

What's Happening in the Jury Room? — Analyzing Shadow Jury Deliberations in Korea*

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Abstract

This paper looked into the jury deliberation process by examining shadow jury deliberations in 18 actual cases between November 2010 and July 2011 in Korea. Based on the direct observation and the content analysis of the videotaped deliberation, we examined four key areas in jury deliberation in order to gain insights and implications for the institutional design of the jury system: (1) the binding effect of the jury verdict, (2) the number of jurors, (3) the jurors' deliberations regarding both conviction and sentencing, and (4) the judge's intervention in jury deliberation.

The results demonstrate that the shadow jurors in general actively participated in the deliberation process by speaking in turn, and were respectful toward other jurors in debate. The jury forepersons positively played their role by giving jurors equal chance to talk and managed the discussion well. Misunderstanding of law and the intermingling of facts relevant to conviction or sentencing were not as frequent as many people expected: when such problems occurred, they were most often corrected through the intervention of other jurors or judges. Most judges were helpful in jurors' reaching a verdict in the jury room. Also there was no definitive relationship between the size of the jury and the quality of deliberation. On the other hand, the shadow jurors tended to state their initial positions early in the deliberation process without fully discussing the issues first. They oftentimes made arguments not based on evidence. In addition, jurors' emotions affected decision-making in some instances.

Although encouraging aspects as well as areas for improvement coexist, the overall quality of jury deliberation in Korea, as evidenced by this study, is positive. Over time, the Korean jury

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system is expected to be firmly established as a robust institution to increase democratic participation of the lay people and to enhance the credibility of the judiciary.

KEY WORDS: jury studies, Korean jury trial, shadow jury, deliberation, judge, jury size

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I. Introduction

Jury trials were first introduced in 2008 in Korea.¹⁾ The Korean jury system, as envisaged in the Act for Civil Participation in Criminal Trials of 2007 [*Gukminui hyeongsajaepan chamyoeo gwanhan beoprul*] (the “Act”), incorporates elements of both the U.S.-style system and the German lay assessor system to be implemented during an initial five-year experimental phase. The idea of utilizing the two primary styles of lay participation was to experiment with each of them in the Korean context in order to come up with the most appropriate model.

The Korean jury system was to serve dual purposes: to increase democratic participation of the lay people and to enhance the credibility of the judiciary.²⁾ It is regarded by scholars as an effective channel to infuse the public’s sense of justice into judge-only decisions,³⁾ which were frequently criticized as dogmatic and elitist. As of the end of the year 2012, a total of 848 jury trials had been held, and the number of jury trials has consistently increased from year to year.⁴⁾ This fact alone demonstrates that the jury system has furthered democratic ideals in Korean judicial decision-making.

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); see also Jae-Hyup Lee, *Korean Jury Trial: Has the New System Brought About Changes?*, 12 ASIAN-PACIFIC L. & POL’Y J. 58 (2010).

2) *Gukminui hyeongsajaepan chamyoeo gwanhan beoprul* [Act for Civil Participation in Criminal Trials], Act No. 8495, June 1, 2007, art. 1(1)(S. Kor.) [hereinafter the Act].

3) NORMAN J. FINKEL, *COMMONSENSE JUSTICE: JURORS’ NOTIONS OF THE LAW* (1995).

4) The number of jury trials was 64 in 2008, 95 in 2009, 162 in 2010, 253 in 2011, and 274 in 2012. Jongsun Kang, *Gukmin chamyoeo jaepanui heyonhwanggwawa gwaje* [Status and Task of the Civil Participatory Criminal Trials], National Court Administration, 2013 (on file with the author), at 2.

On the other hand, the mere addition of lay people into the judicial decision-making process does not necessarily enhance the credibility of the judiciary, which is the second prong of the legislative purpose. It is only fulfilled when the general public believes, at a minimum, that jurors' decisions are as well-reasoned and reliable as those of professional judges. The success of the jury system requires the people's support and respect for jury verdicts.

The general mistrust of lay people as unable to engage in meaningful discussion and to reach consensus in a rational manner was one of the main reasons for opposing the jury system. This criticism centers on cultural assumptions about Korean people: namely, that they are emotional and are easily influenced by non-legal factors during the decision-making process;⁵⁾ that they are influenced by elders or the more educated during the deliberation process; and that they are not accustomed to participating in public debate, especially concerning sensitive subjects. These tendencies are said to be more pronounced amongst young females. There is some truth in this description of Korean people. In fact, the Korean education system discourages debate and contradiction of teachers or similar authorities, and students are encouraged to follow hierarchical order with the admonition that silence is golden.

But on the other hand, if one considers internet sites and recent social media trends, Koreans do frequently and passionately discuss social and political issues. Anecdotal evidence and experience indicates that Koreans in fact have great enthusiasm for discussing politics and the issues of the day in social gatherings. Moreover, there is a conflicting assessment that Korean jurors do not wrongfully make decisions due to emotional influences.⁶⁾ This complexity leads us to suspect that the reflexive pessimism regarding the Korean jury system could be based on misconceptions.

Indeed, many legal practitioners who are involved in jury trials have witnessed positive effects of the new system towards open and concentrated

5) Byung-Soo Kim, *Gukminchamyegojaepanui jungganpyeongga* [The Interim Appraisal of the Civil Participation in Criminal Jury Trial], 83 HYEONGSAJEONGCHAEKYEONGU [KOR. CRIMINOL. REV.] 311 (2010).

6) In Sup Han, *Hangukui baesimwonjaepan* [Criminal Jury Trials in South Korea: Issues and Initial Experiments], 50 SEOULDAEHAKGYO BEOPHAK [SEOUL L.J.] 681, 704 (2009).

court proceedings.⁷⁾ Some judges have confessed that they became much respectful about lay decision-making after presiding over jury trials.⁸⁾ They also noted that jurors are not easily swayed by emotions but are conscious of the need for rational deliberation and conscientious in executing their duty to be impartial decision-makers.

Although concerns about the Korean jurors in the new system still exist, there are positive evaluations of the ability and the commitment of Korean jurors as well. Indeed, the past five years of jury trial experience shows that the final court judgments have matched with jury verdicts over ninety-percent of the time,⁹⁾ even though the jury verdicts are advisory in nature.¹⁰⁾ The high matching rate between jury verdicts and the court judgments in Korea may suggest a positive outlook on the credibility of the verdict.

However, in order to reach an informed view on whether jury verdicts are the product of a rational and confidence-inspiring process, an empirical analysis of actual jury deliberations is required. The quality of deliberation in the jury process, i.e., how the Korean jurors are engaged in the discussion of fact-finding and sentencing, and whether any meaningful deliberation happens at all in the process, is a central question for such analysis. As other empirical studies suggest, we believe the jurors who have engaged in quality deliberation are more likely to have satisfying experiences and consequently are expected to have increased confidence in the jury system and the legal system as a whole.¹¹⁾ In this sense, the quality of deliberation can be regarded as a key to sustaining the durability of the jury system in Korea.

