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RESEARCH ARTICLE

Punitive Processes? Judging in Thai Lower Criminal Courts•

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Abstract

This article examines how Thai courts of the first instance deal with run-of-the-mill criminal cases. How do judges deal with criminal trials of a rather routine nature, often involving defendants from ethnic minorities and reflecting the particular conditions in the provinces concerned? Drawing on participant observation and interview research conducted mainly in two provinces in different regions of the country, the article examines the challenges faced by judges and court officials in dealing with heavy caseloads in a highly bureaucratized system where acquittal rates are extremely low. How far do such cases shed light on how judging is carried out in the majority of Thai courts? What kind of challenges do Thai judges face in adjudicating minor but often messy cases in order to fulfil societal expectations in line with their own understandings of justice?

Keywords: lower courts; criminal cases; legal ethnography; hostile environment; Thailand

I Introduction

In a sensational episode on 5 October 2019, a judge at the Yala Provincial Court acquitted five men of murder and then made a speech criticizing the judicial system in open court, which he posted on Facebook Live.[1] He then apparently recited an oath before a portrait of the late King Bhumibol before producing a gun and shooting himself in the chest, in his own courtroom. Although Kanakorn Pianchana survived to tell the tale, sadly he succeeded in killing himself in a second attempt the following March. The questions he had raised about the interference in his work by superiors remained largely unanswered. Kanakorn's suicide testified to the frustrations experienced by provincial judges in a system where the overwhelming majority of defendants are found guilty, despite a lack of public confidence in the way both the police and prosecutors perform their roles.

Since 2006, Thailand's courts have received much greater scholarly and media attention than before—but the main focus of interest has been on nationally significant political

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[1] See Prachatai (2019).

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cases heard by the Bangkok Criminal Courts, the Supreme Court, and the Constitutional Court, often viewed through the lens of "judicialization."[2] Yet, these high-profile trials are vastly outnumbered by the hundreds of thousands of routine criminal and civil cases, dealt with annually in around 200 provincial courts, family and youth courts, and district courts.[3] Coverage of provincial trials is very weak: the dominance of national newspapers such as *Thai Rath* means that local newspapers scarcely exist in many parts of Thailand, and very few local court cases make national news. Information about court schedules and verdicts is often hard to access and, while, in theory, all Thai courts are open to observers, there is no culture of public scrutiny of judicial proceedings. This article takes a closer look at how Thai courts and judges work in the provinces: in particular, what are the informal assumptions and practices that shape trial proceedings? How do Thai judges judge?

Unlike judges in the Anglo-American common-law mode, who typically serve as lawyers or prosecutors for many years before being elevated to the judiciary, most judges in Thailand's nominally civil system are recruited at an early age through a highly competitive examination process.[4] Their exam performance when they enter the profession determines the arc of their subsequent careers. In effect, the examinations distinguish between Bangkok-centred high-fliers destined to end up in the Supreme Court or the upper echelons of the Courts of Appeal and regular judges who will spend more of their working lives in courts of the first instance and in the provinces. In previous decades, judges maintained a strong sense of detachment and tried to avoid socializing that might bring them into contact with politicians or businesspeople who could embroil them in conflicts of interest.[5] More recently, these restrictions have loosened, but many Thai judges still prefer to limit their social entanglements. In principle, judges are not supposed to be posted to their home provinces—though exceptions can be made—and junior judges are regularly rotated to different courts, often in different parts of the country.

This article is about Thai trial-court judges in criminal cases, rather than the entire range of litigation in the Thai justice system. It starts from the assumption that examining the conduct of low-level criminal-law cases for crimes such as theft and assault offers an especially poignant entrée into ordinary life, which in turn may help us understand judging and judgment in Thailand. As Feeley noted in a comparable study of mundane criminal cases in New Haven, "lower criminal courts are a world apart" from the more serious—even glamorous—trials we typically read about in newspaper stories or see depicted in TV dramas:

> Court officials themselves are part of this depressing landscape. Judges, bored by their jobs, become callous toward defendants who are so different from themselves. Prosecutors, dulled by their repetitive work, may be noncommunicative and appear to be vindictive. Defence attorneys, depressed by feelings that their efforts are not appreciated, can easily begin to treat their clients carelessly.[6]

Much the same applies in Thailand. The research for this article drew upon conversations and interviews with judges, prosecutors, defence lawyers, and other key protagonists, combined with legal ethnography consisting mainly of trial observations and participant observation in and around local courts. I conducted this ethnographic research unaided,

[2] For a review of these debates, see McCargo (2014).

[3] In this article, I translate *san khwaeng* as "district courts:" some might be better called "municipal courts." They deal with minor civil cases and criminal cases, for which the maximum penalty does not exceed three years' imprisonment.

[4] On Thai judicial careers and norms of behaviour, see McCargo (2019), pp. 30–55. The present article should ideally be read in conjunction with that chapter.

[5] The conduct of judges is governed by an ethical code. See Courts of Justice (2010) and discussion in McCargo (2015), pp. 28–9.

[6] See Feeley (1992), p. 3.

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drawing on extensive previous fieldwork experience and a good command of Thai—although at times, following arcane legal proceedings pushed my linguistic abilities to their limits.

Thai trials for relatively minor crimes in the provinces are often quite cursory affairs, in which there is limited witness testimony.[7] The shape of the trial is largely determined by the decision of the defendant concerning their plea. If a defendant confesses to the crime and pleads guilty (*rap sarapap*), proceedings are generally extremely rapid. In theory, since 2008, defendants cannot be convicted solely on the basis of their own confessions. But, in practice, the Thai police have limited expertise in investigating crimes; the primary *modus operandi* is to identify a suspect and persuade the suspect to confess.[8] Confession is more than a legal or bureaucratic procedure; it involves an acknowledgement of the sovereignty of the state and a surrender of the rights of the individual. According to Article 78 of the Penal Code, confession and repentance can reduce a sentence by up to half. Defendants place themselves at the mercy of the judges. In doing so, they are effectively throwing themselves upon the mercy of the king. Confession is an act of loyalty. By contrast, a refusal to confess may be construed as an act of disloyalty, a failure to accept the legitimacy of the legal proceedings, which masks a failure of loyalty to the state and indeed an implicit rejection of the authority of the monarchy.

Inside the courtroom, judges have a great deal of power. Everyone rises when a judge enters the courtroom, from a special door at the rear used only by judges. Defendants and even those attending the trial are not only forbidden from speaking; they are also not permitted to cross their legs, are supposed to sit up straight, and are not allowed to take any notes. While not all judges enforce these rules strictly, some judges seemed to enjoy exercising their authority. Large gold-framed pictures of the king hang behind the bench in all Thai courtrooms: many judges see themselves as the literal embodiment of royal authority and dignity, rather than as arbiters of justice working on behalf of a neutral state apparatus.[9] Judges can punish anyone who demonstrates contempt for court proceedings with a jail sentence of up to six months.

One explanation for the empty power plays performed by some provincial judges is that most of their work is terribly dull: they spend many hundreds of hours each year listening to testimony that often makes very little sense, much of it delivered by semi-competent or monosyllabic police officers, or by "professional" witnesses who appear implausibly articulate and well rehearsed. Most defendants are sad characters whose lives are in a mess: a significant proportion of them have obvious mental-health problems. Only by imposing an arbitrarily harsh discipline on courtroom conduct can some judges feel in control of the often muddled and even futile cases before them.

The format of Thai trials is highly predictable. Prosecutors and lawyers are not given structured opportunities to present oral opening and closing statements, though some judges invite them to explain the basis on which they plan to argue their cases. The defendant has no specific right to speak, unless called as a witness. Typically, prosecution witnesses greatly outnumber those for the defence. Many provincial defendants have court-appointed lawyers who are badly paid and put little effort into lining up witnesses on behalf of their clients. Many Thai feel reluctant to appear in court and contradict testimony by police officers and other prosecution witnesses. Witnesses from both sides frequently fail to show up for hearings, as do defendants. All this results in repeated

[7] The classic discussions of Thai provincial court cases remain those provided by Engel (1978), e.g. pp. 13–5. Surprisingly little has changed in Thai courts since the 1970s.

[8] For an excellent discussion of the origins of Thai police procedures, see Lim (2016).

