried to fight a decision made by the Gorkom, but it wanted the presidium to be occupied by Party people. There therefore was some tension between those advocates who were Party people and those who were not...

An example can be found in how Miniust (through the efforts of Deputy Minister G.G. Cheremnykh, as well as officials in the ispolkom's Justice section and the RSFSR Ministry of Justice's Department of the Advokatura), and not advocates themselves, would define a "self-regulated" organization was the October 1987 Miniust decree, "On the Work of the Moscow City College of Advocates in Light of the Demands of Perestroika." Miniust officials criticized Moscow advocates for not behaving morally, not performing strongly enough, and not bringing legal services closer to citizens and their work places. They then outlined a plan for improvement. Only near the end of the decree did its authors request feedback from advocates.

Miniust's plans never were fulfilled in the course of perestroika. The numbers of advocates did not increase markedly, advocates did not accept a high volume of new types of cases in the civil sphere (in comparison to the load of criminal cases they had to bear), and conditions inside LCBs were not improved greatly. Miniust's rule by decree was faltering, as will be shown in the sections below concerning conflicts over professional entry, methods of remuneration, methods for disciplining, and training practices.

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54 Interview with Moscow (female) advocate #33, early 60s, who worked in an MGKA LCB, 7 February 1995.
55 Interview with Boris Abushakhmin, 29 April 1995.
56 For a translation of this document, see Rand, 127-29.
A. Professional Entry and Methods of Remuneration

Until the last few years of the Gorbachev period, the RSFSR Ministry of Justice, through the Department of the Advokatura and local justice sections of the ispolkom, continued to wield the largest amount of daily control over the colleges of advocates. Ministry limited the number of advocates admitted to the colleges and payments for advocate services, and instructed advocates about their work goals and behavior. On the local level, college presidiums interacted on a fairly regular basis with officials in the justice section of the Executive Committee of the Sovet, or governing council. No less than even their counterparts in the myriad of economic ministries, the officials working in the bodies of Ministry had a “fulfilling the plan” mentality.37

The number of advocates in the RSFSR in 1986 was 2.5 times less than in 1913, and there was only one advocate to 13,000 people (about five to ten times lower than in European countries).38 While there was a shortage of advocates even in urban centers, there was a near absence of them in certain rural areas, although each year in the Gorbachev period saw an improvement.39 In 1990, around 46.3 percent of the membership was under 40 years of age, 24.3 percent were between the ages of 40-50 years, and 29.4 percent were over 51 years. About 27 percent of advocates in 1990 had worked less than 3 years, and 27 percent had worked more than 10 years.40 Into the 1990s, the youngest segment of the bar decreased further.

By 1990, approximately half of the membership in colleges was composed of women, and their numbers continued to increase thereafter.41 This can be partly explained by the fact that more male jurists were beginning to work outside colleges, in legal cooperatives and

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37 The RSFSR Ministry of Justice, interestingly, was even more stringent in maintaining its barriers to professional entry into colleges of advocates (including the MGKA) than the USSR Ministry of Justice was, which suggests that the more reform-minded bureaucrats probably were working in the higher levels of administration. See Huskey, “Between Citizen and State,” 107 and FN 54 in same.
39 For example, in the RSFSR in 1984 there were 95 regions that lacked advocates; 1983 had 67; 1986, 43; 1987, 12; 1988, 8; 1989, 5; 1990, 20; and 1991, 10. “Otchet o rabote kollegii advokatov,” 1984-91. Archives of the RSFSR Ministry of Justice, Otdel advokatury, dela 07-05 - 07-09.
40 Petrukhin, Vam nuzhno advokat, 27.
41 Ibid.
private law firms catering to the new entrepreneurial class. Women, busy with child care and homemaking responsibilities, did not have the time needed to start up new practices. Despite their high numbers in the rank-and-file, a disproportionately low number of female advocates filled leadership positions in the bar.

Former law enforcement officers and judges who were dismissed from their positions for improper behavior began to enter the *advokatura* in even larger numbers beginning in the late 1980s. As of the early 1990s, approximately 15 percent of new members were recent graduates of law faculties who had not worked in other legal fields, whereas 40 percent of the new entrants came from other legal institutions. In 1990, 1,070 people from the courts and Ministry divisions entered the *advokatura*62. This mass exodus from the courts and law-enforcement agencies beginning in the late 1980s was largely the result of economic imperatives: law-enforcement officials worked just long enough to receive pensions, and then left to enter the *advokatura*, in order to earn better salaries. On the whole, advocates earned more than judges, although they received inferior benefits packages.

While most advocates and legal scholars were promoting legal values, most other legal professionals, such as judges, procurators and investigators, were less reform-minded. There are institutional and sociological factors to explain this contrast: the standard of living of the latter group (judges, et al.) depended on whether the same political order remained in place, and members of this group tended to come from the same social and educational backgrounds out of which more conservative jurists originated.63 Advocates and legal scholars, on the other hand, were the best educated of the jurist stratum and tended to come from *intelligentsia* backgrounds.

Statistics suggested that there was a dearth of qualified advocates, but there was a lack of general agreement in the legal community and state planning bureaucracy regarding the benefits of creating more advocates. GOSPLAN and the State Committee on Statistics issued

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62Ibid. 26-27.
directives for reducing the numbers of all practicing jurists, including advocates, in the fall of 1988, while the USSR Minister of Justice, B. Kravtsov, argued that the legal system required more practitioners. Leaders of the bar in the 1987 publication, Advoakatura i sovremennoj, strongly spoke out against Minister's regulation of its size. In 1989, the MGKA still had to receive permission from Minister to increase the number of new members by 50 places. Only in the last months before the dissolution of the USSR did Minister remove its authority over the setting of membership ceilings in colleges of advocates.

A former chairman of the MGKA presidium, F.S. Kheifets, argued quite vehemently that artificial ceilings on advocates' pay automatically caused the lowering of revenues for the colleges and advocates, and lowered the volume and quality of legal aid to citizens and organizations. Moreover, often advocates reached their maximum level of remuneration in the fall quarter and would slack off for the remaining months of the year.

Finally, reformist advocates reached a victory of sorts on 1 September 1988, when the USSR Ministry of Justice issued an instruction, “On Payment for Legal Aid Provided by Advocates to Citizens, Enterprises, Institutions, Organizations, and Cooperatives.” It stipulated that, in certain instances (excluding consultations and completion of official documents), advocates could set their own rates with clients who were capable of paying their own fees, and these rates could be above the state determined fee schedules. This instruction removed the need for advocates to collect MIKST (illegal extra payments), and it gave more autonomy to

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(3) See, for example, G.K. Sherov and B.A. Dashchinskii, “Nekotorye voprosy obshchego rukovodstva advokaturoi,” Advoakatura i sovremennoj, 18.
(4) Rand, 113.
(5) Husky, “The Administration of Justice,” 234. Despite this freeing of barriers, the number of advocates still did not increase dramatically in the Russian Federation.
the colleges and LCBs to decide on rates for particular services. At the same time, however, it played a role in increasing the earning gap between advocates who specialized in criminal litigation, who were largely court-appointed, and those who specialized in civil matters, more of whom were paid in full by their clients.

When the right of advocates to participate more fully in pre-trial phases was granted in principle, some members of the advokatura expressed reservations once they realized that advocates would be paid very little for the privilege of early admission and access to case materials. In June 1989, the first deputy of the Moscow Procuracy, Iurii Smirnov, wrote the MGKA presidium to announce that the organs of the Procuracy would approve of any petitions that advocates submitted requesting to participate in an investigation from the moment that their clients (as suspects) were detained, before any formal action would even be taken by the RSFSR Supreme Soviet to institute the revisions to the USSR Fundamentals of Criminal Procedure. The members of the MGKA presidium answered that they could not unconditionally approve such proposals.

The advocates specifically argued that there was still no acting RSFSR law on this issue, advocates could not possibly wait all day for investigators to call them, and they did not know by what means they would be paid. What the advocates were posing, though perhaps in a shamelessly self-interested way, were real dilemmas. It also might have been possible that Procuracy officials were trying to portray themselves as negotiators and reformists when they knew they had the advocates in a bind. Already advocates were being paid two times more for their work at trial than their work in the investigation, according to presidium chairman,

71 Usually advocates did not set their own rates; managers of LCBs were the main decision-makers on rate issues and had to sign off on agreements between clients and advocates. Also, there are several categories of clients who automatically received free legal aid (outlined in Article 22 of the 1980 RSFSR Statute), including legislative deputies and pensioners; advocates also must render free legal services in many labor cases. In these ways, advocates were working virtually for free in the service of the state. While colleges are exempt from taxes, advocates must pay taxes on their personal income and relinquish up to 30 percent of their salaries to their colleges to cover staff salaries, rent, honorarium for the chairman and vice-chairman, insurance funds, and these pro bono cases (Article 29 in the RSFSR Statute).

72 As reported by Aleksandr Borin, “Nishchaia iustitsiia, ili skol’ko stoit pravovoe gosudarstvo,” Literaturnaia gazeta, 23 August 1989, 10.
Giorgii Voskresenskii. The April 1990 revisions to the “USSR Fundamentals of Criminal Procedure” still did not clarify the exact conditions under which advocates would work and receive compensation in pre-trial phases in the RSFSR. This unreliable system of payment and shortage in their own ranks proved to be a continuing roadblock that kept advocates from representing the accused in preliminary investigations, as well as in court, in years to come.

B. Control Over Advocates’ Behavior and Disciplinary Measures

As mentioned in Chapter One, behavioral norms for the bar were to be based on a few books on advocate practice, Party ideology, and instructions from Ministry. General evaluations of the behavior of individual advocates were not even conducted exclusively by their peers. The certifying commission of every college, which regularly evaluated the professional activity of every advocate-member, always contained officials of state organs of justice, as well as judges and prosecutors. A relatively small number of advocates in the perestroika era, however, were ever formally disciplined; in 1990, only 1.4 percent of Soviet advocates were subjected to some kind of disciplinary action, and 0.1 percent were dismissed from colleges of advocates due to improper conduct.

Ministry instructed advocates to outline the contents of consultations in LCBs in reports. They included the names of the client and attorney, the legal questions (with reference to the corresponding laws), and how the advocate answered the questions. These then would be reviewed by the managers of LCBs, advocates who generally were Party members and not chosen by the rank-and-file, and by members of college presidiums. The reports were kept in special files open for any advocate at an LCB to see, and thus the confidentiality between client and attorney was weakened. Instituted by a 12 November 1984 order of the RSFSR Ministry of Justice, the practice (which went into effect on 1 September 1985) did not sit well with many advocates or legal scholars. They claimed it contradicted Article 16 of the 1980 RSFSR

73Reported in an article on a Round Table sponsored by Pravda and written up by G. Owcharenko and A. Cherniak, 14 March 1988.
74Sharov and Dashchinskii, 19.
75Petrukhin, Vam nuzhen advokat, 27.
Statute, which called for confidential relations between clients and attorneys.\textsuperscript{76} The MGKA attempted to amend the practice of report-writing by decreasing the required information needed on each card, in order to retain some semblance of confidentiality. But the Department of the 	extit{Advokatura} in the RSFSR Ministry of Justice complained that this revision "undermined its control over the work of advocates."\textsuperscript{77}

The one element of self-regulation which did exist was on the individual level. Advocates still were able to construct their own work schedules, decide on which clients to accept (apart from the criminal cases to which they were appointed by the court, which were often difficult to reject), and were paid roughly in accordance with the amount of work they chose to complete each day. Advocate was one of the least supervised and most flexible jobs in the Soviet era, although an advocate's individual autonomy was constrained by the extent to which her manager and Party cell leader interfered. Individual advocates could also choose to be strong opponents of the state in their approaches to defense; while this may have led to unwanted consequences (i.e., disbarment), it did offer them a choice. It was in the interests of all advocates to retain their day-to-day career independence, even if they disagreed among themselves somewhat on how the colleges should operate.

In disciplining advocates, judges sometimes wrote harsh criticisms about their improper court behavior and notified the presidiums of colleges of it. While under law only courts and Ministry organs could take disciplinary take action outside the colleges, CPSU organs sometimes intervened as well.\textsuperscript{78} The presidium of the college to which an advocate belonged exacted disciplinary penalties, the aggrieved party could appeal to a court, and the republican level or USSR Ministry of Justice also had the right to repeal any decision of the

\textsuperscript{76}G.D. Meparishvili, "O sokhranenii lichnykh tain grazhdan v iuridicheskoi konsultatsii," 	extit{Advokatura i sovremennost}, 113-14.


\textsuperscript{78}Article 27 of the 1980 RSFSR Statute states that: "The RSFSR Minister of Justice, the minister of justice of an autonomous republic, or the head of the justice section of the executive committee of a territorial, regional, or city sovet of people's deputies shall have the right to instruct the presidium of a college of advocates to initiate a case of disciplinary responsibility of an advocate."
presidium. As was common practice in the Soviet era for anyone’s alleged malfeasance, appeals for wrong-doing by advocates could be made to higher administrative agencies and CFSTU bodies, which then acted as the ultimate decision-making authorities.

The following is an example of the continuing practice in the Gorbachev period of appealing to leaders for resolution of a dispute, rather than (or in parallel with) trying institutional channels, such as the courts. But this example also reveals a new development in the Gorbachev era: how judges and the media began to come to the defense of advocates and penalize corrupt investigators. This 1987 case concerned the disciplinary action taken against a well-known Moscow advocate, Mark Kogan. Kogan was faced with criminal charges ostensibly for accepting illegal honoraria, but the actual reason for his alleged criminal culpability was that he complicated the work of those investigators who had arrested his client, a male juvenile who confessed to a crime under pressure. Kogan refused to be interrogated as a witness against the boy. Anatolii Lukianov, then head of the Central Committee’s General Department, intervened, urging that the charges against Kogan be dropped and the problems with investigators resolved. In addition, the Moscow Oblast Court judge reprimanded the investigators for mishandling the preliminary investigation in the case of the minor, and the RSFSR procurator removed the head investigator from the case. Moreover, because of the exposure that Kogan’s plight received in articles in Literaturnaia gazeta, judicial officials came under pressure to resolve the matter in Kogan’s favor.

Had this case happened in the Brezhnev era, it would have probably resulted in Kogan’s disbarment, at the very least. Some sources have suggested that the colleges’ control over disciplinary practices actually began to improve in the late 1980s. While in the late

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79Rand discusses this case, 142-43 (FN 8), and it is mentioned by Igor’ Petrukhin and Igor’ Gamilianov, “Zashchita: Chto mешает юристу бороться за справедливость,” Literaturnaia gazeta, 17 June 1987, 13. Due to a 1981 revision of the RSFSR Criminal Procedure Code (Article 156.2), the state would be permitted to punish workers employed in service industries, including advocates, for accepting bribes and other non-official moneys. Kogan could be “brought to justice” on this charge. See Pipko and Pipko, 871.

80Petrukhin, Vam nuzhen advokat, 48-49.
Soviet period, colleges of advocates were instructed by Minist to perform routine checks on individual advocates, this practice, at least in MGKA, was canceled after 1991.\textsuperscript{81}

However, emerging internal tensions over how the \textit{advokatura} would cooperate with state officials and how aggressively advocates would lobby for more adversarial rights overshadowed these positive professional developments. In 1988, for example, MGKA chairman Voskresenskii preferred not to readmit a former advocate, Zolotukhin, who had been disbarred in 1968 for his defense of a dissident. Despite Voskresenskii's objections, the presidium voted to readmit him. In addition, Voskresenskii initially did not come to the defense of Kogan, an MGKA member. At the General Meeting of the MGKA, the first such meeting open to the entire membership since 1958, several advocates voiced disapproval at Voskresenskii's leadership, his hesitation to defend other members, and his lack of fervor in insuring that rights to defense strengthened.\textsuperscript{82} At this same meeting, a proposal failed which would have allowed all members of MGKA to vote for members of the presidium and their chairman.\textsuperscript{83} Ironically, advocates themselves were practicing authoritarian methods of self-governing not unlike those of the CPSI. In April 1990, however, the MGKA leadership finally decided to allow their entire membership to elect members of the presidium.\textsuperscript{84}

C. Methods of Training Members and Communicating Goals

Another aspect of a profession's autonomy from the state concerns its ability to train and inform its members. The Gorbachev era witnessed a slight improvement in the way future advocates were trained. In theory, candidates for the bar were required to have degrees from five-year general legal education programs. By 1988, about 95 percent of all Soviet advocates possessed a higher legal education; however, not all of them had completed the full five-year program.\textsuperscript{85} As a result of new state instructions on higher legal education,

\begin{itemize}
\item \textsuperscript{81}According to Aleksei Rogatkin, chairman of the MGKA presidium in 1994-95. Interview on 17 May 1995.
\item \textsuperscript{82}For more on Voskresenskii's unpopularity, see Rand, 61 and 150 (FN. 10). In 1994-95 he belonged to MOKA.
\item \textsuperscript{83}Rand, 61-62.
\item \textsuperscript{84}Michael Burra, "Advokatura: In Search of Professionalism and Pluralism in Moscow and Leningrad," \textit{Law and Social Inquiry} 15:3 (1990), 457.
\end{itemize}
coursework was to become more specific to manpower requirements and students’ future career goals. New courses on the *advokatura*, for example, began to appear in a few law faculties and institutes, although most were introduced in the early 1990s and thus were more a product of post-Soviet efforts.

According to law, advocates-in-training (*stazhery*) were to intern for nine months at an LCB. Then, once they were accepted into colleges and assigned to an LCB (usually the one in which they interned), they received some instruction in the form of seminars and lectures provided by senior advocates. Weaknesses in this system included the lack of university courses on the *advokatura* and advocate’s practice; a weak internship system, in which *stazhery* were often neglected by the busy senior advocates who were supposed to be their mentors; lack of an entrance exam; and an inadequate number of training seminars. In this area of the *advokatura*’s “perestroika,” advocates took some unilateral measures to improve the education of their new cadres and to begin more formal research on the new approaches to defense. Also during the late Gorbachev period, the state’s method of job distribution (*raspredelenie*) collapsed, and new law graduates had to fend for themselves.

Boris Abushakhmin, while acting as vice-chairman of MGKA in the 1980s, constructed an ambitious plan for strengthening the training of young advocate-interns. Redesigning such a program was a state objective as well as an objective of several colleges in the late Gorbachev period. Abushakhmin believed that such a plan was needed in light of the fact that the internship (*stazhirovka*) program typically was based on only one or two supervisors for each intern. Problems arose when a mentor’s approach clashed with that of the intern. Also, sometimes a supervisor, though an excellent advocate, was not a good pedagogue.

Abushakhmin’s plan offered interns a variety of ways to learn from and be evaluated by a number of advocates in one LCB. This experiment, agreed to by the MGKA presidium, was conducted in two bureaus and seemed to work. But the program never was implemented on a

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86 Ibid., 74.
87 Abushakhmin provided me with this detail in his 29 April 1995 interview.
long-term basis; it demanded too much time from senior advocates and the presidium in organizing a program of two new lectures a week and additional meetings. Thus, this is an example of the *advokatura*’s own failed attempts at internal reform.

In 1989, MGKA formally began to require that certain candidates pass an entrance exam (many candidates who were academics and former judicial employees were exempt). It took over nine years for the MGKA, along with number of other colleges, to adopt this requirement, even though it was noted in the 1980 RSFSR Statute. This move was taken to strengthen the pool of applicants entering the college, as well as to base the process more on merit than on the state’s preferences. But by no means were all colleges requiring entrance exams in the late Gorbachev period, nor were all colleges requiring them by 1995. Typically, entrance was still based on the completion of a five-year legal education, a *stazhirovka* for new jurists, and good recommendations from supervisors.

In the Soviet era, the colleges of advocates had no organized way in which to communicate, and methods for communication among advocates inside colleges remained considerably weak as well. A number of new advocacy institutes, which fell under the academic rubric of scientific-research institutes (*nauchno-issledovatel’skie instituty*, or NII), however, were formed by advocates and legal scholars in the late 1980s. These jurists wanted them to act as centers for work on the preparation of manuals on advocate’s practice; provide research on the controversial issue of numbers of advocates needed to fulfill the demand for legal services; act as forums for the exchange of ideas among colleges of advocates; represent the *advokatura* before the Supreme Courts and Ministries; and participate in legislative drafting work. Due to a lack of funding, however, many of these plans collapsed. Those NII which did exist did not produce the amount of work their founders had anticipated, for the main reason that they lacked adequate facilities and funds. MGKA also

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89Rand. 23.
opened a Legal Defense Institute in the Gorbachev era, which aimed to compile statistics on acquittals and possess other holdings on defense-related issues and data.92

Colleges of advocates did not have any of their own publications, and advocates were only permitted to publish articles in existing legal journals, such as Sovetskoe gosudarstvo i pravo, Sovetskaia iustitsiia, and Sotsialisticheskaiia zakonnost'. Textbooks were often out of date and were only published if they were approved by the Ministry of Higher Education, Minist, and CPSU officials. Apart from Advokatura i sovremen nost', which was a joint effort with legal scholars, there was no publication exclusively produced by and written for advocates until the early 1990s, after the USSR Union of Advocates was formed.

The Public Image of Advocates and Their Search for Improved Prestige

As mentioned in the “Introduction,” one of the assumed ideals of a profession is a high social status. Prestige is a difficult gage to judge for any occupation or profession: in this case, some advocates believed that their prestige improved, while for others it remained the same, or even worsened, in the Gorbachev period. The prestige of the advocate was directly connected with his or her role as defense attorney. Some members of the public disdained advocates; others believe that advocates served an important purpose in society.

It is clear from Advokatura i sovremen nost' that advocates were particularly concerned about how they were being perceived by the public and other colleagues in the legal field during the late 1980s. In comparison with other types of jurists, advocates received little public recognition. Only 206 advocates served as deputies to local soviet, compared to 2,400 judges, although advocates outnumbered judges two to one. Also, 14 advocates became 'honored jurists of the RSFSR,' as opposed to 268 judges.93 Only two advocates served in the revamped Supreme Soviet.

92Though unfortunately, during the time I was in Moscow in 1994-95, the institute (which was really one room located in the offices of the presidium) was not in operation. The presidium of some colleges of advocates have had, however, a chairperson of the section on criminal law and procedure, who is to arrange lectures on such topics and represent the college as spokesperson when controversies arise in this area.
On the other hand, Moscow advocate, Genri Reznik, argued that the *advokatura* as a legal profession was fairly prestigious in 1987. According to a sociological survey in 1979, nearly half of those surveyed (from 40-50 percent in various regions of the USSR) considered the profession of a jurist, including the work of advocates, respectable. But Reznik cautioned that the bar's prestige fluctuated, as it was directly linked with the results of advocates' work (acquittal or lower sentence, satisfactory divorce settlement), not necessarily with their efforts. This assessment, of course, could be applied to lawyers in any country.

A. Public Perceptions

Empirical studies in the 1960s and 1970s indicated that the prestige of Soviet defense attorneys fell and was below that of law-enforcement officials. Soviet scholars explained this difference by the fact that the work of investigators and militia officers was more strongly propagandized by the state, and, in general, romanticized; moreover, investigators and militia officers usually were more visible on a day-to-day basis than advocates were.

In the 1980s, scholars began to discuss how "legal nihilism" in the population had been affecting the work of advocates. The most noteworthy discussion of this topic was an article by Institute of State and Law Director V.N. Kudriavtsev. Kudriavtsev wrote that jurists for many years had to face narrow-minded attitudes about law. This nihilism was understandable -- Soviet citizens were not socialized to value their own rights and civil liberties highly, let alone the rights of the accused.

According to some opinion polls, however, respondents seemed concerned with issues of legal reform by the Gorbachev era. In a 1987 *Izvestiia* poll, for example, 77 percent of respondents supported permitting defense counsel to enter a criminal case from the moment

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94G.M. Reznik, "Advokat: prestizh professii," *Advokatura i sovremennost,* 57-66. Note that this fairly upbeat attitude about prestige is coming from an advocate who has had one of the most successful and lucrative careers in the bar and whose personality is quite assertive.

95See *Lichnost' i uvanzenie k zakony* (Moscow, 1979), 145.


of detention." Such findings suggest that some Russians were well aware of the unequal role defense played in the criminal process. On the other hand, other surveys and letters from citizens written into newspapers indicated that the Soviet public was more likely to react to issues of personal safety and specific infringements of the administration of justice on fairness. These survey data reveal that many Soviet citizens did not view as a priority in the criminal justice system the need to uphold legal procedure and individual liberties, should such practices obstruct the prosecution of criminals.

Throughout most of the Soviet period, the public lacked information on advocates, so ill-conceived notions about them emerged. The Soviet public envied advocates for their often higher-than-average wages. In certain ways, the advokatura was looked upon as a haven for “the other.” In fact, two former advocates noted that, until recently, the predominantly Jewish looks and names of advocates further raised the barrier between the profession and its potential clients. Some members of the public imagined advocates as the pre-revolutionary other -- the sworn attorneys of the tsarist era, who were often depicted in Soviet movies and literature as bourgeois and self-interested pettifoggers.

Andrei Makarov, a former MGKA advocate, conducted a survey of Muscovites’ opinions of advocates, which was aired on the Moscow Program Channel on 5 June 1988. Those interviewed on the street by Makarov reacted negatively to questions concerning what advocates were doing and how they were viewed. One female respondent said that an advocate is a “smoke screen,” that all court decisions are made beforehand, and that advocates make no difference in the outcome of trials.

The most thorough treatment of public opinion in the Gorbachev period regarding the quality of services performed by advocates and how advocates were organized was completed

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87Pipko and Pipko, 855.
89As reported in Rand, 32. Makarov’s survey was featured on the TV program, “Na strazhe pravoportadke,” aired on the Moscow Program Channel on 5 June 1988.
in 1990. That year, a poll of 1,000 Leningraders was conducted by the Scientific-Research Institute of Complex Social Research (NIKSI), at Leningrad State University. The purpose of the survey was to determine what kinds of legal services were most in demand, and what kind of law office was most frequented. The survey's results were a mixed review of the quality of advocates' work and legal services. Fifty-eight percent of the respondents had received some kind of legal aid; in comparison to the mid-1980s, this figure indicates a growth in the demand for legal aid. Sixty-nine percent went to LCBs for legal aid, 33.6 percent to a known jurist, and 2.5 percent to a legal cooperative. People who had not received legal aid cited as their reason for not consulting advocates at LCBs as mistrust of the work of LCBs.

Interestingly, a high percentage of blue-collar workers (compared to other occupational categories) used new legal cooperatives, although pensioners and white collar workers also reported a preference for legal cooperatives over LCBs. Only 49 percent of those who received legal services were satisfied with them. Respondents cited problems with drawing up documents related to filing a suit. More than anything, respondents were dissatisfied with the way in which advocaty often did not offer clients any viable options for resolving their problems. Almost all respondents (95 percent) felt that it was necessary to inform Leningraders more about the work of the bar. For example, 25 percent of respondents were not aware that advocates also worked for enterprises on a contractual basis.

An overwhelming number (91.5 percent) thought that government organs should not interfere at all with the work of the advocatura. According to the respondents, the independence of an advocate meant, first and foremost, independence from the investigators, procurators, and courts. A majority of respondents answered that the creation of a new societal structure like the Leningrad Associated College of Independent Advocates would benefit them by offering a wider selection of legal services. Respondents considered the following important ways to make colleges more independent from government organs:

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- facilitating the rendering of legal services 83% (found important)
- controlling the quality of legal services 83%
- examining complaints of citizens and making decisions on the compensation of damage to citizens and organizations 79.5%
- taking measures in events of violation by an advocate of ethical norms, extortion, refusing to conduct a case 77.3%
- rendering aid to enterprises working in market econ. 72%

Few respondents disagreed with the creation of new structures. Respondents who did not take a position, due to lack of knowledge about the general principles of advocates’ work, consisted of approximately 14-25 percent of the total number.

The results of the survey revealed a growth of interest in legal aid, increasing demands for higher quality of legal aid, and hopes that lawyers would offer a way of obtaining a legal goal. The survey also indicated changes in profiles of citizens who frequent legal institutions. The poll takers warned of an increase in the number of Leningraders who would not be satisfied with legal aid in LCBs (referred to here as “governmental” structures), and would instead seek help from private practitioners. Respondents expressed their obvious dissatisfaction with the quality of legal assistance, including its lack of concrete direction and narrow results. To receive the proper attention at LCBs, sometimes respondents had to bribe advocates. Lastly, respondents consistently reported that they did not have a sufficient amount of information about the advokatura and advocates’ services.

B. Co-workers’ Perceptions

If society’s opinions of advocates were mixed, so were those of their co-workers, judges and law-enforcement officials. In a 1986 survey of militia officers, 50 percent referred to their relations with advocates as negative.104 Some judges were not even aware of what exactly the advocate’s role was in court.105 In a 1982-83 survey of judges’ opinions, only half of the respondents supported the adoption of procedures allowing defense attorneys to begin

105 Sovetskoe gosudarstvo i pravo 3 (1985), 74.
representing their clients from the moment that a charge was presented.\textsuperscript{106} In a later (1988) survey, however, 63.7 percent of the 212 judge respondents from across the USSR appeared to strongly support the admission of defense counsel at the moment when the suspect was detained. Those investigators and procurators who were surveyed in this poll showed more support for admission of defense at least at the beginning of the preliminary investigation than their colleagues in earlier polls ever had.\textsuperscript{107} These and other data suggest that, while some court actors' retained negative attitudes about defense counsel even into the Gorbachev period, many other were learning to rethink their roles in light of legal reforms.

There are several possible reasons why conflicts still erupted between advocates and other court actors in the Gorbachev period. These include the fact that law-enforcement officials were overburdened with heavy caseloads, but expected to "quickly and decisively" lower the incidence of crime.\textsuperscript{108} In addition, the success of the work of law-enforcement workers, including judges, was defined by certain measurable and non-measurable institutional criteria, such as the "percent of uncovered cases," "stability of sentences," and "the capability of the justice system." People's court judges were pressured by justice officials and judges in superior courts to fulfill these criteria. Advocates posed obstacles to this goal. The new revisions in the criminal procedure codes (granting advocates' earlier access to cases, for example) actually contradicted the state's goals of "quickly and decisively" fighting crime.

C. Self-perceptions

The perceptions that the public and advocates' co-workers had about advocates have already been noted. But what did advocates think about themselves in the Gorbachev era? First and foremost, many advocates were self-critical. In a 1985 survey of 200 advocates who were members of MGKA and MOKA, respondents reported that they were not very effective in

\textsuperscript{106}Reznik and other advocate-colleagues and legal scholars conducted this survey on judges from all levels of the courts across the USSR. Reznik, 61-62.


\textsuperscript{108}Reznik, 61.
bringing about positive results for their clients. All those surveyed believed that a majority of cases in court were conducted not on the basis of the presumption of innocence, but on assumptions that the materials in the preliminary investigation were accurate. In answering a question about how often they detected accusatorial bias, 50 percent answered "sufficiently often." In any inquisitorial system, courts tend to focus in hearings on whether investigation reports are accurate, not on the adversarial play between two sides. But in the Soviet system, defense lawyers appeared to be particularly handicapped by the other court actors' ingrained disdain for their work.

Some advocates attributed part of the blame for inadequate defense of the accused to the passivity of advocates. Voskresenskii and his counterpart in MOKA, M.P. Bykov, commented in 1986 on how the negative approach to defense that courts had adopted fettered the initiative of advocates and caused them to fear that undesirable personal consequences would result if they acted assertively. That same year, these and several other chairmen of colleges of advocates met to discuss how to improve advocates' work in court and the prestige of their profession. They also set out to define what urgent demands they would present to Minist. There had not been such an "All-Union Meeting of Leaders of the Advokatura," since 1950. Across the USSR, many advocates-- though definitely not all -- were growing impatient with Minist's supervisory authority over the bar and began discussing the possibility of forming a national organization of advocates.

Abram Move, who headed the Criminal Law and Procedure Section in MOKA, was among the bar's leaders. While no anti-Soviet radical, Move nevertheless had the courage to challenge the legal wisdom of the day and to represent his clients to the fullest extent possible. Among other defense tactics, he often appealed to the USSR Procuracy for redress, and sometimes received favorable results. He had methodically collected newspaper articles he

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109Ibid. 62-64.
110M.A. Gotshteim, "K voprosy o samostoiatel'nosti pozitsii advokata," Advokatura i sovremennost', 104.
111Literaturnaja gazeta, 23 April, 1986, as noted in Reznik. 62.
112Barenboim. 24.
had written and materials from his past cases, including texts of appeals and official court
documents, for a 5-volume book, Zv kulisami zashchity, which was published by the
Gorbachev Foundation in 1993.113 The book was written for the edification of advocates as
well as for the general public.

Most advokaty, considering themselves above politics, wanted to be viewed as
individualists. Similarly, Move wrote that “I ascribe myself neither to the far right, nor to the
extreme radicals, nor even to the centrists. I am a typical Russian advokat.” He was not a
typical advocate, however, as he seemed to possess a special kind of authority in Moscow.
Move used the press to the best of his and his profession’s advantage, and advocates began
using the media more often in their defense appeals in the post-Soviet period in Russia. While
it is difficult to attribute direct credit to Move for influencing policy changes in certain areas
of the law, it is likely that his opinions did hold some sway in certain elite circles.

Some of Move’s articles were about specific problems that advocates confronted in
their daily criminal practices. In one, “Obzhalovaniyu...podlezhat,” he discussed how the
“stability of sentencing” was held up as an indicator of the courts’ work in the Soviet
period.117 Using the case of one client (Kazaku) as an example, Move mentioned how a court
of first instance found his client guilty, based on a forced confession, and then how he
appealed to the General Procurator of the USSR, who brought forth a protest in the USSR
Supreme Court. The Supreme Court repealed the decision and instructed a lower court to
carry out a supplementary investigation, after which Move’s defendant was acquitted. Still,
Move expressed his concern that many lower courts would not be willing to decide
differently. Move’s colleague, MOKA advocate, Mikhail Gofshtein, believed that “the term

113A.I. Move, Zv kulisami zashchity, Volumes I-V (Moscow: Gorbachev Foundation, 1993). Gorbachev was so
impressed with the articles he wrote in 1992 which criticized the actions of the Constitutional Court, that he told
him in a private meeting, “You saved the honor of the Russian advokatura,” and wrote him a congratulatory
letter on the event of Move’s 70th birthday (27 October 1992), published on p. 22.
‘stability’ has practically disappeared from court parlance, and A.L. Move was one of its gravediggers.”116

Other articles dealt with the importance of forming an independent organization of advocates, reinstituting jury trials, and fairly compensating victims of Soviet-era repression. In March 1988, Move participated in a roundtable sponsored by Pravda on the independence of courts. With him were Professors Savitskii and Kudriavtsev, Voskresenskii, and a number of other outspoken jurists (not all reformists).117 Move clearly had his own agenda, which included pushing for changes in the manner of appeals, an increase in the number of court assessors, and a reform of the sentencing system. In an article entitled “Rech’ v zashchitu narodnykh zasedatelei,” Move proposed that the number of court assessors be increased.118 Although he was still upholding the honor of the October Revolution and referring to “bourgeois exploitation,” Move also criticized the present court system and called for the introduction of more assessors, or jurors, who would represent an opinion separate from that of professional judges. He thus supported a reform -- the reintroduction of a jury system -- which would be implemented only four years later.

Move’s most aggressive public attack of anti-perestroika forces took place in November 1988. I.T. Shchekhovtsov, a self-proclaimed Stalinist, brought suit against the journal Sovetskaia kultura, and writer Alesei Adamovich for libel; Sovetskaia kultura had published an article entitled “Nakanune” in which Shchekhovtsov was referred to as “an exultant defender of butchers.” Move represented both the publication and writer. A judge at the Sverdlovsk People’s Court in Moscow dismissed the suit, and Shchekhovtsov appealed it to the Moscow City Court. Despite the vocal presence of Shchekhovtsov’s ultra-conservative allies in court on the day of the hearing, the City Court decided to uphold the dismissal. On 26 November 1988, Sovetskaia kultura published an excerpt of the speech that Move had given in the people’s court a few days before. In his speech, Move passionately defended the right of

116 Preface to Move (vol. 1), 11.
his clients to publish articles that were critical of Soviet-era repression, particularly of Stalinism and the mass repression of Soviet citizens by secret police agencies. Move specifically urged the judge to rebuff the anti-perestroika forces.119 On 16 January 1989, the Presidium of the USSR Supreme Soviet passed a decree (ukaz) which repealed all decisions and resolutions (postanovleniya) carried out by extra-legal organs of the secret police (OGPU, NKVD, and MGB) -- thus fully rehabilitating all Soviet citizens who were repressed.

While a direct connection between Move's speech and the writing of the decree cannot be proven, his long speech and the documents he presented at least influenced judges, further educated the public about the nature of the mass repression, and, in so doing, pressured Supreme Soviet leaders into taking action. Move's efforts in the perestroika era showed that certain advocates had a political consciousness, as well as sufficient confidence in their powers to convince and educate the minds of the elite, their clients, and the public at large.

**Perestroika and New Frontiers of Self-Regulation**

Mikhail Gorbachev and many other CPSU' leaders at the time intended for Soviet institutions, enterprises, and even republics to become more self-regulating, but they did not want to see them become fully autonomous from Moscow in the process. During the period when forces outside government started taking independent reform action, the late 1980s and first two years of the 1990s, the struggle for autonomy -- and sovereignty -- against the central authorities in Moscow grew among certain groups and republics of the USSR. The advokatura was a part of this dynamic. This section will highlight two examples of these new approaches to the self-regulation of lawyers. The first example, the formation of a national Union of Advocates, illustrates the attempts of some leaders of the Soviet bar to unite in protecting their interests in 1989. The second example, the formation of legal cooperatives, illustrates the attempts of jurists to expand the playing field of legal services, an effort that began to disunify the advokatura.

119 A transcript of Move's speech is published in vol. 1, 71-93.
A. Forming the USSR Union of Advocates

In general terms, the formation of the USSR Union of Advocates is an example of how a group negotiated its status vis-à-vis the state in a time of transition. It specifically addresses how the Soviet state, represented by both local and central officials, lost the upper hand against emerging non-governmental interest groups in the late 1980s.

In the mid-1980s, several reformist advocates were already discussing the possibility of forming an independent national organization of advocates. In May 1987, the chairmen of 30 colleges of advocates (out of approximately 164 colleges) finally took the initiative and met to prepare a draft of a charter for a future USSR Union of Advocates. A number of these active leaders then wrote articles in legal journals about the Union's formation and tactfully stressed how it would lessen the work load of Ministry officials. As they envisioned it, a union also would establish a needed communications network among colleges. It would become a voluntary social organization which, unlike the colleges of advocates, would not regulate or supervise the behavior of its members, but act as a voice for them on the national level.

Not all advocates, however, thought that a national organization would benefit them. Nor did all advocates consider the Ministry of Justice to be their nemesis; after all, justice officials sometimes provided advocates with the kind of resources they needed to fulfill their daily work. The Ministry of Justice tried to profit from these divisions and to gain support from conservatives by insinuating that only a small group of radical Moscow advocates supported such a union. While the most politically active advocates did tend to be from Moscow, many rank-and-file advocates, even in the provinces, also wanted justice officials to interfere less in their professional affairs.

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121 Many conservative leaders of colleges believed that they would lose part of what meager autonomy they had to a national organization. This was also the concern of those rank-and-file members who disliked the very idea of any more centralized control, even by a leadership of their own choosing. Advocates from republics other than the RSFSR, particularly the Baltics, feared that their interests would not be protected in an organization that could be dominated by Slavs. Huskey, "Between Citizen and State," 97.
The Ministry of Justice wanted to integrate advocates across the USSR into a new national bar association under its own auspices. On 5 August 1988, the Department of the Advoκatura of the USSR Ministry of Justice informed several colleges that the Ministry was in the process of restructuring the bar and that forming a union unilaterally would be illegal. From that point, tensions mounted. A kind of dynamic emerged, whereby reformist advocates took initiatives and state officials responded. Dozens of advocates from around the country gathered in Voronezh to hold an organizational meeting in October 1988. But on the eve of the meeting, the head of the local justice organs in Voronezh sent telegrams to all the colleges of advocates, informing them that the meeting had been canceled. Despite these obstacles, representatives from twenty-two colleges assembled and selected an organizational committee to arrange for a constituent congress of the Union of Advocates. Within days, the Ministry was sponsoring the creation of an Association of 50 colleges.

Meanwhile, Party organs became involved. On 2 December 1988, members of the Politburo discussed the possible formation of this association. They had before them a Central Committee memorandum (zapiska) written by Minister of Justice Kravtsov and A.S. Pavlov, head of the Department of Administrative Organs of the Central Committee. According to the memo, in founding the association, advocates would need to be assisted by several groups, including Ministry of Justice officials, judges from the Supreme Court, and several legal scholars. Thus, the two authors, unlike the advocates who had gathered in Voronezh in November, were not envisioning a self-governing and independent organization for advocates. The Politburo rubber-stamped this document and did not question the Ministry of Justice’s central role in its creation. On 7 December, with the approval of the Politburo, USSR

127Protocol no. FI43/3 from 2 December 1994. Center for the Preservation of Contemporary Documents (TsKhSD); kollektiivia raskekrenchnykh dokumentov: f. 89/3, op. 102, d. 106, ll. 125-29. Many thanks to Todd Fogelson for directing me to this document.
Ministry of Justice officials canceled the 26 December opening congress of the original independent Union of Advocates.

Several journalists quickly came to the aid of reformist advocates. The very fact that popular newspapers were allotting space to -- and in some instances, showing support for -- the formation of an independent Union of Advocates made the issue more controversial and public. For example, because of his close contacts with several staff members at Pravda, Abram Move approached a small group of deputy editors to publish an open letter written in support of an independent union and signed by well-known Soviet artists, performers, and scholars. Despite the possibility of recriminations from Party officials, these mid-level editors agreed with Move and published a letter that contained views contrary to the official Ministry of Justice line. The letter appeared in the 19 December issue of Pravda, above an interview with a conservative advocate who supported Ministry's guiding hand. Recall that, in 1989, Pravda was still the most influential newspaper in the USSR. Ministry officials may have assumed that the open letter's presence indicated a shift in Party thinking in favor of a more independent advocate organization. After much internal squabbling, Ministry leaders themselves approved measures for creating an independent advocate organization.

Thus the first Congress of the Union of Advocates met in Moscow, in February 1989, with over 1,000 advocates in attendance. USSR Minister of Justice Kravtsov conceded in his speech that between Ministry and the advokatura there was a history of "favoritism, command methods, and absurd instructions."127 But it was advocates who actually ran the opening of what was the first independent legal organization created since the Bolsheviks disbanded the Russian Union of Advocates in 1918; and it was advocates exclusively who were elected to leadership positions in the Union.

The Union of Advocates soon had to contend with a new rival organization, however. In June 1989, the Union of Jurists finally was formed and, as proposed, backed by the USSR Ministry of Justice, the USSR Supreme Court, Ministry of Internal Affairs (MVD), the Central

Council of Trade Unions, and the Academy of Sciences. Around 45 percent of the executive committee was composed of MVD officials. Membership in the Union of Jurists was automatic, not voluntary, for all members of legal occupations. The antecedent to this union contained the same leadership. During the opening congress, advocates in attendance were treated with disrespect; they were underrepresented at subsequent Union of Jurists' conferences. Reformist advocates like Move, Voskresenskii and Gofshtein refused to participate further in this Union.

Despite the obviously cold reception that the representatives from the Union of Advocates received at the opening congress of the Union of Jurists, the new advocate organization did not fold. Funds for the Union of Advocates came largely from advocates' pockets. The Union had few resources at its disposal, but it did manage to sponsor conferences on various legal issues. It also published a small monthly newspaper called Advokat. In addition, the Union's leaders took steps to establish formal ties with their western colleagues. For example, in October 1990, the Union of Advocates formed the Soviet/American Securities Law Working Group (SASLAW) with a number of American lawyers. Based in New York City, SASLAW was to provide advice and assistance to the Soviet government in drafting and implementing securities law, regulations, and disclosure systems.

The Union membership continued to act as a force against Ministries after its conception in 1989. Ministries officials who were working on a draft law on the advokatura in the first half of 1990 initially did not consult with members of the Union. This draft, had it been passed, would have created a commission of jurists to decide on admissions to colleges of advocates, and would have contained only a minority of advocates. The climax of this conflict came in December 1990, when over 600 members of the Union marched in protest to the

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128 Interview with Voskresenskii, 31 October 1994.
The draft subsequently was withdrawn. Afterwards, the Union members drafted their own versions of the revisions to the 1980 RSFSR Statute several times. The Union was never able to submit a version directly to the Supreme Soviet or to nominate candidates to this national legislature because subsequent revisions to the law on social organizations (obshchestvennye organizatsii) removed these rights.

B. Legal Cooperatives

In May 1988, the USSR Supreme Soviet passed legislation on cooperatives; the laws went into effect in July 1988. Cooperatives were among the first legal forms of entrepreneurial activity in the Soviet Union, but they in essence were only business partnerships. In 1989, after fierce internal wrangling, the USSR Ministry of Justice approved the creation of cooperatives that would provide legal aid, as a way in which to increase the volume of legal services. Ironically, more than just a few Ministry workers left their posts to join legal cooperatives.

The co-ops differed from the traditional juridicheskie konsultatsii in that they were self-contained entities, not answerable to colleges of advocates or any other body which regulated professional behavior. First and foremost, legal cooperatives were businesses and were taxed as such. Although state officials justified the existence of legal coops on the basis


132 The original USSR Union of Advocates, after December 1992, was renamed as the International Union of Advocates. A Ministry-backed Russian Association of Advocates was formed in Saratov in 1990 (registered as an all-Russian ob’edinenie advokatov). It was composed of provincial advocates and those who were more inclined to serve business people. A third national organization was formed, the Russian Union of Advocates, in June 1990, and was on friendly terms with its larger USSR Union of Advocates sibling. By August 1992, membership numbers were drawn so that the International and Russian Unions (both in alignment) had 40 percent of their potential membership and the Association had 30 percent. (Burrage, "Russian Advocates," 306). Later, in September 1994, a Federal Union of Advocates (replacing the Russian Union) was formed at the Congress of Advocates, then, in early 1995, a Guild of Advocates was created to represent the interests of parallel colleges.

133 Zakon SSSR o kooperatsii v SSSR, Izvestia, 8 June 1988, 1.

134 E. Sekhin, head of the Department of the Advokatura in the USSR Ministry of Justice in 1988, opposed the creation of legal cooperatives because he anticipated a drop in qualification, but the May 1988 law presented no restrictions. Friedrich-Christian Schroeder, "The Reform of Legal Consultation in the Soviet Union," Review of Socialist Law 16:2 (1990), 129. Gorbachev supported the creation of legal cooperatives and struggled with conservatives in the Politburo over the issue (7 December 1994 interview with Mikhail Vyshinskii, advocate #22 and former USSR deputy Minister of Justice).
of their services to the community, their "commercial" status meant that they were under no obligation to provide legal aid to less advantaged clients in criminal or civil cases (although some did). Thus, they were not governed by the 1980 RSFSR Statute.

While a number of advocates left colleges to form co-ops, there was no mass exodus. Most advocates remained in colleges because they represented a long tradition of public service and had a respectable reputation. In addition, most advocates assumed that colleges gave them the best employment protection; as long as they were tied to a college and worked in an LCB, they were guaranteed steady work, particularly in the criminal sphere. Those jurists who worked in legal cooperatives represented a potential competition for income-generating clients that advocates had not faced since the early Soviet period. By February 1989, Russia had 370 legal cooperatives, which employed 2,500 jurists. By June 1990, approximately 50 legal coops existed in Moscow. The chairman of MGKA at the time, Feliks Kheifits, denied that coops presented any real competition for advocates, although he claimed that some co-op jurists stole information from his advocates and used it for their own benefit. He also claimed that most jurists who worked for coops were either disbarred or had worked earlier as law-enforcement officials.\textsuperscript{135} One prestigious legal scholar reported that legal cooperatives were forcing up the cost of legal services to levels which most people could not afford.\textsuperscript{136}

But many legal co-ops had solid clientele bases. In fact, the 1990 Leningrad opinion poll on the quality of legal services (mentioned earlier in this chapter) showed that many respondents approved of the work in legal cooperatives. The survey also showed that even working class people and pensioners visited coops for legal advice. In January 1990, according to Minjust figures, 203 people sought legal aid at LCBs connected to the Leningrad Oblast College of Advocates, whereas 300 people sought legal aid at legal cooperatives.\textsuperscript{137}

\textsuperscript{135} Robert Rand's interview with Kheifits in Rand, 141-42.
\textsuperscript{136} Petrukhin, Vam nuzhen advokat, 27.
\textsuperscript{137} Spravka "O rezultatakh izuchenia predlozhenii ob obrazovanii v Leningrade vtoroi kollegii advokatov," 20 June 1990, signed by V.P. Popkov, specialist at the Department of Legal Aid to the Population, the RSFSR Ministry of Justice. Found in binder on second colleges.
Legal cooperatives, as well as business cooperatives, banded together on the local, republic, and national levels to protect their interests against the general mistrust of free enterprise that was prevalent in Soviet populations. In April 1990, the 800-member strong Interregional Union of Legal Cooperatives met to strengthen its goals of uniting all independent jurists in the RSFSR and protecting their professional rights. Many of the coop jurists were former advocates, jurists, judges, investigators, and procurators. Chairman Iuri III'in claimed that most advocates did not want to increase their numbers because that would lead to lower pay honoraria. He urged his colleagues to form more coops in the provinces, where legal services were especially scarce. The existence of this union strengthened the mandate of independent law offices.

Already in the early 1990s, a distinction was being drawn between advocates' work -- legal assistance in courts, especially in the role of defense attorney -- and the work of all other providers of legal aid to the public, such as jurists working in legal coops -- the counseling role in general. Jurists who were working in legal cooperatives were prevented from participating in any preliminary investigations of criminal cases, because the presidium of the RSFSR Supreme Court decided in 1991 that Article 201 of the Criminal Procedure Code prevented their admittance to this phase. They could, however, participate in criminal trials, but only at the judge's discretion. Over time, it became more acceptable to members of the legal community for jurists working in coops to appear in civil court cases.

By the early 1990s, approximately 1,000-3,000 jurists worked in legal cooperatives. By 1993, however, legal co-ops either closed down, having become antiquated, or changed their status to private law firms or colleges of advocates. Moreover, new colleges of advocates

138White, Gill, and Slider, 170.
139Mikhail Ljubarskii, "Nezavisimye iuristy pridut na pomoshch?" Chas pik, 9 April 1990.
140There is no tangible evidence of state officials' supporting this organization and sanctioning legal cooperatives as a ploy to weaken the colleges of advocates and break their monopoly over certain kinds of legal services, although the possibility should not be ruled out completely.
143There seems to be no definitive source on numbers of legal coop employees.
(called parallel or alternative colleges) began to form in 1990. By the end of 1994, 30 parallel colleges were registered with the Russian Ministry of Justice and had a membership of around 3,000 advocates.

**Conclusion: Outcomes of Reforms in the Advokatura under Gorbachev**

A significant number of legal reforms and independent initiatives improved the work life of advocates and strengthened the autonomy of the advokatura in the Gorbachev period. Advocates gained more control over entry into the bar and the training of their own cadres. Their governing bodies no longer received Minjust instructions like the one produced in 1987, which dictated how Moscow advocates were to implement their own perestroika. Moreover, after a long struggle between a group of reform-minded advocates and state officials, an independent Union of Advocates formed and provided a way for advocates to influence drafting procedures and strengthen professional identity. These developments occurred as the Party's authority dwindled across the USSR and as Minjust's Department of the Advokatura began loosening its supervisory controls.

Reforms in the way that advocates practiced, however, were often incomplete. Legislation passed in the USSR Supreme Soviet allowed for defense attorneys to begin representing their clients at earlier points in preliminary investigations. Advocate participation in phases of the preliminary investigation rose by 59 percent between 1985 (314,027 appointments) and 1991 (525,344 appointments).\(^{144}\) Attitudes slowly began to change among some judges, who began to accept a stronger adversarial component in their courts, and acquittal rates increased (slightly) in the final years of the Gorbachev regime.\(^ {145}\) On the other hand, investigators were still bullying advocates, and advocates still perceived strong accusatory bias in trials. They also represented more indigent people, as economic

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\(^{145}\) For results on a 1988 poll of judges and other legal officials, in which judge-respondents exhibited reformist-tendencies, see Solomon, "Legality in Soviet Political Culture: A Perspective on Gorbachev's Reforms," 273; and Donald Barry, "The Quest for Judicial Independence: Soviet Courts in a Pravovoe Gosudarstvo," in Barry, 266.
malaise set in, and they were paid little for their labor. As a result of being overworked, advocates had little time to educate the public through lectures in their free-time; they fell short of fulfilling the socialization role that justice officials had outlined for them.

Aside from their criminal work, advocates also increased their work in the civil sphere in the Gorbachev period. More so than in the 1970s, they were working on a contractual basis for enterprises, including joint ventures. In the late 1980s, about 65 percent of Soviet advocates completed work for organizations, enterprises, and institutions on the basis of contracts concluded between LCBs and legal entities. In addition, nearly one-third of advocates' revenues derived from legal services rendered to organizations. By 1989, advocates were signing contracts with clients to act as their “family advocates.”

The number of commissions (porucheniia) in civil cases advocates reported they had between 1985 and 1988 increased by approximately 25 percent (although numbers of reported commissions decreased between 1989 and 1992 and then rose thereafter); of the total number of civil cases in courts of the first instance, however, advocates only participated in approximately 9 percent in 1985 and 11 percent in 1991. As in all socialist countries, in the USSR, civil disputes were discouraged. Political elites downplayed the existence of societal conflicts and, therefore, any need for them to be resolved. Even under Gorbachev, those advocates and legal scholars who contributed to Advokatura i sovremennost' largely ignored civil practice to the benefit of criminal practice, which was more developed as an area of academic study.

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146 Butler, Soviet Law, 86.
148 The year 1988 appears to have the highest number of advocate commissions in civil cases in the Gorbachev period. It also is marked as the year with the highest number of civil cases for the Gorbachev period (1,890,228). My data are calculated from the statistics in the 1985, 1988, and 1991 Otechety o rabote kollegii advokatov za god. Otdel advokatury, Russian Ministry of Justice. Delo 07-05, 1985, str. 1; delo 07-05, 1988, str. 1; and delo 9, 1992, str. 1, respectively. Also, statistics on the number of civil court cases in courts of first instance were found in the document, “Ob”em sluzhebnykh rabotnikov, 1970-94.” Unarchived document at the Russian Ministry of Justice. The second set of statistics I cited (i.e., 9 and 11 percent) may be inexact, because I was working with figures which presented the number of commissions advocates had in civil cases, not necessarily the figures for the number of civil cases advocates appeared in a particular year. For example, more than one advocate may have appeared in one particular civil trial.
Advocates were socialized by the nature of their work to protect their clients' rights on a case-by-case basis, not to defend a whole society or challenge the foundations of Soviet authority. In fact, relations between state officials and colleges of advocates were not always combative; they more often were parental. Those advocates who contributed to *Advokatura i sovremennost*, for example, though critical of aspects of Ministry's control over their corporate interests, lauded CPSU organs for their legal reform proposals.149

This lack of anti-communist activism was not necessarily the case in all Soviet bloc countries in the late 1980s, however. In Hungary, for example, private attorneys (equivalent to advocates) played a more visible role in supporting a transition to democracy. They created the Independent Lawyers' Forum, which sponsored the opposition Round Table Talks that resulted in a unified opposition to the communist leadership. In contrast to the authority Russian advocates wielded in tsarist Russia, the authority of lawyers in pre-communist Hungary was even better established and benefited from a more developed market economy. After communist Hungary fell, lawyers began to re-establish part of that authority. However, Hungarian lawyers' role in social reform after 1989 suffered due to the growing opportunities for them to prosper by working exclusively for the entrepreneurial class and to a lack of up-to-date information about constitutional and other legislative changes and market relations. Also, there were still communist-era restrictions on professional entry and thus a similar problem as there continues to be in Russia—too few qualified lawyers.

In the Gorbachev era in the RSFSR, a relatively small group of advocates were social and political activists, and even they cautiously limited their battles. The large mass of advocates remained relatively disinterested in efforts to negotiate with state officials over issues of stronger organizational control and distanced themselves from politics. Compared with the glut of lawyers in the U.S. Congress, the dearth of lawyers in the Soviet legislature (in 1991 there were only two advocates) revealed that strong connections to power centers, like

the CPSU and certain economic ministries, were stronger indicators of electability than a legal education. 150

A prediction that Louise Shelley made in the early 1990s, that in “areas with stronger Western legal traditions, legal professionalism may emerge more strongly whereas in others it may remain as illusive an objective as in the years of Communist Party rule,” is a plausible description of how the Russian advokatura was beginning to transform itself in the late Gorbachev period. 151 Advocates’ opinions concerning the bar’s new approaches to self-regulation and national identity varied across regions, and even colleges of advocates. During perestroika, some advocates tried to reform their korporatsia, as Gorbachev and his supporters attempted to reform parts of the Soviet system. Neither Gorbachev elites nor the leaders of the bar, however, were able to predict the extent to which individuals would make choices diverging from their own — whether in forming new political factions or new colleges of advocates.

CHAPTER THREE
THE STRUGGLE FOR CONTROL OVER THE RE-INSTITUTIONALIZATION OF THE RUSSIAN ADVOKATURA, 1989-95

In Soviet times, the state accused the advokatura of being bourgeois, but now we’re accused of being too communal and monopolistic. -- Aleksei Rogatkin, chairman of the MGKA presidium

This chapter focuses on the processes of development inside the three organizational levels of the post-Soviet advokatura -- national bar associations, colleges of advocates, and law offices. Such processes have yielded both positive and negative results for advocates. On the one hand, new bar organizations reflected the decentralization and depoliticization processes of Soviet institutions and the growth of pluralism in Russian society. On the other, these processes produced tensions between two new national bar associations. They also produced tensions and ideological differences between Soviet-era colleges of advocates and new colleges. Third, they resulted in vastly different approaches to providing legal services and in unequal work conditions between Soviet-era legal consultation bureaus (LCBs) and new law offices tied to various colleges. Lastly, private law firms (operating outside the purview of colleges and the law on the advokatura) emerged which responded to the increased demand for legal services in the commercial law sphere but broke the colleges’ monopoly over legal services.

To compound advocates’ worries, underground legal practitioners, referred to in tsarist times as striapchic, were known to be plying their trade again.¹

How and why did the advokatura become this disunified and come to lose its monopoly? Was this lack of professional unity in fact detrimental to advocates’ practices? Moreover, did new colleges and law offices make a difference in shaping relations in the legal sphere and provide expanded services to various types of clients? Why did these changes to

¹Very little has been written about a post-Soviet podpol’naia advokatura, or the breadth of its development. Anecdotal evidence, however, points to its existence. For example, in April 1996, a resident of the Leningrad oblast wrote to the newspaper, Argumenty i fakty, about a neighbor of his -- a retired procurator on pension -- who was practicing law in his free time. The letter writer, using the word “striapchi” to describe his neighbor, claimed that “It’s turned out that in our times people have not just a few problems in their daily lives, for which a professional advokat is not taken -- the scale [of these mundane legal problems] is not such [to require one].” The letter writer discussed briefly how his neighbor had a solid client base and assisted clients in completing court documents, securing land deals, and tracking down ex-husbands who avoided paying alimony. A. Pereverzev, “Striapchic -- eto professia,” Argumenty i fakty, 14 April 1996, 1. At least this striapchii had a law degree; it is probable that many of these renegade lawyers do not.

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the bar occur when they did, and how did they fit into the general context of the transition period in Russia? These are the questions that this chapter poses and sets out to answer.

As explained earlier, historical institutionalism is a middle-range approach to explaining how actors influence the development of institutions through their strategies, and how rules and norms embedded in institutions constrain and shape their strategies. It is applied here to a study of the development of the advokatura. The institutional weight of all of the laws, norms, organizational structures, and patterns of state-profession behavior in the late tsarist period led to the way in which advocates were subordinated to Minist and Party officials in the Soviet period. Then, once the Soviet government and CPSU began to lose their legitimacy in the late 1980s, new structures of legal practice and bar regulation emerged, though they still did not completely subsume the old.

Advocates and state officials challenged some of the structures and norms solidified in the Soviet era, as they set out to reshape an institution such as the advokatura to match their own present interests and agendas. These interests, however, were not delineated along simple lines, with the advocates always in opposition to state officials. As with any legal profession, professional autonomy and goals of self-regulation were not absolutes. Moreover, advocates were also redefining their structures of practice and organization in response to domestic pressures other than the state, as well as to some global changes.

This chapter begins by examining the differences between the two national bar associations, and is followed by an explanation of how new colleges of advocates and law offices formed. Next, it presents comparisons between a number of Soviet-era and new colleges of advocates and between a number of legal consultation bureaus and new law offices in Moscow and Ivanovo. The final part of this chapter focuses on two ways in which advocates attempted to create a new identity for their profession in the 1990s: through the drafting process of a new law on the advokatura and through educational programs.
National Bar Associations in Conflict: The Federal Union and the Guild

Gassan Mirzoev, who first practiced law in Baku, was not your average advocate. Before practicing law in Moscow, he worked as the chief of the Moscow Gosarbitrazh (State Arbitration Board) and worked two years at the Soviet Mission to the UN. In the early 1990s, he created the largest rival to the original colleges of advocates in Moscow, the Moscow Legal Center (Moskursentro), which catered to the emerging entrepreneurial classes. Soon after, he became leader of the parallel colleges (over 3,000 members in 1994). With his strong ties to certain state officials, including the head of the Moscow Justice Department, Mirzoev insured that the parallels would not be dismantled.

On 27 January 1995, Mirzoev gathered representatives from 32 parallel colleges of advocates, located in approximately 22 territories across Russia, for a conference whose purpose was to create the Guild of Russian Advocates. Mirzoev himself was elected the Guild’s president. Popular national newspapers such as Rossiiskaia gazeta, Kommersant-Daily, and Delovoi mir painted the event as a positive development for the advokatura. As envisioned by Mirzoev, the Guild was to become a voluntary professional organization with the status of an inter-territorial college of advocates. Unlike a union, which in Russian law is designated as a public “societal” organization which possesses no managerial authority over its members, the Guild would decide questions of administration and ethics (such as disciplinary appeals). Mirzoev wanted advocates in the parallels to be protected by a more active umbrella organization; in turn, he wanted his members to pay for the service. Leaders of the rival Federal Union of Russian Advocates, whose members mainly belonged to the original, Soviet-era colleges of advocates, did not welcome this new development. In fact, they objected to the notion of parallel colleges. The International Union (Sedruzhestvo) of Advocates, the successor of the original USSR Union of Advocates which wielded less authority in national bar affairs, sided with the federal Union against the parallel colleges.

In an attempt to downplay this ensuing conflict, the head of the Department on the Advokatura in the Russian Ministry of Justice (Minjust), Isai Sukharev, denied that any major disagreements between members of parallel and original colleges arose at the Congress of Advocates held in September 1994. In actuality, congress delegates did not chose a single advocate from a parallel college to sit on the leadership organ (Ispolkom) of the new Federal Union of Advocates. One sympathizer pointed out that the parallels paid for a large part of the Congress, but many of its delegates questioned the right to their existence.

Mirzoev was not against creating a unified national bar organization, but refused to be subsumed by what he considered to be the conservative leadership in the collectivized Soviet-era colleges. Leaders of original colleges, on the other hand, feared that the status of a national professional organization would undermine their own control over their colleges. This coalition won at the Congress, and the Federal Union was created as a societal organization which "defends the social and professional rights" of its members; supports the creation of future training institutions for advocates; works with legislators on drafts of a new law on the bar and of other laws which concern the profession; and facilitates communications among members. According to its charter of September 1994, the federal Union of Advocates is a voluntary organization, and members (either individuals or colleges) are obligated to pay 5 percent of their monthly revenue to the union. Thousands of advocates from original colleges soon joined. By January 1995, however, Mirzoev gained considerable ground towards reaching his organizational objectives. With a healthy cashflow from wealthy business clients and its own public relations office, the Mosiurtsentr, along with its national Guild, was poised to take future initiatives.

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1 Interview with Isai Sukharev on 25 October 1993, in his office at the Russian Ministry of Justice, Moscow.
Why New Colleges and Law Offices Formed

This section will examine the creation of new colleges of advocates and structures of practice and how it was driven by both state and non-state actors. If justice and CPSU’ officials had not approved of these new structures in the late 1980s, for example, they most likely would not have formed. Similarly, new colleges and law offices would not have formed had non-state actors, such as jurists who wanted a wider choice of practice and self-regulation outside the original colleges’ fold, not taken the initiative to operate them.

A. The “Parallels”

In the 1980s, the word “voluntary” was used to describe the nature of membership in the colleges of advocates in Article 3 of the 1980 RSFSR Statute, but this designation was not accurate. Only jurists who belonged to officially-registered colleges of advocates were, in fact, considered to be advocates. Advocates therefore could not practice alone or without college affiliation. The colleges’ monopoly over membership in the profession also came with a price: it only applied to those colleges which were approved by the state bureaucracy. Article 3 also stipulated that the USSR Ministry of Justice must grant consent to the creation of inter-territorial and additional colleges of advocates.

Before 1989, the only new college created on the basis of the 1980 RSFSR Statute was the Inter-territorial College of Advocates (MRKA), which was formed in 1982 to handle classified cases in military tribunals and special political cases. By the late 1980s MRKA’s advocates, in addition to their special jurisdiction, were handling cases which belonged to the traditional colleges, including both criminal and civil cases. In the late 1980s, jurists conceived the idea of forming new colleges of advocates as a way to create independent, “non-state,” non-collectivized bar associations which were tax-sheltered. According to the 1980 RSFSR Statute, colleges of advocates (as voluntary associations of persons) are not subject to taxation, although the revenues of individual advocates are.
The first group on record that initiated the formation of a parallel college of advocates was the Leningrad Association of Colleges of Advocates (LOKA), composed of members of the Interregional Union of Legal Cooperatives. At a 8 April 1990 meeting, members approved a charter and appointed an organizational committee. Chairman Ill’in sent to the USSR and RSFSR Ministries of Justice a proposal about the college’s formation, asked for their approval, and noted that LOKA intended to forward the proposal to the Leningrad City Council for confirmation and registration. An RSFSR people’s deputy and 22 council deputies wrote in support of LOKA.

The way in which the first parallel was formed is a revealing case study of how lawyers used the support of certain officials to win a decision from a reluctant RSFSR Ministry of Justice. According to a memo dated 20 June 1990 and written by a staff member of the Department of Legal Aid to the Population of the RSFSR Ministry of Justice, Ministry initially refused to support the formation of the parallel because it considered the charter to contradict the 1980 RSFSR Statute. Those on the Leningrad council who supported the formation included deputies from the commissions on human rights, legislation, legality, and legal order; the investigative department of the Department of Internal Affairs and the military procuracy also supported the move. The Leningrad city department of justice, the already-existing colleges of advocates, the courts, city procuracy, and Mayor Anatolii Sobchak opposed it.

Those opposed worried that the new college would not accept the burden of court-appointed cases and other forms of free legal aid, and they wanted numbers of advocates to increase by admitting more members to the original colleges. Ultimately, the group in support of the formation won. RSFSR Minister of Justice Nikolai Fedorov wrote to Sobchak that, because a majority of the Leningrad Council supported LOKA, Ministry would allow it to operate for one year, on the condition that it was an experiment that would cease once a new

"Spravka “O rezultatekh izuchenii predlozhenii ob obrazovanii v Leningrade vtoroi kollegii advokatov,” 20 June 1990, signed by V.P. Popkov, specialist in the Department of Legal Aid to the Population, the RSFSR Ministry of Justice. Otdel advokatury, binder on second colleges, Russian Ministry Archives."
law on the *advokatura* passed. In addition, a minimum of only 20 founders were required by law to license a new college of advocates, which made transferring from private law firm status to college of advocate status less difficult.

Fedorov justified the creation of new colleges as a way to increase the number of advocates and allow the structure of the bar to contend with the new dynamic of market forces. He even believed the monopoly of the original colleges needed to be broken because it violated the law on anti-monopoly activity. This idea for setting the legal services market free changed the face of the Russian *advokatura* and turned Fedorov into the original colleges' nemesis. Some advocates actually hoped that Ministy would ensure that the original colleges' monopoly remained intact. However, Ministy, even after Fedorov stepped down in 1993, continued to register new colleges. If the goal was to increase the number of advocates, the creation of new colleges worked. But the experiment made unifying the profession more difficult, since new colleges felt allegiance to no one and emphasized commercial law practice to the detriment of court-appointed criminal cases.

Once the Leningrad parallel was created, other proposals for creating new parallels quickly surfaced across Russia, including petitions from Sakhalin island, Sverdlovsk, Voronezh, and Jaroslavl. Most advocates took offense. In June 1990, at the Founding Congress of the Union of Russian Advocates, delegates voted against the opening of these parallels in krai, oblasti, and autonomous regions, stating that the new colleges would destroy the *advokatura* as an institution and not respect the legal interests of citizens and organizations. Some Ministy officials joined advocates in their concern and particularly worried that each parallel would adopt its own informal operating procedures. Some officials were even sympathetic towards advocates' calls to outlaw parallels, although this faction of

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8Letter to A.A. Sobchak from RSFSR Minister of Justice, N.Y. Fedorov, 16 July 1990, no. 7-13/160. Otdel advokatury, binder on second colleges, Russian Ministry of Justice archives. Both Articles 3 "Colleges of Advocates" and 32 "Relations of the Ministry of Justice of the USSR with the Advokatura" in the 1980 RSFSR Statute allowed for the creation of new colleges, according to the RSFSR Ministry of Justice.


10Spravka "k voprosu ob obrazovanii dopolnitel'nykh kolegii advokatov," signed by G.V. Shumskii and E.A. Sekhin of the USSR Ministy. Otdel advokatury, binder on second colleges, Russian Ministy archives.
opinion did not cause Miniust to stop registering parallels. USSR Ministry of Justice officials complained that the volume of work produced by advocates in the "originals" had actually decreased from 1988, when advocates were first allowed to set most of their own fee schedules. Moreover, they remarked that the original colleges were more often focused on fulfilling commissions for criminal cases, instead of widening their scope of legal services. The parallels were poised to pick up the slack.

Although the Ministry's hold on the colleges and individual advocates substantially weakened at the end of the Soviet period, Miniust bureaucrats still tried to maintain supervisory powers and discretion over them. In an order signed on 5 December 1991, Yeltsin approved a measure to strengthen Miniust's upper hand in deciding who was authorized by the state to provide legal services. The order gave Miniust the right to issue licenses to practice law and to strengthen registration requirements. While these licenses were never issued to practicing advocates (because the draft law on the advokatura was never approved), this order underscored the fact that Miniust was the bureaucracy in charge of reinforcing the long-term practice by the state of defining boundaries of practice and admittance procedures. Aleksei Galogunov, chairman of the Union of Russian Advocates, strongly criticized this measure and worried that presidiums of colleges would lose their control over bar admissions.

If parallel colleges were at all necessary, they were particularly needed in the provinces of Russia, some of which suffered from a severe shortage of advocates. Many local councils favored their creation, given their potential to fulfill the growing need for legal services. In Astrakhan, a group of jurists decided to form a new college in late 1991; the formation was approved by the City Council. With the support of the Association of Advocates, a competitor to the Union of Russian Advocates composed of members of parallels, and even editors at Miniust's journal, Sovetskaia iustitsiiia, the jurists created their college of

11 Spravka "k voprosu ob obrazovanii dopolnitel'nykh kollegii advokatov."
28 members and opened up two consultation bureaus. The structure of the college was similar to that of old ones, as outlined in the 1980 RSFSR Statute. But they created specializations in their law offices to cater to enterprises, collective farms, and business cooperatives. After a year, their average pay exceeded that of advocates in the original college.

Moscow fell behind this and other regions of the country in creating parallel colleges, most likely because of the influence of the Moscow City College of Advocates (MGKA) and the Moscow Regional College of Advocates (MOKA), from whose ranks the union leadership was largely drawn. In May 1992, with over 20 parallels in existence across Russia, a group of jurists applied to Minjust and the Moscow mayor's administration to get their college, the College of Advocates of Moscow (KAM), registered. Their proposal was approved by the deputy Russian Minister of Justice, who commented that more competition for legal services was needed, since "up to 60 percent of the appeals that citizens make to Minjust concern advocates' refusals to grant legal aid, a significant part of which come from Moscow."13 But KAM advocates rejected Minjust's mandate of providing general legal services to the population. Minakov wanted to specialize in intellectual property because MGKA had no specialists in this field, even though two-thirds of trade transactions involved intellectual property issues. He also mentioned how MGKA rejected the proposals of several private law firms in order to collaborate on cases and unify efforts. MGKA responded that it did not intend to allow competition.

This MGKA decision, though protecting the interests of the leadership in the short-term, financially damaged the college as a whole in the long-term. MGKA declined a chance to collect more fees and benefit from having more prestigious advocates practicing in commercial fields of law work as members. The conservative leadership in MGKA wanted no part in the cooperative movement, but it did not want to invest in improving the conditions in legal consultation bureaus (LCBs), either. Some advocates who belonged to MGKA and MOKA

admitted that in the waning years of Soviet power there was some justification for parallels, because advocates were trying to distance themselves from state control. But that time had passed, according to these advocates, and now there should be only one college per territory, with few exceptions.14

The parallels were criticized for lowering the quality of professionalism for all of the advokatura. The assumption was that most advocates in parallels either did not have law degrees or were disbarred from the original colleges. On the other hand, some influential advocates in Moscow’s original colleges welcomed the parallels. MGKA advocate Boris Abushakhmin argued that new colleges, and the competition which developed because of their creation, forced all advocates to perform better.15 Similarly, a number of advocates at the MOKA I.CB in the Moscow Regional Court argued that parallels promoted a healthy spirit of competition, increased the numbers of advocates, and gave clients more choice.16

The fight between the original and parallel colleges heightened after the September 1994 Congress met, because the existence of the parallel colleges became a controversial issue to the drafters of the new law on the advokatura in the State Duma. The struggle continued in the press. According to one legal observer, advocates in original colleges artificially limited the scope of their practice to criminal cases, contrary to practice in the rest of the world.17 Another journalist strongly criticized the government of Buriatiia for dissolving a parallel college of advocates in March 1995, ostensibly because it had not registered properly with Miniust.18

The leaders of the International Union of Advocates and Federal Union of Advocates (from Moscow original colleges) were the strongest foes of the parallels. Advokat, the
International Union's newsletter, reported on a fall 1994 civil case filed by founders of a parallel college in Moscow (TsGKA) against the Moscow Department of Justice and the Russian Ministry of Justice for canceling their request for registration in October 1993. The Tverskoi Intermunicipal (People's) Court decided that it was Ministry's right not to register a parallel college. In addition, it stated that the creation of parallels as an experiment in expanding legal aid had concluded. Advokat editors considered this a precedent-setting case; all the same, parallels continued their operations.