The jury room dynamics may affect the outcome of the deliberation. We

7) See IN SUP HAN AND SANG HOON HAN, GUKMINUI SABEOPCHAMYEO [CIVIL PARTICIPATION IN JUDICIAL DECISION-MAKING] (2010).

8) Jin-Gyeong Cheong, *Gukminui hyeongsajaepan chamyoeo gwanhan beopryule tareun baesimweonjaepanui yueuijeom* [Key Points of Jurors' Trial under People's Participation in Criminal Trial Act], 100 THE JUSTICE 97 (2007).

9) Sangjoon Kim, Jaihyun Park, Kwangbai Park, Jin-Sup Eom, *Judge-Jury Agreement in Criminal Cases: The First Three years of the Korean Jury System*, 10 J. EMP. L. ST. 35, 42 (2013).

10) The Act, art. 46(5).

11) JOHN GASTIL, E. PIERRE DEESS, PHILIP J. WEISER AND CINDY SIMMONS, THE JURY AND DEMOCRACY: HOW JURY DELIBERATION PROMOTES CIVIC ENGAGEMENT AND POLITICAL PARTICIPATION 101 (2010).

were interested in examining the process, mechanism, and the quality of jury deliberation by actually observing the deliberation itself. Such a study, however, is extremely difficult in the Korean jury system, because juries deliberate in secret and jurors are not expected to provide reasons for their verdict. Due to this limitation, most of the previous studies in this area are thus based on experimental juries with hypothetical cases, oftentimes with mock jury panels consisting of college students.

In England and the U.S., very few studies on the shadow jury have been conducted to examine the validity of mock jury studies. Among the very limited previous shadow jury studies, McCabe and Purves studied 30 shadow juries sitting for actual trials in England.¹²⁾ In the U.S., Diamond and Zeisel assessed the effectiveness of *voir dire* strategies by comparing a jury's verdict to the judgments of a shadow jury composed of jurors who were excused on preemptory challenges.¹³⁾ Although the shadow jury has been used by jury consultants to assist trial preparations¹⁴⁾ in the U.S. and elsewhere, it was seldom used as a research tool beyond these two representative studies.

In Korea, a number of district courts around the country started a "shadow jury program" in September 2010, in order for people to actually experience the judicial process through voluntary participation. The court intended to improve the public perception of the judiciary's credibility through this program. So far the program has been successfully administered.¹⁵⁾

Amidst this divergent assessment about the jury system and the newly developed shadow jury program, the Committee on Civil Judicial

12) SARAH McCABE AND ROBERT PURVES, *SHADOW JURY AT WORK* (1974).

13) Shari Diamond and Hans Zeisel, *A Courtroom Experiment on Juror Selection and Decision-Making*, 1 *PERSONALITY AND SO. PSYCHOL. BULL.* 276 (1974).

14) Donald E. Vinson, *The Shadow Jury: An Experiment in Litigation Science*, 68 *A.B.A. J.* 1242 (1982).

15) The Seoul Central District Court, for instance, has administered the shadow jury program more than 30 times since January 2011. More than 400 people volunteered to become shadow jurors. Gukminchamyeojaepan geurimjabaesim chamyeo annaemun [A Guide to Shadow Jury Program], available at newsletter.seoulbar.or.kr/system/webzine/viewDownFile.php?id=167.

Participation (the “Committee”),¹⁶⁾ established by the Supreme Court, recommended a final format of the Korean jury system to the National Assembly in March 2013, which it presented after assessing the performance of the jury trials for the past five years.¹⁷⁾ The recommendation consists of some major changes in the system in relation to the jury deliberation. First, the jury verdict becomes *de facto* binding, meaning the court must respect the jury verdict, unless it is clearly contrary to the Constitution or statutory law. The jury opinion on the sentencing remains advisory. Second, the decision-making rule of the verdict is strengthened to require a three-fourths majority to reach a verdict. If the 3/4 majority is not reached, the court nevertheless renders a judgment, with reference to the jury opinions. Third, the number of jurors can either be seven or nine, but not five. Upon this recommendation, the Minister of Justice is expected to submit a bill, revising the existing Act.¹⁸⁾

In this paper, after first detailing the major areas of focus that we consider central to the assessment of Korean jury deliberations, we will broadly report the results of our shadow jury study, which was based on direct observation of shadow jury deliberations. We will address some key areas in jury deliberation that the Committee considered in the context of the institutional design of the jury system in Korea, namely, (1) the binding effect of the jury verdict, (2) the number of jurors, (3) jurors’ deliberation in conviction and sentencing, and (4) the judge’s intervention in jury deliberation. We will then provide some insights and implications based on the results of the shadow jury study.

Specifically, we will examine the following aspects. First, we explore whether there are any problems in making jury verdicts binding, with a particular focus on the quality of deliberation and the role of the jury

16) The Act, art. 55.

17) The Korean jury system was implemented on a trial basis for the past five years, in order to assess the actual experience of citizen participation in trials. Han, *supra* note 6, at 695.

18) On October 11, 2013, the Ministry of Justice posted a bill for public comments. Beopmubu Gonggo 2013-221, available at https://www.moj.go.kr/HP/COM/bbs_01/Download.do?FileDir=/attach/f2013/&UserFileName=%C0%D4%B9%FD%BF%B9%B0%ED%B9%AE.hwp&SystemFileName=20131011174979_1_%C0%D4%B9%FD%BF%B9%B0%ED%B9%AE.hwp. At the time of this article’s publication, legislation had not yet been submitted to the National Assembly for consideration.

foreperson. Second, we seek to determine whether the content and quality of deliberation differs depending on the number of jurors. Third, we identify the way shadow jurors discuss the matter of conviction and sentencing; this is particularly relevant because Korean juries simultaneously evaluate the defendant's guilt and form opinions regarding appropriate sentencing, which, in the case of a conviction, are presented to the judge. Finally, we aimed to assess whether and to what extent the intervention of judges affects the conviction deliberation and the sentencing discussion.

II. Areas of Focus

1. Jury Verdict Process

A major reason why the jury verdict in Korea is advisory is to evade a potential constitutional challenge. Because the Korean Constitution gives one the right to be tried by a judge, a binding jury verdict may contradict this right by putting the fate of the defendant in the hands of laypeople.¹⁹⁾ The debates on the constitutionality of the jury system are not conclusive at this point.²⁰⁾ It is precisely due to the possibility of this constitutional challenge that the Committee recommended granting a *de facto* binding effect, rather than a complete *de jure* binding effect.

