
Who Sues Government?

Evidence from the Moscow Theater Hostage Case

Debra Javeline

University of Notre Dame, Indiana

Vanessa Baird

University of Colorado–Boulder

Courts can better protect rights when citizens are willing and able to litigate in response to government abuses of power. However, if people are not socialized to the possibility of litigating against governments, why do some individuals decide to litigate? Using an original survey of victims in the Moscow theater hostage incident, we find that litigants in a postcommunist context are motivated by political disadvantage, defined as their perception that they are not well represented by political institutions. The effect of political disadvantage on litigation is also intensified by the perception that courts are not fair, suggesting that general alienation from the political system may play an important role in the decision to initiate antigovernment litigation in new states.

Keywords: *law and society; judicial politics; litigation; procedural justice; courts; Russia; postcommunism*

One hallmark of liberal democracy is that rights are not only granted but also defended when violated. This means that citizens must be willing and able to challenge their governments in court. In countries where citizens

Authors' Note: An earlier version of this article was presented at the annual meetings of the American Political Science Association, Chicago, 2004, and at the Midwest Political Science Association, Chicago, 2004. We thank the National Science Foundation for making this research possible (Small Grants for Exploratory Research SES-0317122) and Paul Wahlbeck for his helpful advice and assistance. For thoughtful and energetic collaboration, we thank the Institute for Comparative Social Research in Moscow and especially Anna Andreenkova. For valuable research assistance, we thank Mariam Stepanyan. For helpful comments on the project and feedback on the article, we thank Paul Brace, Tom Burke, Lee Epstein, James L. Gibson, Kathryn Hendley, Eugene Huskey, Herbert M. Kritzer, John McIver, Andrew D. Martin, Kevin T. McGuire, William Mishler, Kim Lane Scheppele, Brian D. Silver, and Peter Solomon.

sue, lawyers take pro bono or contingency cases, nongovernmental organizations support litigation, and rights are better protected (Baird, 2006; Epp, 1998). Rights are especially better protected where citizens' willingness to sue extends to lawsuits against governments. Although in most democracies there are certain limitations on the right to sue the government, the courtroom provides a vital avenue for citizens to hold their governments accountable and check abuses of power.

A crucial question for studies of democracy, therefore, is why do people sue their governments? Given two similarly aggrieved individuals, what makes one more likely than the other to take action through the judicial process?

This question is especially pertinent in postcommunist regimes experimenting with new democratic institutions. Under communist rule, citizens looked at their courts not as the final arbiter of disputes but as part of the governing apparatus. Courts were controlled by the same bosses who controlled everything else, and citizens had very limited opportunities to take their governments to court (Solomon, 2004). With the collapse of communism, citizens must somehow come to imagine this possibility. The crucial question here is the following: Where people are not socialized to the possibility of litigation as a means to challenging their government's actions, why do some people respond to grievances with antigovernment litigation? We explore this question with survey data from victims in an important case study, the 2002 Moscow theater hostage incident, which led some victims to sue the city of Moscow whereas other victims did not sue.

What Explains Litigation Against Government?

Explaining the factors that cause litigation against governments has not been a common topic of previous research. However, a large insightful literature does exist about motivations for litigation in general. We probe this general literature to develop testable hypotheses about the more specific cases of litigation against a new state. We hope to learn which, if any, motivations for suing nonstate entities are applicable to the usually more daunting endeavor of suing the state, especially in countries with little or no precedent for antistate litigation.

For example, Cortner (1968) shows that those who take grievances to court are often the most alienated from representative political institutions and processes, or what he calls "politically disadvantaged." Where the politically advantaged feel well represented by elections, legislatures, and other conventional political institutions, the politically disadvantaged feel

excluded from these institutions, see courts as their only recourse in the political system, and consequently litigate more frequently (Cortner, 1968; Scheppele & Walker, 1991; Vose, 1959). The politically disadvantaged may also be economically disadvantaged, but they need not be. The proposition refers only to the effects of alienation from representative political institutions on litigation and says nothing about socioeconomic status.

Here, we test whether Cortner's ideas apply to suing state entities in postcommunist regimes. Taking cues from Cortner, we hypothesize that individuals in such regimes litigate because they feel politically unrepresented or disadvantaged. In the United States, political disadvantage is not the only motivation for litigation against nonstate entities; the politically advantaged have also used courts to pursue their agendas (Epstein, 1985; Galanter, 1974; Kritzer & Silbey, 2003; Olson, 1990). However, we propose that, at moments of regime change when the politically advantaged and disadvantaged are first becoming aware of their relative positions, the political disadvantage hypothesis will hold, at least in cases against the government. The politically advantaged believe they have gained from recent electoral and legislative outcomes and, even in the face of a new grievance against the state, should have every reason to wait for continued advantageous outcomes rather than expend time and energy in yet another branch of government, especially an untested branch. Conversely, with increasing evidence that they are not well represented by their new executive and legislature, politically disadvantaged individuals with a grievance against the state should be more likely to turn to their last institutional recourse and decide to litigate.¹

Why is the judicial option for taking on the state attractive? Again, the literature on litigation in general offers some insights. The procedural justice literature suggests that people are driven by a quest for fairness and often believe their quest can be satisfied in a courtroom. As Tom Tyler and his colleagues argue, "people choose the procedures that they would like to use to resolve their disputes in large part through assessments of procedural fairness . . . people do not simply choose the procedure they think will allow them to win. They are actually interested in finding a procedure that they think will be fair . . ." (Tyler, Boeckmann, Smith, & Huo, 1997, p. 78; also see Ewick & Silbey, 1998, pp. 133, 147). Tyler and other authors support their argument with evidence that litigation occurs despite its cost ineffectiveness and that evaluations of court experiences are based on assessments of fairness rather than the desirability of outcomes (Feeley, 1979; Lind, Ambrose, de Vera Park, & Kulik, 1990; Lowenstein, Issacharoff, Camerer, & Babcock, 1993; Tyler et al., 1997).

We infer from these arguments that the decision to litigate against the new state may be motivated by similar priorities. Feeling unrepresented elsewhere in the political system, litigants may want to “have their day in court” or “tell their side of the story” in a venue where they will be respected as equals under the law. The greater the perceived fairness of judicial processes, the more willing individuals with a grievance against the state may be to litigate. It is also feasible, however, that perceived political disadvantage runs so deep as to preclude confidence in the fairness of any political institution, courts included, and that aggrieved individuals litigate only because their alienation from courts is some small degree less than their alienation from other institutions. Alternatively, if the aggrieved are politically disadvantaged (feel unrepresented by their executive and legislature), the perception that courts too are unfair and the accompanying anger and frustration could itself be the impetus for self-expression and “telling their side of the story.” Perceptions of unfairness, not fairness, might inspire the disadvantaged to litigate against the state. Thus, perceived fairness could affect the decision to initiate antistate litigation, but so could the interaction of perceived fairness with political disadvantage, with the effects of perceived fairness depending on whether someone is politically advantaged or disadvantaged.

High levels of political disadvantage should be more easily overcome in the presence of social support or networks. Social networks have implications for political and civic activity in a general sense (Gibson, 2001; Howard, 2002; Putnam, 1995) and may also play a role in the decision to litigate in general (Ellickson, 1991; Ewick & Silbey, 1998; Felstiner, Abel, & Sarat, 1980; Macaulay, 1963; Morgan, 1999). People who share the same group membership tend to respond similarly to violations of justice norms (Reicher, 1987; Turner, 1991). Moreover, the ongoing social interaction of such groups encourages mutual obligations and commitments and facilitates the mutual assurance of each member’s willingness to litigate (Chong, 1991). With such assurance, group members who share a litigious response to violations of justice norms can act collectively sooner than nonmembers can, and group members who share a nonlitigious response can collectively opt out of the lawsuit. At moments of regime change, therefore, we propose that aggrieved individuals may be more likely to litigate against government when they have family or friends as colitigants. They may also be more likely to litigate against government if they are networked to people with litigation experience or access to legal information or who simply share their frustration and therefore encourage litigation (Jacob, 1969). These networks may matter most for the politically disadvantaged who may require social support to compensate for their positions as political outsiders.

Attributing blame for a problem to an outside agent, as opposed to self-blame or belief in bad luck, is typically associated with general litigation, particularly when the harm is perceived as intentional (Coates & Penrod, 1980; Farber & White, 1991; Felstiner et al., 1980; Javeline, 2003a; Kritzer, 1991; Sloan & Hsieh, 1995). Accordingly, litigants should blame government for their grievances. Such blame attribution should come most naturally for the politically disadvantaged who are predisposed toward ill feelings about government prior to the onset of a new grievance.

