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Justice in Transition: Jury Trials in Post-Soviet Russia

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JUSTICE IN TRANSITION: JURY TRIALS IN POST-SOVIET RUSSIA

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I. INTRODUCTION

In this paper, I will examine jury trials in present day Russia. The main focus of the paper will be on the new Russian Criminal Code of Procedure which became effective in July of 2002.[1] The code is important because it sets forth the standard for jury trials in Russia.

In order to examine jury trials in Russia today, it will be important to look at Russian history. More specifically, it will be important to look at the history of the right to a jury trial in Russia. It would be difficult to analyze the present day Russian jury trial without also considering the historical aspect of the jury trial in Russia in the past.

After looking at the history of the Russian jury trial, I will then examine the present day Russian jury trial. In order to look at the present day Russian jury trial, one must examine the Russian Criminal Code of Procedure. The code itself sets out not only the return of the jury trial, but also sets out the specific standards for the jury trial.

The examination of the Russian jury trial will be informative. Beyond being informative, this paper will address a salient question raised by the

1. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] (Russ.). This article references an English translation of the Russian Criminal Code of Procedure which the Office for Democratic Institutions and Human Rights has available at http://www.legislationline.org/documents/section/criminal-codes.

return of the jury trial to Russia. The salient question that this paper will address is whether the jury trial today provides justice to the citizens of post-Soviet Russia. The answer to that question will be addressed throughout the paper and more directly during the paper's conclusion.

II. RUSSIA AND ITS PEOPLE

Before there can be an analysis of the jury trial in Russia, it is first important to have an understanding of the historical context of Russia and its people. It will provide a better view of the current state of the country of Russia—including its judicial system.

Russia is a huge, complex, fascinating place. While it straddles Europe and Asia, Russia is neither European nor Asian in its culture or perspective.[2] While Russia, as the Soviet Union, attained super-power status with the United States in "the twentieth century, it is very different from America."[3] Russia for centuries has struggled with its own identity among nations.[4] The struggle for their own sense of identity continues today.[5] Russia is no longer an imperial power ruled by czars, as it was from the time of Peter the Great in the late 1600s to 1917.[6] Russia is no longer communist, as it was when ruled by dictatorships from 1918 to 1991.[7] Since 1991, Russia has been striving to become a true democratic nation.[8] It continues to struggle with its own identity as a Russian democracy.[9]

Geographically, Russia is the largest country in the world.[10] It occupies approximately 6.6 million square miles, almost twice the size of the United States.[11] From east to west, Russia measures over 5,000 miles and has eleven time zones.[12] The population of the Soviet Union was about 290 million.[13] Today the Russian Federation has a population of approximately 147 million.[14] Russia has the sixth largest population in the world following Chi-

2. CHARLES E. ZIEGLER, THE HISTORY OF RUSSIA, 1 (Greenwood Press. 1999).
3. *Id.*
4. *Id.*
5. *Id.*
6. *See id.*
7. ZIEGLER, *supra* note 2, at 1.
8. *See id.* at 1, 6–7.
9. *See id.* at 1.
10. *Id.*
11. *Id.*
12. ZIEGLER, *supra* note 2, at 1.
13. *Id.* at 2.
14. *See id.*

na, India, the United States, Indonesia, and Brazil.[15] Over eighty percent of the population is located in the western part of the country.[16] Only 25 million people "live in the vast expanses of Siberia" and the eastern most part of Russia.[17]

As to be expected, most of the roads, railways, and airways are located in the western portion of the country.[18] Interestingly, the eastern part of the country is "rich in natural resources—oil, natural gas, gold, diamonds, furs, and timber."[19] Due to the remoteness and lack of a transportation system to them, these natural resources remain inaccessible.[20]

Russia today "is ethnically more homogenous than" the Soviet Union.[21] "The Russian Federation is [approximately] 82 percent Russian. The next largest group is the Tatars," who are Moslem Turkic people that comprise about four percent of the population.[22] Ukrainians make up 3 percent of the population.[23] The remaining twelve percent is made up of Turkics, Germans, Belorussians, Jews, and Siberian tribes.[24]

Most of Russia is further north than the United States.[25] It is comparable more to Canada in its geographical location than to the United States.[26] Although Russia has good agricultural land, its northern location and climate provide for shorter growing seasons.[27] Many crops do not do well.[28] As a result of climate and Soviet policies, the farming sector to the present day has done poorly.[29] In 1998, almost half of all Russian imports were food.[30]

"Much of Russia is flat, and the absence of natural barriers is often cited [as the basis for the continued] historical Russian preoccupation with secure borders."[31] The Ural Mountains, which run north to south, separate European Russia from Siberia and the Far East.[32] The Urals are not very high and

15. *Id.*
16. *Id.*
17. ZIEGLER, *supra* note 2, at 2.
18. *Id.*
19. *Id.*
20. *Id.*
21. ZIEGLER, *supra* note 2, at 2.
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *See* ZIEGLER, *supra* note 2, at 2.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.* at 3.
31. ZIEGLER, *supra* note 2, at 3.
32. *Id.*

are comparable to the Appalachian Mountains in the United States.[33] Due to its vastness, the climate in Russia varies.[34] In some southernmost areas in the summer, it "can be quite hot."[35] In north-central Russia the infamous Russian winters are brutally cold.[36] It is not unusual for the temperatures to drop to forty degrees below zero.[37] In the Siberian town of Verkhoyansk, temperatures have often fell to ninety degrees below zero.[38]

"Russia is an urban nation . . . about 70 percent of the population liv[es] in cities. Moscow, the capital, is . . . the largest and [perhaps] most dynamic city" in Russia.[39] Its population is about nine million.[40] Close to seventy-five percent of all "Western investment has been concentrated in [Moscow]."[41] The investments have helped transform the capital to a modern refurbished city.[42] Most other Russian cities lag behind Moscow "where old Soviet industries [lag behind] and the new market economy has" not as of yet taken off.[43]

Life in the Russian countryside is "far removed" from the culture of the larger cities.[44] This has been true historically.[45] Russian villages are much poorer than the cities.[46] Many rural homes do not have indoor plumbing.[47] Horse drawn carts are not an uncommon sight.[48] Agricultural production was mechanized by the Soviet Union.[49] However, many peasants were forced into huge collective state farms, which are still operating today.[50] Productivity on these farms "is low and there are few opportunities for young people in the" countryside areas.[51] As a result, many have left these areas for

33. *Id.*
34. *See id.*
35. *Id.*
36. ZIEGLER, *supra* note 2, at 3.
37. *Id.*
38. *Id.*
39. *Id.*
40. ZIEGLER, *supra* note 2, at 3.
41. *Id.* at 3, 5.
42. *See id.*
43. *Id.* at 5.
44. *Id.*
45. *See* ZIEGLER, *supra* note 2, at 5.
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*
50. ZIEGLER, *supra* note 2, at 5.
51. *Id.*

the cities.[52] While Soviet restrictions prevented migration to the cities, the new "Russian Constitution guarantees freedom of movement."[53]

Russians are a well-educated and highly literate people.[54] Before the Russian revolution in 1917, the illiteracy rate stood at fifty-five percent.[55] Currently, the literacy is approximately ninety-seven percent.[56] "Russian students routinely outperform" American students in math and science.[57] Under Soviet rule, "all schools were operated by the state."[58] Today, the Russian education system resembles those in the West including the United States.[59] Private schools and religious schools now exist along with state run schools.[60] It is not unusual for the Russian elite to now send their children to Europe or the United States for their education.[61]

It is readily apparent that the communist Soviet regime failed to eradicate religion.[62] Today religion flourishes in Russia.[63] Numerous church buildings have been restored or rebuilt.[64] Services are often packed with religious believers of the respective faith.[65] About eighty percent are Russian Orthodox which was the state church of the czars.[66]

Approximately nine percent are Moslems as represented by the Tatars, the Chechens, Ingush, and others.[67] About three percent of the population is Jewish.[68] There are also a large number of Catholics, Baptists, and Buddhists.[69] A small number of fringe religions exist also, including the "Hare Krishnas and members of the Japanese Aum Shinrikyo cult."[70]

"For centuries, Russia's government was a centralized" monarchy led by the czars and "organized on [the] principles of rank and privilege."[71] In

52. *Id.*
53. *Id.* at 5; *see also* Konstitutsiia Rossiiskoi Federatsii [Konst. RF] [Constitution] art. 27.
54. ZIEGLER, *supra* note 2, at 5.
55. *Id.* at 5–6.
56. *Id.* at 6.
57. *Id.*
58. *Id.*
59. *See* ZIEGLER, *supra* note 2, at 6.
60. *Id.*
61. *Id.*
62. *Id.*
63. *See id.*
64. ZIEGLER, *supra* note 2, at 6.
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*
69. ZIEGLER, *supra* note 2, at 6.
70. *Id.*
71. *Id.*

the Soviet period, after 1917, a more stringent "dictatorship was organized through the Communist Party."[72] Lenin, until his death in 1924,[73] "established the Soviet system and laid the foundation[] for a totalitarian dictatorship."[74] His successor, Joseph Stalin, took the system and developed it into one of the most "repressive governments known to history."[75] After Stalin's death in 1953, Khrushchev (1953–1964) and Brezhnev (1964–1982) tempered some of the oppressive aspects of the Stalin era.[76] However, they retained and preserved the basics of the Soviet Party-state system.[77] Gorbachev—from 1985 to 1991—became "the first Soviet leader to undertake serious reform."[78] He "set in motion a series of events," based in reform, which "brought about the collapse of the USSR, leaving fifteen newly independent states in its place."[79] From 1991 to 1999, Boris Yeltsin was president.[80] From 1999 through 2008, Vladimir Putin was the president of the Russian Federation.[81]

"Many factors played a role in the collapse of the Soviet Union."[82] The most important may "have been internal, although international pressures . . . deserve[] some credit for the [demise]."[83] Domestic factors include the following: "poor economic performance of [a] centrally planned economy, technological backwardness, a . . . repressive political system that discouraged [growth and] creativity, excessive military spending, . . . bureaucratic inefficiency," polluting the environment, the impact of the Chernobyl nuclear disaster on a wide range of issues, Russian nationalism, and the insensitivity of the Soviet Union to its diverse population, including its minorities.[84]

One should consider not only domestic problems and international pressures in the Soviet collapse, but also the generational shift in Soviet leader-

72. *Id.*; *see also* David Remnick, *Leaders & Revolutionaries: V.I. Lenin*, TIME.COM, Apr. 13, 1998, http://www.time.com/time/time100/leaders/profile/lenin.html.

73. *Id.*

74. ZIEGLER, *supra* note 2, at 6.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. ZIEGLER, *supra* note 2, at 7.

80. *Id.*

81. Andrew E. Kramer, *Putin's Grasp of Energy Drives Russian Agenda*, N.Y. TIMES, Jan. 28, 2009, http://www.nytimes.com/2009/01/29/world/europe/29putin.html (last visited Apr. 5, 2009); *see* Frances Romero, *Russia President Dmitri Medvedev*, TIME.COM, Apr. 2, 2009, http://www.time.com/time/world/article/0,8599,1888887,00.html.

82. ZEIGLER, *supra* note 2, at 170.

83. *Id.*

84. *Id.* at 167, 170.

ship and the generational shift of all citizens.[85] The new, younger "generation was better educated and more critical of [the] Soviet" record.[86] "[T]he Soviet people [became] disillusioned and impatient with a corrupt, repressive system that" failed to provide for the needs and desires of the modern Soviet people.[87] The collapse of the Soviet regime may have begun with party officials, but it was embraced by the public affirmation that democracy would be accepted and dictatorship would be rejected and not restored.[88]

Today Russia is a blend of presidential-parliamentary form of government, patterned upon the French system of government.[89] "It is federal, with political [power] divided between Moscow and eighty-nine regional [or district] governments."[90] Russia has its own constitution, which defines the power of the presidency, its legislature called the Federal Assembly, and its judiciary.[91] The constitution also contains a section, which sets out the rights and freedoms for citizens, that is comparable to the American Bill of Rights.[92]

The country has experienced difficulty in adjusting to their new economy, shifting from a centrally planned economy to a market economy.[93] The transition has not been easy.[94] In the last ten years, Russia "has experienced hyperinflation, unemployment, . . . capital flight, and . . . income inequality."[95] There exists a complex and burdensome tax system.[96] Many businesses keep two sets of books, which causes the government to run at a deficit.[97] The Russian mafia has a significant presence in the country.[98] There are many armed mafia gangs, and a large percentage of businesses pay protection money to the mob.[99] "Russia now has one of the highest murder rates in the world."[100] Moreover, robbery, rape, and assault cases have risen substantially in recent years.[101]

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85. *Id.* at 170–171.
86. *Id.* at 171.
87. ZEIGLER, *supra* note 2, at 171.
88. *See id.*
89. *Id.* at 6.
90. *Id.* at 6–7.
91. *See id.*
92. *See* ZIEGLER, *supra* note 2, at 6–9.
93. *Id.* at 8.
94. *Id.*
95. *Id.*
96. *Id.*
97. ZIEGLER, *supra* note 2, at 8.
98. *See id.*
99. *Id.*
100. *Id.*
101. *Id.*

"Winston Churchill once remarked that the Soviet Union was a riddle wrapped in a mystery inside an enigma."[102] Russia's present is inextricably tied to its past.[103] It is a past that has been troubled, violent, and fascinating.[104] It is still emerging from many decades of severe repression.[105] It is still struggling to build "a viable and respected democracy."[106] The country has tremendous potential as reflected in its people and its vast natural resources.[107] Its people are highly educated and creative.[108] Whether the country is captive to its past and is doomed to authoritarian rule remains an open question.[109] With its new constitution as a foundation and responsible leadership, Russia could become an affluent shining example of democracy. This brief review of Russian history will provide a better understanding of the present day jury trial and the jury trial in the past in Russia.