The matter of the binding effect of the jury verdict is the most critical issue in deciding the final format of the Korean jury system. Many commentators have advocated for binding jury verdicts based on the past

19) Article 27(1) of the Korean Constitution provides for "the right to trial according to law by judges qualified and appointed under the Constitution and relevant Acts." DAEHANMINGUK HUNBEOB -[CONSTITUTION OF THE REPUBLIC OF KOREA](1987), translated at <http://www.law.go.kr/lsInfoP.do?lsiSeq=61603&urlMode=engLsInfoR&viewCls=engLsInfoR#0000>.

20) Young Sol Kwon, *Baesimje, Chamsimjeui doipnoneuiwa geu heonbeopjeokhapseong munje* [Constitutional Issues in the Proposed Adoption of Jury System in Korea], 26 BEOPGWA SAHOE [LAW & Soc'y] 97 (2004); Sung Gi Hwang, *Hangukeseoeui chamsimjewa baesimjeui heonbeopjeokhapseong* [The Constitutionality of the Jury or Lay Judge System in Korea], 26 BEOPGWA SAHOE [LAW & Soc'y] 123 (2004).

few years' experience.²¹⁾ In practice, the jury verdicts and the judge's rulings matched in 92.2% of the time.²²⁾ Moreover, 81 percent of the 2,595 jurors surveyed from January 2010 to June 2012 across the nation responded in favor of entrusting the final verdict to the jury.²³⁾ However, there is still much reluctance amongst legal practitioners to grant a complete binding force.²⁴⁾

In this debate, the rationality and the credibility of the jury verdict is a key determinant of policy. A number of mock studies conducted in Korea tried to assess jury deliberation in comparison with judges' decisions. One study found that "anchors" (suggested reference point) influenced the decisions of both actual judges and mock juries composed of college students.²⁵⁾ In another study, one official jury and two shadow juries convened in a mock trial.²⁶⁾ Despite the initial vote splits at the beginning of deliberation, all three juries reached unanimous verdicts of acquittal at the end.²⁷⁾ The study concluded that the mock jurors reached unanimous verdicts not because the minority jurors capitulated to social pressure, but because they acquired reasonable doubt about the guilt of the defendant

21) Misuk Park, *Gukminchamyoejaepanui sihaengseonggwawa hyanghugwaje* [The Results of Judicial Citizens' Participation System and Tasks in the Future], 82 HYEONGSAJEONGCHAEKYEONGU [KOR. CRIMINOL. REV.] 135 (2010).

22) Among the 66 cases in which the verdict and the ruling did not match, the jury verdict was not guilty and the judges' verdict was guilty in 62 cases. Kang, *supra* note 4, at 14.

23) Sang Hoon Han, *Gukminchamyoejaepaneseo baesimwon pyeonggyeolui gisokjeok hyoryeoke gwanhan geomto* [An Analysis and Suggestion of Binding Force of Jury Verdict in Korea], 24 HYEONGSAJEONGCHAEK [KOR. J. OF CRIMINOLOGY] 9 (2012).

24) Il-Hwan Moon, *Gukminchamyoejaepane daehan silmujeok jeopgeun* [Practical Approach on Jurors of Jury System: Focused on Jury Selection, Jury Verdict, Jury Sentencing], 135 THE JUSTICE 173 (2013).

25) Kwang B. Park, Sang Joon Kim & Mi Young Han, *Gasangjeokin jaepan jaengjeomeoseoui hyeonyeokpansauui pandangwa mouibaesimui jipdanpandane daehan injijeok bangryakui hyogwa* [Effects of Cognitive Heuristics on the Decisions of Actual Judges and Mock Jury Groups for Simulated Trial Issues], 11 HANGUKSIMRIHAKHOJI SAHOIMUNJE [KOR. J. PSYCHOL. & SOC. ISS.] 59 (2005).

26) Kwang P. Park, Sang Joon Kim, Eunro Lee and Hyeson Seo, *Hyeongsabaesim pyeonguieseoui sahoijeok dongjowa injijeok jeonhyang: hanguk choichoui siminbaesim mouijaepanui pyeongui daehan naeyongbunseok* [Social Conformity and Cognitive Conversion During Jury Deliberations: A Content Analysis of Deliberation Arguments in the First Officially Simulated Jury Trial in Korea], 19 HANGUKSIMRIHAKHOJI SAHOI MIT SEONGGYEOK [KOR. J. SOC. & PERS. PSYCHOL.] 1, 6 (2005).

27) *Id.* at 7.

based on the convincing arguments of the majority jurors.²⁸⁾

These studies provide some indications of rationality in jury deliberation, but in order to evaluate the quality of deliberation objectively, we need to observe deliberations directly to identify the problems that might arise if jury verdicts are binding and the potential factors that contribute to the quality of deliberation.

Several factors or indicators can contribute to the quality of deliberation. Cornwell and Hans illustrated that jury participation is indeed structured by individual-level social status characteristics.²⁹⁾ Devine et al. has identified five criteria for assessing deliberation quality: instruction comprehension, evidence review, factual focus, systematic participation, and informational influence.³⁰⁾ In a Korean study, three descriptive indices were identified to quantify characteristics of mock-jury deliberation: the frequency of speaking among and between the jurors, the richness of jurors' intervention and response to other jurors' speaking, and the evenness of the intervention and response.³¹⁾ Although these studies are instructive, very few have been conducted through actual observation of jury deliberations.

Whether and to what extent the jurors understand the judge's instructions is the key to defining the quality of deliberation.³²⁾ A survey conducted by the National Court Administration of Korea indicates that most jurors (87.9%) say that they understand all or most of the trial procedure. The most frequently mentioned difficulties identified in this study were the length of the trial (46.4%) and the difficulty understanding legalese (23.3%). Most jurors reported that they focused attentively during the trial (86.8%) and actively expressed their opinions during deliberation

28) *Id.* at 14, 16.

29) Erin York Cornwell and Valerie P. Hans, *Representation through Participation: A Multilevel Analysis of Jury Deliberations*, 45 *LAW & SOC'Y REV.* 667 (2011).

30) Dennis J. Devine, Jeniffer Buddenbaum, Stephanie Houp, Dennis P. Stolle, and Nathan Studebaker, *Deliberation Quality: A Preliminary Examination in Criminal Juries*, 4 *J. EMP. L. STUD.* 273, 280 (2007).

31) Kwangbai Park and Eunro Lee, *Baesimpyeonguiui yangjeok teukseongul gyerangjeokuro gisulhaneun segaji jisu [Three Descriptive Indices to Summarize the Quantitative Characteristics of Mock Jury Deliberations]*, 11 *HANGUKSIMRIHAKHOJI SAHOI MIT SEONGGYEOK [KOR. J. SOC. PERSONALITY PSYCH.]* 1 (2006).

32) Neil Vidmar and Shari Diamond, *Juries and expert evidence*, 66 *BROOK. L. REV.* 158 (2001).