The decision to initiate any kind of litigation is complex, and many factors play a role outside the framework of political disadvantage. For any aggrieved individual, politically disadvantaged or not, litigation is more likely when fees for legal representation and other costs are low and when the likelihood of success and the amount potentially recovered are high (Kritzer, 1991, 2001).² Litigants in new states might assess their situation in cost-benefit terms and take on their governments because they believe they have some possibility of winning. General litigation is also more likely when grievances are objectively severe and subjectively perceived as severe (Felstiner et al., 1980; Hunting & Neuwirth, 1962; May & Stengel, 1990; Sloan & Hsieh, 1995). Therefore, we expect litigants to be motivated by rather severe grievances against government that they perceive as such. Other factors in the general decision to litigate include the accessibility, cost, encouragement, and time investment of lawyers (Ewick & Silbey, 1998; Kritzer, 1990; Sloan & Hsieh, 1995); institutions such as alternative forms of dispute resolution and legal reforms (Blankenburg, 1994; Grossman, Kritzer, Bumiller, Sarat, & McDougal, 1982; Kritzer, 2001; McIntosh, 1983; O'Brien & Li, 2004; Ocko, 1988); the substance of the grievance (Miller & Sarat, 1980); income and job status (Burstin, Johnson, Lipsitz, & Brennan, 1993; Doherty & Haven, 1977; McNulty, 1989); the time investment of litigants and how quickly they desire or expect justice; the reputation of courts for efficiency; and the distance and convenience of court locations. We discuss these factors below.

The Ideal Case Study

How can we test these hypotheses and analyze what motivates someone to litigate against a postcommunist government? An ideal test case should meet two criteria. First, the ideal test case should be a reasonable approximation of a real-world laboratory, a previously communist (or possibly other authoritarian) regime with an identifiable group of identically aggrieved

individuals, only some of whom decide to litigate. Second, these individuals should reveal their thoughts and attitudes prior to the litigation decision or at least prior to the beginning of hearings for the lawsuit so that court experience does not taint their explanations for suing or not suing.

In reality, these criteria are difficult to meet. Most challenging is the “denominator question.” It is usually hard to establish the pool of all potential litigants from which some become litigants and others do not. Common grievances in the former Soviet Union—such as government denial of residency permits, government nonpayment of wages, or even government-induced harm in the failed disclosure of the Chernobyl explosion—have inspired lawsuits, yet it would be difficult and even controversial to identify all aggrieved but nonlitigating individuals (Hendley, 2001). If nonlitigants are difficult to identify and locate for some systematic reason, then analysis of litigation decisions could produce biased results.³

Even if the denominator challenge can be met, rarely can the researcher predict that a particular problem or disadvantage will lead to litigation against the state and thus rarely can the researcher interview potential litigants prior to the litigation decision. Indeed, to do so might be the judicial equivalent of “push polling,” in which the very act of asking about intentions to litigate interferes with the litigation decision and introduces bias to the study. Therefore, the only reasonable test case of antigovernment litigation might require next-to-ideal timing—after the litigation decision but prior to the beginning of hearings for the lawsuit.

Given the above criteria and challenges, we identified as close to an ideal test case as feasible, a study of litigants and nonlitigants suffering similar grievances in post-Soviet Russia. The case serves as an example of litigation intended to hold governments accountable in places where rights protections and judicial review of government actions had previously been limited.

Litigants in the Moscow Theater Hostage Case

On November 25, 2002, three ordinary Russian citizens decided to sue the city of Moscow, setting in motion one of the first mass lawsuits against a post-Soviet government.⁴ The three were seeking compensation for damages resulting from the October 23 to 26 Chechen siege on the theater on Moscow’s Dubrovka Street during a showing of the hit Russian musical, “Nord-Ost.” Two were former hostages suing for \$1 million each for injuries sustained during the siege, and one was a pensioner and father of a

deceased hostage suing for \$500,000 for the loss of his family's main breadwinner. In the next several months, they were joined by 58 more surviving former hostages and relatives of deceased hostages, for a total of 61 litigants together seeking damages in excess of \$60 million. The remaining 650 or so Dubrovka victims did not join the lawsuits.⁵

Background for the lawsuit begins with the 41 Chechens who burst into the theater and held the hostages for 3 days, with the female Chechens wearing explosives around their waists. At dawn on the 4th day, Russian special forces pumped gas through the theater's ventilation system, putting hostage-takers and hostages into a deep sleep. After waiting for the gas to take effect, the special forces stormed into the theater and shot all the Chechens dead. They then carried the bodies of the hostages one by one out of the theater and laid many of them on their backs. One hundred twenty-nine of the hostages died, mostly by choking to death.

The Russian government labeled the outcome as a victory against terrorism and counted the 129 deaths as the unfortunate result of a terrorist attack. It claimed that government actions prevented an even higher death toll. Critics of the government challenge this interpretation. They fault the government for being poorly prepared for the aftermath of using such a toxic substance and for not disclosing the chemical contents of the gas. Days passed before the authorities admitted that the gas was mostly an aerosol form of a painkiller called fentanyl, and even today there has not been full disclosure of the gas's other components. Fentanyl is an opiate derivative stronger than heroine that in excessive doses can cause coma, vomiting, respiratory failure, heart attack, and even death. Critics argue that government secrecy about the gas prevented rescuers from caring for the hostages properly, such as lying hostages on their sides instead of their backs to prevent them from choking to death. Critics also charge that the government failed to evacuate the theater in a timely fashion; failed to supply enough antidote for the gas, doctors to administer the antidote, respiratory equipment, and other medical supplies at the scene; failed to provide enough ambulances, instead stacking victims' bodies on the floors of school buses; and failed to clear the streets between Dubrovka and the hospitals for quicker ambulance or school-bus transport. In summary, critics charge that the government should have anticipated the deadly effects of the gas, prepared better, and saved more lives.

It is plausible that the executive on its own would compensate victims for their tragedy or meet their demands for information and greater transparency and effectiveness in future hostage rescue operations. Indeed, Moscow's city administration and Mayor Yurii Luzhkov made modest efforts at compensation. Greater efforts, however, would contradict government

claims that the hostage rescue was a victory. It is also plausible that the legislature would censure the executive, compensate victims, or demand information and transparency from the executive. Not only was such legislation not forthcoming, but some legal experts also blame the victims' predicament on contradictions and confusion in the legislation on liability for terrorist acts (e.g., Allenova, 2002). Unsatisfied with the executive and legislative response, some victims decided to sue.

Because health care in Russia is supposedly free, official wages are often low, and real wages are often unreported, few Dubrovka victims could document losses from the incident and thus sue for material damages. Instead, victims sued for moral damages under Article 17 of the 1998 Law on the Struggle Against Terrorism, which provides for compensation to victims from the Russian region where a terrorist attack occurs.⁶ Their case is challenging, because the law allows compensation for damages caused by a terrorist act but not the counterterrorism acts that truly harmed the victims. Furthermore, the law's designation of the region or city as the proper entity to sue was not based on culpability but was designed to facilitate compensation to victims in presumably remote locations, such as those neighboring Chechnya (Scheppele, 2004). Therefore, the only avenue available to Dubrovka victims planning to initiate a lawsuit against the government is to name Moscow as the defendant. If Dubrovka victims truly blame their tragedy on the counterterrorism operations conducted by Putin or other federal authorities rather than on the initial terrorist act and/or some operation conducted specifically by the city of Moscow, their complaint against Moscow may seem misdirected. Nevertheless, they cannot legally sue the federal authorities—only Moscow—so that is how they have proceeded.⁷

Although the lawsuit has weaknesses and the harm caused to these particular plaintiffs is undoubtedly unique, the Moscow theater hostage case nevertheless represents a demand that resonates with other citizens in post-Soviet Russia—the demand in the words of many litigants “to hold the state accountable for the safety of society.” Thanks to the tremendous publicity surrounding the lawsuit, ordinary Russians know that cases of citizens demanding state accountability now exist. In a survey of the urban population conducted by the authors between June and August, 2003, half of the Russians (48%) said they were somewhat familiar or very familiar with the Dubrovka lawsuit, and only 16% said they were not at all familiar.⁸ It is reasonable to anticipate that witnessing the actions of these litigants leads other ordinary Russians to imagine the possibility of litigation against government. If the plaintiffs win, ordinary Russians may think they too have some chance of winning in the new Russian judicial system, and if the

plaintiffs lose but draw attention to their cause and experience no government retaliation, ordinary Russians may at least come to consider the judicial system less intimidating.