III. SEEDS OF REFORM IN RUSSIA

The seeds of judicial reform were sown by the Czar Alexsandr II.[110] He succeeded to the throne in 1855 as the Crimean War was still being waged.[111] The war impacted "Russia's confidence in its military and diplomatic capabilities, and underscored the need for social reform."[112] From 1853 to 1856, war between Russia on the one hand, and the Ottoman Empire, England, France, and Sardinia on the other, was waged.[113] The war was initiated by Czar Nicholas I.[114] The war revolved around a religious "dispute between Orthodox Christians and Catholics over access to sites in the Holy Land."[115] Negotiations had failed.[116] As a result war was waged.[117] Alexsandr II came

102. ZIEGLER, *supra* note 2, at 207.
103. *See id.* at 9.
104. *Id.*
105. *Id.*
106. *Id.*
107. ZIEGLER, *supra* note 2, at 9.
108. *Id.* at 7.
109. *See id.*
110. *See id.* at 58–59.
111. *Id.*
112. ZIEGLER, *supra* note 2, at 58.
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*
117. ZIEGLER, *supra* note 2, at 58.

to the throne in the midst of a losing war.[118] He immediately sought to end the war and negotiated a peace accord.[119]

Alexsandr ascended to the throne succeeding his father Nicholas who ruled from 1825–1855.[120] The thirty year reign of Nicholas has been "generally described as conservative, militaristic, and repressive."[121] In order to preserve domestic order Nicholas had adopted draconian measures.[122] His secret police, who were the predecessors of the Soviet KGB, were "notorious for their harsh and intrusive methods."[123] The "police investigated every possible revolutionary plot or subversive act" including the monitoring of literature.[124] One such subversive was the writer Dostoyevsky who was arrested and sentenced to death.[125] At the moment of execution, Dostoyevsky and others had their sentences commuted and were instead exiled to Siberia.[126]

Succeeding his father's reign, Alexsandr understood the need for reform in Russia.[127] The loss of the Crimean War left no doubt that military reform was needed.[128] The Russian "army was equipped with antiquated weapons and [was] poorly supplied."[129] The army was also composed of peasant recruits who were ineffective fighters.[130] Alexsandr was no different from many in the country who believed that Russia was technologically backwards.[131] Unless change occurred, Russia would fall further behind.[132]

At the forefront of positive change was the need for ending the deleterious impact caused by the institution of serfdom.[133] The first essential reform by Alexsandr was emancipation of the serfs.[134] "The emancipation of the serfs was . . . the most important of a series of official acts called the Great Reforms."[135] The Emancipation Act of 1861 granted freedom to fifty-

118. *Id.* at 58–59.
119. *See id.* at 59.
120. *Id.* at 56, 58–59.
121. *Id.* at 56.
122. ZIEGLER, *supra* note 2, at 56.
123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.*
127. *See* ZIEGLER, *supra* note 2, at 61–62.
128. *Id.* at 61.
129. *Id.*
130. *Id.*
131. *See id.* at 61–62.
132. *See* ZIEGLER, *supra* note 2, at 62–63.
133. *Id.* at 63.
134. *Id.*
135. *Id.*

two million people from a total population at the time of seventy-three million.[136] Interestingly, Abraham Lincoln would free American slaves two years later.[137] The American slaves freed totaled four million.[138] Alexsandr had stated that Russia needed to abolish serfdom from above before it abolished itself from below.[139]

IV. JUDICIAL REFORM IN RUSSIA

Another major reform enacted by Alexsandr II was judicial reform.[140] "Russia's judicial system in the early nineteenth century was inefficient and corrupt, and based on class privilege."[141] On November 20, 1864, he "signed the main documents of Judicial Reform, known in history as [the] Judicial Statutes."[142] A speedy, just, and merciful trial system equal for all was presented to Russia.[143] Reform "introduced a number of institutions shaped after western European models, such as trial by jury, [and] representation by counsel for [an] accused; torture and physical punishments such as flogging were forbidden."[144] Judicial power was strengthened by providing independence to inspire respect for the law that was necessary for well-being.[145]

By introducing trial by jury as part of the 1864 Judicial Reform, Alexsandr and other reformers in Russia intended to transform the practice of their courts.[146] The initiation of juries, which had been developed in "the adversarial tradition of Anglo-American countries, forced Russia to abandon its pure[ly] inquisitorial" system.[147] The Reform replaced the inquisitorial

136. *Id.*
137. ZIEGLER, *supra* note 2, at 63.
138. *Id.*
139. *Id.*
140. *See id.* at 63–64.
141. *Id.* at 64.
142. Moscow Center for Prison Reform, Jury Trials in Russia (1998), http://www.prison.org/english/rpsjur.htm (last visited Apr. 5, 2009).
143. ZIEGLER, *supra* note 2, at 64.
144. World History at KMLA, Russian Empire, Russian Domestic Policy, 1855–1881, http://www.zum.de/whkmla/region/russia/rus18558 1dompol.html (last visited April 5, 2009).
145. *See generally* Sergi M. Kazantsev, *The Judicial Reform of 1864 and the Procuracy in Russia*, *in* REFORMING JUST. IN RUSS., 1864–1996: POWER, CULTURE, AND THE LIMITS OF LEGAL ORDER 44 (Peter H. Solomon, Jr. ed., 1997) [hereinafter Kazantsev, *Judicial Reform*]; ZIEGLER, *supra* note 2, at 65–83.
146. Girish N. Bhat, *The Consensual Dimension of Late Imperial Russian Criminal Procedure: The Example of Trial by Jury*, *in* REFORMING JUST. IN RUSS., 1864–1996: POWER, CULTURE, AND THE LIMITS OF LEGAL ORDER 61 (Peter H. Solomon, Jr. ed., 1997) [hereinafter Bhat, *Consensual Dimension*].
147. *Id.*

procedure with public trials.[148] The trials featured a contest between two attorneys, presented before an audience composed of a judge, jury and spectators.[149]

Adversarialism was a "major procedural component of Russian jury trial procedure."[150] It was intended to address the defects of pre-1864 Russian justice.[151] Above all else, the reformers "of the new judicial order sought fairness, [i.e.,] equity and even-handedness in resolving [legal] disputes."[152] The reformers also sought "a fundamental respect for the individual as a subject of the law."[153] Adversarialism presupposes competition between competing "parties, in a formal court setting, with the common [goal] of determining legal truth and obtaining judicial satisfaction."[154] The state represents society as a whole and the victim more particularly.[155] The state "is opposed, on equal terms, by the legally [competent] defender [for] the accused. Adversarial procedure is also [noted] by the presumption of innocence," the importance of oral advocacy, and the adherence to an analytical standard of proof in evaluating testimony and the admissibility of evidence.[156] The jury trial, based on "its procedural format and [its] philosophical basis, represent[ed] the best aspects of adversarial justice."[157] The judge's role in the adversarial trial in Russia was to be a neutral and "'impartial settler of disputes' between [the] prosecution and the defense."[158]

Some historians consider the judicial reform as the most successful and far-reaching of all the great reforms.[159] The legal reform gave Russia, in the opinion of legal experts, one of the best legal systems anywhere in Europe.[160] The courts became independent of administrative interference.[161] Judges were sufficiently paid to resist corruption.[162] The accused was guaranteed the right to representation by counsel.[163] Criminal trials were marked with a

148. *Id.*
149. *Id.*
150. *Id.* at 65.
151. Bhat, *Consensual Dimension*, *supra* note 146, at 65.
152. *Id.*
153. *Id.*
154. *Id.*
155. *Id.*
156. Bhat, *Consensual Dimension*, *supra* note 146, at 65–66 (footnote omitted).
157. *Id.* at 66 (footnote omitted).
158. *Id.* (footnote omitted).
159. *See* DAVID SAUNDERS, RUSSIA IN THE AGE OF REACTION AND REFORM: 1801-1881, 258 (1998).
160. *See id.* at 258–59.
161. *See id.* at 261.
162. *Id.*
163. *See id.*

presumption of innocence standard.[164] Lawyers were part of a professional bar association, which raised competency levels to be advocates for an accused.[165] Importantly, people who were charged with crimes received trials by jury that were in open court with oral testimony from witnesses on the competing sides.[166] The new freedom from administrative interference and the right to competent legal counsel with advocacy representation helped to establish and maintain public confidence in the legal system.[167] In turn, with faith in the justice system, public confidence was gained in the state system itself.[168]

Unfortunately, the Bolsheviks abolished jury trials along with other democratic institutions in 1917.[169] Thereafter, courts were transformed from being fair, independent bodies that resolved disputes and protected rights into a component of the repressive system of the new governmental authority.[170]

V. RETURN OF JURY TRIALS TO RUSSIA

Since the end of 1993, and the beginning of 1994, jury trials have once again begun to operate in Russia.[171] In September of 1992, President Yeltsin issued an order requesting the State Legal Directorate and the Ministry of Justice to develop a program of experiments introducing new provisions of judicial legislation.[172] In 1993, the Russian Federation adopted the Laws on Changes on Court Proceedings in the Russian Federation, the Criminal Procedural Code of the Russian Federation, the Criminal Code of the Russian Federation, and the Code on Administrative Violations of Law.[173] The Russian Constitution specifically provides the right to a jury trial to Russian citizens.[174] Interestingly, the new reforms are close to the ones established by the Judicial Reform of 1864.[175] The result is that after consulting with a lawyer, a defendant may choose a court consisting either of a judge and two lay

164. SAUNDERS, *supra* note 159, at 259.
165. *See id.* at 261.
166. *See id.*
167. *See id.*
168. *See id.*
169. *See* Stephen C. Thaman, *The Resurrection of Trial by Jury in Russia*, 31 STAN. J. INT'L L. 61, 62 (1995) [hereinafter Thaman, *Resurrection*].
170. *See id.*
171. *Id.*
172. *Id.* at 78.
173. Moscow Center for Prison Reform, *supra* note 142.
174. Konstitutiia Rossiiskoi Federatsii [Knost RF] [Constitution] art. 47, 123.
175. Thaman, *Resurrection*, *supra* note 169.

assessors or a judge and twelve jurors who reach a verdict without the judge's participation.[176]

Today in Russia, the procedure of excluding unlawfully obtained evidence is an important component of the jury trial.[177] The procedure in Russian jury trials today is, again, adversarial.[178] Jurors are invited to regional courts, which deal with the most serious crimes.[179] Jurors are chosen by heads of local administrations by lot among active people.[180] Jurors must be twenty-five years or older and must never have been in prison.[181]

After considering the evidence, jurors listen to the arguments of the prosecution and the defense.[182] The defendant has an opportunity to make his or her last words.[183] The judge sums up the case to the jury.[184] Jurors then deliberate and fill in a questionnaire.[185] The jurors are asked to determine whether the defendant is guilty or not guilty and whether he deserves leniency.[186] If the answer to the question of leniency is yes the judge gives a milder sentence.[187] The answers to the questionnaire are considered the verdict of the jury.[188]

The number of jury trials has risen from the two that were first held in 1993.[189] As part of the experimental nature of the return of the jury trial, only nine regions began conducting jury trials.[190] The goal of the recent reforms in Russia was a bold one. The goal was to destroy the totalitarian mentality of the country. The aim was to end stereotypes of the historical Russian and Soviet justice system and to gain public confidence between courts and the people.[191]

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176. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 30 (Russ.).
177. *See* Thaman, *Resurrection*, *supra* note 169.
178. *Id.* at 102.
179. *Id.*
180. Thaman, *Resurrection*, *supra* note 169, at 95.
181. *See id.* at 83.
182. *See id.* at 102.
183. *Id.* at 113.
184. Thaman, *Resurrection*, *supra* note 169, at 123.
185. *See id.* at 114.
186. *Id.* at 102.
187. *See id.* at 127.
188. *See id.*at 114; *see also* Stephen C. Thaman, *Europe's New Jury Systems: The Cases of Spain and Russia*, *in* WORLD JURY SYSTEMS 339 (Neil Vidmar ed., 2000) [hereinafter Thaman, *Europe's New Jury System*].
189. *See* Thaman, *Resurrection*, *supra* note 169, at 62.
190. *See id.* at 81–82.
191. *See* Thaman, *Europe's New Jury System*, *supra* note 188, at 325.

VI. THE CRIMINAL CODE OF THE RUSSIAN FEDERATION

In July of 2002, Russia adopted a new legal code that governs the prosecution of criminal cases and protects the rights of those accused.[192] In a country where the criminal justice system has remained ossified in its Soviet past, the introduction of the code has been called the first step of a judicial revolution.[193] The following discussion focuses on the new Russian Criminal Code;[194] this discussion is narrowly focused on one portion of the code, which provides clear direction on conducting a jury trial. This portion of the code is Chapter 42 which contains Articles 324 through 353. This chapter and included articles contained therein, set forth the framework from which a jury trial is conducted in Russia. The chapter provides direction to an audience which includes judges, prosecutors, defense attorneys, law enforcement, witnesses, the Russian public, and to the world community.

VII. ORDER OF THE PROCEEDINGS IN A COURT WITH THE PARTICIPATION OF JURORS

Article 324 is a short introductory statement. It simply states that trials "with the participation of jurors," i.e., jury trials, will be governed by the requirements set out in the articles or provisions contained within, Chapter 42 of the code.[195] Basically, a judge need only look at the code, and more specifically at this chapter, to guide oneself through the procedures of conducting a jury trial.

VIII. SPECIFICS IN CONDUCTING A PRELIMINARY HEARING

Article 325 of the criminal code recognizes that after the accused demands trial by jury at the close of a preliminary investigation, the judge sets a preliminary hearing.[196] At the preliminary hearing, the judge must confirm the defendant's choice of a trial by jury.[197] If there are multiple defendants in a case, a jury trial will take place if any one defendant requests a jury.[198]

192. *See generally* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] (Russ.).
193. *See* Thaman, *Resurrection*, *supra* note 169, at 138.
194. *See generally* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] (Russ.).
195. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 324 (Russ.).
196. *See id.* art. 325(1).
197. *See id.* art. 325(2)–(3).
198. *Id.* art. 325(2).

Article 325 also prescribes the number of initials jurors to be brought into court as the initial venire.[199] The number is not to be less than twenty prospective jurors.[200] Interestingly, the court makes a determination at the preliminary hearing whether jury selection will be "open, closed or partially closed."[201] No guidance is given as to when this stage of the proceedings should be closed or not. This provides the judge wide latitude in making the determination whether or not to close jury selection to the public.[202]

Once the judge confirms that a case will proceed with a jury, the decision is final.[203] It appears that there is no appeal on this issue.[204] Once the judge makes the determination that the case will proceed with a jury, a defendant may neither refuse nor change one's mind.[205] It is a critical time, since the decision to proceed with or without a jury is confirmed and finalized at the preliminary hearing.[206]

IX. COMPILING A PRELIMINARY LIST OF JURORS

Article 326 of the Criminal Procedure Code provides for the initial compilation of a prospective jury.[207] This section provides that a secretary of the court or a judge, who is not the presiding judge at trial, select candidates for jurors, or a venire, from annual lists through a random fashion.[208]

The secretary of the court or the deputy judge then can make a determination whether there exists any circumstances that would prevent the prospective juror in sitting as a fair and impartial juror at trial.[209] This initial decision is made without the prospective juror being in a formal court session.[210] This section anticipates an informal inquiry either through the documentation or contact with the candidate for jury service.[211] It gives the

199. *Id.* art. 325(4).
200. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 325(4) (Russ.).
201. *Id.*
202. *See id.*
203. *Id.* art. 325(5).
204. *See id.*
205. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 325(5) (Russ.).
206. *See id.* art. 325(1), (5).
207. *See generally id.* art. 326.
208. *Id.* art. 326(1).
209. *Id.* art. 326(2).
210. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 326(6) (Russ.).
211. *See id.* art. 326(2).

power to exclude candidates who may not be fair and impartial to someone other than the presiding trial judge.[212]

Article 326 limits the time in which a person may serve as a juror.[213] Specifically, a person may not serve in more than one trial in any one year.[214] Participation in any trial, irrespective of length, would preclude service in that same year.[215] Arguably, if a case lasted from the end of one year to another, a juror would not be required to serve again in the same year the case was concluded.[216]

After selecting a preliminary list of jurors, the secretary or deputy judge shall sign off on the list affirming their selection of a venire.[217] The list is required to include the prospective juror's name as well as his or her father's last name and home address.[218]

Notifications are required to be given to those chosen to make up a venire.[219] This section requires that citizens be given the place of the court, the date, and time for their appearance.[220] Also, notice must be given a minimum of seven days prior to the case proceeding to trial.[221]

X. PREPARATORY PART OF A COURT SESSION

Article 327 addresses the procedure in selecting jurors immediately prior to the questioning of prospective jurors.[222] Prior to trial, the presiding judge determines if there is a minimum of twenty jurors in the prospective panel.[223] If there is not, the judge will order that a minimum of twenty be summoned.[224]

The list of the prospective panel is handed to the parties.[225] The list is not allowed to contain the home addresses of the venire members.[226] Prior to

212. *See id.*
213. *See id.* art. 326(3).
214. *Id.*
215. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 326(3) (Russ.).
216. *See id.*
217. *Id.* art. 326(4).
218. *Id.*
219. *Id.* art. 326(6).
220. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 326(6) (Russ.).
221. *Id.*
222. *Id.* art. 327.
223. *See id.* art. 327(3).
224. *Id.*
225. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 327(4) (Russ.).

beginning the questioning of individuals in the venire, the trial judge is required to tell the parties they are entitled to exercise "a motivated objection to a juror."[227] A motivated objection is a legal challenge for cause. Furthermore, the presiding judge must explain to the parties that they may exercise their right to a motivated objection only two times.[228] No additional number of challenges is delineated based upon the type of case involved.[229]

XI. FORMATION OF A COLLEGE OF JURORS

Article 328 is one of the lengthiest sections in Chapter 42.[230] The chapter deals with procedures involving the selection of a jury.[231] It should be noted that a college of jurors means a jury panel.