(72.3%). A majority (69.9%) found the jury instructions to be helpful.³³⁾

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.³⁴⁾ The same study, however, also found that judges were not nearly as clear in their explanations of the elements or degrees of a crime, and that as a consequence jurors sometimes had difficulty during deliberations.³⁵⁾ Some scholars have suggested that to increase effective jury instructions, obscure legal terminology must be replaced by plain Korean language, and standardized jury instruction manuals need to be developed.³⁶⁾ A recent empirical study shows that the change of the jury instructions, adding more explanations and examples, made a difference in jurors' understanding of legal concepts such as "beyond a reasonable doubt."³⁷⁾

Content characteristics of the deliberation, e.g., the form of speech, intensity of debate, and interaction among jurors, can also affect the quality of deliberation. Whether each juror contributes sufficient speech in terms of quantity and quality is a key aspect in this regard. Whether the jurors focus on evidence presented to the court, understand the legal standards and apply the law to the evidence adequately is another dimension of deliberation quality.

Jurors' style of deliberation also matters. Studies have identified two styles of deliberation.³⁸⁾ An "evidence-driven deliberation" occurs when jurors go around the table offering comments about the trial, including the evidence they found the most compelling. Evidence-driven deliberations have been found to include more wide-ranging and better-focused

33) Kang, *supra* note 4, at 18-19.

34) MISUK PARK ET AL., GUKMINCHAMYEOJAEPANE DAEHAN CHAMGWANMIT JOSAYEONGU [A STUDY OF THE JURY TRIAL SYSTEM IN KOREA] 44 (Korean Institute of Criminology ed., 2008).

35) *Id.* at 260-62.

36) Gidu Oh, *Baesimwonui pandanneungryeok [The Ability of Juries to Find Fact]*, 96 THE JUSTICE 124, 133 (2007).

37) Jong-Dae Kim, Eun-Lo Lee, and Sang-Hoon Han, *Haprijeok uisimui yeoji eopneun jeungmyeong gijune daehan baesimwonui ihaedo yeongu [Study on Mock Juror's Understanding of Proof Beyond a Reasonable Doubt Standard]*, 21 BEOPHAKYEONGU [YONSEI L. REV.] 1 (2011).

38) REID HASTIE, S.D. PENROD AND N. PENNINGTON, *INSIDE THE JURY* 163-65 (1983).

discussions.³⁹⁾ Another style of deliberation, “a verdict-driven deliberation,” involves a public vote taken almost immediately so that the jurors can see where they stand. Empirical studies have not provided conclusive evidence as to which deliberation style is dominant in most cases. In one study, verdict-driven deliberation is manifested more frequently and the majority opinion at the first vote tends to stand;⁴⁰⁾ another study shows that jurors spend much time discussing evidence before taking a formal vote.⁴¹⁾

Studies have shown that jury forepersons participate more than non-forepersons and are viewed as more influential in deliberations.⁴²⁾ Jurors are likely to perceive the foreperson as influential because he participates so actively in deliberations.⁴³⁾ Jurors were less satisfied with their jury experience if one or two jurors dominated the deliberations.⁴⁴⁾ Therefore, it is important to find out whether deliberation is dominated by a few jurors, whether the jurors’ opinions were equally considered, and whether the jurors were open to other jurors’ opinions. The jury foreperson’s role is again important here because he or she can manage the debate by allocating the opportunity to talk equally.

It is generally believed that each deliberation should be guided by logic and reason rather than emotion. However, excluding emotion completely would be very difficult in practice, and may not even be desirable. One scholar divided the deliberation process into the rational deliberation model and the relational deliberation model. He argued that emotion can oftentimes deepen the discussion and induce more participation.⁴⁵⁾ Empathy is said to enhance the seriousness of a juror’s commitment to the

39) *Id.*

40) *Id.*, at 64.

41) Shari Diamond et. al., *Inside the Jury Room: Evaluating Juror Discussions during Trial*, 87 JUDICATURE 54 (2003).

42) Erin York & Benjamin Cornwell, *Status on Trial: Social Characteristics and Influence in the Jury Room*, 85 SOC. FORCES 455 (2006)

43) A Bavelas et al., *Experiments on the Alteration of Group Structure*, 1 J. EXPERIMENTAL SOC. PSYCHOL. 55, 59 (1965).

44) Michael Antonio & Valerie Hans, *Race and the Civil Jury: How Does a Juror’s Race Shape the Jury Experience?* in Ronald Roesch et. al. (eds.), *PSYCHOLOGY IN THE COURTS: INTERNATIONAL ADVANCES IN KNOWLEDGE* (2001).

45) David Michael Ryfe, *The Practice of Deliberative Democracy: A Study of 16 Deliberative Organizations*, 19 POL. COMM. 359, 360 (2002).

deliberation process.⁴⁶⁾ So the involvement of emotion will not create a problem in all cases. We are particularly interested in evaluating whether jurors find it difficult to make a legally correct decision due to emotions. Comments such as “if the defendant is found guilty, the defendant and his family may experience hardship,” or “the defendant’s miserable early childhood and upbringing contributed to the commission of the crime” may suggest jurors’ emotion, so we try to evaluate its undue influence in making a legally correct decision.

2. Number of Jurors

The number of jurors in a Korean jury trial 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.⁴⁷⁾ In all other cases where the defendant’s guilt is contested, there are seven jurors.⁴⁸⁾ In cases where the defendant pleads guilty to most of the indicted counts, five jurors can be used.⁴⁹⁾ The prosecution and the defense may also change the number of jurors if both sides agree.⁵⁰⁾ During the last five years (2008-2012), seven jurors were most frequently selected (57.8%), whereas nine jurors were selected in 32.4% of the cases and five jurors were selected in 9.8% of the cases. In light of this distribution, the final format recommendation by the Committee has abolished the five-member jury, because it is seldom used.

In the U.S., the debate on the number of jurors began when some states tried to reduce the twelve-member jury to a lesser number jury. The U.S. Supreme Court, in *Williams vs. Florida*, opined that six-person juries were functionally equivalent to twelve-person juries.⁵¹⁾ However, this opinion was challenged by later empirical studies,⁵²⁾ most notably by Michael Saks

46) Todd E. Pettys, *Emotional Juror*, 76 *FORDHAM L. REV.* 1609, 1625-1639 (2007).

47) The Act, art. 13(1).

48) *Id.*

49) *Id.*

50) *Id.*, art. 13(2).

51) *Williams v. Florida*, 398 U.S. 78 (1970).

52) Michael E. Saks, *The Smaller the Jury the Great the Unpredictability*, 79 *JUDICATURE* 263 (1996).

and Molli Marti. It suggested, as have other studies, that larger juries took longer to deliberate than smaller juries, and larger juries discussed trial testimony more thoroughly and tended to recall more case facts than smaller juries.⁵³⁾ In another study, when the juries were allowed to take notes in the trial, the larger juries recalled more probative facts after deliberation than smaller juries.⁵⁴⁾

In Korea, it was a matter of decision to design the jury system between the smaller lay assessor model and the large jury model.⁵⁵⁾ The relevant question for Korean observers is which number of jurors provides the most optimum process and verdicts. The relationship between jury size and deliberation quality is still ongoing and is an insufficiently explored area of research.⁵⁶⁾ Although our shadow jury study is not focused on the effect of jury size upon deliberation quality, we will nonetheless offer some initial observations based on our data.