[9] See McCargo, *supra* note 4, pp. 58–63. For a critical discussion by a prominent Thai academic, see Piyabutr (2009).

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rescheduling and constant delays. As a result, it is quite unusual for even a very simple criminal trial to be conducted and completed on two or three consecutive days.

The sheer volume of cases in Thailand is astounding: almost 1.4 million new court cases were filed in 2015—the equivalent of 316 cases per judge.[10] No wonder there were such strenuous attempts to divert as many cases as possible to non-judge mediators, while prosecutors routinely dropped charges if they thought there was a strong chance of acquittal. While a number of Thai judges approvingly cited to me Blackstone's famous ratio that it is better to let ten guilty men go free than to convict one innocent man, none of them mentioned that conviction rates in Thailand are above 95%.[11] Accordingly, most parties to any given court case probably regard conviction—often meaning jail time—as a foregone conclusion. Thailand also has one of the world's largest prison populations.

Unlike virtually all other courts around the world, Thai courts do not produce verbatim transcripts of proceedings: while hearing witness testimony or statements from lawyers, judges regularly pause the proceedings to dictate summaries of what they hear into a small tape recorder. Tapes are then passed to a clerk, who types up not what was said in court, but what the judge has summarized. After a witness has testified, the summary is typed up and witnesses are asked to sign the summary. However, there is no explicit opportunity for the witness, or even a lawyer, to ask that the summary be amended or edited—though I saw this happen occasionally. On the very rare occasions on which a witness does not wish to sign—one former judge said he could not remember a single such instance in his ten years on the bench[12]—the refusal of the witness to do so is noted. In theory, the witness signs the summary in the presence of court officials. However, in practice, the statements are often signed after judges have left the room. In one case, I saw a court security officer ask a Malay-Muslim defendant who was unable to read Thai to sign the summary of his testimony, even before it had been translated to him. The defendant signed without hesitation. Co-operating with the court procedures is a requirement in Thailand, not an option: to assert your rights as a defendant is to question the integrity of the proceedings and to brand yourself as a troublemaker.

A significant minority of judges I talked to favoured changes to the system of note-taking (*banthuk*). The current system means that judges have to focus on note-taking, rather than concentrating on the facts of the case; it also means that, when cases are appealed to higher courts, those courts cannot establish exactly what was or was not said during the trial. One senior judge said he would support a full-transcript system in the interests of consistency and fairness; there were considerable variations in practice between individual judges, which could affect the interests of defendants.[13] Another judge had actually tried to use a full-transcription system for some cases, but the clerk assigned to him could not type fast enough and he was forced to abandon the experiment.[14] A more junior judge said he was extremely meticulous about the *banthuk* process, not wanting to leave open grounds for appeal.[15] Paper records were used for the transcripts: there were no digital files, other than scans of hard-copy summaries, so it was impossible to search quickly through summaries of testimony.

The 200 or so courts in Thailand are literally ranked in descending order of desirability, in a list that closely correlates with their distance from Bangkok. The more senior the judge, the stronger was her or his claim on a higher-ranked assignment.[16] Judges with

[10] Courts of Justice and the Office of the Judiciary (2015), p. 31.

[11] Conviction rates in Thailand for 1997, 2003, and 2004 averaged about 98.5%. See Streckfuss (2011), p. 198, n. 38.

[12] Former judge interview, 18 March 2008.

[13] Judge interview, 9 October 2012.

[14] Judge interview, 20 November 2012.

[15] Judge interview, 23 August 2012.

[16] McCargo, *supra* note 4, pp. 39–41.

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more seniority are rarely posted to provinces that are very distant from Bangkok so, in more remote parts of the country—such as in the deep South—there is a preponderance of inexperienced judges who often find themselves dealing with very important cases. One of the first Thai trials I attended was in Narathiwat, for the notorious "Khru Juling" case in 2006.[17] A group of Malay-Muslim women from the village of Kuching Rupa were accused of involvement in the kidnapping of two teachers, one of whom later died.[18] The case of an idealistic young Buddhist woman teacher who was brutally murdered in an insurgency-related episode captured national media attention and inspired a major documentary film.[19] On the opening day of the trial, before charges had been formally filed, the prosecutor tried to call the village headman and a young woman as witnesses, on the grounds that they might be going away to work in Malaysia. Normally, no witness testimony would be heard at such an early stage in the proceedings. The request was purely opportunistic—an attempt to wrong-foot the defence and gain the upper hand. But, instead of simply dismissing it, two very young-looking judges agonized for several minutes before adjourning the court and going off to consult the chief judge. They returned about 45 minutes later to declare that the prosecution was not allowed to call the witness. The apparent inability of junior judges to handle slightly unusual requests was a theme of my trial observations; judges seemed to be in constant fear of making mistakes and so hardly dared to decide anything. Problems were compounded whenever the chief judge was not around or could not be reached; subordinates often seemed at a complete loss concerning what to do.

Accessing court cases in the provinces can be a challenge. In theory, virtually all legal cases other than those involving juveniles are open to observers and anyone can show up. This worked pretty well at the main criminal courts in Bangkok, where people were quite used to seeing foreigners. However, random Westerners almost never wander into provincial courtrooms and my presence there clearly unsettled some of the judges and court officials I encountered. Before I started fieldwork at one court, a local justice ministry official helped me draft a letter to the chief judge, asking permission to observe some trials. The chief judge seemed rather flummoxed, but eventually I found a senior judge from another province who could vouch for me, and he reluctantly agreed. I tried to be on my best behaviour, making myself as inconspicuous as possible. But, after about three weeks, I got a call informing me that I was no longer welcome at the court building. Nobody would tell me why, but this particular stint of fieldwork came to an abrupt end.

For my next attempt, embarking on a spell of observations at a court in a different part of the country, I was able to meet the chief judge in advance and sound him out. He seemed completely open to my doing some observations. Nevertheless, on my first day of fieldwork, I decided it was best to submit an official letter in Thai, requesting permission to attend cases. I went to the appropriate office on the ground floor to do so. A woman clerk took the letter and stamped it, ready for signing off by various officials before it could be sent to the office of the chief judge. She asked me to wait upstairs.

Meanwhile, though, I promptly bumped into the chief judge on the second floor. He was running around the building popping into different rooms. He had no jacket on and, unless I had recognized him, I would never have guessed he was the boss. He was very friendly and took me up to his office, asking his secretary to bring us both coffee. He told me that "our house has been closed for too long" and he wanted to open it up. Judges needed to have a chance to talk to people and exchange ideas, he said. During the month that followed, I ran into the chief judge a few times and he was always ready to chat. He did not mention the official letter I sent him requesting permission: in fact, I never heard anything more about the letter. Perhaps the invitation from the chief judge to have coffee with him

[17] Fieldnotes, Narathiwat Provincial Court, 25 August 2006.
[18] For a brief discussion, see McCargo (2008), pp. 130–1.
[19] On this documentary by Ing K, see Seno (2008).

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in his office was already such an obvious green light that the official request became an irrelevance. Or perhaps the letter was simply mislaid. I will never know.

Getting permission to access trials was one matter, but working out what cases were going on was another. At one court building, the list appeared on a single dot-matrix-printed sheet, which was pinned up on a noticeboard. There were no computer screens. Outside each of the courtrooms was a small board, but the different clerks put up information there using varying formats. The main noticeboard tended to list the law under which the person was being charged, instead of the actual charge itself. I sometimes resorted to asking lawyers I encountered in the hallways whether they were conducting any interesting cases. Sometimes, I just followed a friendly-looking group of people into a courtroom, with no idea what sort of case was underway. My fieldwork involved a great deal of serendipity.

Thai judges hearing criminal cases in the provinces typically confront the following challenges and dilemmas:

- Problems from lack of experience: many provincial judges are very young, most have not pursued previous careers (legal or otherwise), and there is a lack of clear guidelines on how to handle unfamiliar procedures or unexpected developments during trial proceedings
- A prevailing "hostile-environment" institutional habitus—one that has normalized the presumption of guilt, the dispensing of custodial sentences, and paying limited attention to the rights of defendants
- A default tendency to disadvantage the powerless and side with the more powerful—even when the powerful are clearly in the wrong
- A civil-law system that does not allow formal opening or closing statements, or opportunities for defendants to give an account of their actions or motives, resulting in the difficulty of establishing a clear and consistent explanatory narrative of the events that resulted in criminal charges being brought
- Structural, legal, and cultural obstacles to invoking mediation procedures to avoid punitive or custodial sentences.