The first direction under this article is directed towards the presiding judge.[232] Interestingly, while many judges in Russia are women, throughout the code the pronoun that references judges is masculine.[233] The judge, prior to jury selection, is required to address the prospective panel.[234] The judge must give an introductory speech to the candidates of a prospective jury.[235] By law, the judge must introduce himself.[236] The judge is also mandated to introduce the parties to the venire.[237] The nature of the criminal case that will be heard by the jury must be explained by the trial judge to the venire.[238] The jury must be told the length of the trial.[239] Also, the venire must be told of their duties as jurors as well as their role in the criminal proceedings.[240]

Jurors, prior to selection, have the right to point out any reasons why they should not be selected.[241] If they are unable to perform their duties, they

226. *Id.*
227. *Id.* art. 327(5)1.
228. *Id.* art. 327(5)2.
229. *See id.*
230. *See generally* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328 (Russ.).
231. *See generally id.*
232. *Id.* art. 328(2).
233. *See, e.g., id.* art. 328(2)1.
234. *Id.* art. 328(2).
235. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328(2) (Russ.).
236. *Id.* art. 328(2)1.
237. *Id.* art 328(2)2.
238. *See id.* art. 328(2)3.
239. *Id.* art. 328(2)4.
240. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328(2)5 (Russ.).
241. *Id.* art. 328(4).

may present this to the trial judge.[242] The concept of a juror disclosing that he or she is unable to serve is referred to as self-rejection.[243] The position of a prospective juror's inability to serve will be reviewed by the judge.[244] The judge is required to hear from the parties if a jury candidate claims that it would be impossible for him or her to serve.[245] If the judge rules in favor of self-rejection, the code requires the judge to remove the prospective juror from the courtroom.[246]

After the review of claims for self-rejection, the trial judge then informs the parties of their right to make motivated objections towards members of the venire.[247] These are challenges for cause. The parties are then required to be allowed to question the venire.[248] The questions must have a bearing on their ability to participate in the particular criminal case as a juror.[249] This language appears to narrow the focus of questions that may be presented to possible jurors.

After the questioning by the parties, the judge asks whether there are any objections to the prospective panel.[250] Any objection to the panel is then addressed by discussing each panel member in order of their sequence on the jury list.[251] Any motivated objection must be reduced to writing.[252] Such an objection may not be announced in open court.[253] The code requires the judge to rule from the bench on these challenges.[254] The trial judge must rule on the motivated petitions without departure from the court room to a retiring room for consideration.[255]

The judge is then required to announce the decision on motivated objections to the parties.[256] There is no requirement to inform the particular juror

242. *Id.* art. 328(3).
243. *See id.* art. 328(4)–(7).
244. *Id.* art. 328(5).
245. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328(5) (Russ.).
246. *Id.* art. 328(6).
247. *Id.* art. 328(7).
248. *Id.* art. 328(8).
249. *Id.*
250. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328(9) (Russ.).
251. *Id.*
252. *Id.* art. 328(10).
253. *Id.*
254. *See id.*
255. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328(10) (Russ.).
256. *Id.* art. 328(11).

of the decision.[257] The judge may bring the decision on motivated challenges to the juror candidate.[258] After consideration of self-rejections and motivated challenges, the trial judge is required to inform the parties of proceeding with unmotivated objections.[259] These are preemptory challenges.[260]

The prosecution must go forward first in exercising unmotivated objections or challenges.[261] The number of unmotivated objections is dependant up on the number of jurors remaining.[262] The trial judge can grant an equal number of unmotivated objections to the parties if there are sufficient prospective jurors remaining from self-rejection and motivated objections.[263] In order to proceed, there must be fourteen remaining members of the venire.[264] From these individuals, twelve jurors will proceed along with two alternates.[265] These alternates are referred to as reserve jurors.[266] While the code requires a minimum of two reserve jurors, more can be ordered.[267] The trial judge has the discretion, depending on "the character and complexity of the criminal case," to select additional alternate jurors.[268]

Once the jury is selected, including reserve jurors, the presiding judge is required to announce those who have been selected.[269] The judge is precluded from explaining why any juror was excluded.[270] Interestingly, the code requires the trial judge to thank the juror candidates who have been excused.[271]

The trial judge then assigns the panel their seating arrangement in order of their placement on the jury list.[272] The panel is required to be in a jury box that is separated from everyone else in the courtroom.[273] The jury box, as

257. *See id.*
258. *Id.*
259. *Id.* art. 328(12).
260. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328(13) (Russ.).
261. *Id.* art. 328(14).
262. *See id.* art. 328(12).
263. *Id.* art. 328(16)–(17).
264. *Id.* art. 328(18).
265. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328(21) (Russ.).
266. *See id.* art. 328(18).
267. *Id.*
268. *Id.*
269. *Id.* art. 328(19).
270. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328(19) (Russ.).
271. *Id.*
272. *See id.* art. 328(22).
273. *Id.*

prescribed in the code, shall be directly opposite the witness stand.[274] The finalization of jury selection shall take place in camera, outside the presence of the venire.[275] While questioning and objections take place in the courtroom, the college of jurors is formed in camera.[276]

If the criminal case will contain evidence of state secrets or any secrets protected by federal law, the jurors are required to sign a written acknowledgement and agree not to divulge such evidence.[277] If a juror declines to sign an agreement not to disclose privileged secrets, the trial judge shall reject, i.e., remove, the juror.[278] There is no discretion available to the trial judge.[279] A juror must be removed and replaced with an alternate upon refusal to protect privileged secrets from public disclosure.[280]

XII. REPLACEMENT OF A JUROR WITH A RESERVE ONE

Article 329 addresses the replacement of a juror from the original college of jurors, i.e., panel of jurors.[281] Once the jury has been selected, this section contemplates that one of the jurors may not be able to proceed.[282] If one of the jurors is not able to proceed, the judge may replace the original panel member with a reserve juror.[283]

A reserve juror is the Russian counterpart to the American alternate juror. The alternate juror is selected in the sequence of selection as an alternate.[284] The first alternate must be chosen first to replace a juror who is unable to proceed.[285] If there is more than one alternate, the sequence mandates the selection of a replacement.[286]

The code does not address the specific reason for replacement of the original juror. No mention is set forth as to health reasons or bias. The replacement is based on a broad concept: "[O]ne of the jurors cannot go on

274. *See id.*
275. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328(23) (Russ.).
276. *Id.*
277. *Id.* art. 328(24).
278. *Id.*
279. *See id.*
280. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 328(24) (Russ.).
281. *See id.* art. 329.
282. *Id.* art. 329(1).
283. *Id.*
284. *Id.*
285. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 329(1) (Russ.).
286. *Id.*

participating in the court session."[287] Arguably, this allows the trial judge broad discretion in deciding to replace a juror with an alternate.[288]

If there are not enough reserve jurors to hear the case after multiple jurors need replacement, the trial judge is required to find the proceedings to be invalid.[289] The presiding judge must then begin jury selection again.[290] Jurors who had been previously discharged, as well as the reserve jurors, may be part of the pool to form a new college of jurors.[291]

This section also addresses the inability of a juror to proceed once deliberation begins.[292] The judge is again allowed broad discretion to consider the issue.[293] The general language is that during the deliberation there may be an "impossibility for [some] of the jurors to participate."[294] Once the presiding judge learns and determines that such an impossibility exists, the panel must enter the courtroom.[295] The judge then has the ability to replace a juror during deliberation and require the new panel to continue deliberations with a reserve juror.[296]

XIII. DISMISSAL OF THE JURY BECAUSE OF THE BIASED NATURE OF ITS COMPOSITION

Article 330 allows the parties one last opportunity to object to the college of jurors.[297] The objection by any of the parties is not based upon an objection to an individual juror.[298] The objection is directed to the "college of jurors as a whole."[299]

The basis of the objection must be based on the specific facts of the criminal case to be tried.[300] Even though the individual jurors have been

287. *Id.*
288. *See id.*
289. *Id.* art. 329(3).
290. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 329(3) (Russ.).
291. *Id.*
292. *See id.* art. 329(1).
293. *See id.*
294. *Id.* art. 329(4).
295. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 329(4) (Russ.).
296. *See id.*
297. *See id.* art. 330(1).
298. *See id.*
299. *Id.*
300. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 330(1) (Russ.).

approved, this section recognizes that the panel, as a whole, may be incapable of fairly deliberating a verdict.[301]

Issues of bias and impartiality should have been addressed with the selection of the college of jurors. However, in theory, the facts of the case may raise questions about the jury as a whole even after the individual questioning of potential jurors.[302] Something, such as misconduct, may have occurred between the time of individual questioning and the formation of the college of jurors.

The presiding judge is required to entertain the party's objection, and must rule after proceeding to chambers, which is called a retiring room in Russia.[303] If the presiding judge agrees with the objection, the college of jurors must be disbanded.[304] Jury selection must then begin anew.[305]

XIV. SENIOR JUROR

In the United States, a foreman or foreperson is selected immediately prior to deliberation.[306] It is the first order of business for the jury before deliberations will begin.[307] The purpose of a foreman is to help direct deliberations to ensure that the law is followed and respect for fellow jurors is maintained.[308]

In Russia, Article 331 addresses the selection and function of a foreman– the Russian term used in lieu of foreman is senior juror.[309] Interestingly, the jury does not wait for deliberations to select the senior juror. Nor is the selection limited to those jurors who will be deliberating.

The Code provides that the jury, by a majority vote, decides the selection of the senior juror.[310] The selection must then be presented to the attention of the presiding judge.[311] The vote does not take place immediately prior to deliberation.[312] It takes place immediately after jury selection and

301. *See id.*
302. *See id.*
303. *Id.* art. 330(2).
304. *Id.* art. 330(3).
305. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 330(3) (Russ.).
306. *See, e.g.*, Florida STANDARD JURY INSTRUCTIONS IN CIVIL CASES § 7.2 (2007).
307. *See, e.g., id.*
308. *See id.*
309. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 331 (Russ.).
310. *Id.* art. 331(1).
311. *Id.* art. 331(1).
312. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 332(1) (Russ.).

before the case proceeds.[313] The alternate or reserve juror participates in the voting for a senior juror.[314]

The function of the senior juror is not limited to deliberations.[315] The senior juror, during the course of the trial, takes the role of providing direction to the jury and providing communication to the trial judge.[316] Any questions or requests from the jury must be communicated only through the senior juror.[317] The senior juror is also responsible for answering any questions placed before the jury by the judge about the case.[318] The answers must be in writing.[319] The senior juror must also summarize the result of the voting of the jury, as well as formalize and announce the verdict in open court.[320]

XV. TAKING AN OATH BY THE JURORS

Article 332 provides a detailed oath that must be administered to a selected college of jurors.[321] The presiding judge is required to read the oath to the selected panel verbatim after the senior juror is chosen.[322] Unlike an American oath that is general in nature and requires jurors to swear to perform their lawful duty, the Russian oath provides greater detail:

> As I begin the discharge of the juror's responsible duties, I hereby solemnly swear to discharge them honestly and without a bias, to take into account all the proof considered in court, both those exposing the defendant and acquitting him, and to resolve the criminal case in accordance with my inner conviction and conscience, not acquitting a guilty person and not condemning an [sic] guilty one, as befits a free citizen and a just man.[323]

After reading the oath to the panel as a whole, the trial judge addresses each member of the college of jurors, including the reserve jurors, indivi-

313. *See id.*
314. *See id.* art. 331(1).
315. *See id.* art. 331(2).
316. *Id.*
317. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 331(2) (Russ.).
318. *Id.*
319. *Id.*
320. *Id.*
321. *Id.* art. 332(1).
322. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 332(1) (Russ.).
323. *Id.*

dually.[324] Each individual must respond to the oath with two required words set out in the code: "I swear."[325] The judge is required to make a written note that the oath has been administered and taken.[326] Interestingly, the code requires that everyone in the courtroom, including the jurors, stand while the oath is being administered and accepted by the panel.[327]

After the oath is sworn to, the judge is next required to explain to the jurors their rights and duties as set out in the following article.[328]

XVI. RIGHTS OF THE JURORS

The rights of each juror are enumerated in detail in Article 333.[329] This portion of the code is divided into two conceptual parts.[330] First, the article addresses the rights that jurors have and then the article addresses the rights that jurors do not have.[331]

Generally, a Russian juror has the right to be an active participant in a trial.[332] The code recognizes the right of a juror to study all of the circumstances of a criminal case.[333] Towards that end, a juror has the right to pose questions to all witnesses through the presiding judge.[334] Questions may not be posed directly to witnesses.[335] They must first be presented to the trial judge.[336]

The examination of the case is not limited to questioning witnesses. A juror has the right to pose questions during the trial about any evidence, including documents, demonstrative proof, and the investigative action that was taken on the case.[337] It is a proactive position; more involved than most American jurors are allowed.

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324. *Id.* art. 332(2)–(3).
325. *Id.* art. 332(2).
326. *Id.* art. 332(4).
327. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 332(5) (Russ.).
328. *Id.* art. 332(6).
329. *Id.* art. 333.
330. *See id.* art. 333(1)–(2).
331. *Id.*
332. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 333(1)1 (Russ.).
333. *Id.*
334. *Id.*
335. *See id.* art. 333(2)3.
336. *See id.* art. 333(1)1.
337. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 331(1)1 (Russ.).

The Russian juror also has the right to pose questions to the judge during the trial.[338] A juror has the right to ask the judge about the law of the case at any time.[339] If there are documents admitted into evidence, a juror is entitled to inquire about the contents of the documents at any time.[340] As a general proposition, a juror has the right to ask the trial judge any question during a trial if one finds any concept or issue to be vague.[341] This catchall phrase allows the juror to ask the judge any question during the trial if the juror is in the slightest way unclear on any matter.[342]

The jurors, by law, are entitled to take written notes; there is no prohibition as to time of taking the notes.[343] This allows a juror to take notes at anytime during the course of all the proceedings.[344] The jury is also not limited to the use of the written notes.[345] The notes taken during the course of a trial may be taken back to the retiring room or room for deliberation for consideration by the jurors.[346]

Article 333 informs everyone that jurors do not have certain rights.[347] The first right or prohibition to jurors pertains to their attendance in court.[348] A juror does not have the right to leave the courtroom while the proceedings are taking place.[349] This portion of the code is a recognition of the need for the jury to hear and see all the evidence and testimony in the case as well as hear the law from the judge.[350]

Jurors are not allowed to express their opinions about the criminal case until they begin their deliberations.[351] This ensures that jurors maintain their impartiality until such time as they have heard all the evidence and the law and are prepared to discuss the case with their fellow jurors. This is comparable to the expectations placed upon jurors in the United States.