3. *Combination of Conviction Deliberation and Sentencing Deliberation*

Korean jurors not only deliberate on conviction but also engage in sentencing deliberation with the judge and submit their opinions.⁵⁷⁾ The presiding judge explains to the jurors the scope of punishment and the condition for sentencing before deliberation begins.⁵⁸⁾ Instead of deciding by vote, each juror provides sentencing opinions. This is a significant departure from the U.S. jury system, which Korean jury system is modeled after. Because the public distrust of the judiciary in criminal trials had focused on the sentencing issue, lay participation in sentencing deliberation was inevitable from the start.⁵⁹⁾

53) Michael Saks and Molli Marti, *A Meta-analysis of the effects of jury size*, 21 LAW AND HUM. BEHAV. 451 (1997).

54) Horowitz and Bordens, *The Effects of Jury Size, Evidence Complexity and Note Taking on Jury Process and Performance in a Civil Trial*, 87 J. APPL. PSYCHOL. 121 (2002).

55) Han, *supra* note 6.

56) Devine, *supra* note 30, at 44.

57) *Id.* Art. 46(4).

58) *Id.*

59) Sang Hoon Han, *Gukminui hyeongsajaepanchamyoejedo ipbeopnonui [Legislative Discussion on Civil Participation in Criminal Trials]*, 30 BEOPGWA SAHOE [LAW & Soc'y] 303, 313

The national statistics show that juries participated only in sentencing about thirty-three percent (33%) of the time, as the defendant had already admitted guilt.⁶⁰ Regarding sentencing, relatively small gaps were found between the majority opinion of the juries and the sentencing judgment.⁶¹ In 89.7% of the cases, the majority of sentencing opinions of the jury and the sentencing judgment did not differ much – two years of imprisonment at most.⁶² It is not clear why there is little discrepancy between jurors' opinions and the judge's sentencing decisions. It may be that the judges take the jurors' opinions into consideration, or it may be that the jurors and the judges independently tend to reach similar conclusions about sentencing. No empirical studies have yet been conducted to examine this.

The more crucial issue is the impact of the sentencing deliberation on the conviction deliberation. In Korean jury trials, procedures for verdict determination and sentencing are not separately managed. Therefore, evidence that is relevant to sentencing is introduced before the jury reaches its verdict. Evidence that is not necessarily relevant in determining the verdict—such as diminished capacity due to intoxication, the number of blows causing the bodily injury, or the defendant's prior criminal record—may influence the jurors' ruling on the facts. Some have suggested dividing jury trials into two separate phases, one to determine the verdict and the other for sentencing.⁶³

We will examine how frequently the shadow jurors are influenced by sentencing considerations in deciding conviction matters. If we find such a tendency, we will see whether this combination leads to wrongful decisions or whether this error is self-corrected by the intervention of other jurors or by judges (which will be discussed in the next section).

(2006).

60) Kang, *supra* note 6, at 11.

61) It has been observed that the sentencing gap between the judge and the jury narrows over the course of sentencing deliberation. *Id.* at 16.

62) *Id.*

63) Sang Hoon Han, *Gukminchamyeojaepanjedoeui jeongchakbanghyang [Recent Developments and Suggestions for the New Civil Participation in Criminal Trials System in Korea]*, 106 THE JUSTICE 483, 517-518 (2008); Hyungkwan Park, *Baesimwon yanghyeonge gwanhan jaengjeom geomto [Study on Selected Issues of Jury Sentencing]*, 23 HYEONGSAJEONGCHAEKYEONGU [KOR. CRIMINOLOGICAL REV.] 42, 63 (2012).

4. *Intervention of Judges in Deliberation*

Like in the U.S., Korean jurors deliberate in secret. They first discuss the guilt of the defendant and try to reach a unanimous verdict.⁶⁴⁾ The jury deliberation remains isolated unless one of two situations occurs. First, if half of the jurors agree, the jury may choose to hear the judge's opinion.⁶⁵⁾ Second, if the jurors cannot reach a unanimous verdict, they must hear the judge's opinion.⁶⁶⁾ Korean judges provide their opinions directly to the jurors in this second stage, although they should not make a statement of guilty or not guilty.⁶⁷⁾ After the judges and the jurors have discussed the guilt of the defendant together, the jurors, again outside of the presence of the judges, render a verdict based on a simple majority.⁶⁸⁾

Unless the jury reaches the verdict in the first stage of deliberation, the judge will have ample opportunity to share his or her views and opinions with the jury. This unique feature of the Korean jury system adds another dimension to assess the quality of deliberation: the influence of the judge. Although the law mandates that judges not make a statement of guilty or not guilty when they discuss the trial with the jurors, we cannot rule out the possibility of influence, without knowing exactly what is happening during deliberation.

Some may worry that the intervention of judges may hinder the jurors' independent judgment, and consequently, make jurors dependent on the judge's opinion.⁶⁹⁾ However, many judges who have presided over jury trials have stated that jurors asked for the judge's opinion because they had difficulty differentiating the factual determination and the legal

64) The Act, art. 46(2).

65) *Id.*

66) *Id.* art. 46(3).

67) Gukminui hyeongsajaepan chamyoeo gwanhan gyuchik [Rule for Civil Participation in Criminal Trials], Sup. Ct. Rule No. 2107, Oct. 29, 2007, art. 41(5) (S. Kor.).

68) The Act, art. 46(3).

69) Eun Mo Lee, *Hyeonhaeng gukininchamyoeojaepanjedoui naeyonggwa munjejeom: ilbonui jaepanwonjedowau bigyoreul jungsimuro* [The Substance and Problems of the New Citizen participation Criminal Trials System], 26 BEOPHAKNONCHONG [HANYANG L. REV.] 405 (2009).

interpretation.⁷⁰⁾ Moreover, the sentencing procedure is highly technical and requires scientific and professional knowledge, so jurors may need more guidance from the judge.

We will examine whether the judge's intervention was helpful in facilitating jury decision-making or hampered the independent judgment of the jury. We will compare the jury's preference to convict or acquit before and after the discussion with the judge and evaluate whether changes occurred due to influence of the judge's presence.

