Korean Jury Trial: Has the New System Brought About Changes?

Jae-Hyup Lee
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I. INTRODUCTION

Korea introduced civil participation in criminal trials (jury trials) for the first time in the nation’s history on January 1, 2008.1 The Korean jury system incorporates elements of both the U.S.-style system and the German lay assessor system2 to assess the actual experience of citizen participation in trials during the initial five year experimental phase.3 The new jury system, even if in a very limited scope, is expected to bring about fundamental changes in judicial decision-making in Korea, which has

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1 For a general overview of the background and history of the Korean jury system and the relevant legal provisions, see Jae-Hyup Lee, Getting Citizens Involved: Civil Participation in Judicial Decision-Making in Korea, 4 E. Asia L. Rev. 177, 182-197 (2009).

2 Many key aspects about the Korean jury system resemble the United States system, whereas the Korean legal system and its jurisprudence are heavily influenced by Germany. In this respect, the opponents of the reform have pointed out the potential mismatch of the jury system and the general legal structure. The reformers compromised with them by combining the elements of the U.S. jury system and the German lay assessor system, and as a result, have created a unique model of civil participation. See In Sup Han, Hangukui baesimwonjaeapan [Criminal Jury Trials in South Korea: Issues and Initial Experiments], 50 SeoulDaeHakgyo Beophak [Seoul L.J.] 681 (2009).

3 This means the final format of the jury system will be determined in 2013. Until then, jury verdicts are only advisory in nature and do not bind the judges’ ultimate decisions regarding either guilt or sentencing.
traditionally been managed only by professional judges. The jury trial in Korea will also change the way criminal trial proceedings are conducted in general. It is also expected to create more sophisticated evidentiary rules for criminal trials.

Various opinions have been put forward to assess the past two years of experience regarding the effectiveness and validity of the jury system in Korea. Some have criticized that Korean jurors are emotional and are not trained to determine legal issues. Others have argued that the general public lacks the “legal frame of mind” and a dispute-averse, harmony-oriented cultural tradition might be incompatible with a jury system. However, many legal practitioners who are involved in the jury trials have witnessed positive effects of the new system with regard to the behavior of the public prosecutor and the judge and perceived a heightened general awareness of the rule of law in the public. A social evaluation of the Korean jury system is currently underway. The success of the jury system requires the people’s support and respect for jury verdicts. Because of this connection, empirical testing of the jury system is necessary in order to stabilize the system in Korean soil.

This paper first describes the major driving forces behind the introduction of the jury system and general expectations the new system was meant to bring about. It seeks to determine whether the expected changes are actually occurring, what kinds of problems have arisen, and what implications can be drawn for the future based on the first two years of jury trial operations. Data for this study was drawn from statistics collected by the National Court Administration and the author’s own observations of the trials, as well as interviews with the presiding judges of the jury trials.

II. WHAT THE JURY SYSTEM EXPECTED

Civil participation in judicial decision-making in Korea never materialized until the early 21st century. The adoption of the jury system

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4 This type of “cultural explanation” has been seriously contested in the academia (see e.g., Chulwoo Lee, Talking About Korean Legal Culture: A Critical Review of the Discursive Production of Legal Culture in Korea, KOR. J., Autumn 1998, at 45), but it is still very frequently raised by the media and the general public.

5 See In Sup Han and Sang Hoon Han, Gukminui sabeopchamyeo [Civil Participation in Judicial Decision-Making] (2010).


7 I have conducted an ethnographic study of the Korean jury trials between February 2009 and October 2009, observing and analyzing the speech strategies each participant employs. Jae-Hyup Lee, A Legal Anthropological Study on Cultural and Interactive Aspects of People’s Participation in Criminal Trials (Korea Research Foundation Grant KRF-2008-B00665, 2009) (ongoing research, on file with author).

8 Lee, supra note 1, at 182.
was mainly driven by participatory democratic concerns. Jury system and legal educational reform were the two most important goals of the judicial reform movement during the Roh Moo Hyun administration (2003-2008), known as the “Government of Participation.”