The Moscow theater hostage case thus provides a near-perfect laboratory for testing the above hypotheses. More than 700 individuals in a post-communist regime experienced similar grievances, and some decided to sue their government, whereas others did not. Our question is why.

The Dubrovka Survey

Below, we report the results of a survey of 326 Dubrovka victims, 26 who decided to sue the city of Moscow and 300 who did not. Former adult hostages who survived the crisis were interviewed directly. In the case of minors, we interviewed a parent or legal guardian, as the individual with legal authority to sue on behalf of the child in the event of litigation. In the case of deceased hostages, we interviewed the next of kin, again as the individual who would have the legal authority to sue for the loss of life.⁹ Although the distribution of litigants to nonlitigants in the sample is not ideal, it closely matches the true distribution of litigants to nonlitigants among the population of former hostages (61 to more than 650). Moreover, research in judicial politics suggests that litigants against a postcommunist government will represent only a small percentage of the pool of similarly aggrieved individuals. Litigation is a rare phenomenon even against nonstate entities in an advanced democracy such as the United States, at least relative to the extent of perceived grievances and initiated claims. Most ordinary disputes are resolved outside the courts or not at all (Felstiner et al., 1980; Grossman et al., 1982; Hensler et al., 1991; Miller & Sarat, 1980; Trubek, Grossman, Felstiner, Kritzer, & Sarat, 1983).¹⁰ It stands to reason, then, that litigation against a state entity in a country unaccustomed to lawsuits against the state would be as rare and probably rarer.

There are no glaring differences between litigants and nonlitigants in their reasons for not participating in the survey.¹¹ For about a third of both litigants and nonlitigants, we did not have sufficient information to identify the respondent, and this is the overwhelming reason for nonresponse.¹² Less than 10% of potential respondents refused to participate, again with little difference between litigants and nonlitigants. Because the response rate is unrelated to the dependent variable, it is not likely to bias our results.

The 326 respondents come from a pool of approximately 700 potential respondents. The denominator lacks precision for three reasons. First, some Dubrovka victims have no realistic potential respondent on their behalf.

Two deceased hostages had no next of kin, and 12 deceased hostages had next of kin who were also hostages and therefore already counted in the pool (see endnote 11). Second, although some 900 people might have been in the theater at the time of the siege, many were there for only a trivial amount of time, either because they were set free by the Chechens—as in the case of children, Muslims, and pregnant women—or because they managed to escape. Estimates of the number of hostages who spent meaningful time in the theater are somewhere between 700 and 800, with most newspapers reporting a number closer to 700. Although we would prefer a more precise estimate, our degree of precision is still much higher than for most other potential test cases of antigovernment litigation in which the aggrieved were far less geographically contained.

Third, our research design designated one potential respondent per Dubrovka victim. For surviving hostages, this design is relatively uncontroversial. For deceased hostages, however, multiple individuals could potentially sue for loss of life, so it is reasonable to conceive of a pool of potential litigants larger than 700.¹³ Still, if we were to broaden the pool of potential litigants, the question remains who belongs in this pool and how to establish the number of relatives for each deceased hostage with legal authority to sue. Should the pool include anyone whose income depended on a deceased hostage, and what percentage of income constitutes dependence? Should dependence be conceived in nonmonetary terms? By designating legal next of kin as the only potential respondent for each deceased hostage, we can confidently claim that all potential respondents had the legal authority to sue, whether or not they chose to exercise this right.

Interviews were conducted from January 16 through April 6, 2003, with 96% completed by the end of March. By the time of the interview, most of our respondents had decided whether to join the lawsuit, but none had yet had his or her day in court. Responses are thus not tainted by the court experience. Most developments in the lawsuit that occurred prior to the interviews favored neither plaintiff nor defendant and could be described as routine, neutral, and administrative, such as court delays in response to requests by both parties.¹⁴

Lawyers, Institutional Change, and Other Contextual Factors

One of the many advantages of studying Dubrovka victims is that their grievance and their lawsuit occur in a single legal context so that many

variables found to be important in studies of litigation in general are held relatively constant here, allowing us to focus on other factors. For example, the vast majority of Dubrovka litigants and nonlitigants lived in the same city and country with similar access to alternative forms of dispute resolution and with similar problems that came to be addressed in a coordinated legal battle (Hensler et al., 1991; Kritzer, 1991; Kritzer, Bogart, & Vidmar, 1991). They were similarly aware of their problems, because death of a loved one, hospitalization, and/or subsequent illness due to gas inhalation at a highly publicized event are fairly noticeable occurrences compared to, for example, unperceived cancer (Felstiner et al., 1981). They enjoyed a similarly high socioeconomic status, because most are well educated, relatively well-off white collar workers, and they faced similar costs and benefits when deciding to litigate. Although Dubrovka victims have varying perceptions of emotional and other nonmonetary costs and of the likelihood of winning benefits (described below), the actual monetary costs of the lawsuit (free) and the amount of damages sought per litigant (approximately \$1 million) are relatively homogeneous.

Most important, both litigants and nonlitigants had similar access to legal assistance. Students of comparative judicial politics show that the public in common law systems often turns to courts only with the help of lawyers (Epp, 1998), and students of political participation show more generally that the public participates in politics when asked to do so by political leaders or entrepreneurs (Brady, Schlozman, & Verba, 1999). Those familiar with litigation in the United States or other common-law systems might take notice of the well documented increase in litigation in Russia (Solomon & Fogleson, 2000) and expect to see the emergence of a new breed of Russian lawyers who act as political entrepreneurs—or perhaps “judicial entrepreneurs”—and seize the opportunity to rally the aggrieved to action. In the case of the Moscow theater victims, a differential rate of lawyer contact could explain why some victims litigated and others did not. However, perhaps because of Russia’s civil law traditions and the accompanying difference in fee structure and other incentives for lawyers, only 6 Dubrovka victims of the 326 surveyed claimed they were approached by a lawyer to join the lawsuit.¹⁵ Igor Trunov, lawyer for the vast majority of plaintiffs, himself confirms that the victims in the case approached him, not the other way around (Roshina & Zhohova, 2002; Scheppele, 2004).¹⁶

Trunov did play an important facilitating role in the initiation of the lawsuit by attracting considerable media attention and providing legal services free of charge. However, his broad exposure and his availability to most if not all victims means that Trunov is not much of a variable in victim decision

making. His role, although important, still begs the question of why some victims decided to take advantage of free legal services and join the lawsuit, whereas others did not.¹⁷ That is the focus of our inquiry.

Litigation in a postcommunist or postauthoritarian context is probably always preceded by an institutional change in a permissive direction for citizens. Institutions determine whether litigation is even possible (Kritzer, 1991, 2001). They serve as a necessary precondition of litigation, although actual litigation still depends on some precipitating antigovernment grievance and a host of other factors that we will test below. In the case of Russia, the institutional change in question was the growing jurisdiction of courts over disputes between citizens and state agencies and officials, beginning as early as 1987 with laws granting citizens rights to complain in court and blossoming in April 1993 as broad-based judicial review (Solomon, 2004). As a precondition of litigation, the institutional change is enabling for all Russian citizens and certainly all Dubrovka victims, litigants and nonlitigants. Again, it remains to explain why some aggrieved individuals take advantage of these enabling conditions.¹⁸

Testing the Hypotheses

One approach to studying litigation and the Dubrovka lawsuit in particular is to ask the victims directly about their motivations. The most frequently mentioned reason for deciding to sue was to hold the state responsible for the safety of society (12 of 26 litigants); to receive compensation either for health expenses, material losses, or other damages (8); and to clear up the cause of a relative's death (4). For nonlitigants, the most frequently mentioned reason for deciding not to sue was the small chance of winning (109 of 300 nonlitigants) and the lack of a grievance (50). A majority of litigants (14 of 26) say they got the idea to go to court on their own, whereas 7 got the idea from the media, 4 from another victim, and none from a lawyer. Spouses, parents, children, siblings, and friends of litigants were either uninvolved in the litigation decision or urged legal action. Relatives and friends of nonlitigants, conversely, were either uninvolved in the litigation decision or urged avoiding legal action.