2 Cases

A close discussion of a series of cases I observed in provincial courts in different regions of Thailand will provide some illustrations of recurrent themes that characterize the ways in which judges conduct trials for run-of-the-mill crimes.[20] The nine cases discussed are grouped into themes, based on the challenges set out above. After presenting lightly edited versions of my (italicized) trial fieldnotes for each case, I provide some commentary.

2.1 Overview: Moralism at Work

Case 1: Lessons learned vs. more moralizing (theft from computer shop, model court)

> *I attend a model court session, in which students from a local college assume some of the roles, but are joined on the bench by a couple of real judges. The trial is over a case of theft from a computer store. It is a lively and entertaining session: a couple of the students are outstandingly good. A play is performed in conjunction with the trials, staged by a group of 11 young*

[20] I have deliberately omitted the dates and locations of these trials, and have changed all names and some other minor details to anonymize those involved. I personally observed all of the cases discussed here, which took place in provincial courts between 2009 and 2012.

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offenders. At the end of the two presentations, various people say a few words. One of the lecturers who brought the students explains that this was a really good court case because the judges were very active in asking questions and directing the proceedings, and because they were not doing the banthuk *(they only pretended to), no time was wasted and the witness testimony could be taken extremely quickly. The lecturer says he would like to see reform of the proceedings so that cases could be dealt with more quickly. He urges the judges to be more active. He does not explicitly call for an end to the* banthuk *system but the implication is clear.*

A "real" *judge who was watching then responds to the comments, but making an entirely different point. He wants the students who saw the play about another student getting into trouble—the play was presented alongside the trial and is closely related in subject matter—to learn a lesson from this and make sure they do not end up getting a criminal record, since this would affect their futures if they wanted to work in the justice system.*

The holding of a mock trial and a play involving students, lecturers, and ex-offenders on court premises seemed a great way of creating some safe space to explore and discuss issues relating to the criminal justice system. The performers, trial participants, and the lecturer tried to do exactly that. But one of the judges present responded by turning the event from a chance to reflect on the nature of judicial proceedings to an opportunity for paternalistic, moralistic pronouncements and didacticism. His all-too-predictable moralizing epitomized the lack of empathy and imagination that some judges demonstrate and their reluctance to reflect on their own practices.

2.2 *The Punitive Habitus*

Case 2: Please send my client back to jail (serious drug offences)

Two guys from Malaysia are on trial, both charged with importing drugs into Thailand. In principle, this offence can carry a death sentence. Four witnesses are waiting to be called, all policemen. The defendants clunk into court wearing leg irons. But, just when the four police witnesses are about to be called, the prosecutor apparently produced some new documentary evidence and the defence lawyer asked for a postponement. Hence they were taken back to jail until the next available date—February. Because they insist they are innocent, they will probably get a harsher than normal sentence, I am told—but they are not really likely to be executed.

The prosecutor is there, all ready to present his evidence and seemed a little disappointed not to have a chance to perform. He tells me the atmosphere in Thai courts is too stilted and he would like it to be a bit more like LA Law. *Last week, in another case (which I was not allowed to witness, for reasons that were not made clear), he demonstrated that one witness's account of carrying something under his arm was implausible, by holding a file under his arm and then raising his arm to a certain height, whereupon the file fell to the floor. People in court were quite taken aback—it seems that this sort of thing is not normally done by prosecutors. But why not? He also complains that the wearing of gowns is ridiculous: they are far too hot, for one thing.*

The lawyer, whom I have met before at court, was only representing one of the two men. He does not seem very well prepared to defend the case, and has an amiable but somewhat lazy appearance. I'm not sure if he was appointed by the court or hired by the defendant. The relatives of one of the defendants, who have come from Malaysia, talk to the lawyers through the interpreter after the hearing ends. They say they would like to hire a second lawyer for their relative and argue that the other defendant was the ringleader who led him astray. Apparently, the other defendant has a criminal record.

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Both the prosecutor and the lawyer suggest that this will not be a good line of defence (it seems bizarre for the prosecutor to be advising the relatives of the defendants, but this is Thailand), since, if the defendant knew that the other guy had a criminal record, his getting involved with him was all the more reprehensible. This does not seem very logical to me. The prosecutor says that you can get the best lawyer down from Bangkok and it won't help in this case—something the local lawyer seems to agree with. But why ever not? Surely trying to separate the two defendants in the eyes of the court is a good strategy? Both lawyers seem to be urging pleading guilty and throwing themselves on the mercy of the court, in the hope of getting the lightest possible sentence. This is the legal culture here, especially for the poor and marginalized.

Afterwards, the local lawyer says that sometimes Buddhist lawyers get criticized by Muslim lawyers for counselling guilty pleas too readily, but the Muslim lawyers sometimes get their clients into hot water by defending them too aggressively.

Case 2 illustrated some of the paradoxes of the Thai legal system even more clearly: you are damned if you do and damned if you don't. Trying to fight serious charges by adopting a strong defensive strategy is apparently disapproved of, not just by the prosecutor and the judges, but also by a local defence lawyer who feels it would all be in vain. Everybody urged the second defendant simply to plead guilty and not try to argue that he had been led astray or manipulated by the first defendant. Another shock was the delay introduced by the defence lawyer, who had not prepared properly for the case. By pleading for more time and securing a deferral until February, the lawyer effectively sentenced his client to an additional seven months in jail. He seemed completely relaxed about this, since, for everyone concerned, the outcome of the case—a long jail sentence—was a foregone conclusion and conditions in the small local jail were much more pleasant than those in the larger jail to which the defendants are likely to be transferred once they are convicted.

There is clearly an element of racial and religious discrimination going on here: foreign and, in this case, Muslim defendants struggle to function in an alien setting where English is barely spoken. The interpreter tells me that foreigners are always very disadvantaged in the Thai courts, since they do not understand the system and have little chance of gaining proper advice. Sometimes, the interpreters lend their mobile phones to foreign defendants to allow them to call home, since otherwise they may have no means of communicating with their families.

The judging in this case was very disappointing: at the very least, the lawyer should have been chided for poor preparation and an adjournment granted for no more than a few weeks. A more activist judge might have encouraged the second defendant to obtain his own lawyer.

2.3 Inexperience and Procedural Muddles

Case 3: Errors and confusions (theft of rubber)

A hard case to make sense of. Two defendants have already been in court this morning (I missed them) and pleaded guilty to a theft, for which they were sentenced to two years in jail. Apparently, they stole some rubber. People who steal rubber are usually drug-users who get desperate for cash. It's a stupid crime, since all the rubber dealers in a small locality know all the rubber tappers and, if someone's rubber is stolen, there's no way to sell it locally without getting caught. Now the judge tells them that the sentence will be commuted to 18 months. One of the defendants, who seems like a rather scary character with a scarred face and mean look, seems quite agitated. He has a previous conviction for rape of a 15-year-old, for which he served nearly a year in jail previously.

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At this point, the scary-looking defendant says he would like to request a court-appointed lawyer. This throws everyone into confusion, since he had said in the morning that he did not need a lawyer. The young judge seems to have no idea what to do and, after conferring with the clerk for a while, she disappears from the room. It seems she phones various people asking whether it is okay to request a lawyer after having already declined one (since presumably involving a lawyer at this stage would involve some further proceedings). The defendant is talking about an appeal, possibly on the grounds that the court has messed up the sentencing process.

In the end, the clerk of the court comes in with a handwritten letter they have prepared, in which defendant requests that the court consider his request for a lawyer. He signs the letter. Apparently, they have written the letter as a fudge to buy some time because the judge has no idea what to do—some people told her it was okay for a lawyer to be appointed, others said not. The rules are unclear. Again, nobody seems ready to dare make a decision. I ask the defendant while the judge is out of the room whether he has seen a lawyer at all, and he says no. I say he ought to have the chance to talk to one, but the policeman in the court—whom the defendant is quizzing for legal advice—tells me that, in this kind of case, there is no need for lawyers. When the defendant is given the letter, the other defendant—who has said nothing up to now—suddenly tells the clerk he wants to sign as well. They don't let him, since he did not speak up in front of the judge when he had had the chance. Later, someone explains to me that the afternoon session was held because the judge had made a mistake in the first session and gave them a two-year sentence, which was too severe. Nobody had really wanted to tell me this directly—it's all very awkward.