B. New Law Offices

In 1990, 16 advocates in the Siberian city of Novosibirsk decided to leave their LCB and the Novosibirsk oblast college of advocates altogether to form the first local independent law firm in town, called KontraktS. Planning to specialize in management law, they soon realized that their clients' activities sometimes became grounds for criminal liability. Not only could they no longer represent clients in preliminary investigations; their commercial law firm was subject to heavy taxes. The jurists' renegade spirit sent them running to the justice department to change their status to a parallel college of advocates two years later. This became more of a pattern over the next couple of years as practicing jurists tried to avoid heavy taxation and gain other privileges advocates enjoyed.

By 1993, legal cooperatives for all intents and purposes were obsolete, because jurists working in them knew that they had an even better opportunity for practicing law and making money in private law firms. By the second year of the new Russia's existence, private law firms were beginning to form even more rapidly. They were following more in the footsteps of large western law firms than those of LCBs. The largest amounts of profits were accumulating on the new law-office level, not on the level of colleges. Some former legal cooperatives merely re-registered to become private law firms, despite the fact that they had to

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pay high taxes for the privilege. The private firms chose this status to avoid being governed by the 1980 RSFSR Statute or being attached to a college of advocates, but the firms were governed by regulations on public and commercial organizations.21

Some advocates founded their own law offices, which also specialized in commercial law fields. In October 1991, advocate Boris Abushakhmin opened up the first Moscow law firm to be affiliated with a college of advocates (MGKA). Because his request at the time was unique, he received approval not merely from an office inside the RSFSR Ministry of Justice, but from Minister of Justice Fedorov himself. While supportive, Fedorov insisted that the new firm provide free legal aid and accept court-appointed criminal cases.22 According to the 1980 RSFSR Statute, the local justice organ was supposed to approve the opening of any law bureaus and could close them as well. Abushakhmin changed the name “firm” to “bureau” (biuro) to avoid paying taxes, as firms are profit-making commercial businesses, while bureaus attached to colleges of advocates are legal entities (tjuridicheskie litsa), which are not profit-making or subject to state or local taxes.23

Specialized firms found their own niches in local populations. The number of clients in LCBs from 1993 onward dropped sharply because clients, especially from the business community, began searching out experts in different types of law.24 To run a lucrative law practice in Russia, however, lawyers had to not only remain familiar with the changing legal codes and regulations, but also had to have strong contacts with the business and academic community, as well as local administrative organs and state ministries germane to their clients’ interests. Laws constantly were being revised, but in many institutions, the same characters prevailed.

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21 The Law on Public Associations was passed in October 1990. This law allowed independent organizations to register as “legal persons,” and have such rights as to open up bank accounts, establish their own official stamp (stamps are very important in building public legitimacy), possess currency, and turn a profit.
22 Letter from N.V. Fedorov, RSFSR Minister of Justice, to advocate B.F. Abushakhmin, undated (but probably in September or October 1991). Department of the Advokatura, binder on second colleges, no page number. Ministry of Justice Archives.
23 He also decided to leave the firm he created, in order to join Reznik, Gagarin, and Partners.
Like the legal cooperatives which came before them, private law firms stood outside the purview of state regulation. Private law firms proliferated particularly in Moscow and St. Petersburg, but also opened in smaller towns. Without an organized national organization or corporate membership to keep tabs on them, their numbers were difficult to measure. Private law firms tended to attract those jurists who considered colleges of advocates to be off-shoots of Minjust and preferred to answer only to their fellow partners and clients. Many of these people also intended to produce big profit margins. Several branches of prestigious foreign law firms opened in the late 1980s and contained a mixture of foreign lawyers and Russian jurists, some of whom had once worked in LCBs of Soviet-era colleges of advocates.

A Cross-Organizational Analysis of Soviet-era and Parallel Colleges

This section will focus on how professional boundaries are formed on the organizational level of local colleges of advocates and law firms. According to Minjust records for December 1994, 112 colleges of advocates, 30 of which were parallels, were officially registered with its organs. If colleges in the Soviet era were used by the state to control professional development, including the goals of advocates as an occupational group, it might be assumed that in the post-Soviet era -- during a transition to less authoritarian practices -- advocates on the college level would have free rein in deciding their goals and organizational approaches. But this assumption must be tempered by the fact that state actors still involved themselves somewhat in the further development of the advokatura.

How did members of local bar associations, old and parallel colleges alike, create their own identity and protect their interests? To what degree did state officials participate in (or interfere with) these processes? And what effect did the different identities and interests of colleges have on the rendering of legal services in the first four years of post-Soviet Russia? I will first examine how colleges of advocates adjusted to post-Soviet reality and then trace the development of a number of parallel colleges.

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25 See "Advokatura Rossii," Rossiskaia iustitsia 12 (1994), 54-57. Of the 112 chairmen, only 17 were female.
A. Soviet-Era Colleges and Post-Soviet Change

Approximately 80 percent of advocates belonged to original colleges even after 1991, and this section will center on the extent to which original colleges adapted to regime changes. Most of the data used for this section focuses on organizational developments in the Moscow City College of Advocates (MGKA), the Moscow Regional College of Advocates (MOKA), the Inter-regional College of Advocates (MRKA), and the Ivanovo Regional College of Advocates (IOKA).

On the whole, the main internal structures of colleges did not change. The presidium was the main executive body, and members of commissions worked on issues of qualifications and admittance of new members, auditing, and professional conduct. The remaining advocates were members of the general assembly, who could attend open presidium meetings and vote for presidium members. Internal financial procedures did not change greatly, as members still had to pay between 20-30 percent in fees to their college; the funds were then distributed into a fund to pay for legal aid to indigents and clients in other special categories (such as legislators and workers in labor disputes), and funds for insurance and pensions. Part of the funds were also earmarked for renovations and improved technical support inside LCBs, but this seldom happened.

Since 1993, however, the state had been granting colleges fewer funds to cover legal aid cases; it simply did not have the money to give, or so officials reminded advocates. So colleges had to rely more on their members' fees than they had before. The fees that most benefited colleges came not necessarily from their LCBs, but from the newly formed bureaus. Some advocates who worked in such law offices in MGKA argued that MGKA was still in existence because of the monies that they themselves contributed to their colleges’ funds. Some advocates who worked in such law offices in MGKA argued that MGKA was still in existence because of the monies that they themselves contributed to their colleges’ funds. Some advocates who worked in such law offices in MGKA argued that MGKA was still in existence because of the monies that they themselves contributed to their colleges’ funds. Some advocates who worked in such law offices in MGKA argued that MGKA was still in existence because of the monies that they themselves contributed to their colleges’ funds.26 MGKA and other colleges had already developed a two-tiered system of law offices: the first being the lucrative new-style biuro, where advocates were creating new relations and working on high-profile cases; the second being the LCBs, where advocates handled low-

26Interview with Mikhail Barschevskii on 16 March 1995 and with Boris Abushakhmin, 29 April 1995.
paying legal aid cases. "I think that as long as no new law has been passed," Abushakhmin lamented, "life as it is now will force the colleges to have a structure whereby the new bureaus practice business law and the LCBs accept all other cases -- the appointed ones...the less serious advocates can work in the LCBs."27

Original colleges of advocates were accepting more applicants because they now had control over setting entrance ceilings, but many of these applicants were former law-enforcement workers in search of better pay and more interesting work. Highly detrimental to the originals, however, was the fact that they owned little property: they rented their premises from local officials, they rented most of their equipment, and the physical conditions of LCBs continued to worsen. According to the 1980 RSFSR Statute, no colleges can own property because they are not commercial businesses.28

1. Conditions Inside Colleges

The premises of the MGKA presidium were located in a building on Pushkin Street in central Moscow (where, curiously enough, the offices of the Procuracy's journal, Zakonnost, also were housed). In addition, the college had 29 LCBs and approximately 13 new-style bureaus. The premises contained a small and elegantly appointed auditorium, on whose walls hung photographs of former luminaries of the bar dating back to the tsarist period. The upstairs housed an archive, one office of the Institute for Legal Defense (not active in 1994-95), and three offices for the chairman and deputy chairmen. The premises lacked the fundamentals of modern communication, such as computers and faxes.

During 1994-95, a controversy erupted over the possibility that the whole building would be sold to American business interests. MGKA chairman Aleksei Rogatkin claimed that Mayor Luzhkov, notorious for micro-managing Moscow city properties, wanted MGKA to vacate the building so the city could sell it to foreigners for hard currency. According to

27Interview with Boris Abushakhmin, 29 April 1995.
28Aleksei Rogatkin, chairman of MGKA, also mentioned this in his interview with me on 17 May 1995.
Rogatkin, what ensued between MGKA and Luzhkov could only be described as “war.” The Mayor's office proposed another building, but Rogatkin refused. Rogatkin clearly had lost patience with some local officials: “In Soviet times, the state accused the advokatura of being bourgeois, but now we’re accused of being too communal and monopolistic.”

MOKA’s premises were located in a building on the northeast edge of Moscow, miles from the center, in a residential, wooded area. MOKA in 1994 had 54 LCBs, five new-style bureaus, 17 firms, two kontory (small, specialized law offices), and two agencies, which were located across the large Moscow oblast. Thus this college was ahead of MGKA in the game of creating new-style law offices, although physical conditions inside the college headquarters were comparable.

MRKA’s administrative premises were located in a small building in the prestigious and central Moskvoretskii raion (region). Because this college is inter-regional, however, its 90 LCBs are located across the country. The chairman’s office was well-furnished and with carpeting and large bookcases. Across the hall was a secretary’s room, which had more office equipment than MGKA appeared to have. In 1995, local justice officials decided to move the civil court section of the Moskvoretskii Court into the same building; MRKA had little choice but to comply.

The administrative offices of the Ivanovo region’s original college of advocates were located in the center of the city of Ivanovo. In early 1995, there were 20 LCBs across the oblast, three in Ivanovo itself. On the college’s small premises there was no auditorium, simply offices for two secretaries and the chairman. In the LCB next door to the chairman’s office, there was a library which served all three LCBs, with one librarian on staff. The library was well-stocked with current newspapers and journals relevant to advocates’ practice.

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29 Rogatkin, 17 May 1995 interview.
30 Because MRKA had little leverage over property they did not own, the Moscow Justice Department decided unilaterally to move the courtrooms and judges assigned to civil cases in the regional court into the MRKA building as well, as of April 1995.
2. Leadership Structures

The colleges’ presidiums (leadership councils) typically had 12-15 members who were elected for terms of three years by the general assembly. Chairmen then were elected by the presidium and from the presidium. With the dissolution of the CPSU’s power, candidates for bar leadership bodies no longer had to belong to the CPSU or submit to a screening by local Party organs. For example, MGKA’s chairman, Rogatkin, was never a Party member. Although members of the general assemblies of colleges typically elected the presidium, they were not allowed to choose their own chairman. The chairman typically occupies a very powerful position in the college, since he or she has the most authority on the presidium and is the link between state officials and college members. The chairman must articulate the college’s goals and intentions and constantly negotiate with local justice and city officials over funds for legal aid and rent. Chairmen and deputy chairmen also received compensation for their positions, so it was in their interests that the college structure remain intact. Of those MOKA and IOKA advocates who were surveyed, only 19 percent responded that members of their presidium had too much (decision-making) power vis-à-vis the general assembly. From this and interview data, it is clear that most rank-and-file advocates (especially women) did not want to become involved or have the time to become involved in bar politics. This attitude left the door open for presidium members to move forward with their own ideas, some of which were not always prudent.

Most presidium members in MGKA and MOKA were middle-aged to older men (aged 60 or above) who typically had practiced for over two decades. The MGKA presidium contained three women, but the MOKA presidium contained only men. In the presidium meetings at MGKA, Alla Zhivina was one of the most vocal participants, and seemed to have the most energy and best organizing skills of the whole group. Chairman Aleksei Galoganov

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3 A survey of advocates’ opinions composed of 38 written questions were conducted in the first half of 1995 by Pam Jordan and Professor Daniel McGrody of CEEIL, the American Bar Association’s office in Moscow. Twenty-five MOKA advocates, 32 IOKA advocates, and 20 Stavropol advocates took part. Henceforth, it will be referred to as “the 1995 survey of advocates’ opinions.”
ran the MOKA presidium meetings with an eye to fair play, giving different members time to speak and listening intently to rank-and-file advocates with questions or special requests.

Galaganov, however, was overworked. He led not only MOKA, but also the Federal Union of Advocates; in addition, he still practiced criminal law. Advocates Golfshtein and Voskresenskii also sat on the MOKA presidium, while leading the International Union of Advocates at the same time. Most of the leadership was composed of advocates who mainly practiced criminal law, rather than branching out into commercial law. Young advocates were not being represented, and although Chairman Rogatkin claimed that no cross-generational tension existed in his college, students in Moscow’s most prestigious law faculties and young practitioners seemed more interested in business law than criminal law.32

Presidium meetings occurred sometimes once a month (more frequently in the case of MOKA) and were open to the public. A majority of the time usually was spent either approving applicants for admission or entertaining complaints about disciplinary infractions.33 In 1994-95, meeting time was spent discussing the drafts to the law on the advokatura, and these meetings often were attended by at least one Ministry official. In MOKA and MGKA meetings, there was a parental dynamic at work between the presidium members and some of the rank-and-file members who came to complain or answer to disciplinary problems.34

32When I asked law students where they wanted to practice after university, however, many said inside an original college like MGKA. They were drawn to the established reputation original colleges had for attracting star quality lawyers and guaranteeing job certainties.
33In approving an applicant, the members would look over her karakteristika (a document similar to a resume) and recommendations from former employees and advocate-mentors before making a decision. By this point, however, admission was usually guaranteed. The disciplinary “hearing” was generally informal, with the manager of an LCB announcing the complaint and the offending advocate’s plea of innocence, or at least no-fault. My presence was always known: in fact, one time Rogatkin even introduced me, and then warned the presidium to “watch out what you say -- she takes notes!”
34For example, at the 9 November 1994 MOKA meeting, one presidium member criticized a young female advocate for not earning enough money in her LCB, even though she had been forced to accept a load of court-appointed, low-paying criminal cases. At that same meeting, a young male applicant was criticized for having worked at a private investment firm, and no decision was made because most members considered his former job inappropriate as a prerequisite for bar entrance. At the 29 November 1994 MGKA presidium meeting, a female advocate in her early 40s, looking utterly exhausted, explained how she fell ill after returning from a trip to Israel and had not worked for weeks. On top of that, she had to care for her family. Zhivina stood up and yelled at the poor woman for not fulfilling her duties, and then the manager of the LCB where she worked (also a woman) said that this advocate had not informed her of such personal problems. Another female presidium member told her to see a doctor who made house calls instead of risking her life in a policlinic again. Some presidium members sat back and preferred not to get entangled in the “dysfunctional family” scene. But the
Several of the members of both MOKA and MGKA presidiums sincerely wanted to take into account their members’ interests and concerns. Some of these presidium members were included in the “golden ten,” the term used to describe the most reputable advocates in Moscow.  Genri Reznik of the MGKA presidium (and member of the “golden ten”) found time to lecture new advocates and take on civil rights cases. Rogatkin admitted that he wanted to see a younger advocate take over the Federal Union after Galoganov left office. Yet, at the same time, the presidium and commissions of colleges were not dynamic enough, in terms of either structure or personality, to encourage large innovations. Such innovations included improvements in the conditions inside LCBs and the creation of incentive programs that would motivate their membership to learn more about commercial and public advocacy law.

3. Background of Members

For all four of these original colleges, between 30-40 percent of members had previously worked in law enforcement organs or as justice officials. In March 1995, MGKA membership numbered 1,543 advocates, 54 percent of whom were female. Approximately 80-100 MGKA advocates were working in new-style bureaus. The number of members aged 30 or under was 128; 31-40 years, 386; 41-50 years, 413; 51-60 years, 244; and 61 or older, 372. These figures indicate that the membership leaned toward older advocates. Many

presidium formally reprimanded the woman, and she stormed out of the room. In a later meeting, on 16 May 1995, a newly retired female advocate asked the presidium if her pension could be increased; the members declined to entertain her request, arguing that a lack of discretionary monies in the college’s pension fund prevented them from doing so. But they continued a general discussion about the increase in prices for consumer goods in Moscow. I did not attend any meetings at MRKA or IOKA.

This distinction has been around since the tsarist advoakatura. See “Zolotaia desiatka’ advokatov,” juridicheskaiia gazeta 30 (1993), 8-9.

College leaders were not keen on giving out exact figures. I reached this percentage based on Petrukhin’s 40 percent approximation for all of Russia. (Petrukhin, 26). While attending a number of presidium meetings, during which applicants were briefly interviewed, I learned that many were formerly employed as law enforcement officials, particularly investigators. Not all MGKA presidium members felt comfortable accepting former law-enforcement workers, however; two advocates at a 29 November 1994 meeting, for example, voiced their concern over why a former military investigator would want to join their ranks. Other applicants had backgrounds as jurisconsults. One successful applicant headed the legal department in the prestigious Most Bank, but became bored with it and wanted to join the bar and sign up for more stimulating jury trial work. During his acceptance procedure at a presidium meeting, an advocate voiced his concern that this applicant would be unwilling to pull his own load of court-appointed criminal cases. Chairman Rogatkin, however, welcomed his finance law expertise.

members of original colleges had parents or other close relatives who either belonged to their colleges or were advocates or jurists of some kind elsewhere. In other words, professional legal careers tended to run in families.

Most MGKA members attended the prestigious Moscow day-time law faculties, including Moscow State University, Miniast's Russian Legal Academy, and the Moscow Legal Academy (earlier the All-Union Legal Correspondence Institute and the Moscow Legal Institute). In 1994, 84 percent of MGKA advocates' commissions (porucheniia) were for criminal cases, and 16 percent were for civil cases. They signed 1,792 contracts with enterprises (including state-owned, joint venture, joint stock, and private cooperatives). These contracts permitted advocates to provide ongoing legal services, which had formerly been completed by jurisconsults.38

Approximately 1,000 advocates belonged to MOKA in early 1995. A bit over 100 of these advocates in 1995 were working in law offices other than the old LCBs. They served the Moscow oblast, an area that is home to approximately eight million inhabitants. Some MOKA advocates practiced within Moscow city limits, including members of the large LCB located inside the Moscow Regional Courthouse, where jury trials have been held since 1993. Most, however, worked in small towns in the Moscow oblast, many of which were either rural communities or built around factories. Approximately 77 percent of commissions reported by MOKA advocates in 1994 were criminal cases; 23 percent were civil. They signed 436 contracts with enterprises.39 At least one MOKA advocate, a 33 year-old male, worked full-time for a prestigious high-tech retailer which had its own law department.40

As with MGKA, the population had an average age in the 40s and was approximately half female. Also, like MGKA, all of MOKA's members had law degrees, and there was a relatively high percentage of members who had worked earlier in other legal institutions. Of

38"Otchet o rabote kollegii advokatov" (1994) of MGKA. Copied from data sheet in the offices of the Department on Cooperation with the Advokatura, Russian Ministry of Justice.
39"Otchet o rabote kollegii advokatov"(1994) of MOKA. Copied from data sheet in the offices of the Department on Cooperation with the Advokatura, Russian Ministry of Justice.
40Interview with MOKA (male) advocate #5, 27 October 1994.
the 25 MOKA respondents in the 1995 survey of advocates opinion, over half worked earlier as law professors, jurisconsults, investigators, prosecutors (and sometimes a mixture of two of these legal specialties). Between 1992 and 1995, MOKA acquired around 380 new members, only 90 of whom had just completed their legal education.11

MRKA had 600 members in its ranks, only 30 percent of whom were women.12 The lower number of female advocates was a reflection of the fact that women have been disproportionately underrepresented in the Soviet and Russian military. With the widening of the breadth of legal practice, more women probably will join the college as their options for areas of practice increase. A 1993 report stated that, beginning in 1990, MRKA’s ranks ballooned because former military justice workers resigned their posts to enter the college. However, a majority (54 percent) of MRKA advocates had been working for over ten years (plus 31 percent worked under ten and more than three years; and 15 percent had worked up to three years). In 1993, 47 percent of commissions concerned criminal cases, 12 percent concerned civil, and 32 percent concerned contract work with enterprises. Four out of the 12 State Duma deputies elected in December 1993 who formerly were advocates once belonged to MRKA. Advocates worked only in LCBs (11 in Moscow), with the exception of a few, such as an advocate in LCB number 82, who worked also on contract in businesses which had legal departments.13

The Ivanovo college in 1995 contained approximately 155 advocates, 120 of whom practiced inside the city, and 60 percent of whom were women. Ivanovo (pop. 600,000), once a center of the Russian textile industry, employed mainly female workers in its factories. In 1995, the working population in Ivanovo still reflected high numbers of women in the work force, including in the college. But by this year, the city textile factories had dismissed over 40 percent of its laborers, and even official/unemployment levels reached a record 8.75

12Nikolai N. Klyon, “Otchet o rabote MRKA za 1991-93 i zadachi advokatov na 1994 g.” Klyon provided me with a copy (censored in parts because of classified military case materials).
13Interview with MRKA (male) advocate #9, 2 November 1994. He was in his early 40s, had a graduate degree in law, and worked part-time as a legal advisor for an Eye Microsurgery Center.
percent (although the real rate was much higher). In a town such as Ivanovo, having a job as an advocate was viewed as fortunate. A high percentage of advocates' caseloads (85 percent) were criminal, while only 15 percent were civil. Approximately 15 percent practiced criminal cases exclusively; a much smaller number practiced only civil cases. The college had 74 contracts with enterprises, including 33 governmental enterprises, but presidium Chairman Albert Bulichev admitted that the handful of private law firms in Ivanovo carried most of the contracts with enterprises.

4. Entrance Requirements and Training New Recruits

Entrance requirements remained largely the same in these four colleges from the late Gorbachev period through 1995. Colleges, not the state, were now setting their own admissions ceilings, and still were not required to issue state licenses. Entrance requirements still included the completion of at least a five-year law degree (bachelor's equivalent), followed by an internship (stazhirovka) in an LCB, an average length of six to nine months. In addition, weekly training classes were required, which lasted from one to four months and involved a series of lectures on various areas of legal practice (usually criminal and civil trial work). Lastly, entrants needed to pass an oral exam and present a referat (a paper of around one-hundred pages on a particular legal topic) to the college's Qualifying Commission, composed of twelve or so advocates appointed to the post by the presidium. Of the four, Ivanovo was the only college which still did not require an entrance exam or sponsor many training classes, due to its limited financial resources. Most of the responsibility for training new advocates fell to supervisors in LCBs.

In the remaining three colleges, interns attended evening classes held on the colleges' premises. A number of the most prestigious advocates in each college lectured and answered interns' questions. MRKA created an advocates' training school in October 1994 which had

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4 Data according to IOKA chairman, Bulichev, in interview on 5 April 1995.
5 Interns at MOKA LCBs were required after three months to begin handling criminal cases and complete legal forms for walk-in clients. Mel'nikovskii, 33.
100 interns in its first term and met twice a month on issues from the history of the *advokatura* and MRKA to legal problems involved in establishing property relations.\textsuperscript{16} MRKA had a ten-member Qualifying Commission that graded oral exams which covered questions about methodology, legal theory, and the specifics of new legal codes.\textsuperscript{17} According to Alla Zhivina, head of the MGKA internship program, approximately two-thirds of her applicants passed the exam (100 advocates entered MGKA in 1994).\textsuperscript{18} For the first three months, all new members of colleges were placed on probation. At a Qualifying Commission meeting for interns (called a scientific-practical conference of interns) on 9 March 1995 in MOKA, the commission members watched as intern-applicants (mainly young, recent female graduates of law faculties) presented papers on specific legal topics, then grilled them on particular points. Applicants also presented dossiers of their references and internship evaluations. After that, all applicants were accepted. It appeared that as long as applicants received positive recommendations from the managers of the LCBs where they had interned, they would be accepted into the college.\textsuperscript{19}

However, older jurists who formerly worked in other legal institutions were applying in large numbers to colleges of advocates and being accepted. Unlike the younger applicants who had just graduated from university, this pool of applicants typically was permitted to enter the *advokatura* without completing an internship, although sometimes they too were required to take entrance exams and attend training classes. Such lenience is understandable for former legal scholars who apply to the bar, but it is less so for an investigator who typically lacks a strong methodological base for legal defense work. According to advocate Abushakhmin, the MGKA presidium, because of financial pressures to accept more advocates into the college, was accepting a far higher percentage of candidates (eight out of ten) than they had before. Such an approach resulted in a drop in the quality of new recruits.

\textsuperscript{16}"Advokatskaia praktika nedeli," Kommersant-Daily, 8 October 1994, 22.
\textsuperscript{17}The nature of the exam was noted by MRKA (female) advocate #11, in her 20s, 2 November 1994.
\textsuperscript{18}Interview with Alla Zhivina, 25 November 1994.
\textsuperscript{19}One female advocate told me later that she thought that the entrance exams for MOKA were too lenient.
5. Development of Professional Standards

Despite the impediments imposed by the state, in some ways the *advokatura* managed to develop and maintain some professional standards, including a respect for *krasnorechie* (eloquence in speeches presented at trials, an approach first mastered by sworn attorneys in the tsarist era). Even in Soviet times, the texts of advocates' speeches were published to encourage the art of *krasnorechie*. Now, in the Moscow Legal Academy, a department on the *advokatura* offers law students courses on advocates' practice and the history of the bar.

Inside the original colleges, advocates were sometimes disciplined; rarely, however, were they now disbarred. Since the original colleges needed to increase their numbers to insure their survival against parallel colleges, they were not inclined to dismiss members at the same time. Just as in Soviet times, the originals still lacked codes of ethics in the early 1990s. However, some colleges and national bar associations were moving towards establishing them. In 1994-95, MGKA was in the process of renewing a code of ethics that had been used in the nineteenth century. At MOKA, part of the seminar series for new advocates was devoted to topics about lawyerly ethics (relations with clients and their relatives; and relations with judges, law-enforcement officials, victims, witnesses, and court experts). In 1995, its leadership was drafting a set of precepts to serve as broad ethical guidelines. Moreover, in June 1995, the second Congress of the Federal Union of Advocates, which had around 14,000 members at the time, recommended that the union draw up a code of ethics governing the activities of Russian advocates. The International Union of Advocates, along with Ministy officials, soon joined the Federal Union in this effort.

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50 Interview with Rogatkin, 20 October 1994.
51 Mel'nikovskii, 53.
52 "Zapovedi advokata," Rossiiskaia justitsiia 7 (1995), 50. The precepts are very broadly written and call for each advocate to support the "honor and dignity of his profession."
The original colleges in Moscow offered some continuing-education lectures, and even older advocates could attend the training classes for a review; but there was no requirement to improve skills. Many advocates, despite the fact that they appreciated the idea of continuing education, did not have the time to run to their college to attend day lectures. Some colleges also cooperated with western legal-education programs. Colleges participating in these programs either sent some of their members abroad for short internships in western law firms, or invited such groups as the ABA's Central and East European Law Initiative (CEELI) to run workshops on jury trials and other new additions to advocates' practice. These efforts tended to benefit only a few advocates -- which is certainly better than none -- and participants complained that many western laws and standards of practice could not be applied to the Russian context.

A major obstacle to maintaining professional standards of practice, according to some advocates' working in original colleges, and on criminal cases specifically, was that they themselves were not being defended in society. One advocate claimed that around seven Moscow advocates had been arrested between 1994-95 for reasons stemming from their trial work. Rogatkin recounted how OMON troops (elite commando emergency forces) broke into his LCB Number Seven sometime in March 1995, in order to steal evidence that one advocate had stored for his client. "We couldn't react to this," he said. He and other advocates felt that they had no outlet for protesting the matter. The deployment of OMON hinted at direct orders from above, and Yeltsin's 12 June 1994 decree against banditism gave law enforcement agencies more authority to facilitate their fight with crime. Advocates also were beaten and murdered in Moscow and St. Petersburg. In September 1994, a prominent St. Petersburg advocate was badly beaten for reasons which may have been related to his work. In 1994-95 in Moscow, for example, a handful of advocates had either been attacked or murdered. Still other LCBs had been broken into, probably by thieves assuming that the

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35 Interview with MGKA (male) advocate #28, in his 40s, 18 January 1995.
36 Interview with MGKA (female) advocate #67, late 30s, 7 May 1995.
37 Interview with Rogatkin, 17 May 1995.
"rich" advocates kept extra money in safes. In 1994, an advocate was murdered in Ivanovo, and the college of advocates there was broken into three times.

6. Goals and Attitudes of Members

These four Soviet-era colleges established similar goals in the early post-Soviet era, according to their four chairmen. Most of them included improving the quality of advocates' training and work, expanding legal aid, helping to pass a new bar law, and improving their finances. The concern that leaders continued to emphasize most was finances; special concerns were the lack of funds to improve physical conditions for most of their LCBs, as well as the failure to establish well-endowed funds to cover labor costs in legal aid cases.

Abushakhmin claimed that the colleges still were not defending the economic rights of their advocates adamantly enough, arguing that advocates were not being compensated sufficiently by either the college or the government for many of their court-appointed cases and had been forced to pay higher fees to colleges. Some advocates from Smolensk were so enraged by this governmental neglect that they wrote President Yeltsin to demand that they be paid in a timely fashion. Of the chairmen in my sample of original colleges, the chairman of the Ivanovo college, Bulichev, had the most to worry about, as his advocates did not provide a great amount of revenue for the college. Aleksei Galoganov, the president of the Federal Union of Advocates and chairman of MOKA, admitted that those who were earning a great deal tended to be the profession’s "stars." According to his estimations, "The average salary of an advocate in our union is a bit higher than that of an interregional bus driver."

Advocates also worried about their reputation vis-à-vis law-enforcement officials and even their physical well-being. Rogatkin, for example, called for his members to "increase their professional level" in a speech he gave at the 43rd Annual MGKA Conference in March.

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58"Advokatskoi praktika nedeli," Kommersant-Daily, 18 March 1995, 21. The manager of the MRKA LCB which was robbed remarked that "among the population, there’s gossip about the extreme wealth of advocates."
1995. He also asked members “to be courageous and not fall prey to provocation” from investigators intent on expelling advocates from preliminary investigations.\textsuperscript{62} His words rang true not only for his own advocates, but for advocates working in other regions. For example, on Sakhalin Island in late 1994, an advocate was asked to testify against his client in a criminal investigation. Upon the advocate’s refusal, he was charged with obstructing justice.\textsuperscript{63}

Finally, Rogatkin, as well as other chairmen, stressed that the advocate’s main function was to prevent arbitrary actions in the legal system. In the Russian legal system, with such a weak foundation and widespread evidence of corruption, such a task seemed unachievable to most advocates.

Many rank-and-file advocates were no less worried about their status as lawyers and their monthly pay than the presidiums of their colleges were. But levels of despair differed, especially across different types of law offices. In the 1995 survey of advocates’ opinion, most MOKA respondents answered that the bar either had less prestige or the same amount of prestige than it had before 1992. A majority of MOKA respondents felt that private law firms were damaging the prestige of advocates. Interestingly, however, 80 percent of the respondents believed that advocates were influencing the development of a law-based state (a future goal). Ivanovo advocates responded with similar enthusiasm, although 88 percent of them answered that they believed that accusatory bias existed in trials, and 50 percent of them responded that their role in court only sometimes influenced outcomes (MOKA respondents answered similarly).

One tendency which was clear from my interview data, as well as from reports and articles written by advocates, was that they would often define professionalism in terms of the quality of their services to clients, not in the classic inward-looking terms of developing a unified professional image or strengthening their financial muscle vis-à-vis other legal specialists. Part of the reason for this tendency was that state officials discouraged

\textsuperscript{63}“Po sledam pis’ma v redaktsiiu,” \textit{Advokat} 1:43 (January 1995), 3.
professionals from pursuing these "western," "bourgeois" ideals; Soviet advocates were not permitted to form an independent national organization until the late 1980s, for example. Another part of the reason for this tendency was that, even going back to the tsarist era, many advocates were occupied with questions about how best to serve the general public, particularly the less advantaged members of Russian society.64

These four Soviet-era colleges lacked an active approach to cultivating more business clients. Over decades, colleges grew accustomed to having clients come directly to them and receiving court appointments. Now, with the growth of private law firms and parallel colleges, the originals had to compete for clients. Many advocates in these original colleges believed that the parallels would soon fold and represented only a small threat to their practices, because the parallels' members were under-qualified. This is why the MGKA presidium had previously declined to accept Minakov's offer at the parallel College of Moscow Advocates to cooperate and unify. Now Minakov often took business trips to the West, while only a minority of MGKA advocates were involved in international law practice in Moscow.

7. Relations with State Officials

In the first half of the 1990s, Minius't still had a role in determining the bar's main goals and objectives. Such a role asserted itself during the drafting of a new law on the advokatura in the State Duma and in Minius't's ability to amend regulations on how advocates were paid by the state for court-appointed cases. In addition, Minius't's function of annually collecting and evaluating data on the practice of each college continued. In its 1994 evaluation of the colleges and outcomes of practice, for example, the Department of

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64In the tsarist era, advocates themselves initiated the creation of consultation bureaus to serve the less advantaged members of Russian society. See William Pomeranz, "Legal Assistance in Tsarist Russia: The St. Petersburg Consultation Bureaus," University of Wisconsin International Law Journal 14:3 (Spring 1996), 1-26, for further discussion. In the Soviet period, on the other hand, laws on the advokatura precisely stipulated whose legal needs advocates were to serve and what legal tasks they were to fulfill.
Cooperation with the Advokatura (under Isai Sukharev) sharply criticized those college chairmen who neglected to file their reports and accused them of being “undisciplined.”

In some ways, then, tension between the state and original colleges continued into the mid-1990s. These included problems over maintaining legal aid to the underprivileged and payments to advocates for such labor. While Minjust wanted colleges to pay for part of their legal aid work (out of advocates’ fees), it did not have the power to acquire sufficient funds from the state budget to cover court-appointed cases. Rogatkin and other chairmen across Russia had not received state funds since 1993 to cover legal aid cases. In 1992, there was controversy over the idea of creating a governmental *advokatura* which would handle all court-appointed and legal aid cases. Many Moscow Bar leaders opposed the idea, fearing that their members would leave for the governmental *advokatura*. They also did not want to see state officials regulating advocates’ practice any more than they already had. Moreover, advocates still possessed the attitude that their function was to stand between citizen and state (although in some instances, such as arbitration cases, for example, they represented state enterprises). Rogatkin considered advocates to be the state’s natural opponents, claiming that “No government likes the bar.” At the same time, however, members of the bar never wanted to oppose state intervention completely.

A *rapprochement* between the originals and Minjust had been developing since 1993, when Minister of Justice Fedorov resigned. Leaders of original colleges were willing to relinquish some of their autonomy to state officials. This move would be justified on the basis that colleges would receive guarantees from Minjust for future financial aid from state budgets for funding court-appointed cases. In addition, justice organs would continue to

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66This according to a female member of the MGKA Auditing Commission (advocate #33), which oversees college finances. Interview on 7 February 1995. Regarding MOKA’s lack of governmental moneys see Denis Bykovskikh “Juridicheskii sostoyanie,” *Juridicheskii vestnik* (September 1994), 26.

67Shaposhnikova, “Zashchita nuzhna zashchita”; Valerii Rudnev, “Advokat ne khotiat podchiniat’sia chinnovnikam.” As of May 1995 the Moscow Department of Justice still objected to creating a municipal *advokatura*. In Ivanovo, some advocates favored a municipal bar, and resented the fact that local justice officials did not want to fund a municipal *advokatura*. Interview with Ivanovo (female) advocate #8, 8 April 1995.

68Interview with Rogatkin, 17 May 1995.
furnish affordable rental premises for LCBs and colleges. Moreover, Ministry’s Departments of the Advokatura and Legal Aid acted on behalf of the advocates’ interests in 1992-93, by winning a battle against the State Tax Service. This agency had planned to tax colleges despite provisions in Article 29 of the 1980 RSFSR Statute that freed them from state and local taxes.

In an article published in a popular legal newspaper, Sukharev wrote about how Ministry saved the advokatura from this financial burden:

Only thanks to the energetic interference of the Ministry, illegal actions of bureaucrats in the tax service were abolished: and justice triumphed. Of course, the unions of advocates and other professional associations during such events remain powerless, and this aid by the Ministry of Justice to the advokatura ought to be not only preserved, but even articulated further in the Law [on the advokatura].

This continuing state interference was much less invasive than in Soviet times, especially for individual advocates. On the one hand, it protected the professional standards of advocates, as the state has done to a certain extent with bars in western countries. But, on the other hand, the patronizing nature and extent of the interference of officials from the executive branch into Russian bar operations still was unique.

8. Public Relations

The original colleges of advocates did not have any public-relations specialists working for them, and thus largely relied on their chairmen and star-quality members to handle interviews with the press. Some journalists working on major national newspapers, such as Iurii Feofanov of Izvestia, sided with the original colleges. Kommersant-Daily, a popular newspaper for the business set, ran a weekly spread on advocates’ practice and often spotlighted MRKA advocates. Advertising was rare for advocates in original colleges,
although a number of MOKA LCUs ran an ad in a 1993 edition of Domashnii advokat, a weekly publication that is geared towards offering basic legal advice to the layperson. Mikhail Golfshtein, a member of the MOKA presidium and deputy president of the International Union of Advocates, sometimes wrote a column on legal questions for the popular newspaper, \textit{Argumenty i fakty}.

If advocates' words were gaining more press exposure, they were no longer being heard on the public lecture circuit as they had been a decade before. Once the network of All-Union Scientific Knowledge Societies (\textit{Znanie}) deteriorated in the late Gorbachev period, advocates' participation in lectures crumbled with it. One 1994 article in \textit{Advokat} proclaimed that now, more than ever, advocates should be informing people about the law. Most advocates, however, did not have the time to give lectures now. Some advocates who held advanced legal degrees presented lectures at law faculties, but such lectures were addressed to future jurists, not members of the general population.

B. Parallel Colleges: A Mixture of Old and New Influences

If the strength of the original colleges sometimes lay in their training programs, identification with a long-standing tradition, and criminal practice, the strength of parallels lay in forging new fields of legal practice that were supportive to a market economy and new ways of economic management. This section will highlight six parallel colleges of advocates, including Injurkollegia, Mosiutsentr, Klishin and Partners, the Advocates' Chamber (\textit{Advokatskaia palata}), Advocates' League, and the single parallel in Ivanovo.

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advantage, sometimes made calls to them, too. Part of the reason why MRKA advocates in particular were highlighted in Kommersant-Daily was that Chairman Kiyon made a point to suggest to his advocates that they should be reading that section regularly. Kiyon's report to Minjust: "We recommend that our advocates read the 'advocates' practice' section of Kommersant-Daily. Some of MRKA's advocates have been positively noted there." 
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I. Formation Histories

Mosiurtsentr was both a part of the Establishment and an iconoclast. To understand why, we need to return to its creation and its creator, Cassan Mirzoev, who not only knew people in high places, but occupied a high place himself in the Moscow legal community. In March 1989, Mirzoev, still the chief Moscow State Arbitrator, wanted to experiment with an idea. He sensed a growing opportunity in the field of legal services in the business sphere to create a new type of legal institution. Although it would be state-funded (by the Moscow government), its structure, Mirzoev envisioned, would be built on the model of a large western law firm. With the support of the State Arbitration Board and the Moscow Department of Justice, Mirzoev approached the City Party Committee with his idea. After Moscow Party officials approved it, his idea became the Center of Legal Aid to Enterprises to Prevent Infringements of the Law.75 In January 1991, the Center’s administrative base transferred to the Moscow Executive Committee (a part of the local government) and was renamed the Moscow Legal Center.

Mirzoev and the other jurists at Mosiurtsentr offered legal advice to legal entities and also sponsored a conference in November 1991 on problems relating to the legality of business transactions during a market transition. Two months later the Center was transformed into an independent self-supporting municipal structure, but was not yet a college of advocates. Mirzoev decided to change its status to a college in order to avoid the high taxes that commercial organizations were obligated under law to pay.76 The Center officially became a “specialized” college of advocates in January 1993, after which its advocates were guaranteed equal rights with advocates in original colleges (including the right to represent the accused during preliminary investigations). Mirzoev maintained good relations with the mayor’s office and the Moscow Department of Justice. In April 1994, Mayor Luzhkov sent a message of welcome to participants in a conference on business law

75Shaposhnikova, “Gildiia.”
76According to Mikhail Vyshinskii, a deputy chairman of Mosiurtsentr, the Center had to pay taxes until 1993; around 94 kopecks out of each ruble was taxed.
sponsored by the Mosiurtsentr. A year later the head of the Moscow Justice Department, Boris Saliukov, would side with Mosiurtsentr and other parallels in the creation of a Guild of Advocates, and Mirzoev could rest assured that his Center would remain legitimate.

Like Mosiurtsentr, Iniurkollegia was first an arm of the state. It was formed initially during NEP as a joint-stock company called Kreditbiuro and served industrialists and entrepreneurs involved in currency exchanges abroad. In the 1930s, its name changed, and it became a typical state enterprise under the auspices of the Ministry of Finance (Minfin). According to its present chairman, Valerii Alpatikov, a youthful-looking man with a good grasp of English, “Iniurkollegia was for all foreign citizens as well as lawyers [visiting the USSR] a fully independent and even respectable advocate office.” But that was not entirely accurate, because the jurists practicing there were not members of an official college. In 1985, the “ownership” transferred from Minfin to Miniust, then, in 1989, it became a specialized college of advocates.

Klishin and Partners was established as a college of advocates in January 1993, pursuant to a Moscow government resolution. But this date did not mark the beginning of its existence. Its founder, Aleksei Klishin, worked on the Maritime Arbitration Committee in the USSR Chamber of Industry and Commerce. In 1989, he decided to form a legal cooperative; afterward, he changed its status to a joint venture, a TOO (Tovarishchestvo s Ogranicheskoi Otvestvnenosti, a form of private ownership which was a limited partnership), and a private law firm. It first was subsumed by Group Most, a financial management firm and later a prestigious bank, and almost exclusively served legal entities, not individuals. In 1993, according to Klishin, his firm of only 20 jurists, including a former General Procurator of the Russian Federation, became a college of advocates in order to take

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77Noted in brochure for the Moscow Legal Center, 1994.
78Interview with Alpatikov by Vitalii Volkov, "Khodatay po delam derzhavy," Juridicheskii vestnik 4: 56 (February 1994), 30. In his interview on 23 January 1995 Alpatikov, claimed that his organization had become an official college of advocates in the 1930s, although that is technically incorrect.
79The reason for the switch, like the reason that Vyshinskiy gave for why the Mosiurtsentr changed to a college status, was probably to become tax-sheltered.
part in Minister of Justice Fedorov's "campaign to crush the monopoly of traditional colleges." Curiously, after resigning as Russian Minister of Justice in 1993, and before winning the presidency of the Chuvash Republic, Fedorov himself was chairman of Klishin. According to one of his associates, Klishin and Partners became a college because such a status carried more prestige than that of a law firm.82

Advocates' Chamber (AP), was not formed by any rank-and-file advocates, either. Chairman Iuri Kostanov was a former procurator. Moreover, he once headed the Moscow Department of Justice from 1990 to 1993. He left the Department because he disliked working under the continued practice of dual subordination, which specifically meant being controlled both by Minist and the Mayor's office (even worse, he was not getting on well with Luzhkov).83 He formed a college in November 1993, because he believed that the original colleges lacked independence and agreed with Minister of Justice Fedorov's "campaign" to demonopolize the profession. Advocates' Chambers began operations in March 1994. Kostanov considered himself a "child of the Khrushchev era," a new thinker in his 50s.

The newest of the parallels in Moscow was Advocates' League (AL), which registered at the Moscow Department of Justice as the eighth college of advocates in Moscow on 1 March 1994. AL began accepting clients in December 1994. In contrast to the four Moscow parallel colleges described above, AL was chaired by a dynamic 36 year-old woman and a former jurisconsult, Elena Efimova. Efimova gathered together a number of jurists who had certain specialties, including arbitration and international private law practice. She also viewed the original colleges as old and staid, with advocates who were generalists and therefore had breadth but lacked depth. Efimova and the 34 other advocates voted not to unite with Mirzoev's Guild, because they questioned whether Guild membership would offer them any benefits. Like Klishin, she guarded her independence.

81 Oleg Morzov, Interview with Klishin in "Advokat nuzhen?" Literaturnaja gazeta (4 April 1994).
82 Interview with Klishin (male) advocate #34, in his early 30s, 10 February 1995.
83 Interview with Iuri Kostanov, 22 February 1995.
In September 1992, Oleg Kaganovskii formed a parallel college in Ivanovo, with 30 advocates. It first took the form of a legal cooperative “Pravoved,” opening in 1988. As jurists working in a legal cooperative, Kaganovskii and his colleagues had no right to appear in preliminary investigations, which was one reason he gave for changing the status of his organization. The other reason was that the head of the Department of Justice in Ivanovo suggested that he form a second college. Kaganovskii left the original college to form the cooperative and later the parallel college. Rumor had it among some of the advocates working in the original college that he had been dismissed from there in 1974 for “misconduct.” But certain types of misconduct in the Soviet era, such as those related to aggressively defending clients’ rights against the state, would today be considered to be admirable. Kaganovskii had a renegade, loner personality and was proud of the fact that he had not joined Mirzoev’s Guild of Advocates.

2. Conditions Inside the Parallel Colleges

Like the originals, the parallel colleges also secured their premises from the local government and rented from them. They were not permitted to own their premises, according to law. The quality of the physical conditions of the parallel colleges in Moscow and Ivanovo was not uniform, however. The parallels in Moscow tended to have more up-to-date technology at their disposal, a larger support staff, and renovated interiors than the original colleges in Moscow and the parallel in Ivanovo.

Mosiuutsentr was housed in a former school building in central Moscow, not far from Kurskii train station. Also located on the premises were the Union of Notaries and Union of Jurists. The Center occupied most of two floors, and the offices of its leadership were large and well-appointed. Rank-and-file advocates shared three or four small rooms whenever they

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64Interview with Oleg Kaganovskii, 7 April 1995.
65Kaganovskii himself had no comment on the matter, although he did say that he never was a CPSU member and returned to defense work only after the Party crumbled in 1991. His father was Jewish, but he claimed that he was never discriminated against on the basis of his ethnic background.
were on call at Mosiurtsentr. There was a press office run by a journalist who acted as a spokesperson for the college. Mosiurtsentr also had an auditing department and more computer technology than most original colleges had. In addition, the college ran eighteen legal bureaus in Moscow. It had representative offices in eighteen other cities in Russia and the former Soviet Union (FSU), and ten abroad.

Iniurkollegiia was located in a building close to the Kremlin. The college occupied parts of two floors that had been partially renovated, and all Iniurkollegiia advocates in Moscow worked on its premises. Some of them were grouped in rooms, but each had his or her own desk and computer. The chairman occupied his own large room. Renovated conference rooms were available for meetings. The college also maintained an office in St. Petersburg and had correspondent agreements with law firms in Ukraine, Belarus, and the Baltics. In addition, Iniurkollegiia had cooperating agreements with 37 foreign law firms and lawyers. The only premises of Klishin and Partners was located in central Moscow near Krasnye Vorota, in an old building which had renovated suites. Like the other two colleges, it had security guards posted at the door. Klishin’s suite nearly conformed to the conditions of upscale American law firms, with plush carpeting, artwork on the walls, and a formal reception area. Each advocate had his or her own office and computer.

Advocates’ Chamber was located in the Moskvoretskii region, in a building steps away from the Moscow Procurator’s office, where several of the Chamber’s employees had formerly worked. Conditions were cramped and unadorned, and only the chairman had his own office, which was small. AP had one computer and were working on acquiring a database of Russian laws. Its premises included the offices in this building as well as a kontora and a bureau at the International Confederation of Consumers’ Societies. AP and the Confederation

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86 The journalist also charged me in dollars for some copies of articles. At the time, a law banning the use of US dollars for transactions was in effect in Moscow. Not so at the Moscow Legal Center, however!
87 The business of legal data bases, especially for business law, was hot in 1994-95. More than just a handful of firms were creating them at the time, and many were expensive. New colleges and private law firms, not Soviet era colleges or LCBs, tended to have these resources.
joined forces when jurists from the private law firm, Consumers' Advocate (which already had connections with the Confederation), voiced their interest in joining.

Chairman Efimova was able to find space for the Advocates' League on the third floor of a well-guarded building which also housed a commercial bank. The college premises were in a small suite, but the eight separate rooms were renovated, and some had computers. All was not lavish, but it had better equipment and furniture than most LCBs in original colleges. Efimova said that it had taken eight months to arrange the premises, and they were still working on improving their conditions.88

Lastly, the parallel college in Ivanovo, which had one location, was the most humble of the parallel colleges described above. Clients used a small entryway for a waiting room, and the advocates who were on-call and a secretary occupied a cramped room which contained desks and a bookcase crammed with law books. A larger room was reserved for the chairman. The quality of the premises did not differ significantly from those used by the original college in Ivanovo and reflected the fact that the parallel college's members did not earn enough money to renovate their building or purchase better office technology.

3. Leadership Structures

As much as advocates in Mosiurtsentr portrayed their organization as innovative, they still functioned under a hierarchy similar to that found in original colleges, with chairmen, deputy chairmen, and presidiums and commissions. This hierarchy left open the possibility for too much control from the top, especially if the chairman was not amenable to outside opinions.89 When an important decision needed to be made, Mirzoev had the upper hand. Iniurkollegia too had a presidium, but it had only four members. Without a great need to deliberate over issues such as training and disciplining, it only met once a year, not once a week or month like the presidiums of MOKA or MGKA. Alpatikov was a well-liked figure in

88Interview with Elena Efimova, 24 April 1995.
89One young advocate, though, liked the way the leaders, including Mirzoev, were running the college because they were not micro-managing their advocates and permitted them to choose most of their own cases. Interview with Mosiurtsentr (male) advocate #27, in his mid-twenties, 12 January 1995.
the college and a strong lobbyist for his college in the halls of the Duma and the Moscow government.

At the Advocates' Chamber, Kostanov stood as leader, and under him were a presidium and commissions which handled issues of auditing and admittance. By creating the college, Kostanov did not intend to create a completely different form of management. He was more interested in having full control over admitting members and independence from state organs. The college did not run the Confederation, but was more the administrative base for advocates who worked there. Efimova at the Advocates' League was chairman of the seven-member presidium, which was composed of the most experienced practitioners in the college, including a doctor of legal sciences and a specialist in arbitration cases. The college's leadership adopted a hands-off kind of approach, whereby they did not micro-manage other advocates' work schedules. Kaganovskii in the Ivanovo parallel never aimed to create an innovative form of college management, either, but based it on the model of the original college, in which a great deal more decision-making power is concentrated in the chairman and presidium.

Unlike the structure of the originals, the leadership structure at Klishin and Partners was fluid; in other words, it lacked formal bodies, such as a presidium. There was a chairman and a deputy chairman, but the college was not large enough to have a "general assembly" of rank-and-file advocates. A system of partners and associates was not in place, despite the name of the college. They also hired a group of part-time consultants, well-known academics whom Klishin admitted were hard to find, because so many of them already had consulting work in the Duma and state ministries.

4. Members: Backgrounds, Qualifications, and Training

Typically, the average number of advocates in parallel colleges was smaller than in original colleges. The Mosiurtsetr was an exception, though, as approximately 500 advocates worked in there. Support staff numbered over 100 and included financial advisors,
auditors, journalists, interpreters, and translators. Other advocates who were well-known political actors in Moscow included a former USSR Minister of Justice (B. Kravtsov) and the last acting USSR Minister of Justice (M. Vyshinskii). Two doctors of law also worked at Mosiurtsentr. Although the majority of advocates there largely practiced in the civil and commercial sphere, some almost exclusively practiced in the criminal law field. For example, one of the college's consultation bureaus contained advocates who concentrated on customs and contraband cases in criminal courts. The Mosiurtsentr had a training period for new advocates and an entrance exam, according to Vyshinskii. A law degree was necessary for application. But exams and training classes were not required for older practitioners.

 Iniurkollegiia employed approximately one-hundred lawyers and around thirty staff members in all. In Moscow there were approximately sixty-five advocates on staff. They were separated into two departments; the commercial law department (thirty-five advocates) and the private law department, which amassed the most revenues. Those who worked in the private law department representing individuals received a salary, and those working in the commercial law department were paid based on each honorarium they accumulated. Common assets were distributed annually. According to one advocate in the commercial law department, many of the male jurists at Iniurkollegiia caught the privatization wave in the late 1980s and left to form legal cooperatives and later private law firms. Now around two-thirds of the members were women. This advocate commented that no organizations for female advocates existed because Russian women had so many conflicting interests. All advocates working at Iniurkollegiia had law degrees; the advocate mentioned above received hers from the most prestigious law faculty, Moscow State University. All advocates also had to give five percent of their pay to the college to cover overhead; this fee obligation was lower than the average 30 percent requirement at many original colleges.

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Interview with Iniurkollegiia (female) advocate #47, in her late thirties, on 15 March 1995. At first, she accused me of hiding a recording device on my person, erroneously detected by a special device she had hidden on her own person. I never taped an interview unless I first received the interviewee's permission. After showing her that I had no spy devices, I enjoyed a lengthy conversation and lunch with her.
The bulk of legal practice dealt with enterprise maintenance, finance, banking, taxation, property, tort, commercial, civil litigation, and inheritance and family law, although Alpatikov himself concentrated on maritime cases. Iniurkollegiia as a rule did not accept legal aid or court-appointed cases. Alpatikov admitted: "We are looking for clients who cannot afford to pay high rates to foreign law firms." Less than ten advocates joined every year. Each new recruit was assigned to a mentor during his or her first year, but there were no formal training classes or an exam to pass. Alpatikov described the college in its English-language brochure as more like a law firm than a college.

Klishin and Partners had a high-powered roster of twenty advocates. Klishin served on the Supreme Economic Council, under the presidium of the Supreme Soviet, and most recently had consulted for the Duma Committee on Economic Policy. Other luminaries on staff included Nikolai Fedorov, former Russian Minister of Justice and close friend of Klishin's; Valentin Stepankov, former Russian General Procurator; a number of former jurists who worked in economics and trade ministries; and holders of doctorates in law. Of the eleven advocates who were highlighted in the brochure, the oldest was born in 1948, two were women, and five graduated from Moscow State (all had law degrees). They also hired a group of part-time academic consultants specializing in commercial law fields. However, no distinctions between partners and associates were made. Clearly, the only advocates who were accepted were hand-picked, not just young recruits making cold calls for jobs. Klishin hired some legal assistants, usually law students, who did the equivalent of paralegal work. Advocates received a salary, which Klishin recalculated quarterly to correspond with inflation. Admittance and training procedures varied given one's background. A younger advocate would need to complete an internship, while a former scholar at the Academy of the Ministry of Internal Affairs or someone like Stepankov would simply be admitted.

Only thirty-five advocates belonged to the Advocates' Chamber in 1995. Of these thirty-five, seven were young (under 30) and, throughout their careers, had only worked as advocates. The remaining had worked earlier in the Procuracy, justice organs, and the
Chairman Kostanov admitted that his credentials as a former head of the Moscow Department of Justice brought him a solid clientele. The older set continued to practice criminal law, although they rarely had to accept court-appointed or legal aid cases. The younger advocates, several of whom were women, worked in the consumer rights law field at the Confederation of Consumers' Societies, or in their one law office outside the college headquarters. Most advocates in training (jurists) who were interning at the Confederation were still in law school and would not become full advocates until they finished their internships and received their diplomas. They also had to pass an exam. For most members, however, admittance depended on personal acquaintance.

Like Advocates' Chamber, Advocates' League in 1995 contained approximately thirty-five advocates. Approximately 60 percent of them worked either exclusively or part-time on criminal cases, 15-25 percent worked exclusively on civil and arbitration cases, and 15 percent worked exclusively on what Efimova called “private international law” accounts. Many of her colleagues were young, but more experienced practitioners were represented as well. About five percent of the members had worked earlier under the auspices of original colleges; a number of civil practitioners had worked earlier as jurisconsults. Two of the advocates were doctors of legal sciences, and one had taught for several years at the Higher Institute of the Ministry of Internal Affairs. The five or so international law specialists had the longest legal career records. To enter the college, new advocates were required to pass an oral exam. All of the advocates who then worked at AL had come highly-recommended and were carefully chosen as specialists in their respective fields. Around 10 percent of their cases were court-appointed criminal trials. On occasion, some advocates specializing in civil law counseled Duma deputies, which was categorized as free legal aid.

Approximately thirty advocates worked in the Ivanovo parallel college, about half of whom were women. According to Chairman Kaganovskii, 70 percent of them had worked either as judges, prosecutors, or investigators before entering the bar. They were all required

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91 Interview with Diana Sork, 16 February 1995.
to give 23 percent of their pay in honoraria to the college for fees. As in the original college, an applicant to the parallel was required to have a law degree and to complete an internship. Kaganovskii and the qualifying committee of the college chose advocates who had strong speaking skills and good memories. Around 70 percent of the practice of advocates in Ivanovo's parallel college was criminal, and 30 percent civil. Not all people who sought free legal assistance from the college were guaranteed it, however.32

5. Development of Professional Standards

Like the original colleges, the parallels also lacked codes of ethics. Instead, professional standards were to be met through individual effort and lectures. Out of this sample of parallels, Mosiurtsentr had the best established record for sponsoring education programs and conferences. It conducted annual conferences for business lawyers and organized regular lectures on the premises for members of the college. In 1994-95 the depth of its programs for training new advocates and continuing education was not as extensive as at MGKA. Mosiurtsentr, however, planned a special workshop with CEELI and thus seemed more amenable than MGKA to collaborating with American organizations. The leadership at Mosiurtsentr also did not seem to discourage members from applying to training programs in the West as some leaders in original colleges had. Beginning in 1995, the newspaper Chelovek i pravo frequently allotted one page an issue to happenings at Mosiurtsentr and Mirzoev's Guild, including a column on members' special requests and concerns.

The remaining parallels in this sample lagged behind in their program development. As a relatively small college, Iniurkollegiai did not have an established program of regular lectures, although lectures were sometimes offered. Also, advocates there placed more emphasis on better systematizing their legal practice, rather than strengthening their qualities as a college of advocates. Alpatikov, for example, was interested in 1995 in learning more

32The person who spoke with Kaganovskii before I did was denied service because she was unable to pay and did not fall into any categories of people who automatically received legal aid under the law.
about the managerial techniques found in American law firms. Advocates in Klishin and Partners maintained their professional standards by keeping a core group of star lawyers with good connections and a group of well established scholars as legal consultants. But like Iniurkollegia, Klishin and Partners concentrated more on law-firm dynamics, and less on administrative control over the rank-and-file. According to Kostanov, his college was beginning to organize lectures for its members. Otherwise each member was responsible for maintaining his or her own professional standards. Efimova at Advocates’ League conceived professional standards on the basis of work specialization in a law firm type setting. Since she hand-picked each advocate, she already assumed that they would work appropriately. The college received the services of a database company called Consultant Plus, which, continually updated, gave the advocates access to a wide selection of laws. Kaganovskii and most of his advocates, like Kostanov and his advocates, had been involved in legal institutions for several years, as many of his advocates were judges, investigators, and prosecutors for a longer time than advocates. The Ivanovo parallel had a small library at its disposal but, like the original college in town, did not arrange for special continuing education programs.

6. Goals and Attitudes

Mosiurtsentr had the most ambitious goals of the five parallels, centered on creating a more favorable business law environment for business people. This was due largely to Mirzoev’s hubris, connections, and vision. The brochure about its services boasted that “For the very first time in the history of Russian law, our experts have successfully combined legal aid with accounting services, without which establishing a market economy would be impossible.” The big money was to be made in contracts with private enterprises, and most of the college’s literature highlighted services in the field of commercial, tax, real estate, intellectual property, and bankruptcy law. Mirzoev and Vyshinskii both were concerned that their advocates be treated as well as lawyers in the West. When I gave Mirzoev a copy of my survey, for example, he looked at it quickly and answered, “Would American lawyers provide information about their salaries? No. The advocates here won’t, either.”
parallel colleges, they claimed that they did not worry about competition from foreign lawyers; instead, they cooperated with a number of German, French, and American firms.

Chairman Alpatikov wanted each of his members, not local organs of power, to own the property rights of Iniurkollegiia. Regretting that the 1980 RSFSR Statute was still being enforced, he said that "The property may be divided among the sixty-five advocates as ownership rights, in theory [because it is a societal organization which should allow this], but this must be protected under a new law [on the advokatura]." He did believe that conditions were improving for advocates. Alpatikov argued that many of the improvements stemmed from the fact that, instead of the Soviet approach to law (law by administrative decree), laws now were passed more often by legislatures and had more authority. Like leaders at Mosiurtsentr, Alpatikov stressed how his college served business people and interests abroad. His concerns were not with balancing court-appointed and legal aid cases with money-generating cases, as they were for the leaders in original colleges. He was concerned that a new law on the advokatura stress that only lawyers with a diploma from Russian law faculties be allowed to practice in Russia, thus curbing the number of foreign law firms in Moscow. He conceded, however, that most foreign law firms concentrated their practices on areas of international law which few Russian advocates ever encountered.

The main goals of advocates at Klishin and Partners resembled those of Mosiurtsentr -- to serve legal entities and handle foreign economic transactions. On the other hand, advocates who worked at Klishin preferred to remain as independent as possible and refused to join Mirzoev's Guild. Their main service was helping business people avoid heavy losses when making foreign investments. The college cooperated with several foreign law firms in Moscow, including Arnold & Porter and Baker & Botts, and denied that competition with these firms weakened their standing. Although the college status meant that an organization could not make and invest profits, Klishin and Partners was geared towards accumulating big

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95 Oleg Moroz interview with Klishin, "Advokat nuzhen."
business clients, such as Philip Morris and Texaco. Charging $50 to $100 "S per hour, the
Klishin advocates themselves were entrepreneurs.96

The goals of all of these parallels included staying viable and having good earnings, but
they extended from there, too. The Advocates' Chamber is an interesting study in the area of
goals because, on the one hand, most of its members left their jobs in law enforcement, started
to get pensions, and then joined the college to make more money. On the other hand, the
group of younger advocates who were involved in consumer rights advocacy were working
hard to educate the public about their rights. They partly accomplished this through articles
published in the popular consumer advocacy magazine, Spras (demand), and by breaking new
ground for clients in civil cases and helping to draft new pro-consumer legislation.

Efimova's Advocates' League contained individuals who preferred to leave or stay out of
the original colleges because they perceived that they would not be as independent in them.
One advocate there, a woman around 50 who specialized in criminal law and supply-and-
delivery cases in arbitration court, earlier served as an investigator.97 In her position, she
noticed how MGKA advocates were passive actors in court. This passivity, she explained, was
caused by the fact that each LCB in MGKA was connected to a court and militia post in a
particular region (there are thirty-three regional courts in Moscow). At AL, she felt much less
beholden to other court actors because she did not have to accept certain cases at a particular
courthouse. Clients more often searched her out now, and she could choose whether to
support them. This attitude, of course, clashed with that of leaders of many original colleges,
who felt it the duty of their advocates to accept legal aid cases. But a handful of the younger
advocates at AL did handle legal aid cases, so the college upheld its prescribed duty.

Lastly, the parallel in Ivanovo had strikingly similar goals to the original college,
rendering clients competent legal services in criminal trials, partly because Kaganovskii
modeled its structure and practice after the original's. But the parallel did not provide legal

96Ibid. For comparison's sake, an advocate working on a court-appointed criminal case earned the equivalent of
$1 US a day at trial.
97Interview with AL (female) advocate #64, in her mid-forties, 28 April 1995.
aid to the extent that the original college in town did. At the same time, however, Kaganovskii believed in a normative role for advocates, in helping to build a pravovoe gosudarstvo (law-based state) consonant with the U.N. Human Rights Declaration.

It appears from this sample of parallel colleges in Moscow and Ivanovo in 1994-95, as well as from previously published materials concerning parallels in other locations throughout Russia, that the work of members in parallels located in large cities tended to focus on commercial law more so than the traditional criminal and civil law work handled by members of original colleges. On the other hand, the work of members of parallel and original colleges in provincial towns tended to be more similar, due to the fact that the demand for services in the area of commercial law was lower.

7. Relations with State Officials

Mirzoev called the original colleges “conservative” and “monopolistic,” and even described them as being “of the totalitarian era.” In stark contrast, MGKA Chairman Rogatkin, described the Mosiurtsentr as more a part of the state than independent from it, and Mirzoev as more a part of the political establishment than any real advocates had ever been. Actually, both assessments contain grains of truth. The leadership of the Mosiurtsentr contained former top USSR justice officials and a man who headed the Moscow GosArbitrazh. In contrast, most original colleges did not have any advocates with such credentials; typically they only worked as advocates or had worked earlier in local postings in the judiciary or law enforcement organs. Mirzoev was a player in the Moscow establishment, a businessman of the new Russia. Despite criticism from the Federal Union of Advocates, Mirzoev’s Guild of Advocates was approved by the Moscow Justice Department in the first months of 1995.

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*Interview lunch with Gassan Mirzoev, 29 March 1995.*

*Interview with Aleksei Rogatkin, 17 May 1995.*

*Interview with Boris Saliukov, 29 March 1995. Saliukov had on his desk copies of an agreement between Mirzoev and the Deputy Minister of Justice Stepanov and the Charter for the Guild, both signed by Stepanov on 27 January. Curiously enough, in the Duma committee hearings at the same time Stepanov lobbied on behalf of Minjust’s draft on the advokatura, which rallied against the existence of parallel colleges! Also, there was a letter dated 10 March 1995 from Mirzoev to Saliukov referring to the official creation of the Guild and the establishment of inter-territorial legal consultation bureaus as official subdivisions of the Guild. Mirzoev had to*
Injurkollegiia also had a special history of contacts with state organs, including the USSR Ministry of Finance, under which it had been subsumed for decades. In 1995, it had signed contacts with Duma members. When Alpatikov lobbied in the Duma in 1995 on behalf of a draft law on the advokatura submitted by Duma deputy Traspov, he asserted his interests with the confidence of someone who knew he had allies in high places. But this is not to say that Alpatikov and the entire leadership at Injurkollegiia were abusing the system.

Klishin and Partners, as mentioned earlier, contained a core group of advocates who clearly were a part of the establishment. The core group had never worked as rank-and-file advocates in LCBs in Soviet times, although this lack of Soviet-era pedigree in the advokatura mattered little in the area of law in which Klishin advocates now practiced. On such high levels in the Russian financial world, it did not matter that you had defended the accused in a People’s Court in a region in Moscow in 1983. In 1995, it mattered that you had connections with the right actors in the right offices and institutions. A savvy company such as Phillip Morris would not waste its time or money on anyone else. Klishin advocates also advertised the fact that they had close contacts with state officials and would use them to their clients’ benefit. According to their English brochure, “Klishin and Partners have close relations with the State authorities of the Russian Federation as well as with the Government of Moscow.”

The connections that Kostanov and many of his colleagues had with the powerful Moscow Procurator’s office a block down on Novokuznetskaia Street and to the Moscow Justice department were a distinct advantage for Advocates’ Chamber. These advocates had a clientele base because of their connections with powerful Moscow officials. The Procurator’s office in Moscow was a far more powerful player in the legal system than any national advocate organizations could be. For a defendant accused of murder, the prospects of having a lower sentence might be increased if he had a defense lawyer with close contacts in the Procurator’s office or the Moscow Justice Department.
The advocates at Advocates’ League were not in the same ball park as a Klishin or Fedorov, but some of them had already had long careers in the Moscow legal system. Efimova herself felt no animosity towards the Moscow Department of Justice or Ministry and registered her college without incident at a time when, in the Duma, Russian Ministry officials were calling for parallels to be dissolved. The only start-up problems Efimova had with Moscow officials related to arranging for the issuing of certain documents which permitted advocates to take part in preliminary investigations. Kaganovskii seemed to have every confidence in his relationship with the head of the local Justice Department in Ivanovo, Smurov. Because Smurov initially suggested that Kaganovskii create his own parallel, Kaganovskii knew that he had secured an ally.

8. Public Relations

Not all of these parallels actively courted the press or the general public. With a separate public relations department on its premises, Mosiurtsentr ran one of the most developed propaganda machines of any college in Russia. The journalist in charge of public relations, Genadii Ptitsyn, gave interviews to legal journals and appropriately lauded the Center. Mirzoev’s friendship with an editor at Chelovek i pravo afforded him the privilege to devote a page full of articles in that publication on advocates in his Guild. He cultivated his press connections in combating opposition among the original colleges and in the Duma. A colleague of his at Mosiurtsentr, Mikhail Rozental’, answered questions in a weekly column in Izvestiia, “Goods and Services.”

Iniurkollegia also received some positive press coverage, but nothing as widespread as what Mosiurtsentr received.101 Klishin saw having such legal luminaries as Fedorov and Stepankov as being a “kind of normal, civilized advertisement” for his law group.102 But he too was willing to be interviewed by the popular legal press. Advocates’ Chamber had not

102 Oleg Moroz interview with Klishin, “Advokat nuzhen?”
received any substantial press coverage, but Kostanov tried to maintain public appearances. On 2 March 1995, he participated in a press conference at the Russian-American Press and Information Center on “Legal Defense of Society from Neo-fascism in Russia.”

Contrary to how chairmen of original colleges described parallel colleges, at least a sizable majority of members of parallels had law degrees and had not been dismissed from earlier posts. Moreover, between 30-40 percent of new recruits in originals had formerly worked in law enforcement, a percentage which corresponded to that found in parallels. The small number of advocates in most parallels, and the fact that many only had one location where their advocates practiced, contributed to the way in which most parallels tended to operate more on the basis of law firms than bar associations. In parallel colleges in Moscow, the majority of clients were from the business community, including enterprises and other legal entities, whereas the majority of people receiving legal services from the originals more often came for personal reasons, such as conflicts over divorce, housing property, labor contracts, pensions, and defending the accused.

But this does not mean that originals like MGKA were not signing contracts with legal entities (enterprises, organizations, and institutions); in fact, in 1994, MGKA advocates signed a total of 1,801 contracts to render legal services to state enterprises, joint stock companies, and cooperatives. Mosiurtsentr advocates signed 948 contracts in 1994, although MGKA had two-thirds more members than Mosiurtsentr.103 Mosiurtsentr also had few commissions in criminal (998) and civil (601) cases in 1994, compared with the number of commissions MGKA advocates reported, 92,857 and 18,030, respectively. The gap between the two colleges in the number of times that free legal services were rendered in 1994 (including court-appointed criminal cases) was significant, as MGKA accepted considerably more of the burden. When-less advantaged Muscovites needed legal aid, they still approached advocates in old colleges, because they assumed that their fees would be lower.

1031994 “Otechety o rabote kollegii advokatov.” Obtained from the Department on Cooperation with the Advokatura, Ministry.
A Comparative Analysis of Law Offices in Moscow and Ivanovo

Now that we have examined a sample of new and old colleges of advocates as they operated in 1994-95, we will move one step closer to the individual advocate by focusing on law offices. The sample here includes 1) Soviet-era legal consultation bureaus (LCBs) in MGKA, MOKA, MRKA, and IOKA; 2) new law offices with ties to traditional colleges (MGKA and MOKA) and parallel colleges (Advocates' Chamber); and 3) a number of private law firms (including one branch of a large American firm) which functioned outside the purview of colleges of advocates.

A. Soviet-Era Legal Consultation Bureaus

The LCBs on which this discussion will be focused include numbers 5, 13, 21, 22 of MGKA; the MOKA LCBs on Maiakovskia Square and in the Moscow Regional Court; MRKA LCBs number 82 and 85; and three LCBs in Ivanovo. More than the other kinds of law offices, Soviet-era LCBs were hit the hardest by economic problems, and most advocates working in them (numbers varied, but typically ranged from ten - fifty) had very few resources with which to improve their circumstances. One LCB (#5 of MGKA) was nearly closed down by Moscow city rent and housing authorities in 1994 to make room for a business that would have brought the city more revenue. Located in the basement of a building on Fushkin Street, the LCB was in disrepair and crowded. In stark contrast, only one floor above stood an office of the parallel College of Advocates of Moscow (KAM), which contained computers, laser printers, fax machines, oriental rugs, and original art work.

1. Conditions inside Legal Consultation Bureaus

Most LCBs contained a handful of rooms with several desks, which generally were not assigned to individual advocates. Typically only the manager, hand-picked by a college's

104 This erupted into yet another conflict between MGKA Chairman Rogatkin and the local city officials in charge of rental properties. He and other MGKA leaders appealed to the Mayor's office to force the rental office to cease its plans. As it turned out, the LCB remained in its original premises. See "Vo imia prav cheloveka," Advokat 7:37 (1994). 1.
presidium, had his or her own office. Sometimes LCBs had current periodicals, including Supreme Court and State Duma bulletins, which published decisions and new legislation, and books on law codes and methods of advocates' practice; very few owned computers with legal databases on them. A receptionist generally sat in a box near the entrance and sometimes used a microphone to call on advocates (as was the case in MGKA LCB number 2). The MRKA legal consultation bureau #82 was in the best condition of any LCB in this sample, and its twelve advocates had their own desks. Located near Moscow State University, and next door to a non-profit organization called Interlegal (which was receiving western financial support and with whom #82 collaborated on a legal education project), this LCB contained better equipment and interiors than most Soviet-era LCBs. This was because the advocates invested their own personal funds into improving the conditions. Such an approach to improving the infrastructure of an LCB was an exception.105

An area usually was designated for walk-in consultations, to which each advocate typically was assigned two shifts a week. In MGKA LCB #21, advocates on call for the day sat in little cubicles that offered little or no privacy for clients. In LCBs in Ivanovo and in the MOKA LCB located inside the Moscow Oblast Court, the space between advocates' desks was no more than a foot. When questioned whether advocates felt uncomfortable with their environment, however, most answered no. When not on call, they spent most of their work time either at home preparing for cases or in courthouses and jails representing or visiting their clients.