Concern over professional judges’ dogmatic judgment and their monopoly on fact-finding motivated the introduction of the new jury system. The two main purposes of the new system, as reflected in the Act for Civil Participation in Criminal Trials [Gukminui hyeongsajaepan chamyeoe gwanhan beopryul] (the “Act”), are to reinforce the democratic legitimacy of the judicial process and to enhance the transparency and credibility of the judiciary. In terms of actual change in practice, these two legislative purposes come down to issues of a more open process for criminal trials and more opportunity for parties to advocate and develop evidence-based arguments during court proceedings.

The Act was promulgated in conjunction with the recent major revision of the Criminal Procedure Code, which aims to enhance due process and public criminal trial principles. In essence, the jury trial is the de facto test case for fully materializing CPC principles. For instance, the court must hold a pretrial preparatory conference if the defendant chooses a jury trial because the preparatory conference is regarded as a very important feature of the jury system. A jury trial specifically provides parties the opportunity to participate in oral argument, in contrast to the

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9 Id. at 183. For a detailed account of the major steps in designing the Korean jury system during the Roh Administration, see Sang Jun Kim, Gukminchanyeojaepeun noneuieui gyeongggawa jedoselgye (2003-2005) [Discussion Progress and the Institutional Design of the Civil Participation Trial (2003-2005)], in HAN & HAN, supra note 5, at 163-177.


11 Gukminui hyeongsajaepan chamyeoe gwanhan beopryul [Act for Civil Participation in Criminal Trials], Law No. 8495, June 1, 2007, art. 1(1) [hereinafter the Act]. An unofficial English translation can be obtained at the Korea Legal Research Institute’s English homepage (http://elaw.klri.re.kr), or alternatively, is posted at Professor Hiroshi Fukurai’s homepage (http://people.ucsc.edu/~hfukurai/).

12 Hyeongga sosongbeop [Criminal Procedure Code], Law No. 341, Spt. 23, 1954 (amended Dec. 21, 2007, as Law No. 8730) [hereinafter the CPC].

13 The Act, art. 36(1).

14 Prior to the introduction of the jury system, the National Court Administration published an oral proceedings conducting manual in December 2006, in order to provide guidance to judges. The jury trials have accelerated the court’s implementation of the oral proceedings in practice. Se-In Lee, Beopjeongeseoui gusulsimri hyeonhwanggwa hwalseonghwabang [Oral Argument in Korean Court], 52 GORYEOBEOPIHAK [KOREA LAW REVIEW] 337, 340 (2009). For a general overview of the efforts taken by the Korean court to enhance the oral proceedings, see Hyun Seok Kim, Why do We Pursue “Oral Proceedings” in Our Legal System?, 7 J. KOR. L. 51 (2007).
“trial by dossiers” [joseojaepan] (in which truth-finding depends heavily on the dossiers submitted by the public prosecutor rather than on cross-examinations in the courtroom).

The jury system was brought about to enhance concentrated reviews by the court. Prior to the new rules under the CPC, the court conducted proceedings in a series of separate sessions in two-week intervals. Under the new rules, a trial should be held on consecutive days if it requires two or more days to complete, except in the case of unavoidable circumstance.\(^{15}\)

The jury system is expected to significantly change the communicative dynamics of the courtroom. The existing system of contention and arguments projected toward the bench will be changed to a system in which the parties present their cases to the jury in a lucid way that is easy for the lay jurors to comprehend. Naturally, the whole process and the legal language spoken at trial must be streamlined and refined.