Case 3 illustrated a number of issues. The first was the difficulty judges had in making decisions—an inexperienced judge made a sentencing mistake and was then unable to respond to a simple request for legal support from a defendant. Did no standard procedures exist? How could there be ambiguity about the question of whether a defendant could change his or her mind about requesting a lawyer? A second issue concerned respect for the rights of defendants. One defendant was outspoken enough to request a lawyer, even when he was not explicitly asked whether he wanted one. Exercising such a right was viewed as quite irregular, rather than perfectly reasonable. The court was unfamiliar with responding to defendants who sought to exercise their rights, suggesting that most defendants were extremely passive in their dealings with the authorities. A somewhat hardened criminal who had served a previous jail term sought to assert his rights, perhaps believing that he had nothing to lose at this stage by doing so. His co-defendant kept quiet, but later tried to capitalize on the boldness of his fellow accused by signing the letter that had been drawn up at his request. This suggested that some defendants who were not exercising their full legal rights would be keen to do so under the proper conditions. It was disappointing that the judge did not try to help defendants secure their rights.

Case 4: Plea reversal (robbery with a weapon)

Another case illustrating judicial inexperience, involving the calling of a couple of police witnesses. Two guys are accused of robbing some foreign tourists of the equivalent of around 12 USD. They accosted them in a hotel car park and the older guy showed them that he had a knife hidden under his shirt. The older guy is remanded in custody, but the other one—who is under 18 and looks very young indeed—has been on bail and is brought in by his mother. The court has engaged a local lawyer (technically a "legal advisor") to defend him because he is a minor. The older guy has no lawyer.

The prosecutor calls the first policeman: the officer on duty at the time of the incident. He does not seem terribly bright, and really struggles to give a clear account of what happened and

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what actions he took. The prosecutor has to resort to asking long leading questions and trying to get the policeman to agree with his version. The prosecutor stands next to the witness box and is practically leaning over the witness, telling him what to say at some points. The judge seems to be irritated by this form of direct examination and essentially takes over the prosecutor's role herself, repeating points back to the policeman over and over again. She seems unfamiliar with very basic details, such as the name of the nearby hotel.

Then we get a second policeman: the investigating officer. He is more articulate but surprisingly soft-spoken and does not give a very strong impression. Much of his evidence goes over similar ground. Apparently, the two were not arrested until some hours afterwards, and this raises questions—to me at least—as to whether they are actually the right guys. The prosecution case takes a decisive turn, however, when the court views CCTV footage taken during the incident, clearly showing the sequence of events. It's not as good as one might hope, since there is no sound and we don't see the guy's knife clearly, but we do seem him twice opening his shirt, apparently to show the weapon. Ironically, the DVD is viewed on the judge's own personal laptop, since there are no facilities to show it on a projector. Actually, the footage is not the original CCTV footage, but a video made by the police of the footage. Apparently, the only way to view the actual footage is to go to the hotel, which nobody suggests doing.

The CCTV clip clearly has an effect on the lawyer, who takes his client and the mother outside. Later, they come back in and the guy agrees to change his plea to guilty. The CCTV evidence clearly shows the collaboration between the two defendants, especially since, after taking the money, the older guy got back onto the younger one's motorbike and they rode off together. This apparently contradicts the version the guy gave his lawyer earlier. Technically, the defence could refuse to accept the evidence as admissible, but the lawyer seems to feel there is no point in doing so, since it is pretty damning. It's really a matter of case closed, once the clip has been viewed. The lawyer tells me later there is nothing much he can do for the younger guy, especially since both defendants admit that it is them on the pictures. The prosecutors look very happy.

The judge struggles to dictate sensible notes of the garbled police testimony. When she reads it back, it sounds to me as though she has got some of the details mixed up, but the policemen do not want to challenge her by saying so, and they end up signing her summaries without anything being changed.

Case 4 hinged on CCTV "evidence" that in many legal systems would be considered inadmissible. The defence lawyer could have challenged even screening the clip, on the grounds that it was not original CCTV footage. But, on this occasion, the lawyer not only accepted the use of the material as *de facto* evidence, but also used it in his own discussions with the client as a means of changing his plea from not guilty to guilty. The lawyer seemed convinced that a guilty plea by his client was the best possible defence strategy—a view that reflected Thai sentencing guidelines under which a guilty plea normally results in a substantial reduction in the penalty.

The case also revealed the young judge's lack of familiarity with the layout of the town we were in, including the locations and names of major hotels and stores. This unfamiliarity illustrated the isolation of many judges, assigned to the provinces on short rotations, spending most weekends in Bangkok, living in a judicial housing compound, and maintaining a deliberate social distance from the communities in which they resided. While such arrangements might help judges to maintain objectivity, those who came from upper-middle-class Bangkok families had little sense of the worlds inhabited by the defendants, witnesses, and even lawyers who appeared before them. When I once questioned a senior judge about this obvious cultural gap, he insisted to me that all Thai judges are qualified to hear all court cases: while technically true, this telling answer rather missed the point. Local knowledge and

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cultural sensitivity were not encouraged or appreciated: generalism was the dominant currency for Thai judges.

2.4 *Disadvantaging the Powerless*

Case 5: Ignoring the victim (illegally employing a migrant minor)

The case concerns a young Lao woman who has apparently been employed illegally by an elderly Sino-Thai couple. There is no dock in the small courtroom, so the couple just sit on the front row of benches. The judge sits in the centre of the bench, directly under a rather faded picture of the king below which is the symbol of the Thai judiciary, including a scales. The Lao woman is accompanied by two women who are obviously not her relatives, but seem to be supporting her case in some way. She has no lawyer of her own; her interests are simply represented by the prosecutor. The defendants also have no lawyer. The Lao woman, her two supporters, and the defendant are made to take their shoes off and leave them downstairs before entering the courtroom—something nobody asks me to do. The police guy and the clerk of the court also don't take off their shoes, though later one of the other clerks slips hers off before we enter the room.

Apparently the Lao woman has no documents of any kind. One of the policemen tells me she is 18 or 19 (anyone under 20 is considered a juvenile in the Thai system), but she honestly appears about 13 to me. The Chinese couple look rather low-class and badly dressed. The guy seems terribly nervous, constantly playing with his keys and jumping to stand up even when it is not at all necessary. Because the woman is a juvenile, she is supposed to testify by video link.

There is a lot of palaver at the beginning while a video link is set up. The woman, alone, is called out—absurdly, she practically has to climb over the accused guy's knees to get to the door—and taken to a room that is actually in the library, a section of the clerks' room which is divided from the main office by tall bookshelves. Two TV monitors are used: one facing the judge and one facing the court. The woman can soon be seen seated at a table with a guy in a suit. It turns out that he is a professional juvenile interviewer. This job can only be performed by people with a special qualification, who are certified to do the work. It seems odd to me that this young woman should be left alone in a room with a middle-aged guy. Apparently, juvenile witnesses cannot be directly examined by the court. The court relays questions to the interviewer (via the judge), who then asks the woman the questions, and the court can hear her answers. But I thought the whole point of video evidence was that the witness did not have to see, or be seen by, the defendant. This was not the case at all here.

A senior judge comes in to hear the case. I asked yesterday how so few judges can manage to hear so many cases, and was told that they basically run around from one room to another. In other words, the trials are not really technically quorate. There is a flurry of conversation, as the senior judge is briefed about the hearing and the arrangements for the girl to give video evidence. He seems rather flustered and quite unfamiliar with the details of the case, until the prosecutor explains the situation to him. The whole trial has been organized on the basis that the defendant was denying the charges, but he and his wife say they plead guilty (the wife's role in all this is quite odd, since she stands there admitting guilt but apparently has not been charged with any crime). This seems to throw everything into confusion. They are asked how long they employed the woman illegally and answer that it was two or three months. I had the impression it was a year.