Some advocates also noted that LCBs had a communal atmosphere and expressed feelings of loyalty about working in them.106 They celebrated certain holidays popularized in the Soviet era. In the central LCB in Ivanovo, when very few clients came by in the afternoons, the male advocates played chess together and the females watched foreign soap

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105Interview with MRKA advocates # 9, 10, 11, 2 November 1994. In another MRKA LCB (number 83) located near Novoslobodskaya Street, advocates also had the use of computers, a fax machine, and copier.

106In group interviews I conducted in a few LCBs, sometimes advocates responded uniformly. Under such circumstances, advocates often avoided contradicting one another or mentioning negative aspects of working in their LCBs.
operas on a television in the lounge.\textsuperscript{107} The atmosphere in Russian LCBs, therefore, tended to be more informal than that found in typical western law firms. There was even a sense of rivalry among the law offices in a given college. One manager of a 25-member LCB in Ivanovo, for example, commented that hers was “the most democratic and best formed legal consultation bureau.”\textsuperscript{108} However, certain factors weakened the communal model of providing legal services. For example, only one advocate was assigned to a case, and advocates were competing for walk-in clients.\textsuperscript{109}

2. Background, Attitudes, and Monthly Earnings

Most advocates chose to remain in the original Soviet-era LCBs, just as they chose to remain members of the Soviet-era colleges. Some were either young practitioners, and therefore unable to acquire a clientele base without the built-in support of the walk-in business from off the street or afford to invest funds into a new firm. Many were older advocates, who did not have the energy to work on a new venture or in commercial law. Female advocates were well-represented in Soviet-era LCBs; part of the reason why is that female advocates, with the dual responsibility of homemaking and full-time work, just did not have the time, financial backing, or energy to start anew.

The behavior of many advocates may be related to what some sociologists describe as “cognitive embeddedness.” This condition, characterized by a reliance on the habitual, prevents individuals from conceiving of alternative institutional arrangements. Instead, it causes people to stay with what is already available and proven.\textsuperscript{110} It is similar to a “fear of freedom,” what Erich Fromm described as a twentieth-century phenomenon that arises under

\textsuperscript{107}It appeared from my observations that the female advocates who were on-duty tended to field more inquiries from clients than the male advocates, who preferred to concentrate on their checkmate skills. Several female advocates in Ivanovo commented on how lazy Ivanovo men were, including male advocates.

\textsuperscript{108}Interview with the manager of LCB #3 in LOA, 12 April 1995.

\textsuperscript{109}Advocates in Soviet-era LCBs were required to earn no lower amount a month than that which was set by their college presidium.

conditions of immense political and social change, when the introduction of new choices are often overwhelming to most people.\footnote{Erich Fromm, *Fear of Freedom* (London: Routledge and Kegan Paul, 1942); see also Richard Sakwa, "Subjectivity, Politics and Order in Russian Political Evolution," *Slavic Review* 54:4 (Winter 1995), 964.}

But other explanations exist as well. Rational choice points to the possibility that most advocates were governed by their economic preferences. Being a founder of a new law office represented a large financial and time commitment which most advocates were unwilling to make; in the short-run they would lose money. In addition, some advocates were proud of the fact that their parents or other relatives were members of the same colleges or LCBs; their notion of tradition, involvement in criminal defense work, and opportunities for providing legal aid to the general public continued to motivate them. They also had very few role models when it came to opening up new bureaus. Most likely, the reasons why most advocates' remained in Soviet-era colleges and LCBs were mixed.

In the LCBs in this sample, particularly the ones in Ivanovo, more female than male advocates were employed. Many of the male advocates were older than 40 years, but there was more of a cross-section of generations among the female cohort (with many who were straight out of university). Managers tended to be at least in their mid-forties and male. While difficult to ascertain without data on everyone's background, it appeared that in the LCBs there most likely was a higher percentage of former law-enforcement workers than would be found in new law bureaus and offices, where the focus was more on civil and commercial law. Most advocates who were working in LCBs remained generalists, but others described themselves as civil or criminal law specialists. One LCB in Moscow concentrated almost exclusively on cases involving automobile accidents and other traffic violations, for example.

Most of the LCB advocates (interviewed by the author) were articulate, if guarded, and believed that their work was socially significant. At the same time, they felt overworked and overwhelmed by all of the systemic changes that their profession was undergoing. According
to some advocates in LCBs, their practice had become more complicated because of the constant flow of often contradictory changes to acting legislation. But they also believed that their work was becoming more interesting and their clients more literate in their legal rights. Some, who were more candid than others, complained about how they were not paid for many services they performed, such as for walk-in consultations.\(^{112}\)

In the MOKA LCB on Maiakovskaya Square, one of the most prestigious in the college, physical conditions were equivalent to those in any other LCB. But advocates there had adjusted better than most to the sea changes in their field. Some, for example, were well-known for their defense skills and were involved in college leadership organs and workshops sponsored by western legal programs. One of this LCB's advocates was working part-time with the American law firm Chadbourne and Parke, and the manager of this LCB arranged for his daughter to intern there. Such connections and credentials would not have been found in a typical MOKA legal consultation bureau.

Many advocates' monthly earnings outpaced average salary levels in Russia, but for some advocates even that level was hard to achieve. In the MOKA LCB located in the Moscow Regional Court and in the LCBs in Ivanovo, for example, advocates working on court-appointed cases earned the equivalent of $1 a day, even in the new, more demanding jury trials. In MGKA LCB #12, advocates reported that 20-30 percent of consultations were free. Moreover, average earnings differed between advocates in LCBs in Moscow and in Ivanovo. The average monthly earnings of Ivanovo advocates came to the equivalent of between $100 and $200. Advocates in MOKA received between $150 and $250.\(^{113}\) As an occupational group, advocates were earning higher monthly salaries than most other occupations in the legal system.

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\(^{112}\)Interview with MGKA advocate #34, a young male advocate who specialized in commercial law and wanted to be paid for his time counseling clients on civil matters, 15 March 1995.

\(^{113}\)These figures were reached through using data reported in the author's advocates' surveys, but several respondents preferred not to answer this question. In MOKA those advocates working in new biuro and kontor generally earned considerably more on average than advocates who stayed in Soviet-era LCBs. Average monthly earnings for the average Russian worker in 1995 were between $100-$115.
3. Management Practices

Just as most advocates were not critical of the control that presidium members had over college administration, most were not openly critical of their manager's role in the LCBs. Managers still had control over the distribution of court-appointed cases as well as larger civil and criminal cases, which were conducted on a payment basis with clients. When managers were well liked, advocates working under them considered them to be knowledgeable of their abilities and case preferences, and were able to suitably match advocates with particular cases. The manager at MGKA LCB #13, a man in his early 60s, likened his LCB (located near Moscow State University) to a "policlinic where there are different kinds of surgeons for various kinds of trauma." 111

Not all advocates believed that their managers were leading them appropriately, however. Twenty advocates (out of the original forty-five) already had left MGKA LCB #22, located in a working-class area on the southeast edge of Moscow, because of conflicts with their manager. According to his opponents, the manager was too controlling; he even discontinued the LCBs well-attended seminars on legal methodology. Some advocates filed a complaint with the MGKA presidium against the manager, but the presidium did not dismiss him. Instead, presidium members asked the advocates to try to make amends with the manager. 113 This lack of resolution was indicative of the tendency among presidium leaders to downplay conflict when it concerned managers, who themselves earlier may have belonged to the college's presidium.

4. Legal Services

Clients typically did not call on particular advocates when they needed legal assistance, but received the services of those advocates who were on-call in LCBs. The work of most advocates in LCBs still did not pertain to high finance and international law, the most lucrative cases. These advocates were dealing with the common denominators of legal conflict

111 Interview with MGKA (male) advocate #51, manager of LCB #13, in his 60s, 15 March 1995.
113 Interview with MGKA (male) advocate #28, 18 January 1995.
-- gut-wrenching cases which pitted family members against one another in housing, divorce, and inheritance disputes; and criminal cases in which the accused had little or no chance of being acquitted. In the early Soviet period, criminal cases outnumbered civil cases in LCBs. According to Leonid Efimov, the manager of the MOKA LCB in the town of Klin, the LCB handled an equal amount of criminal and civil cases before 1993. But beginning in 1993, criminal cases began to outnumber civil cases, because the flow into the Klin LCB of visitors inquiring about civil matters decreased by some 30 to 40 percent. According to Efimov, most people preferred to handle their civil conflicts on their own, or would wait until they were in a desperate bind to seek legal assistance.

The nature of many of the cases advocates in LCBs were assigned changed in response to larger trends in the legal and socioeconomic system. For example, some advocates reported working on more criminal cases that involved economic crimes, such as extortion. Also, MOKA advocates since late 1993 were representing clients accused of major and capital crimes in jury trials in the Moscow Regional Court (there were still no jury trials in the City Court or People's Courts in Moscow in 1995). The bulk of court-appointed cases was assigned to young advocates, and the more experienced advocates had more leverage over choosing their own. The average number of court-appointed cases per year, per advocate in a LCB was a difficult figure to obtain, although several MOKA advocates reported that they had around twenty. Advocates were known to carry six criminal cases at one time. Moreover, the accused usually had little choice in the matter of arranging for defense attorneys and sometimes received less than enthusiastic ones.

In civil law practice, advocates were representing parties in court who were suing opponents for moral damage and representing feuding partners in enterprises over conflicts.

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116 Although most sources reveal that advocates always were involved in more criminal cases. Denis Bykovskikh, interview with L. Efimov and V. Sai, "Juridicheskaia konsultatsiia," Juridicheskii vesnik (September 1994), 26.
117 A considerable number of criminal cases reported in the weekly section on advocates' practice in Kommersant-Daily focused on economic crimes and how advocates defended business people.
118 Many times a different advocate represented the accused in pre-trial stages in an appointed case than the advocate who represented the accused during the trial.
119 This according to an experienced advocate at the MOKA LCB in the Moscow Regional Court. Interview with MOKA (female) advocate #47, in her forties, 13 March 1995.
involving management and employment procedures. Some advocates represented sides in arbitration courts, taking the place of jurisconsults, and consulted businesses on how to avoid conflicts with tax inspectors or how to draw up contracts. According to the manager of the prestigious MOKA LCB on Maiakovskaia Square, half of the civil cases there involved commercial law issues, and it had a number of clients who were banks and stock exchanges. In MRKA LCB #82, advocates represented more foreign than Russian businesses, although this appeared to be more of an exception than the norm. In Ivanovo, many business people opted to seek legal counseling from jurists at Leks, the local private law firm.

Advocates in these LCBs, even those located in more residential areas, counseled walk-in clients on many new topics as well. Among them were the public rehabilitation of deceased relatives who served time in labor camps for political crimes, the privatization of one's apartment, the inheritance of property, and the securing of special official passes (propiski) for legal residence in Moscow or any other major urban area. Usually, walk-in clients simply needed help in the completion of official documents, an effort which was usually worth little money or was free-of-charge. An advocate's job was to offer clients a way in which to better understand their legal rights, and according to some advocates, many citizens were ignorant. But sometimes advocates were also unclear about changes to laws and new administrative instructions.

It is difficult to estimate the average number of walk-in clients per day, because of regional differences. One Moscow advocate noted that he served only five to seven walk-in clients a week in his MGKA LCB, whereas advocates in an LCB in central Ivanovo estimated

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120 Interview with MRKA (male) advocate #9, in his late thirties, 2 November 1994.
121 Interview with IOKA (male) advocate #7, early thirties, 4 April 1995.
122 For example, in the central LCB in Ivanovo an old woman walked up to a young female advocate and asked her how to fill out a form enabling her to rehabilitate a repressed relative who had worked on a nearby collective farm. The advocate told her that such a service demanded a payment which the manager had to determine. When the manager appeared, a man in his mid-40s, he told the advocate, "We are not obligated to anyone," and told the old woman to go to the local Department of Internal Affairs to inquire further about the matter. Observation at LCB #1 in Ivanovo, 4 April 1995. But I also witnessed consultations with walk-in clients which were informative.
that they received close to ten to fifteen walk-in clients a day. Such clients represented a cross-section of the lower and middle class population of a community, according to some advocates whom I interviewed. MOKA advocates who responded in the 1995 surveys of advocates' opinions, however, reported that an average of 42 percent of their clients were indigents, and Ivanovo advocates reported that an average of around 40 percent were. Over 30 percent of the respondents from Stavropol reported that at least 50 percent of their clients were indigents. Some respondents only served business people and legal entities; for others, 98 percent of their efforts went towards aiding indigents.

Although most advocates who worked in LCBs no longer performed public service lectures, some worked on special projects. A number of advocates in MRKA LCB #82 participated in public legal education projects with the non-profit organization, Interlegal. The manager of the LCB was the only advocate to sit on the Special Interlegal Council that helped to develop new programs. In the fall of 1993, leading up to the 12 December Duma elections, two MRKA advocates collaborated with Interlegal to educate the public on election law. They appeared on television programs, but, oddly, were not welcomed to write columns in any national newspapers. In early 1995, the MRKA LCB manager was involved in writing a proposal for funding a program called "Legal Education in Civic Society in Russia and the CIS," which would institute a public law library and publish brochures on ways to defend one's rights. He considered his work with Interlegal to be very fulfilling, but he was frustrated by the difficulty in acquiring funding for such programs.123

B. New Advocate Offices of the Original and Parallel Colleges

Original colleges of advocates located in the Moscow area (and in other areas across Russia as well) allowed their members to open new law offices beginning in the early 1990s.

123 Interview with MOKA (male) advocate #28, 18 January 1995, and LOKA (female) advocate #4, in her forties, 3 April 1995.
124 Surveys were written and conducted by the author and Professor Dan McGrory from CEELI in 1995. Approximately 25 advocates at the MOKA conference in March 1995, 32 Ivanovo advocates in April 1995, and 20 Stavropol in May and June 1995 participated. See Appendix for copy of the survey in Russian and English.
125 Interview with MRKA (male) advocate #66, manager of LCB #82, in his forties, 3 May 1995.
New advocate offices (typically called *biuro*, not *firma*) were permitted to form in order to allow some of their more high-profile advocates to strike out on their own without completely leaving the fold -- and eventually to extract considerable fees from them. These highly-motivated advocates opted to stay in original colleges because of their respect for tradition and because colleges granted them a certain legitimacy in the eyes of potential clients. As will be shown, advocates managed these new law offices differently from LCBs. They served the general public less and business people more. In addition, they created a niche which was profitable both for themselves and their college presidiums. But in 1995, this arrangement still had not helped to improve conditions inside Soviet-era LCBs, where the majority of advocates were still working.

Parallel colleges in Moscow with large memberships, such as Mosiurtsentr, operated law offices stationed outside of their headquarters. Some of these law offices were referred to as consultation bureaus and provided a variety of legal services, including criminal defense work, to different kinds of clients. However, because they were tied to parallel colleges and many of them specialized in commercial law, consumer protection law, or other new areas of legal practice, these law offices were not grouped with the Soviet-era LCBs in this study.

1. Formation Histories

Most of the new law offices attached to colleges of advocates formed after 1991, but some originated as legal cooperatives or private law firms. Lex, now a member of Minakov's College of Advocates of Moscow (KAM), was one of the first private law firms in Moscow. Another firm, Ecojuris, formed in 1991 as a TOO.126 In January 1994, however, Ecojuris became a non-profit (societal) organization. In this way it would not be subject to taxation. But those of its founders who belonged to MGKA struck a deal with the presidium, guaranteeing that they would continue to work full-time at an LCB and part-time at

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126The staff members use the English spelling Ecojuris, instead of the transliteration Ekouris.
Ecojuris. The MGKA biuro Praktika formed as a TOO in 1992, then changed into an official bureau in 1995. Barshchevskii and Partners, also of MGKA, began as a law firm outside the college in 1991, and Barshchevskii decided to join with MGKA in 1992. Two other special biuro of MGKA, InterLex and Reznik, Gagarin, and Partners, formed as official law offices within MGKA without changing their status. The law biuro located inside the premises of the International Confederation on Consumers' Societies had a unique arrangement, whereby it was administratively attached to Advocates' Chamber, but served those clients who sought help from the Confederation. The Confederation had representative offices all over Russia, with advocates working in each of them. These new structures of legal practice each had their own histories, as distinctive as the characters of some of the jurists who formed them.

2. Conditions Inside the New Advocate Law Offices

The types and quality of premises differed across these structures of legal practice, depending on the number of employees and amount of resources they possessed. They all secured their spaces from local government officials and had to pay monthly rent to them, as advocates in the traditional iuridicheskie konsul'tatsii had to do. Mikhail Barshchevskii of Barshchevskii and Partners insisted that a stipulation guaranteeing that Ministries would help arrange for rental premises for law offices (and find premises equal in quality to those occupied by other legal professionals) did not make advocates dependent on the Ministry. This arrangement actually saved law offices money over the long term and gave them an incentive to remain inside a college of advocates.

127 As of 1995 the firm had not made a profit and therefore was not taxed. Although Ecojuris was not listed as an office of MGKA in the 1995-97 MGKA and MOKA Directory (sprawozchnik), it was operated by a number of MGKA advocates. Therefore, I am including it in this section and not the section on private law firms. In other cases, other advocates who were members of colleges of advocates also formed their own new law firms operating as commercial enterprises because they did not want to practice inside old-style and run-down LCBs. See the interview with Ekaterinburg advocate, Igor Mikhailovich, who with his wife opened his own law firm, "Kak dela, chastnyi advokat?" Iuridicheskii vestnik (August 1994), 26. In my definition of a private attorney, the legal practitioner works in a private law firm and does not belong to a college of advocates.

128 Interview on 16 March 1995.
Barschevskii found locating the right-sized space for his biuro to be a most difficult task, but finally secured the eighth floor of the well-guarded building which housed the Russian Ministry of Construction. He and his partners funneled a large portion of their salaries into renovating their offices during the first couple of years, and, by 1994, they were giving 30 percent of their salaries to MGKA (the typical amount). The renovations paid off, because the biuro contained fine interiors, an office for every advocate, and all of the computer, photocopying, and communications technology needed to run a top-rate law firm efficiently. They also had on staff several secretaries, accountants, and paralegal interns, some of whom were students at the Moscow Legal Academy, where Barschevskii sometimes lectured. Another MGKA biuro, InterLex, was located not far from the center, in a renovated suite of four rooms which was decorated in an elegant antique and plush style, but also had its share of current computer and communications technology. The offices of Reznik, Gagarin and Partners were located in a government-owned building, and they too had renovated their offices to reflect a business-like atmosphere, equipping them with computer and communications technology.

Some new law offices, however, did not try to assume an air of affluence. Ecojuris, because it specialized in environmental protection cases which offered little to no income, had little seed money for renovations. Ecojuris advocates rented a cramped, one-room space in a building close to Novodevichi Convent. Attempting to save money on fancy interiors, they invested in computers, communications software, and law books on environmental policy and the new Civil Code. The law biuro in the Confederation of Consumers’ Societies also was located in less affluent quarters, but this drawback was compensated for by the Confederation’s central location in Kitai Gorod, near the Kremlin. The law biuro occupied two or three rooms within the Confederation, which were not renovated but had computer technology and a good-sized support staff. The look was no-frills, appropriate given the lawyers’ mission to protect consumers’ rights, not to impress business people.
3. Backgrounds, Attitudes, and Monthly Earnings

The advocates of new law firms situated inside colleges were highly motivated people with innovative ideas and a determination not to spend the remainder of their working lives in LCBs. The deputy director of Praktika, for example, was a former lieutenant colonel in the Soviet army and also worked as a lawyer in military tribunals. Most of the founders of these new law firms, however, including those in Reznik, Gagarin, Barshchevskii, and InterLex, began their careers by working in LCBs themselves. Some advocates who decided to specialize in business law, such as one of the five members of Praktika, had worked first as a jurisconsult. Others had specialized in civil law in their LCBs. Some advocates had received or were completing graduate degrees beyond their basic law degrees. These included Barshchevskii, Reznik, Gagarin, Orlova, Sork, and members of Ecojuris. Having an extra degree helped increase prestige and hiring power in the legal profession in the 1990s, more so than it did in the Soviet era.

This selection of advocates had more exposure to the world outside the USSR and Eastern Europe than the majority of advocates had. Many of them, for example, had traveled to or lived in the West and were fluent in several languages. Mikhail Barshchevskii worked in a New York City law firm, and Elena Orlova, the director of InterLex, after working seven years at Iniurkollegia, worked as MGKA's representative in Madrid from 1991 to 1993. Some of these advocates also emphasized the fact that they belonged to international legal organizations and had regular contact with them. Others were motivated to help draft new legislation to protect new emerging rights. The best-established advocate at the Confederation of Consumers' Societies, Diana Sork (only in her late twenties), worked on the legislation on consumers' rights which passed the Russian Supreme Soviet in 1992; she also interned at the Consumer Association in England and attended conferences in the West. Three advocates in Ecojuris had been working on drafting regulations on environmental protection, which -- like consumer protection -- was a field of law the Soviets never developed. They also often
traveled to the West to attend conferences and meet with environmental groups and other environmental lawyers.

Each biuro generally had no more than fifteen advocates and sometimes as few as five. This was partially due to the fact that many directors hand-picked whom they wanted on staff. The MGKA biuro, Fraktika, had five advocates, four of whom focused on commercial matters, and one who specialized in criminal cases (including a small percentage of court-appointed cases). Orlova at InterLex hired only female advocates, four of whom graduated from Moscow State and majored in civil law areas, and two of whom were born after 1965. In the past, her male counterparts had always been lazy and unmotivated, whereas her female colleagues were more resourceful and efficient. Now she would hand-pick her staff.129

Ecojuris had eight staff members, five of whom were advocates and three of whom were jurists and legal scholars who specialized in environmental protection law from the prestigious Institute of State and Law of the Russian Academy of Sciences. Initially, the founders, advocates Vera Mischenko and Olga Razbash, were searching for any qualified specialists in environmental law, as there were so few in Russia. It turned out that only women applied, and thereafter they decided to include in their charter a stipulation that maintained an exclusively female work environment. When asked why only female advocates may apply for jobs there, Razbash replied that most male jurists would be unwilling to work part-time in such a firm and earn so little. They also believed that women, because of their nurturing role as mothers, were better-motivated and positioned to protect the environment, and were more interested in safeguarding their children’s future health and welfare.130

4. Management Practices

With such a sample of motivated and distinctive personalities, it was not surprising to find that the forms of management inside their new structures of legal practice typically

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129Interview with Orlova on 2 February 1995.
130Interview with Olga Razbash and Elena Minchina. 14 November 1994. This attitude -- that women were somehow “softer” and more nurturing and caring as legal practitioners -- was echoed in several interviews I conducted with both female and male advocates and judges.
diverged from that which existed in legal consultation bureaus. The structures of these new law offices offered advocates more freedom of choice and less supervision than was found in the Soviet-era counterparts. Advocates were often paid on a salaried basis (adjusted regularly to take inflation into account) instead of piece-meal. Reznik, Gagarin, and Partners, which had eight advocates (all partners) and three interns, had the most innovative management structure. Each year, the partners, including one female, elected from their group a head partner, who acted as the chief financial director. Each partner, however, chose his or her own cases or accounts. Also, each agreed to funnel back into the biuro 30 percent of his or her pay for administrative costs. The partners had a separate agreement with MGKA to give five percent of their salary a year to the college. No advocates were forced to accept court-appointed cases, but if one did, he or she would receive partial compensation from the law office's own funds. Such a practice was not in place in LCBs, because their funds were not that substantial.

At Barshchevskii and Partners, the five partners had much the same freedom of choice, although Barshchevskii, as director, had final say in choosing who worked on larger and more lucrative accounts. He also set up his biuro so that advocates would work on teams when assigned to cases, believing that "to work in a firm is to be a part of a collective effort."131 This teamwork, according to him and one of his partners, a female advocate, allowed for more give-and-take, and in case one became ill the other advocate on the team could take up the slack. This system was not in place in LCBs, where each advocate worked on her own case and reported her own honoraria to her manager. Ecojulis also set up its own form of practice based on teamwork. This strategy, according to the advocates there, not only helped them prepare more efficiently, but also provided them with a strong face in court, where they sometimes were up against several jurists from government ministries and local Moscow government agencies. Advocates on each case would work on the arguments and present whatever materials needed to be submitted to the court, and legal scholars would research any

131Interview on 6 March 1995.
precedents and help choose the environmental protection stipulations and articles in the new Civil Code appropriate to a case which applied to it. Ecojuris advocates, upon entering a courtroom, typically exuded more confidence about their level of knowledge on environmental protection regulations than judges did.

5. Legal Services

The number of law offices in colleges of advocates that were not LCBs was growing at least enough to create what advocate Abushakhmin referred to as a “two-tiered” system of well-paid and motivated advocates in the biuro structures and poorer, less motivated advocates in the LCBs. But exactly what were the advocates in new law offices doing and whom were they serving?

As would be expected, they concentrated on civil matters, which sometimes concerned actual court cases, especially in arbitration courts, but more often dealt with counseling business people and setting up big projects for legal entities. Some advocates, such as Abushakhmin and Reznik, represented clients in libel and slander (moral damage) and civil-rights cases. At Ecojuris, the advocates were representing clients in environmental protection cases, which often touched upon property rights and the right of citizens to sue public officials. The advocates who worked at the Confederation of Consumers’ Societies helped clients file for claims under the consumers’ protection legislation. But more often than not, the most driven advocates working in these new law offices assisted new entrepreneurs. These advocates were overachievers, working over forty hours a week, and often on weekends. Their time counted for something -- much higher returns. Some advocates commented that their work had more creative power and seriousness than that done in LCBs.132

Advocates working in specialized law offices were also more likely than their counterparts in LCBs to sign contracts with legal entities to work part-time for them as counsel. Many large enterprises, including major factories, had legal departments operated by

132A female partner at Barschevskii and Partners admitted that she was working more diligently at Barschevskii than in her original job in an LCB. Interview 16 March 1995.
jurusconsults. But mid-sized and small businesses usually could not afford such overhead, although they still needed legal assistance in drawing up contracts and managing finance and labor policy. Under these circumstances, these kinds of clients called advocates whom they thought would have the expertise and contacts they needed. Boris Rivkin, an advocate working in the biuro Advokat (belonging to MCKA), signed a contract with the firm Moscow Business to work for one day a week beginning in September 1994. Only two to three times over a quarter, Rivkin represented the firm in court to resolve conflicts with other commercial structures as well as with government organs. But most of the time he composed and reviewed contracts and provided business and personal legal advice to the firm's employees. He commented that this arrangement -- an advocate on contract serving as a firm's lawyer -- was "growing noticeably" in Moscow.

LEX, the law office for Minakov's College of Advocates of Moscow (KAM), had accounts with the Bolshoi Ballet and the American company Intel. One advocate counseled clients on tax policies, opening joint ventures, and intellectual property law, her forte. Court appearances were rare. She and her fellow KAM advocates had begun to suffer from competition by foreign law firms in Moscow. As LEX was the first private law firm in Moscow, KAM advocates were not pleased to find that foreign firms were entering the market and "stealing" their foreign clients. At Orlova's InterLex, advocates were working on twelve accounts in February 1995. The majority of the services advocates at InterLex provided dealt with international tax and property and commercial contracts. They also prepared negotiations between business parties and researched issues of legal application. Orlova and her advocates formed partnerships with law firms across Western Europe, Cyprus (a popular area for Russian business people who formed off-shore companies to gain tax breaks), and the U.S. Most of their clients, therefore, were banks, insurance companies, industrial enterprises, and foreign trade associations.

At Reznik, Gagarin, and Partners, advocates reported that 20 percent of their clients were foreign firms, while 10 percent were indigents (due to Abushakhmin and Reznik’s efforts). But most of their clients were Russian businesses. Gagarin himself was specializing in arbitration cases and argued that “there’s no bigger task now than to create permanent legal mechanisms.” He and his colleagues were worried that new structures, such as the arbitration courts, were dominated by officials in local administrative organs, and that certain types of law, like legislation defining bankruptcy, were not being properly implemented.

At Barshchevskii’s biuro across town, advocates were involved in “projects.” This term largely entails long-term contract work on a large-scale effort. This may include a construction or privatization project, which allows advocates to provide a number of different services, ranging from negotiating with government agencies to writing contracts and counseling clients on tax issues. Barshchevskii and Partners also represented several state interests. These included the Ministry of Defense, the State Property Committee, the State Tax Police, and Yeltsin’s very powerful Main Security Administration, which approached the biuro for legal defense in a civil case against Most Bank, instead of using the services of its own in-house law department. Barshchevskii was well aware of his status in the business community and admitted that many advocates were envious of those advocates who specialized in business law, because they tended to earn more. Inevitably, he was accused of being corrupt. Nevertheless, Barshchevskii continued to pursue his goal of forming an American-style law firm.

Approximately 80 percent of the clients served by the newest MGKA biuro in 1995, Praktika, were business people and legal entities. They found that a good number of their clients contacted them to correct mistakes made by jurists in private law firms. According to

157 Interview on 16 March 1995.
the deputy director, most private law firms were not attempting to do as much complicated legal work as a biuro like Praktika was doing. Instead, they were usually occupied with registering companies with the authorities, a relatively straightforward and technical task. They were also involved in several high-profile consumer-rights cases concerning foreign travel agencies and corrupt time-sharing deals. Like advocates at Barshchevskii, advocates here also worked on privatization and construction projects. The biuro also accepted cases in arbitration court, often against big state agencies, such as the two above. Sometimes they won, but they were becoming disheartened, as Gagarin also was, by the growing authority of state officials in arbitration.

The two remaining law offices in this sample, Ecojuris and the office in the Confederation of Consumers' Societies, were anomalies because they were not serving state or business interests, but, in most matters, opposing them and placing a check on their power. These two were among the first public advocacy organizations in post-Soviet Russia. In fact, Ecojuris was the only law office in Russia specializing in environmental protection cases in 1994-95. The firm's main goals were to systematize relations concerning environmental protection issues and to educate citizens to defend their own rights in this field. These eight or so eco-jurists did not want to see disgruntled citizens take their environmental grievances to the streets. Instead, Ecojuris advocates wanted to help citizens empower themselves by voicing their objections in the courts, where presumably they could receive more favorable results. Ecojuris worked on these goals by helping to draft new legislation on environmental protection that would strengthen the ways in which citizens could file suit against local authorities. The jurists also organized seminars on various legal topics related to environmental protection and compensatory damage. Ecojuris, because it was earning so little from its clients, was able to operate only with the assistance and cooperation of outside funding sources, such as the MacArthur, Eurasia, and Carnegie Foundations, the U.S. Agency

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138Russia now has one more environmental law firm. In late 1995, a professor at Irkutsk State University, Nelli Romanova, opened an environmental law firm in Irkutsk, which is located near Lake Baikal in Siberia.
for International Development, and non-profit organizations such as Greenpeace, San Francisco's Earth Island Institute, and the International Clearinghouse on the Environment.\footnote{AID awarded Ecojuris with funding in 1995 to work on cases involving sexual abuse against women. Ecojuris advocates also participated in a workshop sponsored by the Washington, DC-based Institute of Women, Law, and Development on empowering women to strengthen their legal rights, and they helped organize a seminar sponsored by the ABA's Central and East European Law Initiative on sexual harassment and abuse in May 1995 in Moscow. Specific cases will be discussed in Chapter Five.}

It also worked with the Russian environmental group Raduga, and had contact with other Russian non-profits in the area of environmental protection.

In 1994-95, Ecojuris was involved in a handful of ongoing civil court actions in which it represented citizens in small communities in the Moscow metropolitan area against such agencies as the Moscow Nature Committee, the Moscow city government, the Moscow Construction Department, and the Moscow Regional Administration.\footnote{AID awarded Ecojuris with funding in 1995 to work on cases involving sexual abuse against women. Ecojuris advocates also participated in a workshop sponsored by the Washington, DC-based Institute of Women, Law, and Development on empowering women to strengthen their legal rights, and they helped organize a seminar sponsored by the ABA's Central and East European Law Initiative on sexual harassment and abuse in May 1995 in Moscow. Specific cases will be discussed in Chapter Five.} While the advocates were up against bureaucrats who refused to appear in court, and conservative local environmental councils which were dominated by the executive branch powers, they managed to get some of their court motions passed. Their clients particularly were impressed by the fact that citizens could now argue in a court against government bureaucrats' actions at all. The general topics of concern that the advocates dealt with in their test cases included air and water pollution, hazardous waste, forest preservation, procedures for presenting expert witnesses and evidence, and local control over land use decision-making.

Ecojuris advocates maintained informal connections with staff members of the Confederation of Consumers' Societies. Like Ecojuris, the Confederation (which included the Moscow Consumers' Union) received support from U.S. sources and general advice from foreign experts, such as renowned American consumer advocate, Ralph Nader. Consumer-rights awareness, considered to be bourgeois in the Soviet era, now was bolstered in the mass media, such as during Vladimir Pozner's popular TV talk show, and in newspaper columns. The 1992 legislation was written in a way that made its application straightforward and understandable to lay people. The Russian Supreme Court made a number of decisions which
strengthened the force of the law, particularly with regard to how services were to be regulated and compensatory damage allocated.  

As at Ecojuris, advocates and jurists at the Confederation made it their goal to educate Russian consumers about their rights, which were more tangible and easier for lay people to grasp than other rights, such as freedom of speech. Advocates working at the Confederation in Moscow contributed to publications geared toward the general public, such as the popular Sprava (Demand), and publications for jurists, such as Advokat potrebitelei (Consumer's Advocate). The latter contained descriptions and analyses of court cases involving consumers' rights. Extremely motivated and gifted legal activists like Diana Sork spent extra time working as consultants in the Duma. Advocates who worked at the Confederation earned money based on their honoraria, and usually only accepted clients who could afford to pay them. In their daily work, these five advocates counseled clients who fell victim to prolific financial pyramid schemes (like the MMM investment bank), faulty products, medical malpractice, and poorly arranged and executed services (such as organized tours and cruises abroad). Transport cases were also popular at the Confederation. When all other avenues were exhausted, advocates and their clients, who mainly were from the lower and middle classes, took their grievances to court.  

C. Private Law Firms: Intruders or Helpful Innovators?

Although almost all of the lawyers working in these private firms were not advocates (i.e., did not belong to colleges), some of the services they provided overlapped with those of advocates. Therefore, examining their members and their work is a relevant exercise because they represented a form of competition for advocates. According to Sergei Pashin, the young and controversial former head of the Department for Judicial Reform and Criminal Procedure in the State Legal Administration (GPU) of Yeltsin's government, the 1991 "Conception of

\footnote{Diana Sork “Verkhovnyi Sud Rossii vziasliia za zashchitu pryav potrebitelei.” Izvestia, 7 December 1994, 13.}

\footnote{Only 20 percent of grievances end up in a courtroom. Specific cases will be discussed in Chapter Five.}
"Court Reform" was written to reflect the differences between those services provided by members of colleges of advocates (iuridicheskaia pomoshch, legal assistance or legal aid) and those provided by jurists working in commercial businesses (iuridicheskie uslugi, or legal services). The former term implies that the advocate is obligated to provide aid to indigents and accept court-appointed cases; the latter involves private attorneys who provide services based on profit motives. But the legal practice of private attorneys was not regulated by any special laws. As commercial businesses, however, private law firms were subject to a general law ("On Enterprises and Entrepreneurial Activity"), to the extent that they were permitted to operate on a for-profit basis.

Most private law firms typically did not have any members of colleges working in them (although there were exceptions). They also were not affiliated with colleges of advocates. In addition, some were branches of large foreign law firms. More often than not private firms focused exclusively on civil and commercial matters, although some provided representation in criminal courts. By 1995, approximately 100 private firms existed in Moscow. Hundreds more were scattered throughout other urban areas of Russia, most notably in St. Petersburg. Some private practitioners belonged to such groups as the Union of Jurists, but otherwise worked independent of any national organizations' influence. Approximately 250 foreign lawyers were practicing in Russia in 1995. The International Lawyers' Group, containing around 150 members, representing forty legal, consulting, and commercial firms, met in Moscow to define their interests.

Some advocates, like Nikolai Gagarin, did not object to the existence of private attorneys, although Gagarin was concerned that those people who received licenses as private attorneys (if licensing were introduced as it was in the tsarist era) would abuse their

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115In 1995, the Duma was beginning work on a draft governing the organization and practice of private attorneys.
116This number according to chairman of Inurkollegia, Valerii Alpatikov. Interview on 23 January 1995. I was unable to acquire an accurate number of these firms from official sources.
privileges.\textsuperscript{147} Many advocates, however, disdained private lawyers and believed that their practice hurt the prestige of the \textit{advokatura}. Results of the 1995 survey on advocates' opinions show that a majority of respondents, including those from the parallel college in Ivanovo, believed that private law firms were violating the norms of advocates' practice and harming their prestige.\textsuperscript{148} They resented the fact that the work and conduct of private lawyers was not supervised and that private lawyers did not carry the burden of court-appointed cases.

Most advocates whom I interviewed were not intimidated by the entrance of foreign law firms into the legal services market, because they argued that the types of services foreign lawyers rendered, mainly in the field of high international finance law, did not touch upon the average daily work of most advocates, whether in Moscow or anywhere else in Russia. Isai Sukharev, head of the Department on Cooperation with the Advokatura, on the other hand, criticized foreign infiltration. In 1994, he commented that, as a result of business sector growth and low numbers of advocates' working in commercial law fields, foreign law firms had "sprung up like mushrooms after a rain shower."\textsuperscript{149} A year later, Sukharev criticized the more than 70 foreign firms in Moscow for hiring Russian jurists as "farm laborers."\textsuperscript{150} Pashin, too, criticized the foreign law firms for exploiting the labor of Russian advocates and for taking advantage of the fact that they had considerably more capital to work with in establishing their practices and enticing clients. Moreover, foreign lawyers were allowed to practice in Russia, whereas in the U.S., there are only a few jurisdictions where foreign lawyers with foreign law school diplomas can practice law.\textsuperscript{151} In a move to curb the influence of foreign lawyers in Russia, Prime Minister Chernomyrdin issued an order on 15 April 1995, "On the Approval of Regulations of Licensing Activities for Providing Paid Legal Services,"

\textsuperscript{147} Gagarin would object to giving former judges from small towns licenses after having worked for years at the will of local justice officials, for example. "Chlenstvo v kollegii advokatov - Osnovanie professionalisma," \textit{Advokat} 3:33 (1994), 3.

\textsuperscript{148} Question was worded: Are private law firms (acting outside of colleges of advocates) violating the norms of advocate practice and damaging the prestige of advocates?


\textsuperscript{150} Iu. Sukharev, "Byt' li v Rossii professional'noi advokaturoi?," \textit{Rossiiskaja institsia} 3 (1995), 41.

\textsuperscript{151} Interview with Sergei Pashin, 9 December 1994.
requiring foreign lawyers to obtain law diplomas from Russian universities or to provide consultation to clients only on laws pertaining to the countries in which they were licensed.132

1. Conditions Inside Private Law Firms

Private law firms registered with local authorities and found their own office space. They were subject to high taxation rates, sometimes up to 70 percent (although in their first year, new businesses received tax breaks), but the jurists who worked in them were not subject to fees from colleges as advocates were. Foreign law firms operated under different tax laws. These private firms, not surprisingly, were better equipped than most advocates' law offices and were often located in suites near banks and other commercial ventures. They contained more support staff than did typical LCBs and owned computer databases of laws.

One private firm, Kontrakt, located in the affluent Moskvoretskii section of Moscow, had its own Department for Scientific-Technical Communications and Foreign Relations. It also published a legal dictionary for business people and a compendium of legislative acts, as well as a computer information system called Foliand. Another private firm, TIAN, was located in south central Moscow, in a mainly residential area only a block away from Minjust's Russian Legal Academy. The director, a man in his late thirties, renovated TIAN's quarters and bought new office equipment, including computers and legal databases.

2. Backgrounds of Jurists and Management Practices

Some of these private firms were based on the western model of law firms, with partners and associates, but most of them also had directors. The directors tended to stress the importance of being independent from colleges of advocates and other forms of professional control. Some, as at the firm AKSIS, were former law-enforcement officers who were tired of being subsumed by a larger entity.

132 Grocott, "State Limits Practice." As of fall 1995, apparently foreign law firms were ignoring this order and continued to practice as earlier.
AKSIS was located in an abandoned labor union building in a depressed industrial area of southeast Moscow. Unlike other parts of the building, the suite in which AKSIS was housed had current communications and computer equipment; the director also hired an intern (a law student) and a secretary. The director, a former investigator in the Ministry of Internal Affairs who retired and gone on pension in 1991, also formed his own security and auditing companies and was involved in operating the International Institute of Management and the Russian Society of Appraisers. Two of his main associates at AKSIS, which was formed in 1992, were former investigators as well. They all used their MVD connections to perform investigations of such activities as investment fraud for those of their clients seeking compensatory damage. Not adverse to having clients who were involved in organized crime, they accepted anyone who could pay them. The jurists appeared in civil, arbitration, and criminal courts and represented about twenty organizations, including banks, state agencies, and insurance companies. Although he never belonged to any colleges, the director still described himself as an advocate. The director of TIAN also considered himself an advocate.

Foreign law firms with representative offices in Russia ran their operations much as they did at their home base, but often hired Russian support staff and Russian jurists.\(^{\text{153}}\) Russian jurists were paid well in foreign law firms and were considered to be crucial assets in the firms' work, because they generally had already established careers, and were more conversant with the Russian language and laws.

Most, if not all, of the people who were working in private law firms had law degrees, although many of them received degrees from smaller, less established programs, such as law faculties located inside economics institutes.\(^{\text{154}}\) In these programs, students were not trained to be generalists like most advocates, but to specialize in management law. Such a specialization was similar to that of jurisconsults. Some young jurists, the bulk of the private law firm population (which also largely was male), were interning or working part-time and

\(^{\text{153}}\)Some foreign law firms eventually planned to only have Russian nationals working there.

\(^{\text{154}}\)Interview with TIAN director, 19 October 1994. He mentioned how the degree in “Pravovedenie,” which is more like general legal studies, was popular. He himself received his degree at one of these economics institutes.
completing the final year of their law degrees. Russian lawyers who were working in foreign law firms, it is safe to say, all had law degrees from prestigious law faculties.

3. Legal Services

Private firms were creating a niche in the legal services market by practicing certain types of commercial law; but some of their work also overlapped with that of advocates. Private law firms actively pursued clients through advertisements in legal publications, as well as in national newspapers and business publications. The private firm Egida was formed in 1994, but prior to this date, its jurists worked in a sub-division of a firm which registered enterprises with local authorities. Now these jurists offered broad services in the fields of civil, criminal, and arbitration law; half of the services were rendered in court. The other half of their practice involved consultation work, such as contract agreements pertaining to foreign economic activities and commercial real estate. However, the firm’s director, Andrei Kozlov, remarked that he and the seven other jurists working at Egida (including a jurist who was awarded the top honor of being a “distinguished” jurist) sometimes represented labor collectives and indigent clients. In some instances, according to Kozlov, Egida received clients who were dissatisfied with services that they had received at LCBs. The director of TIAN noted that most of the time he and his associates worked on management law matters, including the registering of companies, and often appeared in arbitration courts. In the past, he also represented individuals in suits filed against government officials.

In smaller cities, like Ivanovo, jurists in private firms benefited from the fact that they were often the only specialists who performed certain legal services and had the technology to complete them. For example, the small private firm Leks arranged for the creation of off-

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135 Reuters New Agency reported in April 1995 on a story of a Moscow law student who was hired by the First Voucher Investment Fund in an arbitration suit against brokers at Troika Dialog. The suit concerned a dispute over stock shares. The young “lawyer” hired a bodyguard and convinced the Reuters reporter that he was more knowledgeable about securities law than the judges were. He may have been right. In fact, the judge, who said several judges in arbitration court often carried guns, ruled that the court lacked experience in the matter and had to consult with Central Bank specialists. See Elif Kaban (Reuters), “Shares, Guns, and Bodyguards in Russia’s Courts,” The Moscow Tribune, 13 April 1995, 7.

136 “Pravovaya firma,” Juridicheskii vestnik (September 1994), 27.
shore companies in Cyprus and Ingushetia for clients. Such services could not be provided by
Ivanovo's LCBs, because they had no fax machines, no computers, and no telephone with
international lines. The young director of Leks, a graduate of the law faculty of Ivanovo
University, also organized the firm in such a way that each individual specialized in areas
such as commercial property, land, housing, labor, and securities. Formed in 1992, Leks
already had, by 1995, established a reputation in Ivanovo as a respectable law office for
business people; a number of local judges had even referred prospective clients to them.157
On the other hand, the four jurists there also rendered, on occasion, free legal services to
individuals who were entitled to them by law, such as war veterans, single mothers, and
disabled people.

Some jurists nearly monopolized legal practice in certain areas of law. One example of
this phenomenon was the Moscow organization, Sojuz Patent, the largest and oldest
association of patent attorneys in 1995. It claimed such clients as the Mars Company,
Hewlett-Packard, Philip Morris, IBM, and the Ford Motor Company.156 Formed in 1963 under
the auspices of the Moscow Chamber of Commerce, Sojuz-Patent became independent in
1988 and was earning hundreds of thousands of U.S. dollars per year from their big foreign
clients. The Russian clients they did have included some of the largest banks and stock
exchanges. The organization became a union in 1992 and was headed by the most respected
Russian trademark attorney, Mikhail Gorodisskii.159 Gorodisskii had such strong connections
with power centers in Moscow that he was able to lobby directly in the Duma through
deputies he previously had befriended to campaign for amendments to a patent and trademark
law approved in October 1994.160 Patent and trademark attorneys, of which there were
twenty-four in the organization of 250 employees, passed their own professional exam and

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157This according to the director of Leks (interview 3 April 1995) as well as other advocates in Ivanovo.
156Interview with a young consultant in the union's Department of Trademarks and Designs, 24 October 1994. He also provided consultation to advocates at LEX, the law bureau connected with Minakov's KAM, as they were involved with intellectual property matters.
159The organization is actually registered with the Ministry of Culture and Higher Education, in which sits a committee of trade marks and patents, a state body.
160The law was passed by the Duma on 17 October 1994.
did not join colleges of advocates. The union's brochure noted how those attorneys working in the legal department provided clients with expertise on protecting industrial property, prepared drafts of licensing and other agreements, and executed instructions for protecting owners' rights in cases of infringement. These attorneys had clout in Moscow, because they had nearly cornered the patent law market. They knew best how to serve their clients before judges, most of whom were ignorant of how new trademark laws were to be applied and unable to resolve conflicts over court jurisdiction. They were also active in international patent organizations.

Some Russian private firms had clout because of their expertise and contacts with state officials. But large foreign law firms represented in Russia had the most clout on the international level. According to the head of the International Lawyers' Group, "Firms practicing international law are more often the first stop for foreign investors and entrepreneurs who seek clarification of Russia's often hazy legal landscape." Another non-Russian lawyer remarked that foreign law firms "are a key mechanism for the influx of money into Russia....They are primary mechanisms for compliance of laws by Russian and foreign clients." Therefore, in the first half of the 1990s, foreign law firms were vital conduits for international capital flow in and out of Russia. They also served to educate otherwise ignorant foreign business people about the Russian legal system. The American law firm Chadbourne and Parke, which opened its Moscow satellite office in 1990, was a leader in advising clients on Russian telecommunications policy. It also represented international financial institutions, such as Citibank, which became the first U.S. bank to be granted an operating license in Russia.

Foreign lawyers, however, were not always the most useful staff members when disputes in and out of Russian courts needed to be settled. The senior lawyer at Chadbourne

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162 Ibid.
163 Interview with the American partner who was heading the Chadbourne & Parke office and a Russian advocate working on contract there. 3 February 1995.
and Parke admitted that the influence he and his other American associates had in Moscow courts and with Moscow officials paled in comparison to the influence that the five Russian advocates working with them had. And the language barrier was only part of the reason. One Russian advocate on the firm’s staff in particular, Genrikh Fadva, had one of the most respectable practices in Russia. Usually if he appeared on the scene, before a court or in a bureaucrat’s office, Fadva would resolve matters to benefit his clients. Fadva knew how to interpret the laws in his favor, interact with personalities in high places well, and argue an air-tight case consistently. A younger Russian lawyer at the firm, who still belonged to MOKA and had made a formal agreement with his LCB to work at Chadbourne and Parke, first trained in its offices in Finland and New York. In the late 1980s, he was in the forefront of setting up cooperatives and joint ventures. With Chadbourne and Parke, he specialized in carrying long-term privatization and development projects to fruition.

The Struggle for a New Identity in the Early 1990s: Efforts to Pass a Revised Law on the Advokatura and to Educate Advocates

Part of the struggle for a new professional identity involves the ways in which a profession’s members construct corporate guidelines and how they attempt to instruct new entrants about their duties and obligations. The first part of this section specifically examines how Russian advocates negotiated with state officials over the terms of a new law on the advokatura in 1994 and 1995. The second part examines how advocates have attempted to reshape the education of their members since the Gorbachev period.

A. Drafting a New Law on the Advokatura

While advocates formed new colleges of advocates and law offices and experimented with different forms of self-management in the early 1990s, the 1980 RSFSR “Statute on the
"Advokatura" remained in force. Attempts to revise the law began in late 1989 in the Ministry of Justice (Minjust) and the RSFSR Supreme Soviet, and this time bar leaders played an influential role in the drafting process. Given the new, faintly pluralistic atmosphere which developed under Gorbachev's watch, advocates finally were permitted into negotiations addressing the fate of their own profession.

Most advocates, especially those living in the provinces, were not occupied with internal bar politics, including efforts to draft a new law on the *advokatura*. Instead, they responded to the more immediate demands of their colleges, law offices, and clients. For these reasons, the circle of advocate-lobbyists in the Duma was circumscribed and dominated by Moscow Bar leaders. While these advocates did not accurately reflect the total population (for example, females comprised the majority of advocates yet were underrepresented in the leadership ranks) or elucidate on regional variations, they still spoke for the whole.

Dozens of advocates representing various original colleges met in late 1992 to choose a working group and compose guidelines for a draft law. When drafting first began, leaders in original colleges wanted to have their monopoly over bar associations restored, and they went on the offensive against the Ministry of Justice, which planned to issue advocates licenses. Under the leadership of Fedorov, Minjust favored a kind of "marketization" of legal services, in which the creation of parallel colleges was a strategy for breaking up the original colleges' monopoly. Only after Fedorov resigned in late 1993 did Minjust officials and these advocates advance towards a détente of sorts.

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164. However, advocates and legislators in a number of regions were beginning to draft or had already drafted (in the case of the Republic of Bashkortostan) local laws on the *advokatura*.
166. In the 1995 advocate surveys, most advocates did not indicate which of the drafts under consideration they preferred. In interviews with the author, several rank and file advocates from both Ivanovo and Moscow appeared apathetic towards the topic and were unfamiliar with and uninterested in the dynamics of the drafting process. Some even said that its passing would have only minor influence on their work and their profession's operations.
167. They were trying to take precautions against the formation of a private *advokatura*, which existed in the late tsarist period. Isai Sukharev, "Badushchee advokaturno RF," *Advokat* 2:32 (1994), 3.
168. At the time, advocates were not issued licenses to practice. Entrance into a college automatically made them full advocates (although they did receive a document confirming their membership).
169. In early 1994, for example, the head of the department on the *advokatura* in Minjust, Isai Sukharev, criticized the advocates' draft law for unduly limiting the number of colleges and the right to practice independently.
The Duma Committee on Legislation and Judicial and Legal Reform (henceforth, the Committee), which was reconstituted after the elections of December 1993, readied itself for another round of drafting a new *advokatura* law. Chaired by Vladimir Isakov, a pragmatic member of the Russian Unity Faction, the Committee consisted of 22 deputies. Roughly half were from liberal/democratic factions and parties. Two were women. A few, including former CPSU elite, Anatolii Luk'ianov, were conservative hard-liners. Less than a majority of the committee members had law degrees, although the number most likely was higher than that found among members of other Duma committees. At least two staff members who coordinated the drafting process were former advocates. One, Grigorii Iliev, had worked earlier as an advocate in MOKA and had taught at the Moscow Legal Academy. Drafting also was underway of other laws impacting on the work of advocates, such as the Law on Court Reform, the Criminal Procedure Code, the Civil Code (parts II and III), and a revised Law on the Procuracy.\(^\text{170}\)

In late 1993, a handful of Moscow Bar leaders were chosen to participate on a Ministry drafting commission and later appeared regularly at hearings of the Committee. The bar leaders included Aleksei Galogonov, president of the Federal Union of Advocates and chairman of MOKA, and his deputy at MOKA, Aleksandr Kligman (who became Union president in June 1995); Aleksei Rogatkin, Galogonov's vice-chair in the Union and chairman of MOKA; and Giorgii Voskresenskii and Mikhail Gofshtein of the International Union of Advocates. These men were most vehement about retaining only one college of advocates per region (with a few exceptions) and earmarking funds from the federal budget to pay advocates for their aid to

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\(^{170}\) A draft can be submitted to the Duma only by those individuals and government agencies that possess such a right (article 104 in the Constitution). These include the president, the Federative Council, members of the Federative Council, Duma Deputies, the Russian Government (pravitel' stvo), legislative organs in the regions, the Constitutional Court, the Supreme Court, and the Supreme Arbitration Court. Rybkin, the speaker of the Duma at the time, then approved its submission and sent it to the relevant committees. He was assisted by a commission on the coordination of legislation, assigned to order around 480 draft laws between January and July 1995. Valerii Savitskii, a member, noted that the drafts on legal reform were placed in the second rung, below those dealing with the budget. Interview, 1 February 1995. Two votes generally are taken before a draft passes through the Duma.
indigents. Three other advocates who participated in the Duma drafting process, but who belonged to another coalition of interests, were Valerii Alpatikov, chairman of Iniuurkollegia; Nikolai Klyon, chairman of MRKA; and Gassan Mirzoev, head of Mosiurtsentr.

On 24 May 1994, Miniust submitted to the government a draft entitled “Ob advokature v Rossiiskoi federatsii,” which limited most regions to one college of advocates; the draft appeared to represent a clear victory for the advocates on the Miniust drafting commission. The government, in turn, submitted this draft to the Duma in the early fall of 1994. Apparently, a number of behind-the-scenes deals or “trade-offs” were made between the advocates on the Miniust drafting commission and Miniust officials. On 20 March 1995, Kligman alluded to the deal-making when speaking to those deputies present at a Committee hearing. He noted that, “If we [advocates] managed to strike an agreement with the Ministry of Justice, we can do the same with you as well.” A possible bargaining process between the two sides may have involved the advocates’ tolerating some Miniust supervision, in exchange for Miniust’s insuring that most parallels would fold, that colleges would retain a tax-exempt status, and that advocates would be guaranteed payment from the federal government’s budget for their work on court-appointed criminal cases.

In October 1994, the State Legal Administration (GPU) submitted a draft to the Duma, “Ob advokature Rossiiskoi Federatsii.” The GPU’ draft was written by Professor Iurii

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171 Following procedure, the draft was sent to a number of ministries, including the MVD, as well as the Procuracy, GPU, and the Supreme Court for review. Then advocates at the Mosiurtsentr reviewed it. They criticized the bulk of its contents on the basis that it contradicted article 37 of the Constitution (about the right to work according to one’s abilities as one wants). Isai Sukharev, “Kakim but’ zakony ob advokature v RF,” Advokat 7:37 (1994), 6. The State Committee on Anti-Monopoly Activity criticized it for violating the Constitution as well, including article 30 on the right to association. Dmitry Ukhlin, “Russia’s Bar Threatens Legal System,” Moscow News, 7-13 October 1994, 14. Those who sided with the parallels also based their argument on how they were permissible under Article 3 of the 1980 “Statute on the Advokatura,” as well as on the law on cooperatives. This was the draft, however, that the government eventually submitted to the Duma in fall 1994.

172 The author was present at this meeting and overheard Kligman’s comment at the end: no Miniust officials were present at the time.


174 Some of the people working in these two state agencies, namely Pashin of GPU and Sukharev and Stepanov of Miniust had different and competing ideas for the advokatura’s organization, hence the existence of the two drafts. Miniust and GPU officials were not always in agreement about many issues centering on judicial reform. The Ministry of Justice’s mandate over the drafting of legislation on the judicial system proposed by the executive branch was weakened by the GPU. Stephen Thaman, “The Resurrection of Trial by Jury in Russia,” Stanford Journal of International Law 31:61 (1995), 79-80.
Stetsovskii, with the assistance of Sergei Pashin and a group of other jurists. Ideally, Stetsovskii wanted each region to draft its own law on the bar, as in the tsarist era. But he considered this particular draft to be tolerable. It allowed for more than one college to exist in a single region and did not stipulate for individual licensing by local justice organs, as the Ministry draft had. Instead the presidium of a college would admit new members. Both drafts, however, had required applicants to have a law degree, to complete an internship, to have favorable evaluations, and to pass an entrance exam. Editors of _Advokat_, favoring Ministry’s plan, criticized the GFI’ draft for treating colleges like big law firms.\(^{175}\)

A third draft, “Ob advokatakh i advokatskikh ob”edinenakh,” was submitted in October 1994 by a young, ambitious Duma deputy and Committee member, Aleksandr Traspov.\(^{176}\) This draft proved to be more of a nemesis to Ministry supporters than the GFI’ draft. It stipulated that colleges to be disbanded and replaced by guilds (evoking German trade associations). In addition, it called for a new federal union of advocates, which would have administrative control over individual guilds. The leaders of the present Federal Union of Advocates and the International Union of Advocates heartily disapproved of this measure, arguing that it would decrease the self-management capabilities of colleges. In addition, they argued that Traspov’s draft would destroy the practice of legal aid to indigents, although he denied this charge. Traspov and his proponents insisted, on the contrary, that his was the only draft that would promote a truly independent profession and that took into account the needs of individual advocates.\(^{177}\) For committee support, Traspov could count on two members from his 12 December faction and a handful of others, including Isakov. Advocates from MRKA (Traspov’s former college), Mosiurtsentr, and Iniurkollegiia supported it, as it guaranteed their existence.


\(^{176}\)A native of Stavropol, Traspov worked for a couple of years as an advocate in an office of MRKA and previous to that taught criminal law at the local MVD institute. According to most advocates who sided with the leaders of the Federal Union and the International Union of Advocates, Traspov was not a “real” advocate and wrote a sloppy draft which, if passed, would compromise their profession. He was not re-elected to the Duma in 1993.

\(^{177}\)Interview with Aleksandr Traspov, 11 November 1994. Traspov noted that very few of his constituents had the “psychology to embrace political, economic and legal reform at this time.” He also said that most of the lobbying occurring in the Duma at the time was based on corruption, blat (influence), and monetary pressure.
Public hearings were sometimes held to ascertain the public's reaction to certain drafts. At a public hearing in the Moskva Hotel in Moscow, on 15 November 1994, which more closely resembled a public denouncement, Traspov defended his draft. A crowd of approximately 150 legal specialists, including advocates, justice officials, and legal scholars, attended. Most expressed fierce opposition to Traspov's vision. Despite these feelings of ill-will, Traspov declared that he would move his draft forward for a Duma vote. The draft first returned to the Committee for further discussion after the public hearing, but on 19 December, fifteen members of the Committee formally recommended to the Duma that its general membership commence first-round voting on the draft.

Opponents rallied against Traspov's draft. In early 1995, when the Traspov draft was in line for a full Duma vote, initiators of the Ministra and GPC drafts agreed to combine their texts. While the resulting draft still held that only one college of advocates would exist in each region, it no longer stipulated for Ministra to issue licenses, and allowed for some inter-territorial colleges to exist. According to these advocates and state officials, the main goal of the combined draft was "a widening of organizational opportunities for advocates in rendering effective and qualified legal aid to individuals and legal entities." Interestingly, this goal concentrated on rendering legal aid to the population (i.e., performing a state-mandated service), not on establishing boundaries of practice and guidelines concerning self-regulation, or the "power-oriented" goals. Instead, it supports the functionalist assumption that professionals seek to fulfill altruistic goals and serve society (while betraying the fact that Russian advocates were establishing their goals in tandem with the interests of state officials).

Yeltsin signed the combined draft on 12 January 1995 and submitted it to the Duma. Soon after, the Committee had the draft under consideration. The combined draft had one strong supporter on the Committee, Boris Zolotukhin, who was formerly a member of MGKA

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179"Poviasnitel'naia zapiska k proektu federalnogo zakona "Ob advokature v RF," explanatory memo attached to the draft law submitted by Ministra and GPC officials and a group of advocates, 12 January 1995.
and now the Committee’s vice-chairman, as well as a leading member of Egor Gaidar’s Russia’s Choice Party, the liberal party with the most members in the State Duma at the time.\textsuperscript{180} The draft also received support from members of the liberal press.\textsuperscript{181}

In the first five months of 1995, members of the Committee met no more than three or four times to discuss the competing draft laws. Each time, the same advocates argued their case and tried to win over more deputies. Sometimes, Ministry officials and Sergei Fashin were present. At a hearing on 9 February, the fourteen deputies in attendance heard Galoganov discuss the joint draft. He reiterated how parallels were temporary experiments and how original colleges no longer were dependent on Ministry. Parallels had no more than 3,000 members in 1995; almost 18,000 advocates still worked in original colleges. Galoganov caused his colleagues a fright when he said that an advocate could choose to remain outside a college (this proposal was not raised again). The issue of how regions might have different preferences regarding the \textit{advokatura} was raised by one deputy, but remained the most neglected topic throughout these proceedings.

It appeared that negotiations were breaking down. The Committee’s communist curmudgeon, Anatolii Luk’ianov, wanted to see more stipulations placed on how new law bureaus operated; he expressed reservations about independent practice. Zolotukhin doubted whether the drafts could ever be joined. But a special sub-committee composed of about six Duma deputies (including Traspo), plus Deputy Minister of Justice Stepanov and advocates from both camps formed in earnest to revise Traspo’s draft, by taking into account the main demands outlined in the combined draft.

In a later hearing on 20 March, Isakov, who tried to quell tensions between the two camps, decided to go through the text of Traspo’s draft line by line, allowing participants to comment about revisions. This exercise resulted in a yelling match between the pro-joint

\textsuperscript{180}Zolotukhin had already won Isakov’s respect when they were deputies in the Russian Supreme Soviet. Thaman, “The Resurrection of Trial by Jury in Russia,” 139.

draft advocates, on the one hand, and Alpatikov and Traspov, on the other. The former camp spoke out against state licensing, while the latter camp supported it. Next, the two argued over whether parallel colleges should be dismantled. Isakov proposed a compromise: adding a clause that would prevent Minjust from refusing licenses. In turn, the Minjust/GPU' camp agreed to use Traspov's draft as the main text, if its supporters kept the colleges as the local bar associations.

What actually resulted was a stalemate. Members of the "unification" committee constantly canceled meetings, and deputies became preoccupied with campaigning. The new Duma was elected in December 1995, and Traspov lost his re-election bid. Given the results of this election, most likely more Communist Party members and other hard-liners would join the Committee, and liberals would become a distinct minority. Such a configuration may drastically change the outcome of a new law on the advokatura. In early 1996, draft negotiations began their sixth cycle.

Despite the Duma's failure to pass a law on the advokatura in 1995, the drafting process showed how advocates were playing an influential role in building coalitions and constructing texts. At some committee hearings, they raised issues and proposed revisions more often than most committee members did. Staff member Giorgii Iliev, in fact, believed that the advocates had "defined the changes" in the drafts. Advocates had journeyed a long way from fifteen years before, when their demands were tangential to the drafting process of the 1980 RSFSR "Statute on the Advokatura."

Notwithstanding this improvement, leaders of the original and parallel colleges of advocates still were not in agreement on their blueprint for a future advokatura. The leaders of the Federal Union and original colleges who took part in lobbying efforts in the Duma also compromised their initial independent positions to join forces with Ministry of Justice officials; as a result, they acknowledged that they still had to rely strongly on state officials for validation. A law looked no closer to being passed than it had a year before, and the ultimate consequence of this inaction and the advocates' squabbles may be that the conservative state
legislature elected in 1995 may end up deciding the new guidelines for the bar. Moreover, any standards that a law on the bar might create may be unable to halt what already has occurred spontaneously in the courts and bar associations, and with legal practice.

B. The Education of Advocates

While this dissertation does not provide a detailed study of changes in legal education in general, it has emphasized the importance that training has had in shaping the professional identity of the *advokatura*. The state controlled legal education up until the early 1990s, by devising curricula geared to instruct students within the confines of socialist legality. Bureaucrats in the Ministries of Justice and Higher and Specialized Secondary Education created their own educational objectives and approved faculty. The first four years of the post-Soviet period were marked by a liberalization of legal education, as well as by uneven approaches to training across law programs and colleges of advocates.

From 1987 on, neither Ministry nor the Ministry of Higher Education (now relegated to a committee status) interfered in the affairs of law faculties. Such a change gave law faculties more autonomy in hiring their own faculty and administrators and in creating their own objectives and curricula. Moreover, law faculties no longer receive ministry funding; instead, they receive support from the federal budget, a condition which also has increased their autonomy from bureaucrats, but left them with fewer financial means.\footnote{Interview with Professor Konstantin Gutsenko of MGU, 28 November 1995. There are limits to the new trend of law faculty autonomy, however. According to Sidney Picker, a professor at Case Western Reserve University School of Law, well-established law faculties, such as those in Moscow and St. Petersburg are free from government interference in their administration and curricula, whereas less-established law faculties are more vulnerable to it. Phone interview on 24 October 1996.} Students are on their own, too. Stipends are extremely low, and the state's practice of distributing jobs to new law graduates (*raspredelenie*) is now defunct. As a result, law students often hold down jobs and carry a full load of class work, then upon graduating must initiate their own job searches.

Reforms to legal education during *perestroika* encouraged faculties to introduce more courses on specific legal specialties. As a result, some law programs in Moscow offered
courses on the *advokatura* and advocates' legal practice in the civil and criminal spheres, and were taught by well-known advocates. The Moscow Legal Academy formed its own department of the *advokatura*, headed by a member of MGKA, Professor Israil' Martkovich. In 1995, some Moscow advocates and law professors, including Martkovich, were trying to create a special school for future advocates (*shkola advokatury*); a lack of funding stalled their plans. In the late Soviet period and the first years of the post-Soviet era, advocates, especially those who were bar leaders, cooperated with a number of reform-minded legal scholars to further certain goals -- for example, to strengthen the role of defense attorneys in the criminal process, to reintroduce jury trials, and to improve the quality of legal education. Their dedication to these causes has yielded some tangible results and laid the groundwork for the creation of a future rule-of-law society, where -- according to the ideal -- legal scholarship is permitted to flourish in a relatively liberal intellectual climate.

But, despite these efforts, the quality of legal education differed greatly across old and new programs in the early 1990s. The older law faculties, such as Moscow State University, remained the most prestigious in the legal community, while the many new law schools generally were considered to be inadequate for advocates' training. Many of these new law faculties were located inside private universities which charged high tuition and had yet to establish formal credentials, or often in technical, economic institutes. These alternatives to university education trained most students to serve the growing commercial sector, and many of their graduates opted to practice law outside the confines of the colleges of advocates and inside private law firms. As a result, standards for legal practice were uneven.

The remainder of a young advocate's training depended upon the programs and resources that her college had. As mentioned earlier in this chapter, some colleges offered their new entrants courses and seminars on various topics (criminal and civil) that were taught by practicing advocates. But many colleges in the provinces did not have the means to offer such a level of training. Moreover, some colleges still did not require new entrants to pass exams. All candidates completed an internship in a particular law office, however, and
the average length of the internship grew. Many advocates considered their *stazhirovka* to be the most valuable stage of their professional training, although some interns received more attention from their mentors than others.\textsuperscript{183} Once new advocates were accepted into colleges, continuing education often was neglected, especially for civil law topics.

As mentioned earlier in this chapter, some western legal programs cooperated with some colleges in providing training sessions, such as on jury advocacy, and many participants felt that they had benefited from them. But the long-term utility of such programs is limited. Foreign trainers were often unaware of Russian legal practices and unable to explain how to adapt their practices to the Russian legal *milieu*. Moreover, only a minority of advocates have taken part in these seminars; therefore, their impact on legal practice has been minimal.

This brief overview of advocates' education suggests that the bar, despite its newly-acquired autonomy in this area, lacks the ability to coordinate and fund uniform education programs for its new entrants. Recent plans of the Federal Union of Russian Advocates to create an advocates' school and an ethics code, however, may prompt advocates to intensify their efforts and lobby more strongly for federal funding.

**Conclusion**

The late 1980s and early 1990s were years when advocates confronted critical junctures of institutional choice.\textsuperscript{184} By 1995, the 21,000-member *advokatura* was composed of three national bar organizations, eighty-two Soviet-era colleges (composed of about 18,000 advocates) over thirty parallel colleges (composed of between 3,000 and 4,000 advocates), and various kinds of law offices which catered to different types of clients. Such an array of


\textsuperscript{184}According to two historical institutionalists, "political evolution is a path or branching process and the study of the points of departure from established patterns ("critical junctures" of institutional choice) becomes essential to a broader understanding of political history." See Kathleen Thelen and Sven Steinmo, "Historical Institutionalism in Comparative Politics," in *Structuring Politics: Historical Institutionalism in Comparative Analysis*, ed. Sven Steinmo, Kathleen Thelen, and Frank Longstreth (Cambridge: Cambridge University Press, 1992), 27.
structures on the three organizational levels -- national, college, and law office -- divided advocates’ loyalties and created various interests and approaches to practice and management.

The historical institutionalism approach sheds light on the state and societal constraints that advocates continued to work under during this time. In historical institutionalism’s terms, advocates were constrained by both “historical contingencies” and “path dependencies.” First, advocates were still constrained by Ministry of Justice officials, although the latter had lost a great deal of their earlier supervisory controls. As a result of the historical contingency of the state’s lingering control, advocates were forced to continue the same dynamic of negotiating with state officials over the structure and functions of their bar organizations. Although certain leaders of the bar struggled to gain more autonomy from state officials so that national bar organizations could set their own goals and colleges could decide independently how to set entrance barriers and pay scales, they did not attempt to abandon all ties to the Ministry of Justice or local justice organs. Instead, they worked with justice officials in drafting a new law on the _advokatura_, in receiving payment for court-appointed cases, in securing office space, and in creating new bar organizations.

Second, the capacity of many advocates to expand their legal practice further into the civil sphere was limited by their formal obligation to provide legal services to indigent clients in criminal cases (a path dependency caused by societal demands, as well as legalized norms). As a result, most advocates continued to work inside legal consultation offices which typically catered to court-appointed cases. Advocates, despite adding more than 4,000 new members to their ranks over the past three years, failed to meet society’s growing demand for low-cost legal services in the civil sphere, and _striapchie_ and private lawyers picked up the slack.

Although they were constrained by the state and societal factors mentioned above, members of the bar also experienced a period of institutional dynamism which, in part, they

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185 Ibid. 2.
186 Because the information I gathered about _striapchie_ is largely anecdotal, I was unable to ascertain in what areas of legal practice _striapchie_ are most prevalent. My assumptions are that they have been providing basic, mundane legal services in the civil sphere (form completion for divorce filings or complaints related to the dispersal of state pensions, for example).
themselves initiated, as indicated by the creation of national bar organizations, parallel colleges, and new law offices which served new types of clients. The distinct sources of this dynamism have been, first and foremost, the broad changes in the socioeconomic and political context which allowed for change within the institution (the *advokatura*). Second, these exogenous changes encouraged members of the institution to shift their goals and strategies. At this time, some advocates decided to pursue other avenues of practice and even other work arrangements in new colleges and law offices. Another source of dynamism occurred when advocates adjusted their strategies to accommodate changes inside the *advokatura*.187

As the rules about the creation of bar associations and law offices became less rigid in the early 1990s, individual advocates decided to either remain in their former situation or move to the new structures. Advocates fought hard to gain or maintain their structural preferences. On the one hand, thousands of advocates chose to practice within new associations and new law offices, believing that only these new forms could bring Russia into step with legal practitioners in the West. On the other, such Soviet-era carryovers as the old *kollegii* and the *iuridicheskie konsul'tatsii* were still viewed by a majority of advocates and legal scholars to be the best means of regulating legal practice. In their view, these structures represented many years of tradition, including a respect for professional training and a responsibility for serving the legal needs of the community, particularly in the area of criminal defense. They transcended communist ideology, and continued to hold meaning in the post-Soviet era.

While all advocates, to a certain extent, were concerned about the lack of professional cohesion in the *advokatura* in the first half of the 1990s, those who envisioned the bar as a corporate monolith -- typically advocates working in original colleges -- appeared to be most disturbed by this development. Lack of professional cohesion is not necessarily an indicator of

187 Thelen and Steinmo, 16-17. These three sources are based on Thelen and Steinmo’s typology of four distinct sources of institutional dynamism. (The source that I exclude concerns a situation in which, also under socioeconomic and political changes, old institutions take on different ends. The *advokatura*, however, did not change as drastically as this example requires.)
a weak legal profession; the American bar, as disjointed as it is organizationally, is an influential profession in U.S. society which enjoys a great deal of autonomy from government officials. The bar organizations and law offices which have formed in post-Soviet Russia by no means have wielded as much authority in society or enjoyed as much autonomy as bar associations and law firms have in the U.S. However, the dual existence of old and new bar structures is an indication of the development of pluralism and the increased autonomy professions have had over their organizations and practices in Russia in the 1990s.
CHAPTER FOUR
GAUGING CHANGE IN PRACTICE:
ADVOCATES’ INVOLVEMENT IN CRIMINAL CASES

Popular joke in legal circles: Judge to defendant -- Why do you refuse to testify? Defendant -- Your honor, my advocate convinced me that I am not guilty!