III. Data Gathering Procedure

1. Shadow Jury Composition

The present study tries to simulate the study of actual jury deliberations by utilizing the shadow jury. We tried to make the environment of shadow jurors and that of real jurors as similar as possible. The shadow jury sat through the trial, retired and then reached a verdict in parallel to the real jury. Eighteen shadow jury groups from 18 cases were examined. They were composed of juror candidates who were not selected during the *voir dire*. The ages of the shadow jurors were diverse, ranging from jurors in

Table 1. Demographic Characteristics of Shadow Jury

		Number of Shadow Jury
Gender (n=281)	Male	50 (42.7)
	Female	67 (57.3)
Age (n=283)	20s	30 (25.6)
	30s	24 (20.5)
	40s	24 (20.5)
	50s	27 (23.0)
	60s or over	15 (12.8)
Education (n=278)	Middle School or less	25 (21.4)
	High School	44 (37.6)
	College or over	51 (43.6)

70) Il- Hwan Moon, *supra* note 24.

their 20s to those in their 70s.

The total number of shadow jurors was 117, and their demographic characteristics are provided in Table 1. Male jurors were 42.7%, and the female jurors were 57.3%. The largest age group was the 20s (25.6%), and then the 50s (23.0%), the 30s (20.5%), the 40s (20.5%), and the 60s or over (12.8%). In terms of the education, 43.6% were college-educated. High school educated jurors were 37.6%, and middle school or less were 21.4%.

Shadow jurors watched the entire court proceedings and were also given the bench memo which includes the facts and the legal issues about the case, just like the real jurors. Then they were assigned different rooms for deliberation in secret. When the judge's intervention was needed as previously described, an associate judge of the judge panel went into each room to discuss the case with the shadow jurors. The length of deliberation ranged from 24 minutes to 104 minutes.⁷¹ The former was a "guilty plea" case. The latter was a "not guilty plea" case and was concluded after midnight. On average, deliberation in "guilty plea" cases was shorter (43.71 minutes) than in "not guilty plea" cases (55.54 minutes). The former generally has fewer legal issues than the latter; however, in some cases, guilty plea cases took as much time as not guilty plea cases where the jurors considered issues such as habitual crime or diminished responsibility due to lack of mental capacity. When the real jury deliberation began late at night after a lengthy court proceeding, the shadow jurors also stayed in court to deliberate and remained until the final court judgment was rendered.

71) According to national statistics, the real jurors spent from 20 minutes to 300 minutes in deliberation, and the average deliberation time was 98 minutes. Kang, *supra* note 6 at 8.

2. Video Content Analysis⁷²⁾

We observed the trials in question from the beginning to the end and then videotaped the shadow jury deliberations. A total of 18 cases were videotaped. We conducted a content analysis on the jury deliberation and analyzed how intense and interactive the discussion was, how frequently each juror spoke, what the subjects of the arguments were, how many issues were discussed, and how diverse the opinions were. We also investigated which factors might have influenced the nature of the deliberation. We paid attention to the jurors' demographic characteristics, their level of motivation in participating, political views, and also the composition of the jury such as the number of the jurors, gender, profession, and how homogenous or diverse the jury was. The role of the foreperson and his or her interaction with participants in debate and discussion was also noted.

3. Case Characteristics

Data for this study is based on 18 actual jury trials that occurred between November 2010 and July 2011, through the generous sponsorship of the Supreme Court of Korea. Ten cases were held in the Seoul Metropolitan Area, and the rest were held in various regions in Korea. The three crimes most frequently at issue in these cases were bodily injury resulting from robbery (23%), attempted murder (19%) and habitual

72) In this paper, we provide only the outcome of the direct observation and the video content analysis of the deliberation. We also took survey questions from the shadow jurors three times at different stages: pre-deliberation, post-deliberation, and post-judgment. We have provided the results of our survey questions in other publications. See Jae-Hyup Lee, Jisuk Woo, and June Woong Rhee, *Baesimwon pyeonguiui hapseonge gwanhan yeongu: gukminchamyeojaepaneseoui geurimja baesim pyeongui bunseok [A Study on the Rationality of the Jury Deliberation: Analysis of the Shadow Deliberations in Korean Jury Trials]*, 139 THE JUSTICE 208 (2013); Jisuk Woo, June Woong Rhee, and Jae-Hyup Lee, *Jaepanui gongjeongseonge daehan insige yeonghyangul michinun yoine daehan yeongu [The Effects of Trial Procedure Factors and Deliberation Factors on the Perception of Fairness About the Trial – Based on Shadow Jurors' Experiences at Jury Trials in Korea]*, 54 SEOULDAEHAKGYO BEOPHAK [SEOUL L. J.] 261 (2013).

larceny (19%).⁷³⁾ The defendants pleaded not guilty in the majority of cases (62%); at the rest of the cases, juries only deliberated on the sentencing issue.

The number of real jurors in our cases varied. The most frequent number of jurors was seven (67%); in most other cases, the number was nine (24%). A five-member jury was utilized only twice. We tried to match the number of the shadow jury to that of the real jury. However, it did not always match, due to the availability of the juror candidates who were willing to serve as shadow jurors.⁷⁴⁾

All the cases in our study were concluded in a single day, except one. Even this case was not split into two court days; instead, the verdict was reached around 3:00 am the following day of the court so it was counted as a two-day trial.⁷⁵⁾

The court made acquittal judgments in three cases (14%). When the court acquitted, the jury returned acquittal verdicts as well. However there were two cases (9.5%) where the jury verdict and the court judgment did not match. In these cases, the jury returned acquittal verdicts, whereas the court made guilty judgments. We did not analyze the reasons for this mismatch, due to the small sample size.

IV. Results and Discussion

1. Jury Verdict Process

We observed the shadow jury deliberation by measuring and assessing the following aspects. First, we measured the deliberation time, dividing the conviction deliberation and the sentencing deliberation. Because jurors

73) Among them, there were five cases related to bodily injury resulting from robbery, four attempted murder cases, four habitual larceny cases, and the remaining five cases related to manslaughter resulting from assault, murder and sexual offenses.

74) In seven out of 18 cases we observed, the shadow jury was smaller than the real jury; for instance, in some cases the size of real jury was seven, whereas the size of the shadow jury was five.

75) When the verdict is reached after midnight, the jurors are paid compensation for two days.

Table 2. Number of Jurors and the Deliberation Time

	5-6 Jurors	7 Jurors	8-9 Jurors	Total
Deliberation Time (Min.)	50.4	50.9	53.5	50.9
Number	9	7	2	18

Table 3. Initial Voting Time for Conviction

Time for Conviction	Frequencies (%)
within 10 minutes after start	11 (61.1%)
Within 10 minutes after start-10 minutes prior to end	3 (16.6%)
10 minutes prior to end	4 (22.2%)
Total	18 (100.0%)

proceed to deliberate on sentencing only after they find the defendant guilty, we could measure the time spent for each with few difficulties. Even in the case where the defendant admitted most indicted counts (“guilty plea” cases), jurors nevertheless must engage in the conviction deliberation to find whether the admission is supported by corroborating evidence. On average, jurors spent about 51 minutes in deliberation (the conviction deliberation took 36 minutes and the sentencing deliberation took 15 minutes). Table 2 shows that the larger jury spent a bit more time in deliberation.