The judge adopts a rather chatty, bumbling approach, explaining to the defendants that even employing the woman for one day was a crime. But he also says that this is not a very serious crime, especially since they are admitting it (an interesting idea—does admitting guilt reduce the severity of the crime itself?). He starts telling the prosecutor an anecdote about a similar case he heard elsewhere, involving some Burmese migrants who were being employed illegally.

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Of course the employers were breaking the law, but the case was not very serious and they were let off with a small fine. The same would probably happen in this case as well. He seems to be more or less accusing everyone of wasting the court's time. The plea reversal has clearly confused everybody. It seems the defendant has no previous criminal record—this is discussed openly here, at a very early juncture and before any evidence has been heard.

At this point, the senior judge leaves the room and it almost seems that everything is over but, after a few minutes, a young woman judge comes in and takes his place (two consecutive judges for a trial lasting half an hour). She also declares that there is no real need to hear any evidence, but only after the prosecutor explains to her that this is what the senior judge just said. The two don't seem to have had any communication and nor has he left her any notes about what to do next.

The new judge seems curious about the video link and has not apparently used it before. Despite saying that there will be no need to cross-examine the witness given that the defendant is now pleading guilty, she does ask the witness (via the interviewer) how long she worked for the defendant. She replies that it was around two months. This fits with what the defendant just said (which I suppose she didn't hear, since she was in the other room) and confirms that the case is not particularly serious. The judge announces that there is no need to ask the witness any further questions. This is not the end of the trial; there will be a further meeting for sentencing. The judge dictates some notes into the tape recorder to be typed up and read to the defendant, then leaves. Afterwards, the witness comes back into the court and joins the two women who came with her. They discuss the case with the prosecutor for a while, with the defendant and his wife still standing there until the prosecutor tells them the trial is over for today and they are free to leave.

Case 5 illustrated a number of features of provincial Thai trials. The first was the lack of clear structure—switching between judges and making elaborate arrangements (a video link and special staff) to support the testimony of a minor, yet at the same time making her climb over the defendant to give that testimony. The second was the great emphasis placed on the guilty plea. It seemed that the arrangements for testimony had only been put in place because of the original plea of not guilty. As soon as the defendant decided to plead guilty, there was a collective sigh of relief: what are we all here for?

There seemed no real need to bother with any of the special arrangements; indeed, apart from the one simple question posed by the second judge, nobody bothered to ask the victim anything at all. A serious matter had become a completely trivial one and getting to the bottom of what had really happened had become essentially a waste of the court's time. The defendant had pleaded guilty and the case could be adjourned for sentencing. The first judge apparently thought the case so straightforward that he did not bother briefing the second judge, either in person or by leaving any notes.

Yet, the way in which the trial had been conducted left many questions unanswered. For example: How had the employer treated the young woman? Had she been overworked or otherwise abused? How many other people had he employed? Though he had no criminal record, had he in fact ever employed other illegal migrants? Had the woman really worked for him, or for his wife? The answers to these questions might have a significant bearing on the severity of the offence and hence affect the issue of an appropriate sentence. But the court seemed very eager to gloss over these issues; as soon as the defendant had confessed, the matter became a trivial one and could be judged without any further ado or testimony. This was especially so since the woman had corroborated the claim that she had only been employed for two months, but surely her employment had only ended because the defendant had been charged with employing her illegally? Had he intended her employment to be so temporary? Did she want the employment to end, or had she been happy working for him? These questions could have been explored in a few minutes

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of witness testimony, but the judges clearly considered the case so trivial that finding out what had really happened was practically beneath them. The defendant's guilty plea was all they needed. The case represented a triumph of legal formalism over an inquiry into the potentially serious social realities that gave rise to the prosecution in the first place.

Case 6: Open and shut (compensation)

Discussion about how much compensation should be paid to the family of a man killed in a road accident, between judge and driver

Judge: How much did they ask for?

Driver: Once they asked for 300,000 baht.

Judge: That's a lot isn't it? I mean you can't afford that.

Driver: The thing is that the accident wasn't my fault, I had no intention of hitting him.

Judge: I know, I read the police report and the prosecutor has dropped charges against you since the accident was nobody's fault. But what are they going to use to take care of the kids?

Driver: We offered 30,000 baht.

Judge: But that is not very much, the guy already died, honestly.

Driver: We could not talk to them, they were not able to agree.

Judge: So honestly, how much can you afford?

Driver: Can it be 40,000? We have given them 10,000 already.

Judge: That's not really much. How about 50,000 baht?[21]

They agree, and leave the room while the clerk prepares the paperwork.[22]

2.5 Elusive Truth

Case 7: Impossible to judge (assault)

Day 1. I find a case just starting, involving several charges against a female defendant. The lawyers and prosecutors all look extremely young. The prosecutors plan to call eight witnesses altogether. The judge begins by asking the defence lawyer what his line of defence will be: was the defendant not really there at the time? The lawyer explains he will argue that she was in the house nearby but did not take part in the fracas. This is an interesting process—the judge asking the defence what their line will be—and reflects the lack of opening statements by the two parties in the Thai system.

The judge then calls the prosecutor up to the bench, to go through the plan for calling witnesses, and then summons one of the court officials from outside to give instructions about the

[21] Around $1,600.

[22] This was such a depressing courtroom exchange that all commentary seems superfluous. For a related discussion of customary and legal injury settlements, see Engel and Engel (2010), pp. 20–32.

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witnesses. The judge asks the defendant's husband to sit on the other side of the courtroom, not beside her (which seems rather harsh: I did not see this in Bangkok). A police senior sergeant major is the first witness. He was one of the arresting officers. This was an incident of assault and theft at a village in a neighbouring district, which has taken three years to come to trial.

The judge seems very focused and organized and helps direct the questioning. A question from the bench elicits the point that the police seem to have had no arrest warrant and took the woman from her house, which may well have been illegal—a point the prosecutor is quick to gloss over. The judge does a very loud and declamatory banthuk *as a form of announcement punctuated by his own questions: an unusual style. The prosecutor is fumbling with his papers and seems not to be very on top of the case.*

The prosecutor says the investigator did not prepare a list of items seized in the case. The judge is confused as to exactly what items were really found. The police witness says at first he can't remember, then that they are the items they saw in the photo. He can't even remember if they actually seized the items or just photographed them. Given that he also can't remember if he had a warrant to arrest the defendant, it appears the police have no idea what they are doing. It looks like the items are suspected stolen property, mobile phones and the like. The judge ends up telling the prosecutor to ask questions about this. The witness also can't say who the items in the photos belonged to: the debt collector, the defendant, or who? The investigator did a pretty bad job of preparing the case file. A bit later in the proceedings, the police witness signs his testimony, but the judge does not read the banthuk *back to him and the policeman seems not to bother reading it himself.*

The next witness is a victim (phusiahai) *called Manat, a 29-year-old guy, who gives his occupation as "freelancer"* (rap jang), *from an adjacent province. He is very curt, virtually monosyllabic, and gives one-word answers to some of the questions. It turns out that he is an agent for the moneylender from whom Nong borrowed 10,000 baht, and to whom he had to pay back 500 baht a day. The judge and the prosecutor repeatedly ask the witness to speak up, elaborate, explain himself. "Don't mumble," says the judge.*

In the end, the prosecutor has to ask leading questions to drag the answers out of him. It seems they had an argument when she would not or could not pay up. The moneylender got into some sort of encounter in front of her house. The judge starts asking some detailed questions, very strongly and firmly. The witness met three guys in the area at the front of the house. A map of the area around the house is produced, showing where the three guys were at the time. Judge asks the prosecutor to add numbers to the map to clarify where people were standing. The judge complains about how long this witness takes to explain things.

In this courtroom, time stands still. The clock has stopped at 12.03. The witness struggles to tell the story—it all seems an insult to his masculinity. The judge stamps and numbers lots of documents that are included as evidence. I talk to the prosecutor briefly afterwards. There were originally four defendants: three of the guys accused of being involved in the beating-up plus Nong. But the other three guys disappeared, leaving Nong as the only one to be tried. The prosecutor is young, thick-set, and seems very suspicious of me. I give him my card but he does not tell me his name and reminds me that I am not allowed to record anything in court.