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338. *Id.* art. 333(1)2.
339. *See id.*
340. *Id.* art. 333(1)1–2.
341. *Id.* art. 333(1)2.
342. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 333(1)2 (Russ.).
343. *Id.* art. 333(1)3.
344. *See id.*
345. *See id.*
346. *See id.*
347. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 333(2) (Russ.).
348. *Id.* art. 333(2)1.
349. *Id.*
350. *See id.*
351. *Id.* art. 333(2)2.

Jurors are not allowed to communicate with anyone outside the courtroom about the circumstances of the pending case.[352] While there is no prohibition to questioning witnesses in the courtroom, this portion of the code precludes jurors from conducting an investigation of the case outside of the courtroom.[353] While inside the courtroom, a Russian juror may actively scrutinize the case.[354] Independent investigation of the case and even discussion of the case with anyone outside of the courtroom is prohibited.[355] This section is comparable with American jury expectations.

The jurors have no right to discuss their deliberations and verdict after they are excused.[356] This section is very broad. The prohibition prevents a Russian juror from discussing their deliberations and verdict with anyone.[357] While one would contemplate this as an assurance to keep the media from gaining information about the jury's thought process, the prohibition prevents a juror from divulging their work with anyone. While this maintains the secrecy of the jury deliberation, it also impinges upon a Russian citizen's ability to speak freely after serving as a juror. This portion of the code is not comparable to the American jury requirements. Such a portion would be considered an impingement on a juror's First Amendment rights upon being excused from jury service.

A juror has no right to fail to come to court without "a serious reason."[358] The serious reason is not elaborated upon. This provides a trial judge broad discretion to consider whether a serious reason has been provided for missing court. If a juror fails to appear in court and fails to provide an appropriate reason, the presiding judge may impose a monetary fine.[359] The contempt power of the Russian trial judge is limited in this circumstance.[360] American trial judges have contempt power that allows for the imposition of incarceration and/or a monetary fine. Russian judges are limited to monetary fines.[361]

The last portion of this article requires the presiding judge to inform the jurors of their rights and warn them of the consequence of violating any of

352. Ugolovno-Protsessual'nyi Kodcks [UPK] [Criminal Procedural Code] art. 333(2)3 (Russ.).
353. *Id.* art. 333(2)4.
354. *See id.* art. 333(1)1.
355. *Id.* art. 333(2)3.
356. *Id.* art. 333(2)5.
357. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 333(2)5 (Russ.).
358. *Id.* art. 333(3).
359. *Id.*
360. *See id.* art. 333(4).
361. *Id.* art. 333(3).

the demands placed on them.[362] If they violate any of the demands placed on them, the judge may discharge a particular juror.[363] The removal of the juror is not mandatory.[364] The trial judge is given the discretion to consider the violation and consider the appropriate action including removal.[365] Once removed, the trial judge may replace the juror with a reserved one.[366]

XVII. POWERS OF THE JUDGE AND OF THE JURORS

Article 334 generally delineates the function of the judge and the jury.[367] The function of a Russian jury is to address three issues or questions that are presented for its consideration.[368] These issues or questions are: (1) whether the crime that has been charged was committed or has taken place; (2) whether the crime that was charged was proven to be committed by the defendant; (3) whether the defendant is guilty of the crime; and when there is a conviction, an additional question: (4) whether a defendant found guilty of a crime deserves leniency.[369]

The first two issues addressed by a Russian jury are similar to the responsibilities of an American jury. In the United States, the prosecution must prove both that a crime has been committed and that the defendant on trial was the person who committed the crime. The third issue is a variance of the American standard. In the United States, if it has been proven that the crime had been committed and the defendant committed the crime, then the jury is bound to convict the defendant.

The third issue or question presented to juries in Russia allows for a jury to vote for an acquittal even when the case has been legally proven.[370] It is tantamount to a jury pardon or jury nullification. A number of bases may be presented to a jury to pardon a particular defendant. One's use of alcohol, a mental condition, or even economic strata could be considered to find that a defendant was not guilty.[371]

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362. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 333(4) (Russ.).
363. *Id.*
364. *See id.* art. 333(4).
365. *See id.*
366. *Id.*
367. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 334 (Russ.).
368. *Id.* art. 334(1).
369. *Id.* art. 339(1)1–3, (4).
370. *See id.* art. 339(1)2–3.
371. *See id.* art. 335(8).

Once a defendant is found guilty, the jury has the power to find that the defendant is entitled to leniency.[372] This finding then allows the presiding judge to attenuate the sentence based on the jury finding that leniency is deserved.[373] This is a power that is in most states in the United States not afforded to jurors. In most states and in most cases, the judge alone imposes a sentence without input from the jury. In capital cases, the jury does have that input. Interestingly, the Russian code allows the jury to make a finding of leniency, but no finding that a defendant deserves a severe or tougher sentence.[374] Theoretically, based on the language of the code, the presiding judge is the only person who may find that a convicted defendant deserves a severe or tougher sentence based on the facts and circumstances of the case and the particular defendant.[375]

This article notes that four questions are decided exclusively by the jury.[376] The article then in a straightforward manner, declares that all other questions are to be decided by the presiding judge.[377] Specifically, the jury is responsible for only those issues and no others.[378] The trial judge is on his or her own in deciding a multitude of issues that may arise during the course of a trial.[379]

XVIII. SPECIFICS OF THE JUDICIAL INVESTIGATION IN A COURT WITH THE PARTICIPATION OF JURORS

Article 335 provides direction to the judge, parties, and jurors as to their role in the court proceeding.[380] The Russian code refers to the jury trial proceedings as a judicial investigation.[381] The investigation involves more than just the judge and parties.[382]

372. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 339(4) (Russ.).
373. *See generally id.*
374. *See id.* art. 334.
375. *See id.* art. 334(2).
376. *Id.* art. 339(1)1–3, 4.
377. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 334(2) (Russ.).
378. *See id.* art. 334(1).
379. *See id.* art. 334(2).
380. *Id.* art. 335.
381. *Id.* art. 335(1).
382. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 335 (Russ.).

The jury trial begins with introductory statements made by the prosecutor and counsel for the defense.[383] This is analogous to the opening statement in American courts.[384]

The prosecutor is required in the introductory statement to elaborate on the nature of the charges that have been brought.[385] The prosecutor is also required to set out the evidence necessary to prove the case and describe the steps that will be taken to present proof of guilt.[386] The duty of the Russian prosecutor is similar to the requirements of an American prosecutor.[387] The Russian code provides greater detail as to how the prosecutor should proceed.[388] It is generally understood in American courts that the prosecutor in an opening statement will set out the facts which will support the charges.[389] However, the opening statement in many courts does not allow for legal argument.[390] The opening statement is meant to provide the prosecutor an opportunity to let the jury know what the facts of the case will be.[391] Closing arguments are generally reserved for presenting legal argument to the jury.[392]

The defense is also required to present their position to the jury in the introductory statement.[393] The language in the code is mandatory for defense counsel to express their opinion about the charge to the jury.[394] The defense, similar to the prosecution, must also present their position as to the evidence and proof anticipated during the trial.[395] This requirement is different from American proceedings.[396] There is no mandatory requirement for the defense to present an opening statement in American courts.[397] Any requirement would impinge on the presumption of innocence, the right to remain silent, and the right against self-incrimination.

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383. *Id.* art. 335(1).
384. 75 AM. JUR. 2D *Trial* § 429 (2008).
385. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 335(2) (Russ.).
386. *Id.*
387. *Compare id., with* 75 AM. JUR. 2d *Trial* § 429.
388. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 335(2) (Russ.).
389. 75 AM. JUR. 2d *Trial* § 429.
390. *See* 88 C.J.S. *Trial* § 263 (2007).
391. 75 AM. JUR. 2d *Trial* § 429.
392. 75A AM. JUR. 2d *Trial* § 444 (2007).
393. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 335(3). (Russ.).
394. *See id.*
395. *Id.*
396. *See* 75 AM. JUR. 2d *Trial* § 431 (2007).
397. *See id.*

Article 335 allows jurors to pose questions to the defendant, the victim, witnesses, and experts after they have been questioned by the parties, and the questions must be reduced to writing and "submitted to the presiding [judge] through the senior juror."[398] The jury's questions shall be posed by the presiding judge who may rephrase the questions.[399] The judge may also refuse to pose a proposed jury question if the judge makes the determination that the question bears no relevancy to the case.[400]

This portion of the code authorizes the judge to exclude evidence that is inadmissible in the case.[401] The judge has the power to exclude inadmissible evidence on his own initiative or upon the petition or objection of the parties.[402] A judge is required to hear any objections or arguments on the admissibility of evidence outside the presence of the jury.[403] The code allows for the parties to state their opinions on the issue of admissibility.[404] After considering the parties' opinions, the judge alone is required to decide issues of admissibility of evidence.[405]

This section notes that the judicial investigation or trial proceedings is a factual consideration for the jury.[406] Only the factual circumstances of the case are to be presented to the jury for their consideration.[407] The facts must relate to the questions the jury is able to address pursuant to Article 334.[408] Those questions as previously noted are: 1) whether the crime that has been charged was committed or had taken place; 2) whether the crime that was charged was proven to be committed by the defendant; 3) whether the defendant is guilty of the crime; and 4) whether a defendant found guilty of a crime deserves leniency.[409]

This section specifically prohibits any inquiry during the jury trial of the facts of a defendant's prior criminal record or questions relating to whether the defendant is an alcoholic or a drug addict.[410] Moreover, this section has a

398. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 335(4) (Russ.).
399. *Id.*
400. *Id.*
401. *Id.* art. 335(5).
402. *Id.*
403. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 335(6) (Russ.).
404. *See id.*
405. *Id.*
406. *Id.* art. 335(7).
407. *Id.*
408. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 335(7) (Russ.).
409. *Id.* art. 334, 339.
410. *Id.* art. 335(8).

general edict that no questions may be posed that will give rise to any bias against the defendant to the jurors.[411] In the United States, a defendant's prior record generally may not be used as substantive evidence of guilt.[412] The number of convictions of a defendant may be considered as impeachment to attack the credibility of a defendant who testifies.[413] Similar to the Russian code, reputation evidence of a defendant being addicted to alcohol or drugs would be considered inadmissible.[414] Similar to American courts, the Russian code would allow reputation evidence to be admissible if it was not used to show bad character, but to establish the modus operandi or corpus delicti.[415] The general reference to bias gives a judge broad discretion compatible with American courts to determine whether any evidence is unduly prejudicial to a defendant.[416]

XIX. PARTIES' PRESENTATIONS

Article 336 generally addresses the parties' rights to closing arguments in a criminal jury trial.[417] The closing arguments are called presentations.[418] As this section notes, the presentations are to be carried out in conformity with Article 292 of the Russian code.[419] Article 292, in turn, more particularly describes the requirements of the presentations of the parties.[420]

Article 292 calls the arguments the speeches of the parties.[421] The prosecution and defense are entitled to give presentations to the jury.[422] The prosecution always goes first.[423] The defense always goes last.[424] The victim or victim's representative may also give a presentation to the jury.[425] The ability of the victim to be heard at this juncture is within the presiding

411. *Id.*
412. FED. R. EVID. 404(b).
413. *See* FED. R. EVID. 608(b).
414. *Compare* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 335(8), *with* FED. R. EVID. 404(a), 608(b).
415. *Id.*
416. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 335(8).
417. *See id.* art. 336.
418. *Id.*
419. *Id.* art. 336(1).
420. *See id.* art. 292.
421. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 292(1).
422. *Id.*
423. *Id.* art. 292(3).
424. *Id.*
425. *Id.* art. 292(2).

judge's discretion.[426] After the opening presentation of the prosecution and the defense, each side is entitled to a response, which is referred to as a retort.[427] This is analogous to the American rebuttal.

The length of the presentations is unlimited.[428] Article 292 specifically forbids a trial judge to limit the time of the presentation.[429] The article also prohibits the court from stopping argument that is relevant and based upon the fair discussion of admissible evidence.[430]

After the initial reference to Article 292, Article 336 generally notes that the presentations shall not touch upon matters considered after the verdict.[431] Arguably, this can refer to sentencing, as well as issues as to the conduct of a defendant post trial.[432] It is a limitation to the parties to discuss matters that pertain to the charge and the jury's duty to focus on the issues of guilt or innocence.[433] If one of the parties attempts to discuss matters that are relevant after a jury verdict, the trial court can stop the presentation and explain or instruct the jury that it must not take these circumstances into consideration during deliberations.[434]

Finally, Article 336 generally provides that the parties may not refer to inadmissible evidence during their presentations.[435] If the parties do so, the court is required to stop the party and explain to the jury that it may not consider the circumstances during jury deliberation.[436]

The ability of a Russian judge to stop inappropriate comments during presentations is similar to the ability of American judges to prevent inappropriate comments during closing arguments. While oftentimes the attorneys will make an objection, nothing prevents the American trial judge from addressing serious violations that may be fundamental error if left alone. While Article 336 does not prevent an attorney from objecting first during presentations, the code places an affirmative duty on judges to ensure the jury hears only relevant arguments that are based upon the admissible evidence at trial.[437]

426. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 292(2).
427. *Id.* art. 292(6).
428. *Id.* art. 292(5).
429. *Id.*
430. *See id.*
431. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 336(2).
432. *See id.*
433. *See id.*
434. *Id.*
435. *Id.* art. 336(3).
436. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 336(3).
437. *Id.*

XX. RETORTS OF THE PARTIES AND THE LAST PLEA OF THE DEFENDANT

Article 337 is a short provision that recognizes that all parties have the right to one rebuttal or retort to the presentation that was originally presented by the opposing party.[438] The last retort belongs to defense counsel and the defendant.[439]

This article also recognizes the right of a defendant to make a final plea in conformity with Article 293 of the Russian Criminal Procedure Code.[440] Article 293 makes the final plea mandatory if the defendant so chooses to speak.[441] While phrased as a last plea, in effect it is the last opportunity the defendant has to present one's position alone.[442] It is one's individual presentation to the jury after all the other presentations, including any retorts or rebuttals, have been made.[443]

The last plea is the last opportunity for a defendant to speak to the jury about one's case.[444] The opportunity is made without any examination of the defendant.[445] Article 293 expressly forbids any questions from anyone being placed before the defendant when the defendant is exercising a final plea to the jury.[446] Additionally, the defendant may speak as long as one wants.[447] A court has no right to limit the time that the defendant wishes to use during a last plea.[448] The only time the court is allowed to interrupt a defendant's last plea is if the defendant starts speaking upon matters that are totally unrelated to the case before the jury.[449]

XXI. RAISING QUESTIONS TO BE RESOLVED BY THE JURORS

Article 338 sets out the Russian equivalent of the American jury charge conference.[450] This section notes that the judge is responsible for the ques-

438. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 337(1) (Russ.).
439. *Id.*
440. *Id.* art. 337(2).
441. *Id.* art. 293(1).
442. *Id.*
443. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 293(1) (Russ.).
444. *See id.*
445. *Id.*
446. *Id.*
447. *Id.* art. 293(2).
448. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 293(2) (Russ.).
449. *Id.*
450. *See id.* art. 338.

tions to be placed before the jury in determining the outcome of the criminal trial.[451] Similar to special interrogatories in American cases, the judge submits written questions to the jury to be answered during deliberations.