To explore the less self-conscious motivations for litigation, we conduct a logit analysis on a dichotomous dependent variable for whether the victim is a litigant.¹⁹ The main explanatory variables are ordinal and represent the victim's (a) political disadvantage, a 4-point scale based on the highest response to either of two questions, "How well do you believe President

Putin represents your interests?" and "How well do you believe the current Duma represents your interests?" with responses ranging from *very well* to *not well at all* and with respondents who feel better represented by either the executive or the legislature considered more advantaged; (b) Perceived fairness of the hearings, measured as the perceived attentiveness of the court (a 4-point scale based on responses to "How carefully will the court consider the plaintiffs' side of the story?"), although as subsequent analysis will show, the operationalization matters little, and different measures of perceived fairness produce similar results; (c) number of relatives or friends litigating; (d) blaming the federal authorities, a dichotomous measure of whether the victim named any federal authority as first or second most guilty for causing his or her problems from the incident; (e) perceived likelihood of winning the lawsuit, a 4-point scale based on litigant responses to "How likely is it that the court will decide in your favor?" and nonlitigant responses to "If you had taken legal action, how likely is it that the court would decide in your favor?"; and (f) the severity of the grievance, a 5-point scale based on self-reporting of bodily harm from the hostage incident, with 1 representing *no harm at all* and 5 representing *death of a loved one*. Other variables were tested for their possible effects on litigation but were not significant in either bivariate or multivariate analysis and are omitted here for ease of presentation.²⁰

The first column in Table 1 shows that political disadvantage plays a significant role in the decision to litigate. Dubrovka victims who feel unrepresented by either Putin or the Duma are more likely to litigate.²¹ Social networks also play a strong, positive, significant role in the decision to litigate. The greater the number of relatives or friends of a Dubrovka victim who litigate, the more likely that victim is to litigate.²² Litigation also depends on blame attribution. Victims who name federal authorities as first or second most guilty are more likely to litigate than victims who name other culprits.²³

Other significant factors in the decision to litigate include the perceived likelihood of winning the lawsuit. All else being equal, a Dubrovka victim who believes winning is plausible is more likely to litigate than a victim who believes winning is not plausible.²⁴ The perceived grievance also plays a strong, significant role. Relatives of deceased hostages are more likely to litigate than a former hostage who suffered severe bodily harm but lived and certainly more than a former hostage who suffered no bodily harm.²⁵ Factors such as education, income, and being contacted by a lawyer are not significant when included in this model, presumably because of their very limited variation among this particular group of respondents, as described above. For ease of presentation, these factors are omitted from the model, but inclusion does not alter the results.

Table 1
Effects of Political Disadvantage and Other
Variables on Litigation: Logit Estimates

	Model 1	SE	Model 2	SE	Model 3	SE	Model 4	SE
Political disadvantage:	0.77	0.39	0.74	0.39	0.88	0.40	1.89	0.78
How well represented by Putin or Duma?								
Perceived fairness:	-0.88	0.46	-0.93	0.45	-0.99	0.48	-2.33	0.93
How carefully will court consider plaintiffs' side?								
Relative perceived fairness:			0.53	0.32				
How confident in courts versus other institutions?								
Relative perceived fairness:					0.67	0.32		
How effective litigation versus other political acts?								
Interaction: Political Disadvantage × Perceived Fairness							-0.68	0.37
Relatives or friends litigating	1.46	0.44	1.48	0.47	1.32	0.47	1.50	0.44
Blaming federal authorities	1.44	0.67	1.56	0.70	1.20	0.68	1.69	0.71
Perceived likelihood of winning	0.82	0.47	0.79	0.48	0.76	0.50	0.88	0.48
Severity of grievance	1.31	0.25	1.41	0.28	1.40	0.27	1.44	0.28
Constant	-5.64	1.61	-5.30	1.63	-5.55	1.60	-4.31	1.73
Log likelihood	-37.53		-36.08		-35.10		-35.69	
N	295		295		295		295	

Note: The dependent variable is dichotomous (1 = litigant, 0 = nonlitigant). Most explanatory variables are ordered categorical variables, including *political disadvantage* (1 = *very well*, 2 = *rather well*, 3 = *not very well*, 4 = *not well at all*, lowest score taken); *perceived fairness* (1 = *not at all carefully*, 2 = *not very carefully*, 3 = *rather carefully*, 4 = *very carefully*); *perceived likelihood of winning* (1 = *not at all likely*, 2 = *not very likely*, 3 = *rather likely*, 4 = *very likely*); and *severity of grievance* (1 = *not at all severe*, 2 = *not very severe*, 3 = *somewhat severe*, 4 = *very severe*, 5 = *death of a loved one*). *Relatives or friends litigating* is a count variable, and *blaming federal authorities* is a dichotomous variable for whether a federal authority was mentioned as first or second most guilty. Results are not shown for two other included variables, dummies for “don’t know” and missing responses: 35 and 34 respondents answered “don’t know” to the perceived likelihood of winning and perceived fairness, respectively, and 1 respondent refused to answer the perceived likelihood of winning. Rather than toss out these respondents and reduce our sample size, we coded nonrespondents as 0 and included dummy variable controls for whether the respondent gave a substantive response. We could not use this technique for political advantage, severity of grievance, and relatives or friends litigating (24, 1, and 6 respondents, respectively), because *don’t know* responses were perfectly correlated with the dependent variable (all nonlitigants), so our sample size is reduced accordingly. Dummy variables for missing data are uncorrelated with the dependent variable and do not alter our substantive results for the other independent variables.

Taken together, these statistical relationships paint a portrait of litigants against government as political outsiders, motivated to litigate by their alienation from government and their bonds with other victims. The role of perceived fairness further corroborates this litigation story but in a non-obvious way. As the first column in Table 1 shows, the perceived fairness of the hearing is not positively related to litigation, as we might expect. Instead, perceived fairness is negative and statistically significant. A victim who believes the court will consider the plaintiffs' side of the story is less likely to litigate than a victim who holds no such belief.

It is possible that the above finding could be driven by our choice of measure for perceived fairness. Further analysis shows that this is not the case. For example, we substituted perceived attentiveness of the court with perceived adherence to legal procedures ("How closely do you think the court will follow legal procedures?"). The results are essentially the same, and perceived fairness is again negative and significant. Substitutions of numerous other measures for perceived fairness confirm that the negative relationship is robust and not driven by the operationalization of the concept.²⁶

One explanation for this negative relationship between perceived fairness and litigation is that litigation is motivated by the perceived fairness of the court relative to other institutions. Even if victims perceive courts as unfair, they may be inspired to litigate if they perceive other institutions as even less fair. The negative relationship between the perceived fairness of courts and litigation could be picking up the effects of the perceived unfairness of politics more generally as yet another dimension of political disadvantage.

Dubrovka victims were not asked their perceptions of the fairness of nonjudicial institutions, but they were asked numerous questions about their confidence in these other institutions, such as the Duma, Federation Council, President Putin, the mayor, and the local administration, and numerous questions about the effectiveness of other forms of political behavior besides litigation, such as voting, joining a nongovernmental organization, contacting a national official, and contacting a local official. In the second and third columns in Table 1, we alternately include in the model a variable representing the difference between confidence in the judicial system and the mean confidence in other institutions and a variable representing the difference between the perceived effectiveness of litigation and the mean perceived effectiveness of other forms of political behavior. In both cases, the relative measure is positive and statistically significant. Consistent with both the political disadvantage hypothesis and the procedural justice literature, this finding suggests that victims who assess courts more positively than other political institutions are more likely to litigate. Importantly,

inclusion of the relative measure does not alter our other findings. The perceived fairness of courts remains negatively and significantly related to litigation. We return to this puzzle below.

Explaining the Negative Relationship Between Perceived Fairness and Litigation

Why should the relationship between perceived fairness and litigation be negative, even after we control for attitudes toward courts relative to other institutions? The answer is probably not that there is a causal relationship linking perceived unfairness to litigation. An aggrieved individual probably does not say “The court will not consider my side of the story, and therefore I will go to court.” Instead, we think our measures of perceived fairness are capturing another dimension of alienation from the political system. Victims who think the judicial system is unfair, like victims who perceive they are unrepresented by executive and legislative institutions, probably feel like neglected outsiders and are thus the most angry and frustrated.