III. THE FIRST TWO YEARS OF JURY TRIALS IN KOREA

The Korean jury trial is limited to certain type of criminal cases and is only invoked upon the defendant’s choice.\(^{16}\) The Act specifies the scope of the jury trial as murder, manslaughter, rape, robbery, bribery, kidnapping, and crimes involving narcotics.\(^{17}\) It also leaves some room for flexible application because additional criminal cases being tried by the three-judge panels, as specified in the Supreme Court Rule on Civil Participation in Criminal Trials [Gukminui hyeongsajaepan chamyeo e gwanhan gyuchik], may also be tried by jury.\(^{18}\) Depending on the social demand and the accumulated experiences in the jury trial, the number of cases will be adjusted.

Proponents of the reform movement expected 100 to 200 trials would be held per year. Although the first year did not meet that expectation, the number of jury trials in the second year increased by 50%.\(^{19}\) Between January 1 and December 31, 2009, 569 jury trials were filed and 159 cases (27.9%) were tried.\(^{20}\)

Among the jury trial cases filed, the defendant withdrew the request for a jury trial in 228 cases, and the court denied the request in 136

\(^{15}\) The CPC, arts. 267-2(2).

\(^{16}\) The Act, art. 5(2).

\(^{17}\) Id., art. 5 (1).

\(^{18}\) Gukminui hyeongsajaepan chamyeo e gwanhan gyuchik [Rule for Civil Participation in Criminal Trials], Sup. Ct. Rule No. 2107, Oct. 29, 2007, art. 2 [hereinafter the Rule].

\(^{19}\) 64 jury trials were held in 2008, whereas 95 trials were held by jury in 2009. National Court Administration, supra note 6, at 2.

\(^{20}\) Id.
In most cases (76.5%) of the court’s denial, the court determined the case was not appropriate to be tried by jury. No single case was denied because jurors or juror candidates, or because their families or relatives feared possible danger to their life, liberty, or property, although this aspect worried the court the most.

Based on the survey of the defendants the Supreme Court conducted in May 2009, defendants who did not request a jury trial answered that they did not know of the jury trial system at all (40.3%) or that they were aware of the system but did not know it in detail (44.5%). Among these people, 16.7% answered that they would have requested a jury trial had they known the system. About 9.2% of the defendants who did not request a jury trial believed that judges generally dislike jury trials, so they expected unfavorable results.

The three most common crimes that were tried by jury were murder (27%), bodily injury resulting from robbery (21.4%), and sexual offense (17%). Among the 18 district courts around the country in which an exclusive jury trial division was established, jury trials were more actively held outside the Seoul Metropolitan Area.

The Supreme Court maintains a policy of speedy trials in order to minimize the social costs associated with the jury trial. The court also seemed to exclude complex cases with many witnesses during the initial phase of the experimental years. In addition, the jurors reportedly

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21 Id.

22 The Act, art. 9(1)(3). Reasons for such inappropriateness include the defendants’ circumstances (the defendants’ intent of withdrawal, mental capacity, additional criminal charges expected), the nature of the case (either trivial or complex), and the difficulty of witness testimony.

23 Id. at art. 9(1)(1).

24 In-seok Lee, Gukmin chamyoejaepanui donghyangggwa yanghyeong [The Current Status and the Sentencing of the Civil Participation Trial], a paper presented at a seminar hosted by the Civil Participation in the Judicial Decision-making Research Group, April 30, 2010, at 25, FN 9 (on file with the author).

25 At this time, the defendants are notified through a variety of means: posters displayed at police station jails and waiting rooms at the Prosecutor’s Office and the courts, distribution of informative comic-books about the jury trial system, and accompaniment of informational materials when the criminal charge is serviced. Id. at 23.