The judge is required to formulate, or compose, the questions.[452] Along with the questions, the judge submits an overview of the judicial investigation, or trial proceedings, with a summary of the parties' presentations, or closing arguments.[453] All these writings must be submitted to the parties for their review and input.[454]

The parties have a right to provide input to all questions formulated by the judge.[455] The parties also have the right to provide input as to the overall summary by the judge concerning the judicial investigation, as well as the parties' presentations.[456] Besides comments, the parties may present to the judge for consideration their own questions and summaries of the proceedings.[457]

This section of the code requires the trial judge to have the jury consider any defenses that have been raised in the case.[458] Any defense which excludes the defendant's responsibility must be presented to the jury.[459] Moreover, any questions that may establish a lesser included offense from the main charge must be placed before the jury.[460]

This section also requires that any discussion of the proposed jury questions and formulation of such questions must take place outside the hearing of the jury.[461] Specifically, the jurors are required to depart from the courtroom whenever such discussions take place.[462]

The judge is required to finalize the jury questions after considering the input of the parties.[463] When appropriate, the judge should allow the parties' comments and input to be part of the questions and summaries.[464] The judge

451. *Id.* art. 338(1).
452. *Id.* art. 338(4).
453. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 338(1) (Russ.).
454. *Id.* art. 338(2).
455. *Id.* art. 338(4).
456. *Id.* art. 338(1).
457. *Id.* art. 338(2).
458. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 338(2) (Russ.).
459. *Id.*
460. *Id.*
461. *Id.* art. 338(3).
462. *Id.*
463. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 338(4) (Russ.).
464. *Id.* art. 338(2).

is required to sign the list of questions, verifying that the final questions are those to be placed before the jury for their consideration.[465]

Once formalized, the questions shall be read out to the jurors by the judge in open court.[466] The written questions must be handed to the senior juror.[467] If the jurors have any confusion from the list of questions, they are entitled to ask the trial judge to resolve any ambiguities before their deliberation begins.[468] The presiding judge is cautioned that when explaining any confusion or ambiguity, not to provide answers to the jury questions.[469] The judge may clear up the form of the question without providing the answers to them.[470] It is the role of the jury to answer the questions after being provided clarity from the judge.[471]

XXII. CONTENT OF QUESTIONS PUT TO THE JURORS

Article 339 specifically defines the three basic questions that a jury must consider in every criminal case.[472] The questions are: "1) whether it is proven that the act has taken place; 2) whether it is proven that the act was committed by the defendant; [and] 3) whether the defendant is guilty of the perpetration of this act."[473] A judge is required to pose these questions at a minimum to a jury.[474] Whether a defendant is guilty is also considered a basic question.[475] This straightforward question must also be presented to the jury in every case.[476] The question of guilt in form is a general question without any additional issues allowed within the question.[477]

After the basic questions are posed, private or special questions may be placed before the jury.[478] Those questions may require the jury to consider

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465. *Id.* art. 338(4).
466. *Id.* art. 338(5).
467. *Id.*
468. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 338(5) (Russ.).
469. *Id.*
470. *Id.*
471. *See id.*
472. *Id.* art. 339(1).
473. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 339(1)1–3 (Russ.).
474. *See id.* art. 339(1).
475. *Id.* art. 339(1)3.
476. *See id.*
477. *See id.* art. 339(1)2.
478. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 339(3) (Russ.).

mitigating or aggravating circumstances of the defendant's guilt.[479] Also questions may be presented addressing the defenses claimed by the defendant, including the level of responsibility.[480] Another question the jury may consider is whether criminal intent has been established and to what extent.[481]

Also the jury may consider the use of force utilized by the defendant in the particular case in question.[482] In addition, questions may address the complicity of each of the co-defendants charged in the perpetration of the crimes.[483]

Questions must be presented allowing the defendant to maintain that a less serious crime was committed.[484] Such questions may not be posed if the result to any answers would involve a more serious crime for which the defendant would be convicted.[485]

If a defendant is found guilty, the jury must be presented a question on leniency.[486] The jury may respond in any case that the defendant deserves leniency.[487] The court has no discretion in denying a question of leniency once a defendant is convicted.[488] The trial judge must present a question of leniency to the jury.[489]

No question may be presented to the jury that inquires about the defendant's prior criminal record nor criminal history.[490] No question either directly or in combination with another question may address whether the defendant should be categorized as a dangerous recidivist.[491]

Importantly, no question may be presented to the jury that causes a response that finds the defendant guilty of an offense that has not been charged by the prosecutor.[492] The questions must address the charge that has been

479. *See id.*
480. *See id.* art. 339(3)–(4).
481. *Id.*
482. *See id.*
483. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 339(3) (Russ.).
484. *Id.*
485. *Id.*
486. *Id.* art. 339(4).
487. *See id.*
488. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 339(4) (Russ.).
489. *See id.*
490. *Id.* art. 339(5).
491. *See id.*
492. *Id.* art. 339(6).

brought by the prosecutor and that is supported by the evidence.[493] Theoretically, if a sexual offense is the only charge, no question may be presented that would convict a defendant of a theft charge that has not been brought by the prosecutor.[494]

This article requires that every defendant be entitled to separate questions for their individual case.[495] Questions cannot be combined for co-defendants.[496] The questions must be separated for each defendant.[497] Moreover, any questions that are formulated and put before the jury must be comprehensible.[498] This is an effort to reduce complex legalistic questions to an understandable fashion to jurors who may be unfamiliar with the law.

XXIII. CHARGING WORD OF THE PRESIDING JUSTICE

Article 340 directs the presiding judge, or justice, to charge the jury before they deliberate.[499] What the judge must do is contained in this lengthy article.[500] The code requires that before the jury deliberates the trial judge must "address the jurors with the charging word."[501] In essence the charging word means charging the jury. In an American court, this is charging, or giving jury instructions to the jury.

The first admonition given to the trial judge is not to express one's opinion on any of the questions that will be posed to the jury.[502] A Russian judge, during the charge of the jury, is expressly prohibited in any manner or form to convey his own opinion.[503] Arguably, this could be expressed in word or through body language. American jury instructions often contain a charge to jurors to disregard anything the judge may have said or done during the course of the trial to give the impression that the trial judge had one position or another as to the outcome of the case.

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493. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 339(6) (Russ.).
494. *See id.*
495. *Id.* art. 339(7).
496. *See id.*
497. *Id.*
498. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 339(8) (Russ.).
499. *Id.* art. 340(1).
500. *See generally id.* art. 340.
501. *Id.* art. 340(1).
502. *Id.* art. 340(2).
503. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 340(2) (Russ.).

The charge to the jury is required to contain certain things.[504] The first requirement is to inform the jury of the charge or charges against the defendant that they must decide.[505] Next, the judge is required to explain the criminal law with respect to the case and the charge.[506] This entails the elements of the charge necessary to be proven for a conviction.[507]

The judge is also responsible for summarizing the evidence objectively.[508] This summary must fairly present the evidence that is both inculpatory and exculpatory.[509] The court is not allowed to draw any conclusions from the evidence nor convey any conclusions to the jury.[510]

The trial judge must also present the position of both the prosecutor and the defense.[511] The judge is required to explain to the jury the concept of weighing the evidence.[512] This is compatible with American instructions that touch upon weighing the evidence and the credibility of witnesses.

Similar to American instructions, the Russian code contains the requirement that the trial judge must inform the jury of the presumption of innocence.[513] While this is a hallmark of American justice, this is a departure from Soviet law that placed a defendant in the position of proving one's innocence.[514] Now the Russian code aligns its judicial system with the United States by presuming that a defendant is innocent until such time as the government proves guilt beyond a reasonable doubt.[515] Reasonable doubt or eliminating doubt must be contained in the charge to the jury.[516]

Russian jurors are to be advised that they may only consider the evidence that has been introduced during the course of the trial.[517] They are not permitted to speculate on matters that were not part of the evidence.[518] Nor

504. *Id.* art. 340(3)1–7.
505. *Id.* art. 340(3)1.
506. *Id.* art. 340(3)2.
507. *Id.*
508. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 340(3)3 (Russ.).
509. *See id.*
510. *Id.*
511. *Id.* art. 340(3)4.
512. *Id.* art. 340(3)5.
513. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 340(3)5 (Russ.).
514. John Quigley, *The Soviet Conception of the Presumption of Innocence*, 29 SANTA CLARA L. REV., 301, 301 (1989).
515. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 340(3)5 (Russ.).
516. *Id.* art. 340(3)5.
517. *Id.* art. 340(3)5–6.
518. *See id.*

may the jury rely on or speculate or consider evidence that the court ruled was inadmissible.

The court must instruct the jury that the defendant has the right to remain silent and that the refusal to give evidence may not be considered by them as having any legal importance.[519] This is similar to American instructions, which inform the jury that a defendant has the absolute right to remain silent and the exercise of that right may not be considered in the jury's deliberations. The Russian jury is further informed that a defendant's silence cannot be considered as evidence of guilt.[520] This aspect of the Russian code is similar to American instructions dealing with the right to remain silent and the jury's requirement to disregard such an exercise and not consider it as evidence of a defendant's guilt.

The judge must explain to the jurors their responsibility in answering the written questions or interrogatories presented to them.[521] The presiding judge must inform them of their voting procedure on questions and for their procedure to arrive at a verdict.[522]

The final charge or instruction to the jury is a reminder of their oath that they had originally taken as jurors to reinforce the importance of considering the admissible evidence and following the law.[523] Then, the judge must also remind the jury that even if they convict a defendant, they may still find that "the defendant deserves leniency" in terms of sentencing.[524]

After hearing the complete charge or instructions from the judge, the jury may have questions about the instructions.[525] If so, they are entitled to further explanations of the charge from the presiding judge prior to their deliberations.[526] This is different from juror questions on American instructions. Oftentimes, an American jury begins deliberation and then poses questions about the instructions. Under the Russian code, jurors' questions may be posed to the judge for clarification before the deliberations begin.[527]

Finally, this section allows the parties to make an objection to the final instructions or charging word of the trial judge.[528] The objection may be

519. *Id.* art. 340(3)6.
520. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 340(3)6 (Russ.).
521. *Id.* art. 340(3)7.
522. *Id.*
523. *Id.* art. 340(4).
524. *Id.*
525. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 340(5) (Russ.).
526. *Id.*
527. *Id.*
528. *Id.* art. 340(6).

based upon the concept of the judge "violating the principle of objectivity and impartiality" in the charging word.[529] This limitation is problematic. If the judge presents instructions in such a way that there is a question of maintaining objectivity and impartiality, an objection may be preserved. This raises the question whether an objection may be made for an improper or incorrect instruction on the law when made in good faith by the judge. Perhaps this may precipitate an objection or fall under the purview of breaching objectivity and impartiality.

XXIV. SECRET OF THE JURORS' CONFERENCE

Article 341 generally provides for the conduct of deliberations by the jurors.[530] After the charging word or final instructions, the jurors are required to proceed to a retiring room or jury room for their deliberations and consideration of a verdict.[531] The Russian code refers to the deliberation as a conference.[532] This is the same procedure followed by American jurors. Perhaps we take for granted that a jury deliberates within their own room. The Russian code clearly lays out the place where the jury will deliberate.[533]

This provision precludes anyone other than a jury member from being in the retiring room or jury room.[534] While not set out in American criminal codes, the presence of anyone besides the sworn jury would cause a mistrial in an American court.

This section also allows the jury to stop or choose not to start their conference or deliberations.[535] This depends upon the time of day.[536] If, according to the code, night time comes and it is after working hours, the jurors have a "right to interrupt their conference for a rest."[537] The right to interrupt the conference by the jurors must be with the permission of the trial judge.[538] Theoretically, if it is getting late the jury may be tired or have family or business matters to attend to. They may choose to come back in the morning or next day to complete their deliberations. They may even choose to begin

529. *Id.*
530. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 341 (Russ.).
531. *Id.* art. 341(1).
532. *Id.* art. 341.
533. *Id.* art. 341(1).
534. *Id.* art. 341(2).
535. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 341(3) (Russ.).
536. *Id.*
537. *Id.*
538. *Id.*

deliberation the next day if the hour is late. While the jury has the right to do so, the code only allows the right to be exercised upon approval of the trial judge.[539]

Allowing the jury to rest and continue their deliberations is similar to American courts. In some cases the judge or jury can decide that it is best for the jury to either begin or complete their deliberations the next day. Often times this is a discretionary decision. When the jury has been sequestered, and also specifically in capital cases, it will not be allowed to go home and return the next day for deliberations. The Russian code, however, does not provide for the concept of sequestration.

The jury is also admonished not to divulge their discussions during the conference or deliberations.[540] This is more stringent than the American counterpart. American jurors are not allowed to speak with anyone about the case other than their fellow jurors during deliberations. Once deliberations are ended and their duties have been completed, they are not required to speak with the public, but may do so if they so desire.

Finally, this section specifically allows jurors to take their notes made during the judicial investigation or trial back to the retiring room.[541] The notes may be used during their conference or deliberation.[542] The notes may be used to assist the jury in the answering of any of the questions that they must answer as part of the special interrogatories placed before them.[543]

XXV. PROCEDURE FOR HOLDING THE CONFERENCE AND THE VOTING IN THE RETIRING ROOM

Article 342 sets out additional procedures that must be followed by the jury during their conference or deliberations.[544] The section is a direction to, and recognition of, the power of the senior juror, or foreperson.[545]

The senior juror is given slightly more power and responsibility than the American counterpart.[546] The senior juror is required to direct the discussion to the questions posed by the court in the order, or sequence, presented.[547] It

539. *Id.*
540. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 341(4) (Russ.).
541. *Id.* art. 341(5).
542. *Id.*
543. *Id.*
544. *See id.*
545. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 342 (Russ.).
546. *See id.* art. 331(2).
547. *Id.* art. 342(1).

is also up to the senior juror to hold the voting on any questions and the verdict as a whole and to count the votes.[548]

The code even provides the manner in which jurors are to cast their votes.[549] Votes are required to be cast by the show of hands.[550] American deliberations are not as controlled by the senior juror as the Russian code provides.[551] Nor is the manner of the vote of the individual jurors specifically defined. The American jury may cast written votes in secret if they so choose. They may decide as a whole the manner in which to deliberate and cast their votes on questions and the verdict.

No Russian juror member may abstain from a vote.[552] Each juror is required to vote.[553] Theoretically, if an individual juror refuses to vote in violation of the code, the senior juror could bring this to the attention of the trial judge. In turn, the trial judge could admonish the recalcitrant juror or replace the juror with a reserved one or alternate.[554]

While the senior juror is given more power and responsibility than the other jurors, the code requires that the senior juror be the last person to cast their vote.[555] Arguably this tempers the power of the senior juror to initially influence the other members. By allowing others to vote first there may be a freer uninfluenced vote being made initially.

XXVI. PASSING VERDICT

Article 343 defines the manner and process for reaching a verdict.[556] The section begins by providing that a jury should try to reach a unanimous verdict.[557] This is contrary to every American verdict. A unanimous verdict is required in every criminal case in the United States. It is not a question of attempting to reach a unanimous verdict. One must be attained or there is a hung jury and mistrial.

548. *Id.*
549. *Id.* art. 342(2).
550. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 342(2) (Russ.).
551. *See id.* art. 331.
552. *Id.* art. 342(3).
553. *Id.*
554. *See id.* art. 329.
555. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 342(4) (Russ.).
556. *See id.* art. 343.
557. *Id.* art. 343(1).

Interestingly, under the Russian code, a jury has three hours in which to reach a unanimous verdict.[558] This time imposition is also contrary to the law in American courts. No specific time limitation is imposed on a jury. It is not unusual for some complex cases, such as capital cases, to have jury deliberations extend beyond three hours. Some cases take a day or more to decide.