This relationship between perceived unfairness and the emotional implications of alienation matters, because there may be a causal relationship between emotion and litigation. Litigants might see one of the functions of litigation as allowing them to vent or let off steam, to express their anger or frustration or moral indignation, or to go on record as objecting to an injustice. Studies of other forms of political behavior such as protest show that behavior can have expressive functions (Chong, 1991; Gurr, 1970; Javeline, 2003b), and even the procedural justice and judicial politics literatures mention an expressive approach to litigation (Bumiller, 1988; Morgan, 1999; Tyler, 1987; Tyler et al., 1997). People value the opportunity for voice and want to express their views (Lind & Earley, 1992; Tyler et al., 1997). Perhaps they seek this expression especially when they believe the system is trying to stifle their views unfairly. The relationship between perceived unfairness, emotion, and political activism has also been observed in the context of communist-era opposition movements (Kolakowski, 1971; Ost, 1990). Participants in these movements tended to be those most fervently convinced that the system was incapable of reform or overthrow, but anger prompted them to participate anyway.

Still, even if anger, frustration, or other emotional responses to perceived unfairness motivates people to voice their concerns, why would they go to court if they think the court will not listen to them? We think that litigants might be using the court to express their emotions to other audiences, such

as the government, the public, foreign communities, or an intermediary such as the media. If the court does not register the injustice, perhaps these other audiences will.²⁷ The need to express antisystem emotions thus might be a missing intervening variable between perceived unfairness and litigation that explains the negative, significant relationship. Some victims believe the judicial system is unfair, which makes them angry (or upset or frustrated or some other negative feeling), which makes them want to vent their anger in court in the hopes that at least someone will listen.

Dubrovka victims were not asked explicitly about their level of anger or other emotions. If we did have independent measures of various emotions in the data set, we could add them to the model to test whether they diminish or eliminate the negative effects of perceived fairness. As an alternative test, we look to our measure of political advantage and assume that politically disadvantaged individuals are angrier or more frustrated than politically advantaged individuals. The politically advantaged feel well represented by conventional political institutions such as electoral or legislative processes, so their anger at unfair judicial processes might be mitigated by the perceived fairness of these other political processes. Politically disadvantaged individuals, however, feel excluded from conventional post-communist political institutions and may be especially angry that their one remaining accessible institution, the court, does not provide an even playing field. If alienation-induced anger is an unmeasured but important variable driving litigation, the politically disadvantaged should be more encouraged to litigate by perceptions of judicial unfairness than the politically advantaged.²⁸ The perceived unfairness of the judicial system exacerbates their pre-existing political frustrations and increases their need for expression to anyone who will listen, even if the courts will not. We thus add to our model a term representing the interaction of political advantage and perceived fairness.

As we have already shown in Table 1, there is a significant relationship between political disadvantage and litigation. Dubrovka victims who feel unrepresented by both Putin and the Duma are more likely to take on the system and go to court. The fourth column in Table 1 shows that there is also a significant relationship between the interaction term (political disadvantage and perceived fairness of the court) and litigation. This effect of the interaction term means that the politically advantaged are less inspired to litigate based on perceived unfairness. The politically disadvantaged, in contrast, are the victims most inspired to litigate based on perceived unfairness. This finding suggests that the need to express anger or other negative emotions may be the underlying causal mechanism connecting perceived

unfairness to litigation. The finding is consistent with the larger story that alienation from the political system is a strong driving force for litigation against postcommunist governments.

Effects of the Interaction of Political Disadvantage and Perceived (Un)fairness

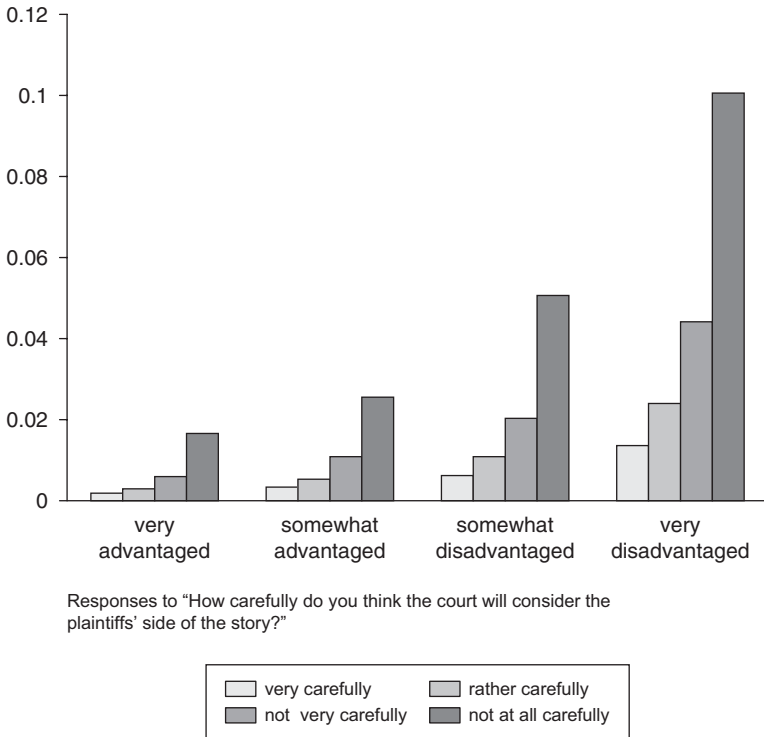
Using the parameters estimated by the first logit model in Table 1, we can estimate the probability of litigation for victims given their perceptions of the fairness of courts and their level of political advantage or disadvantage (Figure 1).²⁹ To generate predicted probabilities, all explanatory variables are held constant at their means, except for perceived fairness and political disadvantage, which are varied according to their different values.

The first and second sets of columns in Figure 1 represent the predicted probabilities of litigation for those victims who claim that either Putin or the Duma represents them “very well” or “rather well,” respectively and who are therefore labeled *very advantaged* or *somewhat advantaged*. These victims are the least inclined to litigate at the outset, and they are also the least influenced to litigate by their perceptions of the fairness of the hearings. The probability of litigation increases only slightly from an extremely low .002 for very politically advantaged victims who think the court will consider the plaintiffs’ side of the story “very carefully” to a still low .02 for those who think the court will consider the plaintiffs’ side of the story “not at all carefully.” For somewhat politically advantaged victims, the increase is only from .003 to .03.

The third set of columns in Figure 1 represents predicted probabilities of litigation for those victims who claimed that either Putin or the Duma represents them only in the slightest way and who are therefore labeled *somewhat disadvantaged*. For these victims, the perceived fairness of courts strongly influences the decision to litigate. The probability of litigation increases from .01 for somewhat politically disadvantaged victims who think the court will consider the plaintiffs’ side of the story “very carefully” to .05 for those who think the court will consider the plaintiffs’ side of the story “not at all carefully.”

The fourth set of columns represents the predicted probabilities of litigation for those victims who claimed that neither President Putin nor the State Duma represents their interests at all and who are therefore labeled *very disadvantaged*. As Figure 1 shows, those very politically disadvantaged individuals who think the court will consider the plaintiffs’ side of the

Figure 1
Effects of Perceived (Un)fairness on Litigation, Given Political Disadvantage (Predicted Probabilities)



story “very carefully” are far less inclined to litigate than those who think the court will consider the plaintiffs’ side “not at all carefully.” The probabilities increase tenfold from .01 to .10. Given the costly nature of litigation and the uncertainty of benefits, litigation in general in most countries is a low probability event. For example, the probability of a civil dispute ending in litigation in the United States in the late 1970s was about .10 (Trubek et al., 1983, pp. S-15, S-20, I-85). A tenfold increase in a less litigious post-communist country that raises the probability of litigation against a daunting adversary such as the government from .01 to .10 is therefore quite meaningful.

Figure 1 thus further supports the notion that the need to express frustration or other emotional responses to political alienation may be the underlying causal mechanism connecting perceived unfairness to litigation. Perceived fairness seems to have a strong impact on the decision to litigate for those victims who feel unrepresented by executive and legislative institutions and who are presumably angry. Among such angry victims, those perceiving courts as unfair are most likely to litigate. In contrast, perceived fairness does not seem to have much of an impact, either positive or negative, on the decision to litigate for those victims who do feel represented by executive and legislative institutions and who are presumably not as angry or frustrated by their alienation from the system.