We then looked at when the jurors first expressed their positions on the guilt of the defendant: (1) within 10 minutes of starting deliberation; (2) between 10 minutes after start of deliberation and 10 minutes prior to the end of deliberation; and (3) 10 minutes prior to the end of deliberation. The majority of shadow juries (61.1%) took the first vote within 10 minutes of starting deliberations (see Table 3). It seems that our shadow jurors most often adopted the verdict-driven style rather than the evidence-driven style; however, this phenomenon is not unique compared to the U.S. study. Moreover, considering the average time of deliberation was 51 minutes, we cannot generalize whether the jurors’ tendency to vote early is related to the style of deliberation or to the complexity of the case.

Table 4 shows the average values of major variables for individual jurors. Seven major variables that account for the quality of deliberation are counted. The number of times jurors speak more than five seconds with

meaningful sentences (“frequency of speech”) was counted as one. The average frequency of speech by a total of 113 jurors was 8.83, and it ranged from 1 to 28. There was no one who did not speak. The most common speech frequency was four times (14 people). Fifty-eight percent of jurors spoke more than seven times, while 91% spoke fewer than 18 times. A majority of jurors (63.7%) commented on the evidence more than once. The average number of times mentioning the evidence (“number of evidence”) by jurors was 1.88. Quite a few jurors never commented on the evidence during deliberation (36.3%). The largest number of times for a single juror to discuss the evidence was 12 times. Jurors sometimes made statements by citing other jurors at the deliberation, or citing statements made by public prosecutors, defense attorneys, or judges during the proceeding (“citing others’ statements”) and can support or oppose them. The average number of citing statements by others was 0.78. The average number of times the jurors made statements supplying a logical basis (“logical reasoning”) was 2.09. Jurors also discussed issues based on personal anecdotes, rumors, or unsupported stories or cases (“anecdotal arguments”). The number of such instances was low, with the average number of anecdotal arguments being 0.60. Jurors rarely made emotional attacks against other jurors or used abusive language or ridicule (“indecorous speech”). Only one instance of indecorous speech was observed. We also noted when the jurors abruptly intervened during others’ speech or made statements to hinder further discussions (“strong intervention”), and its average number was 0.33 times per juror.

In order to better understand the jury verdict process, we streamlined the above variables (see Table 5). We defined the “argumentative quality” as how and to what extent jurors used rational persuasion in deliberation. It is calculated by adding the number of discussions of evidence, the number of comments citing other jurors’ arguments, and the number of comments offering logical reasoning. Therefore the average value of the quality of

Table 4. Average Values of Major Variables

Variables	Frequency of Speech	Number of Evidence	Citing others’ statements	Logical Reasoning	Anecdotal Arguments	Indecorous Speech	Strong Intervention
Mean	8.83	1.88	.78	2.09	.60	.01	.33
S.D	6.35	2.09	1.14	1.87	1.14.	.09	.93

Table 5. Values of Individual Juror Observation

	N	Minimum	Maximum	Mean	S.D.
Frequency of Speech	113	1.00	28.00	8.83	6.38
Argumentative Quality	113	.00	23.00	4.75	3.99
Indecorous Debate	113	.00	10.00	.37	1.17

Table 6. Role of Foreperson

Variables	Values	Frequencies (%)
Allocation of Speech	Equally allocated to each juror	9 (50%)
	Allocated to more than half the jurors	1 (5.5%)
	Mostly let jurors freely discuss and allocated a few times	6 (33.3%)
	Let jurors freely discuss completely	2 (11.1%)
Basis of Argument	Mostly requested jurors basis of argument	8 (44.4%)
	Partly requested jurors basis of argument	5 (27.7%)
	Never requested jurors basis of argument	5 (27.7%)
Effective Management	Effectively managed jurors' discussion	14 (77.7%)
	Did not effectively manage jurors' discussion	4 (22.2%)
Total		18 (100.0%)

debate was 4.75. In other words, each juror, on average, commented on the evidence, other jurors' arguments and logical reasoning more than four times while providing their opinions. Similarly, we used the term "indecorous debate" to describe the sum of the instances of indecorous speech and strong intervention during others' speech. The average value of the indecorous debate was 0.34, so such indecorous debate rarely occurred.

The role of the foreperson was investigated in three ways (see Table 6). First, we looked at whether the foreperson equally allocated the opportunity to talk to each juror. Second, we examined whether the foreperson requested that jurors state the basis of their arguments. Third, we looked at whether the foreperson played active management roles, such as summing up the issues or contentions, or mediating the conflict situations effectively as a moderator. We also assessed the propensity of the foreperson (e.g., authoritative, opinionated, controlling).

In half of the cases (50%) the foreperson gave each juror a chance to talk. Other times, the foreperson did not make it a rule to give each person a chance to talk; rather, the foreperson let jurors freely discuss without intervention (11.1%) or occasionally gave opportunities to those who had not spoken (33.3%). Most of the time (72.1%), the foreperson requested jurors to provide the basis of the argument when they spoke. The foreperson also effectively managed jurors' discussion (77.7%), by summing up the main points and moving on the next issues, etc. Generally speaking, the deliberation processes tended to be open and democratic. We also found that when the foreperson did not provide the opportunity to talk and a majority of jurors speak, jurors' evidence-based discussion increased. On the other hand, when the foreperson did not provide the opportunity to talk and a minority of jurors spoke, the frequency of indecorous discussion increased.

A significant number of people misunderstood or misapplied legal concepts, as 24.8% of jurors did not understand the meaning of certain legal concepts such as diminished capacity (See Table 7). However, what is more important is whether the confusion of legal concepts was corrected through other jurors' intervention. In Korea, jurors are provided a bench memo in writing from the beginning of the trial, so their understanding of the legal concepts and relevant statutory provisions can be enhanced. About 23% of jurors made sympathetic comments and exhibited emotional attitudes. Our observation also suggests jurors' emotions sometimes obstructed their ability to make decisions. The majority of jurors' positions on the guilt of the defendant did not change after deliberation, and only 11.5% of jurors changed their initial opinions.