On a business card of an Ivanovo advocate: Don’t say a word without your advocate.

The level of the advokatura’s development is an exact indicator of the legal guarantee of rights and freedoms of an individual and citizens. The independence and high prestige of the advokatura ought to be guaranteed through legislation, and the state’s interference in the bar’s activities excluded. -- Boris Yeltsin, in a message given to the Federal Assembly on 24 February 1994

Over the past two decades, a number of scholars -- legal historians, sociologists, and political scientists included -- have published a number of works on the roles of lawyers in society. This renewed interest in lawyers was a result of the increased efforts of lawyers in continental Europe to gain autonomy from the state by organizing independently. It also came as a result of the efforts of lawyers to redefine their boundaries of practice across the continent as well as in England. Moreover, this interest grew as scholars sought to explain the rise of rights politics in certain societies and the ways in which lawyers have represented various and conflicting interests.1

Did a similar concern for rights surface in early post-Soviet society, as the civil rights of Russian citizens were expanded in new legislation? According to a study by the Institute of Sociological Research in Moscow, in 1994, a mere eight percent of 5,103 respondents across Russia rated the right to legal protection (studebnaia zashchita, or legal defense) as one of the most important constitutional rights, equal to that of social security.2 Upon a closer look, though, this answer betrays a widespread belief that the court is more effective as a punitive body aimed at fighting crime than one which protects individual rights.3 The findings of rights specialist Inga Mikhailovskaia suggest that young people and individuals participating

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3 Moreover, respondents felt that a criminal going unpunished posed more danger than an innocent person condemned. Mikhailovskaya, 72. Only 23 percent of respondents noted an improvement in human rights conditions in Russia.
in the private sector were more apt to value democratic principles (civil liberties) over socioeconomic rights, which most respondents viewed as the priority. But this survey also indicates that legal attitudes among the general population, as well as in elite political circles in Russia, were not yet compatible with the notion of protecting due process rights.

In Russia, the perpetual conflicts of opinion over the role of defense in criminal cases, particularly in preliminary investigations, originated in the late nineteenth century, with the discussions about the 1864 legal reforms.1 These institutional conflicts between conservative elements (largely law enforcement officials who wanted to limit the defense’s rights) and reformists (largely legal scholars and advocates who wanted to expand these rights) continued throughout the twentieth century. The Soviet constitutions called for the right to a legal defense (articles 158 and 161 of the 1977 Brezhnev Constitution, for example), but they were not consistently enforced. Despite the fact that article 48 of the 1993 Constitution guarantees everyone the right to receive qualified legal assistance, there still were de facto, if not de jure, constraints placed on the role of defense in the first half of the 1990s.

Individual liberty in a society is enhanced by a more autonomous legal profession. Such autonomy is often reflected in the strong role that defense attorneys play in the criminal process, as a means for placing checks on governmental powers. The constraints placed on the role of the defense in Russian courts, on the other hand, reflect Russia’s partial adherence to the continental legal tradition, found in Eastern Europe, France and Germany (Russia’s closest legal relatives), but also in most African and Latin American countries. Curiously, some lawyers who worked inside inquisitorial processes in communist systems have been able to circumvent their constraints relatively effectively. Cuban advocates, for example, have had to maneuver between the ideological constraints of the communist system and the individual needs of their clients, but experienced better outcomes, namely higher acquittal rates, than

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Soviet lawyers did. The reasons for this involve the differing rules, some formal and some informal, in Cuban and Soviet criminal procedure. In Cuba, as will be discussed in more detail later in this chapter, such rules provided the advocate with more tangible influence.

One of the basic foundations on which the Russian -- and earlier Soviet -- criminal justice system has been built is the objective truth doctrine (ob"ektivnaia istina). This doctrine accepts that there is only one correct decision in a criminal case, which allows little theoretical room for the American concept of "proof beyond a reasonable doubt." Its adoption has resulted in investigators' overlooking exculpatory evidence and in preventing defense counsel from collecting evidence. Across the USSR, advocates operated under this and other unique constraints. For example, in Soviet courts, investigators were not subject to judicial control as they were in Germany and France; instead, they worked under the supervision of the Procuracy or the Ministry of Internal Affairs (MVD). This arrangement gave Soviet investigators too much discretion over decisions granting advocates access to pre-trial proceedings and case materials than investigators in Germany and France had. Such a wide breadth of discretion led to Soviet investigators' misuse of power often to the detriment of advocates' participation. Soviet advocates, however, sometimes devised ways to overcome this bias against them by creating their own methods for "winning" cases.

As discussed in Chapter One, changes to the criminal procedure code (UTK) in the various republics during the Khrushchev period created possibilities for a stronger defense, at least on paper. Under Brezhnev, reformers and conservatives continued to battle over the issue of earlier access, but the direction of change more often moved forward toward reform. Then the Gorbachev era brought positive changes to criminal procedure codes, including the earlier access of defense attorneys to pre-trial stages. The re-introduction of jury trials in

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1993 in a handful of regional courts also augmented the advocate's role. However, in the mid-1990s, legislators, legal scholars, and advocates have been working on revisions to the whole Russian UPK, although this process has been continually postponed.

Arguments between legal scholars and officials working on the drafting of the UPK heated up in late 1994, over such issues as an advocate's right to conduct parallel investigations, the arrest of advocates for violations of legal procedure, and the proper amount of time suspects may be detained. Did the amendments made to articles in the Russian UPK between 1989 and 1993 reform legal practice? What, if any, elements of advocates' practice in criminal cases have improved since 1989? What elements are still missing, and in whose interests is it to avoid implementing these changes and why? Finally, do jury trials offer a new hope for the defense and allow advocates to participate more fully in criminal procedure?

This chapter will answer whether the first half of the 1990s witnessed any positive movement toward legalism through a strengthening of the advocate's role -- and, in turn, guarantees for an adversarial trial -- in criminal cases. First, the advocates' work in preliminary investigations and courts of first instance will be examined, by comparing the legal revisions made to criminal procedure with actual daily practice in criminal cases.

Regional variances in the administration of criminal justice, and advocates' work in particular, are also treated briefly in this section. Second, a sample of post-Soviet "political" cases (handled as criminal prosecutions) will be examined, with emphasis on the strategies advocates employ in assisting their clients. Third, in light of advocates' new procedural rights, a study of defense in the jury trials will conclude this chapter.

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Advocates in Pre-Trial Stages: Theory versus Practice

Defense attorneys, due to the structure of the Russian criminal procedure inherited from the Soviets, are at a marked disadvantage right from the start. This partly is because the rules of procedure are written to deprive the defense of equal resources or the means of redress that other actors, like investigators or prosecutors, have.\textsuperscript{10} In the late 1980s, reform-minded legal scholars and officials in the Russian Republic of the USSR believed that, if certain articles in the RSFSR UFK were amended to grant advocates more structural rights in pre-trial stages, the chances that defendants would have fairer trials would increase. Advocates would then be shielded from investigators' and procurators' discretion, thus turning the process into a more adversarial one, even during the preliminary investigation.\textsuperscript{11}

In theory, investigators are to gather evidence pertinent to a case in an objective manner, meaning that they are to include all pieces of evidence. Article 20 of the RSFSR UFK (1983 amendments) calls for an "all-sided, full and objective investigation into circumstances of a case." Yet, more often than not, as mentioned earlier in regards to the objective truth doctrine, investigators have gathered evidence which exclusively supports the accusations. Similarly, the procurator's office supervises the legality of the procedure at the same time that it is prosecuting the case. It is not hard to see why, then, it would be in the institutional interests of these actors to support one another in opposition to defense counsel (zashchitnik).

Earlier versions of the RSFSR UFK lacked objective criteria in defining the role of defense counsel in pre-trial phases. As a result, individual investigators and procurators took advantage of this fact by creating their own operating procedures for allowing advocates

\textsuperscript{10} Such a disproportion exists in the adversarial as well as inquisitorial approaches, although in the former the defense usually is granted more due process rights. Not until the 1960s in the U.S., with the Supreme Court decision Gideon v. Wainwright, 372 U.S. 335 (1963), was defense counsel required in cases involving state felonies (where the bulk of felony cases are heard). In other words, mandated limitations on defense were not unique to inquisitorial systems. See David J. Bodenhamer, Fair Trial: Rights of the Accused in American History (1992). Although defense at certain points in late 20th century America was provided with stronger due process guarantees through Supreme Court decisions, it still was up against more powerful district attorneys who typically had more resources at their disposal.

\textsuperscript{11} Most investigators who work on cases assigned to courts of general jurisdiction (and non-military) are subordinated either to local procurators' offices scattered throughout a city or region or to local divisions of the Ministry of Internal Affairs. The former handle most criminal cases, and the latter handle special cases involving banditism and organized crime. Thus investigators work in close proximity to procurators typically and may work in the same building or in one adjacent to them.
access to their clients and case materials. For example, investigators rejected advocates' petitions for taking such measures as granting the accused release from detention, dismissing the case based on lack of evidence, and requalifying the charges. Investigators typically took for granted the fact that procurators sided with them in such matters. Consequently, advocates often waited until trial to make petitions or voice complaints, at which point they could approach a more sympathetic bench.

Militia officers especially profited from the fact that advocates were barred from the inquest phase (doznanie). At this time, the militia had the opportunity to interrogate -- and, in some instances, bodily harm -- the suspect in an attempt to obtain a confession, all without the defense counsel present. By 1993, if a suspect was not assigned a defense counsel, he had the right to refrain from giving testimony in interrogations, and his silence was not supposed to be viewed as evidence of culpability.

A. Advocates' Earlier Entrance into Pre-Trial Stages

The amendments to articles 47 and 49 of the RSFSR UPK outline the defense counsel's participation in the criminal process; they were approved by the Supreme Soviet of the new Russian Federation on 23 May 1992. The articles formally stipulate that an advocate may participate in a case from the moment an accusation is presented. The advocate may also participate when a suspect is placed in a detention center (sledstvenyi izolator or SIZO), from the moment that the report on the suspect's detention is filed or the enactment defining the terms for his remaining in custody is announced. This means that, in those cases requiring an inquest, zashchitniki now have the right to participate. In addition, should a

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14Inquests generally have been handled by militia units in less severe crimes.
15Igor Petrukhin, Vam nuzhen advokat (Moskva: Progress, 1993), 239.
16This came two years after the USSR Supreme Soviet approved the expansion of the participation of defense counsel in the "Fundamentals of Criminal Procedure." These Fundamentals did actually take effect in the RSFSR in 1990, even though the UPK did not reflect them, as evidenced by the new calculations made of the number of advocates' entering cases after detention or arrest in annual accounts of advocates' practice completed by colleges beginning in 1990.
defense counsel appointed by a suspect or accused (or typically his family) not appear within 24 hours from the time a suspect was detained or taken into custody, the investigator and procurator have the right to suggest to the suspect or accused that he invite another defense counsel. Alternately, they might secure one for him, free of charge, through a legal consultation bureau (LCB). Advocates are now obligated to be present during the doznanie and preliminary investigation (predvaritel'noe sledstvie) in cases where the client is a juvenile, deaf, dumb, blind, or otherwise physically or mentally disabled, or when the defendant did not have knowledge of the language used in court proceedings. They also are to be present the moment that an accusation is presented (after the doznanie) in capital cases.

In the 1970s, advocates participated in only approximately 35 percent of preliminary investigations, and only one-third of these advocates entered the case at the beginning of the investigation. Have the new rules mentioned above actually brought more advocates into the pre-trial stages earlier? The numbers tallied in the Russian Ministry of Justice’s (Minjust’s) annual reports of advocates’ practice since 1990 indicate that they have. The number of advocates brought on to a case soon after a suspect’s detention or arrest numbered 67,313 in 1990; it rose to 211,844 in 1994. Whereas in 1984, only 97,786 advocates entered cases from the moment the accusation was presented, 283,166 advocates began to

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17 Not just advocates take part in pre-trial stages. Representatives of professional unions and members of societal organizations also may. In certain cases close relatives also can act as zaschitniki. The majority of these cases, however, have advocates. Suspects and the accused, under article 30, also have the right to refuse defense counsel, but it must be clear that they were not forced into such a decision.

18 In Russia, once a person is convicted and sentenced to death, the punishment (administered by firing squad) usually is implemented within a few months, unlike the death row process in the U.S., which can take years and many appeals. Over the past three years, 53 Russians were executed according to MVD sources. In late 1995 the Council of Europe approved Russia’s admittance into its ranks, with the proviso that the death penalty be abolished. This request was met with opposition by MVD first deputy minister, Vladimir Kosinikov, on 27 March 1996, who argued that such a move would be “counterproductive” and that Russia lacked the funds to implement it. See Open Media Research Institute (OMRI) Daily Digest Report on Russia and Central Asia, on-line (28 March 1996), hereafter, OMRI Report.


represent the accused at this same phase in 1994.\footnote{1984 "Otechet o rabote kollegii advokatov." delo 07-05, 1984, str. 1. Otdel advokatury, RSFSR Ministry of Justice Archives.} Between 1989 and 1993, the number of advocates taking part during the pre-trial stages who were appointed by investigators and procurators rose substantially.\footnote{1991-93 otchet. The number of advocates appointed during the inquest and preliminary investigations were not calculated until 1990; earlier there was only one number provided for all appointed cases.}

This increase in appointed cases in the early 1990s reflected the fact that the Russian population was growing poorer. For example, the number of Russian citizens whose average family income fell below subsistence levels grew steadily since the late 1980s. By 1995, 40 million (roughly 25 percent of the population) fell within this category.\footnote{This statistic according to Prime Minister Viktor Chernomyrdin and reported by ITAR-TASS. OMRI Report, 16 October 1995.} As in any country, the segment in society that typically comes in contact most often with the criminal justice system, whether as victims or the accused, is the underclass.\footnote{What historian Lawrence M. Friedman said of the American legal system, also applies to the Russian: "The lash of criminal justice...tends to fall on the poor, the badly dressed, the maladroit, the deviant, the misunderstood, the shiftless, the unpopular." Lawrence M. Friedman, Crime and Punishment in American History (New York: Basic, 1993), 101. See also Donald Black, "The Mobilization of Law," The Journal of Legal Studies II:1 (January 1973), 136.} Finally, most of the accused are male; many are juveniles, alcohol abusers, and recidivists. In representing these dispossessed people, advocates are well aware of the fact that they have many uphill battles to fight.

Several advocate-respondents mentioned that they now were regularly taking part in pre-trial stages of cases. Aleksei Rogatkin, chairman of the MGKA presidium, said that he had been participating often in preliminary investigations (but usually not the inquest phase before the preliminary investigations) since the 1960s.\footnote{Interview with Rogatkin, 20 October 1994.} One female advocate noted that she appeared in almost all of the preliminary investigations in the criminal cases she had.\footnote{Interview with MOKA (female) advocate #6, in her forties, 28 October 1994.} There was a tendency, however, for advocates to be appointed to preliminary investigations by investigators, but not to continue their services at trial. Judges then would be forced to appoint other advocates, who often would have under three days to prepare for the first court
hearing. Interview data reflect this tendency, which was a result of the state’s neglect to pay advocates for their work in appointed cases.27

There was also a tendency among investigators to downplay to suspects and the accused the role of the defense counsel, since there was no “Miranda” clause stipulating that an investigator was obliged to inform a detained or arrested person immediately of his rights to an advocate. In 1993, two advocates from the Belgorodskaiia oblast criticized investigators for telling suspects that advocates were too expensive and would not help their case, in any event.28 Juvenile offenders especially were mistreated by investigators, as they usually were the least likely to be aware of their due process rights, including the right to defense counsel. In fact, in one reported incident in 1994, an advocate was supposed to have been present during an arrest of a juvenile in Ivanovo; however, an advocate did not appear, and the juvenile gave damaging testimony in the advocate’s absence.29

Problems and tensions between advocates and investigators which concerned advocates’ early access continued to fester in the late 1980s and early 1990s. Although more advocates entered the pre-trial stages at this time, other circumstances, such as the June 1994 presidential decree which gave law-enforcement officials even wider discretion in investigations, arose which adversely affected advocates. A number of my interview respondents, both advocates and judges, remarked that the quality of investigators had decreased since the late 1980s. They argued that this was due to a loss of experienced professionals, who were replaced by new recruits not yet out of university. It also was due to a lack of financial resources.30 In MGKA’s 1989 report on the work of their advocates in curbing legal violations in criminal procedure, presidium members argued that investigatory

27MGKA (female) advocate #43, in her late thirties, who worked regularly in the Moscow Regional Court, commented that this tendency was especially unsavory for the defense. Interview 28 February 1995.
29Interview with IOKA (female) advocate #1, in her thirties, 3 April 1995.
30Take note, however, that in the early 1960s advocates already were complaining about the quality of investigators’ work. See George Feifer, Justice in Moscow (New York: Delta, 1964), 90-91. But there is little doubt that now more militia officers and investigators were involved in corrupt dealings. According to Russian TV, 773 criminal cases were opened against police officers and employees of procurators’ offices for bribe-taking and abuse of office during the first six months of 1995, which is a 20 percent increase over the same period in 1994. OMRI Report (6 December 1995).
organs consciously were impeding their right to defend clients and incompetently arranging for the appointments of advocates to cases in pre-trial stages. 31 Two judges, including one who worked at a people’s court in Moscow and the other at the Moscow Regional (Oblast) Court, based the higher rates of acquittal not on the strengthening of the right to defense, but on the growth in procedural violations by investigators. 32

Some RSFSR Supreme Court rulings, handed down between 1985-94, dealt with procedural violations by investigators. In these cases, investigators often did not arrange for a defense counsel to be present when one was obligatory, or assigned an accused an advocate without the accused’s consent (see footnote). 33 These Supreme Court rulings most likely were only a small sample of the total number of cases in which such violations occurred. Many violations went unreported and unchallenged by higher courts. One Moscow advocate claimed that he had never worked on a case in which all procedural violations during

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31 “Obozhehenie po praktike po vyiaveniuiu preschenniuiu sluchavev narushenii zakonnosti v ugo looming delakh v 1989 g. . .” signed by F.S. Khlebtets, MGKA chairman on 10 April 1989 and addressed to V.A. Jakovlev, the USSR Minister of Justice. Thanks to Todd Eggelson for a copy of this document.
32 Interview with female judge (mid to late thirties) at Presenskii NarSud, 17 April 1995 and with male judge (early forties) who handled jury trials at the Moscow Oblast Court, 17 April 1995. People’s courts now are also referred to as either raion courts (defining regions within cities) or intermunicipal courts. The Moscow regional court has jurisdiction over the Moscow oblast, which surrounds metropolitan Moscow.
33 Reports in the Biulleten’ Verkhovnogo Suda concerning investigators’ violations which impacted on the entrance of defense counsel into the pre-trial stages (article 49 typically raised): Two decisions were reported in 1985. In one (Iaroslavl oblast), the investigator appointed an advocate without the accused’s consent, even though the accused had already chosen his own. In the other, a juvenile was not supplied with an advocate from the moment that the accusation was presented (no. 1, pp. 13-16; no. 8, p. 7). In 1986, in Tomsk oblast an investigator did not appoint another defense counsel to a capital crime case after the first one left (no. 5, pp. 8-9). In 1988, in Moscow City Court an accused person was unable to secure an advocate during the time he was held in confinement (no. 4, pp. 10-11); and in Briansk the accused refused an advocate because he was detained and his parents were both invalids; apparently the investigator did not secure one, either (no. 12, p. 11). In 1989, two cases involved the right to a new advocate during the preliminary investigation which was not fulfilled by an investigator (no. 9, pp. 3-6), and in Chechnya a similar violation arose (no. 10, p. 7). In 1991, investigators in Chernogorsk did not insure the presence of an accused’s advocate during a second presentation of the formal charges (no. 5, p. 6), and in Kemerovskaya oblast the accused was presented a new accusation in the absence of an advocate (no. 8, p. 8). In 1992, in Sverdlovsk, an investigator allowed an advocate to represent two accused people despite conflicts of interest (no. 6, p. 7). In 1994, there were three cases decided on. In Orenburg oblast investigatory organs were found to be in violation of article 49 when an advocate was not provided (no. 6, p. 7). During the preliminary investigation of a case which eventually went to a jury trial in the Moscow Regional Court, the investigator did not guarantee that an advocate be present during the announcement to the accused that the preliminary investigation had concluded, and he and an advocate could then look at all case materials, which was an obligatory condition for murder and jury trial cases under article 426 cases (no. 9, p. 7). In the Tatarstan republic an investigator invited another advocate to take over a case, although the accused had completed an agreement with the first advocate to remain on the case (no. 11, p. 6). In a case in the Krasnoyarsk krai, an investigator forced an accused person to refuse the services of an advocate (no. 4, pp. 9-10).
preliminary investigations were brought to light.\textsuperscript{34} Another estimated that about 35 percent of investigations were conducted with some kind of violation against the defense.\textsuperscript{35}

B. Rights and Responsibilities of Advocates: A Mixture of Gains and Losses

According to article 51 in the UFZ, the obligations and responsibilities of defense counsel in pre-trial stages include the right to hold private meetings of any length with a suspect or the accused, to appear at the hearing when the accusation is presented, to take part in the interrogations of the suspect or accused, and to be present during any procedures in which the suspect or accused was present. He or she may become acquainted with the report of the detention, the document outlining the terms of custody, and the reports of any investigative activities completed in the presence of the suspect or accused and his defense counsel. The advocate also has a right to review documents presented to his client and filed in court, which confirm the legality or prolonging of a detention. When taking part in pre-trial phases, the defense counsel may pose questions to interrogators and write remarks related to the legality and completeness of the notes in the investigatory report. The investigator may refuse to answer these questions, but he is obligated to record them in the report.

In actuality, in the early 1990s, what these rights and obligations still came down to, however, was the discretion of the investigator or procurator. As one advocate explained, "We do not have the authority investigators have. Our only weapons are khodataistva (petitions or motions), but they often are not granted."\textsuperscript{36} Therefore, the advocate's influence on procedure in the pre-trial phases was only indirect. For example, if he or she could convince an investigator to dismiss or decrease a charge through filing a motion, only then could the advocate take credit for executing a successful maneuver. As a number of my advocate-interviewees mentioned, investigators often believed that advocates slowed the pace

\textsuperscript{34}Interview with MRKA (male) advocate #10, in his early forties. 2 November 1994.
\textsuperscript{35}Interview with MGKA (male) advocate #28, in his early forties. 18 January 1995.
\textsuperscript{36}Interview with MRKA (male) advocate #10.
of preliminary investigations, creating more work for investigators at a time when their
caseloads were already burdensome.

Some advocates were especially concerned about a certain practice, in which
investigators interrogated people who were brought to their offices ostensibly as witnesses,
but soon after brought them back in as suspects. Suspects and the accused were protected
from giving testimony and confessing, but witnesses were not. It was beyond the jurisdiction
of advocates to counsel witnesses, so investigators had a window of opportunity to interrogate
people outside the presence of counsel. Advocates also did not possess the right to question a
detainee without the permission of an investigator and procurator.\textsuperscript{57} Advocates were
supposed to be present when an investigator formally announced that a suspect or the accused
would be detained. But a procurator could enact or change this measure during the extent of
the investigation, even when the \textit{obvinitel'noe zakliuchenie} was released.\textsuperscript{16}

This overview of the limitations that still hampered the work of advocates in the early
1990s should not overshadow the fact that not all advocates were exemplary professionals.
Some did not have the will to become more active players in criminal procedure; they juggled
too many cases at one time. Others were ignorant of or deliberately broke procedural norms
in preliminary investigations.\textsuperscript{19} A few were even full-time lawyers for organized crime
groups. Advocates from this latter group may have helped perpetuate the authority of
criminal networks and facilitated their ties to local officials.\textsuperscript{10}

\textsuperscript{57}Kadysheva and Shriniskii, 26.
\textsuperscript{58}Ibid. 26. An \textit{obvinitel'noe zakliuchenie} is a final report listing the charges against the accused, special
circumstances, and the main pieces of evidences supporting the accusation. The advocate's presence at this
moment is not stipulated for in articles of the UPK.
\textsuperscript{59}In one case, an advocate named Andrei Chuvilev (member of the Moscow filial of the Tver College of
Advocates) was arrested for allegedly passing his client, a priory convicted Georgian criminal, some narcotics
while he was detained in the Butyrka SIZO in April 1995. Chuvilev and his team of advocates argued that the
investigators set him up. See “Advokat ne opravdat’ nadezhd podzashchitnogo,” Kommersant-Daily, 24 April
1995, 14.
\textsuperscript{19}A number of advocate-interviewees mentioned the mafia practice of some advocates, including Moscow
advocate # 28, whom (in an isolated incident) a mafia group wanted to free their colleague from a detention
center by offering the jailer a bribe. Also, Professor Leonid Stikhiainen of the Institute of State and Law mentioned
that some advocate law offices in Moscow are themselves linked with the mafia (though most of these are
probably not run by advocates but by private lawyers). Interview on 30 January 1995.
Certainly not all investigators were underqualified or held anti-defense beliefs. A judge from a people's court in the Tomsk oblast, a man in his early thirties, worked as the head investigator in a small village outside Tomsk from 1990 to 1993. He insisted that, when he was an investigator, he respected the rights of the accused and did not harbor the attitude that advocates hindered the judicial process. Yet he did complain of the fact that it was extremely problematic for him as an investigator to introduce an advocate that early into a case. It appears from this and other interview data that a problem still existed when it came to assigning advocates to represent the detained, as one Moscow judge also pointed out. She reported that in many cases advocates still did not enter the picture until a formal accusation was made (often after the initial interrogations were completed).

Even if many advocates refused to be on call day and night, most who handled any criminal cases at all spent hours of their work time getting to and from detention centers, waiting in line, and meeting with their incarcerated clients. Some advocates experienced daily hassles from investigators, who disliked the fact that they attended interrogations, that they counseled clients at SIZOs, and that they had access to case materials. When asked by a reporter whether the advocate's position is ever a sinecure, Aleksei Galoganov, the president of the Federal Union of Advocates, responded:

Whoever comes to us with such notions will never be an advocate! Were you ever in a jail? Have you ever smelled what it is like in there?...It's a rare day for an advocate when he doesn't have to go to jail. You spend hours standing in line in order to meet with your defendant. The problem of professional deformation [of investigative organs] is serious. And there are few victories, more defeats. Many advocates just don't survive, but become broken. Advocates occupy one of the first places on the sorrowful list of positions tied in with death.

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11The example he cited was the difficulty in arranging for advocates to come to the militia post at night when a suspect was first detained, due to personal considerations which forced them to remain at home. Interview with a judge from Kozhevikovskii RaisUd in the Tomsk Oblast who was participating in a training workshop sponsored by the Russian Legal Academy in Moscow, 21 October 1994.
12Interview with a female judge specializing in criminal cases in the Moskovetskii People’s Court on 20 February 1995.
13Interview with MGKA (female) advocate #67, late thirties, 7 May 1995. She also spoke of the recent (1995) arrests of seven Moscow advocates for obstructing justice in criminal cases.
14Pavel Kiselev, "My prizvali protivstvovat' proizvolu" (interview with Galoganov), Ogonek 12(March 1995), 61.
C. The Right of Habeas Corpus and the Yeltsin Decree against Banditism

Articles 220.1 and 220.2 of the TFK, equivalent to the right to *habeas corpus*, were approved in 1992. The articles allow defense to file complaints against unlawful arrests and the illegal extension of the time a suspect or the accused remained under custody, and to present them before a judge. Under the conditions established by these articles, either the accused who had already been confined, his defense counsel, or any other representative could file a *habeas corpus* complaint at the nearest court.\(^4\) During a hearing before a judge, an advocate presents additional evidence in support of her client’s innocence, as well as documents providing information about her client’s health and character. The judge, in turn, reviews these materials in making a decision on the legality of the investigator’s actions.\(^5\)

Reformists considered these two additions to the TFK to be victories, but they were not widely used by defense from 1992 to 1995. Part of the reason, as will be shown, was that the state intensified its campaign against criminals, particularly organized crime groups. The other part concerned the actual language of a couple of stipulations in the articles themselves. Rogatkin admitted that the two articles rarely were being used by advocates, and even when they were used, petitions were still sometimes not granted. Many advocates voiced concern over whether they would be compensated appropriately for their work in pre-trial phases; this element may also have contributed to their reluctance to use these articles.

When advocates did appear in *habeas corpus* hearings, however, results often were more positive. In a court in Nizhnyi Novgorod, advocates appeared in only forty-seven of 160 court hearings on *habeas corpus* rights. In those hearings in which they did appear, however, advocates often helped their clients win their complaints and thus become released from detention.\(^6\) In addition, Minjust claimed that, in 1994, these appeals were being satisfied by

\(^4\)According to article 96, part 1, a suspect can only be detained up to three days without a presentation of the accusation; and according to article 97, an accused person can only be detained for up to two months, unless the conditions for holding the accused are amended with the permission of the appropriate procurator’s office.


\(^6\)G. Kozyrev, “Advokat i arest,” Juridicheskiaia gazeta no. 15-16 (1994). 6. But this same article also reported that sometimes advocates’ complaints were sent to courts and then ignored.
judges more often than in previous years. According to Miniust, the number of appeals rose by one-fourth in 1994; the number of suspects and accused released from detention grew by one-third that year.48

The most damaging measure taken to limit the defense counsel's influence in pre-trial stages of a criminal process, as well as the use of habeas corpus as a complaint against investigatory organs, was ukaz no. 1226, signed by Boris Yeltsin on 14 June 1994. Entitled "On the Urgent Measures for the Defense of the Population from Banditism and Any Display of Organized Crime," this decree has provided law enforcement officials wide discretion in gathering evidence, including the right to gather testimony from relatives, to support their accusations.49 It ensures that suspects whose alleged crimes were severe enough to require pre-trial confinement may be held for up to 30 days without being charged. Thus, the decree is in direct contradiction to article 96 of the UTK. While this decree was only supposed to be applied to cases involving individuals who allegedly were involved in organized crime groups, it also has been used by law enforcement officials to incarcerate suspects for various crimes.

Advocates were so distressed by ukaz no. 1226 and the negative impact it soon made that they took their own measures to counter it. During their Congress of Advocates of Russia, on 12-13 September 1994, advocates mandated that the first task of the new Federal Union of Advocates would be to ensure the defense of advocates against the power of legal enforcement officials. They presented examples of how investigators were now trying more often to interrogate advocates themselves as possible witnesses against their clients.50 Members of the presidium of MGKA wrote letters to Yeltsin and State Duma deputies, urging them to reconsider the ukaz. Many Duma deputies answered that they opposed the measure, but

49"O neotlozhnykh merakh po zashchite naseleniia ot banditism i inykh protavalenii organizatsionnoi prestupnosti," Sobranie zakonodatel'stva RF, issue No. 8, Item No. 804, (1994). For a discussion of how this decree conflicts with the Russian Constitution, see Ratnikov and Strick. 321-51.
MGKA advocates received no support from Yeltsin’s administration. The presidium of the colleges of advocates in the Primorskii Krai wrote a letter to Advokat, expressing their concern that the ukaz did not mention how defense counsel should protect the rights of suspects in banditism cases and proposed ways to guarantee rights themselves.

Results of surveys completed by advocates in 1995 reveal that 76 percent (four out of 25 did not answer the question) of the MOKA respondents believed that the decree was negatively affecting their practice, while 59 percent (seven out of 32 did not answer) of Ivanovo respondents, and 50 percent (five out of 20 did not answer) of Stavropol' respondents voiced such an opinion. Ninety-two percent of MOKA respondents believed that investigators were at least sometimes violating their rights to defend clients; 84 percent of Ivanovo respondents and 85 percent of Stavropol respondents voiced a similar opinion. These survey returns show that, across Russia, not just in Moscow where it originated, many advocates felt threatened by the decree.

Legal scholars joined forces with advocates against the ukaz. Igor Petrukhin and Aleksandr Larin, respected Moscow law professors at the Institute of State and Law and long-time crusaders for due process rights, feared that the investigator’s ability to hold a suspect thirty days without formal reason was having a negative effect on defense. Another Moscow professor and specialist on bar development, Iurii Stetsovskii, directly connected the ukaz with the weakening of the habeas corpus articles. As a result of the decree, the detention centers were overflowing with people. The manager of a large SIZO in Moscow told him that he did not have enough bunks for detainees, so they were forced to wait in line to sleep.

The manager of the MRKA LCB #84, Vladimir Volkov, sent a formal complaint to the General Procurator of the Russian Federation in October 1994, protesting the procedural

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51Interview with MGKA (female) advocate #26, member of the presidium in her forties, 10 January 1995.
53Surveys written and conducted by the author and Professor Dan McGrory, a specialist at CEEIL ABA in Moscow in 1995. Note that only 23 percent of Stavropol advocates answered that the decree did not affect their work negatively, and 25 percent did not answer the question.
55Interview with Iurii Stetsovskii, 3 March 1995.
violations of the Moscow Procurator’s Office. Volkov insisted that a mass check be conducted of investigators who, according to his advocates, averted their eyes to much of what was illegal in Moscow’s detention centers. Some years before, the Moscow Procurator’s Office had removed itself from the supervision of SIZOs. Now a sub-division on investigations under the City Department of Internal Affairs of Moscow and the MVD of Russia were fulfilling that task. Advocates at MRKA’s LCB Number 84 at the time had five criminal cases, in which fourteen people were detained illegally. Volkov also reported that the head of the Moscow detention centers, in a conversation with advocates, admitted that in his estimation nearly 30 percent of his wards were being held in detention illegally (i.e., without presentation of an accusation, formal documentation of the court or the sanction of a procurator). And nearly 20 percent of suspects and accused landed in SIZOs as a result of an incorrect choice in measures of incarceration.36

Not surprisingly, the head of the MVD’s Main Department on Organized Crime (GUOP), Mikhail Egorov, gloated to reporters on the first anniversary of the order’s approval that it “did not turn out to be as awful or useless as some thought it would be a year ago.”37 Egorov announced that, over the year, 202 complaints concerning the actions of law enforcement workers had been filed. Of them, only 18 were confirmed by judges, and three which set out to bring criminal charges against some officers were dropped for lack of evidence. Forty guards were disciplined for the illegal application of norms of the decree.

It was widespread opposition to the ukaz that most likely prompted Egorov to hold a press conference, in the hope of containing damage already done to the MVD’s reputation. But the head of the Department of Supervision over Criminal Cases of the Moscow Prosecutor’s Office spoke out against the ukaz, because he argued that the UFK already

36“Advokatskaia praktika nedeli,” Kommersant-Daily, 29 October 1994, 22. Unfortunately, I do not know the outcome of this complaint, but I suspect that nothing was done about it.
handled such concerns. Judges whom I interviewed criticized it as well.\footnote{Interview with Procurator (name withheld) at the Moscow Procurator's Office, 24 February 1995. Interviews with judge of first instance criminal court cases at the Moscow City Court, 23 February 1995.} One MVD press conference would not be enough to assuage fears about this measure.

In a move to expand the breadth of the \textit{habeas corpus} articles, the Constitutional Court agreed in early May 1995 to hear the complaint of a citizen named V.A. Avetian. Avetian was accused of a number of non-violent crimes and was presented with an investigator’s order calling for his detention. The order never went into affect, but it was not canceled, either. Avetian thus argued that two stipulations in UPK articles 220.1 and 220.2 were unconstitutional, as his complaints under \textit{habeas corpus} had been rejected by courts of general jurisdiction. The lower courts ruled that Avetian was not eligible to make such claims, since he was not yet incarcerated.\footnote{"Pravo na sudebnuiu zashchitu," \textit{Rossiiskaia gazeta}, 12 May 1995, 4. The resolution was approved by the court on 3 May 1995. The Russian Supreme Court attempted to clarify parts of the two articles in April 1993, but the Constitutional Court found their resolution not to suffice. See Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii ot 27 aprelia 1993 g., no. 3 "O praktike sudebnoi proverki zakonnosti in obosnovannosti aresta ili prodeleniia sroka soderzhanii strazhei." Published in \textit{Advokat} (January 1995), 12-13. In 1993, the Constitutional Court dismissed a complaint brought by the Union of Advocates concerning massive illegal arrests. The court kept delaying its final decision on whether to accept the complaint, and by doing this, apparently delayed many criminal processes and extended the time period for the accused's incarceration.} Articles 220.1 and 220.2 allowed for investigators to continue searching for evidence of Avetian's culpability for four years, before the case was dismissed in 1994. Avetian was not jailed, but his reputation suffered as a result of the investigations.

The court found that parts of the articles indeed contradicted parts of the 1993 Russian Constitution. These included articles 46 (parts 1 and 2), which guaranteed legal protection of rights and liberties and enabled citizens to contest decisions of state powers in court; 19 (p. 1), which guaranteed equality before the law and courts; 21 (p. 1), which protected human dignity; 22 (p. 1), which protected the right to freedom and personal inviolability; and 55 (p. 3), which restricted rights and liberties only under certain severe circumstances. Nine justices heard presentations by Duma deputy Aleksandr Trasprov, himself a former advocate for a brief time and a member of the Committee on Legislation and Court Reform; G. Ivliev, a legislative assistant for that same committee and a former advocate; L. Panteleev, a deputy in the Miniust
apparatus; and M. Smirnov, a member of the Federal Union of Advocates and MOKA. The justices ruled that 220.1 unduly limited the people who were eligible to file a complaint in court (against an investigatory organ's formal decision to apply measures of confinement) only to those individuals who were already under guard. They also ruled that the stipulation in article 220.2 (that the check of the legality and basis for applying the decision could only be completed by a court which was located in the near vicinity of the detention center) contradicted the Constitution. In theory, this Constitutional Court's decision should expand habeas corpus rights, allowing more suspects and accused people to complain before a larger number of courts.

D. Collecting Evidence, Access to Case Materials, and Supplementary Investigations

Another element in the ЛФК which is controversial and ill-defined concerns the defense's abilities to collect evidence. As in the Soviet era, the investigator's report (протокол) still acts as the transcript from which the prosecutor reads during trial. Paragraph one of Article 70, on the collecting of evidence, stipulates that only the investigators, procurators, and courts may call forth witnesses and experts, perform searches, and demand documents from agencies and individuals. The defense counsel, suspect, and the accused are mentioned in the second paragraph as being able to present evidence, but their rights are not outlined. The methods for evaluating the evidence, which makes up a very detailed set of instructions in American judicial practice in criminal courts, is given a fairly cursory treatment here.60 According to a Russian Supreme Court decision in 1992, the ЛФК does not obligate investigators to inform the defense counsel about all investigative activities which are conducted, unless the defense counsel first files specifically to gain access to a particular activity. According to a Supreme Court decision the year before, however, the investigator --

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60Nor does the discovery procedure exist in Russian courts, whereby the prosecution must share with the defense any information vital to a case. Konstantin Gutsenko, Moscow State University professor and head of the Criminal Law division of the law faculty, said that Soviet and Russian courts never had such a tradition of discovery, although he claimed that Russian law is more "progressive" regarding a Russian defense counsel's earlier access to evidence compiled by investigators. Interview on 28 November 1994; and K.F. Gutsenko, Osnovy ugolovnogo protsesa SSRS (Moskva: MGU, 1993).
in cases in which an advocate is obligated to take part -- must inform the advocate about when supplementary investigations take place. Many advocate-interviewees expressed their disappointment at not being able to collect evidence unilaterally. Investigators and other law enforcement workers sometimes took measures which impinged on attorney-client privilege and confidentiality. In the late winter of 1995, for example, an advocate was arrested for bringing in some photographs to his client in a SIZO without the permission of the jailer. There still is evidence which points to the continuing practice of investigators' interrogating advocates as witnesses, or attempting to do so. Advocate interview data do suggest, however, that this practice is not as widespread as in earlier decades.

According to the UTK, the accused and defense counsel have the right to become acquainted with all case materials (articles 201-03) at the end of the preliminary investigation. But before 1992 (in juvenile cases, and when investigators proved flexible), the advocate had gained access to materials at the time the accusation was presented, that is earlier in the process. Some advocates argued that this change prevented them from using their right to file petitions during the time that an accusation was presented. They also told of how investigators that they were working with circumvented the UTK by presenting the accusation at the end of the preliminary investigation instead of earlier, in the pre-trial stages. Moreover, advocates (according to article 202) are only allowed to copy any pertinent materials down by hand. Such a practice has burdened advocates, especially in cases where the amount of evidence was substantial. Once advocates receive access to materials, they may file petitions and complaints concerning improper procedure. Since the mid-1980s, a number of Supreme Court rulings which consequently strengthened the right to

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61Buletten' Verkhovnogo Suda (no. 4, 1992), 8; and (no. 2, 1990), 10. This 1990 decision referred to a case in Komsomolskaia na Amur, in which the advocate was absent during the supplementary interrogation of a minor.
62Interview with AL (male) advocate #40, mid-forties, 22 February 1995.
63Professor Israil Markovich, Moscow Legal Academy, informed me of this incident on 12 March 1995.
64An Ivanovo advocate reported that, even though he had observed several violations of procedure by investigators, he had never been forced by them to give testimony against his clients. Ivanovo (male) advocate #7, 4 April 1995.
65Kadyshcheva and Shirinskii, 26.
a defense concerned investigators’ violations of the accused’s and defense counsel’s right to review case materials.\textsuperscript{66}

Lastly, cases may be sent to a supplementary investigation prior to trial, although this move has not always been in the defense’s favor, as the time period for the accused’s confinement (despite earlier decisions to the contrary) may be extended pending the end of an investigation.\textsuperscript{67} Advocates have had no recourse in cases when they wanted to appeal against a return to supplementary investigation. Moreover, the courts have not viewed investigators’ petitions for more inquiry as a reason for finding the accused innocent (i.e., in cases where the initial investigation appeared to lack culpatory evidence); nor has investigators’ request for a supplementary investigation been viewed as sufficient reason to dismiss a case.\textsuperscript{68} Advocates themselves could also petition for supplementary investigation, but their petitions were less likely to be approved by investigators and courts.

Under article 204, the investigator retains the right to decide whether to allow the zashchitnik to pose questions to witnesses, experts, the victims and the accused. The answers of all people listed above would remain on record. After these activities cease, the obvinitel’noe zakliuchenie is signed by the investigator who then sends the case to the procurator’s office. The procurator next reviews the case in light of the defense’s petitions and any other circumstances under question before sending it on to the appropriate court.

E. Defense Rights in Pre-Trial Stages

In the early 1990s, as in the Soviet period, the structure of the pre-trial process did not grant the defense as many windows of opportunity to influence outcomes as it did the prosecution. Other sources, however, have shown that advocates’ efforts sometimes changed

\textsuperscript{66}As published in Biulleten’ Verkhovnogo Suda. Among them is a case in Kemerovskai\a oblast in which an investigator refused to allow the accused to review the materials of the case against him with his advocate due to a minor technicality (1986, no. 9, pp. 3-6). In 1991 a case that was heard in the Moscow City Court was reviewed because the investigator did not allow an advocate to review case materials, despite the fact that the accused refused to review them. This decision reaffirmed the rule of forbidding those defense counsel who are not advocates or special exceptions from taking part in the pre-trial stages (1991, no. 4, p. 9).

\textsuperscript{67}Kadyshева and Shirinski, 26.

\textsuperscript{68}Petrukhin, Vam nuzhen advokat, 366.
the direction of a case’s outcome, despite this condition. Moreover, in this era of reform, advocates were more willing to defend their clients aggressively in favor of their client’s innocence. In the Soviet period, advocates were more apt to admit their clients’ guilt and then attempt to secure a more lenient sentence. A well-publicized 1992 case of an alleged murderer-rapist named A. Timofeev is a good example of this new trend. Despite the fact that a great deal of material evidence existed which supported the guilt of his client, Timofeev’s advocate, A. Rudakov, insisted on Timofeev’s innocence. Rudakov argued that the investigator had violated evidentiary rules and refused on principle to grant any of his petitions.69

Criminal cases which were outlined on the pages of Kommersant-Daily in 1994 and 1995 tended to illustrate the triumphs of advocates in criminal cases. These victories came about usually because advocates, before trial began, were able to either convince investigators or procurators that their cases against their clients were weak or, during trial, to convince judges that violations were made in preliminary investigations. Advocates employed a number of arguments to gain these positive ends. First, in some of these cases, advocates forced investigators to admit that they did not have sufficient evidence to send the cases to court. In one such case, the advocate of a businessman named Sergei F., accused of blackmail and extortion (UK art. 148), immediately filed for the case’s dismissal due to the fact that witnesses who first testified against him turned out to have colluded against him and lied.70

In some instances, wrongfully accused people sought and were granted compensation for their time behind bars (although whether they ever actually received this money is another question). In October 1994, in the cassation (appeals) division of the Moscow City Court, a former defendant Vladimir Aladushkin succeeded in having a decision of a lower court repealed (and not remanded), thanks to his advocate. The People’s Court granted him

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69Both the lead investigator and judge on the case denied these accusations. Oleg Rubinkovich. “Sledovatel’ i sud’ia ne somnevaiutsia: dzhizhekt-potroshitel’ — vinoven.” Nizavisimaja gazeta, 6 March 1992, 1. There obviously were no pretensions here supporting presumption of innocence!
some compensation, but refused him sufficient compensation for physical and moral suffering he had undergone while being held in jail for two years.  

Second, some advocates stressed how ukaz no. 1226 was being misinterpreted. In one case, advocates who defended five alleged robbers managed to get the case dismissed. The advocates proved that militia workers had used excessive and unnecessary force and wrongly interpreted the measure against banditism.²² Third, advocates were pointing out in some of their cases that investigators overlooked the fact that the accused did not speak Russian. This was precisely what happened to a 19-year old Moldovan woman who was accused of illegal storage of narcotics (l'K, art. 224). Her advocate filed a complaint before the judge, accusing the investigator of refusing his petitions to hire a translator. The judge convicted the woman, but granted her a shorter prison term than the prosecutor had requested.

Fourth, advocates used the general complaint before judges that the investigation had been conducted with clear accusatory bias. One advocate, for example, obtained an acquittal for her client, who was accused of illegal weapons possession. She proved to the judge that the knife that the militia officers confiscated from her client was legally purchased in a souvenir shop.²³ Finally, in the most extreme cases, advocates accused investigators of inflicting bodily harm on their clients. Physical abuse occurred far more often than the number of complaints made would imply, because many defendants did not know that they could seek redress through the courts. In one case, as a result of an advocate’s pleadings, an investigator from the Moscow Administration of Internal affairs was dismissed from the case due to his aggressive behavior. A new investigator was appointed.²¹

²“Advokatskaia praktika nedeli,” Kommersant-Daily, 2 November 1994, 22. See also Kommersant-Daily, 14 January 1995, 23, concerning another example of investigators abusing the decree’s stipulations. This particular case involving a murder was dropped by the procurator because the accused neither had possession of weapons nor belonged to an organized crime group yet was detained without a formal accusation for 30 days; and see “Advokatskaia praktika nedeli” on 23 February 1995, p. 22, outlining two cases involving investigators’ misinterpretation of the ukaz and the accused’s advantage as a result. One case took place in Tiumen’.
³“Advokatskaia praktika nedeli,” Kommersant-Daily, 3 December 1994, 22. See also “Advokatskaia praktika nedeli,” 1 April 1995, 21 about investigators added an additional rape charge to the accusation of one defendant, but the advocate successfully proved to the judge that the investigators did this to strengthen their position.
Advocates were now participating in pre-trial stages and entering at an earlier time more often than they were in the Soviet period. But interview and survey data demonstrates clearly that advocates continued to believe that they lacked influence. They noted that they often failed to convince investigators and procurators that their petitions were necessary. Advocates tended to agree that investigators were not working professionally and were constantly infringing on their and their clients’ due process rights. In 1995, they were still waiting until the pre-trial hearings or first meetings with judges to petition for the removal of evidence from the final investigative report. They also continued to wait until these times to file a complaint (zhaloba) about the actions of investigators which were in violation of L'FK procedural norms. Their opinions of judges were sometimes critical (i.e., pointing out that advocates were often better educated about how new laws were applied). But advocates’ opinions now revealed that they trusted judges somewhat more.

Ministry statistics on advocates’ practice in criminal cases confirm advocates’ perceptions of their weak authority in pre-trial stages, although they reveal some positive shifts as well. In 1984, the total percentage of advocate petitions that investigators or procurators granted in pre-trial stages was 25 percent (advocates filed 90,473 petitions). Percentages of advocates’ petitions granted began to rise in 1987 (90,302 petitions were filed by advocates, and 26 percent were granted). By 1994, the volume of petitions filed by advocates rose considerably (303,686), as did the volume of criminal trials (987,023 criminal trials in courts of the first instance, more than double the number in 1988), but the number of advocates’ petitions granted had risen to only 36 percent. While this figure represents a marked improvement in the success rate of advocates’ petitions, it also explains why advocates typically still assumed that investigators would most likely not grant their petitions.

footnote: It is important to note here that the Ministry officials working in the Department on the Advokatura themselves considered these results to be a tangible reflection of the quality of advocates’ work; in fact, they were listed under a column of statistics worded in just that way. In annual reports, they commented to colleges of advocates about their work based on these numbers. A caveat to this statistical study is that the figures compiled by Ministry may not be extremely accurate, especially now when not all colleges of advocates are reporting their data. The statistics were gleaned from the “Otechety o rabote kollegii advokatov,” filed annually in the archives of the Russian Ministry of Justice. The percentage of petitions granted in pre-trial stages was broken down in some years into three or four categories. See Footnote 20 for a full citation of the otchet.
Russian Ministry of Justice reports on the work of advocates (otchety) that were compiled between 1984 and 1994 contain the numbers of petitions granted for dismissing a case (no distinction was made between partial dismissal -- of some of the charges -- and full dismissal until 1986), and for requalifying the accusation to reflect less severe charges. The otchety also contain the numbers of complaints (zhaloby) advocates filed concerning investigators' refusals to grant their petitions which procurators subsequently granted. The first, regarding petitions asking for the case, or certain parts of the case, to be dismissed, shows the best results for advocates. If, in 1984, investigators were only granting about 20 percent of these petitions, by 1994, investigators were granting 33 percent of advocates' petitions for partial dismissal of some charges and 41 percent of the petitions for a full dismissal of a case. Percentages began to rise in 1987, when ten percent of the petitions for full dismissal of cases were granted, up from only one percent the year before. The year 1991 enjoyed the largest gain in the number of full dismissals, with 33 percent of advocates' petitions granted, up nearly 24 percent from the year before. However, advocates still were only able to secure little more than a fraction of their petitions for dismissal. In 1993, for example, advocates succeeded in having the criminal cases of 5,500 clients dismissed; but approximately 794,964 criminal cases were tried in people's courts that year.

The number of instances that advocates' petitions to lower the charges were granted rose from 20 percent in 1984 to 32 percent in 1994 (although there were slight fluctuations in between). Advocates' complaints to procurator's offices against the actions of investigators did not rise precipitously, except in 1992. If in 1984, only 22 percent of these complaints were satisfied, by 1994, 36 percent on average were being satisfied. While these data do not reveal a sea change, they do reflect at least a partial increase in the rights of defense counsels.

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6Note that it was not until 1991 that Ministry officials broke down the total number of advocates' petitions filed into those in support of full dismissal and those in support of partial dismissal. Before that, there only was one number listed, of the total number of petitions filed in support of case dismissals, without distinctions made.

7In most years before, the number of advocates' petitions for partial dismissal that investigators and procurators granted was higher than for full dismissal, which is why this switch is so surprising, and therefore suspect.

8A. Stepanov, "Kakim byt' zakony ob advokature Rossii?," Rossiiskaya iustitsia 3 (March 1994), 11. Many criminal cases involved more than one defendant, although the difference between the number of cases dismissed and cases sent to trial were still quite substantial.
By the mid-1990s, more information was available than ever before about strategies for defending the rights of suspects and the accused, including *habeas corpus.* Some of this advice was instructive, but advocates found that the changes needed to come not only from them. Advocates tried to articulate their concerns in a letter to Sergei Pashin, head of the Department of Court Reform and Criminal Procedure at the State Legal Administration (GPU). The letter was written by the dozens of advocates who had participated in the October 1994 workshop on jury trials, sponsored by the ABA’s Central and East European Law Initiative (CEELI). In it, the advocates outlined twenty-three problems and possible improvements related to their work in jury trials. Out of these, eight referred directly to their work in preliminary investigations. These included:

1) the lack of an advocate’s right to conduct his or her own investigation;
2) concern about violent tactics used by investigators;
3) the need for investigatory organs to provide more complete information to legal consultation bureaus pertaining to detained people in need of representation;
4) an improved definition of the rules for excluding evidence;
5) instituting plea bargaining between defense counsel and procurator;
6) guaranteeing advocates’ access to all evidence obtained by investigators;
7) a provision requiring that a suspect or the accused be provided with an advocate immediately upon detention;
8) a provision requiring that an advocate be present when the detainee is asked whether he wants a defense counsel.

These eight statements did not apply only to jury trials, but were a comment on problems advocates faced in any criminal case on which they worked. As far as this author knows, neither Pashin nor anyone else at GPU answered the advocates’ letter. Such a snub reflected the state’s lack of attention to improving aspects of the defense attorney’s work in criminal cases.

**Advocates’ Practice in Criminal Trials in Courts of the First Instance**

In any criminal justice system, whether its actors take an inquisitorial approach or not, the trial phase represents the culmination of a number of events which in some ways already

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79 In one 1994 publication which is one of several existing within the series called “Library of the Advocate and Entrepreneur,” advocates are provided with documents pertaining to human rights concerning arrests and incarceration. See N.P. Khainak, O.N. Khainak, E.L. Rodionova, and N.F. Ovshenikov eds, *Prava cheloveka pri areste i nakhozhdenii v sledstvennom izoliator* (Moskva: ANO, 1994).
predetermine outcomes. In U.S. courts, "The trial is the residue of the residue: it is a mechanism for handling survivors of a long filtering process." In Soviet (and now Russian) courts, convictions were more prevalent than in the U.S. Plea bargains in the American sense, whereby defense attorneys and prosecutors meet to reach a deal before trial, did not exist. Instead, defense used other tactics during trial. These tactics, such as filing khodataistva and zhaloby, discussed in the context of preliminary investigations, sometimes earned positive results for the defense in court, including lower sentences and lower charges, because judges were more likely to grant them than investigators. But this trial procedure hurt opportunities for defense attorneys to construct their own story, since the court examination focused on ascertaining the accuracy of the investigator's report. How exactly, if at all, had the influence that advocates experienced in court in the early 1990s differed from this Soviet model, and why? Who perceived that their influence changed? Finally, did legislative revisions spur reform or did changes occur along more informal lines?

A. A Physical Description of Russian Courts

In the Soviet and early post-Soviet context, courts of the first instance include the people's courts, the city courts in Moscow and Leningrad/St. Petersburg, and regional or oblast courts. People's courts handle the "dregs" of the criminal trials -- what we would refer to largely as misdemeanors -- with a selection of more severe cases, including rape and

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80 In the U.S., with its emphasis on plea bargains, relatively few cases actually come to trial. For the unlucky ones that do survive, convictions are the norm in U.S. criminal courts. Friedman, 386.

81 The order of the stages of a criminal trial in Russia is the following. First an administrative session consisting of a judge, two assessors, and the procurator is scheduled to determine a variety of issues, such as jurisdiction, evidentiary questions, need for supplementary investigation, and whether defense counsel is needed and how to select defense counsel. Next is the court examination (razbiratel'stvo), in which the defendant, judge, assessors, procurator, defense counsel, victim, and any special actors (i.e., societal defender or accuser and any actors involved in a parallel civil case) take part. According to article 245 of the UPK all actors are to enjoy equal rights. In this phase, actors are introduced and informed of their rights, and the sides introduce petitions concerning new evidence, including the possibility to summon new witnesses and experts. In the next stage, the judicial investigation (sudebnoe sledstvie, chapter 23 of the UPK), the court hears testimony of the defendant and witnesses, as well as experts. The sides and judges (including assessors) ask questions. Participants also may introduce more petitions. Next, oral arguments (premiiia) are made by the procurator, any civil actors, victims, and the defense counsel. Defense counsel and the defendant have the final say and right of last rebuttal. Participants also may introduce final proposals for changing the accusation. The judge and assessors decide on the verdict and sentence and jointly consider any civil claims. See UPK, chapters 20-26; Butler, 337-360; Petrukhin, Vam nuzhen advokat; Robert Rand, Comrade Lawyer: Inside Soviet Justice in an Era of Reform (Boulder, CO: Westview Press, 1991).
murder charges. City and regional courts administer capital cases, including premeditated and aggravated murder, and other criminal charges which are accompanied by severe punishments. In addition, they administer appeals, and thus also act as courts of the second instance.82

Generally, the physical condition of people's courts was poor. In Moscow, there are 33 raion or people's courts (as there are 33 procurator's offices) which correspond to the municipal regions. They were sometimes found on main streets, but more often were nestled in the backs of apartment blocks. The idea that state officials had in mind by placing court houses in such settings was to bring justice closer to the people. But the result was to turn justice into part of the landscape of urban decay. The courts blended in with the local environment and by no means transcended it. How justice looked physically --ill-kept and neglected -- in many ways corresponded to the level of respect it commanded in Soviet society.

Courtrooms tended to be small, with seats at their head for a judge, a secretary who recorded the trial, and two court assessors. In rooms where criminal trials were heard, either iron cages or "pens" were provided for defendants. The aspect of this arrangement which was most biased against the defense was the fact that the defendants were unable to sit next to their defense attorneys and converse during trial. Therefore, the courtroom environment itself limited the attorney-client privilege. Victims were seated behind the prosecutors, who

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82 The author chose not to focus on the appeals (cassation) process or supervision (nadzor) process because of space constraints. For the most recent article on advocates' work in appeals by a western scholar see W.E. Butler, "Documents: Criminal Appeals Practice and the Soviet Advocate," Yearbook on Socialist Legal Systems (1987), 357-85. See also Abram Move, "O stabil'nosti i zakonnosti prigovora," and "Zhaloba na prigovor," in Za kul'isami zashchity: zamezki advokata (Moscow: Gorbachev Foundation, 1993), 157 and 166; and I. Reznichenko, "O dopolnitel'noi kassatsionnoi zhalobe advokata," Rossiiskaia iustitsiia 3 (1995), 30.

Some advocates in the mid-1990s preferred not to appeal to a higher court because they found that often a court strengthened a sentence (Moscow advocate #28, 18 January 1995, for example). Sometimes cassation courts inconsistently complied with the right of participants to submit additional cassation petitions (zhaloby, article 328 of the UPK). See Reznichenko, 30. The appeals process also usually took several years to complete. Other advocates found that their requests that were filed during the cassation process were more often granted. In fact, Minjust figures revealed that advocates' petitions in the cassation courts were granted significantly more in 1994 than in 1984. On average in 1984 advocates' petitions were granted 17 percent of the time, whereas in 1994 they were granted 31 percent of the time. Petitions requesting that cases return to supplementary investigation were granted the most often (45 percent of the time in 1994), and requests for acquittals the least (under 25 percent of the time). Advocates' petitions filed during the nadzor appeal process also since 1984 were granted more often. Whereas in the mid-1980s cases were being dismissed (either fully or partially repealed) during nadzor in less than 10 percent of the time, since 1992 numbers reached the 20 percentiles. "Otechy o rabote kollegii advokatov," 1984-94. Often procurators sided with advocates in supporting appeals based on legal violations; they thus did not necessarily oppose the defense.
sat on the right-hand side before the judge. There were chairs at the back of the room for family and other spectators. Militia officers, most of whom appeared to be no older than eighteen years, sat alongside the cages and often fell asleep or shared jokes.

The Moscow City Court was the newest of any of the courts in the capital. It had a security post which visitors walked through, carpeted hallways, plush offices for administrators, and adequately-equipped offices for judges, who numbered more than 100. The courtrooms tended to be more spacious than the ones found in the smaller people’s courts. They still used cages, some of them big enough to hold up to ten defendants at one time.

The Moscow Regional Court, located in an unremodeled building in central Moscow, administered jury trials. Defendants could also choose from a panel of two judges, or one judge and two court assessors, on the oblast level. The Moscow Oblast Court was flooded with cases. In the first half of 1995, as reported by the Moscow Regional Police Department, there was a murder every five hours and a gang assault every six hours in the Moscow region.\(^5\)

The Ivanovo Oblast Court also had jury trials and a large docket; but it had little space for judges’ chambers.

B. The Concepts of Adversarial Play and Accusatorial Bias

The idea of defending accused murderers and other criminals in any country most likely has never been popular, and Russia certainly was no exception. Glasnost, however, allowed civil liberties proponents to advance their opinions. In the late 1980s, supporters of a stronger defense and the concept of sostizatel’nost (adversarial principle), such as professors of criminal law at LGAN and certain Moscow bar leaders, succeeded in having a number of their proposals adopted in the UPK and the Russian Constitution.\(^5\) These included earlier access of defense counsel to clients and case materials, the recognition of the presumption of

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\(^5\)Reported by the Moscow Regional Police Department and the procurator’s office at a joint meeting on 28 June 1995 and printed in Moskovskii komsomolets (29 June 1995) and OMRl Report by Thomas Sigel (29 June 1995).

\(^5\)This principle implies an “equality of arms” which allows each side the opportunity to respond to all evidence introduced by the other. Stephen C. Thuman, “The Resurrection of Trial by Jury in Russia,” Stanford Journal of International Law 31:1 (1995), 98 (FN 234).
innocence (article 49, part 1 of the Constitution), and the idea of equality of the sides at trial (article 245 in the UTP).

Therefore, on the surface, it appeared that the general principles that had been imposed on criminal procedure in post-Soviet Russia embraced the idea of adversarial play. Some advocates believed they received fair treatment in court by judges, meaning that they were satisfied with the number of their petitions that had been granted by judges, as well as with the outcomes of their cases. These advocates tended to be the most successful and well-connected ones; some were also older, and therefore socialized to underplay the negative aspects of practice when asked. Other advocates, young or old, argued that their role in court was substantial, because they raised the issue of mitigating circumstances and, in doing so, participated in informal plea bargaining. Still other advocates were encouraged by a marked difference in the attitudes of some judges and even prosecutors, who had displayed more tolerance towards the defense’s role.53

The following two Moscow advocates were cases in point. Mikhail Barslichevskii believed that the procurator and the court had become two separate entities. As he noted, “the court stopped representing the interests of the state and has discontinued the practice of a priori considering the state in the right and an individual against the state as automatically guilty.”54 Barslichevskii had a lucrative business law practice and often won his cases. The experienced advocate whose criminal trial was highlighted in Robert Rand’s Comrade Lawyer, Silva Dubrovskaiia, remarked that the process and outcome of the case would have been the same in 1995 as they were in 1989 (it was eventually dismissed, but took two long years before that point was reached). She did not criticize the criminal court system, however, but commented that the atmosphere was changing for the better and undergoing a liberalization.55 For example, advocates were now raising the issue of human rights in court with less fear of retribution.

53Interview with Moscow advocate (female) #47, 13 March 1995 (practiced for 17 years).
55Interview with Silva Dubrovskaiia, Moscow advocate #33, 7 February 1995.
The attitudes of twenty judges whom I interviewed in 1994 and 1995 were undergoing a transition as well. The judges tended to answer that, on average, more of the advocates whom they encountered were at least average in quality. Most of these judges also preferred to have advocates, as opposed to family representatives or jurists who were not members of colleges, act as defense counsel. They found that advocates were more knowledgeable of court procedure and were even helpful at trial. Only one judge believed that advocates from parallel colleges performed worse than those from originals. Judges exhibited mixed opinions about gender differences. One judge believed that women made better judges than men because women performed better on the qualifying exams for the judiciary. On the other hand, this same judge believed that male advocates performed better than female advocates. He argued that female advocates were too emotional in criminal trials and adversely affected by conditions in SIZOs. In the opinion of a female judge, however, female advocates naturally came better prepared to trials.

Judges seemed to display more reformist attitudes than they were once assumed to have in the Soviet era. Most of the judge-respondents, for example, acknowledged the fact that establishing the truth was not the advocate’s job; representing the true interests of the client was. Some even said that they thought that advocates consistently were stronger court actors than prosecutors because many advocates had more experience in court (in recent years, prosecutors tended to be younger). The judges also noted that they thought that advocates were more prestigious in society now. Only a couple of these judges appeared to be a bit resentful of advocates for withholding facts which they felt might have incriminated their

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88 Most of the 20 judges whom I interviewed, whether from Moscow or small towns, responded that they felt more independent now as judicial decision makers than during the Soviet era. They did not feel fully independent, however, because they claimed that they still were not paid well and still were dependent on local officials for housing and other job-related perks (the average pay was the equivalent of around $100 a month for people’s court judges). Judges assumed that advocates earned more on average than they did in 1994-95, and there was some jealousy and resentment because of it.

89 Interview with judge who specialized in first instance criminal trials at the Moscow City Court, 23 February 1995.

90 Judge at the Presenskii People’s Court in Moscow, 17 April 1995.
clients. Some judges had sent critical evaluations of advocates who misbehaved in their courts (either by being tardy or entering the courtroom drunk), but they did so infrequently.

Thanks to better relations with some judges, most advocates believed that their presence made at least some difference for their accused clients. In answer to a survey question about how often their defense efforts affected the outcome of trials, a question meant to test their feelings of self-efficacy, 50 percent of advocates in Ivanovo answered sometimes, 34 percent answered often, and only one respondent answered never. In Stavropol, 55 percent of respondents answered sometimes, and 30 percent answered often. In the MOKA survey, 44 percent answered sometimes, and 40 percent answered often. No one, however, answered that he or she always had an impact on a trial's outcome.

Survey data shows that a high percentage of Russian advocates believed that they were working within a court environment that was at least partially hostile to them.31 In Ivanovo, 87.5 percent of respondents answered affirmatively that accusatory bias existed at trials. In Stavropol, 85 percent believed so; and among those members of MOKA who completed surveys, 84 percent reported that accusatorial bias still existed. MOKA chairman Aleksei Galoganov was consistently critical of state authority in his interviews with the press. In an interview published in Ogonek, Galoganov lambasted the Procuracy for being a vehicle used for imparting executive power, and courts for not researching criminal cases objectively.32

This accusatory bias was two-fold. First, it was structural, meaning that the formal rules of play, the details of everyday court dynamics, still discriminated against the defense. At the early administrative session, advocates often were not present while the judge examined their petitions concerning the admissibility of evidence and the need for additional investigation. Defense attorneys, therefore, often still waited until trial -- the court examination or investigation typically -- to present their grievances to judges.33

31Referring to surveys written and conducted in the first half of 1995 by the author and Professor Dan McGrory of CEEIL.
33According to Petrukhin, out of 1,000 advocates, typically only seven filed khodatajstva before the actual court hearings begin. See Petrukhin, Vam nužhen advokat, 358-59 and 364.
In the Soviet era, advocates had to justify their motions to the judge, while the
prosecutors were granted their requests pro forma.\(^4\) This practice continued into the post-
Soviet era. For example, when procurators spoke, they were considered by the bench to be
making conclusions based on the arguments of state-appointed experts (art. 288 UPK),
whereas advocates were merely making known their opinions (art. 249 UPK). The latter
were not viewed as having as much legal force.\(^5\) An advocate in Ivanovo complained that the
role of advocates in people's courts there was less authoritative than that of prosecutors.
Specifically, advocates could only raise the question of violations, and the process was
completely predictable (in its bias against the defense).\(^6\) One of her colleagues at the college
opted out of criminal cases altogether to practice in civil and arbitration courts, because in
criminal trials, she felt like she was "standing behind a door and being ignored."\(^7\)

Criminal procedure in people's courts has been characterized by the advocate's
inability to introduce her own defense witnesses and exhibits. Instead, she had to attack what
rightly could be called the opinion of the establishment. It was the advocate's burden to prove
the investigator's report wrong.\(^8\) In addition, in Soviet courts and early post-Soviet courts,
defendants more often than not testified. They typically answered in a long-winded fashion,
instead of responding specifically to pointed questions. Some advocates discouraged the
defendant's participation. For example, one Moscow advocate, on principle, counseled her
clients not to confess, while many of her colleagues accepted the practice of defendant

\(^{4}\) Huskey, "Between Citizen and State," 114.
\(^{5}\) Petrukhin, Vam nužhen advokat, 372.
\(^{6}\) Interview with IOKA (female) advocate #1, in her thirties, 3 April 1995.
\(^{7}\) Interview with IOKA (female) advocate #8, in her late thirties, 3 April 1995.
\(^{8}\) This type of structural burden placed on the defense is found in almost any criminal justice system which
follows an inquisitorial approach. But criminal justice systems that follow an adversarial approach also tend to
favor the prosecution largely for the reason that the state has more resources to lend to investigations. In no
other category of offenses does this make a difference than in capital crimes. Moreover, if a defendant has a
passive defense counsel who does not object to possible procedural violations on record before a court, he will
automatically forfeit his opportunity to appeal his case, and a chance to spare his life. In one case, a defense
counsel did not take note of the fact that the prosecutor used too many preemptory strikes during jury
selection: acknowledging this violation before the bench would have helped his client's case. Grand jury hearings
also are structured to discriminate against defense. See Helen Prejean, C.S.J., Dead Man Walking: An Eyewitness
testimonials as unquestionable court procedure. \footnote{Interview with MGKA (female) advocate #16, in her late thirties, 17 November 1994. According to the 1993 Constitution, article 51, no one is obligated to act as a witness against himself or his close relatives.} Lastly, in many areas of Russia during the early 1990s, a shortage of judges hurt the work of advocates. \footnote{See Peter H. Solomon, Jr., "The Limits of Legal Order in Post-Soviet Russia," 98-99, for more on how judges' independence was limited by continuing low status and pay.} In Moscow, according to one source, vacancy rates at raion courts reached 70 percent. As a result, judges who were on duty were overburdened and were sometimes known to resent the additional work that advocates laid on the system with their petitions and complaints.

Secondly, closely connected with the first aspect of this self-perpetuating accusatorial bias was the attitudinal issue. The actors who inhabit the courtrooms -- judges, procurators, expert witnesses or specialists, and even some advocates themselves -- still accepted informal practices that inhibited the defense's role in court and did not adhere to certain reforms made to criminal procedure in their daily work. One such reform which was not being implemented to the satisfaction of many advocates in 1994-95 concerned article 223 of the TTK, on the examination of petitions. \footnote{Interview with MRKA (male) advocate #10, 2 November 1994.} Theoretically, although subject to the court's discretion, advocates were allowed to submit petitions requesting the inclusion of new evidence or the exclusion of evidence. But this stipulation was not yet as developed in practice as it was intended to be. One advocate, who had earlier worked first as an investigator then a professor of law in an MVD academy, argued that many advocates who were members of original colleges had become passive actors in court because they had long before accepted the fact that their role was circumscribed by the needs of the state. \footnote{Petrushin, Vam nuzhen advokat, 362.}

Other advocates whom I interviewed raised the issue that judges and procurators often acted like they were on the same team and tended to have more collegial relations at trial. As a result, advocates felt ignored, or even worse, ostracized, by these other court actors. One judge in the Moscow Oblast Court mentioned that he simply had more ties to procurators than advocates because on a regular basis he had to discuss with procurators such topics as the
possibility of appeals and the inadmissibility of evidence that investigators collected in violation of the UTP. Many of these issues concerned the role of procurators as general supervisors of the legality of criminal procedure, rather than their role as prosecutors. Despite the fact that the law on the Procuracy of 9 December 1992 excluded the stipulation that granted procurators the function of supervising the courts (nadzor za protessom suda), it appeared from my interviews with judges and observations of courtroom behavior, that procurators were still acting as if they retained this function.

Not all communist or post-communist legal systems have experienced the same levels of accusatory bias as the USSR or Russia, however. In Cuba, laws governing the bar were not as parental as the Soviet laws were, since they more often emphasized the independence and professionalism of attorneys. Moreover, the very structure of the rules of criminal procedure -- informal and formal -- allowed defense attorneys more influence in collecting and assessing the admissibility of evidence. Throughout the 1960s to 1980s, Cuban officials also tolerated far higher acquittal rates, which, for all categories of offenses, remained higher than 20 percent. These higher acquittal rates can be attributed to three conditions: first, the willingness of attorneys to benefit from the errors of the prosecution; second, a procedural system which allowed such "exploitation"; and third, a judiciary which was amenable to ruling in favor of the defense against incompetent prosecution. The specific petitions filed by defense attorneys which concerned evidence were not subject to veto, as they were in Russia. Cuban defense attorneys also regularly filed objections related to the nature of the charges, the characterization of the suspect, and the sentence. Without fearing that their requests would be rejected, defense attorneys presented to the court potential evidence,

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101 Interview with male judge in his early forties at Moscow Oblast Court, 17 April 1995.
102 Revisions of this law passed on 17 November 1995 reinstated the Procuracy's supervisory function of law-enforcement organs, but did not reinstate the Procuracy's supervisory function over the courts. See V. Klochkov, "Federal'nyi zakon o Prokurature RF," Rossiiskaya justitsiya 4 (1996), 37.
103 Michalowski, 80. Cuban advocates between 1982 and 1992, however, lobbied to allow for earlier entrance into pre-trial stages (Spain's inquisitorial procedure. Cuba's main influence, limited attorney access): this attempt paralleled Soviet advocates' efforts at the time. Apparently these stipulations were passed by the Cuban National Assembly sometime after 1992. 95.
104 Ibid, 94.
including a list of witnesses, that would subsequently be used at trial to support the defense’s objections. While Russian advocates could file these kinds of objections as well, they had no guarantee as to whether their requests would be granted.

C. The Criminal Trial and the Advocate, 1994-95

According to RSFSR Ministry of Justice figures, the number of criminal trials in courts of first instance declined in 1987 and 1988 (from 738,657 in 1986 to 564,242 in 1987 and 431,722 in 1988). This trend also corresponded to a drop in the number of criminal cases that advocates were working on during these years. But this development turned out to be an anomaly. Since 1988, the number of criminal cases rose sharply, with the largest increase occurring between 1993 and 1994 (794,964 to 987,023). As a result, advocates fulfilled considerably more court appointments for criminal trials in the mid-1990s.