Social Networks Empower the Politically Disadvantaged

Like perceived unfairness, social networks may also have differential effects on the politically disadvantaged and politically advantaged. Specifically, social networks may influence the propensity to litigate among the politically disadvantaged much more than the politically advantaged. Those who feel well represented by their executive and legislature probably feel secure enough with their positions in the political system to go to court on their own. Conversely, those who feel alienated from their representative institutions are probably more comfortable if friends and family join them in taking on the presumably hostile government. Social support can compensate for their positions as political outsiders and inspire litigation.

Statistical analysis confirms these propositions. Starting with the base model from Table 1 and adding an interaction term to represent the effects of social networks on litigation conditional on political disadvantage, we find that social networks influence the propensity to litigate most strongly for victims who are most politically disadvantaged. As political advantage increases, the impact of social networks on the propensity to litigate decreases. Indeed, for the most politically advantaged victims, the relationship between social networks and litigation is not statistically significant.³⁰

Conclusion

The analysis suggests that at moments of regime change, the individuals most likely to use courts to redress grievances against government are the

politically disadvantaged or those who perceive themselves to be unrepresented by their country's executive and legislature. Consistent with this finding, litigants are more likely than nonlitigants to blame government for their grievance. Litigants are also more likely to be socially networked with other litigants in their lawsuit, and moreover, the effects of social networks on litigation are highest for the most politically disadvantaged. Those who are alienated from their political system are more prepared to challenge that system when they are joined by others.

Aggrieved individuals are especially likely to litigate if they are alienated not only from the executive and legislature but from the judiciary as well. Unexpected and unique to this study is the revelation that victims who think courts are unfair in absolute terms are more likely to litigate. However, consistent with findings from the procedural justice literature, victims who think courts are at least more fair than representative political institutions are also more likely to litigate. We suspect that perceiving courts to be unfair may heighten the desire to express anger, frustration, disappointment, or other negative feelings about the political system. The courts can serve as a venue for this expression, even if the court itself is perceived as unlikely to listen, follow legal procedures, or otherwise behave in a fair, impartial manner.

The expressive function of litigation for the litigants may ultimately serve an instrumental function for the general public. In the case of government violations of rights, the attention that litigants attract to their case may lead to new or expanded legal precedent or may at least encourage governments to be more cautious before attempting future rights violations. Igor Trunov, the lawyer for the Dubrovka victims, explicitly mentions the link between the expressive and instrumental goals of his clients' lawsuit: "Our main goal is to reveal the problem, to draw attention to it, and to create a mechanism for the payment of compensation to victims of acts of terrorism" (Blinova, 2003).

Whether Russian courts will serve the instrumental or expressive interests of the litigants in the Moscow theater hostage case or of Russians in general remains to be seen. Given the idiosyncratic grievance of this case study and the small number of litigants, our results are only suggestive. However, if the litigants achieve even small successes, the impact on future litigation could be significant. As Russian legal experts claim, "[I]n the long run, as the public learns about high rates of success of citizens in suits against the state, it will go to court even more often than now and its attitudes toward courts may improve" (Solomon, 2004).³¹ Such progress in the use of judicial institutions might seem a grand leap from the actions of just a handful of aggrieved

individuals suing their government under strange circumstances with weak legal justifications. However, the importance of litigants against government derives not from their numerical strength but from their potential impact. For courts to set precedents that limit government or force government accountability, only a single litigant may be necessary for each type of dispute or rights violation. Understanding the Dubrovka litigants and litigants in other postcommunist or postauthoritarian countries should contribute to our understanding of how rights become protected.

Notes

1. Cortner's original conception of political disadvantage reflected the systematic exclusion of certain groups from the political process and was in some sense an objective measure. Here we stretch the original conception to refer to a more subjective sense of exclusion. We test whether the perceived lack of representation by the executive and legislature influences the decision to litigate. Although our test is thus not an exact test of Cortner's hypothesis, the two are complementary. Few groups are systematically excluded in Russia, like blacks in the United States, but many Russian individuals perceive themselves to be excluded, and this individual perception is the most relevant aspect of political disadvantage for Russians. Our subjective measure of political disadvantage should affect litigation in a manner similar to Cortner's objective measure.

2. The costs of litigation are usually described in monetary terms, but there may also be social-psychological costs such as anxiety, personal antagonisms, diminished self-esteem, and loss of control (Bumiller, 1988; Trubek, Grossman, Felstiner, Kritzer, & Sarat, 1983). The potential benefits of litigation are similarly described in both monetary and nonmonetary terms, including the assertion of self-worth, the acknowledgment of cherished principles, and revenge (Bumiller, 1988; Morgan, 1999).

3. Students of litigation in the United States have faced similar challenges enumerating the appropriate population under investigation (Felstiner et al., 1980; McIntosh, 1983). For example, Grossman et al. (1982) calculate litigation rates across cities based on the number of cases filed per 100,000 urban residents, but given that some cities may have more aggrieved residents than other cities, the better but more elusive measure of litigation rates would be the number of cases filed per aggrieved urban residents.

4. Russia does not have a legal classification for a "class action lawsuit," except in consumer protection cases.

5. The difficulty of determining the precise number of victims is discussed below.

6. Article 17 reads "Compensation for damage that has occurred as a result of a terrorist action is provided from the budgets of the regions of the Russian Federation in the territory in which the terrorist action occurred." See Schepele (2004) for details.

7. Our thanks to Kim Lane Schepele for sharing her tremendous insights into the Dubrovka case.

8. The survey results are generalizable to Russian cities with populations of 450,000 or more.

9. Interviews were conducted by the Institute for Comparative Social Research.

10. As a point of reference, the 7% or 8% Dubrovka litigation rate is just slightly under the U.S. civil litigation rate in the late 1970s, with about 1 in 10 U.S. civil disputes ending up in court (Trubek et al., 1983, pp. S-15, S-20, I-85).

11. Response Rate and Reasons for Nonresponse

	Litigants		Nonlitigants	
	<i>N</i>	%	<i>N</i>	%
Interviews completed	26	50	300	46
Nonresponse, including the following:				
Insufficient information to identify respondent	19	37	227	35
Respondent refused	3	6	60	9
Respondent agreed but could not find time	3	6	7	1
Interview interrupted	1	2	10	2
Friends refused to give respondent's contact information	0	0	20	3
Next-of-kin already interviewed as hostage	0	0	12	2
Respondent hospitalized or in poor health	0	0	6	1
Respondent unavailable (business trip, residency abroad)	0	0	6	1
No next-of-kin	0	0	2	0
Total victims (former hostages and next-of-kin)	52 ^a	100	650	100

a. Our research design designated one potential respondent for each Dubrovka victim, and lawsuits were filed on behalf of 52 Dubrovka victims. The actual number of litigants is 61, because some litigants are suing for loss of the same former hostage. For example, a lawsuit might be initiated by both the spouse and child of the deceased. The strengths and weaknesses of this research design are described below.

12. Former hostages were individuals who happened to be at a theater on a given day, and no publicly-accessible list of names and addresses exists. To piece together identities, we relied on journalists and networks among former hostages.

13. Indeed, the city of Moscow had already paid 100,000 rubles (\$3,300) to the family of each deceased hostage plus funeral costs, and Moscow Mayor Yuri Luzhkov is rumored to have paid additional compensation (Scheppele, 2004). If the surviving spouse was the only recipient of these funds, then some litigants might be the left-out family members, precisely those who are not legal next of kin. We thank Kim Lane Scheppele for drawing our attention to this.

14. An exception might be the introduction of Russia's new civil procedure code on February 1, 2003, although confusion or uncertainty was the more likely reaction to the new code than normative assessments of judicial processes. We ran our multivariate analyses below with a dummy variable for whether respondents participated in the survey before or after February 1. Our results were not altered, suggesting that introduction of the code does not bias results.

15. Two of the six victims approached by a lawyer eventually did join the lawsuit.

16. Victims approached Trunov at the Moscow Central Bar for free legal consultations.

17. Previous experience with a lawyer and perceptions about the availability and affordability of legal assistance also do not seem to explain decisions to litigate. Among Dubrovka victims, roughly equal percentages of litigants and nonlitigants have used a lawyer for legal assistance (12% and 16%, respectively) and believe that they could afford such assistance if another legal problem arose (50% to 47%, respectively). For more information on the role of lawyers in Russian life, see Burrage, 1993; Hendley, Murrell, & Ryterman, 2001; Jordan, 1996, 2005; Petrovna, 1996; Sajo, 1993.

18. Soviet-era laws permitted many behaviors that were de facto impermissible or at least risky, so an institutional change on paper cannot fully explain the boldness of some citizens who venture to test the waters and take advantage of their supposed new rights.