26 Id. at 25.

27 National Court Administration, supra note 6, at 16.

28 Id. at 5.

29 One such case was the so-called “Yongsan tragedy,” where five civilians and a police officer were caught in a fire and killed during a deadly standoff between a group of tenants resisting eviction and the police officers who raided into the building. In September 2009, the Seoul Central District Court denied the request for a jury trial because the trial may last more than 30 days with a number of more than 60 witnesses requested in this case.
preferred deliberating in late hours instead of attending the court in multiple days. As a result, the majority of cases (88.1%) were concluded in a single day in court, beginning with *voir dire* and ending with the jury verdict.\(^{30}\) No case was held for three days or more. While this practice is understandable given cost considerations and jurors’ deliberation preferences, it is sometimes criticized for being too hasty.\(^{31}\) On average, jury trials resolved cases relatively sooner than bench trials from the date of filing to the jury verdict (84.9 days and 88.2 days respectively).\(^{32}\)

Jury delinquency has not been a serious problem, although only 31.1% of the jurors summoned were present in *voir dire*.\(^{33}\) If unreachable jurors and cancelled cases are not counted, the real attendance rate was 57.8%.\(^{34}\) The average number of juror candidates summoned per trial was 116, and the average number of juror candidates attending the jury selection per trial was 35.9.\(^{35}\)

At the end of the *voir dire*, nine jurors were most frequently selected (45.3%), whereas seven jurors were selected in 38.4% and five jurors were selected in 16.4% of the cases.\(^{36}\) An average of 5.4 juror candidates per case has been peremptorily challenged during *voir dire*.\(^{37}\) In only 13.8% of the cases, the prosecution and the defense used up all allotted peremptory challenges. The peremptory challenges were most frequently exercised in sexual offense (an average of 6.9). Very few (0.43 per case) were challenged for cause.\(^{38}\) In 70% of the cases, the challenges for cause were never exercised.

\(^{30}\) National Court Administration, *supra* note 6, at 17. Based on one study, it took 10 hours and 42 minutes on average for conclusion of jury trials: 1 hour and 40 minutes on average for *voir dire*, 6 hours and 38 minutes for open trial, and 2 hours and 13 minutes for jury deliberation. PARK ET AL., *supra* note 10, at 23.


\(^{32}\) National Court Administration, *supra* note 6, at 18.

\(^{33}\) Article 60(1)(1) of the Act provides for a provision imposing fines on a prospective juror who fails to attend the jury selection proceeding, but no such fines have been administered so far. Lee, *supra* note 25, at 30.

\(^{34}\) National Court Administration, *supra* note 6, at 32.

\(^{35}\) *Id.* at 12.

\(^{36}\) *Id.* The number of jurors varies according to the severity of the case and the defendant’s plea. In cases where the defendant may receive capital punishment or life imprisonment, there are nine jurors. In cases where the defendant pleads guilty to most of the indicted count, there are five jurors. In all other cases, there are seven jurors. The Act, art. 13(1).

\(^{37}\) National Court Administration, *supra* note 6, at 15. Each party may exercise peremptory challenges five times when nine jurors are selected, four when seven jurors are selected, and three when five jurors are selected. The Act, art. 30(1).

\(^{38}\) National Court Administration, *supra* note 6, at 14. Parties can exercise
The actual selected jurors were well distributed in terms of sex, age, and social groups: 31.5% office workers; 15.5% small business owners; 18.3% housewives; 7.6% students; and 27.1% others. Women formed 47.8% of jurors. People in their 50’s and over formed the highest proportion of jurors (30.7%), followed by the 30’s (26.5%), the 40’s (25.6%), and the 20’s (17.4%).

Juries participated only in sentencing about twenty-nine percent (28.9%) of the time, as the defendant had already admitted guilt. The number of cases where the defendant did not admit guilt increased slightly from 28.1% in 2008 to 29.5% in 2009. In a majority of cases (91.2%), the jury found the defendants guilty. This acquittal rate is slightly lower than the non-jury three-judge panel criminal cases (97%).

State-appointed counsel [gukseon byeonhosa] represented defendants in 86.2% of the cases. This figure is much higher than the three-judge panel non-jury criminal trials (57%) during the same period. Under the Act, a criminal jury trial requires defense counsel, so if the defendant cannot retain a lawyer, the court must appoint one ex officio. In 2006, the Supreme Court established a roster of standing members of state-appointed counsels [gukseonjeondam byeonhosa] who exclusively take such cases; these Korean-style public defenders have taken many jury trial cases.