One way of gaining a better understanding of advocates’ influence in court cases is to examine statistical data. The results of the examination were mixed. The percentage of advocates’ petitions granted by judges from 1984 to 1994 did not grow significantly. But compared with the level of satisfaction that advocates received in preliminary investigations, the level of satisfaction in court was always higher. Between 1984 and 1994, the total percentage of advocates’ petitions granted in Russian courts stood between 61 percent (1993) and 73 percent (1991). Advocates’ petitions asking for charges to be requalified (lowered) were granted, on average, between 52 percent and 59 percent of the time, although there was no natural progression toward higher levels between 1984 and 1994. One Ivanovo advocate stated that in no more than ten percent of his cases were charges requalified.

Advocates’ petitions requesting a reduction in the sentence were answered more favorably than any other type of petition between 1984 and 1994: between 62 percent and

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103Ibid, 93.
109"Ob"em sluzhebnikh rabotnikov, 1970-94."
112Interview with IOKA advocate (male) #7, in his thirties, 3 April 1995.
78 percent of the time. In this category, however, it is clear that, since 1991, advocates’ petitions for a reduction in the sentence were less likely to be granted by judges. In 1987 and 1988, the percentages of these petitions which judges granted reached record highs, but they dropped to 62 percent in 1991 and were at 67 percent in 1994. Advocates’ requests for a return to supplementary investigation at the end of court investigations also have been satisfied less by judges since 1992 (in 1991 satisfaction was at 78 percent, but in 1992 it was at 54 percent). These figures tend to correspond to the tendency in courts toward lenience in the late 1980s, followed by a retrenchment of sorts in the early 1990s, when crime rates began to soar, and courts were flooded with criminal cases.

But the participation of advocates in trials, required when procurators were present (which meant in the most severe cases), increased considerably between 1993 and 1994. One source reveals an increase of 24 percent, although this figure seems extreme.\textsuperscript{113} In the 1970s, advocates participated in around 75 percent of criminal cases; since 1987, the percentage of their participation has been in the 80 percentiles (with the exception of lower percentages in 1992 and 1993, as well as a considerably higher figure in 1994). It is clear from these figures that advocates had become indispensable to the criminal process in felony cases -- whether judges or procurators liked it or not.

Anecdotal evidence points to this conclusion as well. In a highly controversial case in the Moscow City Court in March and April of 1995, Vladimir Korchagin was accused of violating article 75 of the Russian Criminal Code, which requires that the equality of citizens be based on race, nationality, and religion. The prosecution argued that Korchagin violated this article when he published anti-Semitic articles in his newspaper, \textit{Russkie vedomosti}. This trial marked the first time that a court would interpret this article, making it a landmark case.

On the day of the first hearing, 14 March 1995, reporters from various news agencies descended on the courthouse. Korchagin’s supporters, dozens of fascists and other ultra-
nationalists, demonstrated in front of the court house and forced their way into the
courtroom. The court was presided over by a female judge and two assessors, who became
impatient when Korchagin’s defense counsel did not appear. The judge berated him for not
informing the court of the advocate’s absence beforehand. She remarked that, in not securing
an advocate for that hearing, Korchagin was violating his own right to a defense. Rumor had
it that not many advocates were willing to accept such a case, and Korchagin undoubtedly was
using his advocate’s absence to postpone the proceedings and to gain more support from
fascist forces. The first hearing was canceled until an advocate could be secured.114

Once advocates entered a Russian criminal courtroom, they were faced with a number
of obstacles through which they had to maneuver, by means of their defense skills. As one
legal scholar phrased it, an advocate “is a soldier of sorts who must be ready at any time to use
his weapons.”115 What law students learned in academic settings, however, did not train
them for the trenches of the courtroom. To survive outside a classroom, a Russian advocate
needed to know the criminal code and criminal procedure code -- and know how they were
applied. Then he had to become acquainted with the case files quickly, especially if he had
not been working on the case before trial began. Many advocates still do not look over the
case file, which is stored in the judge’s chambers during the trial phase, until a few days
before a trial begins. Once he has taken his notes, the advocate needs to work on petitions for
the defense, such as a request to call another expert (who is not on the state’s payroll), to
submit more evidence, or to invite another witness.

But, as mentioned earlier, there was no guarantee that an advocate’s petitions would be
granted by the judge. Nor was the advocate always able to succeed in striking out culpable

114 Once the advocate did appear she did not seem to make much of a difference and was considered by some
observers to be passive. Korchagin would have preferred his own defense. In a bizarre twist, the prosecutor on
the case asked that the charges be dropped. Professor Aleksandr Larin, the acting “societal accuser,” claimed
that the prosecutor was a known anti-Semite and argued that there was sufficient evidence to convict
Korchagin. The judge agreed and convicted him. But due to Yeltsin’s general amnesty of certain criminal
offenders in honor of Victory Day on 9 May 1995, Korchagin was released from prison and amnestic. See
Aleksei Chelnokov, “Prokuratura snimaet obvineniia s antisemita,” Izvestiia, 28 April 1995, 3; and Valerii
115 Interview with Professor Israel Martkovitch of the Moscow Legal Academy, 12 March 1995.
evidence from the investigation's record in a people's court. Once the court examination began, the advocate had to try to get in a word edgewise, as the judge asked the many questions she tended to put before the defendant and witnesses, and as the prosecutor read out parts of the investigative report.

In two misdemeanor trials that I observed in the Moskvoretskii People's Court in Moscow, on 20 January 1995, the atmosphere was informal. Neither side filed petitions during the proceedings. The judge was not dressed in a robe, the procurator did not wear the usual military-style uniform, and one of the court assessors slept throughout a hearing. In the first case, two defendants stood accused of simple theft (article 144 of the UK) and pled guilty. They were involved in stealing loads of chocolate from a private distributing company where they worked as dispatchers. Because of the defendants' early guilty plea, their two advocates, a woman and man, asked them questions to lead them into talking about their positive personal qualities and how their families relied on them for financial support. Both defendants were accusing the other of instigating the theft. Both advocates just wanted their clients to receive lenient sentences, especially since their clients' families depended on their continuing incomes.

The courtroom's second low-level criminal case that day involved a Ukrainian male citizen in his thirties. He was charged with simple theft as well, for stealing a purse at a train station in central Moscow. The main legal issue of this case was how to treat a foreigner who was accused of a crime on Russian soil. The advocate wanted to make sure that his client would not be slapped with double jeopardy (повторное), by being tried in both Russia and Ukraine. Both the procurator and advocate agreed that, since the defendant had admitted his guilt, he would stand trial in Moscow only. Despite the legal controversy, the trial was surprisingly light-hearted and almost care-free. Throughout the trial, which lasted less than three hours, every court actor laughed, even the defendant himself, who recounted a story of drunkenness and poverty. The advocate asked no questions and began putting on his coat to leave as his client was presenting his final statement.
On 2 March 1995, in Tushinskii People's Court across town, two advocates defended two well-educated young men who stood accused of premeditated murder (article 102 of the UK). The murder victim was an old man living in their apartment building. This trial was interesting for the simple fact that the men in the pen were not poor, but middle-class scientists. Even one of the advocates felt that it was unusual because of their status.\textsuperscript{116} But she also was convinced that the defendants would both be fully acquitted. Tangible evidence was lacking, and all of the witnesses had been drunk and arrived at court drunk. The investigators had taken the word of the drunken neighbors over those of the defendants, who, according to the advocates, had air-tight alibis. The defendants had been detained for over half a year. In contrast to the two previous cases, the two advocates here were both far more aggressive as defenders. The advocates asked pointed questions to clarify statements made in the record by witnesses; the witnesses were dumbfounded by having to give specific answers. While some evidence pointed to a possible motive for killing the old man (i.e., for the ownership of his apartment), most of the testimonial evidence remained unsubstantiated, and these two skillful advocates underscored this weakness before the judge.

On the level of the Moscow City Court and Moscow Oblast Court, there was more decorum; more sophisticated equipment was used as well. The cases involved more severe crimes and longer sentences. In a case at the Moscow City Court, on 21 February 1995, a female official at the Moscow Property Fund (Fond Imushchestva Moskvy) stood accused of accepting a bribe of $3,000 (article 173 of the UK). Given the woman's position of influence in such an organization that had become so important in recent years, her alleged crime was grave. The defendant's ten months in a SIZO had taken their toll, and she sat in the cage wringing her hands. She had reason to be worried: the prosecution had a videotape of a raid on her office, which appeared to prove that she had accepted the cash bribe.\textsuperscript{117} The

\textsuperscript{116}Both advocates served on the case by contract with their clients. The female advocate did not begin representing her accused until a month into the preliminary investigation.

\textsuperscript{117}A small team of investigators on an anonymous tip heard that the defendant had a tendency of accepting bribes. One of the investigators posed as a person wanting to privatize his apartment and talked with her in the presence of a hidden microphone. The defendant on tape said that she could arrange for it, after which he allegedly passed her an envelope of money, which was marked with phosphorescence. She placed it in her desk.
procurator working on the trial, a woman in her late thirties dressed in a procurator’s formal uniform, encouraged me to watch because she believed that the advocate was being assertive.

The advocate was strong-willed, but came across as parental. To her credit, she supported her client’s claim that the transcript of the audiotape was incomplete and therefore held no legal strength. On the other hand, the advocate scolded her client for not revealing where the envelope filled with $3,000 came from. In addition, the advocate did not counsel her client to stop using such phrases as “I can’t recall,” which is perceived by the Russian bench as an obstruction of the “truth.” The advocate also urged her client to answer the judge’s questions. In this case, it appeared that the advocate was playing on both teams, by defending her client at certain times, and then acting as an assistant to the court at others.

The fact that the acquittal rate was lower than one percent in Soviet criminal courts is well known. In 1991, acquittals made up 0.3 percent of all verdicts. While reform measures originated in the legal community, Soviet officials continued to emphasize to the judiciary the importance of high conviction rates. But did the acquittal rate rise at all any time during the Gorbachev period or early post-Soviet period? And to what extent did advocates influence the outcome of cases during this time? Soviet advocates had different methods for gaining victories which fell short of full acquittals. These included such tactics as arguing for a return to supplementary investigation (when procurators could then dismiss a case without registering a formal acquittal); petitioning to lower charges; and striving for leniency in sentencing, including sentences which covered the length of time already served. During the Gorbachev years and the early post-Soviet period, advocates continued to incorporate these strategies into their defense work.

Sometime later a team of investigators stormed into her office brandishing video recording equipment and demanded that the drawer be opened. They took out the envelope with the cash and claimed that this was bribery booty. Their instruments detected the invisible substance which was placed on the $3,000 and was also on the defendant's hands. She said it was a set-up and complained that part of the incident was not filmed and that the judge read an incomplete transcript of the interview taped by microphone.

118Petrukhin, Vam nuzhen advokat, 373.
As mentioned, while judges granted advocates' petitions more often than investigators or procurators did, they were not on average granting advocates' petitions dramatically more than earlier. Some advocates reported that their petitions were granted by judges no more than ten percent of the time, while others reported a marked improvement from the pre-Gorbachev era. Yet according to Ministry figures, judges since 1991 were granting petitions that called for full or at least partial acquittal more often. Figures since 1984 suggest that judges granted partial acquittals around 30-38 percent of the time, on average. In contrast, only two percent of petitions calling for full acquittal were granted in 1984.

The year 1991 saw a marked improvement in the number of petitions for full acquittals that judges granted (33 percent compared to nine percent in 1990); by 1994, the figure rose to 41 percent. These data suggest that judges and procurators were acknowledging the incompetent work of investigators by handing down more acquittals. A few advocates mentioned how the number of acquittals in people's courts was rising, although not significantly. The chairman of MRKA, Nikolai Klyon, reported to Ministry that his advocates had received more acquittals between 1991 and 1993. A judge at the Ivanovo Oblast Court, who also taught criminal procedural courses at Ivanovo University, presented the figure of three percent as the acquittal rate in 1994. Most advocates, however, said that either there were no significant changes in the amount of acquittals they were receiving or that only the years 1987-89 had seen an increase in acquittals, due to a new, but not lasting, liberal approach to criminal justice. Official figures for 1994 reveal that 3,557 defendants were acquitted (there were 2,699 acquittals in 1993). Taking into account the total number

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120 A number of judges whom I interviewed mentioned that they usually acquitted a defendant based on investigators' incompetent practices. Some judges reported no change in the numbers of acquittals they gave, some reported a fall in the numbers of acquittals since 1991, and some reported a rise. This lack of coherence shows that judges no longer felt the same pressure to convict from Russian officials as their predecessors felt from Soviet officialdom.
121 Nikolai Klyon, "Ochet o rabote MRKA za 1991-93 gg. i zadachi advokatov na 1994 r." Received a partially censored copy from Klyon in December 1994.
122 Interview with male judge at Ivanovo Oblast Court, 6 April 1995.
123 Interview with MGKA (male) advocate #28, 18 January 1995.
of criminal cases in raion courts in 1993 and 1994, official acquittal rates were still well below one percent.121

D. Examples of Center-Periphery Differences in Defense Work

Advocates' criminal defense work in early post-Soviet Russia was dependent on some regional variances. For example, in Moscow, the incidence and types of crimes, the administration of criminal justice, as well as the nature of advocates' work differed from that in Ivanovo. As would be assumed, a smaller percentage of cases involved hooliganism, organized crime offenses, and capital crimes in provincial towns like Ivanovo than in Moscow. In 1995, in Ivanovo, a case involving four men accused of attempting to carry out a contract murder made news because of the infrequency of such a crime. Unlike in Moscow, people in Ivanovo rarely were being killed over their private property. The Ivanovo area, however, saw a rise in the number of small thefts and robberies during the early 1990s.125 As a result, advocates there were bombarded with more criminal cases than they had ever experienced before; by far, the majority of advocates' cases in Ivanovo were criminal, and many advocates there based their livelihood on low-paying court-appointed work.

One may assume that the most substantial difference between the ways that criminal justice was administered in Moscow and Ivanovo would be that advocates in Ivanovo had cultivated more informal ties with other court actors. Anecdotal evidence suggests that this was the case, because the community of court actors in Ivanovo was relatively small. For example, several advocates in Ivanovo commented on how "everyone knows everyone else." One female advocate was close friends with a judge (although they did not work on the same cases). Two judges in the Ivanovo Oblast Court had been acquainted with dozens of local advocates for years and knew them well by name. While none of these examples is particularly revealing by itself, they all add up to the fact that close contacts existed, and that

122Interview with Albert Bulychev, chairman of the presidium of the Ivanovo College of Advocates, 3 April 1995 and with advocate #7, 3 April 1995.
advocates were not necessarily isolated as the "enemies" of those lawyers who worked on the opposing side. In fact, one Ivanovo advocate revealed that he consciously took the effort to cultivate good relations with his opponents, especially the prosecutors, "because it's such a small legal community." 126

On the other hand, the fact that law enforcement officers were acquainted with advocates in Ivanovo did not necessarily insure that advocates' incarcerated clients would be safe from their abuse. Anecdotal evidence from Ivanovo suggests that investigators, despite advocates' formal complaints and previous acquaintance, sometimes resorted to violence during interrogations of suspects and the accused in their advocates' absence. For example, in one case, which later led to a jury trial (see later in this chapter), a juvenile accused of attempted murder -- and incarcerated for months in a SIZO -- was beaten by an investigator and not given proper medical treatment for his wounds. The advocate's pleadings did not result in his medical care, and she later reported the incident to the court.

Moscow's legal world is composed of essentially 33 legal communities of court actors who know each other at least relatively well, by reputation, if not by face. This condition exists because of the 33 raion (people's) courts, which each have corresponding procurators' offices, militia posts, and local LCRs. The Moscow oblast system is no different. Therefore advocates, especially those who worked in LCRs located on the first floor of courthouses, were well acquainted with the judges they worked with on almost a daily basis, as well as the investigators and militia officers. Because advocates were permitted to work in courts all across Moscow, however, there was a stronger tendency toward anonymity than in Ivanovo. 127

Moreover, with the growth in the number of advocates working in parallel colleges, came the

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126 Interview with IOKA (male) advocate #12, in his mid-tenties, 6 April 1995.
127 According to a judge in a people's court in the Tomsk region, he was still receiving calls from local officials who "advised" him about certain verdicts. Interview on 21 October 1994. But according to a judge in the Moscow City Court, he never once received a call from a Communist Party official during his years of practice before 1992. Ironically, he received a letter from human rights commissioner Sergei Kovalev in 1994 instructing him not to convict or give death penalties to certain defendants in his cases. Interview with judge who specialized in first instance criminal cases at the Moscow City Court, 23 February 1994. Interview data indicates that small town culture tended to enable Communist Party officials to interfere more often in judicial decision-making. In larger cities CPSU officials probably had what they would have thought were more pressing needs to attend to and more time constraints.
tendency to work in various courts around town. But this should not overshadow the fact that court actors in Moscow, including advocates and investigators, sometimes became well acquainted and had certain reputations to uphold. In the Moskovetskii People's Court, for example, a judge read off a list of five advocates from the nearby LCB that she preferred working with, because of their high quality of performance. However, the majority of judges most likely did not experience the same level of informality in Moscow as they did in a smaller town like Ivanovo. Moreover, the amount of law-enforcement officials was considerably higher in Moscow than in Ivanovo, and the operations of many detention centers often went unsupervised by outsiders.

E. Recent Trends in Advocates' Work in the Criminal Sphere

1. Increase in Court-Appointed Cases

The first trend -- controversies over advocates' court-appointed work -- has already been raised earlier in this dissertation. Because of the rise in criminal cases and the fact that the majority of defendants were unable to afford contracted defense services, more advocates were being appointed to criminal cases. Miniust statistics show a significant increase in the number of advocates' appointments to investigations and trials since 1989 (the 1989 figure was 133,591, while the 1994 figure was 384,161).128 Advocates who responded to the 1995 surveys reported that appointed cases made up approximately 25-40 percent of their case load.129 Across the country, the percentages reached even higher levels. For example, the Federal Union of Advocates reported in early 1996 that, in most colleges, court-appointed cases composed more than half of their work load; in some colleges, they composed up to 90 percent.130

129Survey data compiled by author and Professor Dan McGrory of respondents in Moscow, Ivanovo, and Stavropol. The average number of criminal cases per month tended to be around six to eight between 1991 and 1994. See “Obzor statisticheskoi otchentnosti o rabote kollegii advokatov RF za 1991 g.,” 4 April 1992. Delo 05, str. 49-54, of the Otdel advokatury, Russian Ministry of Justice Archives. Document of the same name released yearly (the department on the advokatura presented me with a copy of their 1994 report). Presidium chairman of the Ivanovo College of Advocates, Albert Bulychev, reported that around 70 percent of jury trials in Ivanovo contained advocates who were court-appointed (Interview 5 April 1995).
As the monies from local and federal budgets earmarked to pay for advocates’ labor dwindled, colleges of advocates were unable to compensate for the loss. In interviews, bar leaders as well as rank-and-file advocates complained that this lack of compensation would hurt their capacity to defend in the long run. In 1994-95, several judges in interviews criticized advocates who were court-appointed for being less conscientious and more passive than advocates who were “on contract.” Conversely, most advocates when questioned denied that their form of payment had any impact on their behavior in court.

A few measures were taken or proposed to relieve advocates of their (labor) burdens in 1994 and 1995. After members of the Congress of Russian Advocates recommended such an effort in September 1994, the Russian Ministry of Justice prepared an explanatory document on the issue of paying advocates for appointed criminal cases. The authors of the draft decided to increase the minimum daily payment for an advocate’s work in court from one-fourth to one-half of the average (national) minimum wage for one day’s labor. The document was distributed to all colleges of advocates. Advocates who commented on the matter until the summer of 1995 still described their appointed criminal cases as “free” work, especially when taking into account the even lower pay they received for participating in pre-trial phases. Pay for work in court-appointed jury trials was more reliable, as the court paid them for their labors.

Another possible solution which was considered by local justice officials in Moscow and a number of other locations was the creation of a municipal advokatura administered by the local justice departments -- the equivalent of public defenders’ organizations in the United States. The U.S. has its own history of under-funding the work of public defenders for

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131 Six judge-interviewees from Moscow, Tiumen, and Ekaterinburg argued that a clear distinction exists. Two judges from Stavrostopol krai and Prinestrovia in Moldova felt that this was not true (interview at the Russian Legal Academy, 18 October 1994). Stephen Thaman noted that in almost all jury trials advocates were court-appointed. He argued that the low level of the advocates’ remuneration impacted on the quality of their defense. Stephen Thaman, “The Resurrection of Trial by Jury in Russia,” 87-88.

132 Tamara Gromova, “Novosti ot Minlusta RF,” Cheleovk i pravo 7(1993), 5. This document was to supersede the last document on the issue, “Poleozhenie o poriadke oplyati truda advokatov za schet gosudarstva,” 1 January 1994, upon agreement with the Ministries of Justice, Finance, Labor, and Internal Affairs; and the General Procurator’s Office, Government Customs Committee, and Department of Tax Policy. Advokat 2:32 (1994), 2.
indigents, and legal aid programs have undergone an uneven development. Moreover, the 1984 U.S. Supreme Court ruling stipulating that the Constitution's right to counsel include the guarantee of the "effective assistance of counsel" has yet to be achieved in practice.\textsuperscript{133}

Criminal defense in the U.S. is more often handled by public -- or appointed -- defenders than private attorneys. The reputation of public defenders is not dissimilar to that of court-appointed Russian advocates in criminal trials. As one legal scholar notes, "Typically, they are overworked; burnout and cynicism are serious occupational diseases. Their salaries tend to be low, and there is a numbing volume of work...Defenders feel like they get no respect from anyone."\textsuperscript{134} While certainly many public defenders are respectable attorneys, others who do not have the time to familiarize themselves with cases just aim to cut a deal at the plea bargain session and therefore give their whole sub-profession a poor name. Over the past decade there has been an on-going campaign for reform of indigent defense services in the U.S. A number of states and municipalities have been involved in constructing various types of programs to fit their local needs.\textsuperscript{135} But recent budgetary constraints on the federal and local levels have prevented the full implementation of these programs.

In the early 1990s, Ministry officials were planning to create municipal public defenders. As of the spring of 1995, however, the head of the Moscow justice department, Boris Saliukov, denied that such an organization would be formed in the capital of Russia.\textsuperscript{136} Bar leaders Galoganov and Rogatkin objected to its formation strongly, on the grounds that local state officials would then have too much control over their professional functions. Most likely, they also feared the possibility that scores of advocates would leave their colleges to work for the government as defenders, thus leaving the colleges weaker than ever. Legal officials in Ivanovo also were considering the possibility. In such a place as Ivanovo, where a

\textsuperscript{133}\textit{United States v. Cronic} 1984, 656-57, 655. In fact, the way in which public defenders typically represent indigents (through plea bargain negotiations with prosecutors) has actually weakened the adversarial process while supporting one salient goal of the criminal system: minimizing financial costs. See Gerald N. Rosenberg, \textit{The Hollow Hope: Can Courts Bring About Social Change?} (Chicago: University of Chicago, 1991), 330-34.

\textsuperscript{134}Friedman, 394.


\textsuperscript{136}Interview with Boris Saliukov, 29 March 1995.
very high percentage of advocates worked on court-appointed cases, a larger number of advocates than in Moscow viewed the creation of a municipal *advokatura* in a more positive light. They yearned for job security and a reliable paycheck. The liberal ideas of professionalism and control over entry did not concern them as much.

2. Rise in Economic Crime

With the development of a market economy in Russia and the simultaneous breakdown of state authority, more people were willing to risk arrest and embrace illegal business practices in order to insure profits. In such an environment, organized crime groups thrived. In addition, the pace of change in business law made it nearly impossible to know just which practices were permitted and which were not. As a result, jurists, advocates included, were more often relied upon now to advise business people on the frequent legislative changes affecting them. Economic crimes since the early 1990s were on the rise; the MVD reported that in the first quarter of 1995 economic crimes were up 31.7 percent from the first quarter of 1994.137 Advocates, as a result, more often were defending people arrested for such widespread offenses as contraband (article 78 UK), blackmail and extortion (article 148 UK), misuse of position (article 170 UK), negligence (article 172 UK), and narcotics possession and sales (article 224 UK).138 Approximately 25,400 people were convicted on narcotics charges alone in 1994.139 Advocates who defended clients in cases involving white-collar economic crimes sometimes found that they often were more straightforward, because they could rely more on printed documents and less on various kinds of forensic evidence.140 Such crimes

138In the law on the books until 17 July 1994 contraband was defined as the illegal transference of goods or anything of value through the governmental borders of the USSR. This discrepancy was exploited by skilled advocates, in trying to free their clients from such charges. See "Advokatskaiia praktika nedeli," Kommersant-Daily, 1 October 1994, 22.
139Rudnev, "Novye rekordy."
140Interview with Albert Bulichev, 3 April 1995.
included those listed under article 162 of the Criminal Code, including tax evasion, hard currency violations, and customs fraud.\footnote{In a 1994 survey taken of 40 lawyers working in banks and other financial concerns across Russia, results show that they were most concerned about the following legal problems in the financial sphere: 1) criminal responsibility for not returning investors’ funds; 2) criminal responsibility for false enterprising and false bankruptcy; 3) regulation pertaining to bank security; and 4) violations of confidentiality, forgery, and swindling. See Lev Gaukman and Sergei Maksimov, Ugolovno-pravovaiia okhrana finansovoi sfery: nove vidy prestuplenii i ikh kvalifikatsiia (Moscow: IurInFor, 1995), 58-59.}

With the state crackdown on organized crime groups and the tendency to interpret ukaz no. 1226 more widely, acquittals and requalifications of charges in this area of law were not easily reached in the mid-1990s. Still, judges were willing to lay aside pressures to convict or give harsh sentences under certain circumstances. This indicated that at least some members of the judiciary were acting independently and taking a more liberal stance towards the administration of justice. Interestingly, these developments were not occurring exclusively in areas where reforms generally took place. In 1995, in a well-publicized case in Barnaul (in the Altai region), five businessmen were accused of extortion (a five to ten year prison sentence). Their advocates convinced the judge that their remaining partners had lied to the militia in order to avoid their own monetary obligations, and the five defendants were acquitted of the crime.\footnote{“Advokatskaia praktika nedeli.” Kommersant-Daily, 28 January 1995, 22. Many of the criminal cases that advocates worked on and won which were reported weekly in Kommersant-Daily concerned economic crimes. These wins, however, need to be treated as exceptions.} This case spoke poorly of local militia and investigatory officials, who proved unable to properly assess witnesses.

3. Rise in Juvenile Crime

During the latter half of the 1980s, and into the 1990s, juvenile crime was on the rise in the U.S., as well as in Europe. Reasons given for this development range from the breakdown of the nuclear family and economic crises to simply the rise in the number of teenage males. Russia witnessed similar developments, and, as a result, advocates more often were representing juveniles. Under law, youth were required to have advocates represent them from the time of their detention or arrest to the end of trial. At least in passing, many
advocate-respondents mentioned how representing juveniles had become an increasingly prominent aspect of their criminal practice.\textsuperscript{143}

The following are some characteristics of the juvenile crime wave in Russia. First, many juveniles accused of crimes came from underprivileged families, according to one advocate in Ivanovo.\textsuperscript{144} Second, advocates who accepted juvenile cases had noticed that they often were related to organized crime group activities.\textsuperscript{145} The chairman of the Gagarinskii People’s Court in Moscow reported that her court already had a number of cases involving juveniles who were hired by organized crime groups to steal cars in the area.\textsuperscript{146} Young men in Russian society, tempted by the new material goods that the nascent capitalistic economy had brought to their country, were drawn to this line of work, much as teens face pressures in American urban ghettos to make quick money running drugs for gangs.

Advocates, however, found that courts were showing less mercy to juvenile offenders in the 1990s than they had at times in the Soviet period.\textsuperscript{147} In order to offset the problems involved with defending these mostly underprivileged Russian citizens, more advocates were studying how to represent juveniles more adequately. Some interns who were required to write their theses (referaty), chose to concentrate on juvenile advocacy. At a meeting of the qualifications commission of MOKA in March 1995, two of the applicants who were undergoing entrance evaluations presented their papers on representing juveniles to the commission.\textsuperscript{148} While this specialty was not lucrative -- because most juvenile trials were appointed ones -- it at least provided advocates with a constant flow of new cases and a challenge for those interested in civil rights law.

\textsuperscript{143}Including Dubrovskaya, who had practiced law for several decades, and a 70-year old advocate in Ivanovo. Interview on 10 April 1995.
\textsuperscript{144}Interview with 1Oka (female) advocate #9, in her early twenties, 4 April 1995.
\textsuperscript{145}Interview with Mosurtsev (male) advocate #27, in his mid-twenties, 12 January 1995.
\textsuperscript{146}Interview with the chairman of the Gagarinskii People’s Court, 18 April 1995.
\textsuperscript{147}Interview with MGKA (male) advocate #28, 18 January 1995.
\textsuperscript{148}Meeting of the Qualifications Commission of MOKA held at the Moscow Oblast Court on 9 March 1995.
4. Use of Necessity Defense

Necessity defense (right to self-defense) involves the protection of one’s rights or person or those of others, or even the state’s or society’s interests, against unlawful attack. Whereas the concept of a necessity defense was not honored in courts during the Soviet period, it was approved by the Duma on 1 July 1994 and became article 13 of the Criminal Code (UK). Legal scholars had long lobbied for such a measure to be included in the code. In theory, the necessity defense should help lower the rate of convictions and allow more cases to be dropped in the pre-trial stages.

Advocates were taking advantage of this new stipulation as well. A Moscow advocate and member of MRKA, for example, appeared in a military court in May 1995 on behalf of her client, a military ensign who stood accused of committing an act of severe bodily harm to a subordinate in his construction battalion (article 108 UK). The advocate used the necessity defense to argue for her client’s innocence. In other words, she claimed that her client, the alleged attacker, had injured the “victim” while he was in the process of actually defending himself from bodily harm. The court, in turn, granted her request by ruling that the ensign had not exceeded the limits of this stipulation (i.e., did not impose any aggravating conditions). It is not known at this point what the actual rate of success was for those defendants and advocates who were using the necessity defense in the early 1990s. But its being on the books and at least partially implemented indicates that some courts had adopted a more liberal approach to the assessment of mitigating circumstances in criminal trials.

5. Defense of Victims’ Rights

In most studies of advocates’ practices in the USSR and Russia, emphasis has been placed on advocates as defense attorneys of the accused. Yet, with the rise in the number of crime victims in Russian society in the early 1990s, some advocates reacted to the increased demand, working on the side of victims’ rights. Moreover, in theory, victims could now seek

compensation for moral damage in courts, which for an advocate representing these types of clients, could prove to be a lucrative side-practice. In Soviet and Russian courts, victims have played a more formal role than in the U.S. legal system: it is their right, or in the case of murder, the right of spouses or parents, to speak before a court in expressing their grief and outrage. Their authority is most strongly felt when they are in a position to reject the motion of a procurator to dismiss a case in its entirety.  

Under these circumstances, advocates have been useful to victims in defending their rights and helping them to strengthen the message in their speeches. Professor Aleksandr Larin, in addition to his efforts to champion the rights of the defense, worked to strengthen victims’ rights outlined in article 53 of the OTK. Larin was most concerned with the rights of sexually-abused children vis-a-vis their parents. Law students at Moscow State University also showed interest in specializing in victims’ rights. One of the top law students in the criminal law faculty at Moscow State in 1994 planned to devote her advocate practice to representing crime victims. This student’s interests, however, appeared to be in contrast to those of most other students at MGU, who wanted to enter business law practice.

Moscow advocates were already making inroads on behalf of victims of crime. One MGKA advocate, who worked at an LCB in the center of Moscow, represented three schoolboys who had been shot by a classmate. As attorney for the victims, he convinced the judge that the defendant should receive an eight-year sentence for premeditated (attempted) murder, for committing grave bodily harm, and for the illegal possession of firearms. The advocate succeeded; the court did not uphold the boy’s defense of “carelessness.”

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150 Such a move by a victim happened in a jury trial in the Moscow Oblast Court. She succeeded in having the judge return the case to supplementary investigation. See Stephen Thaman, “Trial by Jury and the Constitutional Rights of the Accused in Russia,” East European Constitutional Review (Winter 1995), 79.
151 Interview with Larin, 3 February 1995.
152 Interview with fourth year law female student at MGU, 1 December 1994.
The Use of Criminal Sanctions for Political Ends: Advocates Against the State

The USSR’s collapse marked a different era for political cases, although some old baggage remained.\textsuperscript{134} Articles in the UK, such as 70 and 190, which were used to imprison dissidents, were amended by the Supreme Soviet in the late 1980s to narrow their breadth of interpretation. Some political cases in early post-Soviet Russia, however, were used as tools for defaming public officials who had fallen from official favor.\textsuperscript{135} They also were used in an attempt to silence the voices of some Russian citizens. Moreover, the collapse of the USSR did not automatically dissolve the requirement that defense attorneys in cases involving state crimes possess special security clearances. Yet, in the early 1990s, advocates without special security clearances did, in a couple of instances, gain admittance to certain political cases. These cases did not always conclude in the state’s interests anymore, and part of the credit for this new development should be given to those advocates who took part in them.

A. The Case of Mirzaianov: Government Secrets

According to a well-known Moscow advocate, Aleksandr Asnis, the rules governing the work of militia officers and investigators still called for the protection of government secrets, and this meant that defense attorneys’ participation was likely to be discouraged.\textsuperscript{136}

Investigators still tended to take harsher measures when dealing with accused officials and political defendants, but they were now unable to keep advocates away for long in most

\textsuperscript{134}The August 1991 coup plotters case, which ended in amnesty for those remaining alive in early 1994, is not covered here.

\textsuperscript{135}Show trials, like the much publicized case of Brezhnev’s son-in-law, were already being used to destroy the reputations of certain elites who had fallen out of official favor in the 1980s. The most celebrated case involving a former Yeltsin official, however, is of Dmitriy Iakubovskii, arrested in December 1994 for arranging for the theft of ancient books and manuscripts from the Russian National Library in St. Petersburg. Genrikh Padva served as the head advocate on a legal defense team. See “Iakubovskii prodolzhat’ sidet.,” Izvestia, 6 January 1995, 1; “Iakubovskii ostalsia bez advokata,” Izvestia, 3 March 1995, 1 and Igor Svinarenko, “Genrikh Padva: Vse advokaty -- riadovye,” Domovoi, 30 March 1995, 6. In the fall of 1995, Iakubovskii was still in a SIZO, despite Padva’s pleadings with a St. Petersburg judge to release him in keeping with limits of detention established in the UK. Another member of the defense team, Evgenii Mel’ntskii, was murdered in St. Petersburg in the fall of 1995. Investigators were unable to connect the murder with Iakubovskii. See Vadim Nesvizhskii, “Delo Iakubovskogo blizko k zaversheniu,” Segodnia, 12 October 1995, 6 and Vadim Tiagniradno, “Dmitriy Iakubovskii ostanetsia za reshetkoi,” Segodnia, 16 November 1995, 6. Iakubovskii’s trial actually commenced on 29 April 1996 (see Sergei Kruikhin, “Delo Iakubovskogo doshol do suda,” Izvestia, 30 April 1996, 2). In November 1996, he was convicted on all charges and sentenced to five years in prison.

\textsuperscript{136}In 1994, there was a political case Asnis knew of in which an advocate was not allowed access because of the need to preserve government secrets. Interview with Aleksandr Asnis, 15 December 1994.
instances. In addition, media coverage of these cases and the efforts of international human rights organizations were significant reasons for this change. The advocates who defended the accused were typically the best-known Moscow practitioners. Sometimes they were paid well; but more often than not they accepted political cases because they were potentially significant.

The case of Vil Mirzaianov, the investigation of which began in the fall of 1992, was Asnis's first political trial. In a subsequent interview, Asnis admitted that he had had very little idea about what to expect as it unfolded. Mirzaianov, a chemist at a scientific institute called GosNIIOKhT, was accused of revealing state secrets (article 75 of the UK) in an article he wrote on chemical weapons research in Moskovskie novosti on 20 September 1992. Mirzaianov claimed that he had only mentioned how Russia had these weapons and therefore was in violation of international conventions; but he insisted that he had not supplied any classified details. While Mirzaianov was sitting in a SIZO, his wife and the newspaper asked Asnis to represent the chemist. Asnis did not have a special clearance to work with classified materials, and the investigator on the case, as well as the Ministry of Security (the equivalent of the KGB), refused his admission. Asnis appealed to the General Procurator's Office, which gave him written approval to enter the case. Meanwhile, Asnis had missed a large part of the initial investigation and interrogations. He was the second advocate without a special clearance who applied for access to a sensitive case and received permission to enter (advocate Genri Reznik was the first, when he represented a member of the GKChP in 1991-93). But Asnis was the first advocate without special clearance to gain admission to a case involving government secrets.

Once Asnis entered the investigation, however, he was faced with one disappointment after another, especially concerning expert witnesses. The prosecution's experts all said that the accused had revealed government secrets, whereas the experts that Asnis lined up claimed the opposite. But the reports of the prosecution's experts had been sent to the court first, and Asnis's eleven petitions calling for supplemental investigation were rejected. In court, Asnis

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137 Interview with Aleksandr Asnis, 15 December 1994.
complained about how biased the investigation was against the defense. The judge eventually allowed Asnis to put his experts on the stand, and they claimed that Mirzaianov had not revealed any state secrets. The General Procurator’s Office dismissed the case before its conclusion, based on the fact that the accusation lacked sufficient evidence. This was the first case involving the exposure of government secrets in Russia’s history which was completely dissolved. In assessing this favorable outcome, however, Asnis gave little credit to the judicial system or any renewed respect for law:

I would like to think that the 11 March 1994 resolution of the case is a turning point in the history of our legal system. But reality dictates otherwise. Today many similar cases exist which are simply not known to society...this decision did not exist by way of a right and law, but because the means of mass information actively took part in the creation of a correct societal opinion. Only thanks to the honorable and democratically inclined journalists who exposed this case in newspapers, on TV, and radio, was I able to have the opportunity to present my arguments. These legal arguments even helped society to formulate, in my view, an objective opinion of the case. Even international organizations acted in M’s defense, and not only legal defense organizations but a wide circle of society [including human rights champion Kovalev and Arbatov, head of the Institute of USA and Canada]...it became impossible to carry out such a sentence for the sake of which the case first was undertaken.

The criminal case of Mirzaianov represented a victory for human rights interests in Russia, but it did not resolve the continuing controversy over security clearances for defense attorneys, because it did not formally change the existing practice. In 1996, this issue was finally placed on the agenda of the Constitutional Court. The impetus for this decision came from several complaints that had already been filed, charging that the security clearance practice was unconstitutional (under article 48 of the 1993 Constitution) and gave the prosecution an unfair advantage. On 27 March 1996, the Constitutional Court ruled on the issue: defendants charged under the “Law on State Secrets” would be entitled to choose their own defense attorneys. To what extent the FSB (the present KGB equivalent) will honor this

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158Mirzaianov’s and Asnis’s worries did not end there, however. M. tried to sue the KGB, the General Procuracy, and GosNIIOKhT for moral damage, but the court did not uphold the suit. After that attempt, M’s employer counter-sued, and the case is still pending. See Sergei Mostovskikhov, “Delo Mirzaianova budet zhit?,” Vechno?, Izvestiya, 10 December 1994, 2.
160At this time a controversial case was underway, involving a retired Russian naval officer, Aleksandr Nikitin, who in January 1996 was arrested on charges of treason by the Federal Security Service (FSB) for allegedly revealing classified information about the Russian navy in his report on the Navy’s nuclear polluting of waters off the Kola Peninsula published in a publication of the Norwegian environmental group, Bellona. Initially the
ruling in subsequent cases will depend on continuing outside pressure from the media, human rights activists, advocates, and reformers inside legal institutions.

B. The Case of Panskov: Hidden Agendas Behind the Arrests of Officials

Other political cases in the early 1990s did not hinge on state secrets or treason, particularly when it came to officials who had fallen from favor in the eyes of members of the upper echelons of executive power. Sometimes such show trials took the guise of charges of bribery, corruption, and the theft of government property. While the charges were not political per se, the hidden agendas behind the arrests made them so. The very nature of the process was political, and advocates who defended people accused of such crimes took this into account in their strategies. The following is an illustration of one such case. In 1993, Vladimir Panskov was the first deputy head of the State Tax Inspection Department. On 25 February of that year, he was arrested on bribery and corruption charges, for an inconsequential incident involving the purchase of a car for a cut-rate price. The Ministry of Security (KGB's equivalent in 1993) arrived at his apartment at 7:30 am and escorted him to Lefortovo prison in Moscow, infamous for its treatment of political prisoners. His wife quickly phoned MGKA advocate Mikhail Burmistrov for assistance.

Burmistrov immediately contacted N. Fanin, the head of the department of the investigative administration of the KGB, who was conducting Panskov's case. Burmistrov asked that he be accepted as Panskov's advocate and requested that Fanin not institute any investigative proceedings until his arrival. Fanin promised, but, according to Burmistrov, he interrogated the suspect for hours in Burmistrov's absence.161 Panskov initially urged the advocate to keep quiet during the subsequent interrogations, but Burmistrov insisted that he could not remain silent in the face of such arbitrariness. Burmistrov was convinced that a

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FSB insisted on only granting him a defense attorney with a special security clearance, although on 26 March Yeltsin announced that it would allow Nikitin to choose his own lawyer. Yeltsin intervened because Norway's Prime Minister became involved in defending Nikitin and Bellona. See Doug Clarke, "Yeltsin and Norwegians Compromise on Arrested Environmentalist," OMRI Report (27 March 1996); and Penny Morvant, "Court Rules Defendants Can Choose Own Lawyers," OMRI Report (28 March 1996).

161 This case is outlined in Pavel Nikitin, "Menia spasli advokaty," Ogonek 12/4391 (March 1995), 38-39.
power struggle was ensuing inside the Ministry of Finance (Minfin), and that Panskov, in a sense, was being held hostage, because he was the front-runner in the position at Minfin. As a result, investigators kept on record only incriminating evidence against Panskov. Some of the evidence which the advocate submitted for the record was confiscated. Burmistrov tried to make this violation known to the court, but was placed in a holding cell for three hours. After this incident, he asked for the assistance of an advocate named Sergei Zamoshkin.

Panskov was beaten, given "psychiatric treatments" in jail, and told that he would be freed if he confessed. The two experienced advocates, however, knew that investigators had little to support either charge, even after five months. All the prosecution had to bolster its argument was the fact that a former student had given Panskov a kilogram of ham -- this could conceivably have been interpreted as a bribe, although it was hardly a sturdy leg on which to base a high-level corruption case. Burmistrov and Zamoshkin succeeded in having Panskov freed from the SIZO. Still, the investigation continued for one more year. According to Zamoshkin, because the Ministry of Security was undergoing reform during its transition into the FSB (Federal Investigations Committee, the next KGB equivalent), the case was transferred to the General Procurator's Office. The General Procurator's Office found no basis for criminal liability and fully dismissed the case. Panskov was later appointed Minister of Finance by Yeltsin.

C. The Case of Memorial: Public Demonstrations

Finally, a third category of political cases which advocates defended in the early 1990s involved public demonstrations against government policies. Although citizens were now allowed to demonstrate en masse (as long as they first gained permission from state officials), state officials sometimes found ways to frustrate their efforts. In early 1995, ten members of the human rights group Memorial were defended by well-respected Moscow advocate Boris Abushakhmin, along with his colleagues Reznik and Tarasov. These three prestigious Moscow advocates only received 50,000 rubles each for their labors (a little more than $10), but they
felt that the case had been well worth their efforts, because it challenged the boundaries of state organs.

In December 1994, without demonstration permits, Memorial members staged a peaceful vigil against the war in Chechnya outside the President’s administration building in Moscow. They claimed that, amidst their rush to organize the vigil on a particular day, they had tried to seek permission to demonstrate from the Mayor’s office, but had been refused. The Mayor’s office refused apparently because the property on which Memorial wanted to demonstrate was under the jurisdiction of the federal executive branch, not the Mayor’s office.

Soon after the vigil, the demonstrators were charged with unsanctioned picketing (article 161.1 of the Administrative Code, with criminal sanctions of 15 days in prison or a fine ranging from 1.5 to 4 million rubles). But, in a peculiar twist, it was not the executive authorities who issued the formal warrant for their arrest, but local authorities.162

The demonstrators and Abushakhmin appeared in the Basmannyi Intermunicipal (People’s or Raion) Court on 29 December to challenge the charges. Abushakhmin was aware of the discrepancy between the fact that the owner of the property on which his clients’ demonstrated was the federal government and the fact that local officials issued his clients’ arrest warrants. The advocate prepared to emphasize this discrepancy in court.

Abushakhmin later referred to this case as a victory for the courts.

Its conclusion represented a strengthening of the separation of powers. The court ruled that, although Memorial had not registered in time to secure a demonstration permit, its members could not be convicted of such violations due to the fact that mistakes were made over the question of jurisdiction. The judge, Natal’ia Kareva, also accepted certain other arguments Abushakhmin raised. For example, he argued before the judge that his clients had no choice but to hold the vigil when they did because, as human rights activists, they had to act as quickly as possible in order to express their outrage over the Russian government’s actions in Chechnya, a very unpopular war. Memorial members were not alone in their

opinions, but had the support of many journalists and other well-known societal actors. Abushakhmin added that the demonstrators had not blocked the entrance into the building or broken social order. He believed that the judge ruled on the basis of law, not her emotions, when she acquitted all ten of the accused. She had not caved into the pressure exerted by either the Mayor's office or the president's administration, who would have preferred some kind of punitive action against the demonstrators.

In conclusion, certain characteristics of Soviet political trials and investigations still existed in the mid-1990s -- namely, the arbitrary actions of investigative organs and the use of contrived trials as ways for those in power to discredit their enemies. But three factors represented a difference and offered some promise for the development of a pravovoe gosudarstvo in the future. The first was the Constitutional Court's March 1996 ruling against the need for security clearances, which now provides the accused and advocates with a legitimate instrument for defending their claims. Second, advocates were actively taking part in some of these cases and often benefiting from the support of journalists and human rights organizations. Third, some judges were acting as a separate, independent power from the executive branch and took the rights of the defense seriously.

Jury Trials: The New Frontier of Defense Advocacy?

In the late afternoon of 10 April 1995, four advocates and a public defender sat in a courtroom in the Ivanovo Oblast Court, where jurors were deliberating over the verdict in a week-long trial. The Melikin case concerned four male defendants (two of whom were minors) who were charged with attempting to complete a contract murder the previous

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163 Abushakhmin's opinions taken from interview with author on 29 April 1995. At the initial hearing only four demonstrators were acquitted; later in January the remaining six were also.

164 Public defenders are court actors who are permitted in certain points of the trial to speak on their defendants' behalf. They do not raise points of law, but emphasize the good points of a person's character. In this case, the public defender was a female teacher of the high school student who shot the victim in the shoulder with a small gun at a bus stop. She remarked to the jury that he was a good student who behaved well in class and could perform ballroom dances.
summer. Although they had some doubt, the advocates believed that the jury would acquit
their clients of this crime, due to a lack of tangible evidence. They had statistics on their side.
Jury trials in the Ivanovo Oblast Court had one of the highest acquittal rates of any court in
the country (27 percent). The first advocate whose defendant received a full acquittal in a
jury trial in Russia since jury trials were reintroduced in 1993 was seated in that court
room. These advocates could afford to hope for a favorable outcome, as they were among
the few advocates across Russia who could offer the option of juries to their clients. Jury trials
were not widespread in 1995, but they did represent what might possibly become the future
of criminal defense. Why were juries acquitting at such relatively high rates, and to what
extent were advocates responsible for this change?

A. Juries: A Solution in Russia, a Controversy Elsewhere

Liberal jurists in the Gorbachev era were already proposing ways to increase the
number of court assessors. They argued that the use of juries would inject an element of
democracy into criminal procedure, much like it had in the 1870s in high-profile political
trials. Authors of the “Conception of Court Reform in the Russian Federation,” approved by
the Supreme Soviet on 21 October 1991, included jury trials in their program and
emphasized their potential to further the cause of reform. How ironic therefore that, at a time
when Western European and Anglo-American countries were curtailing the role of juries in

165 One of the minors (the “executor” of the deed) actually shot the victim, a man in his twenties, at a bus stop in
Ivanovo one summer morning in the presence of a friend (called the “organizer”), who was also a minor;
another defendant was on the scene and allegedly involved in the planning. Investigators claimed that the fourth
person, a man in his mid-twenties, ordered the crime. The executor and organizer claimed that they were
merely looking over the new gun they bought when it went off and hurt a stranger; the procurator claimed it
was an attempt to kill for money.
166 For jury trial statistics, see Valerii Rudnev, “Prisiazhnye zasedateli -- eto ne ‘dobren’kie diadi.” Izvestia, 16
March 1993, 3. The acquittal rate in the Moscow Oblast Court was lower, at around 20 percent. The Moscow
court had the highest number of jury trials annually of any other oblast court which administered them in Russia
between 1993-95.
167 As of March 1995, 379 applications for jury trials already had been filed, and 400 people stood accused of
such severe crimes as premeditated murder and rape. According to GPC statistics, on average only one in five
accused was opting for a jury trial. Ninety-seven percent of the criminal cases which were heard by juries were
settled by verdict and a sentence (as opposed to being returned to supplementary investigation, for example). See
Rudnev, “Prisiazhnye zasedateli.” On the other hand, a majority of people accused of capital crimes in areas
where jury trials were taking place declined jury trials. For the most complete western analysis of the Russian
jury trial system see Stephen C. Thaman, “The Resurrection of the Trial by Jury in Russia,” Stanford Journal of
judicial decision-making, Russian legal specialists were looking to this institution to help beat a path to a pravovoe goсударство. Just as Russian legal specialists were thinking of bringing the jury back, many Americans, lay people and academics alike, were rethinking the utility of jury trials altogether in favor of professional justice.168

By 1993, after the adoption of the “Conception of Court Reform”, the reintroduction of the jury actually looked possible. A young jurist named Sergei Pashin spearheaded the effort to reinvent juries, from his new post as head of the Department of Court Reform and Criminal Procedure at GPU. Disliked by many, Pashin still had the vision and the administrative pull to head the project, and he insisted from the beginning that the jury would become a permanent legal institution in Russia.169 Advocates had a minimal role to play in drafting this law, and their interests appeared narrow. They seemed most concerned with the issue of how court-appointed defense attorneys would be paid for their labor in jury trials.170 Not all colleges of advocates, especially those in the regions, favored jury trials; most likely some advocates were more concerned with the additional training and effort they would require.171

The law of 16 July 1993, “On the Introduction of Changes and Amendments to the RSFSR Law ‘On Judicial Administration,’ the RSFSR Criminal Procedure Code, the Criminal Code, and the RSFSR Administrative Violations Code,” ushered jury trials back into only some criminal courts.172 Initially, jury trials were introduced in five locations on the oblast level, including in Moscow, Riazan’, Ivanovo, Saratov, and Stavropol.173 Moreover, the

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171Thaman argued that some regional colleges were “lukewarm” in their support. Thaman, “The Resurrection of Trial by Jury in Russia,” 140.
172The 1993 Russian Constitution grants those accused of capital crimes the right to a jury trial (Article 20.2).
173In early 1994 jury trials commenced in regional courts in the oblast of T’ianovsk and Rostov-na-Donu and the Altai and Krasnodar territories. Not all criminal defendants in these regions would be eligible to opt for jury trials unless their charges were related to terrorist acts, sabotage, banditism, contraband, a number of felonies against the state including state secrets, certain kinds of murders, rape, kidnapping, bribery, and grand theft. According to Professor Iurii Stetsovskii, a member of the President’s Council on Court Reform established in late
prerevolutionary Russian jury trial system has acted as more of a model for the post-Soviet jury trial system than western jury trial systems.174

Article 426 of the U'FK requires that defense counsel participate in all jury trials, at least from the time at which the completion of the preliminary investigation is announced. Changes and amendments to the U'FK pursuant to jury trials have strengthened the meaning of the adversarial principle, the presumption of innocence, the privilege against self-incrimination, and the exclusion of evidence under circumstances of procedural violations.175 In addition, the U'FK mandates that the judge's role is to reflect a "neutral" stance. As will be shown, however, the new rules did not completely mark a departure from the Soviet inquisitorial approach. Obstacles to a fair defense remained, particularly those which limited the influence of the defense counsel in pre-trial phases. As with almost everything else connected with the Russian reform process, certain concessions to conservative hard-liners were made at drafting time.

B. Training Procedures for Advocates

Beginning in the summer of 1993, through training programs sponsored by Ministry's Russian Legal Academy in Moscow and the American Bar Association, judges and prosecutors received instruction on jury trials; they also practiced by means of mock trials. Judges from the first five regions gathered for month-long programs at the Academy.176 For additional training, groups of judges visited courts in the U.S., Canada, Germany, and England.


175Tharman, "Trial by Jury and the Constitutional Rights of the Accused," 78.
176Very simply, far more money was dedicated to judges' training. For example, a handbook for judges' taking part in jury trials was published by CEEL and written by four well respected academics assisted by a group of American consultants. Sergei Vitsin and others, Sud prisiaznnykh: Posobie dlia sudei (Moscow: CEEL, 1994).
In November 1993, the Russian Legal Academy sponsored the first training session for advocates (23 attended), but this effort was on a smaller scale than the training programs for judges. Two months later, the International Union of Advocates and a college of advocates in St. Petersburg sponsored a workshop on jury trials. The American Bar Association's organization in Russia, CEELI, offered training programs for a few dozen advocates in jury trial advocacy in Suzdal in April 1994 and outside Moscow in October 1994. But, by and large, far fewer advocates than prosecutors and judges were being trained. It was therefore no surprise to hear some legal scholars, as well as Pashin himself, say that advocates were the weak link in the process of jury trial development. In the first place, the role of advocates in jury trials was downplayed from the start by Russian officials, who preferred to give highly coveted spots on trips abroad to procurators, judges, and their own colleagues.177

The October 1994 CEELI workshop offered advocates sessions on such issues as arguing diminished responsibility, developing evidentiary strategies to achieve convictions on lesser charges, excluding the defendant's confession, juror selection, and attacking the credibility of unfavorable witnesses. Most advocates who participated in these workshops and whom I interviewed, particularly those from Ivanovo, were satisfied with the instruction and learned new techniques for becoming more assertive in court. They also appreciated the mock trials and the opportunity to meet with their American counterparts. But problems did arise in cases where American lawyers were not aware of just how different the Russian criminal trial process was from their own. Rules governing admissibility of evidence were different, Americans were not familiar with the central role of the investigator's report in the court investigation, and they were not always aware of the fact that advocates still did not have the

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177In 1994 and 1995 more trips including at least some advocates were sponsored by Western organizations, including two to England in March 1994 and in January 1995 to watch jury trials and meet with English barristers. Still, these trips were largely cosmetic, as they did not include more than a handful of advocates, many who were chairmen of college presidiums and therefore did not have time to practice law themselves. Even Aleksei Rogatkin, chairman of the MGKA presidium, confessed that advocates were worse prepared than prosecutors to fulfill their duties in jury trials ("Advokatskaiia praktika nedeli," Kommersant-Daily, 25 March 1995, 21.)
right to collect their own body of evidence and present it independently from that of the investigator's report.

Upon completion of the workshop, advocates were asked to train their colleagues back home in the techniques and approaches that they had learned. Many of the advocates who were among the first to participate in jury trials, however, were not formally trained. In Ivanovo those participating in the workshops returned to their college, but had not arranged training workshops. MOKA offered some training, but MGKA had not yet arranged any seminars, because the Moscow city and people's courts were not yet holding jury trials. Many advocates in the first five regions were simply learning on the job. At the October 1994 workshop, as mentioned earlier in this chapter, advocate participants wrote a letter to Pashin calling for certain structural and financial improvements in jury trials. Other than the ones mentioned earlier, which referred to their role in preliminary investigations, the remaining included:

1) better pay for appointed cases;  
2) discontinued use of cages and other bodily restraints on defendants;  
3) clearer guidelines defining the grounds for evidentiary exclusion;  
4) the right to have access to all evidence (a loose equivalent to discovery in the U.S.);  
5) a new provision for dismissing a jury after evidence deemed inadmissible is introduced;  
6) no longer allowing victims to object to the dismissal of a case;  
7) a revision to the procedure for challenging experts' testimony to better enable defense attorneys to summon and cross-examine experts;  
8) better court recording equipment;  
9) the granting of more authority to defense counsel in demanding the inclusion of questions to the jury;  
10) increased ability to submit evidence in support of the defendant's character and mitigating circumstances, if relevant to the consideration of leniency;  
11) assurance that prior convictions and other evidence of poor character remain inadmissible.

From this list, it is clear that advocates were far from being satisfied with the role that was outlined for them in jury trials. These points together reflect a strong belief among advocates that adversarial play in the jury trial process was malnourished.

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178 According to article 427 of the UPK, advocates who are appointed by the court to represent the accused in jury trials are to receive for one day's work in court no less than one-fourth the minimum daily wage.
C. The Preliminary Hearing and Jury Selection

Defense counsel must be present during a new pre-trial phase, the preliminary hearing (predvaritel'noe slushanie), which is closed to the public and occurs before the jurors are chosen. At this time, a judge may decide to set a trial, to return a case to supplementary investigation, to determine the appropriate jurisdiction for the trial, or to dismiss the case on grounds of incorrect procedure or insufficient evidence (article 433 UFK). In allowing investigators another try at producing stronger evidence against the accused, the supplementary investigation presumes guilt, although defense counsel also have used it to call for a dismissal or to escape an immediate conviction.\(^{179}\)

In the preliminary hearing, the defense team members file their petition to institute a jury trial and have the opportunity to argue before the judge in favor of striking certain pieces of evidence from the obvinitel'noe zakliuchenie.\(^{180}\) Because judges are defined in the rules of jury trials as “objective” or “neutral” coordinators, they are under less pressure to conform to the procurator’s interests in retaining all of the evidence collected by investigators. For that reason, along with the general strengthening of the adversarial principle, prosecutors generally have disliked jury trials because they have complicated their work.\(^{181}\) Judges, on the other hand, have responded favorably to their new role. According to my advocate interview data and Stephen Thaman’s study of Russia’s first jury trials, judges granted a number of defense petitions concerning inadmissible evidence filed in preliminary hearings.\(^{182}\) The four advocates taking part in the Melikin case succeeded in having the judge remove 30 pages from the protocol, which added up to a substantial loss of evidence for the prosecution.

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\(^{179}\)By still assuming that supplementary investigations are partial victories, defense counsel often ignore the defense strategy of arguing the presumption of innocence and stressing the lack of proof from the first investigation. On the other hand, the first full acquittal in a jury trial (in Ivanovo Oblast Court in February 1994) occurred after a judge who ruled over three aborted trials of this case (in a regular criminal court) agreed to return it to supplemental investigation. As a result, sufficient exculpatory evidence was gathered for a jury to acquit. Thaman, “The Resurrection of Trial by Jury in Russia,” 101, 134-35.


\(^{181}\)Interview with chairman of IOKA, Albert Bulychev, 5 April 1995.

\(^{182}\)Judges in a number of Moscow and Saratov oblast jury trials in 1993 and 1994 excluded statements of the accused, including under circumstances where investigators did not advise them of their right to remain silent during a time when they cooperated with the investigation as witnesses. During trials, judges pro forma remind defendants of their right to remain silent. Thaman, “The Resurrection of Trial by Jury in Russia,” 91, 103.
Overall, it was an acknowledgment of how poorly the preliminary investigation was conducted.183

While Russian advocates knew that juries tend to acquit more often than the bench, they and their clients usually did not decide hastily to enter a jury trial. For one Moscow advocate, Vilen S.,184 and his client, Khanamer'ian, who was 17 years old at the time of the incident, choosing whether or not to have a jury trial was a critical matter, and it took time. Khanamer'ian had already been under guard for over three years, under charges of murder (article 102 (K) and hooliganism (article 206 (K)). Vilen S. was the second advocate; the first was young and inexperienced and lacked the stamina to work on such an extended case.185

By the time Vilen S. entered the case, jury trials had already been instituted in the Moscow oblast. He and Khanamer'ian carefully weighed their options. On the one hand, they did not want to place all their trust in people who were ignorant of court procedure. On the other, the advocate believed that many of the best judges had already left the Moscow Oblast Court, so he hesitated to entrust a verdict to the bench. They were unable to reach a clear decision on the matter based on possible outcomes, so they chose straws. Looking back after the trial, the advocate was relieved that neither the one judge or a panel of three judges, another option besides the jury or a judge and two assessors, was not taken, "because they undoubtedly would have sided with the militia reports." Most advocates who chose with their clients to have jury trials expressed this opinion.

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183 One of the accused minors was kicked in the right kidney by a militia officer during an interrogation, for example. Investigators refused to hospitalize him.
184 Interview with Vilen S. (MOKA advocate #23, in his fifties), 8 December 1994. I am using only the advocate's first name and the first initial of his surname here, to protect his identity. Unless an advocate is widely published and is used to expressing his or her opinions to the press, I refrain from using names. Vilen S. had been working as a criminal defender for 45 years, but this case turned out to be his first jury trial.
185 Case background: Somewhere out in the Moscow oblast, in early 1991, Khanamer'ian stood next to a bus stop and allegedly beat the deputy director of the local factory severely. The beating was so severe that the man died a week later, the advocate claims because of poor medical treatment of his head wounds. Khanamer'ian, a quiet young man, claimed that he merely witnessed the end of the attack and got blood on his pants -- which investigators claimed linked him to the crime -- while helping the victim. The investigation apparently lasted so long because a military investigator and a Ministry of Internal Affairs investigator were both working on the case. According to the advocate, one investigator tried to have a Duma deputy testify against the accused, just to bring credibility to the case. Various state experts were hired to evaluate the blood evidence and the liability of the hospital which cared for the victim. Meanwhile, the accused stayed in a detention cell all of this time under conditions which, according to the advocate, were putrid.
Jury selection is carried out in a process similar to that practiced in the U.S. First, a number of potential jurors from the oblast are chosen randomly from lists previously compiled by local administrators. From these, one-third are weeded out initially based on their answers to basic questions (such as whether they have any prior convictions). After this, a random method is used to choose one-tenth of the remaining group. Next, the accused and his advocate, along with the procurator and the victims (including family members in murder cases), construct a number of questions to ask the remaining candidates. At this time, the prospective jurors announce relevant reasons for not being on the panel. Then the procurator and the defense both make peremptory challenges (bezmotivnye otvody), for which they do not have to present an explanation. The prosecution may make up to two challenges, and the defense up to four. This stage typically narrows the pool to fourteen. Finally, the judge randomly chooses which two will be alternates.

In the Melikin case in Ivanovo, jury selection was a more involved affair due to Ivanovo's smaller size. The four defendants, seated in the cage, were present, as were their advocates. First, a female candidate was excused because she was a relative of one of the defendants. Then, a male candidate was taken from the list because he worked with one of them. He walked up closer to the cage in a cautious way, as if observing a wild animal, to confirm that he knew one of the defendants. Another candidate, a woman this time, was excused because she had worked with one of the accused. No advocates made peremptory challenges. The final panel turned out to consist of only three women and nine men. In the textile factory town of Ivanovo, where adult women outnumber adult men in the working population, this panel did not reflect the gender balance. Most likely there were more male

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186 Outlined in articles 438-41 of the UPK. See also Thaman, "The Resurrection of Trial by Jury," 84 (FN 143), 95-97. Jury selection in courts across the U.S. consists of a voir dire examination by attorneys on both sides and judges. In theory, it ensures that a jury is relatively impartial and reflects the attitudes and beliefs of the community. Trial juries in courts in the U.S. usually consist of twelve members, although juries of less than twelve are also permitted. For a general background, see Lloyd E. Moore, The Jury: Tool of Kings; Palladium of Liberty, 2nd ed. (Cincinnati: Anderson, 1988).

187 In cases in the Moscow Oblast Court jurors come from around the huge oblast. At the end of each hearing, the judge usually struck deals with jurors to ensure that they could reach the court on time. They were not being sequestered. Each receives for his service one-half the salary a judge receives a day, which tends to be considered to be a satisfactory amount. Each court has its own fund which covers these expenses.
jurs in Ivanovo because so many women were family breadwinners, and thus had reason to be excused from jury duty.186

D. The Trial

During jury trials, judges are required to instruct juries in certain concepts and methods, for example, by emphasizing that a defendant's choice to remain silent does not indicate his guilt. In the five jury trials that I observed in 1994-95, judges informed jurors of their duties to determine the facts of the case and to support the rights of the defendants. They also emphasized that the statements made by the prosecutor and the advocate do not act as evidence but are ways in which it is systematized.189 Unlike in the regular criminal court procedure, in a jury trial the judge lacks all accusatorial functions related to charging a defendant, dismissing a case, and conducting its prosecution. Instead these functions are reserved for prosecutors, who must participate in every jury trial. Also, new rules allow the two sides to interrogate witnesses first, followed by the judge and the jurors.

As outlined in regular court procedure, the judge dominates the questioning. In jury trials, unlike in regular courts, "the parties carry the burden of convincing the trier of fact [the jury] to decide in their favor."190 However, in the Melikin case, the judge, a female in her early forties who had traveled to the U.S. on a judge-training program, dominated the questioning of witnesses and the defendants. Judges' questions also dominated the court investigation during two of the jury trials that I observed in the Moscow Oblast Court. To her credit, the judge in the Ivanovo case emphasized to jurors how the accusation did not act as a

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186 Stephen Thaman also noted that in two Ivanovo jury trials he observed, more male jurors participated. Thaman, "The Resurrection of Trial by Jury in Russia," 96.
189 See N.V. Golubov, V. A. Gordiev, L.M. Komozova, E.V. Kriuchkova, and S.A. Pashin, "Letopis' suda prisiizhnykh (preisdenty i fakty)," Vypusk 4 (Moscow: GPU, 1995), 23. Jurors must answer four main questions: 1) Is it proven that a crime (activity) took place?; 2) Did the person standing trial complete the crime (activity)?; 3) Is the person standing trial guilty of the crime (activity)?; and 4) If found guilty, should the sentence be more lenient? Before the jurors deliberate after the conclusion of the court investigation, however, they are given a longer set of questions composed by the judge with the assistance of the prosecutor and advocate. The jurors themselves are allowed to pose questions during the court investigation; they write them down and pass them to the judge, who presents them to the relevant person.
190 Thaman, "Trial by Jury and the Constitutional Rights of the Accused," 79.
piece of evidence, but was rather a document of the investigation. While this message and the 
advocate’s ability to have pages struck from the protocol of evidence is a step in the right 
direction, it still does not overshadow the fact that, once a jury trial begins, the advocate must 
defend his or her client against the investigator’s report.191

The witnesses, whether they are expert or non-expert, typically are not called by either 
side per se but are called on to make trial appearances by whichever procurator’s office is 
overseeing the case.192 Consequently, the majority of the witnesses, including the paid expert 
witnesses, speak on behalf of the prosecutor’s evidence. Because the part of the UFK which 
outlines rules for conducting the preliminary investigation does not explicitly call for a 
parallel investigation by the defense, it is not stipulated in Russian criminal procedure for 
advocates to collect their own evidence. Rather, advocates petition investigators, procurators, 
and judges requesting that new pieces of evidence and the testimony of more witnesses be 
added to the investigative report.193 Prosecutors in the jury trials that I observed, as well as 
those Thaman observed, tended to read regularly from this investigative report (what they 
typically did in non-jury trials).194

During the two weeks that the Khanamer’ian case was heard, Vilen S. had to fight the 
forensic findings of the state’s expert witnesses. In the process, the advocate became an expert 
on blood evidence. He was frustrated that he could not hire his own experts. Only because of

191The observations of jury trials in Saratov compiled by Professor William Burnham for CEELI indicated similar 
findings. He pointed out how advocates were in a weaker position because they did not make opening 
statements which could counter the prosecutor’s reading of the indictment; nor did they respond aggressively to 
questions asked during the first court interrogation of their defendants. Also, judges tended to consciously limit 
advocates’ time in questioning witnesses, and issues of admissibility of evidence were discussed directly in front 
article about the first round of jury trials in which the author brings out weaknesses of the defense. Deborah 
Trial by Jury in Russia,” 99-101, in which he explains the structural reasons behind defense’s subordinate role 
(such as the overemphasis on supplementary investigations) and the weakness of the presumption of innocence.
192In jury trials, the judge and jurors may only question a witness after the sides have completed their 
questioning (article 446 UFK).
193It also continued to be the norm that advocates and prosecutors remain in their places while questioning 
witchesses and presenting their final arguments (instead of standing directly before the jury). This physical 
arrangement was problematic, as sometimes the court actors directed their comments more to the judge than the 
jury.
194They are supposed to avoid reading at trial a witness’ testimony from the preliminary investigation unless it 
contradicts his testimony on the stand, but this sometimes occurred without impunity at the first jury trials. 
a serendipitous circumstance -- the main expert was not coopted by the prosecution and, instead, acted like a maverick of sorts -- did the case end in full acquittal. The expert concluded that the forensic results had no basis in fact. Vilen S. stood up and pointed out the contradictions in the results, and this expert concurred and added that the hospital where the victim was treated made severe errors in the treatment of his head wound. According to the advocate, the jurors became more attentive when the expert said this. The procurator failed to get the court to agree to a lesser charge, in order to guarantee a conviction. In the end, the jury acquitted most likely because of the expert’s testimony.

The Melikin case also turned out well for the four advocates working on it, because the accusation was based on the testimony of a teenage girl who had a reputation for being untrustworthy. The advocates were easily able to discredit her testimony, as well as the forensic evidence. Moreover, the prosecutor relied solely on the forensic evidence and often read the report verbatim to the jurors. He apparently did not have the ability to synthesize it in a credible way before the jurors. Another judge in the Ivanovo Oblast Court, whom I interviewed before the trial concluded, believed that the defense would win since the evidence clearly was weak.193

In the Karpukhin case, a jury trial in the Moscow Oblast Court occurring from November through December 1994, a juvenile was accused of attempting to kill a militia officer and of malicious hooliganism (UK articles 191.2 and 206.3, 15-year sentence for the former). A charge involving the mistreatment of a member of the militia was a serious one, which is why a jury trial was applicable. His defense counsel, Aleksandr K., was a young and dynamic MOKA advocate, who was confident from the beginning of trial that his client would be acquitted of the attempted murder charge. This was only his second time defending a jury trial. Aleksandr K. admitted that he had little influence when it came to non-jury trials

193Interview with male judge at Ivanovo Oblast Court, who also taught criminal law classes at Ivanovo University, 6 April 1995. There is no formal guideline in the CPK or handbook which outlines for juries a standard of establishing guilt “beyond a reasonable doubt,” although some judges have used this and other standard American jury instructions (mentioned in CEELI’s Draft Benchbook, prepared by American lawyers before a second handbook including Russian jurists was published) during their summations before juries. Thaman, “The Resurrection of Trial by Jury,” 124.
because "it all depends on how much blat (influence and money) you have with which to convince a judge." In this case, he knew that he would have a good chance of winning, by arguing that the charges were too stiff and that there were mitigating circumstances involved (i.e., no one was severely injured, and it was his client's first offense). The advocate believed that the judge, a woman in her late thirties, was fair, although he had known others in the past who were not. From the point of view of a western observer, however, the judge was overly didactic before the jury and came across as being accusatory. She criticized the boy's mother for raising him incorrectly and the boy for not attending to his studies.

Aleksandr K. immediately went on the offensive against the investigative report during the court investigation. He pointed out to the jury that, although his client had confessed earlier to committing acts of hooliganism, he had not admitted to hitting anyone with an ax or to threatening anyone with bodily harm. In the mind of the 17-year old, he was taking out his anger with the ax because of a fight with his girlfriend. The advocate noted that the militia officers gave contradictory testimony and could not even recall by whose summons they had come to the scene. Moreover, no one saw the boy attack the militia officer. Aleksandr K. presented a spravka (information letter) describing how some growth was forming on the hand of the militia officer, but it did not indicate exactly how the trauma was received. The advocate proclaimed that the only injured party was his client.

Two jury trials in the Moscow Oblast Court, the Kozlov case and the Riakhovskii case, however, did not go well for the defendants. This was largely because most of the evidence appeared to be culpatory, and, from the beginning, the advocates in these jury trials assumed that their clients had little chance of being fully acquitted. But in the Kozlov case, which took place in March 1995, the inconsistent behavior of the advocates further increased the
defense’s problems. This was another case involving multiple defendants (five). One, Kozlov, was charged with murdering two men from whom he hijacked cars in late 1993 and was eligible for the death penalty; the remaining four were accomplices or had bought the cars.198

After the first hearing, the main advocate on the case, Otar K., was sure that he had already lost on one murder count, since his client confessed to the first murder. His client, Kozlov, insisted on having a jury trial, because he believed that jurors would be more lenient. Otar objected to having one, but had agreed with his client’s wishes. The advocate’s main goal now was to convince the jurors to ask for leniency in sentencing.199 His approach was to emphasize the harsh methods of the investigators on the case and to convince the judge to strike more culpatory evidence from the investigator’s report. Otar K. showed a video tape of one of Kozlov’s interrogations, which he hoped would support his claim that investigators acted maliciously against his client.200 During this interrogation, Kozlov appeared pressured into confessing (another advocate was present who was acting quite passive). Otar K. also stressed to the jury that no one had seen his client with the second victim, nor had a body been found. Lastly, he claimed self-defense for his client in the first murder.

While Otar K. came across at times as an aggressive defender, at other times he did not object when he should have, nor did he always question witnesses thoroughly. Part of this behavior may have had to do with his habit of alcohol abuse, something which was confirmed later by the judge who presided over the trial. Otar K., however, was still the most vibrant of the five advocates throughout the court investigation. One advocate brought in a newspaper

198In the first murder, the main defendant, a man in his mid-twenties who had a wife and daughter, allegedly hijacked the car that a retired army colonel was driving, and then killed him with a knife. The body was found in this murder. In the second murder, however, the body of the owner of a car which Kozlov allegedly hijacked near a train station in Moscow was never found. Both victims' cars were bought by two of the minor defendants.