Day 2. I talk briefly to the defendant and her husband outside. Her husband seems a lot more with it than Nong herself. They have hired a lawyer from town rather than taking the court-appointed lawyer. They say the lawyer is very hard-working and they seem really to like him. He looks about 20 but I assume is older . . . . The husband says she was in the house and did not take part in the alleged incident. She has protested her innocence throughout; indeed, the police investigator didn't even take a proper statement from her at the time of the incident,

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because he did not regard her as worth charging. She only became a defendant when the real culprits did a bunk, she claims.

The second victim is in the witness stand: another moneylender working with the guy from yesterday. She had to pay 500 baht for 24 days: 12,000 baht repayment for a 10,000 baht loan. This guy is much clearer in his explanations than the one yesterday. Two judges today: the same very organized one on the right and another one on the left, more junior, who seems to be here primarily to read out judgments reached in other cases.

Now the judge is asking questions of the witness himself. This judge really pulls together the story through active questioning, so as to make the whole episode extremely clear. He writes notes and then dictates them into the recorder quite a lot later on: I've never seen any judge do exactly this before, quite elaborate.

The lawyer asks a number of leading questions trying to drag details out of him. The witness is a confident and clear speaker despite his diffident and shy appearance. At one point, the lawyer asks the prosecutor to help find a document. Neither side has a colleague or assistant to hand in the court.

Day 3. The defendant is now in the witness stand. Nong's sibling Maew (younger sister) and husband Wasant are there, along with Nong's husband and their two children. Nong testifies that she and her family rented a three-bedroom house but all four slept of them in one of the bedrooms: another was used for storage and the third as a guest room for Maew when she came to stay, which she did whenever she had a fight with her husband. They have drawn a plan of the house to help clarify their explanation.

This judge seems very diligent, eager to get through cases promptly. Yesterday, he adjourned at 12.20 and asked everyone to come back by 13.00 so he could finish the witness testimony by 15.00 and then deal with another case. He is unusually focused on getting through the evidence.

After the morning session, I talk to the couple. They explain that Wasant, the brother-in-law, is a local thug with a long criminal record who is very ready to get aggressive and take the law into his own hands. He is out of control, and has been in and out of jail many times: he is not a good guy and has created a number of problems for them. He is wanted separately on firearms and drugs charges.

A third of the courtrooms in this building have signs on the door saying that outsiders are not permitted to enter without permission. It is very quiet in the afternoons here—today (Friday), there are no afternoon cases listed on the noticeboard. A few rooms seem to be in use, but most are dark and empty. When we leave the courtroom in the morning, the prosecutor tells the lawyer to get to the point with his questions and stop going on and on; it is pointless.

Despite the judge having said "let's start at 1.00 p.m.," we actually start at 1.40 p.m. The prosecutor tells them before the case starts that the court may acquit her, given the judge's willingness to let her husband testify, which suggests he is sympathetic to her case. The prosecutor says it is all about whether they believe she was actually there or not. It all depends on how much he believes the testimony of the two accusers. The prosecutor seems to be implying that they were not totally credible.

At the end of the case, the prosecutor asks me why I don't have a job teaching in a university. I tell him I teach at the University of Leeds. He says that, if he had graduated from a British university, he would be on the inside track, would not need to appear in cases like this; he would be one of the elite prosecutors. He says it is strange how big a deal it is to graduate from the UK or USA despite the fact that Thailand uses a civil-law system. Those who studied in those countries can't actually apply the knowledge they gained at all. It's just a matter of prestige and status within the organization.

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The judge in Case 7 worked hard to help those in court to construct a clear narrative: he asked the defence in advance about the arguments they would use, he took extremely detailed notes, and he repeatedly jumped in to question confusing witnesses himself and try to get their stories straight. This was one of the best-judged cases I observed during all my fieldwork. But, despite three days of hearings and an extremely active judge, at no point in the witness testimony of the husband and wife did their own angle on the situation emerge. They never explained that their brother-in-law was a thug who had created all kinds of problems for them and was out of control; and their lawyer seemed unwilling to bring this out. Maybe they were too scared to say all this, but the net result was that Nong's defence was never properly articulated.

Tellingly, for all his bravado, the prosecutor appeared quite sympathetic to the defendant, apparently recognizing the fraught family circumstances that had contributed to the crime. It was also difficult to feel sympathetic towards the "victims" in this case, since they were illegal moneylenders who extracted extortionate rates of interest from their customers. My best guess was that various people in the village were unable to repay their own loans and so Wasant and friends took it upon themselves to beat up the moneylenders at Nong's house before skipping town, thereby avoiding responsibility for their actions. But I only arrived at this rudimentary understanding of what might have happened through my conversations with the protagonists outside the courtroom. The format of Thai trials, which did not allow opening or closing oral statements, meant that, unless lawyers were highly skilled, they struggled to craft narratives that could favour their clients. As a result, even sympathetic judges might fail to see good reasons for an acquittal.

Despite the evident professionalism and commitment of the judge in this case, the witness testimony failed to elucidate what had really happened. The adversarial trial procedures occluded the real story and the judge was left struggling to make sense of what was stated in court.

2.6 The Trouble with Reconciliation

Case 8: Trying hard to reconcile (defamation of an abbot)

Walking from one part of the court building to another, I run into a very friendly monk and he urges me to follow him. As a result, I find myself observing the mediation process used in a defamation case, in which the monk is the victim. He is the disciple of a locally well-known senior monk and has been sent to a remote village as abbot. About 25 villagers, led by a young woman called Nong, have brought a defamation case against an older man who has been criticizing the monk. The defendant comes with about six followers, mainly his relatives, and a lawyer. The case is heard not in a formal courtroom but in a mediation room on the ground floor, which contains a Buddha image and nest of tables. During the proceedings, the young judge is very jolly and tries to get the two sides to explain what is going on, but they all tend to talk at once.

> *Judge: "We can't listen to 20 witnesses and get 20 points of view."*
>
> *Daughter: "If the party leaders can agree they can control all the members."*

The judge keeps telling them they are all from the same village and should be able to work together and apologize. It's as though bringing such a case is an affront to Thai society. The older guy is accused of saying bad things about the monk. The judge talks to the villagers in two groups in a very friendly way. The lawyer suggests both sides apologize at the temple for everything, but they also need to agree the case here first. Judge suggests they agree to accept the court's decision and then do a follow-up meeting at the temple later. The young judge is actually very good at his job.

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The outcome of the meeting of the two sides is recorded: monk, one witness and two complainants, plus the accused guy and two relatives. Both sides agree to apologize and have a further follow-up meeting in the village. After a while, though, they are all yelling at each other. Judge reminds the defendant that he can always have a six-month jail sentence if he prefers. The defendant's daughter tells them not to argue; they should go out of the room and let the two protagonists apologize.

The plaintiffs are reluctant to have a village meeting: it will all get very messy. The defendant is 81, says his daughter. The judge tries to persuade the defendant to say sorry: after all, he has heard people apologize for murder and for raping their own children, and this is just about retracting his words. The session is adjourned until 1 p.m.

"It's not very nice in there," says the judge to me outside the mediation room before we reconvene. He tells me part of the problem is that he looks too young, so people do not take him seriously enough. He is actually in his mid-thirties, but looks younger. The lawyer for the old guy seems to be begging his client to agree. The judge takes no notes and there is no clerk in the room. Finally, the defendant agrees to sign a document in front of the judge. The judge say it is all a misunderstanding and the monk gives everyone a Buddhist sticker. The daughter declines to take one, says she has one already at home.