Korean jurors deliberate in secret. They first discuss the guilt of the defendant and try to reach a unanimous verdict. If the jurors cannot reach a unanimous verdict, then they must hear the judges’ opinion. After the judges and the jurors have discussed the guilt of the defendant together, the jurors, again without the presence of the judges, enter a verdict based on a simple majority. Korean jurors discuss the sentence with the judge and submit their opinion. The presiding judge explains to the jurors the scope of punishment and the condition for sentencing before unlimited challenges for cause. The Act, art. 28(3).

39 National Court Administration, supra note 6, at 35.
40 Id. at 18.
41 Id. at 17.
42 Id. at 19.
43 Id. at 17.
44 The Act, art. 7.
45 The CPC, art. 15-2.
46 The Act, art. 46(2).
47 Id. art. 46(3).
48 Id.
49 Id. Art. 46(4).
deliberation begins. The average length of the jury deliberation was between 30 minutes and 210 minutes. Relatively shorter time was spent when there were fewer jurors, as well as cases where the defendant admitted guilt.

The judge agreed with the jury and adopted their verdict as the official judgment in 90.6% of the cases. Among the 15 mismatched cases, in 13 cases, the jury verdict was not guilty and the judge’s verdict was guilty. In one case where the verdict and the ruling did not match, the higher court reversed the conviction of the lower court. Recently, the Supreme Court reversed a High Court decision to reverse an acquittal verdict supported by the judgment of the trial court jury and judge. The Supreme Court ruled that the High Court must defer to the judgment of the trial court unless new clear, sufficient, and convincing contradictory evidence appears. This decision signals that a very stringent standard will apply to the High Court for reversing a trial court judgment where both the jury and the judge acquitted the defendant.

Regarding sentencing, relatively small gaps were found between the majority opinion of the juries and the sentencing judgment. In 93.1% of the cases, the majority of sentencing opinions of the jury and the sentencing judgment did not differ much – two years at most.

Between July 1, 2009, when the sentencing guideline took effect, and March 31, 2010, there were 38 jury trials that were subject to the sentencing guideline. Among them, the jury’s sentencing opinion and the sentencing guideline concurred in 35 cases. Notable is the fact that the judge’s sentencing judgments were closer to the jury’s sentencing opinions than the sentencing guideline. Where the jury’s sentencing opinion and the sentencing guideline differed, the court’s sentencing judgment took the same direction (either upward or downward from the sentencing guideline) with the jury’s sentencing opinion in all cases.

A relatively high rate (87.4%) of appeal to higher courts was observed. The prosecution appealed the case in 58.5% of cases. The rate of appeal by the prosecution is much higher than non-jury trials (21.2%)

\[50 i.d.\]
\[51 \text{National Court Administration, supra note 6, at 21.}\]
\[52 i.d. \text{at 23.}\]
\[53 \text{Supreme Court 2010.3.25., 2009Do14065.}\]
\[54 \text{It has been observed the sentencing gap between the judge and the jury narrows during the course of sentencing deliberation.}\]
\[55 \text{National Court Administration, supra note 6, at 24.}\]
\[56 \text{Lee, supra note 25, at 42.}\]
\[57 i.d. \text{at 43.}\]
\[58 \text{National Court Administration, supra note 6, at 20.}\]
of the same criminal charges. This is due to the higher acquittal rate of jury trials. On appeal, the High Court dismissed the appeal in 72.1% of the cases, whereas it revered the trial court judgment in 27.9%.\(^{59}\) The appeal decisions of the High Court differ from trial courts in 22.1% of the cases.\(^{60}\) More than half of the cases (56.1%) were appealed all the way up to the Supreme Court, where almost all the appeals were dismissed.