199Jurors do not set sentences, but recommend to the judge whether or not to apply leniency. Interview with MOKA advocate Otar K. (a Georgian), 7 March 1995. He served as defense counsel on six other jury trials, half of which he succeeded in getting his clients acquitted. In this trial, he was under contract with the defendant’s family; the other four advocates were court-appointed.

200The obtaining of statements made by suspects and witnesses is a central task of criminal investigations. In most of the first one hundred jury trials, the accused allegedly confessed at least partial guilt. As damage control, advocates typically waited until trial to argue the validity of such confessions before a jury, rather than petition a judge in the preliminary hearing to expunge the evidence from the investigative report. Steve Thaman, “The Resurrection of Trial by Jury in Russia,” 92.
to read; another stared off into space. In other words, these four other advocates had not refined their behavior in light of the structural changes in the jury trial. They generally acted passively until the judge called on them or until the time came to present final arguments.201

Both the judge and an advocate who was observing the trial also believed that the advocates were not performing as assertively as they should have.202 The judge noted how the advocates, especially Otar K., missed an opportunity in the preliminary hearing to file petitions concerning the admissibility of some of the pieces of evidence compiled by the investigators. “Some of the evidence was questionable, but these advocates did not raise this issue,” he added. He found in general that advocates had not been trained properly to establish doubt and were handicapped because they could not collect evidence independently.

Another jury trial at Moscow Oblast Court, the Riakhovskii case, looked like a sure conviction on all counts. Before the trial began in early May 1995, the alleged Moscow serial killer, Sergei Riakhovskii, was already well-known, due to the case’s early media exposure. Television news and the popular newspaper, Moskovskii komsomolets, ran stories about him before and during the trial.203 This trial could only be referred to as a public spectacle.

Riakhovskii, a large man in his mid-thirties, who took voluminous notes in his cage during trial, stood accused of nineteen murders, six attempted murders, six charges of theft, and one charge of rape. The case file contained 26 volumes of materials. Because of Russian criminal procedure, each murder needed to be deliberated on separately; as a result, the trial spanned months. Riakhovskii confessed to a dozen or so murders, but retracted confessions for the remaining ones. He aided the investigator in locating several of the bodies and insisted that the murders he committed in woody areas in Moscow were not immoral because many of

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201 Sometimes in other jury trials this passivity was manifested in the way in which procurators, not defense counsel, would petition judges at preliminary hearings to expunge evidence in violation of the law. Thaman, “The Resurrection of Trial by Jury in Russia,” 93. Final arguments are called prenja.

202 Interview with judge at Moscow Oblast Court who oversaw this case, 17 April 1995. He said that the advocates were not well prepared, and their stories often contradicted one another. An MRKA advocate (MRKA, former procurator in his forties) who observed the trial echoed this assessment. Interview 9 March 1995.

203 Television cameras were in the courtroom during most hearings, and usually only victims’ families were permitted to sit in the courtroom as spectators. I was allowed to observe a hearing only when Aleksandr K. received permission from the judge.
his victims were supposedly homosexuals and prostitutes. Riakhovskii was detained by police as the main suspect of several murders on 13 April 1993. His first advocate left in disgust at the end of the preliminary investigation, at which point Aleksandr K. took over.

Because of his aggressive approach to advocacy, Aleksandr K. did not see this as an open-and-shut case. While he conceded that his client would be held responsible for most of the murders, he believed that some of the charges were worth fighting over, due to a lack of tangible evidence. In this way, he hoped that his client could be spared execution. Unlike in American courts, the defense rarely uses the insanity plea in Russia. This defendant would stand trial as a sane Russian citizen. The advocate chose to use all of his defense weapons, including those which judges in American jury trials most likely would find highly objectionable.

The most obvious technique that Aleksandr K. used in examining witnesses, for example, was to create an atmosphere of doubt about the reputations of some of the victims. In such a way, the advocate attempted to deflect the feelings of disgust that jurors probably already had away from the defendant and onto the victims. Early in the trial, Aleksandr K. began to insinuate before the jury that certain victims were homosexuals, and that they may have consented to having sex with his client. Until just a couple of years before, homosexuality was a criminal offense in the USSR and Russia. In 1995, strong anti-homosexual sentiment remained. The advocate apparently wanted to exploit these prejudices. He asked the mother of one victim, “Did your son have any homosexual liaisons?” Although she answered no, his asking the question might have influenced some jurors’ minds about the victims’ character.

\(^{204}\) Olga Boruslavskaya, “Neljud,” Moskovskii komsomolets, 28 April 1995, 2.

\(^{205}\) Unfortunately, I was only able to sit in on one full hearing of this case and therefore cannot comment any further on its proceedings other than the final outcome.

\(^{206}\) However morally repugnant this tactic was, it did reveal that the defense attorney was making a genuine, if desperate, effort to represent his client.
E. Final Statements to the Jury and Outcomes

In the tsarist period, leaders of the Moscow, St. Petersburg, and Kharkov Bars had emphasized to their members the importance of oratory skills, and had often published excerpts of speeches given by sworn attorneys at trials. Even in the Soviet period, books continued to be published on advocates' speeches, although they often reflected the rhetoric of socialist legality. In the early 1990s, colleges of advocates no longer emphasized socialist legality or any other political standard, but encouraged their members to improve their speaking skills in order to better represent their clients. When advocates in interviews referred to how working on jury trials challenged their skills, they often focused on the quality of their closing arguments -- how they intended to convince the minds and manipulate the emotions of the jurors in the course of one speech.

In trial courts across most states in the U.S., jurors must reach unanimous verdicts in criminal cases, otherwise they are considered "hung" juries. In contrast, in the Russian jury trial, rules for reaching verdicts are based on the prerevolutionary model: initially, the jury is given a set amount of time (three hours) to reach a unanimous verdict; after that time elapses, majority voting follows. Many western legal consultants opposed this method, but their criticism failed to sway the Russian drafters of the jury law in 1993.

In the jury trials I observed in Moscow and Ivanovo in 1994 and 1995, the advocates often gave more compelling performances than the prosecutors, who continued to read from the "script." In the case of Karpukhin, the advocate Aleksandr K. spoke directly to the jury during the closing arguments. He moved some of them to tears, as he recapped the arguments he had built during the court investigation phase. The jury then acquitted the boy of all charges.

207Defendants also possess the new right to give a final statement, which they often take advantage of, either to reassert their innocence or to plea for lenience. They more often than not were self-incriminating. In Kozlov's case, during his closing statement he did not again confess his guilt in the first murder, but asked his mother for forgiveness and mentioned that he had served honorably in the Soviet army. Victims too give closing statements, and they usually are the most undirected and emotional. Their speeches in Kozlov's trial led the judge to tell the jurors that they needed to take the families' grief into account but decide on the basis of facts.
At certain moments during the 25-minute speech Otar K. gave on behalf of Kozlov, he almost yelled; at other times, he whispered. He noted, “I understand your grief, victims, but we are here to determine fact and guilt, which is what the jury was created for.” The advocate spoke of democratic changes in Russian society and urged the jury to look at the deeper facts of the case -- namely what he referred to as a breach of investigatory procedure. He spent a large amount of the time talking about procedural violations, particularly about how Kozlov’s first defense counsel had been passive and unhelpful to him during interrogations. Then Otar K. tried to deflate several of the main points that the prosecutor had just made in her final statement, including the fact that the exact circumstances of the second murder had not been determined. Finally, he asked the jurors to apply leniency should they find Kozlov guilty. The other advocates on the case distanced their clients from Kozlov in their closing statements; all of their clients had proclaimed their innocence. The last defense attorney to speak talked about the importance of the presumption of innocence and how his client was no threat to society.

The jury found all five guilty of their respective crimes. Kozlov received only fifteen years for the two murders, because of his family situation and because it was his first conviction. A co-defendant received eleven and a half years for aiding and abetting. The other three were convicted of lesser crimes; one of them (the youngest) was acquitted by the judge at the sentencing hearing. Otatar K. appeared 40 minutes too late to hear the verdict and did not appear for the sentencing; the judge wrote a critical evaluation of him and sent it to the college presidium of MOKA, where he was a member.

In the Melikin case, each advocate gave a convincing speech. The advocates had a strong enough basis on which to discredit the prosecution’s case, and their presentations sounded compelling and logical. Moreover, their final statements were not in contradiction to

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209 The prosecutor proceeds first, followed by the victims, the defense attorneys, and then the defendants. After this sequence closes, the prosecutor and defense attorneys can rebut certain points.

210 Judges can change a verdict only to an acquittal, not vice-versa.

211 One of the advocate’s colleagues tried to cover up for him when I asked why he did not appear, a clear illustration of how professionals tend to protect their own more than penalize them for inconsistencies.
each other, as they were in the Kozlov trial. The advocates emphasized how the forensic report had been biased against the defense and how the gun had only one bullet in it. They stressed that their clients had no real motive for attempting to kill the victim. Moreover, they pointed out, the case was not dismissed before trial because the investigators did not take into account the compelling testimony Melikin gave during the preliminary investigation.

One advocate argued that many boys had been acquiring guns in Ivanovo lately to protect themselves and that the two minors did not act maliciously. Another advocate also raised the point that her client was being held under guard for longer than the usual time, but that the prosecutor had not taken the proper measures to extend his detention. In her commanding speech, the advocate who had been the first defense attorney to secure a full acquittal for her client in a Russian jury trial urged the jurors to be objective and to thoroughly analyze the evidence. In contrast, the prosecutor mumbled during his speech, forgot the names of witnesses, and made general statements which claimed that the investigator's report was “objective.” Before sending the jury off to deliberate, two advocates asked the judge to allow them to reword a couple of the approximately twenty-five written questions that the jurors needed to answer, in light of the fact that the questions implied that Melikin already was found guilty. The judge complied.

The four advocates in this case were relieved to hear that their clients were all acquitted of their charges of attempted murder. Although they had been somewhat confident that they would secure an acquittal, the advocates also were afraid that the jury might be swayed by their fear of crime. This time, the jurors made a decision based on the lack of evidence to convict.

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212 The judge prepares a list of questions for the jury to answer, apart from their mandatory questions. Then the defense counsel and procurator may propose revisions. For more on the questions, see Thaman, "The Resurrection of Trial by Jury in Russia," 114-23.

213 The two main defendants, the "executor" and the "organizer" remained in the cage until the victim announced that he did not want to press a lesser charge, such as bodily injury (what the jury had recommended). The prosecutor proposed that a civil case related to moral damage be filed, but this was an unrealistic option for the victim: the families of the two main defendants were poor and there was no money to be recovered.
Finally, the jury in the Moscow Oblast Court convicted Sergei Riakhovskii of all but one count of murder in the summer of 1996, and the judge sentenced him to death. Three of the counts of attempted murder were reclassified to hooliganism. However, the advocate, Aleksandr K., did not view his performance as a total failure, because he convinced the jurors to take his arguments into account when it came to deliberation. He recounted that “The outcome of the case attests to the fact that the jurors related well to my arguments; and in several murder counts, the guilt of Riakhovskii was established by only a margin of one person (seven voting for conviction and five for acquittal).” Despite the fact that this case received an unusually large amount of media attention, not to mention that the accused had confessed to a number of murders, jurors still respected the work of the advocate and at least entertained the possibility of innocence.

F. Reasons for the High Rate of Acquittals

Why were Russian juries handing down more acquittals? First and foremost, juries in various countries tend to act more leniently than the bench. In those countries where they may deliberate on sentencing, juries more often hesitate before giving death sentences, and are more likely to take into account the mitigating factors of a defendant’s personal circumstances. Juries may rule on facts, but when it comes down to the verdict, they can be governed by their emotions and prejudices. Russian advocates did not deny this tendency, and the most attentive ones tried to benefit from it by improving their rhetorical flare and inserting the personal into the process. They felt that the jurors brought to the trial an element of uncertainty that bench trials lacked. They also felt that this worked in their favor.

Almost all of the advocates whom I interviewed strongly believed that the role of advocates in determining outcomes and in preventing procedural violations was being strengthened by jury trials. Still, it is difficult, unless one interviews a large sample of former

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jurors, to determine just how much influence advocates have had thus far in the outcome of jury trials. Instead of making one blanket statement about advocates and outcomes, it is better to take each case as a separate matter and observe how individual advocates performed in different phases of the trial process. Stephen Thaman partially attributes some acquittals to the efforts of advocates, but he also counsels caution in according them too much credit. He notes that “just as often [decisions favorable to the defense] are the result of the sympathies of juries who have received little or no help from either the prosecution or the defense in understanding the case.”

Some advocates, including Aleksandr K, Vilen S., and three of the four advocates in the jury trial in Ivanovo, were more assertive in their delivery and their ability to challenge the prosecution on evidence than many of their counterparts, who were more passive. Because of the efforts of the more active advocates, more evidence was struck from the record, and more violations committed by investigators were aired. Passive advocates sat in the courtroom, reading newspapers or falling asleep until it was their turn to make a statement of some sort. Unfortunately, the problem of alcoholism also permeated the ranks of advocates. The main advocate in the Kozlov case was intelligent and had a good record of winning other jury trials. But in this case he acted inconsistently, and in so doing let down his client. On the one hand, the structure of the process still encouraged advocates to be more passive than active. On the other, when advocates were demanding and persistent in jury trials, jurors did appear to respond, and judges sometimes treated these advocates as equals with the prosecutors, granting advocates ample time to challengeculpatory pieces of evidence.

217I use the word “sometimes” because certainly some judges disliked the interference of advocates in their cases and preferred them resolved in a timely fashion. Other judges who consciously tried to be objective exhibited actions and gestures during jury trials which could be viewed as accusatorial. One judge in the Moscow City Court, who otherwise spoke in a relatively objective fashion, would nod “yes” often when the prosecutor was making a statement or asking a question. He did this during the prosecutor’s closing statement as well. This problem with judges’ giving nonverbal cues to jurors is not unique to Russia; however, in trial courts in the U.S., judges have been known to give nonverbal communications which have had a prejudicial effect on cases. See Rochelle L. Shoretz, “Let the Record Show: Modifying Appellate Review Procedures for Errors of Prejudicial Nonverbal Communication by Trial Judges,” Columbia Law Review 5 (June 1995), 1273-1300.
Should rules governing the procedure for collecting evidence during the preliminary investigation change to permit advocates to conduct their own parallel investigations, the acquittal rate may continue to rise. Moreover, more cases would probably be dismissed before they ever came to trial. But until the TFK is revised, advocates will have to act within the confines of investigators’ transcripts and supplementary investigations, whether they are representing clients in jury trials or in regular courts. In a survey taken of 405 jurists who had taken part in Russian jury trials, 60 percent of the respondents answered that they believed that jury trials had raised the quality of criminal procedure and would strengthen court authority and, ultimately, democracy. Thirty percent argued that jury trials complicated court procedure.218 These results suggest that in the early 1990s, juries did in fact have strong supporters in the legal community, advocates and judges among them. At the same time, they also had a good number of opponents. The opponents most likely were procurators, who traditionally occupied a better position from which to convince elites in powerful state agencies to halt efforts to limit the strong discretionary powers of law enforcement officers.

If jury trials, as they functioned in the mid-1990s, left advocates dissatisfied, particularly with limits placed on defense’s actions in evidence-gathering and on jurisdiction, they did offer advocates the possibility that their role in court might continue to improve. Jury trials gave defense attorneys hope at a time when they perceived that little had changed for them in regular courts.

Conclusion

Advocates working as defense attorneys in the Soviet era had never been mere puppets of courts or of the regime in place at a particular time. In fact, they were given some opportunities to cull minor victories. But they were always working within a system which constantly placed them at a distinct disadvantage. More often than not they were representing the disenfranchised of Soviet society: those without high-powered connections and those who

218Ten percent of the respondents were undecided. Rudnev, “Prisiazhnye zasedateli.”
would not conform to the rules of socialist legality. Moreover, advocates were positioned opposite a prosecutorial machine that had considerably more resources at its disposal and more pressures on it to perform and fulfill a central plan.

To some extent, western defense attorneys have also had to compete against prosecution teams with more resources at their disposal, including the backing of the state. The uniqueness of Russian advocates' work, however, lies in the details and the extent of limitations placed on their role -- the specific nature of accusatorial bias in their criminal justice system. The inquisitorial approach to administering criminal justice since tsarist times always contained some adversarial elements (i.e., the notion that the accused had a defense attorney at all). These circumstances forced advocates into a dual role: defenders of alleged law-breakers and assistants to the court. Simultaneously, advocates were "ordering" society by reconfirming the rules of criminal procedure and opposing the interests of the state.

There is no doubt that many conditions improved for Russian advocates between 1985 and 1995. Some of these improvements, which allowed more advocates into pre-trial stages, were a part of a wave of reforms that began in the Khrushchev era. Others, like the jury trials, came after the USSR's collapse. The reforms outlined in the Criminal Procedure Code -- the right to represent a client at the time of detention in certain cases, the presumption of innocence, the equality of the sides, the right of habeas corpus, and the right to participate in the preliminary hearing in jury trials, to name a few -- are significant, at least in theory. They illustrate that certain key elites in state organs, as well as national legislators, responded positively to the lobbying efforts legal scholars and advocates were making in the 1980s.219

Statistics show how, since the late 1980s, advocates entered in greater numbers into preliminary investigations and more of their petitions were being granted by judges and law-

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219Recent surveys of political elites and university educated citizens in Russia show that these groups tend to reject the belief held by authoritarian-minded individuals (synoptic thinkers), many of whom tell into the category of the undereducated, that there is only one correct philosophy. Instead, they believe that culture is relatively malleable (i.e., people can change their attitudes). In fact, political elites surveyed in the winter of 1993 "were far more likely to associate themselves with statements congenial to western notions of liberal or market democracy than were university attenders." See William Zimmerman, "Synoptic Thinking in Political Culture in Post-Soviet Russia." Slavic Review 54:3 (Fall 1995), 630-41.
enforcement officials. In addition, acquittal rates were high in jury trials. Most significantly, advocates no longer were as afraid of suffering the consequences of aggressively defending their clients -- namely, disbarment and arrest.\footnote{Some fear still existed because there was evidence of advocates’ being taken into custody by militia officers for allegedly violating procedural rules. Editors of Advokat (“Vo imia prav cheloveka,” Advokat 7:37, 1994, 1) mentioned how a number of MGKA advocates had been arrested that year in connection with their criminal cases. Also, a number of advocates were murdered, in connection with their work on criminal cases. In late September 1995, for example, advocate Evgenii Melnitskii of St. Petersburg was found violently murdered in his car. He was a member of the Lakubovskii defense team.} They also now were more often admitted into political cases that involved government secrets, when earlier they had been locked out or permitted only if with special KGB passes. In the early 1990s, more doors swung open for advocates. They held unique skills as defenders, which were appreciated and called upon more than ever before. A new awareness of advocates’ work appeared in the news media, and journalists came to their assistance in high profile cases.

In the first half of the 1990s, Russia was moving -- albeit slowly -- in the direction of legalism, and advocates now had more direct access to the process of criminal justice. Anyone who evaluates public-policy outcomes knows, however, that what is established in theory is not always implemented as planned. In the pre-trial phases, investigators still had and used the prerogative to reject advocates’ petitions, including their requests for outside experts. In court, including during jury trials, accusatorial bias, best exemplified by the continuing reliance on the investigative report and advocates’ inability to present their own body of evidence, compromised the development of adversarial play. Conservative attitudes, along with informal and established practices embraced by less liberal elements of the legal community, continued to hamper change.
CHAPTER FIVE
GAUGING CHANGE IN PRACTICE:
ADVOCATES' INVOLVEMENT IN THE CIVIL SPHERE

Economic relations with the other CIS countries have been complicated by the latter introducing economic legislation of their own. All this has called for radical changes in the functions of the lawyer -- the manager's and entrepreneur's closest advisor. -- Andrei Ivanov, advocate at the Moscow Legal Center, in a 1991 interview in Business Contact

Privatization rules are not in the interests of the people, but in the interests of powerful figures. Vouchers did not defend the people. Earlier [in Soviet times] the economic rights of the people were defended here.

-- advocate on economic conditions in Ivanovo in 1995

As an individual, I do not much believe that the shortest road to justice is through the courts, but as a lawyer, I cannot recommend to my clients any means which are not stipulated by law. -- Moscow business advocate

Mikhail Barshchevskii, in a 1995 interview published in Sobesednik

In western countries with market economies, lawyers generally play substantial roles in developing and maintaining capitalistic principles and institutions by representing the rights and interests of their clients. Some critics would go so far as to argue that lawyers in these countries, especially in the United States, have protected and articulated their clients' individual interests to the detriment of the common good.

Countries with market economies experience civil law in a vastly different way from countries which have centrally planned economies. In his work, Max Weber explained how capitalists thrive best in a predictable environment made stable by rules and norms. The law as an official organ of coercion insures that state and societal actors are subject to rules. A bureaucracy, in its quest to rationalize administrative processes, stresses hierarchy, specialization, and experience.¹ Research on lawyers in Continental and Anglo-American countries shows that the development of a market economy and bureaucratization of political rule tends to lead to the growth of a legal profession.² Experience in these countries suggests that lawyers are essential to laying out the details of disputes. Their specialization in bureaucracies, legislatures, and market economies places them in a position to influence outcomes and even create new policies and forms of management.

In contrast, the role of Soviet advocates was to strengthen “socialist legality,” with emphasis on the proclaimed common good, and to follow orders set by state officials, which, more often than not, limited their autonomy of personal action and access to clients. Many civil disputes were settled outside courtrooms and within local administrative offices and enterprises, and therefore often without the participation of advocates (beyond their completing a few formal documents for one-time walk-in customers). These limits placed on public action reflected the fact that the Soviet Union lacked a market economy and contract and private property rights.

One social scientist recently argued that in Eastern Europe, including the former Soviet Union, “[w]hat is open for negotiation is not just the character of the regime but also the very nature of the state itself, not just citizenship but also identity, not just economic liberalization, but also the foundations of a capitalist economy.” The creation of a “range of new interests” to which she also refers is not simply a shift but a reflection of the gravity of the changes in the 1990s. When we examine the ways in which Russian advocates represented the rights and interests of individuals, groups, and private businesses in civil matters in the first half of the 1990s, we can view a range of new interests and relations.

Soviet political elites rarely allowed for separate spheres to exist apart from the state after the 1920s. Some post-Sovietologists, wary of the term “civil society” being applied too prematurely to the former Soviet republics, have cautioned that a country only has a civil society if it has social groups which exist apart from the state, and which, along with state actors, accept the same rules of behavior. Moreover, such groups must accept the fact that the state has a vital role in structuring public life, and both state actors and groups in the public sphere must generally agree on the contours of the boundaries between them. This chapter

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examines this particular understanding of civil society insofar as advocates are involved in such developments (in certain areas of their practices).

Beginning in the late 1980s, Soviet state officials adopted policies to encourage the formation of democratic institutions and a market economy. Legal institutions, such as the judiciary and the advokatura, prepared to uphold laws which supported the creation of a market economy, particularly those governing private property and contracts. Were Russian advocates, in fact, playing an influential role in the development of new economic principles, institutions, and relations in the early, formative years of the capitalistic experiment (1989-95)? Why or why not?

Whereas in the previous chapter we explored how advocates defended the rights and interests of the accused in criminal trials, in this chapter we will explore how they defended the rights and interests of clients in the civil sphere. It touches upon how advocates mediated and created new relations between state and societal actors, as well as among societal actors involved in disputes. In addition, the chapter examines the work that advocates performed as business consultants. Finally, special emphasis is placed on privatization and property ownership disputes, arbitration disputes, citizens' formal complaints against the actions of state officials and state organs, and consumer and environmental protection advocacy. These provide the most dynamic areas in which to evaluate how new interests were articulated and relations developed in the civil sphere.

The work of Russian advocates in the early 1990s makes an excellent focal point for a study of changes in state and societal relations, not only because these lawyers were counseling and representing business interests, but also because they continued to represent the disadvantaged in the unstable post-Soviet economic and social terrain. The extent to which the representation of advocates met the needs of various clients, though, will be

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3 Soon after the USSR's demise, temporary measures were passed to support such a transition, including a resolution regulating civil legal relations in the period of economic reform ("O regulirovanii grazhdanskih pravoootnoshenii v period provedenia ekonomicheskoii reformy," passed by the Supreme Soviet on 14 July 1992). Certain USSR laws still remained in effect, which only complicated matters.
examined. In the early 1990s, advocates did not yet occupy influential positions as lobbyists, business counselors, or legislators in numbers equivalent to those in many western countries. They were faced with forces and continuing patterns of relations which prevented this. Still, advocates did become players in the developmental processes of a host of new relations and institutions.

Changes in Civil Practice: An Overview

Economic law-making in Russia, as in any country, is a political process marked by the changing preferences as well as constraints of its creators. Whereas in Soviet times, legislative drafting was made within elite circles inside economic ministries and high CPSU organs, in the post-Soviet period more actors and interests entered the policy-making fray. As a result, the business of passing laws became a far messier and perplexing process.

Russian lawmakers had experimented with wider participation before. In the late tsarist period, various conflicting opinions arose over many stipulations in Imperial civil law, because of the significant changes in society and the economy that were occurring at the time.6 Policy outcomes were mixed. A century later, in the early 1990s, a similar dynamic was being played out in legislatures, courts, administrative offices, and businesses, as new values and attitudes about the economy and civil relations were constantly forming and challenging one another. Whereas the tsarist autocracy was the main barrier to the development of strong capitalistic and democratic institutions one hundred years ago, in the early 1990s, the Russian government failed to establish and support rules governing stable market institutions. As a result, a kind of "crony capitalism" emerged, based on networks formed by the old Soviet centralized economic infrastructure. Those people who have

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6For an excellent discussion of controversies over the revision of marriage, property, and inheritance law in the late tsarist era see William G. Wagner, *Marriage, Property, and Law in Late Imperial Russia* (Oxford: Clarendon, 1994). Wagner concludes on p. 383 that "the Soviet experience, too, [as late Imperial civil law demonstrated] demonstrates that although the law affects behaviour, it is far easier to change the law than to use it effectively to inculcate specific values, control behaviour, or shape social relations in conformity with ideals." However, Wagner does argue that, parts of the judiciary in the late tsarist era took the initiative when legislative change proved to be ineffective to adapt existing civil law to changing conditions and resolve ideological and political conflicts over the law. It will be interesting to see if that dynamic arises in the first decades of the post-Soviet era.
benefited -- the business elites and economic ministries -- have little incentive to change the situation, since change would jeopardize their preexisting arrangements.7

According to one observer, state actors “devoted few resources to developing a court system capable of defending even investors or property owners, let alone consumers or workers.”8 Undoubtedly, courts suffered from a dearth of judges and were burdened with complicated and protracted new economic cases.9 But more often than many observers assumed, courts were defending these interests. It was when court rulings were not implemented that problems often arose and Russians discounted their authority and relevance. Additional forces, some of which emanated from the two other branches of government, tended to cancel out whatever reform efforts courts made. Yeltsin’s administration and the regional governments failed to nurture market-supporting institutions; conflicts between the executive and legislative branches constantly arose; and organized crime elements exerted a troubling influence over local officials and segments of local economies.

A. Advocates’ Reactions to New Laws

In the first years of the post-Soviet period, advocates’ work in the civil sphere was constrained by some of the forces described above, as well as by the piecemeal ways in which new economic laws were being drafted.10 Regulations on privatization, property, land, patents and trademarks, bankruptcy, securities, banks, and taxation proved to be particularly inadequate as guidelines. Dozens of advocates interviewed by the author in late 1994-95 complained of the difficulties they faced in putting some of these laws to use.

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9In interviews in People’s Courts in Moscow and Ivanovo and the Moscow City Court, some judges mentioned how they were overwhelmed by the number of new civil cases on their dockets and did not have the time to familiarize themselves properly with new laws. Two judges at the Moscow City Court on 21 February 1995 noted these problems in particular detail.
10Most deputies in the federal Duma, as well as regional legislatures, had no legal education. Some staff members who worked for federal Duma deputies or on committees, however, did and were once even practicing advocates. Also, Duma committees contracted consultants who were legal scholars or advocates to work on draft laws. But the final word about draft law texts was given to the politicians themselves.
One reason why so many advocates continued to focus on criminal cases was that they were unwilling or unable, due to time constraints, to absorb the majority of the new civil laws. Advocates also were concerned about the integrity of their expertise, due to the fact that laws in the civil, and particularly commercial, sphere changed so often and so radically. According to one business advocate, "I'll advise a client on how some law affects his company's activities one week, and then the law is changed the next."

Advocates awarded mixed reviews to the first part of the new Civil Code (Grazhdanski Kodeks, or GK), passed by the Duma on 21 October 1994. On the one hand, they were heartened by the way in which the law ostensibly strengthened citizens' abilities to defend their rights in the economic sphere, including rights to receive compensation for damage. On the other hand, advocates worried about the vagueness of certain parts of the law, such as the meaning of the new concept of moral damage (pain and suffering paid by a defendant in the form of monetary or material compensation) and how its value is reached, the role of local organs of power in certain property relations, or the details in subsection four about transactions and representation.

A number of Western legal experts criticized the code on the grounds that it restricts market activity. For example, it does not facilitate new payment systems. Some argued that, "the civil code says any deal seen as 'immoral' by a judge is void, but fails to explain what is moral in Russia's turbulent society. In addition, it offers no protection for secured lenders or for those who purchase in good faith." Many questions would go unanswered for the time being, as the two remaining parts of the GK were still not approved by the Duma as of 1995.

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11Interview with Mikhail Barschevskii, 16 March 1995.
12Advocates both in Moscow and Ivanovo expressed concern over the lack of details which elaborate on the meaning of certain concepts, like moral damage, in the General section of the GK. The law firm, Ecojuris, held several in-house workshops in early 1995 to help its jurists better understand the GK. Colleagues of advocates in Moscow also held seminars on parts of the new legislation.
13Elif Kabun (Reuters), "Shares, Guns, and Bodyguards in Russia's Courts," The Moscow Tribune, 13 April 1995, 7. He quoted one Western banker as saying that the Civil code was "a complete disaster." It did not outline measures against financial fraud on Russia's unregulated over-the-counter stock market.
14Part II of the new GK was approved by the Duma on 22 December 1995 and signed by Yeltsin on 26 January 1996. It went into effect on 1 March 1996. It outlines bank operations and settlements, as well as obligations in transactions, such as credit agreements, buying and selling, donating, leasing, and concluding contracts and loans. But it does not cover land transactions. Part III will regulate industrial ownership, but was still in the drafting phase in early 1996.
B. Statistics on Civil Court Cases and Advocates' Legal Assistance

Despite these constraints over the proper implementation of laws and the tentative foundations of new institutions, a market economy was forming. Many urban localities moved in varying extents towards privatizing businesses, as well as apartments, in the first half of the 1990s. In addition, hundreds of banks and investment houses opened, and the number of entrepreneurs grew. As a consequence, were the number of civil cases on the rise? The statistics were uneven. According to Ministry of Justice data, the number of civil cases introduced in courts of the first instance annually between 1984 (1,970,890) and 1994 (2,005,445) did not increase dramatically. These data, however, reveal that since 1991 (which had 1,627,054 cases) the number of civil cases has risen more significantly each year.

According to records compiled by Minisut and colleges of advocates, the number of commissions in the civil cases that advocates had in 1994 was somewhat higher than in 1984. In 1984, approximately eight percent of civil cases involved advocates, whereas in 1994, about ten percent had. On the other hand, colleges of advocates reported that very few of their advocates represented clients in administrative cases in 1993 and 1994. The number of contract agreements that advocates signed with enterprises, institutions, and organizations of various kinds had been rising since 1984. However, the number of civil suits that advocates participated in as counsel for these kinds of clients actually declined since 1984, according to Minisut figures.

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15Statistics on numbers of civil cases are from “Ob"em sluzhebnikh rabotnikov 1970-94.” Internal Russian Ministry of Justice document lent to the author. This document, however, did not indicate categories of civil cases in *ravn* courts. In the Soviet period, more than half of civil cases concerned family problems (divorce, alimony, and settlements of private property).

16These figures were calculated from the numbers of civil trial commissions (poruchenia po yedeniiu grazhdanskikh del v sudakh 1 instantsii) reported on the forms, “Otechy o rabote kollegii advokatov,” 1984-94. Archives of the Russian Ministry of Justice, Otdel advokatury. The rise was not steady, however. The amount of commissions, for example, fell by 15 percent between 1992 and 1993. A. Galogonov, “Advokatam Rossii delit’ nechego,” Rossiiskaja justitsija 7 (1994), 48-49.

17T. Iu. Sukharev on p. 3 of the Ministry of Justice report, “Obzor statisticheskoi otchetnosti o rabote kollegii advokatov za 1994 g.” noted that “Presidiums of colleges today, as of earlier, do not devote enough attention to this category of commissions.” Sukharev personally gave me a copy of this report.

18From the otchetly. These figures appear under the section, “Pravovaia rabota v narodnom khoziaistve.” In contrast, in Hungary the majority of attorneys work on the basis of employment contracts with enterprises as in-house counsel or in public administration posts. See Andras Sajo, “The Role of Lawyers in Social Change: Hungary,” Case Western Reserve Journal of International Law 25 (1993), 142.
The number of civil cases which were pro bono had been declining since the Gorbachev years. In 1984, these cases comprised around eleven percent of the total number of civil cases, whereas in 1994, they comprised only around three percent. Certain categories of citizens were automatically guaranteed free legal assistance, in accordance with article 22 of "The Statute on the Advokatura." But many people who were facing civil problems opted to represent themselves in cases. According to a professor at the Moscow Legal Academy, Israil Martkovich, the problem of providing indigents with legal assistance was more severe when it came to civil matters than in criminal cases at this time in Russia. The number of oral consultations which advocates provided to individuals (as reported by advocates themselves) rose between 1987 and 1990, but decreased a bit after 1990, as prices for legal services increased. Approximately 86 percent of the total number of consultations in 1984 were provided by advocates free of charge, whereas in 1994 they comprised only 32 percent.

On the one hand, advocates were completing more legal documents for paying clients, up approximately 33 percent in 1994 from 1984 figures. On the other, advocates were providing fewer services to indigents in the area of document completion in the early 1990s.

C. Civil Procedure

Civil procedure under the Soviets was not meant merely as a forum for resolving private or organizational disputes. Rather, its goal was to teach Soviet citizens lessons about socialist legality and to protect the social and state system from unintended influences. Any pretense of socialist legality was dropped by the courts in the early 1990s; what mattered now to judges was emptying their dockets and seeing that the specific stipulations in the new laws were being followed.

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19Such categories included plaintiffs in various labor cases; citizens filing petitions for assignment of pensions and benefits; deputies of legislatures; and certain other categories (usually single mothers were included).
20Interview with Martkovich, 12 March 1995.
The stipulations of civil procedure in Russia changed little in the first four years of the post-Soviet period. In the Soviet period, civil court procedure was already structured along adversarial lines, although the judge had (and still has) more authority over evidentiary matters in the Russian system than in most western legal systems. For example, as in the Soviet period, judges in the early 1990s still assembled evidence from both sides and chose which witnesses and experts to summon. One major change, however, was a 1992 revision to the Civil Procedure Code (Grazhdanskiy Protseksual'nyi Kodeks or GPK), which allowed for the sides to opt for either a judge and two court assessors or only a judge (article 150). Chapter Five of the GPK provides for the presence of several categories of representatives. One of the categories names advocates and another names members of professional unions. Procurators are sometimes present during civil cases; sometimes their presence is obligatory. They are able to initiate proceedings on behalf of a plaintiff. The losing side in a suit must pay the costs of the advocate as well as other costs associated with the civil suit.

A civil suit consists of four stages: the preparatory stage, the court investigation (body of the trial), the pleadings by the contending parties, and the judge’s ruling. During the preparatory stage, advocates may present petitions (khodataistva) concerning requests to summon additional witnesses, to appoint new experts, or to demand additional evidence. In civil trials, judges are far more likely to grant advocates’ petitions than in criminal trials.22

The judge opens the trial by outlining the case, asking the sides whether they are prepared to resolve the claim in court, and, in some cases, suggesting that the sides settle by way of a written agreement (mirovoe soglashenie). During the court investigation, both sides present opening, explanatory statements. Next, evidence is examined, witnesses testify, and experts present their conclusions in written form. Then they are questioned further by both sides. During the period when pleadings are made, the plaintiff and his representative usually speak first, followed by the defendant and representative; time is given for rejoinders. The

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22In 1993 and 1994 judges granted advocates’ petitions 63.5 percent and 61 percent of the time, respectively. “Obzor statisticheskoi otchetnosti o rabote kollegii advokatov za 1994 g.”
procurator, if present, has the last word. Civil decisions, like criminal verdicts, can be appealed to cassation courts. Usually civil cases last longer than criminal trials, often due to the fact that the defendant does not appear in court for hearings. Because judges are not at liberty to impose heavy fines, defendants often have little incentive to appear.

D. Advocates’ Daily Work in the Civil Sphere

The work of an advocate now varies more than it did in the Soviet era, depending not only on the locality in which he or she practices, but also the type of law office and environment in which the advocate has chosen to work. In Soviet times, the civil matters and cases that advocates were regularly occupied with consisted of family disputes, including inheritance disputes; personal property disputes; housing disputes; pension issues; and some labor disputes. The bulk of advocates’ work through 1995 still fell within these same categories of civil issues.

The chairman of the Zargarinskii People’s Court in Moscow noted that the advocates in her busy courthouse usually participated in the most complicated cases. These cases involved significant amounts of money: housing and property rights, including forced exchanges of property; divorces involving child custody disputes; inheritance cases; and cases concerning author’s law and intellectual property issues. Most advocates continued to work as generalists in legal consultation bureaus (LCBs), where they were available twice weekly for walk-in clients in need of help in personal legal matters, were in court, or were occupied with preliminary investigations.

Many advocates, however, were being educated and re-educated about civil law. Some advocate organizations, including colleges of advocates and unions, organized seminars on

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23Robert Rand outlines the subject matter of consultations he observed in an LCB in Moscow in 1987-88, which reflect the typical daily legal issues advocates encountered in the late Soviet period, in Comrade Lawyer: Inside Soviet Justice in an Era of Reform (Boulder: Westview, 1991), 121-25.

24Interview with chairman of the Gagarinskii People’s Court, Moscow, 18 April 1995. Her observations were corroborated by the interview data taken from four other Moscow or Ivanovo people’s court judges. One judge from the Babushkinskaia People’s Court commented that advocates appear in no more than 20 percent of her civil cases. “Unfortunately, because of economic reasons,” she said, “many people write their own pleadings and complaints without an advocate’s assistance, and it shows.” Interview on 24 February 1995.
new legislation and business practice. The International Union of Advocates, for example, sponsored and advertised several conferences to benefit its members. Moscow colleges of advocates, such as MGKA, MOKA, Iniurkollegia, Mosiurtsentr, and MRKA, offered seminars for new members, as well as more experienced ones, on topics involving new areas of civil law. A few advocates also participated in training programs in Europe and the United States, which often placed participants in corporate law firms for months at a time.

In another few years, more advocates may be practicing in the civil sphere. Interviews with a number of Moscow professors and students from the law faculty at Moscow State University and the Moscow Legal Academy reveal that most students were specializing in business law. The majority of students were worried about their economic futures and guided by new career opportunities. Only a generation before, a specialty in criminal law study offered the most prestigious career path. This is no longer the case in many regions. However, in contrast to Moscow students, most law students at Ivanovo University were still majoring in criminal law and procedure, its strongest program.

There are no set requirements for course offerings in the area of commercial law established by federal legislation. Academic institutions, public and private alike, have been devising their own curricula. But a number of administrative acts have been adopted, including decree no. 1473, signed by Yeltsin on 7 July 1994, which mandated the development of a program in private law and includes as a stipulation the training of

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26 Many presidium members of colleges, however, found these business trips for their colleagues to be counterproductive: many participants preferred to stay in their placements, or returned to form their own private law firms outside colleges. Aleksei Rogatkin, the chairman of MGKA, Moscow's largest college of advocates, for example, discouraged his advocates from applying to these programs after a while. Unfortunately, because of this disincentive from above, and the fact that many advocates assumed that their chances were slim for being accepted into these programs because they did not have special connections, not many advocates (no more than a few hundred) were participating in these training programs. Moreover, CEELI's offerings tended to fall within the sphere of criminal practice (training in jury trials, for example).
27 MOKA advocate (female) #6. 3 April 1995, who had recently graduated from Ivanovo University. Recall that in Ivanovo around 80-90 percent of the cases advocates handled in 1994-95 were criminal.
advanced specialists. In 1994-95, the Moscow Legal Academy offered a course on civil law practice for advocates, which was taught by well-known Moscow bar members.

No advocate, unless he or she focused solely on criminal cases, could avoid confronting changes in civil practice. There was too much demand for legal clarification in the community, and advocates were aware of the new, competing sources of legal services and guidance available to citizens and businesses. Advocates in Moscow and St. Petersburg faced competition from thousands of Russian jurists who owned their own private law firms, as well as a few hundred foreign lawyers. Jurists working for Domashnyi advokat, a legal publication for lay people, answered questions that readers submitted. The queries were organized into such topic areas as family, housing, labor relations, army, taxes, business, pensions, fringe benefits, and land.

Advocates' work, even for those advocates working in LCBs, often intersected with the legal issues of private property and ownership, along with the relationship between

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28V.F. Popodopulo, "Russian Legal Education: Training Lawyers for a Market Economy," Rule of Law Consortium Newsletter (ARD/CHECCHI and AID, Fall 1995), 6-7. Popodopulo, a professor in the commercial law section of the law faculty at St. Petersburg State University, still supports a broad legal education which would allow students to perform in any field of law. But his section does offer specialized, elective courses for upper-level law students (commercial legislation, legal status of entrepreneurs, contracts, and law on competition). The Rule of Law Consortium aided law schools in Russia, Ukraine, and Kazakhstan in acquiring up-to-date data legal data bases and textbooks. According to David P. Cluchey, an American law professor who was working on the legal education project with ARD/CHECCHI, Russian law professors he interviewed acknowledged the fact that their programs have to respond to the demand in the market economy for newly trained legal specialists, and that this training should involve more emphasis on developing particular skills or competencies than on "doctrinal purity." "Curricular Reform and Commercial Law Teaching in Russia," (same publication), 18.

29Some advocates whom the author interviewed were threatened by the perceived competition, others believed that there was enough work to go around for every jurist and advocate. A majority of the advocates surveyed in Moscow, Ivanovo, and Stavropol by the author and Dan McGrory from CEELI in 1995 indicated that they believed that private law firms were violating the norms of advocate practice and damaging the prestige of advocates. Many advocates were under the notion that most jurists were handling less complicated matters, such as registering companies with local authorities, or simply did not have the good training and good reputations that advocates had.

In some areas of law, such as patents and trademarks, however, groups of jurists had a stranglehold on the legal services market. The jurists working as patent and trademark attorneys at Sojuz-Patent, the foremost organization of its kind in Russia, monopolized the accounts of most of the biggest foreign corporations selling their products in Russia. According to one of its staff members, the organization has 95 percent of the total amount of possible corporate clients concerned with patents and trademarks in Russia and are often contacted by advocate firms for advice. Interview on 24 October 1994.

Advocates interviewed by the author typically were not resentful of foreign lawyers. This was because they often argued that foreign lawyers had a very narrow sphere of practice, did not know Russian laws as well as they did, had fewer important contacts with appropriate officials, and did not handle court cases due to their lack of fluency in Russian.

Purchasing such publications as Domashnyi advokat may have represented an attempt by lay people to avoid the expenses of consulting an advocate.
consumers and sellers. For example, privatizing one's apartment and then selling it was not a straightforward process, but depended on its occupants (family members, including ex-spouses, were known to contest ownership rights), the owners of the building in which it was located, and the owners of the land under the building. Also, more and more citizens became educated to the fact that they had new rights, although they still lacked the rights awareness typically found in the West. Advocates' work terrain in the civil sphere, therefore, became more complicated as new kinds of laws, rights, institutions, and individual actors began to enter it. On top of this, informal norms and practices formed, while old ones reasserted themselves, so advocates had these dynamics to contend with as well.

Many of the advocates who practiced in the civil sphere whom I interviewed remarked that they felt that they had more control over the direction of their work in civil cases. One well-known female advocate practicing in Moscow and teaching at the Moscow Legal Academy, Geralina Liubarskaia, believed strongly -- and told her students so -- that advocates were helping to create a pravovoe gosudarstvo (law-based state) through their civil cases. Unlike in criminal cases, when the law-enforcement organs constructed the charges and gathered the evidence, in civil cases, advocates representing plaintiffs determined the legal grounds.

Advocates therefore take on a far more creative role. "The advocate," Liubarskaia said, "begins a struggle in court, allows clients, who may be entering a courtroom for the very first time, to see that something of the government works, and cultivates a legal position. In so doing, she strengthens all court authority -- and even gives judges some pointers about the law!" In a moment of particular confidence, she added, "People who go to court to resolve conflicts are able to see now how the courts are fast becoming the single order of power that actually works!" Liubarskaia also argued that advocates were right in the middle of the effort to form new economic relations, by ensuring the defense of property and an entrepreneurial approach or spirit (predprinimatel'nost') through their work.

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Advocates sometimes advised business clients on simple matters, such as registering with local authorities. But advocates also advised them on complicated matters that involved privatization, taxes, customs law, and large development projects, and they represented their clients in court. In the surveys on advocates' opinions which the author and Professor Daniel McGrory of CEELI conducted with advocate respondents in Moscow, Ivanovo, and Stavropol' in 1995, approximately eighty respondents were asked to list a number of issues involving "new economic relations" they encountered in their work. Many left this space blank, for reasons of time or because they specialized in criminal law. Those who did respond commented on the issues in the list below. Note that respondents in all three locations included most of these categories in their answers, in some form or another. The appearance of the marker, "OM" indicates that the item was often mentioned in their responses.

**Property Issues**
- privatization (OM)
- buying and selling of land, including residential property (OM)

**Finance and Tax Issues**
- violations of rules governing hard currency (including indexing)
- apportionment of shares bought through the redemption of government vouchers
- defense of shareholders' rights
- assisting clients in maintaining and increasing their capital
- tax disputes
- the misconduct of customs organs (mentioned the most by Ivanovo respondents)
- banking disputes

**Management and Labor Issues**
- composing founding documents (charters) for enterprises
- advising on how to manage enterprises
- disputes between enterprises
- enterprise relations with municipal authorities
- disputes between co-founders of an enterprise
- dismissal of employees from enterprises
- pension problems involving employees of enterprises
- bankruptcy of an enterprise

**Buyer and Seller Issues**
- compensation for moral damage (OM)
- consumers' rights (OM)

In another survey question, advocate-respondents were asked to answer whether or not they had ever provided the following legal services to legal entities (some of these categories overlapped with the previous ones chosen by advocates themselves):
At least some of the respondents in each location answered that they had provided all of these services. Ivanovo advocates provided their services largely in the areas of document preparation and the privatization of land or other property. The majority of these respondents answered that they did not provide consultations on taxation issues, but, more often than not, they answered that they prepared agreements between enterprises (for distribution of goods, etc.) and consulted on management issues. Moscow respondents, most of whom worked mainly in the oblast, not in the city of Moscow, indicated that their most concentrated efforts were in the area of privatization. Advocate-respondents also worked often on preparing agreements between legal entities, prepared documents for registration at government offices, and gave advice on management issues. The most typical service that the Stavropol' respondents provided to legal entities was the preparation of agreements between legal entities. They also often drew up charters and other founding documents, gave consultations on management issues, and assisted owners in privatizing land and other property.

The Moscow and St. Petersburg areas offered business advocates a far wider range of clients and lucrative projects on which to work than smaller cities and provincial towns across Russia did. In the Ivanovo college of advocates, for example, no more than three advocates working inside the town of Ivanovo specialized exclusively in civil matters. As one advocate there lamented, “usually people here in Ivanovo go to the local ‘racket’ to get their conflicts resolved. But you don’t always get justice.” In contrast, MRKA, the interregional college of advocates with its headquarters in Moscow, reported that, in 1993, 32.33 percent of the work handled by its members involved the legal maintenance of enterprises. Only a handful of private law firms existed in Ivanovo in 1995, although they did offer such services as

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32 Interview with IOKA (female) advocate #9, in her early twenties, 4 April 1995.
arranging off-shore companies in Cyprus for their clients. While advocates in Ivanovo worked on such matters as customs violations, privatization, and disputes among co-founders of private enterprises, the scale of their work in these areas could not compare with the amount of work available to advocates and jurists in Moscow and St. Petersburg, the centers for financial activity in the country.  

Ivanovo’s economy was depressed, its textile industry in decline. Most people could not afford legal services. From the author’s observations of how the central ICB in Ivanovo operated over a two-week period in April 1995, the bulk of walk-in clients were individuals needing advice and assistance in completing documents in the areas of housing and privatization. On the other hand, in Nizhny Novgorod, another provincial city, its mayor led a strong drive for privatization and financial investment. As a result, the demand was higher for advocates’ participation. For example, a Russian advocate who was an associate at the American law firm Chadbourne and Parke which had a satellite office in Moscow, advised the international development agency FIC on a pilot agricultural land privatization project near Nizhny Novgorod for almost two years.  

E. Highlights of Civil Cases and Issues in 1994-95: Old and New Tendencies  

One may assume that many of the civil cases on which advocates regularly worked involved labor issues. After all, the Soviet Union, in theory, was a society which propagandized workers’ rights. Some cases handled by advocates did involve labor issues. But, as Kathryn Hendley concluded from her research of cases concerning the dismissal of workers for redundancy between 1983 and 1989, workers tended not to turn to advocates for

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34 Interestingly, however, only Ivanovo advocates mentioned their work in the area of customs law. The present code and regulations were largely written in 1992. In Ivanovo there is a customs post which is authorized to inspect foreign vehicles whose drivers may have entered the area without first declaring their cars and in the process paying tariffs. If an owner is found selling the vehicle or anything else foreign, expensive, and not reported to customs officials, he could be subject to large fines. According to one advocate who practices civil law exclusively (a young female advocate interviewed on 4 April 1995), Ivanovo customs employs over a dozen officers to deal with these situations, and the GAI, or traffic cops, are authorized to report to customs too, upon finding such violations. This particular advocate represented a man who bought a car in Germany and neglected to register it with Ivanovo customs. As a consequence, he was fined a great deal. For more on customs law, see M. Iu. Tikhomirov, Juridicheskaia entsiklopedia, third ed. (Moscow: IurinformTsentr, 1995), 284-292.  
35 Interview with MOKA advocate (male) #32, in his thirties working for C & P, 2 February 1995.
assistance (only 15 percent of workers were represented by counsel) or to the courts for reinstatement. Instead, they turned to their factories' trade union committee (protkom) to represent their interests before management. Needless to say, often the workers' interests were made subordinate to the others' in the process, and courts appeared to be more concerned with whether their rulings would hold up on appeal than with whether their courts had thoroughly reviewed all of the available evidence. 36

After the Soviet Union collapsed, advocates still appeared to be taking on fewer labor cases than might be assumed, due to the fact that such cases continued not to be lucrative and were time-consuming. In one case heard in a civil courtroom inside the Moskvoretskii People's Court in Moscow on 8 February 1995, management simply did not appear. 37 The plaintiff was a female economist who, in April 1993, was dismissed from her job at a private firm, as part of a general job reduction measure. Two years later, the plaintiff was still trying to recover money which she should have received as compensation for benefits denied her, as stipulated in article 40.3 of the Labor Law Code (Kodeks zakonov o trude, or KZoT). Her advocate was retired from MGKA, working on his own, and collecting a pension. In essence, he was a striapchii. All he could do for his client that day was to arrange for another hearing.

Labor cases which ended favorably for the plaintiffs and featured advocates often involved plaintiffs who were in higher-profile positions. In 1994 and 1995, Kommersant-Daily, for example, featured articles about labor cases concerning journalists at Rabotnitsa, a general counsel at the Ministry of Foreign Affairs, a chairman of the Russian Committee on Publishing, and the editor of Pravda. In the case of the Pravda editor, a team of two advocates succeeded in having him reinstated in April 1994, after Pravda's owner, a Greek financial


37Observed by the author.
concern, fired him. In October 1994, in an arbitration court case, the same advocates secured for their client the right to Pravda's trademark and control over its properties. 38

Among the most high-profile cases which dealt with the new and popular issue of compensation of damages were those involving the defense of the honor and dignity of individuals (article 7 of the CK). This law was a vehicle used by public figures such as Vladimir Zhirinovskii, Egor Gaidar, and Pavel Grachev to take revenge on their political opponents. Such figures typically accused their foes of libel and slander through the formal, more respectable vehicle of civil suits argued by their advocates. 39 Editors of newspapers and journalists who wrote the contested articles also were targeted for these lawsuits.

Advocates who secured these big cases often received a boost in their reputation. In an Ogonek article on the top 100 advocates in Russia, one category of winners highlighted by the authors was advocates who participated in civil cases on the defense of honor and dignity. 40 Two top Moscow advocates, Genri Reznik and Genrikh Padva, often represented different sides in these cases. 41 They had an on-going argument, published in Rossiiskaia iustitsiia, over the issue of compensation for moral damage and whether it should apply to cases involving the defense of honor and dignity. 42 But often plaintiffs in high-profile lawsuits pertaining to this stipulation won settlements. For example, Zhirinovskii won his suit against Gaidar, after

40Evgenii Lisov and Pavel Nikitin, “Pered vami spisok 100 luchshikh advokatov Rossii,” Ogonek 12 (March 1995), 57. Winners in this category came from ten regions in Russia, not just Moscow or St. Petersburg.
41One judge at Fresnenski People’s Court in Moscow, a candid man in his late 30s whom the author interviewed on 17 April 1995, often heard cases involving the right to honor and dignity because his court was located near the offices of several national newspapers.
42Padva argued that the court should have the right to confiscate the property of losing defendants in such cases should moral damage compensation be granted to plaintiffs, whereas Reznik argued the opposite, including the point that there is a principled difference between compensation for loss (in which an exact monetary equivalence could be reached) and moral damage (which is too subjective). Despite the fact that the Supreme Court attempted to clarify how moral damage compensation is reached in 1992 (in Biulleten Verkhovnogo Suda, no. 1,18 August 1992), judges as well as these advocates were still at a loss about reaching similar conclusions about this issue. See Genrikh Padva and E. Korotkova, “Obespechenie iskov, vytekaiushchihi iz lichnykh neimushchestvennikh otshenii,” Rossiiskaia iustitsiia 3 (1994), 43-44; Genri Reznik, “Neimushchestvennyi isk ne podlezhit obespecheniui imushchestvennum arestom,” Rossiiskaia iustitsiia 6 (1994), 10-11. Reznik lectured to new members of MGKA as a part of their training program in 1994-95 about these kinds of cases.
Gaidar called Zhirinovskii a fascist in a newspaper article. While these cases show that the sides considered advocates to be necessary in presenting sound legal arguments about new concepts like moral damage, they also indicate a willingness on the part of high government officials, advocates, and judges to limit freedom of speech.

In other cases on compensation issues, plaintiffs lost, which suggests that courts were at least showing some restraint. For example, in a case involving authors’ rights, an author tried to recover 380 million rubles from a publishing house which allegedly had violated a contract for his book, The Health of Your Dog, which in Russian society very well could have become a best seller. An MGKA advocate, who represented the defendant (the publishing house), argued in his opening statement that the author’s demands for a settlement were unjustifiable. Minutes after the advocate finished his statement, the judge dismissed the case.

Civil courts heard dozens of cases concerning compensation issues, but the number of cases concerning residential housing and privatization was almost certainly much greater. During the Soviet era, relatives and neighbors fought bitterly over limited apartment space, especially in large cities, where people struggled to obtain housing and, along with it, coveted residence permits. But now the stakes were even higher, because they also involved ownership and profits. The general part of the new Civil Code passed in the fall of 1994 contains a section on the right of ownership (section two), which governs these types of cases. In addition, although the new GK took precedence as the general voice of instruction in the civil sphere, jurists also could consult other pieces of legislation pertinent to housing disputes and privatization.

44“Advokatskaiia praktika nedeli,” Kommersant-Daily, 18 February 1995, 22. Author’s law existed even in Soviet times. According to the chairman of the Gagarinskii People’s Court in Moscow, in the 1980s she knew a handful of advocates who did excellent work in the area of author’s law. Interview on 18 April 1995. Carolina Liubarskaia accepted a number of high-profile author’s law cases in 1994 and 1995, including ones involving a well-known public figure who was suing a bank for using his likeness in their ads, the daughter of a deceased pianist who sued Melodia record company for selling an unauthorized recording, and relatives of Boris Pasternak who sued an archive for housing some of his personal letters which were confiscated by the NVKD. Interview 25 February 1995.

45The period during which the author completed her research, however, was a time when the old and new civil codes saw overlap because civil cases already pending since 1994 or oftentimes earlier referred to articles in the old code. This dynamic, of course, brought much confusion to the trial process.
Housing disputes, like most other civil cases, span months, sometimes years. In a case heard on appeal in the cassation section of the Moscow City Court in December 1994, a number of individuals living in an apartment building on a street located near the Arbat (an affluent area of Moscow where real estate prices have been consistently high) contested a lower court’s ruling made in 1992 which had prevented them from privatizing their apartments. That year the court had sided with the interests of ZhKO Mospochtamt, the housing department of Moscow’s main post office, which had a controlling interest over the building. The judges heard the cassation complaint in December 1994. It was argued by two MGKA advocates who were working in a reputable new advocate bureau called Khel.Bi. The court found that the Mospochtamt’s claims were based on acts which were no longer in force in 1994, due to changes to the legal norms regulating the right to property in apartment buildings. The tenants won their appeal and could now privatize. This case shows how skilled some advocates had become at constructing positions which used the laws themselves as central points of contention. It also shows that judges were willing to overturn decisions which, at the time they were made, had not been illegal per se, in order to strengthen the right to own property.

Some cases lasted months because the sides were acting out their mutual animosities in court. Such a dynamic often occurred in cases involving ex-spouses. In Gagarinskii Court in Moscow, a civil case was introduced in December 1994 by the ex-wife of a man whom she claimed deprived her of her property rights over an apartment they once shared. The apartment was presently occupied by their children. This was her first time in court, and she revealed to me how confused and ignorant she felt. The case was postponed for four months because the husband, who had no legal counsel, boycotted the hearings. The wife’s advocate, a young man who worked in the LCB located on the first floor of the courthouse, showed less initiative in posing questions to the plaintiff and defendant than the judge, a female in her forties, did. Neither did he speak with his client during a break in the hearing. The main

issue was the legitimacy of an order giving the defendant the right to rent the apartment in 1973 and whether the plaintiff was automatically entitled to a similar right as a spouse. After the divorce, the plaintiff continued living in the apartment for a certain amount of time, while the defendant moved out to live with his future wife. The advocate petitioned the judge to include additional evidence regarding the length of the plaintiff's residence in the apartment. But the judge decided on the basis of the original contract: the defendant's name was on the rental agreement with the housing office of the building. The rights of the ex-husband were protected in this case because the ownership issue, thanks to the available documents, was relatively clear-cut.

In other cases concerning residential property rights, however, the advocate's expertise and participation were essential, because the evidence and legal issues were more complex. The following is an example of a case which demanded the intervention of an advocate.16 On 12 May 1993, two men knocked on the apartment door of a man, Valerii V., whom a psychiatric clinic had diagnosed as a schizophrenic. Seeing that the strangers had vodka in their hands and were ready to share, he let them into his apartment. After plying him with the liquor, the two men proposed that Valerii V. grant them power of attorney over his right to dispose of his apartment. Valerii V. immediately complied with their wishes. The very next day, the two men hastily completed forms to privatize the apartment and then sold it. Meanwhile, Valerii V., upon leaving the hospital he had checked into to treat the delirium tremens brought on by the vodka, soon found out that the two men had sold his apartment and transferred his official residency to the Saratov oblast, hundreds of miles from Moscow. He appealed to a court for justice, but chose to not hire an advocate. This proved to be a mistake, as two Moscow people's courts dismissed his complaint. Finally, he contacted a member of MGKA.

The advocate knew to file a complaint (zhaloba) with the Moscow City Court requiring the Proletarskii People's Court (renamed Simonovskii People's Court) to hear the case. The

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court complied. One of the first petitions the advocate made was to ask the court to appoint a psychiatric expert to conduct an evaluation of his client, in order to prove that Valerii was not aware of his actions when he signed over his right to dispose of his apartment to the two men. The court experts concluded that Valerii V. could not, in fact, have been in his right mind at the time. Using this conclusion, the advocate argued during the trial that, according to article 177 in the new GК, a transaction cannot be pronounced valid if one of its participants is not fully aware of his own actions. The advocate put his client on the stand and had him answer that he could not reasonably explain what forced him to sign over power of attorney to two strangers. The judge granted Valerii V.'s demands, by pronouncing the transaction invalid, ordering the present occupants out of the apartment, and returning ownership of the property to Valerii V.

Advocates tended to believe that not only were their non-business clients ignorant of new laws and legal practices in the civil sphere, but that their business clients were as well. This ignorance of the law strengthened the value of an advocate's expertise. In court, usually both the plaintiff and defendant were ignorant of new legislation. Business people needed advocates to clarify the dispute for them and make sure that they would win and, if possible, profit. A 1995 case in the Oktiabrskii People's Court in Ivanovo illustrates the extent to which certain Russian business people were unaware of or avoided following legislation governing the operation of private businesses.

A group of around a dozen shareholders, all female, in a laundry business called Ozor filed a suit against their director in late December 1994. They contacted a well-known female civil advocate at the central LCB in Ivanovo to assist them. Panteleeva, the director, who was a haughty older woman with a commanding presence, hired a male jurist who was working at a

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5 This particular business is registered as a TOO, a company-partnership with "limited responsibility." The prescribed capital needed to fund such an operation is obtained only through the investments of its founders (its stocks therefore are not sold through a public exchange). Owners-investors must follow the rules they themselves construct in their charter and are obligated to inform each other about major internal policy changes, such as electing a new director or transferring ownership of any property. The author observed the first hearing.
private law firm in Ivanovo. The issues at hand were that, at a general meeting held the summer before, a charter had been approved and Panteleeva had been reappointed director without a vote (she had been director since 1991, when the business had a different legal status). All of this was in spite of the fact that the law governing their type of business required that all shareholders elect a director. Panteleeva allegedly had written the charter herself, and the other shareholders had not read it in its entirety until December 1994. According to the main plaintiff, the shareholders had not been told by Panteleeva about the upcoming gathering in July 1994 early enough to prepare for it and to decide on a possible nominee for director. During the gathering, the shareholders were brought into a room to act as witnesses while Panteleeva reappointed herself. The plaintiffs and advocate argued that the charter, as well as the reappointment, were illegal and that they had not been apprised of their rights as participants in a TOO, as outlined in their charter, until December 1994. This action violated article 31 of the law on property (sobstvennost'), which stipulates that all founders choose the director and write the charter.

During the first hearing on the case, held on 12 April 1995, the advocate came prepared to ask questions and provide proof for mismanagement. The director was dressed in a matching fur coat and hat; the shareholders were all dressed more humbly. The advocate immediately began to question the main plaintiff, her client, as well as the director, about their management policies at Ozor. She asked questions about whether they had known the former definition of their company before 1994 (no), whether they had established a clear list of participants in the newly reconfigured company in 1994 (no), and whether their funds and accounts had been arranged in a particular manner (no). The advocate pointed out early in the hearing that the director had decided most policy on her own without consulting the other shareholders and had not bothered to define their rights. She claimed that Panteleeva had initially nominated herself as director when the other shareholders were on vacation. The plaintiffs admitted to the judge that they had known little or nothing about what kind of company they were running. They knew enough by the time of the hearing, however, to
assert that the director had consciously kept them in the dark. In addition, they claimed that Panteleeeva had intentionally neglected to file some founding documents with the Ivanovo executive committee (the city's administrative helm).

The advocate tried to benefit from her clients' ignorance, commenting that the director had prevented them from asserting their own rights. The jurist, in contrast, was less aggressive in posing questions and making statements. Panteleeeva claimed that she had not had to complete a separate agreement with the shareholders stipulating their relations and that she had placed the charter in a safe to eventually take out and rewrite together with the shareholders. The group of shareholders only bristled at the director's explanation.

The main witness, the secretary at the July 1994 gathering, had not taken notes on the voting process, but insisted that someone had made a comment at the gathering that all participants had a right to choose a director. Panteleeeva claimed that she had forgotten what happened with the voting. Later, three other witnesses gave testimony which contradicted the secretary's and director's claims. The advocate, however, left the day's hearing feeling that the judge was skeptical about her clients' plea because certain key evidence was missing (i.e., the secretary's minutes). Her next strategy was to prolong the case and in the meantime, convince the judge otherwise. It is clear from the less than savvy behavior of her clients that, without an advocate, the judge may very well have dismissed this case early on due to lack of evidence and the plaintiffs' inability to clearly articulate their demands before the bench.19

Most advocates represented clients from smaller enterprises like this one, not large companies. Even though the largest state organs had their own legal departments, where dozens of jurists were employed, they sometimes hired highly reputable advocates to represent them in civil suits as well. For example, Moscow business advocate, Mikhail Barshchevskii had represented such high-profile state organs as the president's Main Security

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19I have been unable to reach the advocate to inquire about the present status of this case.
Administration (GI'O), the Ministry of Defense, the State Property Committee, and the Government Tax Police.50

Barshchevskii received a call from the GI'O only after it had lost a suit which it was defending. The first suit had been brought forth by a businessman who had been renting Leonid Brezhnev’s former dacha near Kislovodsk; Mikhail Gorbachev had transferred the ownership of the house to the local executive committee. GI'O petitioned to gain ownership of the elaborate dacha. The businessman then sued GI'O, which lost the suit in the local court. After Barshchevskii got GI'O’s call, he filed an appeal with a cassation court, which ruled that Gorbachev’s original edict was illegal under the laws of the Russian Federation, which now took precedence over those of the USSR. In the Ministry of Defense case, a number of generals were being sued by the Krasnogorsk city council for illegally privatizing their dachas. Barshchevskii convinced the court that the council had no right to file suit against his clients, since their right to privatize was protected under law. In both cases, the advocate’s legal literacy influenced the court’s decisions, although it is not known just how much leverage GI'O or the Ministry of Defense had over the judges.

F. Advocates’ Role as Counselors to Business Interests

This section will explore advocates’ connections with nascent capitalists in relation to their work as counselors to large (i.e., corporate) business interests in Russia. Only a small percentage of advocates, probably no more than 10 to 15 percent, counseled large enterprises and companies in the first four years after the USSR fell; most who did practiced in Moscow or St. Petersburg. Their relation to capital, or rather, the influence they had over shaping high-powered international business relations and the management and financial decisions of corporate business people, was not as well formed or articulated as it has been with lawyers in

50Barshchevskii briefly describes some of these cases in an interview in, “Advokat Barshchevskii: Sudit’sia, pravo, ne greshno,” Sobesednik 10 (1995). 3. It was not Barshchevskii’s style, either in this interview or in interviews with the author, to reveal great detail about his clients’ cases. He refused to give any detailed comments about his pending cases.
the West. The chairman of Mosiurtsentr admitted that "We are only in the beginning process of creating such an institute of contracted or family lawyers, without whom a person would not take a step in the West."\textsuperscript{51} Boris Yeltsin, in fact, admitted his surprise to a group of financiers during a visit to the U.S. in 1993, when he found out how important a role lawyers play in business and bankruptcy practices in the U.S.\textsuperscript{52}

This is not to say, however, that, in the first half of the 1990s, Russian advocates had no role to play in these dynamics in Russia. The interesting point is that some did. These advocates already had experience with foreign clients, high finance, international economic law, and the processes of the world economy in their practices in ways that advocates working in most Soviet-era legal consultation bureaus had not.

While this section focuses on the legitimate work of business advocates, the point must be made that some advocates and jurists also profited from extra-legal methods. According to one advocate in St. Petersburg, more than just a few lawyers helped arrange money-laundering schemes with their clients (what proportion were advocates was not revealed). He also reported on how some lawyers acted as respectable fronts for mafia groups. Some Moscow advocates worked regularly for mobsters as well.\textsuperscript{53} Some members of the colleges and law firms mentioned in Chapter Three may have assisted in mafia deals, but nothing can be proven. For obvious reasons concerning life and limb, the author chose not to pursue these lines of inquiry.

An ongoing effort that was indispensable to advocates who were consulted by business people was securing international contacts. Some advocates arranged special affiliations with foreign law offices to expedite their work abroad. Mosiurtsentr had satellite offices in more than a dozen places around the world, including New York City. Iniurkollegia also had formal cooperating agreements with law offices outside Russia and the other former Soviet

\textsuperscript{52}Valentin Khalin, "Biznesmen pod krylyshkom advokata," \textit{Delovoi mir}, 2-8 May 1994, 29. Interview with an American lawyer who worked with advocates at Mosiurtsentr.
\textsuperscript{53}Silchenkov, 509-511. An IGPAN professor informed the author of how jurists, including advocates, were known to work for mobsters in Moscow. Interview with Leonid Siukiianen, 30 January 1995.
republics. Mikhail Barshchevskii worked as a temporary associate at a large corporate law firm in New York City. In their brochures and public interviews, members of these firms and colleges emphasized the fact that they catered to joint ventures and foreign capital and analyzed financial and legal profiles of businesses.\textsuperscript{34} Moscow offered training sessions for the employees of various companies concerning the legal aspects of modern market relations. By 1991, the college had already set up dozens of joint ventures, exchanges, and banks.\textsuperscript{35} Iniurkollegia worked with clients in resolving international trade, maritime, and inheritance disputes. Klishin and Partners emphasized their work in the area of foreign economic transactions and had several foreign corporate clients, including Phillip Morris and Texaco. Klishin and Partners also boasted of their collaboration with such prestigious American law firms as Arnold and Porter and Baker and Botts. Minakov's college of advocates contained specialists in intellectual property issues and often advised lawyers in Moscow branches of foreign law firms on such matters.\textsuperscript{36}

These advocate firms and colleges managed to retain big-business clients for various reasons. Some of these Moscow law firms and colleges of advocates gained overnight success on the coattails of some of their more well-known members, such as former Ministry of Justice, Procuracy, and State Arbitration officials, who had transferable skills and strong personal connections. Before the Gorbachev era, other colleges, like Iniurkollegia, already had formal institutional ties with state organs and continued to use their contacts after they changed status. Still others, like the director of the small Moscow law firm, Interlex, which catered to clients who required international commercial contracts, already had a large amount of experience with foreign legal practices.

\textsuperscript{34} I am taking into account the possibility that these representatives were overselling and misrepresenting what they really do, although these law firms and colleges of advocates mentioned here are widely known to be involved in such high-powered activities.\textsuperscript{35}Lazar Volkominsky, "Businessmen Consult Lawyers." \textit{Business Contact} 5-6 (1991). 36. Interview with Moscow advocate, Andrei Ivanov, who commented that, “The nascent entrepreneurial structures have come up against a shortage of lawyers capable of ensuring the adequate standard of mediation.”\textsuperscript{36}Interview with female advocate at Lex International, a law firm inside the College of Advocates of Moscow, 8 November 1994. She advised the American law firm, Baker Mackenzie, on intellectual property law in Russia and traveled on business trips to France. She also works with patent lawyers at Sojuz-Patent.
Advocates' participation in international conferences on Russian business markets and finance gave a small segment of the profession a large opportunity to make foreign contacts and augment their own expertise. In turn, foreign investors and Russian business people who participated in these conferences found out how advocates could benefit them. One advocate who participated in the 1994 Paris conference on business in Russia, for example, described his role in this way:

Advocates can render legal aid in an analysis of the 'legal aptitude' of a Russian partner and clarify all nuances, securing from the partner all necessary documents, and give a legal assessment of the proposed transaction by taking into account acting Russian legislation. Our advocate bureau, through an inquiry of foreign clients, prepared several assessments concerning proposed property transactions, which would help clients avoid possible negative legal repercussions. The assistance of advocates is also necessary because Russian partners sometimes are consciously mistaken about their own authorities [in transactions with their foreign partners]. They sometimes even intentionally mislead a foreign partner, by alluding to precedents set by similar, but not identical, transactions.37

Such business advocates as this one had the expertise and institutional contacts needed for assisting Russian and sometimes foreign business people through the maze of bureaucratic red tape and international law. In handling their business clients' transactions, these business advocates consulted international legal conventions, including normative acts concerning international tax regimes. Sometimes they consulted international laws even more than Russian ones.38

Mikhail Barshchevskii claimed that most of the work of business lawyers is "boring," in that it serves to routinize daily business practice.39 As a result, over time, such efforts would make the business environment more predictable and therefore more congenial to capitalists (à la Weber). An important question related to Russian advocates' consultations with business clients, however, is the extent to which they initiated certain actions, such as securing transactions and large-scale development projects. In a number of specialized advocate law firms, advocates did take part in such ventures regularly. Because of advocates'
knowledge of business laws, which often surpassed that of their clients, they could not help but take initiatives in these areas.

Lawyers in many western countries act as lobbyists with legislators and other government officials on behalf of their business clients. Russian advocates undertook such initiatives, but on a much smaller scale. For example, an advocate who worked at the MGKA law firm, Praktika, created regular channels of communication with a number of bureaucrats in the powerful State Customs Committee and the State Property Committee. He informed me that he was not giving bribes, nor was he lobbying, a practice which, in Russia, can have a highly negative connotation. Whether one calls the activity lobbying or not, it was a necessary way in which this advocate directed his clients' written requests to those organs of power which had to approve them.

In these instances, the requests of business clients usually amounted to permissions to build a business center in downtown Moscow or to begin work on a large privatization project. The Praktika advocate first would visit a handful of bureaucrats in their offices, present his client's proposals, then wait for their answers. Should the bureaucrats not contact him within the time allotted for making such a decision (there were stipulations for such matters) or decide not to cooperate with a request, he usually threatened court action. The Praktika advocate's explanation for why he behaved in such a way was that the bureaucrats actually feared advocates. According to him, they believed that the advocates knew more than they did about how the appropriate laws and regulations were being interpreted and implemented. While some bureaucrats may have responded more readily to an advocates' threats than others, these efforts show that advocates were acting as channels of communication between state and business actors.