19. Because litigation is a rare event, the data can also be appropriately analyzed with a logistic regression model for rare events data (King & Zeng, 2001). The results of such an analysis are substantively similar to the results shown here with smaller error terms (available on request).

20. For example, Western exposure as measured by Western travel or English, French, or German language proficiency is not a significant explanatory factor for litigation. Connection to a relative or friend with court experience, either as plaintiff or defendant, is also not significant.

21. Only 31% of litigants feel President Putin represents their interests “very well” or “rather well,” compared to 57% of nonlitigants. Forty-two percent of litigants feel the Duma represents their interests “very well” or “rather well,” compared to 56% of nonlitigants.

22. Nearly all Dubrovka victims have at least one relative or friend who was also a hostage, but there are extreme differences in the number of relatives and friends participating in the lawsuit for litigants (58% with at least one relative or friend suing) and nonlitigants (11%).

23. Litigants more than nonlitigants attribute blame to President Putin (58% to 37%), other federal authorities (81% to 65%), Moscow city authorities (89% to 64%), and doctors and emergency services (35% to 14%). Asked who is most to blame, three times more litigants than nonlitigants name President Putin (15% to 5%) and Moscow city authorities (12% to 4%).

24. Asked “What is the single most important reason why you are not now involved in the lawsuit?” nonlitigants most commonly replied, “the small chance of winning” (36%). Other reasons include the lack of a problem requiring legal action (17%), the lack of a concrete culprit (12%), the anticipated amount of effort (6%) or time (4%) involved, the relatively low amount of suffering (5%), shame in asking for money (3%), the perception of better ways to solve the problem (3%), the anticipation of being treated unfairly (2%), distrust of the legal system (2%), poor physical condition of the respondent (2%), the lack of precedent in Russia (2%), the expense involved (1%), and the desire to wait for the results of the current hearings (1%).

25. Sixty percent of family members of deceased hostages are litigants, compared to 18% of surviving former hostages who suffered severe bodily harm, 10% who suffered somewhat severe bodily harm, and 3% whose bodily harm was not very severe or not at all severe.

26. Results not shown but available on request. Litigants are less likely than nonlitigants to believe that the average person can get a fair hearing in a Russian court; that all people are equal before the court, whether they are rich or poor; that the judicial system is worthy of their confidence; that the Russian Supreme Court is free to go against the preferences of the president or Duma; that urban judges are free to go against the preferences of local authorities; and that powerful political officials, such as the president, Duma members, and the mayor, would be forced to abide by court decisions with which they disagree.

27. Many Dubrovka victims have explicitly stated their interest in targeting nonjudicial audiences. According to Trunov, “by filing claims for millions of dollars, we want to create a precedent. The authorities must think about how to protect people from terrorists. Perhaps, we need to change the legislation in this area. It’s extremely important to attract the attention of our society to this problem that concerns everybody” (Roshina & Zhohova, 2002).

28. Huo, Smith, Tyler, and Lind (1996) provide evidence that in-groups care more than out-groups about procedures because fair procedures confirm their status as equals and reinforce their self-esteem. Out-groups, in contrast, have no delusion that they are equals and therefore no expectation of being treated fairly. In-groups more than out-groups will thus litigate in pursuit of fairness, and we suspect that out-groups more than in-groups litigate in angry response to unfairness.

29. Probabilities are estimated in Stata using Clarify.

30. Parameter results and predicted probabilities of litigation based on the interaction of social networks and political disadvantage available on request.

31. Local and regional courts in Russia are increasingly deciding cases in favor of private citizens over state officials (Cashu & Orenstein, 2001; Hendley, 2002; Solomon, 2004; Solomon & Foglesong, 2000). Throughout the late 1990s, citizens won in more than 80% of such cases. Citizens also won in 96% of individual complaints against tax officials, 87% of complaints against the military, 70% of corporate complaints against tax officials, and 48% of electoral disputes (Hendley, 2002; Solomon, 2004).

References

- Allenova, O. (2002, December 3). Rodstvennikav zhert Nord-Osta gorya malo [The grief of relatives of Nord-Ost victims is not enough]. *Kommersant*. Retrieved January 7, 2003, from **PLS PROVIDE WEB ADDRESS**
- Baird, Vanessa A. (2006). *Answering the call of the court: How justices and litigants set the Supreme Court agenda*. Charlottesville: University of Virginia Press.
- Blankenburg, Erhard. (1994). The infrastructure for avoiding civil litigation: Comparing cultures of legal behavior in the Netherlands and West Germany. *Law and Society Review*, 28, 789-808.
- Blinova, E. (2003, April 4). Advokat proigral pervuyu mirovuyu [Lawyer loses first round]. *Nezavisimaya gazeta*. Retrieved July 24, 2006, from http://ng.ru/events/2003-04-04/7_nord_ost.html
- Brady, Henry E., Schlozman, Kay Lehman, & Verba, Sidney. (1999). Prospecting for participants: Rational expectations and the recruitment of political activists. *American Political Science Review*, 93, 153-198.
- Bumiller, Kristin. (1988). *The civil rights society: The social construction of victims*. Baltimore: Johns Hopkins University Press.
- Burrage, Michael. (1993). Russian advocates: Before, during and after Perestroika. *Law & Social Inquiry*, 18(3), 573-592.
- Burstin, H. R., Johnson, W. G., Lipsitz, S. R., & Brennan, T. A. (1993). Do the poor sue more? A case control study of malpractice claims and socioeconomic status. *Journal of the American Medical Association*, 270, 1697-1701.
- Cashu, Ilian G., & Orenstein, Mitchell A. (2001). The pensioners' court campaign: Making law matter in Russia. *East European Constitutional Review*, 10. Retrieved August 2, 2006, from <http://www.law.nyu.edu/eecr/vol10num4/special/cashuorenstein.html>
- Chong, Dennis. (1991). *Collective action and the civil rights movement*. Chicago: University of Chicago Press.
- Coates, Dan, & Penrod, Steven. (1980). Social psychology and the emergence of disputes. *Law and Society Review*, 15, 655-680.
- Cortner, Richard. (1968). Strategies and tactics of litigants in constitutional cases. *Journal of Public Law*, 17, 287-307.
- Doherty, Edmund G., & Haven, Carl O. (1977). Medical malpractice and negligence: Sociodemographic characteristics of claimants and nonclaimants. *Journal of the American Medical Association*, 238, 1656-1658.
- Ellickson, Robert. (1991). *Order without law: How neighbors settle disputes*. Cambridge, MA: Harvard University Press.

- Epp, Charles. (1998). *The rights revolution: Lawyers, activists, and supreme courts in comparative perspective*. Chicago: University of Chicago Press.
- Epstein, Lee. (1985). *Conservatives in court*. Knoxville: University of Tennessee Press.
- Ewick, Patricia, & Silbey, Susan S. (1998). *The common place of law: Stories from everyday life*. Chicago: University of Chicago Press.
- Farber, Henry S., & White, Michelle J. (1991). Medical malpractice: An empirical examination of the litigation process. *The RAND Journal of Economics*, 22, 199-217.
- Feeley, Malcolm M. (1979). *The process is punishment: Handling cases in a lower criminal court*. New York: Russell Sage.
- Felstiner, William L. F., Abel, Richard L., & Sarat, Austin. (1980). The emergence and transformation of disputes: Naming, blaming, and claiming. *Law and Society Review*, 15, 631-654.
- Galanter, Marc. (1974). Why the 'haves' come out ahead: Speculations on the limits of legal change. *Law and Society Review*, 9, 950-997.
- Gibson, James L. (2001). Social networks, civil society, and the prospects for consolidating Russia's democratic transition. *American Journal of Political Science*, 45, 51-68.
- Grossman, Joel B., Kritzer, Herbert M., Bumiller, Kristin, Sarat, Austin, & McDougal, Stephen. (1982). Dimensions of institutional participation: Who uses the courts, and how? *Journal of Politics*, 4, 86-114.
- Gurr, Ted Robert. (1970). *Why men rebel*. Princeton, NJ: Princeton University Press.
- Hendley, Kathryn. (2001). 'Demand' for law in Russia—A mixed picture. *East European Constitutional Review*, 10, 73-78.
- Hendley, Kathryn. (2002). Suing the state in Russia. *Post-Soviet Affairs*, 18, 122-147.
- Hendley, Kathryn, Murrell, Peter, & Ryterman, Randi. (2001). Agents of change or unchanging agents? The role of lawyers within Russian industrial enterprises. *Law & Social Inquiry*, 26(3), 685-715.
- Hensler, Deborah R., Marquis, M. Susan, Abrahamse, Allan F., Berry, Sandra H., Ebener, Patricia A., Lewis, Elizabeth, et al. (1991). *Compensation for accidental injuries in the United States*. Santa Monica, CA: RAND.
- Howard, Marc Morje. (2002). *The weakness of civil society in post-communist Europe*. Cambridge, MA: Cambridge University Press.
- Hunting, Roger B., & Neuwirth, Gloria S. (1962). *Who sues in New York City? A study of automobile accident claims*. New York: Columbia University Press.
- Huo, Yuen, Smith, Heather J., Tyler, Tom R., & Lind, E. Allan. (1996). Superordinate identification, subgroup identification, and justice concerns: Is separatism the problem; Is assimilation the answer? *Psychological Science*, 7, 40-45.
- Jacob, Herbert. (1969). *Debtors in court: The consumption of government services*. Chicago: Rand McNally.
- Javeline, Debra. (2003a). *Protest and the politics of blame: The Russian response to unpaid wages*. Ann Arbor: University of Michigan Press.
- Javeline, Debra. (2003b). The role of blame in collective action: Evidence from Russia. *American Political Science Review*, 97, 107-121.
- Jordan, Pamela. (1996). Russian lawyers as consumer protection advocates. *Parker School Journal of East European Law*, 3(4-5), 487-517.
- Jordan, Pamela. (2005). *Defending rights in Russia: Lawyers, the state, and legal reform in the post-Soviet era*. Vancouver, British Columbia, Canada: University of British Columbia Press.
- King, Gary, & Zeng, Langche. (2001). Logistic regression in rare events data. *Political Analysis* 9, 137-163.