Based on a post-trial survey, most jurors (95.1%) were generally satisfied with the jury trial system, especially with the open trial proceeding. A majority of jurors (87.3%) said that they understood all or most of the trial procedure. The most frequently mentioned difficulties were the length of the trial (50%) and the difficulty understanding legalese (21.8%). Most jurors reported that they focused attentively during the trial and actively expressed their opinions during deliberation. A majority (69%) found the given jury instruction to be helpful.\(^{61}\)

IV. Observations

Has the jury system brought about expected changes? Only two years have passed since the introduction of the jury trial system in Korea. Thus, it would be premature to draw any final conclusions. I have made initial observations elsewhere, identifying problems and suggesting a number of areas for improvement.\(^{62}\) Here, I would like to reiterate some points I made and to illustrate areas yet unexplored.

A. Clarifying Jury Instructions

One study found that Korean judges instruct juries well on principles such as the right to remain silent, adjudication based on evidence, and presumption of innocence.\(^{63}\) However, their explanations of the elements of various crimes were not adequate, which caused some jurors difficulty during deliberation.\(^{64}\) Recently, the Daejun High Court held that a trial court erred in failing to give a full explanation of evidence related to the diminished capacity of the defendant.\(^{65}\) To increase effective jury instructions, obscure legal terminology must be replaced with easier

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\(^{59}\) _Id_. at 25. This rate of reversal is lower than the average reversal rate (41.5%) among all the High Court cases during the same period. _Id_.

\(^{60}\) _Id_. at 27. This rate of change in sentencing is lower than the average (32.9%) among all the High Court cases during the same period. _Id_.

\(^{61}\) _Id_. at 36-37.

\(^{62}\) Lee, _supra_ note 1, at 200-206.

\(^{63}\) PARK ET AL., _supra_ note 10, at 44.

\(^{64}\) _Id_. at 260-62.

\(^{65}\) Decision of April 17, 2008 (2008Gohap11) (Chunchun D. Ct.). _See also_ PARK ET AL., _supra_ note 10, at 260 (discussing instructions given to the jury).
terms and standardized jury instruction manuals need to be developed.\textsuperscript{66} The only model of the jury instruction available at this moment is the jury instruction cases published by the National Court Administration in 2008.\textsuperscript{67} It is hoped that more effort will be made by the court to compile and update the actual instructions in order to set up a uniform format of jury instructions.

B. \textit{Separate Sentencing Proceedings and Guideline}

Procedures for determining guilt and sentencing are not separately managed in Korean jury trials. This creates two problems – one for efficiency and the other for evidentiary matters. Because jury trials are generally costly\textsuperscript{68} and difficult in practice, the issue arises as to whether it is desirable for sentencing purposes only. Indeed, twenty-four cases were excluded because the defendant admitted the indicted facts.\textsuperscript{69} However, one of the main purposes for the introduction of the jury trial system in Korea is to enhance democratic legitimacy and judicial reliability, since the focus of judiciary mistrust by the public lies in the sentencing.\textsuperscript{70} Thus, listening to the jury’s opinion during sentencing deliberation is regarded as very meaningful and important.

Issues of relevancy or admissibility of evidence during a bench trial do not create a serious problem because the judge can consider all evidence presented and make determinations independently.\textsuperscript{71} In a Korean jury trial, because the jurors engage in determining guilt and sentencing, evidence that is not necessarily relevant in determining guilt may also be introduced. This is problematic in three ways. First, the investigative reports related to sentencing consideration, which lack admissibility to determine guilt, can potentially create dangers for prejudgment and bias. Second, this bias compromises the defendant’s ability to present materials to the jurors that may mitigate the sentencing at the same time he or she is pleading not guilty. Third, as soon as the court implicitly initiates the sentencing deliberation, the jurors might think that the judge is predisposed towards finding the defendant guilty. In the end, it

\textsuperscript{66}The need for a standardized jury instruction manual, by different types of cases, is frequently raised by the presiding judges of the jury trial. Sang-gyun Chang, \textit{Gukminchamyoejaepan unyeongsangul myeotgaji munjejeom [Issues in Conducting in Civil Participation Trials]}, in HAN & HAN, supra note 5, at 349.