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*Interview with MGKA Praktika (male) advocate #61, late-forties, 20 April 1995. Before becoming a business advocate he had been a lieutenant colonel in the army and then a jurist in military tribunals.*
Advocates in Arbitration Courts

In the Soviet-era Government Arbitration tribunals (GosArbitrazh), only state enterprises filed complaints, usually about breach of delivery contracts. Moreover, contract breaches generally were resolved through the industrial ministries, not through GosArbitrazh. Jurisconsults, legal specialists who were employed by separate enterprises, acted as representatives. Advocates typically did not represent sides in GosArbitrazh organs.

In 1992, the Russian government created a revised system of arbitration courts to resolve disputes between legal entities, both state and private. As outlined in the 4 July 1991 law “On the Arbitration Court,” the system consists of dozens of first-instance courts and cassation (appeals) courts. These are subordinated to the Supreme Arbitration Court, chaired by Veniamin lakovlev. According to lakovlev in 1992, the state still needed to devise more structural guarantees if entrepreneurial activities were to progress further.

The year of 1992 held promise for the possibility that the arbitration courts would become popular means of regulating disputes; 335,657 arbitration cases were introduced. However, the figures for 1993 and 1994 were lower. A recent study of the extent to which enterprises have been using arbitration courts found that enterprise managers have continued to avoid official institutions for resolving contractual disputes and instead have relied on long-held personal connections. From 1992 to 1994, most arbitration cases involved either traditional disputes, which concerned breach of contract between enterprises, as well as new ones over privatization issues, the defense of property rights, and the creation of new forms of

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62Vedomosti 5"ezda narodnykh deputatov RSFSR i Verkhovnogo Soveta RSFSR, 1991, No. 30, St. 1013.
63GosArbitrazh was reconfigured into these separate and structurally independent courts. Also available to enterprises now are the preteiskij courts, which resolve property disputes in the manner of a third-party. They could be found in a number of institutions and corporations which deal regularly with stock exchanges, such as stock exchange commissions.
65A main reason why enterprises do not go to arbitration courts is that they lack injunctive powers. Also, many enterprise managers believe that the courts lack fairness, particularly when local administrations are involved in cases. Kathryn Hendley, “The Spillover Effects of Privatization on Russian Legal Culture,” Transnational Law and Contemporary Problems 5:39 (Spring 1995), 58-62.
management. Also included were arguments between entrepreneurs and government organs.65

Jurisconsults continued to appear more often than advocates after the new arbitration courts were formed. Enterprises and other businesses that could afford to have legal departments usually hired jurisconsults, who automatically would represent them in arbitration courts. The total number of commissions that advocates fulfilled in Russian arbitration bodies actually decreased between 1984 and 1991 (26,285 in 1984 and 18,242 in 1991).66 Between 1992 and 1994, however, the amount of advocates' commissions began to rise again, although advocates appeared in only around nine percent of cases in 1994.67

Despite the low percentage of advocate participation that was reflected by official figures, advocates handled many high-profile arbitration cases.

In addition, advocates wanted to make known their expertise in arbitration, so they wrote articles in economic law journals.68 According to one Moscow advocate, advocates were necessary in arbitration cases because they ensured that their clients were following correct arbitration procedure. This was crucial, especially since around one-fourth of applications for arbitration suits were returned to the plaintiffs without having been examined, because of legal errors.69

A. Advocates' Formal Role in Arbitration

The Arbitration Procedure Code (APK), which came into force in April 1992, names advocates as legitimate -- although not exclusive -- representatives of legal entities in

65Gromova, 3-4.
66From the "Otechety o rabote kollegii advokatov," 1984-95. The figures for MGKA, MOKA, and Ivanovo advocates also show this drop in the number of commissions between 1984 and 1991. It in 1985 Moscow advocates (MGKA and MOKA members) comprised 15 percent of commissions fulfilled by advocates in RSFSR arbitration tribunals, in 1994 advocates from the two largest Moscow area colleges comprised just eight percent.
67It is difficult to otherwise prove this figure wrong, because arbitration courts themselves do not generally tabulate the exact status of a representative. The head of the department of economic cases in the Moscow Arbitration court, for example, said that the court does not even require representatives of sides to prove they have legal educations. She approximated that advocates appeared in less than 10 percent of cases in her court. Interview with Tat'iana Gdanskia, 21 March 1995.
69Ibid., 116.
arbitration courts (article 36), which contain either a panel of three judges or one judge.70
Whereas jurisconsults working inside enterprises are automatically assigned arbitration cases
which their employers are a party to, advocates appearing in arbitration courts are hired by
directors of those enterprises which generally do not have in-house legal departments. In
such instances, directors must themselves contact LCBs or other law offices to arrange for an
advocate to appear as their representative. Beyond an advocate's assistance in compiling the
proper documents for a case, filing petitions during the trial, and gathering the relevant
documents, other services may be rendered. These include an advocate's comments on legal
issues involved, participation in internal enterprise meetings, and participation in negotiations
over transactions.71

Very few advocates devoted a large part of their practices to arbitration work, but those
who did tended to have an educational background in economic law and a strong belief that
courts should mediate disputes in a market economy as dispassionately as possible, even when
opposing the interests of administrative organs. Advocate Nikolai Gagarin had already been
doing consulting work for cooperatives and representing them in court before the USSR fell.72
He adjusted quickly to consultation work with newly privatized companies and firms, as well
as to cases in the Moscow Arbitration Court and High Arbitration Court, beginning in 1992.
Gagarin was convinced that arbitration courts were the medium in which new economic
relations were developing now in Russia, and was disappointed by the lack of attention
journalists were giving them.

In his first two years working on these cases, Gagarin was impressed with the courts' rulings. From what Gagarin had observed, judges did not seem pressured by either federal or
local authorities to rule one way or another. But, beginning in 1994, he noticed that the
Moscow Arbitration Court and Supreme Arbitration Court were more often receiving pressure

70 While some advocate respondents claimed that arbitration court participants tended to act more civilly toward
each other, reports were released that not just a few judges in arbitration courts carried guns under their robes.
This according to the first vice-president of the High Arbitration Court in an interview with Elif Kaban (Reuters),
71 Shingarev, 116.
from Yeltsin's administration and city government organs, in the form of instructions and a general tightening of the reins of power. Gagarin blamed this dynamic on the bureaucrats. According to Gagarin, these officials were continuing to prevent the formation of permanent legal mechanisms that would regulate economic relations in society. He also blamed the way the state was again resorting to pressure on the fact that some judges "were not raised on the principle of judicial independence." Two Ivanovo advocates who regularly handled arbitration cases also gave their experiences a mixed review. They believed that most judges treated advocates as colleagues and respected them more than they did jurisconsults, but that the nature of the arbitration court process tended to emphasize the importance of documents over that of witnesses and arguments by legal representatives.

B. Arbitration Cases

Respondents to the 1995 survey of advocates' opinions reported that the arbitration courts more often than not ruled in their clients' favor, in cases where they represented private businesses against state or local organs. Around 60 percent of those Stavropol' advocates who answered the question reported that they often won such cases; 30 percent said that they always did. According to respondents in Ivanovo, 42 percent said that they often won these cases against state organs, and 33 percent said they always did. Finally, 81 percent of respondents in Moscow answered that they often won their cases, and 12.5 percent said that they always did.

Parties to arbitration disputes hired advocates to represent them for the same reason that advocates represented sides in civil court cases: to clarify a complicated dispute through reference to the most beneficial parts of the law and a presentment of documents, in order for

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73Gagarin also discusses this problem in an article highlighting Moscow’s top advocates, in which Gagarin was named a member. “Advokatskaia praktika nedeli,” Kommersant-Daily, 24 December 1994, 21.

74Ivanovo (female) advocate #8 had the strongest reputation for civil practice among her colleagues (interviews, 3 April and 12 April 1995; (female) advocate #9 had only been in practice for a couple of years (interview 4 April 1995).

75In Ivanovo, less than half of the respondents answered the question; in Stavropol’, half of them did; and in Moscow, over half did. These results contradict the negative outcomes Gagarin had experienced in the Moscow Arbitration Court. This discrepancy indicates that the views and levels of tolerance for state interference held by judges in arbitration courts sometimes differed considerably.
a court to favor their side. In other words, although many Russian economic norms are codified, they still afford legal actors room for interpretation, especially during this time of political and economic transition. Shrewd advocates took advantage of these uncertainties and employed their own strategies. This section will examine a select number of arbitration cases in which advocates served as representatives. These include cases in which advocates represented private businesses against state or local organs, represented local organs against private businesses, and represented private businesses against other private businesses.

Advocates' strategy in securing for their business clients a way in which to privatize additional property against the interests of local administrative organs sometimes pitted local laws against federal ones. For example, in a case held in the arbitration court of the Komi Republic in November 1994, four advocates from MOKA represented a company called Komineftegazprom (an oil/gas business) which privatized in 1992. It ran into difficulties when the State Property Committee of Komi, which had control over the privatization process, compelled the owners to rent, not privatize, the administrative building. Under Komi law, no administrative buildings could be privatized. Under federal law, on the other hand, administrative buildings fell into certain categories, such as general administrative (former courthouses and procurators' offices) and production buildings, some of which were allowed to be privatized. According to Russian law, the contested building in Komi fell into the latter category. Two years later, in arbitration, the four advocates reminded the court that Komi's privatization program had been instituted after the plan for Komineftegazprom had been approved. The court decided in the favor of the advocates and their clients. As the advocates initially concluded, federal law held precedence over local law.

The data was limited because the author did not observe any arbitration cases and has instead mainly relied on cases outlined in Komsersant-Daily. Cases outlined in this publication often exhibited favorable results or court victories for advocates. The author, however, believes that they reveal the types of arbitration cases in which advocates participated, and thus help to answer why parties need to have advocates' expertise in arbitration. The author received mixed answers to the question about what categories of clients advocates more often represent in arbitration courts. Some advocates and arbitration court officials said that advocates have more clients who are government organs, because most small enterprises cannot afford advocates' services; but others said that advocates more often represented these entities.

Advocates, however, did not always stand on the side of the private owner. In February 1995, an MRKA advocate represented the prefecture of the Central District (okrug) of Moscow, which had been sued in Moscow Arbitration Court by a business called Nastas’ia.79 According to Nastas’ia, the prefecture oversaw a competition for a bid to reconstruct a building, part of which Nastas’ia rented, and did not allow it to take part. Nastas’ia argued that the prefecture violated article 15 of the “Bases of Legislation of the USSR on Renting.”

In defending the prefecture, the advocate first claimed that Nastas’ia could not be named as a tenant. He referred to an earlier Moscow Arbitration Court decision, which dissolved all rental agreements between businesses with TOO status and local economic administrations called FREU. FREU had control over non-residential buildings in the Soviet era. Finally, the advocate argued that his client had conducted the competition in accordance with a 1993 Moscow government resolution. The court in this case found that FREU could no longer handle leases, because now only the Moscow Property Committee did. The court in this case agreed with the advocate’s arguments and dismissed the lawsuit.

Many of the arbitration cases on which advocates worked concerned breach of contract and monetary loss. Advocates appeared on both sides of the disputes. In one case heard in the Moscow Arbitration Court in January 1995, an MRKA advocate represented a business which sued a commercial bank for 30 million rubles ($6,000). Allegedly, the bank had not fulfilled its written obligation to transfer some of the business’s funds into its partner’s account in a timely fashion; instead the bank held onto the money in order to make an investment.80

In order to win his case, the advocate knew that he would have to prove to a court that the only goal of the commercial bank was self-serving in this matter. In doing this, the advocate showed the court documents to prove that his client and the bank had an agreement to transfer the funds within a certain amount of time. He referred to legislation governing

banking operations and the "Instruction on the Non-cash Transfers in the Economy" to prove how the bank had misappropriated his clients' funds. In acknowledging the bank’s breach of obligation, the court not only granted the plaintiff the 30 million rubles (10 million more than the original amount given to the bank), they also took measures to confiscate some of the bank's properties.

Arbitration cases involving foreign-owned businesses typically were adjudicated in special international commercial arbitration courts under the Trade-Industry Chamber (TPP). Advocates appeared as counsel there as well. In one such case, held in April 1995, an MGKA advocate represented the plaintiff, a Yugoslavian textile firm called Tsentrotexstil', against a Russian association called Legpromeksport. The case had a long history. In 1991, the Yugoslavs agreed to send Legpromeksport accessories for shoes, at a cost of $1.2 million. The goods were shipped to the RSFSR; however, the Russian association had not settled accounts with their partners. Then, in December 1991, the Russian government ordered that all funds found in the Vneshekonomin Bank (the foreign funds bank) be frozen. Legpromeksport did not notify Tsentrotexstil’ that it could not fulfill its end.

In January 1994, Tsentrotexstil’ sued. The Russians claimed that their government had promised to make all debt payments, freeing Legpromeksport from its obligations. The advocate for the plaintiffs claimed that liability still lay with the association, not the state. While the defendants argued that the International Vienna Conference on international transaction payments acted in their favor, the advocate for the plaintiffs argued that the original agreement of purchase held precedence. The court concurred and ordered the defendants to pay the plaintiffs $1.2 million. But, as the advocate pointed out after the trial, winning did not necessarily guarantee that his client would receive an actual settlement.

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82 Sometimes the largest obstacles to implementing settlements occurred when dealing with entities from the former Soviet republics. According to one Russian advocate who worked in arbitration, it was easier to make mutual monetary settlements with Tokyo than it was with Baku. Interview with advocate Olga Iudina. V. Khalin, "Ni shagu bez advokata," Delovoi mir, 10 September 1994.
Two particularly unstable areas of economic law in Russia were taxation and bankruptcy. Tax laws were amended every year, and they penalized private businesses by nearly extinguishing their profits.\textsuperscript{83} However, the tax laws were enforced unevenly by the local tax police and tax inspection agencies. Tax disputes were sometimes resolved in arbitration courts and sometimes at the tax inspection offices. Advocates had little good to say about this area of practice, which was filled with hassles and uncertainties. To make matters worse, their clients had little respect for tax law.\textsuperscript{84} Instead of settling disputes through the courts or formal administrative channels, many businesses used bribes or arranged for a high-placed person to put in a good word for them at the nearest tax inspection office. Many businesses would exhaust all of these measures before finally contacting an advocate to determine whether they had violated tax law in the first place.

Tax inspection agencies took advantage of the imprecise wording of tax regulations and often used points of law which were irrelevant to actual events and processes.\textsuperscript{85} Arbitration courts, however, sometimes ruled in favor of private business against the discrediting behavior of tax agencies. In a taxation case in Moscow Arbitration Court in 1994, advocate Geralina Liubarskaia represented a firm called Akademinvest against the Moscow tax inspection agency. The tax inspection agency had transferred money from the firm's account after Academinvest allegedly neglected to pay taxes and fines.\textsuperscript{86} Liubarskaia convinced the court to settle the case in her client's favor, because the tax inspection office was not following the stipulations outlined in federal laws. Under court order, the agency returned 11 billion rubles ($2.5 million) to Akademinvest. An advocate in Ivanovo reported that she helped her business client reach a victory in arbitration court against the local tax inspector, in a ruling that set a precedent for business people in the community.\textsuperscript{87}

\textsuperscript{83}The Russian tax system is governed by several laws, but the general piece of legislation outlining the whole system is called, "О основах налоговой системы в Российской Федерации."  
\textsuperscript{84}Interview with Barschchevskii, 24 March 1995.  
\textsuperscript{85}Interview with Iurii Platonov in Delovoi mir. Valentin Khalin, "Doshlo delo do suda," 5 August 1994.  
\textsuperscript{87}Interview with IOKA (female) advocate #9, 4 April 1995.
In the area of tax law, at least some progress was being made in correcting the mistakes of tax agencies in arbitration courts. But the bankruptcy law which entered into force in March 1993 was being under used. Moscow businesses in particular were ignoring bankruptcy law, in spite of the fact that the city contained close to 70 percent of financial capital in Russia, and many commercial banks were facing insolvency. The government continued to bail out enterprises which, under stricter adherence to laws, should have folded. In some instances, the liquidation process was handled outside the courts (“hidden bankruptcy”) and the reach of creditors.88

Advocates became involved in drafting additional regulations, in an attempt to remove contradictions between the 1990 “Law on the Central Bank” and the bankruptcy law. In 1994, advocate Petr Barenboim, who headed the Section of Business Advocates in the International Union of Advocates, assisted in the preparation of a Central Bank document, “Temporary Regulations on the Temporary Administration and Management of Banks and Other Credit Institutions.”89 The document allowed the Central Bank to appoint for six months a temporary manager who would assist a bank in determining whether it was capable of remaining solvent. If it was not, the manager would begin liquidation procedures in an arbitration court.

In May 1995, Barenboim, along with Boris Abushakhmin, wrote an article in Moscow News about how the arbitration courts avoided instituting bankruptcy proceedings.90 According to the advocates, the courts did not supervise the execution of decisions ordering the recovery of debts. In specific terms, Moscow Arbitration Court rulings prevented foreign firms from initiating bankruptcy proceedings. In some advocate circles, rumors were flying that a local government instruction had been released, forbidding bankruptcy cases from being adjudicated. The advocates did, however, point out that arbitration courts instituted

bankruptcy proceedings more responsibly in certain other localities. But St. Petersburg, as well as Moscow, should be excluded from this list. Arbitration court judges and lawyers in St. Petersburg met with French lawyers and business people at a seminar sponsored by the French Foreign Affairs Ministry in February 1995 to discuss bankruptcy problems of their own.31

Advocates as Watchdogs

Advocates in the first half of the 1990s were representing the interests of Russian citizens who took legal action to correct or compensate for their mistreatment by state officials, by those who harmfully exploited the environment to the detriment of neighboring communities, and by those who sold and provided consumer goods and services. Moreover, advocates and legal scholars joined activists groups in efforts to activate laws in the interests of average Soviet citizens and to encourage a sense of reciprocity and fair play. Such efforts show that more citizens became better aware of their rights and, at crucial points, entrusted advocates to defend them.

A. Formal Complaints Against Officials and State Organs

The right of citizens to lodge complaints in courts against the malfeasance of officials and state organs, and to receive compensation for damage resulting from such actions, was first outlined in article 58 of the 1977 USSR Constitution. Like so many other stipulations in the Brezhnev Constitution, however, this one was not implemented. Three years later, on 1 August 1980, the Presidium of the RSFSR Supreme Soviet released an order (ukaz) calling for the procedure to be completed in courts. The ukaz was published as articles 236 ("Dela po zhalobam na deistviia administrativnykh organov ili dolzhnostnykh lits, rassmatrivaemye sudom") and 238 ("Rassmotrenie zhaloby") of the GPK, although these articles also did not spur action. An actual law was not approved by the USSR Supreme Soviet until 1987, and it stipulated that only individual officials could be sued. A second law was approved in 1989

31Yevgeny Pogorelov, 11.
and introduced on 1 July 1990. It was entitled “O poriadke obzhalovaniia v sud nepromernikh deistvii organov gosudarstva upravlenia i dolzhnostnykh lits, ushchemliaiushchikh prava grazhdan,” and finally permitted citizens to file complaints against both individual officials and state organs.92

Reformers in the bar hoped that citizens would take advantage of their new rights under this law, and anticipated new and challenging casework as a result.93 Since 1987, thousands of citizens have indeed taken officials and state organs to court. In 1991, citizens brought 3,941 complaints to court; in 1992, 6,366; and in 1993, over 8,300; they won the claims almost three quarters of the time.94 In 1994, 19,538 court cases pertaining to these matters were completed in Russian civil courts; 10,057 were decided in favor of the plaintiffs.95 Judges interviewed by the author in 1995 in Moscow and Ivanovo commented that they heard at least a few of these complaints and often satisfied them. Still, some judges remarked that problems persisted, such as a continuing fear among average citizens about raising complaints. Also, officials and representatives of state organs often did not appear at hearings to answer these complaints.96 Moreover, most complaints were still being brought to the Procuracy and to administrative agencies outside the court system, which were cheaper options.97

Both advocates and judges remarked on how many of these complaints had been heard without legal representation. This is because most of the complaints were straightforward matters, having less to do with violating civil liberties than with acting inefficiently, such as

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95Figures for 1994 were supplied by a Ministry of Justice employee in May 1995. The author copied them down and therefore was not given a reference to these data. In addition, in early 1995 at a Ministry of Justice press conference, officials reported that over 70 percent of these complaints were satisfied by judges in 1994. See “V Ministerstve iustitsii RF,” Advokat 1 (January 1995), 8.
96Interview with female judge in Ivanovo Oblast Court, 6 April 1995; interview with male judge in Presnenskii People’s Court, 17 April 1995.
97This is often the case in Ivanovo, according to one advocate. Ivanovo (male) advocate #13, 7 April 1995.
delays in processing a residence permit (propiska) or mistakes in fining motorists made by traffic cops (GAI) and the militia.\textsuperscript{98} Citizens filing complaints generally prefer to appear in court alone, rather than to pay for an advocate’s services. In the 1995 surveys of advocates’ opinions, advocates responded that on average they had only worked on four to eight of these cases; several respondents left no answer, meaning that they had not yet accepted any of these cases. Most who had, however, answered that, on average, over 50 percent of their clients won their complaints.

Sometimes a citizen who lodged an otherwise straightforward complaint spent the extra money on an advocate. In a case in a Moscow People’s Court in December 1994, an MGKA advocate represented the interests of a Russian citizen who was of Greek ethnic origin.\textsuperscript{99} The officers on duty at the militia station which issued passports in the area of Moscow called Teplyi Stan refused to cooperate with this citizen. He had come in to request that they change the line on his passport which indicated his ethnicity from Russian to Greek. Figuring that he had to fight a discrimination problem, the citizen hired an advocate to represent his interests before a court. But the advocate encountered no bigotry there -- the judge ruled that the militia station had handled his client’s request incorrectly and ordered the militia to change his ethnicity to Greek.

Advocates appeared in the Russian Supreme Court as representatives of citizens who were appealing complaints that had not been satisfied by judges in the lower courts. In one 1991 case, for example, an advocate appeared in the Supreme Court on behalf of a citizen from Murmansk.\textsuperscript{100} The citizen had allegedly been mistreated by the chairman of the governing body of the Murmansk oblast fishing union. The chairman removed his fishing organization from a list of future car recipients that it had been on for ten years. The lower courts did not find grounds for the appeal and even claimed that it was out of their

\textsuperscript{98}Such categories were listed by a male judge at the Presnenskii People’s Court. 17 April 1995, as well as a number of advocates who were interviewed by the author.


\textsuperscript{100}Bulleten’ Verkhovnogo Suda 10 (1991), 9. See 1992 issues (nos. 2,5,8,9) for more rulings on the law on complaints which further clarified its meaning.
jurisdiction. Conversely, the Supreme Court, which traditionally took a more reform-minded approach to jurisprudence, ruled on 23 May 1991 that the complaint had legal grounds. In so doing, its justices sent a word of warning to all lower court judges to adhere strongly to the law on citizens' complaints.

B. Green Advocates

During the 1960s, a number of Western democratic societies, foremost the U.S., witnessed the proliferation of environmental action groups, particularly based on the local level.¹⁰¹ In the U.S., the initial concerns of these groups dealt with specific economic interests, or damage to the individual and property. By the early 1970s, though, many smaller, local groups either became defunct or joined forces with national environmental groups, such as the Sierra Club. The Sierra club was among the first national environmental organizations to file lawsuits concerning damage to the public's general interest in the environment. Most environmental problems which have promoted citizens' action and lawsuits have involved common-property resources and public goods or externalities that impose social costs on people who are only remotely involved in such activities.¹⁰²

American lawyers responded to this rising demand for environmental protection by establishing contacts with environmental groups, representing the aggrieved at trial, and developing their own environmental law organizations and programs.¹⁰³ This section will examine how and why Russian advocates came to involve themselves in similar environmental

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¹⁰¹A concern for the environment is what may be termed a "post-materialist" value, exhibited typically by younger members of post-industrial societies who had already obtained a standard of living (well-being) high enough to allow them to pursue the less tangible values of power, respect, and enlightenment. See Ronald Inglehart, "The Nature of Value Change in Post-Industrial Society," in Politics and the Future of Industrial Society, ed. Leon N. Lindberg (New York: David McKay, 1976), 57-99; and Ronald Inglehart, The Silent Revolution: Changing Values and Political Styles Among Western Publics (Princeton, 1977).


¹⁰³Sixty lawyers attended the opening meeting of the Natural Resources Defense Council in 1970. Soon large law firms were representing environmental interests, as well as those of corporations. The ABA and the American Trial Lawyers Association developed committees and programs on environmental defense. Later several American law schools introduced environmental law into their curricula. For more discussion on the environmental law movement in the US, see Thomas W Wilson, Jr., International Environmental Action: A Global Survey (Cambridge, MA: Dunellen, 1971), 81-83; and Gerald N. Rosenberg, The Hollow Hope: Can Courts Bring About Social Change? (Chicago: University of Chicago, 1991), Chapter Ten.
efforts in the 1990s. Before doing this, however, we will examine why environmental activists re-emerged in the USSR in the late 1980s.

1. Soviet Environmental Protection Efforts in the Late 1980s

Environmental groups which formed in the late 1980s were not the first ones to exist in the USSR, but represented a reawakening of an earlier environmental movement. In the 1920s, independent groups of educated citizens (many of them biologists), such as the All-Russian Society for the Protection of Nature (VOOF), participated in the creation of a network of nature preserves (zapovedniki) and led efforts to protect natural habitats. Beginning in the early 1930s, Stalin’s five-year plans almost completely eliminated ecologists’ direct influence over Soviet environmental policy and their integrity as voices of independent resistance. However, VOOF avoided co-optation by Communist bureaucrats until 1955. In the 1950s, student organizations called nature protection brigades emerged in Moscow and Tartu, Estonia, and spread to other institutions of higher learning across the country. The brigades became centers for the continuation of the environmental movement, however disempowered it continued to be up until the late 1980s.104

The Soviet government created central and local institutions to manage issues concerning ecology and natural resources.105 But the administrators of these organizations emphasized large-scale exploitation of natural resources, not preservation. The Soviet government also treated environmental regulation purely as an administrative function; citizens had no formal involvement in the implementation of environmental policies because the state was supposed to act in the interests of society.106 In the late-1980s, Gorbachev and


other reform-minded Communist Party leaders were willing to allow citizens to provide more input into environmental policy implementation. In an attempt to organize expertise on environmental issues more efficiently, the Gorbachev regime instituted the USSR State Committee for Environmental Protection (Goskompriroda), under the chairmanship of a biologist, Nikolai Vorontsov. On the local level, corresponding committees were formed to actually carry out the mission and, in doing so, help solve local ecological problems. These new organs lacked trained ecologists, who were in short supply across the country; many positions were then filled by CPSU apparatchiki.¹⁰⁷

Concurrently, Gorbachev's policy of glasnost led to the explosive growth of thousands of informal groups in the Soviet Union, leading some scholars to argue that forces in the population were moving toward the possible formation of a civil society.¹⁰⁸ Environmental groups formed in certain areas, including in the Ukrainian Republic, where chemical production and nuclear power had wreaked havoc on the ecological system, and in the Baltics, where the movement took on a more anti-Soviet flavor. Citizens who had been constrained by Soviet dictates were now able to participate in these non-Communist Party affiliated organizations. The first to join the environmental groups did so out of a concern for the safety of their own backyards. Early in their existence, small, local -- but often well organized -- groups were successfully pressing local organs of power to close down nuclear power plants, to stop the construction of hydro power plants and further nuclear weapons testing, and to prevent further damage to Lake Baikal. By 1989, members of many of these local groups chose to combine forces and create mass republic-level organizations.¹⁰⁹ As in the U.S., they found that, after a certain point, large umbrella groups were more likely to get heard.

It was at this point that the environmental movement began to radicalize and challenge the CPSU's leadership itself. People joined because they saw participation in such groups as a way to express collective opposition to the CPSU. Political elites in several republics tried to crack down on some of the informal groups. The CPSU, however, was well on its way to losing its legitimacy, and mass publics were no longer deterred by the threat of state coercion. In fact, some central political elites were responding positively to the environmentalists' protests. But many participants deserted environmental causes to join newly formed political blocs, popular fronts, and parties. The effort to bring down the USSR subsequently moved to more radical playing fields.

2. The Post-Soviet Era: New Laws, Old Faces

After 1991, Russia's environmental problems still remained formidable. A core group of environmentalists -- scientists and jurists among them -- focused on particular efforts, such as saving the Siberian forests, Lake Baikal, and the zapovedniki. They participated in the drafting of new regulations governing natural resources and methods of environmental protection. Also, not all average citizens ignored ecological problems, as will be shown. But most Russians were occupied with "materialistic" matters -- staying employed, covering the daily necessities, and guarding against crime. Moreover, in the first few years of post-Soviet Russia's existence, the tools for improving ecological conditions were not easily obtainable, and environmental institutions, including restructured administrative organs, were not consistently responsive to the needs of local populations.

Concerned environmentalists and non-governmental organizations (NGOs) began to lock horns with enterprises and local authorities over the management and control of limited natural resources. Such confrontations began to take place in legislatures and courthouses. The few jurists who specialized in environmental protection advocacy, namely the handful of..."
jurists and advocates working at Moscow’s Ecojuris and St. Petersburg’s Jurists for Ecology (now defunct), represented the interests of some of these citizens and NGOs. They also worked to educate the wider public on environmental action strategies.

First created by the Soviet government in 1988, the Russian Ministry of Environmental Protection (Minpriroda) was given new guidelines in December 1992. Under these guidelines, Minpriroda would coordinate the implementation of environmental policies and maintain environmental standards. Thus far, Minpriroda, not unlike other post-Soviet Russian ministries, has not consistently fulfilled its responsibilities. According to one specialist on Russian environmental institutions, because of interagency power struggles, center-periphery conflicts, and a barrage of legislative changes, the Russian Minpriroda has been more occupied with sorting out bureaucratic processes than solving pressing environmental problems. Furthermore, whereas in the Gorbachev era, several economic ministries were disbanded or their powers curtailed, in the early post-Soviet era, certain economic ministries whose programs had an impact on the environment, such as the Ministry of Energy, soon tried to revive former development projects in order to receive better funding from the federal budget and create more jobs.

Legislative and administrative organs on the regional, oblast, and krai levels also hold responsibilities in the area of environmental protection and natural resources management. Legislatures may pass laws specifically geared towards the resources in their areas, and

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111 The English spelling that staff members prefer to use is “Ecojuris,” not the transliteration, “Ekojuris.”
112 “Položenje o Ministerstvu okhrany okružnatiushčej sredy i prirodných resursov RF, utvěrždenno Postanovleniem pravitel’stva RF ot 18 dekabria 1992 г.,” no. 996. Sobranie Aktev Prezidenta i Pravitel’stva RF, 1993, no. 3, 172. (Henceforth, Sobranie Aktev). Among the many functions held by Minpriroda and its local organs include fining organizations and enterprises which violate regulations; organizing scientific conferences; collecting environmental resource and protection data and creating information systems; licensing the users of certain controlled natural resources; and presenting suits in court on the compensation for damage caused as a result of violations to environmental regulations. Another institution central to the implementation of environmental protection policy created after the Soviet Union’s demise is the State Committee on Sanitary-Epidemiological Supervision, formed in November 1993. “Položenje o Gosudarstvennom komitete sanitarno-epidemiologicheskogo nadzora, utv. Uказом Prezidenta RF ot 19 noyabria 1993 г.,” no. 1963. Sobranie Aktev. 1993, nos. 47, 4527.
114 Interview with Olga Razbash and Elena Minchina, advocates from Ecojuris, 14 November 1994.
administrative organs have direct control over how local resources are being used by utilities and enterprises.\(^{115}\) As was the case with so many other administrative organs in the early 1990s, some of the administrative organs operating in the area of environmental protection and resource management were restructured in form, but not in terms of personnel; the same faces and sometimes same neglectful attitude towards resource management have remained. Many officials have continued to subordinate law to their own personal authority.

Since 1993, local executive organs in Russia have possessed a disproportionate amount of control over the local committees on environmental protection. This condition began to develop once local councils (soughty) were liquidated after the Supreme Soviet was disbanded in 1993. The committees are now formally subordinated to the Goskompriroda and the local executive organs, which serve as the source for most of their funding.\(^{116}\) The experts on these committees have tended to have strong technical backgrounds but have lacked an understanding of policy development and analysis.\(^{117}\) Moreover, many of these experts left to join NGOs. According to Ecojuris lawyers, who have regularly dealt with the members of some of these committees, their independence from local administrative organs sometimes is “fictitious.”

Since late 1991, revised pieces of legislation were being drafted to outline Russia’s new approach to environmental protection and natural resources management, taking into account the concepts of ownership and private property.\(^{118}\) Most of this legislation has come under sharp criticism from Russian environmentalists as well as western analysts, particularly

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\(^{115}\) Zakon RSFSR ot 6 iulja 1991 g. “O mestnom samoupravlenii v RSFSR.” Vedomosti S'ezda narodnykh deputatov RSFSR i Verkhovnogo Soveta RSFSR 1991 g. nos. 29, 1011; “O kraevom, oblastnom Sovete narodnykh deputatov i kraevoi, oblastnoi administratsii.” Vedomosti S'ezda narodnykh deputatov RF i Verkhovnogo Soveta RF, 1992, no. 13, 663-64.

\(^{116}\) In 1992, the Russian government cut all of its funding to local environmental protection committees, which resulted in the regional governments’ attempts to undermine environmental regulations and withhold further funding. In 1993, committees again were financed by the federal budget, but received even less funding. Peterson, “Building Bureaucratic Capacity,” 110.

\(^{117}\) Ibid, 111-13.

\(^{118}\) The main piece of legislation on environmental protection and the rights of citizens, “Ob okhrane okruzhaishchey prirodnoi sredy,” was passed on 19 December 1991. Vedomosti S'ezda narodnykh deputatov RF i Verkhovnogo Soveta RF, 1992, nos. 10, 457, 459. The main pieces of legislation on natural resources such as land, minerals, and forests, were approved in 1991, 1992, and 1993, respectively. Legislation on societ al health (sanitary-epidemiological issues) was passed in April 1991 and July 1993.
concerning guidelines for taxing polluters. On the other hand, this legislation also has given citizens and NGOs opportunities for intensifying their environmental protection efforts. In section XII of the environmental protection legislation passed in 1991 (which went into effect in 1992), for example, a citizen's right to take his or her grievance to court is established. Among the most important provisions in the 1991 environmental protection legislation which serve to strengthen the rights of citizens in court include section II (the right of citizens to a healthy and favorable environment), and section V (government ecological expertise), which allows citizens to challenge conclusions made by government experts in court.

Augmenting these provisions are certain stipulations found in the 1993 Russian Constitution. These include article 42 (all citizens have the right to a favorable environment, to information about its condition -- the "right to know" stipulation -- and to compensation for damages affecting one's health or property) and article 58 (everyone is obligated to preserve the environment). The first part of the new civil code, because of its articles concerning property ownership and compensation for damage, also aids the cause of citizens in environmental protection lawsuits. Citizens may use the services of a legal representative, or they may seek redress through a procurator's office. A procurator can act on behalf of a citizen in a grievance involving the violation of any environmental protection laws, as a part of the procuracy's general obligations to supervise the implementation of laws. In addition, citizens may file complaints against officials or state organs which violate the environmental

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119 Transgressors of pollution regulation paid approximately 750 million rubles in fines in 1994 in the Moscow area alone (Moscow News, 24 February-2 March 1995, 16). This figure may be taken out of context, however. Foreign business people complained at the time that only foreign firms were being forced to comply with the standards, so that the Russian government could collect hard currency to fill its coffers. Every investor must carry out an expertiza, or an environmental impact assessment (EIA); between 1993-95 only two out of ten EIAs were approved by the government. According to one observer, "Many investors claim that regional officials use environmental laws to gain leverage when cutting deals." Liam Halligan, "Green Laws: A Double Standard at Work," Moscow Times, 18 March 1995, 11. In addition, taxes on an industry's pollution emissions are kept relatively low to insure that it will not be put out of business. See Barbara Jancar-Webster, "Environmental Degradation and Regional Instability in Central Europe," in DeBardeleben and Hannigan, 39-60.

120 Zakon RF "O prokurature RF. Vedomosti 5"ezda narodnykh deputatov RF i Verkhovnogo Soveta RF. 1992 x. nos. 8, 366 (articles 2 and 21).
regulations, as stipulated in the law on complaints against officials and state organs; they can also appeal to the Constitutional Court.

3. Networks of Greens Organizations and Legal Specialists

What occurred in the American environmental movement beginning in the 1970s, occurred in Russia during the first half of the 1990s, but on a much smaller scale: legal specialists became partners with environmental activists. Together they educated the public, worked on legislative drafts, and moved environmental disputes into courts. At times, they fought an uphill battle, coping with conservative forces in the central and local governments, a lack of funding, and a continuing failure in law schools to train new specialists in environmental law.121

Russian environmental activists and jurists were savvy in their approaches to media exposure, funding, and technical support. Most journalists were sympathetic to the causes of environmental interest groups. Advocates would often inform them when a significant court hearing was pending, and the journalists would report on it. Some of these advocates accepted advice from staff members at the Confederation of Consumers’ Unions in Moscow, which had already received many favorable results for their clients in lawsuits and out-of-court settlements.122

Beginning in the late 1980s, environmental activists began to network with western environmental organizations through exchange programs. The Natural Resources Defense Council (NRDC), the International Clearinghouse on the Environment (ISAR), San Francisco’s Earth Island Institute, the Center for International Environmental Law, and the American Bar

121 A couple of the legal researchers who worked part-time at Ecojuris in Moscow had full-time research positions at the Institute of State and Law. But they said that very few of their colleagues were researching or teaching in the area of environmental law. Clearly, the demand in law faculties was for business law courses to be taught. Students knew that the most lucrative jobs were in this area of law and that environmental cases were not widespread.
122 One staff member at the Confederation suggested to Ecojuris advocates that they try to apply the consumer rights legislation to some of their cases. For example, water and heat could be conceived as utilities used by consumers. Ol’ga Razbush, however, noted that water still tends to be viewed more often as a natural resource, unless it has been treated first for consumption. In addition, heat in the Soviet period was managed as a part of a centrally planned mechanism and was not divided per household. It will still be years before gauges are installed in domicile units to measure electricity usage, water, or natural gas levels, for example. Nevertheless, Ecojuris considered doing research on class actions. Interview 14 November.
Association were among the many American NGOs which worked closely with their Russian counterparts on projects. Starting in 1991, for example, NRDC arranged internships in U.S. law firms, environmental law organizations, and government agencies for students in the law faculty at St. Petersburg State University. NRDC also worked closely with Lawyers for Ecology. ISAR has shared information and participated in conferences with the Socio-Ecological Union (SES), an umbrella group of some 150 eco-organizations throughout the former USSR. The MacArthur, Carnegie, Eurasia, and Ford Foundations, as well as programs inside the U.S. government's Agency for International Development (AID), funded some projects as well.

Finally, the opening of a Greenpeace office in Moscow plugged Russian activists directly into the world's foremost environmental action organization.

The Russian activists, however, knew that the international network that they had established could only go so far in improving the dismal local environmental conditions — and they wanted to have control over their own conferences to shape the issues in their own way. Legal specialists were wary of radical eco-groups who tried to solve problems on the streets; the lawyers felt obligated to offer an alternative. Dozens of environmental activists from around the world gathered in St. Petersburg on 11-13 November 1994 to attend a conference on the legal protection of citizens' environmental rights. Its participants signed a petition addressed to Minpriroda and the Ministry of Emergency Situations; the text of the petition was published in the newspaper Spasenie in January 1995. In the petition, the authors asked for better adherence to the present environmental legislation and to the drafting of amendments which would further strengthen protection measures and the right to file suit in court. Also that fall, environmental law specialist, Tat'iana Zakharchenko, along with the NRDC and advocates and jurists at the two environmental law firms, published a handbook on environmental protection for citizens, entitled Okhrana okruzhajuschchei sredy: k iuridicheskim deistviyam grazhdan Rossii. The book's particular audience was citizens who

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123Advocates at Ecojuris sometimes worked with the more radical activist group, Raduga, but they had reservations about its tactics. Raduga apparently was considered by authorities to be dominated by hooligans and therefore was not respected.
were living in the provinces, and therefore may not have had access otherwise to information about their legal rights and methods for confirming them in court.124

The handbook discusses the legislative basis for the activities of citizens, their relations with state organs, their right to information about the environment, and their right to complain before a court of law. According to Zakharchenko, in civil suits involving environmental disputes the plaintiff is not obligated to prove that the defendant is guilty; instead, the guilt of the defendant is first presumed, and innocence must be proven.125 The main message that she and the advocates present through their research and presentation of case materials is that of empowerment -- a new concept to the minds of average Russians. These legal specialists displayed an assumption similar to that which American civil liberties activists had when they sought the support of justices on the Supreme Court for their views on racial equality, due process, and right to privacy in the mid-1950s to early 1970s. That is, the courts, with the support of citizens and environmental groups, could formulate an improved policy in the area of environmental protection through their rulings.

4. Case Study of Ecojuris's Representation of Environmental Interests

The dozen or so female jurists and advocates at the law firm, Ecojuris, nestled in one room of an unremodeled Moscow building, work overtime on lengthy lawsuits filed by their clients to obtain the goal of citizens' empowerment through the courts.126 When Ecojuris began operations in 1991, its members knew that they were faced with weaknesses in the text of the laws, a lack of available information about environmental conditions, and incomplete training in environmental law. They created a seven-part program that consists of amassing and sharing litigation experience, maintaining contacts with other environmental lawyers in

124Tat'iana Zakharchenko, Okhrana okruzhajuschei sredy: k juridicheskim deistviyam grazhdan Rossii (St. Petersburg: NRDC, 1994).
125Ibid., 42. This said, in reality, many Russian lower courts have acted in such a way that they appear not to assume that those defendants which possess a large amount of local authority (administrative organs and big enterprises) carry the burden of proof.
126See Chapter Three for more information about this law firm pertaining to its creation in 1991, philosophy, and basic modes of operation.
the FSU and abroad, skills training, analyzing legislative drafts written on the local and federal levels, updating database materials on environmental law, and preparing and publishing materials on environmental law and citizens’ rights. In doing so, they had established themselves as Russia’s foremost group of environmental lawyers within four years. The expertise of the jurists at Ecojuris was soon in high demand. As a consequence, these few advocates carried the weight of great expectations that many domestic and foreign environmental NGOs, a number of major American foundations, and the Rule of Law program at AID had placed on them.

Offices within the federal and some local governments contracted Ecojuris for certain projects. In the federal Duma’s Committee on Natural Resources, Ecojuris members worked on a revision of the 1991 law on environmental protection (still underway as of 1996), as well as new draft laws on protecting Lake Baikal in the Far East, on sanitary-epidemiological inspection, and on environmental impact assessments. In 1995, in the Moscow Duma, they wrote drafts outlining the legal conception of pollution control and an environmental insurance policy. That year, they also participated on a Minpriroda environmental expert commission that investigated a nuclear power plant in Rostov and the construction of a high speed railway between Moscow and St. Petersburg.

Although their main focus was on representing and further defining the environmental interests of citizens, the advocates at Ecojuris also advised and represented NGOs. They completed consulting work on fundraising, taxes, founding documents, and management issues for NGOs across Russia, including in Novokuznetsk and Lipetsk in 1995. On occasion they accepted municipal governments, committees on environmental protection,

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127 Laid out in “General Concept of Ecojuris Activities.”
128 Ecojuris also worked on cases involving the abuse and harassment of women. The NGO, Winrock, awarded Ecojuris $3,000 to complete such cases. In February 1995, two Ecojuris advocates attended a workshop outside Moscow sponsored by the Institute on Women, Law, and Development (US) and other women’s organizations called “From Basic Needs to Basic Rights: The Use of Law as a Strategy for Changing Society.” The thirty or so participants discussed ways in which to take concrete action in educating women about their legal rights and empowering them to take collective and individual action on a number of issues affecting their lives, including ecology. The Ecojuris advocates, the only advocates present, contributed significantly. The author was present at one day’s session.
and some corporations as their clients. This work typically focused on environmental impact assessments and the use of certain types of expertise. In this vein, Ecojuris advocates were particularly concerned that state officials were observing the new right to know stipulations.

Some of Ecojuris's cases had been underway since 1991. Because most of them were civil suits, as opposed to complaints against officials and state organs (which tend to be completed more swiftly), the opposing sides used scare tactics such as not appearing at hearings and withholding court-ordered documents and other pieces of evidence, which resulted in endless continuances. In a given year, the advocates were juggling at least a dozen or more civil suits which were in various stages of litigation. Initially, some of the lawsuits were declined by certain lower courts, which considered them to be outside their purview. This often forced the advocates to appeal to higher courts for the resolution of jurisdictional issues. Eventually, however, they succeeded in getting most of their cases on the docket. When possible, they helped clients to prepare for lawsuits by completing the proper forms, after which their clients would represent themselves in court.

The topics and issues of these suits varied, but they often concerned the recovery of damages to clients' health and property caused by environmental hazards, including the radioactive fallout from nuclear testing conducted by the Ministry of Defense in the mid-1950s. In one case which was covered in the media, Ecojuris advocates were representing a veteran named Sorokin, who filed a complaint against the Ministry of Defense for subjecting him to the effects of nuclear testing in 1954. His exposure to the nuclear fallout from the tests resulted in severe health problems. A People's Court in Moscow declined Sorokin's complaint and advised an outside settlement. The advocates received a better outcome in

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129This information about the nature of their cases was gleaned from the Ecojuris information letter they distribute on occasion to give updates on the status of their cases. It also came from the author's interviews and correspondence with the advocates themselves over the course of late 1994-96 and from her observation of hearings in the Butovo law suit.

130Ecojuris tried to appeal the case to a higher court in late 1994, but their client died before further action was taken. Ecojuris advocates claim that the outcome occurred because the judge was pressured by the Ministry of Defense to rule against the plaintiff. Conversely, according to a People's Court judge who knew about this case, the court made its ruling based on the fact that the plaintiff did not provide any earlier doctors' reports about chronic illnesses related to radiation exposure. Interview with a female judge at the Babushkinskaia People's Court, 24 February 1995.
in a health and moral damage case which took place in Petrenko, a town in the Saratov oblast. The case involved a plaintiff who sued a military troop (a sub-division of the Ministry of Defense) for having poisoned him as a result of his participation in chemical testing. The lawsuit was presented by Ecojuris advocates in Saratov Oblast Court, and the court awarded the plaintiff five million rubles ($1,000), as well as a monthly pension of 95,000 rubles ($20). Although the judge rejected the plaintiff's moral damage claims in this case, and although the plaintiff intends to appeal, the case acted as a precedent for awarding future damages to army veterans in similar cases who could prove harm. The advocates also filed similar cases on behalf of clients in the Volga region.

Ecojurists joined the efforts of citizens and NGOs who wanted to halt the construction of large housing complexes, landfills, and utility plants. When possible, the advocates tried to encourage negotiations and out-of-court settlements. In one 1994 matter, for example, Ecojuris advocates represented the interests of organic farmers who needed to strike a deal with a local council located in the Moscow oblast. The agreement would allow the farmers to farm in a certain protected area. The council had not cooperated with the farmers until the advocates intervened and helped settle the dispute in their clients' favor.

Ecojuris has also handled cases in arbitration courts. In one lawsuit heard on appeal in the Supreme Arbitration Court (and still pending in 1996), one Ecojuris advocate, Olga Davydova, is representing a committee on nature conservation in the town of Dzerzhinsk, in the Nizhnyi Novgorod area. In 1994, the committee filed suit against a factory which produced ethanol, complaining that the defendant was dumping illegal amounts of lead into a nearby river and into the atmosphere. Investigations concluded that around 90 percent of the children in Dzerzhinsk were suffering from various illnesses related to these emissions. The committee had already complained to the factory for two years without any response. But a controversy arose in court over the rules governing the testing of emissions. The regulations had apparently been written in such a way that they did not apply to the case. A local court in Nizhnyi Novgorod therefore ruled that the factory could not be fined.
At this point, the committee decided to seek assistance from Ecojuris for the appeal. Davydova succeeded in convincing a panel of Supreme Court justices that the lower court’s ruling was not “objective.” The case was then remanded to the same court in Nizhnyi Novgorod, but with different judges this time. The advocate, however, worried about the case’s outcome. She had heard rumors that the chairman of the committee had been badly beaten physically in connection with the case. She also was aware that the factory had a powerful presence in Dzerzhinsk, not only because it was the town’s main employer, but also because its managers had cultivated strong links to local officials. Moreover, both the fines for not appearing in court and the fines for violating environmental protection standards are negligible. Davydova worried that the factory administrators would be unlikely to appear at the hearings. And, even if she won the case, the defendants might still refuse to change the factory’s standards. Due to instances like this one, the Ecojuris advocates have grown wary of expressing optimism about outcomes and the behavior of judges, whom they consider, for the most part, to hold conservative, Soviet-era views on the environment.

The environmental case presented at this juncture -- the Butovo litigation, which is still ongoing -- holds particular interest to social scientists because it serves as an example of the strong participation of and close collaboration between Ecojuris lawyers and a group of Moscow citizens. Particular attention will be paid to why and to what extent the role of advocates in the case has influenced its development. Attention also will be focused on how the courts represent new playing fields between societal and state interests.

The Butovo litigation actually consists of three separate actions which have been underway since 1991; this section is concerned primarily with the first action. In the first

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131 According to lawyers at Ecojuris, a high number of environmental protection cases are litigated without legal representation, due to the lack of specialists in the field and the high cost of legal services. The chairman of the nature committee in Dzerzhinsk found out about Ecojuris only through an acquaintance at the Institute of State and Law in Moscow.

132 The author completed this study of the Butovo case from court hearings she observed in the first months of 1995 and interviews she conducted with the Ecojuris advocates who were working on the case and a couple of Butovo residents. In addition, the author continued to receive written information Ecojuris bulletins and correspond with Ecojuris advocates in late 1995 and 1996 about the case.

133 The second action, which involved the Moscow city government’s refusal to deliver title agreements to 186 Butovo residents who owned homes there, was at a standstill during the time the author was in Russia in 1994-
action, 183 residents of Butovo, a district (sometimes referred to as a settlement or poselok), located on the outskirts of metropolitan Moscow, filed suit against the Moscow city government, the Moscow construction department (Moskapstroi) and the Moscow Nature Conservancy Committee (Moskompriroda) concerning their efforts to construct a number of large housing projects in Butovo. Initially, a people's court in Moscow ruled that Moskompriroda was not a proper defendant. According to Ecojuris, “The judges were very reluctant to begin hearing these cases because of their political context.” But the Supreme Court ruled on appeal that Moskompriroda was an appropriate defendant. Next, Moskompriroda appealed that decision, and the case was stalled in the Supreme Court until September 1994. The high court reaffirmed its earlier decision, and the case fell to the Moscow City Court for a full deliberation thereafter.

The city of Moscow had recently annexed Butovo; it earlier had been administered by the Moscow oblast. Because Butovo is a part of Moscow's so-called “green belt,” which buffers Moscow from the industrial areas of the surrounding oblast, it has been protected from large building projects.134 Over the past few years, however, parts of Butovo nevertheless had been further developed, with the exception of the small settlement area in dispute. The residents wanted the area to remain in its present condition, in order to protect the environment, but their main concern centered on whether their property rights would be upheld. The Moscow government had not consulted residents about their preferences in the matter. The government's failure to do so came in spite of the fact that such negligence violated the new procedures for large municipal building projects, which stipulated that those affected by the large development had to be consulted.

93. A lower court ruled that federal land use laws, which would have confirmed the residents' right to privatize the land under which their houses stood, did not apply. Ecojuris was then in the process of appealing the case to the Supreme Court. The third action has concerned a complaint (zhaloba) against the Moscow city government. It approved, it would allow for Butovo residents to be reimbursed for the intentional infliction of harm caused by the illegal action of the officials. This action was in the process of being filed by the Ecojuris advocates in 1995.

134 The Moscow oblast administration facilitated the process of land privatization more efficiently than the Moscow city administration. Some Butovo residents involved in this action claimed that they never would have been forced to file lawsuits had the area stayed within the oblast. Keep in mind that this is not a class action suit. Thus each resident involved had to file suit against the city.
As a legal basis for this court action, the Ecojuris advocates used several legal references. These included the RSFSR law on property (article 10, allowing for the ownership of plots of land); stipulations in the new Civil Code about the defense of civil rights in court and the right to compensation for moral damage; the 1991 law on environmental protection; and parts of the law on the sanitary-epidemiological safety of the population.\(^{135}\) To litigate this case, three Ecojuris advocates arrived as a team to each hearing. The team approach, not employed by most Russian advocates during trial, benefited the eco-jurists. They shared their expertise and ideas while preparing for trial; in court, they appeared to their opponents as worthier adversaries, due to their collaborative efforts.

The residents involved in the case were largely pensioners who owned small homes in Butovo and insisted that they owned the land underneath their homes as well. For most of the plaintiffs, this was their first courtroom experience. During the first two years of litigation, dozens of residents would appear at hearings, after traveling for hours on public transport. According to one of the residents, Rosita, they were at first invigorated by democratization, and hopeful of reaching a just settlement. By 1994 and 1995, however, only about ten of the litigants were attending regularly. Most had lost patience with the case, as well as with the new post-Soviet political system in general.

One resident, Alla Andreeva, was chosen by her neighbors to become the residents' chairman. This role meant that she acted as the main plaintiff during trial hearings, and questions about the opinions of the residents were directed to her. A self-assured and articulate person, Andreeva had the trust of her fellow plaintiffs. Her role in court sometimes appeared to be as active as that of the advocates whom she had hired to defend her interests.\(^{136}\) Nonetheless, the residents still trusted and respected the work of the advocates

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135 The property law was passed by the Supreme Soviet of the Russian Republic before the break-up of the USSR. Parts of the 1991 law on environmental protection that were used include: article 12 on the authority of citizens in protecting natural resources; article 34 on defending certain zones which have natural resources from pollution and other detrimental influences; article 38 on liability for not fulfilling the demands of state ecological experts; articles 40 and 42 on ecological demands placed on construction projects; and other articles referring to the authority of citizens in the area of environmental protection.

136 As lead plaintiff, Andreeva had the right to present petitions and make comments during the trial. She first received the advice from the Ecojuris advocates about strategy in court before filing a petition or advancing an
and believed that Ecojuris had their best interests in mind. They called the three advocates
*umnyisty*, or smart, clever people.

Rosita mentioned that she and her neighbors were pleased that they now could put the
government on trial. A phrase often heard from the plaintiffs was "We are engaged in battle
with the Moscow government" (*My srazhaemsia s predstaviteliami Pravitel'stva Moskvy*).
"But," Rosita lamented, "the state and the courts are not prepared to deal with this kind of
case involving the people against them." Like the others, she knew that the Moscow
government wanted to retain the land on which she and her co-plaintiffs owned homes for its
own use. The residents also were aware that, if their land were to be confiscated through a
court order, they would receive either a minimal amount of compensation or new land in an
undesirable location. As the most visible government figures connected (however remotely) to
the residents' case, Prime Minister Victor Chernomyrdin and Moscow Mayor Yuri Luzhkov
had their names bandied about with much disdain. According to the residents, these political
elites were trying to ensure that land privatization laws would not go into effect, or at least
not for the average citizen. Luzhkov was particularly culpable, since he had immediate
control over their property and, according to the Butovo residents, control over all of the
banks in Moscow.\(^{137}\) The residents assumed that the judge in this case was on the mayor's
side.

During the first six months of 1995, when the Butovo trial was underway in the
Moscow City Court, over half of the hearings were canceled, either due to bomb threats
(related to other trials) or to the absence of the defendants. In a hearing on 24 January, two
female jurists representing the Moscow government appeared without their clients; nine
plaintiffs appeared with the three advocates. The judge, a woman in her early forties, allowed
for some motions to be heard before canceling the hearing. After the judge read Andreeva her

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\(^{137}\) In fact, as mayor, Yuri Luzhkov did have a great amount of control over privatization efforts and land
ownership in Moscow. Still, he remained a popular public figure and was easily re-elected in June 1996.
rights as a plaintiff (she sat in the audience, not with the advocates), one of the Ecojuris advocates stood up to present a petition confirming the plaintiffs' request for moral-damage compensation from the government. Not only was the government trying to develop protected land, the plaintiffs argued, it was also failing to fulfill its obligations, such as supplying the settlement with sufficient electricity or providing proper militia protection.

One of the government's jurists told Andreeva that she was acting like a child for demanding such services, then rose to protest the whole lawsuit. The government jurist charged that, since the dispute had begun in 1991, it lacked legal grounds in 1995. The Moscow government was arguing in favor of the more restrictive Moscow law and against the earlier RSFSR law on property, which the plaintiff’s wanted to see as a basis for deciding the case. One of the Ecojuris advocates immediately rebutted the protest, claiming that her clients still had a right to claim that the Moscow government had not fulfilled their responsibilities in the matter. The lawyers also argued over the issue of expertise. It was unclear to both sides who exactly would be called upon to evaluate the extent to which the government’s future development of Butovo would harm the local environment. After the hearing, the residents, composed of one man and eight women that day, gathered with Andreeva and the advocates to develop a strategy for the next hearings.

Another hearing in early February was canceled because the Moscow government representatives did not appear. However, the hearing on 21 February offered renewed hope for the plaintiffs. The head of the public-relations section of Moskapstroy appeared with a legal representative. Before the judge opened the hearing, both sides confronted the other in the hallway outside of the courtroom. They were discussing the possibility of a mirovye soglashenie. The deal would benefit the government, because it would then be a quiet affair outside the glare of the media. For the citizens, it would still be a victory, as long as they were permitted to contribute to the formal assessment of the project and retained most of their property.
When the hearing began, the Moskapstroi representative told the bench that her clients were suffering, too. "The city has little money to go towards improving utilities on such a large scale," she added. Andreeva and the Moskapstroi official spoke at each other from across the room about the possibility of a settlement, and it appeared to the judge, who was growing impatient, that both sides wanted to attempt the measure. One of the Ecojuris advocates stood up and discussed how the lawsuit had already been objectionably long, because of the government's stalling. She admitted that now, in order for the matter to be resolved, she and her clients might have to compromise some of their demands and sign a mutual agreement. The judge warned both sides that it was an "all or nothing" matter. Then the judge turned to the representatives of Moskapstroi and told them that the agreement had to be binding on all government defendants, not just the construction agency. Once a settlement is reached, the sides must present it before her in court to make it legally binding.

The advocates, Andreeva, and the other residents in attendance left the courtroom feeling more hopeful about a favorable outcome than they had in four years. After all of the disappointments, the case finally had a breakthrough. Andreeva made arrangements to meet with some of the government representatives. She would act as the go-between, along with the advocates.

Since the February 1995 hearing, however, a settlement still has not been reached (as of mid-1996). Government bureaucrats have continued to postpone meetings with citizens and advocates. In their 1995 case updates, Ecojuris noted that "the Moscow city government, the Moscow construction department, and the Moscow environmental protection committee were still continuing their violations." Such obstructionistic behavior has betrayed these Moscow bureaucrats' disregard for legal procedure as a means of resolving conflicts. But the Butovo case thus far has shown that trial court judges, after some pressure from the more reformist Supreme Court justices, have more often been inclined to hear complaints against government agencies based on property rights and rights to a safe and clean environment. The case also indicates that not all Russians are afraid of taking legal action against the
government over these issues. In fact, their experiences in court seem to strengthen the awareness they have of their newly-gained rights.\textsuperscript{138}

The Ecojuris advocates lent credence to their clients' claim by enforcing the rules of play. In addition, the advocates also placed the local officials on legal ground more level with that of their clients in the court hearings.\textsuperscript{139} Moreover, the advocates were keeping their clients' disputes against local power viable by a stubborn show of perseverance in the face of long court delays. Without such legal guidance, citizens groups might have disbanded after a shorter amount of time had elapsed. Many of Ecojuris's cases have not concluded or have ended in a stalemate of sorts, and Russian courts lack the authority to enforce their own decisions. However, the very fact that the Ecojuris advocates have been able to get cases like Butovo heard and to allow citizens to defend their new rights indicates that courts are being used more effectively -- at least to some extent -- for dispute resolutions in this area and in implementing environmental legislation.

5. Environmental Lawyers as Facilitators of Political Change

Ecojuris's cases indicate a slight trend towards the more active involvement of average Russians in the legal process. In the area of environmental law, the courts are proving to be new playing fields for the resolution of conflicts between citizens and the state.\textsuperscript{140} First, the citizens' groups have viewed themselves as entities separate from the state. At the same time, state officials have recognized that their interests and views conflict with those of the citizens -- something which political elites did not openly acknowledged during most of the Soviet era.

\textsuperscript{138} Still, it should be noted that the Butovo residents appeared to be far more worried about retaining their private property rights than with preserving the natural resources of Butovo. In contrast, while the Ecojuris advocates also strongly defended their clients' private property rights in the 1995 court hearings, they tended to emphasize the need to comply with environmental protection regulations more than the plaintiffs themselves did.

\textsuperscript{139} The author says this with some reservation, because the judge could have sided fully with the plaintiffs in ruling that the federal laws on property and privatization took precedence over Moscow laws. By the way she agreed to an out-of-court settlement, the judge seemed to avoid the task of ruling in favor of one side. In the long run, her decision for a settlement may favor the government.

\textsuperscript{140} I am not assuming here that Russian advocates have been major instruments of change in environmental politics, however. Not enough time has passed to allow for many of the court cases on the environment that have been underway since the early 1990s to conclude, let alone exhibit any influence. Even research on environmental cases in the U.S. shows that courts have been weak instruments in "directly producing environmental improvement." See Rosenberg, 292.
Second, both sides have accepted some general guidelines, such as court procedure and certain regulations governing civil relations, environmental protection, and sanitation standards.

Finally, in agreeing to work together on a settlement in the Butovo case, both the citizens' group and local Moscow administrators have resolved to reach a compromise through bargaining. In such a way, both sides have acknowledged that they share at least some common ground. This trend bodes well for the future of civil society in Russia. Although the governmental actors may be assuming that their interests have a better chance of prevailing in the end, their agreeing to participate in a settlement with average Muscovites indicates, at the very least, that they are not relying on the tactics Soviet bureaucrats used earlier: namely, pressuring the courts into deciding in their favor.

C. Consumers of Russia, Unite!

Consumer protection legislation in any country is designed ostensibly to protect consumers from faulty products and inadequate services. It also serves to strengthen the legal force of contracts and warranties, and to deter producers from manufacturing inadequate products and providers of services from reneging on their agreements with customers. But, in the case of former Communist countries, consumer protection legislation can counter anti-market attitudes in the public by promoting a level of fairness and attempting to limit the economic power of existing monopolies.11 James P. Nehf and other legal scholars have shown, however, that in many countries, consumers do not always find that their grievances are addressed in a satisfactory way through the courts.12 This is because consumers typically are not well informed of their rights, most claims are not worth the money needed to cover

court costs, and many businesses have in-house lawyers who try to prevent possible litigation.\textsuperscript{113}

Nehf predicted that Russian consumers' use of the courts in confirming their rights would most likely be minimal, especially since lawyers were scarce and Soviet culture had stressed conciliation over confrontation. But compared to the number of environmental cases in court, the number of consumers advocacy cases was quite high in Russia in the first half of the 1990s. In Moscow, over one hundred consumer rights cases were heard in courts each week; across Russia, consumers were winning close to 90 percent of the lawsuits they filed against both domestic and foreign companies.\textsuperscript{114} Why then was Nehf's justifiable prediction incorrect? The reasons, as we will see below in more detail, is that new consumer legislation has been written and is being implemented more effectively than most other pieces of legislation outlining new rights in the early post-Soviet period. Moreover, many Russian citizens have wanted to mobilize the law because of their strong opinions about just compensation. They have also wanted guarantees that what little money they acquire from their jobs or pensions will go towards reliable consumer goods and services.

1. Consumer Rights Legislation

Soviet political elites viewed consumers' concerns as largely bourgeois until the Gorbachev era, although the 1977 USSR Constitution and RSFSR Civil Code did contain articles about consumers' rights. Nothing was enforced or specifically codified in this area, at a time five-year plans and heavy industry took precedence over the production of durable consumer goods. A USSR law on the defense of consumer rights was first drafted in 1989, passed in 1991, and was to go into effect in 1992. While it never did, for obvious reasons, it

\textsuperscript{113}The cases in US courts involving negligence or strict liability which make the news because of large awards to plaintiffs are the exceptions. Take, for example, the statistic that doctors as defendants in medical negligence cases win more than 80 percent of the cases that land in trial. Barry Werth. "Lawyers vs. Doctors, vs. Patients.” \textit{Gentleman's Quarterly}, August 1994, 177-78.

\textsuperscript{114}These statistics were furnished by the vice president of the International Conference of Consumers' Societies, Mikhail Poryachek (a 1,000 cases a week figure was published, but these seems quite high and may have been an editing error). See Simon Saradzhyan, "Consumers on Winning Side," \textit{Moscow Tribune}, 3 November 1994, 10.
acted as a catalyst for the drafting of an RSFSR law, which began in 1991. An NGO, the
International Confederation of Consumers’ Societies (KonfOP), worked on the draft, which
Yeltsin signed into law on 7 February 1992; the law went into effect on 7 April.115 Although
staff members of KonfOP had misgivings about certain omissions, they were pleased that such
a law was being passed.116 The draft was written during a time when the Russian Republic
still had a planned economy; it therefore lacked proper stipulations governing consumers’
rights in the area of financial services, medical fraud, false advertising, consumer credit, and a
coherent definition of moral damage. Since 1992, more consumer laws have been adopted,
including ones on false advertising and consumer credit, although problems with
interpretation still persist in many areas of consumer rights legislation.117 In interviews with
the author, judges who worked in civil courts in Moscow and Ivanovo all noted that they
regularly tried consumer protection cases, and that the 1992 law was a comprehensible one
compared to many other new laws.

As the 1992 law stands, consumers are given rights because they lack both sufficient
information and the economic power needed to bargain with merchants over contract
terms.118 A consumer is, under this law, “a citizen who is using, obtaining, ordering, or

115Zakon RF “O zashchite praw potrebitelei,” Rossiiskaja gazeta, 7 April 1992, 4. Henceforth, the 1992 consumer
protection law.
116Interview with Diana Sork, advocate and member of the KonfOP, 16 February 1993. According to Polyachek,
the 1992 legislation was written clearly enough so that parties to a consumer rights case are well defined, and
consumer can actually win. Interview 15 February 1995.
117For a compilation of all of these laws, plus commentary, see V.N. Ivanov, Karmannaja kniga potrebitelei
(Moscow: Infomatsionno-vnedrencheski ie centr Marketing, 1994). In 1995, the State Duma’s Committee on
Economic Reform was drafting further revisions to the 1992 consumer protection law. In January 1996, the
State Duma adopted new guidelines for the rendering of medical services. Also in January 1996, the State Duma
approved revisions to the 1992 consumer protection law and adopted part two of the Civil Code (GK), which
contains references to consumers’ rights. While the revisions to the 1992 consumer protection law do not
change the basic structure of the 1992 document, they are meant to strengthen consumers’ rights to receive
information about product manufacturing, to demand full compensation for damages, as well as to define the
buyer’s and seller’s contractual relations more clearly. Consumers rights organizations which represent
consumers in cases are now guaranteed fifty percent of court settlements. In addition, the burden of proof is on
the sellers or manufacturers to show that a buyer misused a product. About these legislative changes, see “O
vnesenii izmenenii i dopolnenii v Zakon RF “O zashchite praw potrebitelei” i Kodeks RSFSR ob administrativnykh
pravonarusheniakh,” Rossiiskaja gazeta, January 16, 1996, 3-5; N. Rostovsteva, “U potrebitelei -- novye prava, u
prodatsovev -- obizannost,” 4 Rossiiskaja iustritsija 4 (1996), 33-36; and “Grazdanskii kodeks RF (chast’
118Nehf, 745. For another Western opinion about this law see also Peter Maggs, “Consumer Rights Confused, But
Taken Seriously,” Survey of East European Law (June 1992), 7-8. Both Nehf and Maggs are concerned that the
law places too many limitations on the free market and not always to the benefit of consumers’ rights, which
very well may prove to be so. Maggs points out that no cost-benefit analysis need be applied when making safety
provisions, that warranty protection is too high, and that losing defendants would be subject to paying both for
intends to obtain or order, goods (jobs and services) for his own, everyday needs.” The last two words in the definition hold the most weight when determining whether a dispute actually falls under consumer protection legislation. In Section I, general provisions grant consumers a right to product information and safety and obligate government organs to protect this right. Consumers can make claims for damage or physical injury, as well as warranty liability. In Section II, which focuses on the sale of products, there is mention of the right of consumers to demand the removal of product flaws, the repair of damaged purchases, and their replacement. Section III, which focuses on services, stipulates that contracts are a necessary part of transactions for services, and that they must comply to certain standards of practice. Finally, Section IV names the government organs and NGOs involved in protecting consumers’ rights.

The organs mentioned in the law include the RF State Committee on Anti-Monopoly Policy and the Support of New Economic Structures (GKAF), which has corresponding local organs; the RF State Committee on Standardization, Metrology, and Certification under the President (Gosstandart); the RF State Committee on Sanitation-Epidemiological Supervision; and Minpriroda. NGOs (obshchestvennyi organizatsii), like KonfOP in Moscow and its affiliates across Russia, are permitted to form in the area of consumer advocacy. They may collect data or produce expertise (ekspertiza) on the quality of certain products and services, cooperate with state organs in supervising the application of prices, and bring cases to court on behalf of consumers.

Some consumers had complaints which could be easily resolved by simply returning to the store from which they had purchased a faulty item. But for those consumers with more complicated problems, they now had the chance to take their grievances to court. Article 16 in the 1992 law confirms this right. Plaintiffs bring consumer cases alone, or use an advocate, an official from a local department on the defense of consumers’ rights, or a member of a moral and physical damages. Neft points out (p. 746) that stipulations for mandatory product and service standards set by Gosstandart would limit consumer choice and inhibit entrepreneurial initiative. The 1992 law, however, was influenced more by German laws governing consumer protection than American laws.
consumer society (who also may be an advocate). In theory, consumers' rights trials are to take place no later than seven days after they are filed (20 days for particularly complicated cases), whereas the GFK designates a one-month period for the majority of civil cases. In practice, consumers' rights cases can sometimes last eight months or more (due to problems with compiling evidence and to scheduling delays), the average length of civil cases.\footnote{149} As an incentive to litigate, the consumer (the plaintiff) is not obligated to pay filing fees. He has a choice as to where to file a lawsuit, either in the area of his domicile, in the area where the defendant is located, or in the place where the damage occurred. According to \textit{Karmannaia kniga potrebitelei}, consumers have wide procedural rights, most of which are extended to legal representatives.\footnote{150} A consumer has another incentive -- if he wins the case, the defendant must pay his advocate's fees. But it works both ways; if he loses he must pay for the defendant's.\footnote{151} Finally, class action cases (\textit{iski zashchity neopredelennogo kruga lits}) have been used in defending consumer rights, particularly in cases involving investors who were harmed by fraudulent pyramid schemes.

2. Consumer Protection Organizations and Publications

KonfOP, formed in 1989, was the best organized and most used non-governmental consumer advocacy organization in Russia in the first half of the 1990s. Based in Moscow, it had branch offices in large metropolitan areas across Russia, Ukraine, and Kazakhstan. The philosophy of the International Confederation, according to vice-president Mikhail Polyachek, has been "to educate consumers to defend themselves and use the laws in their favor." KonfOP headquarters was located in a building on Varvarka Street in Kitai Gorod, an old, prestigious section of Moscow where many of the offices of Yeltsin's administration are

\footnote{149}{Diana Sork, "Verkhovnyi sud Rossii vziasia za zashchitu prav potrebitelei," \textit{Izvestia}, 7 December 1994, 14.}
\footnote{150}{Ivanov, 196. These include: becoming acquainted with the case materials; taking notes about them; making copies of them; filing challenges and petitions with the judge, experts, and secretary; presenting evidence; participating in the investigation of the evidence; posing questions to other participants in the suit; giving explanatory comments to the court; and expressing opposition to other petitions and arguments filed and posed.}
\footnote{151}{This is in accordance with article 91 of the Civil Procedure Code. In the U.S., a losing plaintiff is not responsible for paying for a defendant's lawyer or court fees. In most European countries, as in Russia, he is. Some have argued that this condition has generated too many tort trials in the U.S.}
housed. The condition of the space was sparse, not plush, but staff members had computers, faxes, and several telephones. Two rooms were used by the legal staff. The main Moscow office consisted of no more than a few dozen jurists, advocates, journalists, economists, and administrators.

The Confederation benefited from positive media exposure about consumerism. Several national publications ran columns for consumers, including Izvestiia, Segodnia, Pokupatel', and Domashnyi advokat. Television highlighted the efforts of consumers as well. Talk-show host, Vladimir Pozner, often featured stories about consumer cases on his television program. Polyachek, a journalist by trade, claimed that these segments spurred the average citizen's interest in consumer rights. Now people could see for themselves how consumers could challenge the evils of capitalism and lingering Soviet bureaucracy and incompetence.

The Confederation created its own media sources. In 1995, KonfOP was producing two publications, one for jurists and the other for consumers. The first publication, Advokat potrebitel'ia (consumer advocate), contained court cases related to consumer services, on which their own jurists and advocates had worked. The publication omitted matters concerning product liability because its editors believed such matters were generally straightforward, and usually were settled outside of court. The categories of cases that they did cover included transport, service agreements, disputes concerning the rendering of communal services (apartment housing), disputes concerning insurance agreements, and medical services agreements. Legal practitioners compiled synopses of the cases and provided commentary on how they were litigated.

The second, Spros (demand), is a monthly publication which appears in kiosks all over Moscow and is distributed across Russia. It contains no advertisements, in an effort to insure that its reporting about the quality and safety of products and services remains disinterested. Writers provide their readers with sophisticated charts and ratings systems comparing different brand names and presenting warnings. They also provide constructive advice for making more systematic purchasing choices. In every edition, there is a section on consumers
advocacy, written by KonfOP’s legal staff. The lawyers include articles about filing consumer protection claims in court and drawing up valid contracts, and answer readers’ questions about a host of legal problems consumers in Russian society are confronting. The Moscow department on the defense of consumers rights (a branch of GKAP) offers its own expertise to readers of Izvestiia in a weekly column using a question and answer format.