Table 7. Frequency of Individual Juror Deliberation

Variables	Value	Frequencies(%)
Misunderstanding of Legal Concepts	Yes	28(24.8%)
	No	85(75.2%)
Sympathetic Attitudes	Yes	26(23.0%)
	No	87(77.0%)
Change of opinions	Yes	13(11.5%)
	No	100(88.5%)
Total		113(100.0%)

Table 8. Number of Jurors and Qualities of Deliberation

	5-6 Jurors	7 Jurors	8-9 Jurors	Total	F Test (sig.)
Frequencies of Speech	10.88	8.28	5.53	8.83	4.97(p<.01)
Argumentative Quality	5.21	4.56	4.23	4.75	.49(n.s)
Indecorous Debate	.71	.17	.18	.37	2.95(p<.10)
Number of Jurors	42	54	17	113	

2. Number of Jurors

Because our sample size is low, we may not formulate any meaningful generalization on the implications of the number of jurors on the panel. However, we can provide some of our findings for future study in this area. Our data shows a correlation between the size of the jury and the frequencies of speech. As Table 8 illustrates, the average number of instances of speech per juror was 10.88 when the jury was composed of five or six jurors. It was 8.28 for a seven-member jury and 5.53 for a panel with eight or nine jurors. So jurors spoke more often when the jury size was smaller. On the other hand, the size of the jury did not affect the argumentative quality. There were no meaningful differences in the average value of the argumentative quality between juries of different sizes. Lastly, a slight increase in the frequency of indecorous speech was found in the smaller jury. So the indecorous debate tended to decrease when the jury was composed of seven or more jurors. It may be that greater demographic diversity is likely to decrease the occurrence of indecorous debates. It can be inferred that even distribution of gender and age level promotes inter-respect, eventually suppressing indecorous remarks and debates.

3. Conviction and Sentencing Deliberation

We examined whether sentencing-related matters were used by jurors in rendering judgment on the guilt of the defendant. If sentencing issues were introduced by jurors into the deliberation on guilt, we considered whether this was corrected through deliberation: in other words, whether the jurors recognized they were mixing sentencing issues into the conviction phase of the trial, and deliberately stopped doing that. Among

Table 9. Frequency of Combining Conviction and Sentencing Considerations

Variables	Value	Frequencies (%)
Confusion of Guilt-Sentencing	Yes	16 (14.2%)
	No	97 (85.8%)
Mentioning prior Criminal Records	Yes	22 (19.5%)
	No	91 (80.5%)
Total		113(100.0%)

the cases we observed, jurors mixed sentencing matters into the conviction deliberation in 9 cases (50%). However, 8 of these cases were corrected through deliberation.

At the individual level, we also looked at each juror's situation to determine how many of them mixed together the distinct matters of conviction and sentencing at deliberation. Sixteen (14.2%) out of 113 jurors mixed them in arguments (see Table 9). Twenty-two (19.5%) jurors mentioned the defendant's criminal record during the conviction deliberation.

4. *Intervention of Judges*

In the trials included in our study, the presiding judge participated in the deliberation (if needed) with the real jury, and an associate judge participated with the shadow juries. In considering the effect of judges' participation on jury panels as a whole, there was only one case where all the jurors changed their opinion about the defendant's guilt after the judge's intervention. In two cases, half of jurors changed their opinion. One or two jurors changed opinions in three cases. But in almost all the other cases, each juror's position on the defendant's guilt did not change.

On the individual level, we have divided judges who intervened at the jury deliberation into three groups in accordance with the style of their discussion with jurors: (1) information-delivering type; (2) opinion-introducing type; and (3) opinion-imposing type (See Table 10).⁷⁶⁾ The

⁷⁶⁾ If the judge simply provides the information related to the case at hand or how similar cases are handled by courts, such style is regarded as "information-delivering." If the judge

Table 10. Jurors' change of positions and the type of judges in deliberation

			Jurors Changed Position?		Total
			Yes	No	
Types of Judges	Information-Delivering	Frequency %	17 23.3%	56 76.7%	73 100.0%
	Opinion Providing	Frequency %	10 30.3%	23 69.7%	33 100.0%
	Opinion Imposing	Frequency %	7 100.0%	0 .0%	7 100.0%
Total		Frequency %	34 30.1%	79 69.9%	113 100.0%

$\chi^2=17.871$, $df=2$, $p=.000$

percentages of judges, respectively, were 64.6% (information-delivering type), 29.2% (opinion-introducing type), and 6.2% (opinion-imposing type). Notably, when the judge was an imposing type, all jurors changed their decisions after discussing with the judge. In the case of opinion-introducing type judges, 30.3% of jurors changed their positions. In the case of information-delivering type judges, 23.3% of jurors changed their decisions. Therefore, the evidence indicates that when a judge interjects his or her opinion strongly during the deliberation, jurors are more likely to follow the judge's opinion, although we cannot provide any conclusive generalization due to the limited number of cases.

V. Conclusion

The Korean jury system is in the midst of another reform. As reflected in the recommendation by the Committee, the past five years of experiences were evaluated as a success, and the jury system is expected to be

provides his or her opinion by saying "I think..." or "[I]n my opinion,...," then we categorized it as "opinion-introducing." When the judge's opinion is expressed strongly, then it is regarded as "opinion-imposing." In one such occasion, the judge said "if the defendant is found not guilty under the circumstances, we can say that justice does not prevail in this case."

improved and more widely used. Mixing the components of the common law jury and the civil law lay assessor system was an innovative attempt to develop a suitable jury system for Korea. Over time, the jury system will be firmly established as a robust institution to increase democratic participation of the lay people and to enhance the credibility of the judiciary.

In this paper, we tried to look into the actual jury deliberation process by examining shadow jury deliberations. We were particularly interested in knowing whether the quality deliberation is made and to find out any meaningful insights in order to best serve the purposes of the jury system by optimizing the results of our shadow jury study. In connection with the Committee recommendation, we focused on four areas: the binding effect of the jury verdict, the number of jurors, the jurors' deliberations regarding both conviction and sentencing, and the judge's intervention in jury deliberation.

Our results demonstrate that Korean jury deliberations show promise as a model of robust decision-making. Jurors in general actively participated in the deliberation process by speaking in turn, and were respectful toward other jurors in debate. The jury forepersons positively played their role by giving jurors equal chance to talk and managed the discussion well. Misunderstanding of law and the intermingling of facts relevant to conviction or sentencing were not as frequent as many people expected: when such problems occurred, they were most often corrected through the intervention of other jurors or judges. Most judges were helpful in jurors' reaching a verdict in the jury room.

However, we also found some areas for improvement. The shadow jurors tended to state their initial positions early in the deliberation process without fully discussing the issues first. They oftentimes made arguments not based on evidence. In addition, jurors' emotions affected decision-making in some instances. In order to enhance the quality of deliberation, proper guidelines must be made and communicated to the jurors well before they deliberate.

In conclusion, the recommendation by the Committee is consistent with our results. We did not find any critical problems that would counsel against granting *de facto* binding effect to jury verdicts. There was no definitive relationship between the size of the jury and the quality of

deliberation. Although we need further study to examine the correlation, the Committee's decision to abolish the five-member jury seems to be reasonable due to its lack of use. With proper guidance and oversight, jurors will less often inappropriately mix conviction and sentencing considerations; instead, juror deliberations on sentencing will provide the opportunity to infuse the common sense of the lay people into the judge's decision-making. The collaborative deliberation amongst jurors and judges in sentencing, and in some cases in conviction, will mutually benefit both. In turn, jurors will promote the credibility of the judiciary while the judges will reflect upon their decisions in accordance with the legal consciousness of the lay people.