Aud, a young guy who comes with the monk, is from the village but has a degree in management from a local college. He tells me the whole story is about a missing Buddha image of very little value; the old guy implied the monk had taken it. The monk's supporters charged the man with defamation and he then launched a counter-case against the plaintiffs. The old man's daughter is from Bangkok, while his main sidekick is from another district. Aud worries that the two sides can agree here but not when they get home. It's a fight over saksi*—nobody wants to back down in a Thai courtroom. If one side backs down, the other side will torment them with this later and not allow them to back off gracefully.*

Later, I make two field visits to the village where the defamation case began. I first call at the house of the woman in court who sued the guy for defaming the monk; she is as sweet and mild as ever. Then to the well-maintained temple, perched on a hill above the village with dramatic views. It's in a small forest and has a fabulous location. The abbot is there, with three other monks. Two of them are in their late sixties or early seventies, recently ordained under a Thammakai*-sponsored programme.*[23] *They are the relatives or sidekicks of the subdistrict chief, as is the third monk. The previous abbot, whose picture is still in the chedi, left the monkhood over three years ago because of harassment from a clique of local politicians: the subdistrict chief, the elected subdistrict chairman, and the 81-year-old man accused of defamation. Other abbots who followed him did not last a year.*

The current abbot has been there three years, but has just moved his own sleeping hut away from the quarters used by the other monks, to a location next to the chedi, where he can enjoy cool winds. He is a charismatic and thoughtful man, full of interesting ideas and stories. But he hates lottery numbers and popular Buddhism, and refuses to give numbers to villagers.[24] *I guess some of them don't like his style. There are lottery machines in the chedi but they are not plugged in; he says he doesn't like them.*

The abbot is backed by most of the local villagers and by Aud, who now lives at the temple solely to protect and support the abbot. The lawsuit seems to have been a move by the villagers to firm up his position and stop the old power clique from putting pressure on him. A big

[23] *Thammakai* is a controversial, highly organized, and commercialized movement within Thai Buddhism that sponsors mass ordinations and tries to boost the numbers of monks, with a focus on quantity rather than quality.

[24] In popular Thai Buddhism, temple-goers make donations to monks in exchange for numbers, which they use to select lottery tickets for purchase.

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problem is that this conflict is partly one of age—the abbot is too young to be respected by older men—even men of virtually no formal education and no religious knowledge. It's a classic case study of the micro-politics of a temple. When I visit the same province a few years later and phone Aud, he tells me that the abbot has since moved on to another temple. Eventually, the monk's persistent, pathetic enemies wore him down.

Court buildings in Thailand are full of posters and leaflets promoting informal modes of conflict resolution: people involved in court cases are encouraged to opt for mediation processes, often presided over by non-judges. In Case 8, a professional judge conducted an informal, non-standard hearing and tried to broker a compromise rather than settle matters by legal diktat. This village-level defamation suit involving a Buddhist monk might sound like a perfect example of the sort of case that could be resolved by mutual agreement. But the apparently trivial court case was a testament to deep-rooted local conflicts. A remote, idyllic temple was the focal point of bitter local feuding that had made the lives of successive abbots completely intolerable. The abbot's enemies had no respect for the authority of the court, just as they had no respect for the abbot himself.

Sadly, the judge involved in the case was on a hiding to nothing, and legal proceedings brought by the abbot's supporters failed to prevent an obnoxious clique of village elders from regaining control of the temple. Nevertheless, this was a fine example of good judging—an attempt by a very dedicated and thoughtful judge to address a messy problem without recourse to inflexible legal procedures.

Case 9: Failing to reconcile with a fantasist (assault)

At the district court, the prosecutor, very self-confident and aggressive, arrives and calls the lawyer and the defendant to talk to him outside the courtroom. I wonder if they plan to drop the charges; it all seems very irregular. But it appears they are not going to drop the charges; now he is taking witnesses outside. The lawyers are donning their robes. This courtroom is spacious but the prosecutor and the defence lawyer have only small benches on each side, with barely room for two people on each.

The case judge explains that it will be unpleasant for everyone to hear all the evidence, and he suspects that there is more to the case than meets the eye. He suggests the defendant—who seems to be some kind of policeman—should plead guilty and allow everyone to proceed without calling witnesses, in which case he can expect a light sentence. In this case, the victim is a party to the case (jot ruam *with the prosecutor) so she would need to agree to such a course of action. The judge seems to be trying to do some mediation on the spot. He is very humble and several times refers to himself as pom, rather than as san—a very informal style of working.*[25] *He then gives them 15 minutes to discuss what to do. The judge seems to be quite idealistic: he talks about the need for apology and how, if he goes through the full procedures, it will lead to resentment and tensions. But it seems the defendant will not agree.*

This is just a small matter arising from anger, the judge had said, neither side is perfect, the woman victim who was assaulted is an older woman and was treated badly by the defendant. But the defendant is very reluctant to plead guilty, the main request of the court: he is determined to fight on. As the lawyer says, "It's his right." The prosecutor seems to have agreed with the judge and I suspect the defence lawyer does too, but the defendant is intent on fighting.

The judge comes back and urges defendant to find a way out, tells a story of how he was once involved in a court case as a fellow plaintiff, he decided to withdraw, and, since then, has been

[25] When speaking in court, Thai judges normally refer to themselves formally in the first person as "the court," rather than as "I."

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happy: "You have to remove your emotions from your decision." You must dare show yourself, he says, if you are fighting only for your own present benefit, it will not be good. You may win in the short term, but not in the long term, says the judge. Okay, he says, let's call the witnesses, then. He seems quite disappointed.

The victim takes the stand. The incident took place one evening last year. The defendant had moved into her village—a modern housing estate—about three months earlier. He lived opposite her at the end of a row of townhouses. There seems to be no question that he did assault her, but he apparently claims he did so in self-defence. She is in her sixties and not very threatening-looking, so this seems implausible. He hit the woman in a dispute over a parked car, and she was lying unconscious on the ground in front of her house while others tried to deal with the defendant. The judge says there is no need to call a lot of witnesses; the case seems very straightforward. The defendant came back with a gun, then the woman locked herself in her house.

The defendant is furiously taking notes throughout her testimony. Because the witness stand chair is so far back from the podium, the victim cannot read any documents unless they are actually handed to her. The woman was charged with defaming her alleged attacker and pleaded guilty in a separate case (how on earth she was convicted is another mystery to me). The prosecutor asks her about this, apparently to get the issue out of the way. Then the lawyer for the woman also stands up to ask questions (she has joined the case, so he is asking questions on her behalf . . .). She says that, after the incident, she slept at other people's houses for a while.

Day 2. They seem to have started very early; I got there at 9.35 and one witness has already finished! I have never seen this before. The victim is not here. The witnesses are a doctor and another medical person. The defendant is wearing a large amulet around his neck as he did yesterday. Discussion of why the doctor wrote bruises would clear up after five days but the witness claims they lasted two weeks. Judge is very jolly, says that of course people and medical opinions may differ. He creates a very nice atmosphere in court. There is a problem with the other witnesses—where are they? Judge says the investigating police officer is usually the last of the prosecution witnesses, since he can testify to the authenticity and details of the documents.

Day 3: The defendant is here. He says to the prosecutor that he has not been back to his old house since the incident; he took his things and left, is now staying in another district. His wife took his son to live somewhere else and now he lives alone. Two witnesses today, both for the prosecution. The first is a woman who sent her children to the nursery operated by the victim —the woman I saw last time. At one point, the judge asked how she felt during the incident—she wanted to get away as quickly as possible. The witness saw the defendant hit the woman with both fists multiple times: she was thrown against the car door. She grabbed the defendant's shirt to get him off her husband.

I'm the only person on the main benches except the defendant. Two lawyers (one from each side) and the prosecutor, plus the witness, form the full complement of those present. One more person turns up to attend a bit later on. The defendant did some damage to their car during the incident. After hitting her husband, he went back and hit the old woman again [he really sounds like a maniac]. Finally, he came out with a gun, not moving it, but had his hand on it next to his belt. "He made such a vengeful angry face . . . " "This was the most afraid I'd been in my life." He was two metres away. They got into the car because they were worried about the kids. They got out of there as quickly as possible in the car, did not hang around to see what he would do next.

The defence lawyer tries to tease out some inconsistencies between her statement to police and witness testimony, but these seem very minor to me: the whole incident is very confusing—a whole series of things happened very fast. The lawyer is doing his best but looks very unhappy,

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since the evidence against his client is so overwhelming: it looks like there will be five witnesses all saying the same thing.

She denies her husband ever hit the defendant, says he only defended himself. She is very adamant and passionate on this point. Her husband is going to be asked almost exactly the same series of questions as the wife—a bit of a groundhog-day feeling. Courts can be so dull. The prosecutor's phone rings for a moment. The judge asks both witnesses if they are sure they are telling the truth—is he sceptical or just wants to be sure? This witness seems to think the map of the layout of the townhouses is not correct, which causes some consternation, since no other witness queried it.