According to Polyachek, KonfOP had not established a strong working relationship with this department, although they sometimes shared information on cases. Both he and his colleagues working in the law department complained that the department often did not assist consumers properly and sometimes even offered them misleading information. This lack of cooperation between the department and the consumer society, however, was a local phenomenon, according to Polyachek. In the town of Ekaterinburg, for example, the branch office of the Confederation had cultivated good contacts with the department on the defense of consumer rights. Their staffs found ways in which to work together to assist victimized consumers.

As its name implies, the International Confederation established contacts with foreign consumer advocacy groups, including Ralph Nader’s Public Citizen, and attended international conferences on consumer rights. Nader himself made an appearance at KonfOP’s Moscow office to offer his advice on how to promote a consumer culture; he donated the Confederation’s first computer and wrote articles for Spree. KonfOP president Aleksandr Auzan, an economics professor at Moscow State University, hosted a group of Harvard economists there in February 1995. Advocate Diana Sork, a graduate of the MGU’ law faculty and still in her twenties, interned at the Consumer Association in Britain and attended a conference in Belgium on consumer protection law in the EU. With her legislative drafting experience as a consultant for the Duma Committee on Economic Reform and her knowledge of consumer rights advocacy abroad, Sork was the foremost expert on consumer protection law and practice in the country.
3. Consumer Advocates and Legal Practice

In 1995, the number of jurists working at KonfOP and a Moscow law office affiliated with them, Advokat potrebitel'ia, was around 15 (including five advocates). The advocates belonged to the parallel college Advokatskaiia palata, which was led by the former head of the Moscow Department of Justice, Iuri Kostanov. Like most Russian advocates, they were paid on a fee-for-service basis, and on average earned around $200 per month, which was higher than the average monthly salary for advocates in 1995. According to Sork and two of her colleagues who worked as jurists in the law department at KonfOP, most clients were from poor to middle-class backgrounds. Consultations generally were not free and could be quite expensive for those consumers who were financially disadvantaged and did not fall under one of the categories of citizens who had special privileges (i.e., veterans and many pensioners). Advocates and jurists at KonfOP were responsible for varying amounts of cases. Approximately fifteen to twenty consumers a day were visiting their legal department.

Sork noted that only around 20 percent of disputes relevant to consumer protection legislation ever reached the courts. In deciding whether to proceed to court, she took into account her level of preparation and whether a case's legal bases were contestable. Clients almost always received larger settlements in court, due to the fact that judges set the amount of compensation for moral damage. Usually, however, she saw clients in one or two stages: either to help them reach their goals through simply writing a complaint directly to the store or company for redress of grievances; or to help them complete the proper documents for trial. Despite the nearly 500 cases she had already won for her clients, Sork told me that she did not view her work as damaging to private firms or the market economy in general. "Few firms are afraid that their reputation will be badly hurt," she noted, "because there still is so little competition in several market areas. Firms know that they've got the market covered, and consumers can't go anywhere else for goods or services." In addition, most products in

132They made special arrangements with the Confederation to allow for the joint affiliation. For more on Kostanov's college, see Chapter Three. Unless otherwise noted, the comments made by two jurists at the KonfOP law department were made on 15 February 1995, and Diana Sork's comments were made on 16 February 1995.
Russia were imported, making lawsuits over product liability difficult for consumers when they were trying to sue foreign outlets.

These were not the only jurists in Moscow practicing consumer protection advocacy, however. Across the country, LCB advocates who did not specialize in consumer protection cases handled such issues. In fact, the editors of Advokat (the publication of the International Union of Advocates located in Moscow) in January 1995 found consumer protection law so timely that they announced that part of their question-and-answer column would be devoted to it.\textsuperscript{153} A majority of advocates in Moscow (members of MOKA) and Ivanovo who responded to the 1995 surveys indicated that they worked on consumer cases. In Moscow, 54 percent indicated they had. In Ivanovo, 66 percent of respondents said they had, although according to a people's court judge there, staff members from the Ivanovo department on the defense of consumer rights more often represented claims.\textsuperscript{124} One Ivanovo advocate who was working at the central LCB, remarked that he thought the 1992 consumer protection law was the "most democratic law on the books now in Russia."\textsuperscript{153} These results show that, although advocates may not have appeared in all trials concerning consumer rights (judges and advocates quoted between 5 and 70 percent of court cases), consumers often came in during LCB walk-in hours for help in completing the forms for filing a complaint.

Any advocate working on consumer protection, whether a member of a consumer protection organization or not, usually encountered similar scenarios. These included investment losses; defective modes of transportation, including defective cars; breach of repair, construction (especially dachas), and service contracts; and breach of apartment rental and time-share contracts. Medical negligence cases occurred, but they were not yet widespread. These disputes reveal the extent to which many state and private retailers, contractors, and providers of services in Russia believed that they could fool the public.\textsuperscript{156} The most prevalent

\textsuperscript{153}Advokat (January 1995), 10.
\textsuperscript{154}Interview with female judge at the Oktiabrskii People's Court, 10 April 1995.
\textsuperscript{155}Interview with Ivanovo (male) advocate #7 on 5 April 1995.
\textsuperscript{156}According to one jurist working at KonfOP, often suing a state entity offered consumers a better chance at collecting their court settlements because they were less likely to go out of business than private firms.
claims involved clients who had lost large amounts of money in misleading pyramid schemes that were advertised and offered by such private banks or investment houses as MMM, Chara, or Zolotoi Standart. In many cases, investors faced these companies alone, as they could not afford legal representation. These businesses would advertise widely that any investor would be guaranteed huge returns on his or her investments. Consequently, most amateur investors lost everything, including their life savings. Between 1992 and 1995, about 20 million Russians, many of them pensioners, participated in these schemes and lost close to $444 million.

This loss translated into thousands of lawsuits and settlements, many of which have not been implemented. Initially, courts were not uniformly defining investors as consumers, mostly because the 1992 consumer protection law largely ignored financial services. A Supreme Court plenum resolution written on 29 September 1994 clarified the kinds of services that are regulated by the 1992 law on the defense of consumers rights. In so doing, it facilitated and substantiated the process of filing suit against financial companies.137 It also stipulated that judges set levels of compensation for damages when their decisions are handed down, not when a case is first filed or heard in court, in order to guard against high inflation.

I interviewed a handful of advocates who had client-investors suing Chara Bank in the Taganskii People’s Court of Moscow. One advocate pointed out that on 4 November 1994 a people’s court had ruled that investors could collect compensation for their losses; in February 1995, however, the bank still was not responsive to the court order.138

The most elementary consumer complaints which advocates handled involved product liability, although a request for moral damage compensation automatically complicated matters. Diana Sork’s ground-breaking work on one case set the stage for those to follow. In

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137Sork, “Verkhovnyi sud Rossi vzhaisia za zashchitu pryv potrebitelei,” 14. As Sork points out, a Supreme Court resolution (postanovlenie) places obligations on all lower courts to interpret a law in a uniform way, but it itself does not have the authority of a law. It acts more like an explanatory note. According to the way the resolution was worded, if a financial company neglects to issue investors money, then it is in violation of the conditions of an agreement governing the transaction of an account (vedenie scheta); this violation is relevant to the 1992 consumer protection law. Therefore, investors in this case are consumers.

138Interview with MGKA (female) advocate #42, in her mid-forties, 25 February 1993.
early 1992, she set out to file the first moral damage claim in Russia in Kievskii People’s Court. Her client, who had purchased a defective microwave at a privately owned store, had spent weeks trying to pressure the manager to exchange it for an operable one. Once that strategy failed, he contacted Sork to help him at trial. According to Sork, the judge who presided over the case knew little about the new consumer protection law, but had a “progressive” character. Sork argued that her client had lost a great deal of time and money in the matter and that his nerves had suffered. She convinced the judge that her client’s request to have the item replaced was in accordance with the new law. In addition, the judge agreed to award the plaintiff the equivalent of $120 for moral damage, which was half the price of the microwave. The court’s ruling made news, and Sork’s reputation was cemented.

Two years later, consumers all over the country were being awarded compensation for pain and suffering caused by defective every-day products. In 1994, an advocate working at the central LCB in Ivanovo, for example, represented a consumer who had bought a pair of shoes at a private retail store, but noticed that one shoe was defective once she returned home. Not only did she win her client’s suit, but the advocate convinced the judge to award her moral damage.159

Since 1992, the prices of settlements to consumers have increased. In addition, “collective” suits, which were more prevalent than class action suits in Russian courts, allowed more consumers to benefit from the mistakes of one retailer. The Podsolnukha case was one such example.160 In 1991 a private firm in Leningrad called Podsolnukha promised consumers -- apparently through an ad -- that it would install a special brand of televisions for them. When that promise was not fulfilled, forty-five angry consumers appealed in April 1993 to the Kalininskii People’s Court, which granted each of them the value of the television (as it stood when the case was under examination), as well as compensation for moral damage. After the court “implementors” took charge of the case, the firm paid the entire

159Interview with IOKA (female) advocate #1, in her mid-thirties, on 3 April 1995.
settlement. Subsequent to this settlement, almost 500 additional consumers filed claims against the firm; an advocate from KonfOP handled some of these in 1994.

Large and influential firms, as well as small and humble ones, were subject to consumer protection litigation involving product liability issues. An MCKA advocate who was working in LCB Number 25 in late April 1995 won a suit in the Liublinskii People's Court in Moscow. The court forced the large Russian auto company, Moskvich, to pay his client -- the owner of a Moskvich -- compensation for moral damage (2 million rubles, or $400), as well as pay compensation for parts of a purchasing and repair contract which it had breached (10 million rubles, or $2,000). The owner had bought a defective 1993 Moskvich and had to have it repaired several times over the course of a year. As it turned out, the plaintiff's original claims filed in November 1994 would have provided her with a smaller award than the revised claims that the advocate had filed in her name two months later.\footnote{\textit{Advokatskaia praktika nedeli}, Komsomolskaya Pravda, 6 May 1995, 21.}

Apart from car problems, additional transportation-related matters became popular consumers advocacy issues. Consumers sued private companies and state agencies responsible for transportation. In \textit{Advokat potrebitelei}, KonfOP advocates commented on a 1994 transport case.\footnote{For more details on this case, see \textit{"Delo o vozmeschenii ushcherba v sviazi s utratoi bagazhei." Advokat potrebitelei}, 2 (1995), 7-11.} This case illustrates how Russian courts sometimes rule in the consumers' favor even when there is a lack of evidence. It involved an airline passenger who lost one piece of luggage at the airport in Khabarovsk in July 1993. The luggage contained wholesale merchandise (women's shoes and clothing) that the passenger had purchased during her trip to Harbin, China. She sued the Khabarovsk United Aviation Detachment (KhOA) for negligence in the service of bag-handling and for refusing to grant her any compensation over the course of seven months. KhOA's representative offered to settle the case and partially grant her request for compensation. But she and her advocate preferred to take their chances and let the judge in the Zheleznodorozhnyi People's Court decide, so that she could secure part of her award in U.S. dollars. Their perseverance paid off, as the judge decided in their
favor, based on article 382 of the GK, article 12 of the 1992 consumer protection law, article 131 of the "Foundations of Civil Legislation of the USSR," and articles 191 and 197 of the GFK. In their commentary, however, the advocates noted that the judge made her decision based on the plaintiff's own estimate of the worth of her bag's contents, not documentation or witness testimony; they stressed that this case could be repealed by a higher court.

In the area of housing and rental law, advocates represented consumers in more complicated cases which involved severe negligence, scams, and breach of contracts. The advocates and jurists who wrote articles for Sprav urged their readers to consult with advocates and to read their advice closely on how to file claims in court and what documentation to use in such instances. Case studies were meant as guidelines for future court actions. In one such case study, "If Your Apartment Building is not Repaired," readers were informed of a successful court ruling. On 11 April 1994, in Presnenskii People's Court, Diana Sork represented the interests of a group of residents of an apartment building located on Chaikovskii Street in downtown Moscow, against the regional management, "Presnenskaia," which coordinated the repair of buildings under its purview. The building had not undergone capital repairs since it was built in 1934. Inside the apartments, doors were warped and cracked; heating, water supply, and the elevators had constantly been breaking down. In addition, the communal areas, including the outside courtyard, were filthy and strewn with garbage.

Sork used parts of the Housing Code and the 1992 consumer protection law to argue that the local housing authorities working under the regional management, ZhEK and REO, had neglected to fulfill their obligations in maintaining certain standards. These organizations, she pointed out, also have the authority to appropriate funds from the local

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164 In the first decades of Soviet rule, residents of apartment buildings were urged to clean communal areas on Saturdays. This procedure failed, and by the early 1990s most apartment buildings -- even ones located in prestigious neighborhoods -- were in extreme disrepair. In the building in which I lived near the Pavletskii train station, considered to be in better condition than most, residents spent nights stuck on elevators, and hallways and stairwells were dark and dingy. Local government agencies, like the housing operations organization (ZhEK), were responsible for completing major repair work on apartment buildings, but they were notorious for neglecting their duties.
administration to pay for capital repairs. Neither organization had taken such action. The court ruled in favor of Sork's clients. It gave the regional management office five months to complete repairs in the building and awarded each tenant who filed suit moral damage compensation in the amount of 500,000 rubles (close to $200 at the time). In a later issue of Sprav, advocates included a six-point litigation plan for residents of other buildings that were in disrepair, in answer to a large number of letters requesting that they explain the process.165

The last area of consumer protection to be discussed in this section, medical malpractice, posed particular difficulties for plaintiffs and their legal representatives. This was due largely to the problem of expertise and to determining the value of moral damage. Consequently, as noted by a number of my informants, most incidents of medical malpractice probably went unreported.166 According to one jurist at KonfOP, medical experts tended to defend their own colleagues in the profession and thus often avoided criticizing their work. That is why Sork sometimes contacted foreign medical experts living in Moscow to evaluate consumer protection claims and act as witnesses at trials. Second, most -- if not all -- medical negligence cases involved moral damage claims. The process for determining moral damage involved factors particular to each case, such as the nature of the patient's injuries, his age, and financial situation. In a legal system governed by detailed codes which discouraged judges from making their own interpretations, this process became arbitrary.

The following is a case in point. In late December 1993, in Sovetskii People's Court in Moscow a patient sued a state medical organization, Mnogogrannyi, for moral damage in the

165Stage 1 is determining one's goal, and stage 2 is determining one's opponent. In stage 3, residents are advised to collect evidence. Stage 4 involves completing the claim form for the court (one is featured, but the advocates advise residents to look at similar claims filed in court that other residents won). In stage 5 residents must locate experts to evaluate the condition of one's building; there are now organizations which cater to this kind of service. The last stage, of course, is the trial. The advocates point out that only one participant in the law suit need represent the interests of everyone and thus that attending the hearings is not a requirement. In this kind of suit, there is only one plaintiff, the communal interest. The main plaintiff must acquire a special document (doverennost) from either a notary public, one's workplace, or a local registry office. This document allows her to participate in court proceedings. "Sestavliaem isk k kommunal'nym sluzhbam," Sprav 1:13 (1995), 19-23.
166The same holds true in the U.S. A 1991 Harvard Medical Practice Study (a review comparing medical injuries and malpractice claims in New York State), found that while more than 80 percent of the people who sue doctors and hospitals suffered no medical harm, less than 3 percent of those who do suffer negligence actually sue. Barry Werth, 177-78.
amount of 2,000,000 rubles (about $800 to $1,000). The plaintiff's advocate used articles 5 and 13 of the 1992 consumer protection law (on the right of consumers to safe goods and services and to moral damage, respectively) and articles 91, 191-97 of the GFK (concerning payment of advocates and court rulings). The defendant's advocate recognized that a moral damage settlement was justified under the circumstances. They diverged over the exact amount, however, as the defense offered only 5-6,000 rubles. The patient had undergone a faulty root canal, which resulted in an injury to part of her lower lip. The injury left an unsightly scar and caused discomfort. The patient sought treatment at the trauma center of a polyclinic. At the trauma center, the attendants completed information forms about her injury, which she used as evidence at the trial.

The judge ruled that the defendant had caused moral damage, but that the requested award could not be granted, because it overcompensated for the plaintiff's actual pain and suffering. The plaintiff was granted 400,000 rubles instead. The KonfOP advocates who commented on the case in Advokat potrebiteliya objected to the way in which the judge had reached that amount, arguing that the court's conclusions were contradictory. On the one hand, they said, the evidence clearly proved that the plaintiff had experienced physical and moral suffering, due to medical negligence. On the other, this suffering was not severe. In deciding, the judge took the plaintiff's original request and decreased it by more than half. But the advocates pointed out that he did not justify how he reached that conclusion.

The law department at KonfOP handled several medical negligence claims concerning dentists. Other cases reflected the lowest depths of incompetence found in the medical profession at the time. In 1994, for example, a female consumer came to KonfOP to complain about a doctor who, she soon found out after returning home, had not succeeded in giving her an abortion. While consumers learned to mistrust overworked physicians in polyclinics, they also did not have much of an opportunity to look elsewhere, to private medical services.

168 "Za chto platiat patsienty, a za chto vrachi?" Sprav 4:10 (1994), 40-41.
Moreover, the new business of medical insurance was plagued by false advertising, corrupt management, and unfulfilled policy contracts.\textsuperscript{169} Consumers were paying large amounts for medical care at private facilities, as well as for special treatment and space in hospital wards (such as maternity wards). Advocates working on medical malpractice cases tried to combat some of these inadequacies through the consumer protection law; however, in the first half of the 1990s, their scope of practice in the medical field was still limited.

Nevertheless, advocates’ representation of consumers since 1992, as well as their work with environmentalists, reveals their involvement in the articulation of new rights. It also provides a window on the formation of pockets of civil society in these areas. Advocates were enabling groups of consumers and environmentalists to challenge the patterns of long-term neglect that state agencies, from housing authorities to local administrations, had imposed over the environment, sanitation conditions, and the production of durable consumer goods. Advocates’ work with clients on complaints against state officials and agencies gave individuals further leverage over those in power. Now state agencies, along with new private business interests, would be held accountable for their detrimental actions.

Along with advocates, many judges also need to be credited for such changes, as they ruled on these cases and consulted the new laws. As in the late Imperial period, parts of the judiciary initiated their own solutions in response to inadequate legislative changes by adapting existing civil law to changing conditions.

Conclusion

Statistics show that the participation of advocates in civil and arbitration cases did not increase by leaps and bounds between late 1991 and 1995. But according to qualitative measures, such as interview data, reports about trials, and the media’s attention to advocates’

\textsuperscript{169}See “Kogda doktor neprav,” Spros 6:12 (1994), 28. The 1993 Constitution (article 41) still guaranteed free medical care to citizens who use state medical facilities, but private hospitals and clinics charged patients for their services.
work, advocates were involved in significant, even pivotal, cases in some spheres of new economic and civil relations.

These ranged from matters involving the privatization of residential housing, the management of private companies, slander and libel, and international finance, to rights advocacy cases involving consumer and environmental protection and claims against state officials and organs. Also, advocates were more often offering consulting services to private businesses in the areas of taxation, management, and financing; they also were involved in contract negotiations. Although the new trends in practice were most prevalent in the largest urban areas, they also appeared in smaller towns. Moreover, these new services and areas of practice in which advocates were involved in the first half of the 1990s reflected a growing demand from different segments of the population for advocates.

In comparison to lawyers in western countries, however, advocates still were not participating in a large amount of civil cases, nor were all business people using them as advisors. Part of the reason why was that the number of advocates remained low, especially in the provinces. Also, jurisconsults continued to be used widely in arbitration cases by those enterprises and businesses who could afford to retain in-house counsel. In addition, most citizens either were not aware of the services advocates provided or assumed that they could not afford them. Coupled with this, many citizens continued to avoid courts altogether as venues for conflict resolution. The relatively low use of advocates reflected the number of compliance problems that courts had to face. After all, what good was a lawyer if the courts themselves could not force losing defendants to comply? Of course, compliance problems are evident even in rule-of-law societies, including the U.S.; but Russian courts have been experiencing significantly more compliance problems than these other countries due to low penalties and to a continuing disrespect for legal procedure. Advocates then often were used as a last resort -- for example, after a company was fined heavily by local tax inspectors, or after a consumer could not get a response out of a retailer.
But what is most interesting about advocates and their legal practices in the first half of the 1990s was that some Russians, whether they were consumers, environmentalists, or business people, considered them indispensable in supporting their new rights in the civil sphere. This aspect of their practice put advocates in a more comparable position with their western counterparts. It indicated that advocates were working towards a reciprocal, interactive approach to law in Russian society.

Under such an approach, law serves to facilitate citizens' goals and to address their grievances; as a result, law's efficacy (its use and the level of trust in its basic fairness) increases and people's accessibility to the legal system improves. A reciprocal approach to law also illustrates a willingness on the part of citizens' and rulers to recognize the legitimacy of law in stabilizing state and societal relations and in responding to certain societal expectations. Advocates educated clients about and assisted clients in asserting their economic rights in court settings and in negotiations, sometimes in opposition to state organs. They were creative in their approaches to representation, in choosing what laws to use to benefit their clients, in lobbying state officials on their clients' behalf, or in locating solutions to the financial and management problems that businesses faced. When appropriate, advocates even referred to international law and legal practice when drawing up private business transactions.

All democratic reformers, including public advocacy lawyers, have been constrained by the lingering conservative forces in the political and economic spheres in Russia, regional variations, and poorly-written and inconsistently-executed laws. But the work of advocates in the areas of environmental and consumer protection should not be discounted simply because of the many political problems which persist in Russia. Nor should it be discounted because its volume does not yet compare to the amount of work that environmental and consumer advocacy lawyers in western countries have completed.

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At this early point in the post-Soviet period, it is instead important to note that the work of advocates has already supported an alternative form of political participation in Russia for citizens’ groups and individuals who, over the course of decades, have had no political voice at all. Through their accumulative efforts, advocates played a role in shaping new relations between different state and societal forces, and in strengthening new institutions, ranging broadly from private property and contracts, to consumer protection societies, environmental organizations, and businesses. Their efforts to restrain government and empower private individuals and groups reflect a drive towards liberal democracy.
CONCLUSION

This dissertation has explored the means by and the extent to which Russian advocates, as individuals and members of a profession, shaped and were shaped by the first years of a major political and socioeconomic transition (1985-95). It has analyzed the bar’s role in the Russian legal reform process, as well as assessed the development of pluralism, civil society, and legal professions, particularly in their relations with the state.

This thesis argues that, beginning under Gorbachev, significant reforms of the advokatura’s organization occurred as a result of the initiatives of both state officials and advocates. The presence of competing national bar organizations, new bar associations (colleges), and various types of law offices represents a more pluralistic approach to the process of re-institutionalization in Russia. Moreover, colleges have gained more, though not complete control over such professional issues as entrance and training, compensation, and the creation of new law offices.

Historical patterns of state-profession interaction and internecine conflict have begun to reassert themselves, however. First, justice officials have interfered to a certain extent in the advokatura’s efforts to build a professional program, particularly in the drafting of a revised law on the advokatura. Advocates have not strongly challenged the state’s actions, but have continued to rely on the Ministry of Justice’s endorsements, as well as lobbied to receive more support from local and federal budgets. Second, internal divisions, as well as state intervention, have prevented the advokatura from becoming a unified interest group and monopolizing its control over the legal services markets in the 1990s. Advocates failed to reach compromises over major issues of self-regulation. Overall, the bar as an institution has remained in a state of flux, although it has not fully disintegrated or lost the identity and organizational forms that marked it during most of the Soviet period.

My dissertation has also shown how advocates, numbering around 21,000 in 1995, now have a broader range of ways in which to represent and counsel clients. My findings on advocates’ work in representing clients in appeals against state officials and agencies, in
arbitration courts and business consultations, and in environmental and consumer protection cases show how advocates are enabling clients to assert their new civil and economic rights more effectively. On the other hand, revisions to the Criminal Procedure Code have not eliminated many of the traditional constraints that Soviet courts placed on defense attorneys.

My findings on advocates’ criminal defense work in regular courts and in jury trials in Moscow and Ivanovo indicate that advocates continue to encounter opposition to their expanded participation.

The first section of the conclusion concerns the implications of the main findings of this dissertation for the study of the *advokatura* and the Russian legal system, for an understanding of post-Soviet politics, for literature on legal professions, and for the historical institutionalism approach. The second and final section outlines a number of future prospects for the Russian bar in the second half of the 1990s.

**The Main Implications of This Study**

A. Implications for Previous Knowledge of the Bar and the Legal System in Russia

This is the first full-length study of the *advokatura* which encompasses its entire development -- from the tsarist era to the early post-Soviet era -- and comments on both its historical legacies (continuing patterns of relations with state officials and internecine conflicts), and on how and why its corporate structures and forms of legal services have changed most recently. It augments previous studies of the bar in the tsarist or Soviet eras in its presentation of materials on the everyday dynamics of colleges of advocates and law offices.\(^1\) It also complements these earlier works in its emphasis on the reasons why certain patterns persisted and how advocates, working within these constraints, were still able to

enact specific changes to their corporate organization, to their relations with state officials, and to the way they rendered legal services since the late 1980s.

This work provides a more thorough treatment of areas of advocates' legal practice than Robert Rand does in Comrade Lawyer. Whereas Rand's more journalistic approach focuses on one criminal case and one legal consultation bureau (LCB), this dissertation weaves Ministry of Justice statistics on advocates' work in criminal and civil cases into its discussions of dozens of regular criminal cases, political cases and jury trials, as well as regular civil cases, arbitration cases, and environmental and consumer protection cases. It also looks at the operations of a number of colleges and law offices, not only in Moscow, but in Ivanovo as well. Such a comparative approach provides the reader with a wider understanding of the variances in advocates' work and provides a more thorough overview of advocates' present breadth of expertise.

As a result of this study, some of our perspectives about the advokatura have changed. First, the advokatura is now an institution that has more than one "trend-setter." If in the Soviet period, the Moscow City College of Advocates (MGKA) was viewed as the model for the profession -- from which trends in the profession emanated -- now it is in competition with parallel colleges and new types of law offices, some of which appear to be the trendsetters in new forms of management and legal services. The Federal Union of Advocates, the largest national bar association, must contend with the positions of members of the Guild of Advocates. Moreover, advocates in other regions have begun writing their own draft laws on the advokatura and have formed various other kinds of associations from which still other loyalties have sprung. In other words, in some respects it is difficult to view the advokatura as a monolith.

Second, the past ten years have seen elements of flux in all legal institutions; however, the advokatura has been more susceptible to spontaneous evolution than most other legal institutions. This is because of the way that advocates have responded to socioeconomic changes in Russian society, and the fact that the State Duma has yet to approve a new law on
the *advokatura*. The law's absence has given advocates more latitude in creating bar associations and legal services structures. In the meantime, justice officials have been directing the operations of the bar to a lesser extent than they have the operations of other legal institutions (the judiciary, for example). This dissertation has argued that the *advokatura* is positioned along the borders between the state and society. It therefore should come as no surprise that, once state officials canceled some of their supervisory controls in the early 1990s, societal forces -- such as the demand for certain types of legal services -- would begin to influence the way that advocates organized and practiced more significantly than they had throughout most of the Soviet period.

One may even view the bar's re-institutionalization as anarchic and ambiguous. Legal practitioners who do not belong to colleges, for example, sometimes have insisted that they too are advocates. More so than in the Soviet era, former law-enforcement officials, procurators, and judges have left their posts to enter the *advokatura*, in hopes of earning a better salary and having a more flexible daily routine. As a result, jurists whose work experience socialized them to act as the inquisitors now were expected to change their world view and adopt the methods of defense advocacy. Such a wide in-flux of outsiders into legal practice places the notion of a professional identity for the bar into question.

Third, another important issue concerning changes to the bar is the extent to which it was politicized in the 1990s. Previous studies of the tsarist *advokatura*, particularly those which focus on the events around the 1905 Revolution, have shown that sworn attorneys in Moscow and St. Petersburg actively supported the creation of a constitutional monarchy; in fact, some sworn attorneys rallied for a more radical dismantling of the tsarist autocracy. In contrast, eight decades later, Russian advocates succeeded in creating an independent national bar organization, but they were conspicuously absent from the political stage.

Advocates refrained from making statements or from organizing with other groups in opposition to conservative elements in the CPSU or government in 1990 or 1991. Only a handful of advocates took political initiatives which reached beyond the scope of the interests
held by most advocates and their immediate clients to address publicly the more general problems in Soviet society. After the USSR dissolved, advocates avoided running for elective office; only twelve advocates, for example, were elected to the State Duma in 1993. Advocates now were more preoccupied with issues of daily subsistence. As revealed in my interviews, many advocates prided themselves on the fact that they were not mired in a political scene wracked by corruption and hypocrisy.

Fourth, and most importantly, this dissertation argues that the advokatura must be examined within the confines of the legal system itself, not in isolation from it. Reforms which legal institutions underwent beginning in the late Soviet period -- laws and measures instituted to encourage more judicial independence, the re-introduction of jury trials, and the creation of the Constitutional Court, for example -- marked a positive movement toward legalism. Advocates and their organizations certainly have contributed to this development, and their achievements have been documented.

The notion of effectiveness in advocates' work has been emphasized in this dissertation and informed by Kathryn Hendley's discussion of the reciprocal nature of law -- its legitimacy as a process of conflict resolution, its efficacy, and the extent to which it is accessible to Russian citizens. Hendley sees lawyers as one gauge for measuring a legal system's reciprocal nature, especially in their role as gatekeepers (either in increasing or decreasing citizens' access to the legal system). As major findings of this dissertation suggest, advocates have improved law's legitimacy, its efficacy, and its accessibility in some areas of their legal practice.

On the other hand, the judicial branch, the weakest of the three branches of the new Russian state, has lacked the daily authority and budgets the president's administration has been accorded. Advocates have encountered persistent problems with the anti-reformist attitudes of many law enforcement officials, and the courts' low enforcement capacity in their

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civil rulings jeopardizes the effectiveness of advocates in the legal system as well. Many Russians continue to avoid hiring legal representatives and using courts to resolve their civil conflicts because they view the legal option as too expensive and too lengthy a process. Such findings support Hendley’s argument that areas of Russian law still lack such a reciprocity and that Russian society still lacks a strong legal culture.

B. Implications for an Understanding of Post-Soviet Politics

1. Pluralism

The fact that old networks of influence and patronage are perpetuating themselves in the post-Soviet period does not supersede the possibility that glimpses of pluralism -- of independent sources for change and renewal -- now exist in the political system. Changes in the bar’s organization towards greater autonomy from justice officials and advocates’ participation in the legislative process in the State Duma point to the development of pluralism in post-Soviet Russian politics. The diversification of advocates’ organizations is a reflection of the amount of spontaneous social processes unfolding in Russia at this time.

Unlike in the Soviet period, when advocates had no other option but to maintain ties to state-sanctioned colleges of advocates and LCBs, in the 1990s, Russian advocates have been confronted with a multiplicity of loyalties and affiliations.

A caveat to this understanding of pluralism, however, is that we cannot yet be sure whether these developments in the advokatura have exhausted themselves or whether they will continue to multiply and strengthen. The advokatura, like any organization in Russian society today, is only as independent from outside interference and as influential in policy making and implementation as Russian state officials allow it to be.
2. Civil Society

Coupled with pluralism is the notion of civil society, or the existence of a sphere in which independent groups struggle to pursue their various and often competing objectives. This study of advocates has introduced a number of specific findings of how advocates in the early 1990s supplied certain societal actors with additional tools for asserting their interests. Advocates’ combined efforts towards building civil society -- and in assisting clients on new playing fields with state actors -- include the ways in which they have represented citizens in court in environmental and consumer cases, represented new business interests, and counseled enterprises and non-governmental organizations about management practices.

Some advocates promote social advocacy in an effort to make the legal process an alternative form of political participation. My findings have shown that, in a measured way, these advocates are redistributing social and political power, by means of their role as intermediary actors between state and societal forces.

At the same time, it is important to note that this work does not argue that advocates are major instruments of social and political change in Russia; advocates -- as well as the courts -- are under too many internal and external constraints to allow for such a role. First, post-Soviet Russia is still far from reaching the status of a “post-materialist” society. Many Russians are occupied with meeting their daily needs and motivated more by careerist considerations than by political or social activism.1 Secondly, since its conception, the Russian state and its separate institutions have been experiencing a period of instability and uncertainty, especially as the executive leadership falters and communist and other ultra-nationalist pretenders to power advance their views and programs. Such instability places any semblance of a civil society in a fragile position, as a strong state is needed to create and maintain a framework in which groups and viewpoints may compete.

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1In fact, recent research has shown that many citizens of former communist societies have exhibited a tendency to concentrate on their personal situations and avoid contact with political institutions, which they view as corrupted. Richard Sakwa, “Subjectivity, Politics and Order in Russian Political Evolution.” Slavic Review 54:4 (Winter 1995), 963.
3. The Process of Decentralization and Regional Variation

The process of decentralization of the *advokatura* is part and parcel of the general processes of decentralization occurring in the political and economic spheres in Russia today. My main findings have shown that the organizational structure of the *advokatura* has decentralized in so far as various new colleges and law offices on the regional level have formed and have developed their own goals and management strategies. As a result, competing bar leaders have refused to reach compromises. Such a decentralization of bar organizations is not necessarily detrimental to professionalization, a process by which a professional group attains a specific level of training and form of socialization, as well as learns to regulate the behavior of its members. In the long run, it may offer advocates improved vehicles for providing legal services and for training new entrants in specific areas of practice.

Since the late 1980s, control over the profession has also devolved somewhat from Ministry of Justice officials and local justice organs to bar structures. State officials permitted new colleges to open, but only up to a certain point. Since early 1994, there has been a backlash of sorts against the new bar associations, both spurred on by leaders of original colleges of advocates and justice officials who feared that their authority over legal institutions like the bar had diminished too much and pushed for more cohesion. It is no coincidence that at the same time other conflicts concerning the devolving of power were unfolding -- the Chechnya war and the refusals of some regions to pay Moscow federal taxes are the most salient examples.

The issue of regional variation is crucial for an understanding of post-Soviet politics, including the reform process in the *advokatura*. It must be kept in mind that advocates' advancements in the areas of criminal defense advocacy, public advocacy, and in the development of their new professional groupings have been dependent on regional variation. The general reform processes in such places as Moscow, St. Petersburg, and Nizhnyi Novgorod are far ahead of those in many provincial towns, particularly in parts of southern Russia.
where the Communist Party still has a stronghold. As this dissertation has discussed in its comparisons between the bar in Moscow and Ivanovo, factors such as financial and technical resources differ considerably across regions. In addition, while the smaller number of legal specialists in Ivanovo allowed for closer acquaintances between advocates and other court actors, advocates there also reported that they were confronting more conservative, Soviet attitudes in their daily work (i.e., investigators' misuse of their discretionary powers while interrogating suspects and the accused) than advocates in Moscow were. Such findings imply that the legal reform process -- across Russia, but particularly in the regions -- has been stymied by these anti-reform attitudes, as well as by a lack of material resources.

4. The Impact of Historical Legacies on Reform Processes

The tsarist autocracy acted as the main barrier to the development of strong capitalistic and democratic institutions one hundred years ago, and the Bolsheviks destroyed capitalism in Russia and much of what amounted to pluralism there before the October 1917 revolution. Therefore, in the first half of the 1990s, Russian politicians could not draw from a history of liberal traditions when they set out to create a democratic, capitalist system. It soon became clear that the Russian government had failed to establish and support rules governing stable market institutions. As a result, a kind of "crony capitalism" emerged, based on networks formed by the old Soviet centralized economic infrastructure. Those people who have benefited -- the business elites and economic ministries -- have little incentive to change the situation and thus jeopardize their arrangements. Neither the *advokatura* nor individual advocates -- as professionals whose goal is to assert the rights of citizens and organizations -- wield the influence to alter these entrenched forms of power-brokering.

While this dissertation has connected changes in the *advokatura* with a semblance of pluralism and the development of a civil society, it does not argue that these factors indicate

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the presence of a liberal democracy in Russia. Such a correlation between a strong legal profession and the development of a liberal democracy -- generally applied to western countries -- is premature in Russia and incompatible with the present empirical evidence. Despite the fact that Russia has undergone a couple of democratic elections, its democratic institutions have yet to consolidate and its democratic processes are far from ingrained. For example, as much as advocates' participation in the drafting process of a law on the advokatura in the Duma indicates that state officials are taking the interests of advocates into account more, it also shows that -- in order to participate -- advocates must be willing to compromise part of their autonomy to gain further support from justice officials. In other words, this example also underscores how state officials are still imposing brackets inside which advocates -- and other professionals -- may independently pursue their professional programs. In addition, members of many professions, not just the advokatura, are not challenging this arrangement, but encouraging it. For example, the Council of the Professional Unions of Workers in the Academy of Sciences issued electoral statements in favor of more governmental support and intervention, not a new-style democracy.6

Lastly, persistent problems with the economy and a weak middle class have undermined the social and economic status of professional specialists. Russian professions today are trying to establish new admissions policies and other approaches to regulation, efforts which have involved and most certainly will continue to involve the state's participation. How these processes unfold in the near future will reveal whether state officials are willing to break the patterns of intervention which, in earlier eras, have stymied professional initiatives.

C. Implications for the Literature on Legal Professions

This dissertation has also examined the extent to which the development of the Russian bar, its organization and the work of advocates, compares to that of legal professions in certain

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other continental law systems. Special emphases have included the tight control state officials had over lawyers' professional organizations; the inquisitorial nature of criminal proceedings; the recent tendency to form new partnerships in law firms; controversies over how to increase the scope of practice; the bar's efforts to protect its boundaries of practice from outside intruders; and private practitioners' dependence on legal aid casework for steady income. In other ways, this dissertation has explored how general similarities have existed even between the Russian bar and legal professions in common law countries, particularly in the areas of decentralization and competition between different types of lawyers.

This study of the Russian legal profession takes the middle ground between functionalists and power-oriented analysts. As Charles McClelland argued in his book on German professions, it is better to avoid fitting professions into rigid categories -- such as are found in the list of professional ideal types associated with Anglo-American professions -- and instead concentrate on the unique historical contexts of a particular profession.\(^7\) The five hypotheses which were introduced in the "Introduction" focus on how legal professions and the practices of lawyers develop in response to changes in their political and socioeconomic environment. At this point, I will discuss how well they compare with the findings presented in this dissertation.

Hypothesis One stated that, "The more rapidly economic and political conditions change and the scope of allowable activity widens, the more diverse lawyers' goals and organizational structures become." This hypothesis was first used to explain what was happening to the legal profession in Spain towards the end of Franco's regime. It shows how a number of external factors -- not only changes in the political landscape but changes in the economy and in Spain's trading habits with Western Europe -- influenced the way in which the legal profession became more heterogeneous and pluralistic.

Without a single, dominant influence, members of the *advokatura* became more heterogeneous as a professional group as well, as the political crisis in the Soviet Union intensified. Ministry of Justice officials and officials in the local justice organs relinquished much of their supervisory control over colleges of advocates and the behavior of individual advocates. After 1991, the main corporate bodies of the *advokatura*, the original colleges of advocates, lost their monopoly of power over entry to the bar, as new colleges of advocates opened in dozens of regions across Russia. As explained in Chapters Three, Four, and Five, advocates' interests and motivations divided across types of colleges, regions, forms of practice, gender, and age cohorts and impacted on the integrity of the bar. These findings therefore show that, once provided with certain environmental conditions such as a more tolerant atmosphere for independent organizational activity, lawyers and other professionals (even in former communistic countries, which over decades had restricted their professional programs) have a tendency to diversify and create new corporate organizations.

Hypothesis Two stated that, "Some lawyers react to the expansion of their profession by defending the established boundaries rather than expanding the scope of legal services." This dynamic occurred in other legal professions, including advocates in West Germany in the 1980s who fought to maintain and not increase their numbers. In the late 1980s in England, even as many barristers attempted to widen their scope in reaction to the solicitors' encroachment on their legal services territory, still others wanted to preserve their elite status based on their former monopolies over certain functions. It appears from the evidence about the *advokatura* in the early post-Soviet era that, despite the opportunities for changing their modes of practice and ways of organizing, not to mention their opportunities for pursuing higher salaries elsewhere, many advocates simply preferred to remain in their old LCBs and colleges of advocates.

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8 West German advocates reacted negatively to the influx of new members and worked to prevent the creation of a wider range of legal services, such as neighborhood law centers and university legal clinics. E. Blandenburg and C. Schultz, "German Advocates: A Highly Regulated Profession," in Lawyers in Society: The Civil Law World, ed. Richard L. Abel and S.C. Philip Lewis (Berkeley: University of California Press, 1988), 144.

Many advocates working in Soviet-era LCBs opted to continue working mainly on criminal cases instead of new and more complicated civil matters concerning private enterprise and the market economy. Criminal cases offered reliable, though low-paying, income and did not require advocates to inform themselves about the new commercial laws. While some bar leaders encouraged their members to work in commercial law, most emphasized to their membership as paramount the obligation of the advocate to accept legal aid cases in criminal courts. In doing so, bar leaders also complained to justice officials about not being paid sufficiently, reinforcing their dependence on low-paying criminal cases as the bulk of their income and on state subsidies and control. These findings indicate that, in Russia as in many other countries, some individual lawyers are going to react differently to change than others, often due to their perceptions about personal risks. The behavior of those lawyers who chose to protect the present configuration of their institution can be explained by “cognitive embeddedness,” a sociological theory which argues that people are more apt to maintain the status quo in their careers and personal lives than take risks.¹⁰

Hypotheses Three and Four concern lawyer-client relations and how lawyers recreate legal services under conditions of change. Hypothesis Three states that, “Lawyers’ ways of organizing and approaches to practice diversify as identification with their clients’ interests strengthens. Partially as a result, a legal profession tends to lose its effectiveness as an interest group and its leaders lose their ability to guide members.” Certainly, this has been the case in England over the past two decades, as solicitors expanded their scope of legal services and gained dominance over the profession, particularly economically and commercially.¹¹ Such changes hurt the cohesion of the legal profession, although at the same time they provided clients with more choice in legal services.

¹¹Glasser, 8.
Russian advocates have experienced closer identification with clients. The fall of the Soviet Union freed advocates from their subservience to Ministry guidelines about legal services. In the Soviet era, advocates had been restricted from incorporating certain kinds of arguments into their trial work, particularly those which reflected poorly on the state. Advocates' efforts also reflected a dual role, as court assistants and as defenders, and this weakened their ability to identify with clients. Now advocates, whose role was depoliticized, could take more risks on behalf of their clients without facing dire consequences, although, as outlined in Chapter Four, exceptions sometimes prevailed in criminal matters. In the civil sphere, advocates were now representing what had earlier been "bourgeois" interests, those of nascent capitalists and consumers. With this new identification with clients came new organizations and new types of law firms. On the one hand, they provided improved vehicles for rendering legal services to clients. On the other, many of the advocates who were members of these new bar structures had little in common with their counterparts working in LCBs who were assigned to court-appointed cases. The bar was unable to reach compromises, to establish methods for training future advocates, and to create and maintain codes of conduct, weaknesses which have persisted since the tsarist era.

Hypothesis Four states that, "The expansion of the practice of lawyers into the economic sphere results in an increased neglect of indigent clients requiring legal assistance in civil matters." As mentioned in the "Introduction," the administering of legal aid programs has been a point of concern for lawyers in many countries over this past century. Due to the drastic changes in the English bar in the late 1980s, barristers have become concerned with whether they can provide effective legal assistance to the poor.12Russian lawyers have been concerned with this issue since the late 1800s, when they took the initiative in St. Petersburg to open consultation bureaus which served the less fortunate. In the Soviet era, the state paid advocates for their court-appointed legal defense work; now, under tighter budget constraints and more court-appointed cases, advocates are not always receiving their full pay. Moreover,

12Ibid., 9.
Ministry of Justice statistics show that advocates are providing less free services to the poor in the civil law sphere. The problem of providing indigents with legal assistance in civil matters has become more severe than in criminal cases at this time in Russia. These findings about Russian advocates, and problems with legal aid programs in England as well, show that the downside of the expansion of legal services into commercial sectors often is the neglect of disadvantaged clients.

The final hypothesis concerns the determinants of change and reflects the assumption of many scholars of Central European professions. It states that, "The development of an institution like a legal profession is likely to be influenced more strongly by external factors than by internal ones." In the "Introduction," I preliminarily agreed with Charles McClelland's comment that making the assumption that external variables impacted more on the professional program underestimates the degree of self-actualization that some professions have had, even in Central European countries where traditionally governments have had more control over professional programs. According to McClelland, the post-war era in Germany -- its growing, social-market economy and relatively decentralized state -- benefited the independent programs of the professions. Moreover, since 1989, the part of Germany that was once the GDR has seen the "resurgence of strong interest in autonomous professional life."  

The Russian bar still remains less autonomous from the state than the German bar is. But when considering the relationship between lawyers and the state across countries, one theme resonates similarly in all cases: no matter what a legal profession's outward pretensions are to autonomy and decentralization, it still demands some amount of protection and validation from the state, whether to retain some semblance of control over legal services or to guarantee a certain level of remuneration. What continues to set the Russian case apart, however, is the extent to which justice officials are still interfering in the bar's professional

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13 Interview with Professor Israil Martkovich, 12 March 1995.
14 McClelland, 13.
15 Ibid, 229-30.
program, particularly concerning the drafting of the new law on the 
advokatura and the way that leaders of the original colleges of advocates have been relying on the state as a major source of their subsistence.16

In addition, while the state has been the most influential external factor in the 
advokatura's development up to this point, public opinion of advocates also has had an impact. I have shown throughout this dissertation how an unfavorable public opinion of lawyers has persisted since the tsarist period, largely due to the fact that Russia has always lacked a strong legal culture, a respect for the authority of law in resolving conflicts and defining relations. This weakness, coupled with the state's lingering interference in the bar's affairs, more reflects the particular historical legacies of the Russian case than reflects Russia's affinity with Central European legal traditions.

Ultimately, though, internal divisions, as much as the lingering control of justice officials and public opinion problems, prevented the post-Soviet Russian bar from becoming a unified interest group and from monopolizing its control over legal services.17 The 
advokatura did not have enough authority in Russian society to prevent private lawyers and striapchie from entering the legal services market. In addition, the Russian Ministry of Justice's policy when Nikolai Fedorov was minister of justice (1991-93) was to permit all kinds of bar associations and legal services organizations to form. Once it changed this policy in 1993, the damage to the bar's cohesion had already been done. In the early 1990s, Russian advocates appeared to be defining professionalism more in terms of the quality of their services than in the classic inward-looking terms of developing a unified professional identify or strengthening their financial muscle vis-à-vis other legal specialists.

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16 In the 1995 survey of advocates' opinions which Professor McGrory and I conducted, most respondents believed that their profession was partly independent from the state. However, the number of those who believed that the 
advokatura was completely dependent on the state (15 percent) was almost equal to the number who answered that it was fully independent from it (16 percent). As these results suggest, most advocates are aware of their profession's need to cooperate with the state, and in some ways remain dependent on it.

17 As a reminder, even in the Soviet era, advocates had a monopoly over legal practice, but not over the right to represent someone in court. See William Butler, 
D. Implications for Historical Institutionalism

Historical institutionalism is one neo-institutional approach to understanding how institutions shape actors' goals and strategies and mediate their relations of cooperation and conflict.\(^\text{18}\) Such an approach sheds light on the long-standing state and societal constraints that advocates continued to work under in the late 1980s and early 1990s, and why, at the same time, advocates nevertheless managed to reshape aspects of their profession.

First, as a result of the historical contingency of the state's lingering -- though somewhat diminished-- control, advocates were forced to continue the dynamic of negotiating with state officials over the structure and functions of their bar organizations. Second, despite the fact that more information about advocates' work from media sources was available to the general public now than in the Soviet period, the general public's continuing ignorance about their work and the public's entrenched assumptions about them (that advocates were self-interesting experts who over-charged for legal services and often did not resolve their legal conflicts) hurt the bar's prestige in the first half of the 1990s.\(^\text{19}\) Advocates still failed to meet society's growing demand for low-cost legal services in the civil sphere.

Although they were constrained by the state and societal factors mentioned above, some members of the bar experienced a period of institutional dynamism which, in part, they themselves initiated, as indicated by the creation of independent national bar organizations, parallel colleges, and law offices which served new types of clients. The distinct sources of this dynamism have been, first and foremost, the broad changes in the socioeconomic and political context which created openings for independent action in society. In turn, these exogenous changes encouraged some members of the *advokatura* to shift their goals and strategies from maintaining the present forms to creating new ones.


\(^{19}\) Most advocates, when asked, probably would have said that their prestige had not improved thus far in the post-Soviet era. According to our 1995 survey results, 33 percent of respondents from Moscow, Ivanovo, and Stavropol' believed that the reputation of their profession was lower than it had been in the Soviet era, whereas around 28 percent said it was the same, and 15 percent said it was higher.
What are the implications of this study of the Russian bar for the historical institutionalism approach? First, it has shown that this approach can be applied to legal professions, even ones which until recently functioned under heavy constraints. Like intermediate institutions, legal professions mediate between the behavior of individual actors (citizens, businesses and other organizations) and broad political structures (for example laws, courts, and administrative agencies). Second, legal professions are meaningful subjects for such an approach because of the ways in which these institutions relate to changing notions about autonomy, public participation, and the protection of citizens' rights. These are concepts which define the essential and often changing nature of any political system -- notably, the interaction between citizens, groups, and state officials. Third, this study has shown how historical residues like the supervisory control of justice officials shaped the bar's professional program but how at the same time advocates were capable of initiating changes in their own institution and in the ways that they provided legal services. Institutional actors in this scenario therefore are subjects and agents of historical change.

Looking Ahead

While the changes to come over the next ten years may prove to be less drastic and more evolutionary than those which occurred between 1985 and 1995, they certainly will influence the way that legal services are to be rendered in Russia over the next century. This final section of the conclusion will highlight a number of future prospects for the organization of the Russian bar and the work of advocates.

A. The Organization of the Advokatura

Thus far in the 1990s, the advokatura has been reacting to both positive and detrimental professional developments which have occurred over the past ten years. What advocates gained in freedom from state intervention, they lost in cohesion and monopoly over legal services. The main variables that will influence the future organization of the
advokatura -- particularly its identity and cohesion as a profession -- are the way in which advocates are able to resolve their differences and coordinate training programs of less ranging quality; their relations with state officials; regional variance; and the adoption of a new law on the advokatura. In addition, general political developments in Russia could move the profession in still other directions, including ones that may be regressive.

First, advocates remain most divided over the issue of parallel colleges, which ultimately should be resolved when the State Duma passes a new law on the advokatura. In the meantime, advocates remain divided into the two competing national bar associations, the Federal Union and Guild, although not all of the members of the Federal Union oppose the existence of parallels. At the Federal Union’s Second Congress held in June 1995, delegates made an appeal to the Guild of Advocates to reach a mutual compromise, although as of 1996 there has been no formal resolution. Both sides have continued to seek support from different state officials and legislators in the Duma. Advocates are also divided over the extent to which they are obligated to accept court-appointed criminal cases and offer free services to indigents. The tensions here have developed between original and parallel colleges, as well as between LCUs and new law offices catering to business people. Again, theoretically a new law on the bar should define advocates’ obligations more clearly, although it is uncertain whether business advocates would, in fact, follow such stipulations.

The future identity of the advokatura is also dependent upon whether advocates themselves will be able to construct relatively uniform training programs across the country. At the Second Congress of the Federal Union of Advocates held in Moscow in June 1995, delegates from 52 original colleges agreed to begin organizing an academic program for increasing the qualification of advocates on the basis of the Russian Legal Academy (which has sponsored dozens of training programs for judges). It may take years to raise enough funds for this program, and the Union may only be able to train a small percentage of advocates.

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21Ibid.
However, the Union advocates are well aware of the importance that establishing their own, independent training programs holds for the future of their profession. They also began in the summer of 1995 to draft a code of ethics for the bar, based on the code of ethics used by advocates in member states of the European Union. A Russian code of ethics would finally outline guidelines for behavior to which all advocates would be obligated to adhere.

Second, relations with state officials will depend partly on how a federal law on the *advokatura* will be worded, as it will contain a number of articles stipulating for the Ministry of Justice's role in licensing and other matters concerning the bar. On the one hand, advocates have taken measures to separate themselves from the arms of the state. For example, leaders of the federal Union are beginning to organize information systems (in the form of regular press releases) to track any violations of advocates' rights by government organs. The Union is also in the process of publishing a new independent newspaper, *Advocates of Russia*.

However, as empirical evidence has shown, certain patterns of behavior which limit advocates' autonomy over their professional program will likely continue. In an article which appeared in *Rossiiskaia iustitsiia* in the fall of 1995, two members of a parallel college in Vologod argued that Ministry intended to collectivize the bar again through the use of its draft law. Already, Ministry of Justice officials have intervened in the Federal Union of Advocates' efforts to draft a code of ethics, and the Union's leaders have not challenged this intervention. Ministry's participation in this project illustrates how Russian advocates still rely heavily on state officials to construct their professional identity.

Regional differences in the ways in which advocates organize, practice, and interact with state officials undoubtedly will influence the *advokatura*'s future, as they have influenced its development up until now. At present, a number of regions, including the city of Moscow, are already drawing up separate laws on the *advokatura*, before the federal law is

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23"Izbran novyi prezident," 42.
even passed. This is a trend not only concerning the law on the bar, but also concerning other laws. The Republic of Bashkortostan passed its law on the *advokatura* in 1992, and it still stands as the only regional law on the bar passed by a legislature. In it, parallel colleges are outlawed, but advocates may form various kinds of law offices within the college framework. Since the law passed, membership in the *advokatura* has risen twofold in Bashkortostan. As a result of these and other separate efforts taken in the regions, a national bar organization is finally taking steps towards accessing the special interests and needs of advocates outside of Moscow. In mid-1995, federal Union leaders, along with the omnipresent Ministry officials, were planning trips to the regions in order to analyze how best to give concrete aid to advocates.

B. Advocates’ Legal Practices

In the 1990s, Russian advocates have enjoyed more autonomy in their legal practices than advocates did in the tsarist and Soviet periods. Certain Ministry of Justice practices, such as reporting on individual advocates’ behavior in court and setting the prices of all types of legal services, have ceased. The future direction of advocates’ legal practices is dependent on three major factors: the work outlooks of advocates; the attitudes of state officials as well as the general public toward the rule of law; and the Russian economy and the extent to which its actors develop further ties to international trade and finance.

First, as discussed earlier in this dissertation, many advocates have chosen to retain the boundaries of their practices (typically criminal law) instead of branching out into other areas of practice, such as commercial law. Their work outlooks have been dependent upon their immediate opportunities and perceptions of risk, as well as loyalties to their colleges. For example, they continue to accept criminal cases because they require the least amount of re-education and are most available and prevalent. Advocates who have chosen to work in new

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areas like commercial law and work in new law offices typically live in regions of Russia where there are wide business opportunities, such as the large cities. As long as the work dichotomy between the legal consultation bureaus and new law offices exists, most likely many advocates in the LCBs will continue to carry the burden of court-appointed criminal cases.

Second, the legal attitudes of state officials and of the general public will continue to influence the work of advocates. Advocates' effectiveness in their courtroom work stands a better chance of improving with the superior courts' introduction of a new standard of assessing the justifiability of criminal convictions, which has encouraged trial judges to conduct more exacting reviews of materials supporting indictments. But more measures aimed at increasing impartiality in courts of first instance need to be adopted to support long-term reform.

The Yeltsin administration's campaign for law and order has and will continue to impact negatively on the rights of the accused and, consequently, the role of defense attorneys in criminal cases. Law-enforcement officials still dampen advocates' effectiveness in preliminary investigations and criminal courts -- a pattern which plagued tsarist sworn attorneys, as well as Soviet advocates. In the early 1990s, advocates continued to complain that a strong accusatorial bias against their clients still existed, despite the fact that, in theory, new laws expanded their access to the criminal process. Until the number of venues is expanded across all regions, and until procedures are revised to grant advocates the right to collect and present their own evidence, jury trials will only provide a limited means for dissolving the historical constraints on defense advocacy in Russia.

New opportunities for legal representation in the civil sphere should improve advocates' prestige in Russian society. As professionals who offer a particular kind of expertise, advocates are becoming at least a bit better known to the average Russian

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household, due to media coverage of their work. Advocates' opinions on individual rights and methods for resolving legal conflicts have appeared regularly in columns in such national newspapers as Izvestia and Argumenty i Fakty, and a number of advocates have hosted and participated in radio and television talk-show programs. In March 1995, Ogonek's editors ran a series of stories which lauded advocates, even calling the advokatura "one of the most socially useful professions." Such examples indicate that, despite the prestige problems advocates perceive that they still have, various kinds of Russian citizens nevertheless have viewed them as sources of information critical to their personal and work lives -- and even sometimes as gadflies and champions of individual causes.

These examples show that since the early 1990s, the Russian bar provided an improved vehicle for satisfying the demands for legal services to several new categories of clients. In other respects, however, advocates have become less accessible to average Russians involved in mundane civil matters, largely due to the fact that many Russians believe that they cannot afford legal assistance. In addition, some Russians continue to believe that having a legal representative in court impacts little on the outcome of a trial. The extent to which striapchie have stolen business away from advocates is unknown; however, it is clear that they, along with jurists who practice in private law firms, have broken the monopoly advocates enjoyed over legal practice in the Soviet period. In order to increase the scope of their legal services in the civil sphere, to improve their prestige, and to compete with other legal practitioners, advocates must work on providing low-cost legal services to less advantaged clients. If they are unable to do so, they most likely will lose more of their control over legal services markets.

Third, the ways in which the Russian economy develops and the extent to which its actors develop further ties to international trade and finance is also crucial to how advocates will practice law in the next century. As mentioned earlier, at present many advocates lack

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28The radio program was called "Vash advokat." It was produced by the company Femida RTV and appeared on station Maiak daily at 11:19 am. The television program was also called "Vash advokat," and appeared on Wednesdays on channel 31 at 9:50 pm.
opportunities to become involved in commercial law because business development is still disproportionately concentrated in Moscow and St. Petersburg. In addition, economic production is still low, organized crime is a persistent problem throughout Russia, and political institutions have failed to support a stable business environment. Under these conditions, legal institutions in particular are still weak components in business operations, and advocates' role remains constricted. However, the ties to international legal organizations that some Russian advocates have secured recently have increased their knowledge of international law and ability to create international networks with foreign lawyers. If these advocates continue to maintain their international law practices and inform other advocates of their work (i.e., through seminars and workshops), there is some possibility that this legal services market eventually will expand, at least in the larger Russian cities.

Finally, despite the problems that advocates faced in their organizations and practices in the first half of the 1990s, they still consider their work to be socially significant. In the 1995 survey of Russian advocates' opinions, a high proportion of the respondents from Moscow, Ivanovo, and Stavropol' (72 percent) believed that the advokatura is influencing the eventual development of a pravovoe gosudarstvo. In interviews in 1994 and 1995, advocates maintained that their work was helping to build a future legal culture, in which both Russian citizens and state officials would adhere to well-defined and enduring laws and principles.

Indeed, on the small scale of their own daily practices, advocates are assisting in the development of new institutions and civic relations in the early post-Soviet era. Whether advocates will be capable of shaping some of these developments to a wider extent in the future depends largely on whether they manage to construct their own professional programs or, conversely, become more constrained by and dependent on state officials. This dissertation traces only the beginnings of a long transition process that still lies ahead for the advokatura.
ОПРОС МНЕНИЯ АДВОКАТОВ

Пожалуйста, ответьте как указано в инструкциях. Если Вы предпочитаете не отвечать на вопрос, Вы просто можете опустить ответ. В тех ответах, где требуется указать %, можно указывать примерную цифру. Спасибо за Ваше внимание и время, потраченное на ответы. Пожалуйста, пишите разборчиво. ЭТА АНКЕТА АНОНИМАНА.

1. Биографические данные и образование
1. Возраст/место рождения:
2. Пол:
3. Национальность:
4. Город, в котором Вы работаете:
5. Где, когда и как.: ВУЗ Вы закончили:

6. Другие должности в юридической области, кроме адвокатуры:

II. Ваша адвокатская практика
1. Когда Вы начали работать адвокатом?
2. Коллегия, членом которой Вы являетесь:
3. Являетесь ли Вы членом президиума или какой-либо комиссии коллегии?
4. Были ли Вы членом другой коллегии? Какой?
5. Работали ли Вы раньше в другой юридической консультации? Какой?
6. Ваше место работы сейчас:
7. Вы заведующий юридической консультации?
8. Средний месячный гонорар:
9. Процент гонорара подлежит отчислению коллегии в качестве взноса

10. Количество клиентов в месяц:
11. Нарушают ли следователи права Ваших подзащитных и Ваши права как защитника? Выберите один ответ: никогда иногда часто всегда
12. Отрицательно ли влияет на право на защиту Указ Президента 1226 о защите граждан от бандитизма от 14 июня 1994 года? Выберите один ответ: Да, влияет отрицательно Нет, не влияет
13. Да или Нет: Существует ли обвинительный уклон при рассмотрении уголовных дел судами?
14. Процент Ваших ходатайств по уголовным делам, удовлетворенных судьями: ___
15. Какой процент в месяц составляют у Вас дела по назначению (ст.49 УПК): ___
16. Выберите один ответ: Ваша роль как адвоката (никогда/иногда/часто/всегда) влияет на исход типичного уголовного дела:
17. (Если Вы выступали в суде присяжных) Да или Нет: Прочнее ли Ваше положение адвоката в суде присяжных чем в обычных судах?
18. Какой процент Ваших клиентов составляют бизнесмены? ___ %, юридические лица? ___ %, иностранцы? ___ %, малоимущие? ___ %
19. Какой процент Ваших гражданских дел касается новых экономических отношений в Российской Федерации? ___ %
20. Укажите 3 примера этих новых экономических отношений:

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21. (Если это Вас касается) Как часто Ваша иск в государственном ведомстве в арбитражном суде удовлетворяются? Выберите один ответ: никогда ______ часто ______ всегда ______
22. Сколько раз Вы представляли граждан, которые заявили жалобы на действия или решения государственных или местных органов власти? ______
Какой процент этих дел Ваши клиенты выиграли? ______
23. Предоставляете ли Вы следующие юридические услуги? (Да или Нет)
   ______ подготовка договоров между юридическими лицами;
   ______ подготовка документов к государственной регистрации юридических лиц;
   ______ разработка уставов, положений и других учредительных документов для вновь создаваемых компаний, банков, фирм, совместных предприятий;
   ______ консультации по налогообложению;
   ______ консультации по регулированию деятельности предприятий;
   ______ приватизация земли или собственности.
24. Да или Нет: Занимались ли Вы делами о защите прав потребителя?

III. Общее мнение об адвокатуре
1. Да или Нет: Президиум Вашей коллегии наделен слишком большой властью по сравнению с властью общего собрания.
3. Насколько адвокатура независима от государства? Выберите один ответ: полностью ______ частично ______ полностью зависит ______
4. Да или Нет: Оказывает ли адвокатура влияние на развитие правового государства в России?
5. В каких адвокатских объединениях Вы принимаете участие?

6. Да или Нет: Частные юридические фирмы (действующие вне коллегий) нарушают нормы адвокатской практики и вредят престижу адвокатов?
7. Какой законопроект об адвокатуре Вы поддерживаете, проект Грачева или проект Минюста/ГПУ?
8. Занимаетесь ли Вы вопросами правового образования граждан, а если да, то каким образом?

9. Принимали ли Вы участие в каких-либо образовательных или проектах по линии западных организаций? Каких? Были ли они Вам полезны?
SURVEY OF ADVOCATES' OPINIONS

Please answer as indicated in the instructions. If you prefer not to answer a question, you may skip it. In the questions which ask for percentage answers, please estimate the percentages. Please write legibly. Thank you for your attention and time. THIS IS AN ANONYMOUS FORM.

I. Personal Background:
1. Age/place of birth:
2. Gender:
3. Nationality:
4. City in which you work:
5. Where and when you attended law school:
6. Other positions you have held in the legal field other than in the advokatura:

II. Your Advocate Practice
1. When did you begin working as an advocate?
2. College in which you are now a member:
3. Are you a member of the presidium or a commission of the college?
4. Were you ever a member of another college?
5. Did you earlier work in another legal consultation bureau? Which?
6. Your present place of employment:
7. Are you the manager?
8. Average monthly wage:
9. What percent of your monthly wage must you pay to the college?
10. The number of clients you have every month:

(For Criminalists)
11. Do investigators violate the rights of your clients and your rights as a defense attorney? Answer one: never/sometimes/often/always
12. Does the presidential order no. 1226 about the defense of citizens from banditism (June 14, 1994) negatively influence the right to a defense? (Yes or No)
13. Yes or No. Does accusatory bias exist in criminal cases?
14. Percent of your requests/petitions in criminal cases which are satisfied by judges
15. Percent of your cases to which you are appointed a month
16. Your role as an advokat (never/sometimes/often/always) influences the result of a typical criminal case.
17. (If you have participated in jury trials) Yes or No: Is your role as an advocate stronger in jury trials than in non-jury trials?

(For civilists)
18. What percent of your clients are business people __%, legal entities __%, foreigners __%, poor/indigents __%?
19. What percent of your civil cases concern new economic relations in RF? __%
20. List 3 examples of these new economic relations:
21. If you have represented clients in arbitration court, how often are your cases which are brought up against government agencies satisfied? Choose one: never, sometimes, often, always
22. How many times have you represented individual citizens who raised claims against government agencies? What % of these cases have you won?

23. Have you ever provided the following legal services? (Yes or No):
   ___ preparation of agreements between legal entities;
   ___ preparation of documents for government registration of legal entities;
   ___ writing of charters, general conditions, and other founding docs. for new companies, banks, firms, joint ventures;
   ___ consultations on taxation
   ___ consultation on the regulation of private enterprises;
   ___ privatization of land or property.

24. Yes or No: Have you ever handled cases dealing with the rights of consumers?

III. General Opinions about the Advokatura

1. Yes or No: Does the presidium of your college have too much power in comparison to the general assembly?

2. Choose one: In 1995 the advokatura is a (more/less/similarly) prestigious organization than it was/as it was in 1991.

3. To what extent is the advokatura independent from the government? Choose one: fully. partly, fully dependent

4. Yes or No: Does the advokatura influence the development of a law-based state in the Russian Federation?

5. In which advocate organizations (unions, special interest groups) do you take part?

6. Yes or No: Do private law firms (outside of kollegii) infringe on advocates' practice and are damaging the prestige of the advokatura.

7. Which legislative draft on the advokatura do you support, the one written by deputy Traspov or by MJ/GPU?

8. Yes or No: Do you sometimes give lectures to various citizens' groups on their rights and new legislation? If yes, for whom?

9. Have you taken part in any programs or training sessions organized by Western organizations? Which ones? Were they useful to you?
SOURCES CONSULTED

Books


Apraksin, K.N. and others, eds. Advokatura v SSR. Moskva, 1971.


**Periodicals and other published monographs**


**Russian Periodicals Often Cited**

*Advokat* (published by the International Union of Advocates, Moscow)

*Advokat potrebiteia* (International Confederation of Consumer Societies, Moscow)

*Bulleten' Verkhovnogo Suda*

*Chelovek i pravo*

*Chelovek i zakon*

*Delovoi mir*

*Domashnyi advokat*

*Izvestia*

*Iuridicheskaia gazeta*

*Iuridicheskii vestnik*

*Khoziaistvo i pravo*


*Moskovskii komsomolet*

*Moskovskie novosti*

*Nezavisimaia gazeta*

*Ogonek*

*Praava*

*Prawozashchitnik*

*Rossiiskaia gazeta*

*Segodnia*

*Sotsialisticheskaia zakonnost'* (now: *Zakonnost'*)

*Sovetskaia iustitsiia* (now: *Rossiiskaia iustitsiia*)

*Sovetskoe gosudarstvo i pravo* (now: *Gosudarstvo i pravo*)

*Spros* (International Confederation of Consumer Societies, Moscow)

**Archives**

Fond 89 of the Center for the Preservation of Contemporary Documentation (Tsentr khraneniia sovremennoi dokumentatsii, TsKhSD), the former Central Committee Archive).

Files on the advokatura, 1984-94, including annual statistical reports (*otchety o rabote kollegii advokatov za god*) and copies of memoranda and decrees. Otdel advokatury (Department on the Bar inside the RSFSR/RF Ministry of Justice). Stored in the Russian Ministry of Justice Archives, Moscow.
Laws Often Cited
1939 "Polozhenie ob Advokature SSSR." Sov. Post. SSSR, no. 49, 1939, item 394.

1962 "Polozhenie ob Advokature RSFSR." Vedomosti Verkhovnogo Soveta RSFSR, no. 29, 1962, item 450.

1980 "Polozhenie ob Advokature RSFSR." Vedomosti Verkhovnogo Soveta RSFSR, no. 48, 1980, item 1596.

"O statusu sudei v SSSR." Vedomosti S"ezda narodnykh deputatov SSSR i Verkhovnogo Soveta SSSR, 9(1989), item 223.

"Zakon o statusu sudei v Rossiiiskoi Federatsii." Vedomosti RF, issue no. 30, item no. 1792 (1992).

Laws on local administration: Zakon RSFSR ot 6 iuliaz 1991 g. "O mestnom samoupravlenii v RSFSR." Vedomosti S"ezda narodnykh deputatov RSFSR i Verkhovnogo Soveta RSFSR 1991 g. nos. 29, 1011; "O kraevom, oblastnom Sovete narodnykh deputatov i kraevoi, oblastnoi administratsii." Vedomosti S"ezda narodnykh deputatov RF i Verkhovnogo Soveta RF. 1992. no. 13, 663-64.


Versions of the Criminal Code (Ugolovniy kodeks or UK) and Criminal Procedure Code (Ugolovniy protsesual'nyi kodeks, or UK), used in 1994-95.

Part One of the Civil Code (Grazhdanskiy kodeks, or GK), approved by the Federal Assembly on 21 October 1994; and the version of the Civil Procedure Code used in 1994-95.

Version of the Arbitration Procedure Code (Arbitrazhnyi protsesual'nyi kodeks, or APK) used in 1994-95.


Unarchived documents, and unpublished materials


Moscow law firm brochures and information letters in Russian and English.

Various CEEIL/ABA Moscow materials concerning jury trial training, jury trial observations, and analyses of legislative drafts on the advokatura.

Interview Data (N.B.: In the dissertation, the actual names revealed in the text are of Bar leaders who are accustomed to giving interviews for the press: legal scholars; Ministry of Justice officials; State Duma deputies and legislative assistants. Pashin’s name is also mentioned in connection with his interview. The majority of the rank-and-file advocates, judges, and law students interviewed are not mentioned by name, in order to protect their privacy.)

Four Russian émigré advocates, one (Yuri Luryi) living in Ontario, Canada, and three living in Chicago, Illinois. May-July 1994.

Seventy-eight advocates, from both original and parallel colleges, legal consultation bureaus and new law firms, and practicing in both criminal and civil law; half of the sample is female. Roughly 58 from Moscow and 20 from Ivanovo. Fall 1994-Spring 1995.

Twenty judges in Moscow and Ivanovo, on the People’s Court, City Court, and Regional Court levels, and Tamara Marshchakova, vice-chair of the Russian Constitutional Court. Fall 1994-Spring 1995.

Five prosecutors or former prosecutors. Fall 1994-Spring 1995.

Aleksandr Traspov, Duma Deputy and Member of the Committee on Legislation and Judicial Reform. November 1994.


Five Ministry of Justice officials, including Isai Sukharev, head of the Department on Cooperation with the Advokatura and Boris Saliukov, head of the Moscow Justice Department. Fall 1994-Spring 1995.


Several prominent legal scholars at the Institute of State and Law, the Russian Academy of Sciences; Moscow State University, Moscow Legal Academy, and the Moscow State University for Communications (Puti Soobshenii). Fall 1994-Spring 1995.

A number of law students at the Moscow State University law faculty, the Russian Legal Academy, and Moscow Legal Academy. Fall 1994-Spring 1995.
Survey data
In cooperation with Professor Dan McGrory of the American Bar Association’s Moscow office, CEELI, I designed a survey of advocates opinions. Professor McGrory and I distributed the surveys to 25 advocates belonging to the Moscow Oblast College of Advocates (MOKA); 32 advocates belonging to the Ivanovo Oblast College of Advocates (IOKA) and the Ivanovo parallel college of advocates; and 20 advocates belonging to the Stavropol Oblast College of Advocates (SOKA) in 1995 (see Appendix for copies of the survey in English and Russian).

Trials observed
Selection of criminal and civil trials at Moskvoretskii People’s Court, January - February 1995
Civil trial at Gagarinskii People’s Court, April 1995
Criminal trial at Tushinskii People’s Court, March 1995
Selection of criminal and civil trials at Moscow City Court, January - March 1995
Selection of jury trials at Moscow Regional (Oblast) Court, December 1994 - April 1995
Jury trial at Ivanovo Regional (Oblast) Court, April 1995
Civil trial at Oktiabrskii People’s Court, Ivanovo, April 1995

Meetings, hearings, conferences, and special events attended in Russia
Meetings of the presidiums of the Moscow City College of Advocates (MGKA) and the Moscow Oblast College of Advocates (MOKA), Fall 1994-Spring 1995.

Conference “From Independent Professions to a Civil Society.” Moscow, 9-11 November 1994. Sponsored by the Friedrich-Naumann-Stiftung Foundation (Germany) and the Liberal Women’s Fund (Liberal’nyi Zhenskii Fond).

Public Hearing, Traspop’s draft law on the advokatura. Moscow, 15 November 1994.


Two Meetings of the State Duma Committee on Legislation and Judicial Reform, 9 February and 20 March 1995.

Celebration of the 130th Anniversary of the creation of the Russian advokatura.
Moscow, Moskovskaia Operetta, 2 December 1994. (Speeches by Bar leaders and Ministry of Justice officials, followed by a performance of “Die feldermaus.”)