If the jurors have not reached a unanimous decision in three hours, a verdict is reached by voting.[559] Simply put, a guilty verdict is reached through a majority vote.[560] If a majority of the jurors answer in the affirmative to the three paramount questions set forth in Article 339, then a guilty verdict is reached.[561] Those three questions are: "1) whether it is proven that the act has taken place; 2) whether it is proven that the act is committed by the defendant; [and] 3) whether the defendant is guilty of the perpetration of this act."[562]

If there is no majority vote on the aforementioned questions, a not guilty verdict is reached.[563] It should be noted, as specifically set out in the code, if the jury is split or tied with a vote of six to six, a not guilty verdict is rendered.[564] A majority for guilt has not been reached and therefore a tie goes to the defendant in the form of a not guilty verdict.[565]

On questions other than the three paramount questions set out in Article 339, an answer is arrived similarly by a majority if a unanimous answer may not be reached.[566] In addition, if there is a tie on non-paramount questions, the answer that is the most favorable to the defendant is accepted.[567] An example would be on the question of leniency. If a unanimous decision is not reached on that question, the majority vote shall prevail.[568] On the other hand, if the jury is equally divided on the question of leniency, the answer to the question on leniency would be in the affirmative since that answer would be more favorable to the defendant under the code.[569]

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558. *Id.*
559. *Id.*
560. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 343(1)–(2) (Russ.).
561. *Id.* art. 343(2).
562. *Id.* art. 339(1)1–3.
563. *Id.* art. 343(3).
564. *See id.*
565. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 343(3), (5) (Russ.).
566. *Id.* art. 343(4).
567. *Id.* art. 343(5).
568. *Id.* art. 343(4).
569. *See id.* art. 343(5).

Even when a verdict is attained, the jury may consider varying the verdict to reflect a charge that is more favorable to the defendant.[570] In theory, the jury, within its discretion under the code, could find the defendant guilty of a lesser included offense, even if the main charge has been proven.[571] That is a matter that is within their discretion when passing a verdict.[572]

The code specifies the manner in which the answers to the three questions under Article 339 must be presented.[573] The answers must be in writing.[574] Furthermore, the answers are limited to a confirmation, i.e., affirmation or negation, i.e., in the negative.[575] The response must also be followed by an explanatory phrase addressing guilt or innocence.[576] An example of the form of the answer to those questions would be: "Yes, guilty," or "No, not guilty."[577]

The senior juror is required to enter the responses to all the questions based upon the vote of the jury.[578] If a unanimous verdict is not reached, the senior juror is also responsible for noting the vote count as part of the response to the written interrogatories.[579] Finally, the senior juror is required to sign the verdict form and list of interrogatories.[580]

XXVII. ADDITIONAL EXPLANATIONS OF THE PRESIDING JUSTICE AND RESUMPTION OF THE JUDICIAL INVESTIGATION

Article 344 sets out the procedure for the jury to raise questions about their deliberations and also to reopen the case to consider additional evidence if they feel the need and the judge concurs with the request.[581]

The section begins with the acknowledgement that the jury may have questions about the questions posed to them by way of the interrogatories as part of the verdict.[582] The code allows the jury to pose questions if they are

570. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 343(6) (Russ.).
571. *Id.* art. 338(2).
572. *Id.* art. 343(6).
573. *See id.* art. 343(7)–(10).
574. *See id.* art. 343(8).
575. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 343(7) (Russ.).
576. *Id.*
577. *Id.*
578. *Id.* art. 343(8).
579. *Id.* art. 343(9).
580. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 343(10) (Russ.).
581. *Id.* art. 344(1)–(6).
582. *Id.* art. 344(1).

confused or need clarification on the questions presented to them by the trial judge.[583] The specific procedure for posing questions is set forth in this article. The jury must come back into the courtroom and present their questions to the presiding judge through the senior juror.[584] This procedure is slightly different from the one exercised in American courts. An American jury will reduce any question they may have to writing.[585] There is no requirement that the American foreperson be the writer of the question nor specifically be required to convey the question to the judge.[586]

Once presented with the questions, the judge may solicit the opinions of the parties to determine how to respond.[587] The ultimate burden is on the trial judge to appropriately respond to the questions posed to him or her by the jury.[588] The code notes that the court may explain the questions or present additional questions based on the juror's need for clarification.[589]

If there is an amendment to the original questions presented by the judge to the jury, an additional charging word, or instructions, must be provided to the jury.[590] The code refers to the additional charging word as being a brief one at that time.[591] Once the explanations are made, or additional questions are posed to the jury, and after the additional brief charging word, the jury is required to return to the retiring room to continue with their deliberations.[592]

Interestingly, the jury may make a request to resume the judicial investigation even after they have begun their conference or deliberation.[593] The code provides that if the jury has doubts about the factual circumstances of the case which is essential to their answering the questions before them in the verdict, they may request the judge to resume the judicial investigation.[594] In essence the code provides for the reopening of the case to introduce facts on issues the jury has doubts on.[595] In theory, the jury could hear additional

583. *Id.*
584. *Id.*
585. *See* American Bar Association, Principles for Juries and Jury Trials 22 (2005), *available at* http://www.abanet.org/juryprojectstandards/principles.pdf.
586. *See id.*
587. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] 344(6) (Russ.).
588. See *id.* art. 344(2).
589. *Id.*
590. *Id.* art. 344(3).
591. *Id.*
592. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 344(4) (Russ.).
593. *Id.* art. 344(5).
594. *Id.*
595. *See id.*

testimony or evidence, or have testimony repeated or clarified. The request for the resumption of the judicial investigation is made to the trial judge through the senior juror in open court.[596]

This procedure is different from the recognized procedures in American courts. Once an American jury begins deliberating, there is no authority to allow for the reopening of the criminal case for additional testimony or evidence.[597] Under some circumstances, a jury may request to review evidence that has already been admitted.[598] Also, an American jury may ask for the testimony of one of the parties to be re-read to them.[599] This may be within the discretion of the court subject to the parties' objections.

Once the request to resume the judicial investigation is made, the presiding judge must consider the parties' opinion.[600] The judge must make the ultimate decision whether or not to grant the request for the resumption of the judicial investigation.[601]

If the court allows for the resumption of the judicial investigation, the parties and the court follow the procedure that takes place at the end of the original judicial investigation.[602] This means that the court must formulate additional or modified questions with the input of the parties.[603] The parties are again allowed to make a presentation or argument to the jury along with retorts or rebuttal, and the defendant is allowed again to speak to the jury if he or she chooses, which is described as one's final plea.[604] Once again, the judge must provide a charging word to the jury with appropriate summaries of everyone's position on the case.[605] The jury then, once again, must proceed to their conference or deliberation in order to reach a verdict.[606]

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596. *See id.* art. 344.
597. *Cf.* Zenith Radio Corp. v. Hazeltine Res., Inc., 401 U.S. 321, 332–33 (1971).
598. *See* Sherry M. Purdy, Casenote, *Videotaped Testimony in Child Sexual Abuse Cases: United States v. Binder*, 23 WILLAMETTE L. REV., 193, 196–98 (1987).
599. *See id.* at 196–97.
600. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 344(6) (Russ.).
601. *Id.*
602. *Id.*
603. *See id.*
604. *Id.*
605. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 344(6) (Russ.).
606. *Id.*

XXVIII. PROCLAMATION OF THE VERDICT

Article 345 addresses the protocol to be followed by the jury after reaching a verdict.[607] The senior juror is required to sign the list of answered questions that were posed to the jury by the presiding judge.[608] The jury is required to return to the courtroom after completing their conference or deliberation in the retiring room or jury room.[609]

The senior juror in open court is responsible for announcing the verdict.[610] This is done by reading aloud each question put to the jury by the judge followed by announcing the corresponding answers by the jury.[611]

Interestingly, the code requires that when the verdict is announced, everyone in the courtroom must stand.[612] This is in contrast with American courts where the parties and counsel will stand when receiving the verdict. The audience, however, in American courts is not required to stand when the verdict is read.

The Russian code provides that the proclaimed verdict must be physically presented to the presiding justice.[613] The justice is then required to make the verdict together with all the questions and answers part of the criminal case or file.[614] This ensures, similar to an American trial, that there is a record for appellate purposes.

XXIX. ACTIONS OF THE PRESIDING JUSTICE AFTER THE PROCLAMATION OF THE VERDICT

Article 346 sets out the protocol to be followed by the presiding justice, or trial judge, after the proclamation, or receiving, of the verdict.[615] If the jury finds the defendant not guilty, the presiding justice shall declare the defendant to be acquitted.[616] If the defendant is in custody, he or she must be immediately released after an acquittal.[617] The code specifies that the release

607. *See generally id.* art. 345.
608. *Id.* art. 343(10).
609. *Id.* art. 345(1).
610. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 345(3) (Russ.).
611. *Id.*
612. *Id.* art. 345(4).
613. *Id.* art. 345(5).
614. *Id.*
615. *See generally* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 346 (Russ.).
616. *Id.* art. 346(1).
617. *Id.*

is immediate and directly from the courtroom from which the not guilty verdict was rendered.[618]

These first two provisions are comparable with American trials. Upon receiving a not guilty verdict, an American judge must accept the verdict of the jury without any ability to vary the acquittal. On the other hand, while American courts require the release of an acquitted defendant from custody, not all jurisdictions require the release to be directly from the courtroom as the Russian code specifies. An American detainee may be released in some jurisdictions after being processed through the jail the same day within a short period of time.

The Russian code requires the presiding justice to thank the jury for their service.[619] Also after the proclamation of the verdict, the trial judge must inform the jury that their service in the case has ended.[620] American judges thank jurors for their service, but it is not a requirement set out in every code. Similar to the Russian courts, American judges also discharge the jury after the verdict has been received. Often they are discharged or excused with the thanks and appreciation of the judge and the parties.

After the verdict is rendered, there may be consequences to the verdict.[621] An example of a consequence would be the sentencing after a guilty verdict.[622] The code recognizes that after any verdict the consequences shall be discussed among the parties and the judge without the participation of the jury.[623] Once the jury has given "the proclamation of the verdict," their duties cease.[624]

The jurors still have the right to stay in the courtroom after they have reached a verdict and have been relieved of their duties.[625] The Russian code requires, however, that if a juror decides to remain for the discussion of the consequences of the verdict, it must be seated with the rest of the public in the audience.[626] In essence after the verdict is reached they no longer are jurors and return to public seating if they decide to observe the remaining proceedings.[627]

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618. *Id.*
619. *Id.* art. 346(2).
620. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 346(2) (Russ.).
621. *Id.* art. 347.
622. *Id.* art. 347(3).
623. *Id.* art. 346(3).
624. *Id.* art. 346(2).
625. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 346(3) (Russ.).
626. *Id.*
627. *See id.* art. 346(2)–(3).

XXX. DISCUSSION OF THE CONSEQUENCES OF THE VERDICT

Article 347 defines the roles of everyone and also the matters to be discussed after the proclamation of the verdict.[628] After the verdict is received, the judicial proceedings continue with the participation of the parties and the judge.[629]

This section first addresses the procedure when a not guilty verdict is rendered.[630] If a not guilty verdict is rendered, the parties must address the issue of the civil claims contained within the criminal case.[631] Under the Russian code, issues of restitution or damages are handled within and not separate from the criminal case.[632] An example would be if there was a burglary or aggravated battery case where damages arose from the defendant's conduct.

The issue of damages is addressed through questions placed before the jury in the criminal case.[633] Even when there is a not guilty verdict, damages may be assessed civilly against a defendant if the jury so finds.[634] While this may appear inconsistent with a not guilty finding, the Russian code distinguishes innocence from a finding of civil responsibility.

If there is a conviction, the parties are also allowed to be heard on sentencing issues.[635] This is done prior to the actual sentencing.[636] The defense counsel and the defendant have the right to be heard last.[637] Besides discussion of the civil claim, the issue of classification of the criminal conduct and the issue of punishment may also be discussed.[638] The parties have the right to be heard prior to the judge pronouncing sentence.[639] The argument of the parties must address matters that need resolution, such as the appropriate classification and the appropriate sentence to be imposed.[640] The parties are prohibited from arguing that the verdict reached by the jury was inappro-

628. *See id.* art. 347.
629. *Id.* art. 347(1).
630. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 347(2) (Russ.).
631. *Id.*
632. *See id.* art. 347(3).
633. *See id.* art. 347(2).
634. *See id.*
635. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 347(3) (Russ.).
636. *See id.*
637. *Id.* art. 347(5).
638. *See id.* art. 347(4).
639. *See id.* art. 347(5).
640. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 347(4) (Russ.).

priate.[641] They are precluded from casting doubt on the correctness of the jury's discretionary decision.[642]

After the parties present their last arguments before the court, prior to sentencing, the defendant has the right to be heard.[643] The defendant has another last plea.[644] Before sentencing, the last plea of the defendant is before the presiding justice.[645] After hearing the last arguments from everyone, the judge is required to retire and consider his or her decision on the sentence to be imposed in the criminal case.[646]

XXXI. OBLIGATORY CHARACTER OF THE VERDICT

Article 348 deals with the impact of the verdict and how the presiding justice or trial judge is required to address it.[647] First, the code mandates that a not guilty verdict is a mandatory verdict that the judge must accept.[648] He or she cannot reject it, ask for further deliberations, nor override it with a finding of guilt.[649] The judge upon receiving a not guilty verdict must pass or find the defendant not guilty.[650] A sentence of acquittal shall be entered by the presiding justice.[651]

Second, the code notes that a verdict of guilty is also obligatory.[652] The trial judge must accept it.[653] However, the code also notes that the judge has the ability to override a guilty verdict under some circumstances set out in a later portion of Article 348.[654] This paper will address this exception shortly.

The judge must make certain determinations or findings when the jury renders a guilty verdict.[655] The judge is required to determine the classifica-

641. *Id.*
642. *Id.*
643. *Id.* art. 347(5).
644. *Id.*
645. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 347(5) (Russ.).
646. *Id.*
647. *See generally id.* art. 348.
648. *Id.* art. 348(1).
649. *See id.*
650. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 348(1) (Russ.).
651. *Id.*
652. *Id.* art. 348(2).
653. *Id.*
654. *Id.* art. 348(2), (4), (5).
655. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 348(3) (Russ.).

tion or degree of the convicted crime.[656] The judge must also consider the circumstances of the facts of the case without assistance from the jury before imposing a sentence.[657]

A trial judge has the discretion to pass a sentence of acquittal or override a guilty verdict.[658] This may occur if the presiding justice finds that the acts committed by the defendant do not give rise to a crime.[659] This is comparable to an American judge granting a judgment of acquittal. If a legally sufficient case is not proven, i.e., a prima facie case, an American judge has the power to grant a dismissal of the case. It is not, however, considered a passing or sentence of acquittal as the Russian code proscribes.[660]

The judge also has the discretion to determine whether the defendant is an innocent person irrespective of a guilty verdict.[661] The basis of this determination is that the defendant's guilt has not been established, or that the defendant's participation in a crime has not been proved.[662] If a court determines that a convicted defendant is an innocent person, the court can proceed further.[663] In American trials, once a jury or a judge makes a determination of legal insufficiency, that trial judge can go no further based on double jeopardy protections.[664]

The Russian courts face no double jeopardy restriction.[665] The code allows the trial judge to take further steps in the case even when the judge makes a finding that the defendant is innocent.[666] The court may dismiss the college of jurors but must address a resolution on sending the criminal case for a new consideration.[667] This is tantamount to the case being reset and retried before another judge and jury.[668] Procedurally, the case may be initially referred to the beginning stage of a preliminary hearing should a judge grant a resolution sending the criminal case for a new consideration.[669] This

656. *Id.*
657. *See id.*
658. *Id.* art. 348(4)–(5).
659. *Id.* art. 348(4).
660. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 348(4) (Russ.).
661. *Id.* art. 348(5).
662. *Id.*
663. *Id.*
664. *See* United States v. Scott, 437 U.S. 82, 91 (1978).
665. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 348(5) (Russ.).
666. *Id.*
667. *Id.*
668. *See id.*
669. *Id.*

is a significant decision by a Russian trial judge.[670] The decision is not subject to appeal.[671] This gives the judge tremendous power to continue proceedings against a defendant whom the government has unsuccessfully prosecuted the first time.