- Kolakowski, Leszek. (1971). Hope and hopelessness. *Survey*, 17, 36-52.
- Kritzer, Herbert M. (1990). *The justice broker: Lawyers and ordinary litigation*. New York: Oxford University Press.
- Kritzer, Herbert M. (1991). Propensity to sue in England and the United States of America: Blaming and claiming in tort cases. *Journal of Law and Society*, 18(4), 400-427.
- Kritzer, Herbert M. (2001). Litigation. *International Encyclopedia of the Social and Behavioral Sciences* (Vol. 13), 8989-8995.
- Kritzer, Herbert M., Bogart, W. A., & Vidmar, Neil. (1991, June). *Context, context, context: A cross-problem, cross-culture comparison of compensation seeking behavior*. Paper presented at meetings of the Law and Society Association, Amsterdam.
- Kritzer, Herbert M., & Silbey, Susan. (Eds.). (2003). *In litigation: Do the "haves" still come out ahead?* Stanford, CA: Stanford University Press.
- Lind, E. Allan, Ambrose, Maureen L., de Vera Park, Maria V., & Kulik, Carol T. (1990). Perspectives and procedural justice: Attorney and litigant evaluations of court procedures. *Social Justice Research*, 4, 325-336.
- Lind, E. Allan, & Earley, P. Christopher. (1992). Procedural justice and culture" *International Journal of Psychology*, 27(April), 227-242.
- Lowenstein, George F., Issacharoff, Sam, Camerer, Colin, & Babcock, Linda. (1993). Self-serving assessments of pretrial bargaining. *Journal of Legal Studies*, 22, 135-159.
- Macaulay, Stewart. (1963). Non-contractual relations in business: A preliminary study. *American Sociological Review*, 28, 55-67.
- May, Marlynn L., & Stengel, Daniel B. (1990). Who sues their doctors? How patients handle medical grievances. *Law and Society Review*, 24, 105-120.
- McIntosh, Wayne. (1983). Private use of a public forum: A long-range view of the dispute processing role of courts. *American Political Science Review*, 77, 991-1010.
- McNulty, Molly. (1989). Are poor patients likely to sue for malpractice? *Journal of the American Medical Association*, 262, 1391-1392.
- Miller, Richard E., & Sarat, Austin. (1980). Grievances, claims, and disputes: Assessing the adversary culture. *Law and Society Review*, 15(3-4), 525-566.
- Morgan, Pheobe A. (1999). Risking relationships: Understanding the litigation choices of sexually harassed women. *Law and Society Review*, 33, 67-92.
- O'Brien, Kevin J., & Li, Lianjiang. (2004). Suing the local state: Administrative litigation in rural China. *China Journal*, 51, 75-96.
- Ocko, Jonathon K. (1988). I'll take it all the way to Beijing: Capital appeals in the Qing. *The Journal of Asian Studies*, 47, 291-315.
- Olson, Susan. (1990). Interest group litigation in federal district courts: Beyond the political disadvantage theory. *Journal of Politics*, 52(August), 854-882.
- Ost, David. (1990). *Solidarity and the politics of anti-politics: Opposition and reform in Poland since 1968*. Philadelphia: Temple University Press.
- Petrovna, Dimitrina. (1996). Political and legal limitations to the development of public interest law in post-Communist societies. *Parker School Journal of East European Law*, 3(4-5), 541-567.
- Putnam, Robert D. (1995). *Bowling alone: The collapse and revival of the American community*. New York: Simon & Schuster.
- Reicher, Stephen. (1987). The St. Paul's riot: An explanation of the limits of crowd action in terms of a Social Identity Model. *European Journal of Social Psychology*, 14, 1-21.
- Roshina, O., & Zhohova, A. (2002, November 29). 2,5 milliona dollarov s moskovskogo pravitelstva [2.5 million dollars from the Russian government]. *Gazeta*. Retrieved January 7, 2003, from <http://www.gzt.ru/rub.gzt?id=2855000000003285#top>

- Sajo, Andras. (1993). The role of lawyers in social change: Hungary. *Case Western Reserve Journal of International Law*, 25(2), 137-146.
- Scheppele, Kim Lane. (2004). The value of mourning: Claiming compensation after the Moscow Theater Siege. Paper presented at the Law, Culture and Humanities conference, Hartford, CT.
- Scheppele, Kim, & Walker, Jack. (1991). The litigation strategies of interest groups. In J. Walker (Ed.), *Mobilizing interest groups in America* (pp. 335-372). Ann Arbor: University of Michigan Press.
- Sloan, Frank A., & Hsieh, Chee Ruey. (1995). Injury, liability, and the decision to file a medical malpractice claim. *Law and Society Review*, 29, 413-435.
- Solomon, Peter H. (2004). Judicial power in Russia: Through the prism of administrative justice. *Law and Society Review*, 38(3), 549-582.
- Solomon, Peter H., & Foglesong, Todd S. (2000). *Courts and transition in Russia: The challenge of judicial reform*. Boulder, CO: Westview.
- Trubek, David M., Grossman, Joel B., Felstiner, William L. F., Kritzer, Herbert M., & Sarat, Austin. (1983). *Civil litigation research project, final report*. Madison: University of Wisconsin Law School.
- Turner, John C. (1991). *Social influence*. London, Milton Keynes: Open University Press.
- Tyler, Tom R. (1987). Conditions leading to value expressive effects in judgments of procedural justice: A test of four models. *Journal of Personality and Social Psychology*, 52, 333-344.
- Tyler, Tom R., Boeckmann, Robert J., Smith, Heather J., & Huo, Yuen J. (1997). *Social justice in a diverse society*. Boulder, CO: Westview.
- Vose, Clement E. (1959). *Caucasians only: The Supreme Court, the NAACP, and the restrictive covenant clause*. Berkeley: University of California Press.

Debra Javeline is an assistant professor of political science at the University of Notre Dame. Her research interests include protest and other forms of political behavior, political psychology, and social influences on public health. Her publications include *Protest and the Politics of Blame: The Russian Response to Unpaid Wages* (University of Michigan Press, 2003) and "The Role of Blame in Collective Action: Evidence from Russia" (*American Political Science Review*, 2003).

Vanessa Baird is an assistant professor of political science at the University of Colorado–Boulder. Her research interests include understanding how courts rely on extra-judicial actors to amass political power. Her book, *Shaping the U.S. Supreme Court's Agenda: Justice's Priorities and Litigants' Strategies*, is forthcoming at the University of Virginia Press. Her articles have appeared in the *American Political Science Review*, *Journal of Politics*, *Political Science Quarterly*, *Political Psychology*, and *Political Studies*.