\textsuperscript{67}Lee, \textit{supra} note 25, at 56.

\textsuperscript{68}For an estimation of the costs of the Korean jury trial, see Kyeong-Rae Park, \textit{Gukminchamyoejaepanjedoui biyonggwa pyeonige daehan sogo [A Study on the Cost and Benefit of the Civil Participation Trials]}, in Han & Han, \textit{supra} note 5, at 279-291.

\textsuperscript{69}National Court Administration, \textit{supra} note 6, at 7.

\textsuperscript{70}Lee, \textit{supra} note 25, at 38.

\textsuperscript{71}The CPC states that the probative value of evidence is left to the discretion of judges. The CPC, art. 308.
fundamentally challenges the essential feature of the jury trial – independent review of evidence and deliberation. In order to solve these problems, some have advocated for the division of court proceedings into two stages: a guilty determination first without considering the sentencing materials and the sentencing deliberation next. This suggestion is worth considering.

Because jurors lack the experience of sentencing and normally do not engage in disposing of the case, it is necessary to provide sufficient information regarding sentencing. Whether it is desirable to provide jurors with the sentencing guideline becomes an issue. Because jurors deliberate sentencing from a layperson’s perspective, some scholars have argued not to disclose the sentencing guideline to jurors. Moreover, the sentencing guideline may be revised in considering jurors’ deliberation opinions. It is reported, however, that most courts provide the sentencing guideline to jurors during the sentencing deliberation.\footnote{Lee, supra note 25, at 40.} In my opinion, the sentencing guideline should be provided to enable jurors to make better-informed decisions.

When a defendant is found guilty by a majority vote, the issue arises as to whether those who voted not guilty should participate in the sentencing deliberation. It may not be desirable to entirely exclude jurors who voted not guilty from the sentencing deliberation. When jurors cannot render a sentencing opinion because of their belief in the defendant’s innocence, then such facts must be explicitly stated in the sentencing reports.\footnote{Id. at 41.}

C. Enhancement of Courtroom Communication

Every aspect of a Korean jury trial is conducted orally. The judge must listen to the oral arguments presented by the public prosecutor and the defense attorney. The success of the jury trial system depends on how the judge, public prosecutor, and the defense counsel explain and persuade the lay jurors on the main legal issues and the legal principles they apply. In order to accomplish this, the issues must be clearly identified and comprehensively investigated during the open proceedings with clear and intelligible words. Two recent initiatives are worth mentioning here.

In 2009, the Supreme Court organized a research group to study the ways oral proceedings may be better conducted in a courtroom. This group was composed of judges, public prosecutors, attorneys, as well as professors in law and relevant social sciences. Among other activities, a sample of real court proceedings were videotaped and critiqued by members of the group. Each presented their opinions based on their expertise, and outside speakers were frequently invited to stir discussions. At the end of the meeting, several hypothetical scenarios (both civil and
criminal) were formulated, and each member participated in role-playing exercises to incorporate the models that were developed during the project.

Based on collaborations between attorneys, the judiciary, and social scientists, the Judicial Research and Training Institute recently assembled a research team to study judicial behavior and to make determinations on communicative aspects of court proceedings. The judiciary has never undertaken such an initiative before. The experience of jury trials will provide significant resources for a proliferation of empirical analysis.

D. Proliferation of Empirical Jury Studies

Many empirical studies have been conducted by law and psychology scholars using mock juries. Because the National Court Administration is willing to support such studies, the general atmosphere for conducting them is ripe. In addition, all aspects of such trials are currently recorded or videotaped with the exception of jury deliberations. Also, the small number of jury trials and their short (one-day) duration create a supportive research environment for such a study.

Judge-jury agreement is also a promising area for empirical inquiry. These studies are greatly needed due to the mismatch between advisory jury verdicts and court judgments, which will create a problem if the Korean legislature decides to make jury verdicts binding. If many cases are mismatched, the effectiveness of the jury trial system will be put into question. What legal or nonlegal factors have contributed to such mismatches is an issue that empirical jury studies are expected to illuminate.