This is a troubling portion of the Russian code. It allows the government to continue prosecution even after being unsuccessful the first time. Without the American protection against double jeopardy, a Russian citizen may go through multiple trials after a trial judge grants an acquittal to a convicted defendant. Arguably, a judge could find sufficient facts to warrant additional investigation and continued prosecution after a first or even second trial or more.

XXXII. LEGAL CONSEQUENCES OF RECOGNIZING THE DEFENDANTS AS DESERVING LENIENCY

Article 349 addresses the concept of leniency in sentencing, directing the presiding judge on how to proceed.[672] The section begins by mandating that the trial judge must accept the finding of the jury that leniency is merited in the case before it.[673] The code describes the finding as an obligatory one for the judge.[674] The court has no discretion to disregard or override the determination by the jury that a defendant deserves leniency.[675]

A jury decides when a defendant deserves leniency and so notes it as part of the verdict.[676] Once the jury makes this determination, the judge must account for leniency in the sentence.[677] The code then directs the trial judge to follow Article 64 and Article 65 of the Russian Criminal Code.[678]

Article 64 allows the judge, upon a jury's finding of leniency, to impose the most lenient sentence under the sentencing requirements of the Russian code.[679] The court may also disregard any additional mandatory sentencing

670. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 348(5) (Russ.).
671. *Id.*
672. *See id.* art. 349.
673. *Id.* art. 349(1).
674. *Id.*
675. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 349(1) (Russ.).
676. *See id.*
677. *Id.*
678. *Id.* art. 349(2). Note that this code is substantive as compared with the procedural law of the Russian Code of Criminal Procedure.
679. Ugolovnyi Kodeks [UK] [Criminal Code] art. 64(1) (Russ.).

requirements.[680] This would be analogous to a court being able to disregard a minimum mandatory sentence in the United States.

Article 65 further provides that irrespective of the lenient sentence imposed, it may not exceed two-thirds of the maximum term for the particular crime charged.[681] An example would be for a robbery case that has a maximum sentence of thirty years. A Russian judge obligated by a jury finding of leniency would under no circumstance be able to exceed a sentence of twenty years. Additionally, if the defendant is convicted of a capital offense or a life felony, Article 65 precludes a judge from imposing either a capital sentence or a respective life sentence if the jury finds the defendant deserves leniency.[682]

The presiding judge also has the discretion to impose a more lenient sentence, even when the jury makes no finding for leniency, when reaching a guilty verdict.[683] Article 349 gives the trial judge this authority.[684] The trial judge may take into consideration the circumstances of the case and the defendant, along with any mitigating and aggravating circumstances relating to the case.[685] The court is directed to consider sentencing under the Russian Criminal Code, giving consideration again to Article 64.[686]

Article 64 contains the necessary predicate for the trial judge to consider when solely deciding to impose a lenient sentence.[687] Generally, the standard is one of exceptional circumstances set out in the aforementioned article.[688] The exceptional circumstances must relate to the motive or purpose behind the crime.[689] Was it one of malice or was the defendant committing a crime with the motive to assist his family?

Under Article 64, the court must consider the role played by the defendant in the crime.[690] Also, the court is required to consider the behavior of a defendant during or after the commission of the crime.[691] The court must consider the societal impact of the crime in terms of danger.[692] A drug of-

680. *Id.* art. 65(1).
681. *Id.* art. 65(1).
682. *Id.*
683. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 349(2) (Russ.).
684. *Id.* art 349(2).
685. *Id.*
686. *Id.*
687. Ugolovnyi Kodeks [UK] [Criminal Code] art. 64(1) (Russ.).
688. *Id.*
689. *Id.*
690. *Id.*
691. *Id.*
692. Ugolovnyi Kodeks [UK] [Criminal Code] art. 64(1) (Russ.).

fense may be considered less dangerous than a crime of violence such as robbery or sexual battery.

The court may consider particular mitigating circumstances or the totality of mitigating circumstances when considering whether the circumstances rise to the standard of being exceptional to merit a more lenient sentence.[693] The actual sentence imposed when the judge makes the finding of leniency without the jury is the same substantively as when the jury determines a defendant deserves leniency.[694]

XXXIII. KINDS OF DECISIONS TAKEN BY THE PRESIDING JUSTICE

The criminal jury trial ends through the conduct of the trial judge.[695] The procedure is set out in Article 350 which the judge must follow to complete the case.[696] At the conclusion of the case, a presiding judge has four options or decisions to make.[697] In order to reach this decision, a judge must not only review Article 350, but also multiple other sections of the code that are referenced in order to properly conclude the case.[698] This paper will go through the myriad of sections which the judge must consider and follow in order to complete the case.

The first option or decision that the judge must consider is "the termination of the criminal case."[699] Article 254 governs the law when considering a termination of the criminal case.[700] A court must terminate a criminal case under certain circumstances pursuant to Article 24 before the case proceeds before the jury.[701] These circumstances include the expiration of the period of limitation for the criminal case.[702] This is the Russian version of the American statute of limitations or speedy trial rules.[703] Another circumstance would be the death of the suspect or accused.[704] This would result in termi-

693. *Id.* art. 64(2).
694. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 349(2) (Russ.).
695. *See id.* art. 350.
696. *See id.*
697. *Id.*
698. *See id.*
699. *Id.* art. 350(1).
700. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 254 (Russ.).
701. *Id.* art. 254(1).
702. *Id.* art. 24(1)3.
703. *See id.*
704. *Id.* art. 24(1)4.

nation of the criminal case.[705] Additionally, if there is an "absence of the victim's application" to pursue the case, a judge must terminate the case.[706] The judge must also terminate the criminal case if the proper charging authority has not been followed.[707] Under Article 448, different governmental positions, such as judges or prosecutors who face criminal charges, must be prosecuted by those named specifically.[708] If the procedure is not followed, the trial judge would be required to terminate the case.[709]

The judge is also required to stop or terminate a prosecution pursuant to Article 27.[710] The circumstances set out in this provision include the non-involvement of the suspect.[711] If the accused is shown at any point not to be involved with the crime, a judge is required to stop or terminate the case.[712] Also, when there is a resolution to terminate the case made by the body of inquiry, investigator, or prosecutor, the judge must terminate the case.[713] Additionally, when the Russian Parliament refuses to institute a case against a member of that legislative body, the judge must terminate the case.[714] If the Russian Parliament refuses to bring a Human Rights action, the judge must terminate the case.[715] And if the Russian Parliament refuses to remove the grant of immunity to the President of the Russian Federation during a prosecution, the judge must terminate the case.[716]

The prosecutor during a criminal prosecution has a duty to the court pursuant to Article 246.[717] Anytime during the case, a prosecutor may determine that there is a legally insufficient case to move forward with.[718] When that occurs, the code requires the prosecutor to renounce or dismiss the

705. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 24(1) (Russ.).
706. *Id.* art. 24(1)5.
707. *Id.* art. 24(1)6.
708. *Id.* art. 448(1).
709. *Id.* art. 24(1)6.
710. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 254(1) (Russ.).
711. *Id.* art. 27(1)1.
712. *See id.*
713. *See id.* art. 27(1)5.
714. *See id.* art. 448(1)(1).
715. *See id.* art. 448(1)(7).
716. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 27(1)6 (Russ.).
717. *Id.* art. 246.
718. *Id.* art. 246(7).

case and to explain the situation to the court.[719] The court must in turn record and terminate the case.[720]

The prosecution of a criminal case requires the victim to appear and participate.[721] Should a victim refuse to appear or participate in the criminal proceeding, this will result in the termination of the case when the appearance is obligatory by law.[722] Article 249 addresses this area of termination of cases.[723] It would be the responsibility of the prosecutor to renounce the case and bring the matter to the court's attention.[724]

The court, in concluding or terminating a case, must also consider three other sections.[725] Article 25 deals with the parties' reconciliation.[726] An application may be filed by a victim of a crime to terminate the case.[727] The victim could be a friend or family member of the defendant, although no relationship is required under the code.[728] The crime must be a first offense and be a minor one or one of ordinary gravity.[729] The prosecutor must approve the termination along with the parties, the court, and the investigator.[730] If there is reconciliation and compensation to the victim for any damages suffered, termination takes place with the approval of all the interested participants.[731]

A case may be terminated based on a change of the situation, pursuant to Article 27.[732] This section provides that if the person has changed or the facts of the case have changed to the point where the defendant is no longer socially dangerous, the case may be terminated.[733] Perhaps the defendant has been rehabilitated from a drug or alcohol abuse problem.[734] The prosecutor must approve the termination along with the parties, the court, and the inves-

719. *Id.*
720. *Id.*
721. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 249(1) (Russ.).
722. *Id.* art. 249(2).
723. *See id.* art. 249.
724. *See id.* art. 254(2).
725. *See id.* art. 25, 27, 28.
726. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 25 (Russ.).
727. *Id.*
728. *See id.*
729. *See id.*
730. *Id.*
731. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 25 (Russ.).
732. *See id.* art. 27.
733. *Id.*
734. *See id.* art. 134.

tigator.[735] The crime must be a first offense and be a minor one or one of ordinary gravity.[736]

A case may also be terminated if there has been inadmissible evidence, such as a confession obtained without the presence of counsel or one that has not been confirmed by the defendant and is only established through hearsay.[737] The prosecutor must approve the termination along with the parties, the court, and the investigator.[738] The crime must be a first offense and be "a minor one or [one] of an ordinary gravity."[739] The second option or decision under Article 350 that the judge must consider to complete a case is the sentence of acquittal.[740] Articles 305 and 306 govern this consideration.[741] The former section requires that three basic questions be placed before every Russian jury.[742] Those questions are: "1) whether it is proven that the act has taken place; 2) whether it is proven that the act [is] committed by the defendant; [and] 3) whether the defendant is guilty of the perpetration of this act."[743] If any one of those questions is answered by the jury in the negative, the judge must enter a sentence of acquittal.[744]

The third option or decision under Article 350 that the judge must consider to complete a case is the sentence of conviction.[745] The judgment of conviction may be entered only after considering and reflecting on the legal sufficiency of the case based on all the admissible evidence.[746] The judgment of conviction is governed by Article 302.[747] In passing a sentence of conviction, the judge must specify the punishment.[748] It could be a time certain or a suspended sentence.[749] A judge is also authorized to impose no punishment.[750]

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735. *Id.* art. 25.
736. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 25 (Russ.).
737. *Id.* art. 28; *see also id.* art. 75(2).
738. *Id.* art. 25.
739. *Id.*
740. *Id.* art. 350(2).
741. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 305, 306 (Russ.).
742. *Id.* art. 339(1)1–3.
743. *Id.*
744. *Id.* art. 350(2).
745. *Id.* art. 350(3).
746. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 302(4) (Russ.).
747. *Id.* art. 302(4)–(5), (7).
748. *Id.* art. 302(5)1, (7).
749. *Id.* art. 302(5)1–2.
750. *Id.* art. 302(5)3.

The judge is required to compile or reduce the sentence to its proper form pursuant to Article 303.[751] It also must address all the questions resolved by the jury.[752] The sentence must also be reduced to either a writing by hand or by the use of a technical device, whether that is a transcript or by computer.[753]

Under Article 307, the judgment of conviction must contain a descriptive-motivation part.[754] This means there must be a description of the criminal act supplied by the judge.[755] Also, the judge must set out the place, time, and method of the crime's perpetration.[756] The court is responsible for providing the evidence and conclusions that were reached that served as the basis for the defendant's conviction.[757] The form must also contain a consideration of aggravating and mitigating circumstances that impact the sentence.[758] The court must explain how it handled the resolution of questions during the trial.[759] In general, the judge is required in the sentencing form for conviction, to summarize and describe all the factual and legal issues at trial.[760]

The judgment of conviction form must also contain a resolutive part setting forth the details of the sentence under Article 308.[761] This part requires the defendant's full name to be set forth.[762] The judge must record and recognize the defendant to be guilty.[763] The criminal code violation must be specified.[764] The punishment administered must be noted.[765] The name of the correctional institution must be identified in the resolutive part of the judgment of conviction.[766] Any probationary period and any other type of

751. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 303 (Russ.).
752. *See id.* art. 303(1).
753. *Id.* art. 303(2).
754. *Id.* art. 307.
755. *Id.* art. 307(1).
756. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 307(1) (Russ.).
757. *See id.* art. 307(2).
758. *See id.* art. 307(3).
759. *Id.* art. 307(4).
760. *See id.* art. 307(1).
761. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 308 (Russ.).
762. *Id.* art. 308(1)1.
763. *Id.* art. 308(1)2.
764. *Id.* art. 308(1)3.
765. *Id.* art. 308(1)4.
766. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 308(1)6. (Russ.).

punishment must be detailed in the form.[767] The judge must also account for any time the defendant served while being detained before trial either while in jail, house arrest, or in a mental hospital.[768] This time is offset, which means a defendant is entitled to the time that he or she was detained prior to trial including the conviction and sentence. This form also requires the judge to describe the restraint necessary for the defendant prior to the sentence being imposed and served.[769] The court must detail those charges that the defendant was convicted on and on those where there was an acquittal.[770] Finally, the court must record that a sentence is suspended or that no punishment at all is being meted out.[771]

The fourth and last option or decision under Article 350 that the judge must consider to complete a case is the resolution on the dismissal of the college of jurors and the sending of "the criminal case for a new consideration by another composition of the court."[772] The judge has the discretion, pursuant to Article 348, to determine that a defendant is an innocent person irrespective of a guilty verdict.[773] The basis of this determination is that the defendant's guilt has not been established or that the defendant's participation in a crime has not been proved.[774] If a court determines that a convicted defendant is an innocent person, the court can proceed further. The court may dismiss the college of jurors, but must address a resolution on sending the criminal case for a new consideration.[775] This is tantamount to the case being reset and retried before another judge and jury. Procedurally, the case may be initially referred to the beginning stage of a preliminary hearing, should a judge grant a resolution sending the criminal case for a new consideration.

XXXIV. PASSING THE SENTENCE

Article 351 addresses the procedure the judge must follow before imposing a sentence.[776] Passing a sentence basically means determining, for-

767. *Id.* art. 308(1)7.
768. *Id.* art. 308(1)9.
769. *Id.* art. 308(1)10.
770. *Id.* art. 308(2).
771. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 308(3) (Russ.).
772. *Id.* art. 350(4).
773. *Id.* art. 348(5).
774. *Id.*
775. *Id.* art. 350(4).
776. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 351 (Russ.).

mulating, imposing, and recording the sentence. The first requirement for a judge is to proceed with sentencing based on the mandate of Chapter 39 of the code.[777] Chapter 39 contains articles 296 through 313.[778] This paper has already addressed several of the provisions contained in those articles.[779] This paper will generally provide an overview of Chapter 39 to give some sense of the judge's responsibility in passing the sentence.

Chapter 39 requires the judge to address many issues before a sentence may be passed.[780] The judge must first be convinced of the legality, substantiation, and justness of the sentence.[781] The judge must reflect on these things.[782] The judge must go to a retiring room or chambers to maintain the secrecy of the judge's conference or deliberation on the passing of a sentence.[783]

The judge must resolve questions that the code presents.[784] These questions are similar to the ones answered by the jury. They are questions that deal with the legality of the conviction and the appropriateness of any sentence to be imposed.[785] The judge is required to consider the defendant's sanity before imposing sentence.[786] The judge is required to consider the different types of sentences that can be imposed.[787] The judge is also required to compile or reduce the sentence to written form with details of the case and the court's findings.[788] These details of the case and sentence provide a record from which the public and the appellate court may review.

Importantly, the judge is required in any sentence to set out the procedure and time frame in which to file an appeal.[789] The judge is required to return to the courtroom to pronounce or impose the sentence.[790] Everyone present in the courtroom is required to stand as the judge pronounces the

777. *Id.*
778. *Id.* art. 296–313.
779. *See supra* notes 746–72 and accompanying text.
780. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 296–313 (Russ.).
781. *Id.* art. 297(1).
782. *See id.*
783. *See generally id.* art. 298.
784. *See id.* art. 299.
785. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 299(1)1–17 (Russ.).
786. *Id.* art. 300(1).
787. *Id.* art. 302.
788. *Id.* art. 303(1)–(2).
789. *Id.* art. 309(3).
790. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 310(1) (Russ.).

sentence.[791] The judge must also be mindful when a defendant is in custody.[792] If there is a sentence of acquittal, the defendant must be released from the courtroom after the judge pronounces the sentence.[793]

The judge must also adhere to the mandate to provide copies of the written sentencing document to the defendant, to defense counsel, and to the prosecutor.[794] Copies must be provided to the respective individuals within five days of the pronouncement of the sentence.[795]

While Article 351 is instructive to the trial judge to follow Chapter 39 in passing sentence, Article 351 also is instructive to the trial judge on what not to do.[796] The judge is prohibited from naming the jurors in the written sentence form.[797]

This section also requires the judge to reference the charge and verdict of the jury when a sentence of an acquittal is rendered.[798] When there is a sentence of conviction, the judge must describe the criminal act of which the defendant was found guilty.[799] The court must also provide an explanation for the punishment that the judge imposes.[800] If there is a civil claim imposed as part of the sentence, the judge must also provide a substantiation and explanation for the claim.[801] Finally, this section underscores that the judge must explain within the sentencing form the cassation procedure or appellate procedure for filing an appeal from the sentence.[802]

XXXV. TERMINATING AN EXAMINATION OF THE CRIMINAL CASE BECAUSE OF THE ESTABLISHED DEFENDANT'S INSANITY

Article 352 gives guidance to the judge and all parties on the procedure to follow when there is evidence of the defendant's insanity.[803] This section

791. *Id.*
792. *See id.* art. 311.
793. *Id.* art. 311(1).
794. *Id.* art. 312.
795. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 312 (Russ.).
796. *See id.* art. 351.
797. *Id.* art. 351(1).
798. *Id.* art. 351(2).
799. *Id.* art. 351(3).
800. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 351(3) (Russ.).
801. *Id.*
802. *Id.* art. 351(4).
803. *See generally id.* art. 352.

is applicable during any stage of a jury trial.[804] The court must act if there is evidence of insanity.[805]

The insanity of the defendant is at issue whether the insanity was present at the time of committing the act charged or anytime thereafter.[806] The issue of insanity could arise during the trial or at sentencing.[807] There must be a showing that the defendant has or is suffering a mental disorder.[808] There must be some circumstances shown to prove this mental disorder.[809] This section of the code also requires that an expert, one who has forensic-psychiatric expertise, confirm or support the circumstances or claim of a mental disorder.[810]

Once the mental disorder is established with some evidence and confirmed by an expert, the judge is mandated to "pass a resolution on the termination" of the examination of the criminal case.[811] This procedure does not terminate or dismiss the case entirely.[812] It simply ends the existing jury trial.[813] In the United States, the issue of competency and insanity is addressed prior to trial. If an American defendant is not competent to stand trial, the case may not proceed until such time as competency is restored. If a defendant in the United States is competent to stand trial, but was insane at the time of the commission of the offense, the defendant may assert this defense at trial. A jury would then be able to find the defendant not guilty by reason of insanity.

If a Russian judge passes "a resolution on the termination" of the examination of the criminal case based upon the insanity of the defendant, the court is required to move the case to another court for consideration of the issue of insanity as set out in Chapter 51.[814] Chapter 51 requires the new court to consider only the issue of insanity based upon compliance with articles 433 through 446.[815]

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804. *See id.*
805. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 352(1) (Russ.).
806. *Id.*
807. *See id.*
808. *Id.*
809. *Id.*
810. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 352(1) (Russ.).
811. *Id.*
812. *See id.*
813. *See id.*
814. *Id.*
815. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 433–36 (Russ.).

The referral of the case to another court is considered a separate proceeding.[816] The focus of the referral is the establishment of the insanity of the defendant conclusively.[817] The issue of the defendant's conclusive mental disorder is heard and decided by the new judge alone, without the assistance of a jury.[818] During this proceeding the defendant is entitled to representation.[819]

If the judge hearing the referred case determines the defendant suffers no mental infirmity, then the case may be referred back to the prosecutor to proceed to a jury trial.[820] If the judge hearing the referred case determines the defendant is insane, the judge must order the defendant to a stationary state mental hospital.[821] It should be noted that the terms "insanity," "mental disorder," "mentally deranged," and "mentally ill" are used interchangeably.[822] The term stationary precludes outpatient treatment and requires the defendant to be confined for treatment.[823] The decision of the judge on the issue of finding a mental disorder may be appealed by way of cassation, the Russian counterpart to an appellate court.[824]

Article 352 finally specifies that the decision of the trial judge to terminate the examination of the criminal case with a referral to a judge under Chapter 51 is not subject to appeal.[825]

XXXVI. SPECIFICS IN KEEPING THE PROTOCOL OF A COURT SESSION

Article 353 requires there to be a record of the criminal proceedings during the course of a jury trial.[826] The record of the proceedings is referred to as the protocol.[827] The protocol or record "may be written by hand, or typed, or made with the use of a computer."[828] The process of reducing the case to a written record is compatible with the recording process of an Amer-

816. *Id.* art. 436.
817. *Id.* art. 154, 436.
818. *See id* art. 440.
819. *Id.* art. 437–38.
820. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 443(5) (Russ.).
821. *Id.* art. 435(1).
822. *See id.* art. 433, 435, 446.
823. *See id.* art. 203(1)–(2).
824. *Id.* art. 445(8).
825. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 352 (Russ.).
826. *See generally id.* art. 259, 353.
827. *See id.* art. 259.
828. *Id.* art. 259(2).

ican criminal jury trial. American courts require a written record detailing all the proceedings.

All of the proceedings must be memorialized in order to provide a record that may be reviewed by an appellate court for its correctness.[829] The judge is required to compile or verify and confirm the protocol and sign the entire record within three days of the end of the concluding court session.[830]

Article 353 details what must be contained within the protocol or record.[831] The record must reflect the composition or members of the jury.[832] The protocol is required to show the process as to how the college of jurors or panel has been selected.[833]

This section also requires that the charging word or jury instructions from the presiding justice shall be part of the protocol in writing.[834]

Article 353 ends with the mandate that all of the proceedings should be reflected in the protocol.[835] The reason for having a protocol or record is the same reason as American courts have in maintaining a record. The Russian code states that it is important to have a protocol of "the entire course of the judicial proceedings, so that one can [get] convinced of the correctness of its conducting."[836] Simply stated, a record will convince many audiences of the correctness of the conduct of the judge, the prosecutor and all the proceedings during the course of the trial.[837] The audience is not limited to an appellate court.[838] It includes the public as well.[839]

XXXVII. CONCLUSION

It is difficult to separate the history of Russia from its people and its judicial system. For centuries the country was ruled by the Czars. A large percentage of Russians lived as serfs tantamount to slavery. The justice system was by grace of the monarchy and not from the will of the people.

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829. *See id.* art. 353(4).
830. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 259(6) (Russ.).
831. *See generally id.* art. 353.
832. *See id.* art. 353(2).
833. *Id.*
834. *Id.* art. 353(3).
835. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 353(4) (Russ.).
836. *Id.*
837. *See id.*
838. *See id.* art. 354(4).
839. *See id.*

With the Reforms of 1864, the Russian people were granted freedoms including the right to a jury trial.[840] However, this historical period of reform lasted a little over fifty years.[841] With the Russian revolution of 1917, a totalitarian rule under communism began.[842] Jury trials stopped.[843] The judicial system was the arm of the totalitarian government with few rights granted to those charged with offenses.[844] No due process rights were provided nor substantive laws to provide for a fair and just resolution of a case.[845] Acquittals were unheard of under totalitarian rule.[846] The Soviet judicial system was perceived as another tool of the government to maintain power and control over the people.[847]

From the darkness of communism to the sunshine of freedom, Russia has moved towards democracy.[848] In 1993, the first Russian jury trial was held since the October Revolution of 1917.[849] Since 2003, all provinces provide for a jury trial to those defendants who are charged with serious crimes.[850] The Russian Constitution now grants rights that we are familiar with in the United States: the presumption of innocence; the right to remain silent; the right to have illegally seized evidence excluded; the right to counsel; and the right to a jury as provided by law.[851]

The new Russian Code of Criminal Procedure provides the framework for implementation of those rights to a defendant during the course of a jury trial.[852] The stages of the Russian jury trial are similar to the American jury trial.[853] The demand for the jury trial is made by the defendant.[854] Jury selection takes place with the right to inquire of prospective jurors and challenge

840. *See* SAUNDERS, *supra* note 159, at 260–61.

841. *See* Sharon LaFraniere, *Russian Courts Give Power to the People; Revival of Jury Trials Marks Shift from Soviet-Style Justice System*, WASH. POST, Dec. 22, 2002, at A24.

842. *See id.*

843. *See id.*

844. *See id.*

845. *See* LaFraniere, *supra* note 841.

846. *See id.*

847. *See* Ian Traynor, *Shake-Up for Russia's Legal Code*, THE GUARDIAN, July 2, 2002, at 11.

848. *See id.*

849. *See* James W. Diehm. *The Introduction of Jury Trials and Adversarial Elements into the Former Soviet Union and Other Inquisitional Countries*, 11 J. TRANSNAT'L L. & POL'Y 1, 4 (2001).

850. *See* LaFraniere, *supra* note 841; *see also* Diehm, *supra* note 849 at 37 n.220.

851. Diehm, *supra* note 849 at 29–33.

852. *See* Steven Lee Myers, *Russia Glances to the West for Its New Legal Code*, N.Y. TIMES, July 1, 2002, at A1.

853. *See generally* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 325 (Russ.).

854. *See id.* art. 325(3).

the jurors to ensure their impartiality.[855] Opening statements are permitted as well as the examination of witnesses.[856] The attorneys are allowed to make closing arguments.[857] The judge may dismiss the case if it is legally insufficient.[858] If the case is legally sufficient, the case goes to the jury with instructions from the judge.[859] The jurors deliberate in private.[860] The judge reflects on the sentence and imposes it in open court after a conviction.[861]

As a whole, the new constitution and new code provides citizens with a fair process.[862] No longer is the judge aligned with the prosecutor.[863] The Russian judge is now a neutral arbiter deciding legal issues before the jury can determine the disposition of the case.[864] The process is fair because the defendant has an opportunity to be heard before a jury of one's peers.[865] The case does not rest solely with the government.[866] The people, as a jury, decide the fate of a Russian citizen.[867]

While the present Russian jury trial, based on the Russian Constitution and code, provides for greater justice to the people, there are areas of concern that should be addressed. One area of concern is double jeopardy. This concept is not recognized under Russian law. In fact, the code provides for the termination of the case by a judge with a referral to another court for further investigation.[868] This could result in a Kafkaesque situation. A defendant could have a trial where the evidence is insufficient, but face further prosecution. The case should end the first time under a double jeopardy theory to ensure proper original investigation. Respecting double jeopardy protections would also free the people from the belief that the case is never ending whenever the government so chooses.

Another area of concern is the limitation on deliberation and the process thereafter. Russian juries are not permitted to deliberate longer than three

855. *Id.* art. 328(3), (8).
856. *Id.* art. 335(1), (4).
857. *See id.* art. 336(1).
858. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 348(5) (Russ.).
859. *Id.* art. 338(5).
860. *Id.* art. 341(1).
861. *Id.* art. 347(3).
862. *See* Myers, *supra* note 852.
863. *Id.*
864. *Id.*
865. *Id.*
866. *Id.*
867. Myers, *supra* note 852.
868. Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 350(4) (Russ.).

hours in order to arrive at a unanimous verdict.[869] The judge has no discretion on this issue.[870] There are some complex criminal cases, such as a death penalty case, which require more than a three hour time frame to consider. This time period is arbitrary and would raise significant constitutional due process questions if an American Legislature imposed a deliberation restriction on criminal juries.

Along with the time limitation is the process after the three hour period is met. Under the code, the jury must decide the case after three hours with a less than unanimous verdict.[871] In theory, seven people could decide the fate of an individual in a death penalty case even though five other jurors support an acquittal.[872] This would again raise constitutional questions in an American court. Such a provision would have a difficult time withstanding constitutional scrutiny.[873]

The type of crimes where a Russian citizen is entitled to a jury trial should be expanded. Presently, only the most serious crimes in Russia entitle a defendant to have a case considered by a jury.[874] In the United States, a jury trial in many jurisdictions is guaranteed when the crime carries with it any term of incarceration.[875] This marks the high value we place on freedom. The Russian Parliament should consider expanding the right to a jury trial in any case in which the defendant may be sentenced to incarceration.

Finally, standard jury instructions need to be developed in Russia. In American courts, judges are provided with standard jury instructions to properly charge a jury.[876] At the present time, no standard jury instructions exist in Russia. This may result in judges applying different law throughout the country and also places a burden on the trial judge to create jury instructions in every case. It would be easier for the judge administratively, and it would be more consistent for all parties in Russia, if jury instructions were standardized and adopted.

It is an exciting time for Russia. The move from totalitarian rule to democracy provides challenges along with the many new freedoms we now see. The judicial system is a fairer and a more just system than before. It

869. *Id.* art. 343(1).
870. *See id.*
871. *Id.*
872. *See id.* art. 343(2).
873. *See, e.g.*, Morgan v. Illinois, 504 U.S. 719, 721 (1992).
874. *See* Ugolovno-Protsessual'nyi Kodeks [UPK] [Criminal Procedural Code] art. 20, 30 (Russ.).
875. *See* Duncan v. Louisiana, 391 U.S. 145, 148–50 (1968).
876. *See* Molly Armour, Comment, *Dazed and Confused: The Need for a Legislative Solution to the Constitutional Problem of Juror Incomprehension*, 17 TEMP. POL. & CIV. RTS. L. REV. 641, 643–44 (2008).

will provide confidence and a belief by the people that the government does not determine their freedom; it respects it and acknowledges it. The new constitution and code provide a great promise to the Russian people. It is a promise that must be acted upon. The words of the constitution and the code must be given meaning by the people in the justice system by implementing and protecting the rights given to Russian citizens. Only then will those words grant freedom to a people who have long lived under the tyrannical rule of the Czars and communist dictators. Only time will tell whether the Russian people will successfully break from its past and embrace its new found democracy. That success will be assisted by the historic return of the jury trial to Russia, a return not only of the jury trial to Russia, but a return of justice to the Russian people.