What remains to be tested is the reliability and the legitimacy of civil participation in the judicial decision-making process. Whether Korean lay jurors are too emotional or whether a jury verdict may be based on regional consciousness rather than on more objective legal criteria requires elaborate empirical evaluation.

Based on an initial analysis of cases I gathered in 2009, determination of guilt did not vary significantly among different regions. Rather, a large difference existed in terms of defendants’ admission of indicted facts. In almost all cases in Kyungbuk province, defendants

74 The Judicial Research and Training Institute (JRTI) was established by the Supreme Court to educate and train future judges, public prosecutors, and private attorneys. Only successful applicants of the judicial examination (the old bar examination) can enter the JRTI. It has been functionally replaced by the new postgraduate law schools since 2009, but will continue to exist until 2017. See generally Jasper Kim, Socrates v. Confucius: An Analysis of South Korea’s Implementation of the American Law School Model, 10 ASIAN-PAC. L. & POL’Y J. 503 (2009).

75 The Act, art. 40(1).

76 Author’s note: residents in this region tend to be respectful toward national authorities.
admitted the indicted facts presented by the public prosecutor, whereas most defendants in the Seoul Metropolitan Area did not accept the indicted facts in totality. In other regions, these two aspects were evenly distributed.

The difference may be explained in terms of the type and complexity of the cases. For instance, cases submitted to the Seoul Metropolitan Area were more complex and difficult. My data indicates defendants in murder cases were more likely accept the indicted facts, whereas non-murder cases defendants did not generally admit the indicted facts. This difference is statistically significant. The type and complexity of cases does not appear to shed much light on the regional difference.

The possibility remains that regional difference in peoples’ respect for public authorities, such as public prosecutors, may play a role. Much literature on Korean political communications shows such a tendency. If court proceedings are characterized as communication, then Korean jury trials demonstrate explanatory power for the regional difference in verdicts. Where there is high respect for public prosecutors and the police, the defendants tend to admit the indicted facts. Where the level of respect for public prosecutors and the police is relatively low (e.g., Seoul Metropolitan Area), very few defendants admitted the indicted facts. In this regard, these regional differences could serve to explain the difference in the verdict outcomes. Again, my study is exploratory at best at this moment, and this regional difference deserves more elaborate investigation.

V. CONCLUSION

The introduction of jury trials will allow laypersons to directly contribute to core judicial decision-making. This new system is expected to enhance the democratic legitimacy of trials by improving the transparency of the judicial process, thereby strengthening popular faith in judicial decisions. The past two years of experience shows signs that many of the expected changes are indeed occurring.77

The number of jury trials is consistently increasing. In most cases, a jury’s verdict and the court’s judgment matched in both determination of guilt and sentencing. In a short period of time, open court proceedings and concentrated reviews have been significantly realized in jury trials. Legal languages used in the courtroom were gradually refined for laypersons to comprehend. The public prosecutors and attorneys involved in jury trials are becoming more sophisticated and experienced in the new system. The Supreme Court is very much supportive for successful implementation of the jury system, and empirical studies on juries are increasing.

77 For a very thoughtful reflection written by a presiding judge of the jury trial, see Jong-ju Ko, Gukminchamyeojaepan weonnyeomui hwoegowa jonmang [Retrospect and Prospect of the Civil Participation Trial After One Year of Implementation], in HAN & HAN, supra note 5, at 451-467.
The positive implementation of jury trials so far will eventually enhance credibility of resulting judicial decisions in the public’s eye. Jury trials in Korea will certainly change fundamental aspects of criminal trials in general, modifying the role of the judge, the trial strategies of both prosecutors and defense attorneys, and the evidentiary rules that are applicable to court proceedings. If the Korean jury trial system experiment becomes successful in the future, it will create meaningful implications for other countries that are contemplating civil participation in their judicial decision-making.