The witness demonstrates how he came up behind the defendant and took hold of him—stands up to do so using the prosecutor as a model. He is a touchy-feely type of guy, I guess. Then he touches the prosecutor's shoulder to show how a second man tried to restrain the defendant. Then he gets up and gives a third demonstration, definitely show not tell. The clerk of the court gets a mobile-phone call and goes into what seems to be the store cupboard to take it.

The judge tells the defence lawyer off for showing the witness his wife's police statement, asking him to read part of it and react to it. The wife is sitting in court with her legs crossed, and seems not to care. The judge says the lawyer has to ask the witness questions and not show him documents unless they are directly linked to his own testimony. The defence lawyer seems very inexperienced. The judge presses the witness further to clarify some points. He is taking a very active role in this case. Afterwards, he goes over the evidence, reading the banthuk *aloud. He does this in quite a meticulous way and, unusually, he clearly invites corrections: she makes some.*

Day 4: There are two prosecution witnesses—Jack, an Irish guy who was a neighbour, and Sombat, a police investigator. Before going into court, the prosecutor talks to the investigator —how do we deal with the divergence of testimony between the two witnesses and the police statement? The police investigator tells us beforehand he can't see why the defendant did not try to settle the case without going to full trial since the punishment is quite light for these charges. A translator arrives: he wears a tourist police shirt and surprisingly has better English than most of the translators I saw in Bangkok.

The defence lawyer's questions seem to be all about the clarification of details, which do not seem to undermine the credibility of Jack's testimony in any very obvious way. The prosecutor is smiling: he seems to feel the lawyer is making no inroads into the credibility of the prosecution case. The defendant goes up to the bench at one point to show the judge the exact location of the cars on the map. I've never seen a defendant permitted to do this while giving testimony. The judge is asking a lot of questions and the defence lawyer is barely doing his job.

The defendant talks about how wrote a letter asking for help from former prime minister and privy councillor General Surayud Chulanont, whom his boss knew personally (this is getting even more bizarre). The letter is in the case file. He claimed he had been assaulted and injured around his eye, and was being forced out of his home by the victim and her group of supporters who made it impossible for him to stay living in his own house, hence he had to move to a new house in a different district. The judge starts asking what this is all about—he is only concerned with the facts of the case, not the aftermath of the letter to Surayud, and so on. They want to get the testimony finished today, as it is getting late.

The defendant said he wanted to reconcile (samanachan) *but did not accept that he had done anything wrong; he wanted to apologize to the victim and the investigator. The victim—the old lady—was here but left the courtroom part way through his testimony.*

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The defendant likes to speak in a mixture of Thai and English; at one point, he says in court "Pom ben friendly kap tuk khon" *(I am friendly to everyone). The prosecutor and the victim's lawyer are on the verge of bursting out laughing. Despite claiming to be so friendly, the defendant sued the victim for defamation about three weeks after he was charged with assaulting her.*

The defendant didn't agree to "clear" the case when he met the old woman at the prosecutor's office in February. They asked him for 160,000 in damages, which he could not afford—130,000 for the old woman, 30,000 for the young one. They nearly agreed on 50,000 but then he pulled the plug on the deal. He apparently agreed in the morning and changed his mind in the afternoon. But didn't he make an appointment to pay the following day? The defendant seems reluctant to agree to this fact. He just cannot answer a straight question.

The defendant's answers seem to be increasingly bizarre and erratic. He admits he might have used the gun if necessary: the judge tells the young lawyer for the victim not to ask hypothetical questions, whereupon the defendant stands up and starts to demonstrate the incident with the lawyer. The judge tells him to sit down. The victim's lawyer objects; the prosecutor says the point is to show what kind of person the defendant is. The defence lawyer says "it is good that you spoke the truth." The lawyer is trying to rescue his client from his own absurd statements. The judge tells the prosecution lawyer that he should not ask questions to show what kind of person the defendant is and what kind of intention he had, but only to establish the facts of the incident. The prosecutor has been on the verge of laughing out loud numerous times.

It is 6.00 p.m., we are still here, and a load more people have just come in, as if for another case. It's good the judge wants to get this case finished. The old lady is sitting outside, says he was talking such nonsense she had to leave the room, he is a fantasist, at first told everyone he was a civil servant and so could not be prosecuted. None of his bizarre references to consulting his boss are recorded by the judge, which is a shame because his craziness is not very evident from the summary of his testimony. The defendant tries to ingratiate himself with me outside the court room, tells me he works with the FBI, the CIA, Scotland Yard, does high-level liaison, has many foreign friends—he seems to view himself as some kind of James Bond figure. He insists on speaking a mixture of English and Thai that I can barely follow.

Case 9 offered another example of excellent judging. The judge tried to avoid going down the road of a full trial, doubtless aware from the outset that hearing all the witness testimony would be traumatic for the assault victim, while simply making the defendant look worse. He put considerable effort into trying to broker a compromise, but the defendant's irrational insistence that he was innocent—which flew in the face of all evidence—made any such resolution of the conflict impossible. A previous attempt to resolve the case using a conflict-resolution process had also collapsed when the defendant failed to pay a nominal amount of compensation to which he had previously agreed. One of the lawyers tells me the defendant faces other similar charges in Bangkok.

The defendant's responses to questions were pretty bizarre and, as the trial proceeded, his credibility eroded completely: this self-styled "friendly" government official had hit an elderly woman on her front porch and pulled a gun on her in a pointless dispute over parking, then had the audacity to sue her for defaming his character. Cases like this place judges in a near-impossible position: they are forced to keep a straight face during testimony at times so ridiculous that it would be hard to make up. At times, they may struggle to maintain a sense of order and dignity, in a courtroom containing people who obviously have mental-health issues that cannot be addressed by any available legal remedy. A custodial sentence for such a defendant would bring little benefit to anyone. The judge did his level best to manage an impossible situation, but the odds were stacked against a pragmatic resolution of the dispute.

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3 Analysis and Reflections

Judges enjoy considerable social status and prestige in Thailand, as well as some of the highest salaries in the public sector. They typically enter the profession at a young age after passing a fiendishly difficult entrance examination. But the reality of their work is often extremely dull and exacting: most judges spend much of their first couple of decades in courts of first instance presiding over criminal cases that are often contentious, confused, and yet depressingly trivial.

The fieldwork for this article was conducted during an age of intense national anxiety in Thailand. The country had been riven by intense political polarization between competing factions—polarization that the 2006 military coup has singularly failed to resolve. King Bhumibol was ageing and, from 2008 onwards, spent much of his time at Siriraj Hospital. What was the right thing to do? Should judges continue to base their ideas of justice and virtue on loyalty to the monarchy? Or embrace a more open and participatory political order, which implied a justice system working for the great public good? There was very little internal debate about these questions inside the judiciary, which lacked a culture of critical self-reflection.

Judges operate within a highly routinized culture in which conviction is the norm and acquittals are rare. Most witnesses are called by the prosecution, many of them police officers who are going through the motions. Some witnesses appear to be following a script and may indeed have been hired to do just that. Poorer defendants either have rather token court-appointed lawyers or no lawyers at all. Many defendants have been arrested illegally, neither caught in the act nor apprehended on the basis of a warrant—but the courts are not encouraged to enquire too deeply into the circumstances of their arrests. It often happens that witnesses who might be able to corroborate the defendant's version of events are not called or fail to show up. While elaborate procedures exist to protect minors, such as giving evidence by video link, I observed instances in which these procedures were honoured mainly in the breach. Foreigners who cannot speak Thai and do not understand how the justice system works are seriously disadvantaged, and sometimes even the interpreters who are assigned to help them are quite unsympathetic. Poor people are expected to accept their fate passively and to agree to extremely token damages, even when have lost loved ones.

Thai judges in the lower courts face sometimes excruciating conflicts and contradictions as they perform their roles. If a serious case proceeds to trial, most parties assume that a custodial sentence will be the outcome. Sentencing guidelines are closely followed and judges who deviate from the norm can expect tough questions from their superiors: the kind of questions that apparently provoked one judge in Yala to shoot himself in his own courtroom in 2019.

Some judges are more or less willingly socialized into the prevailing order, imposing tight discipline in the courtroom, internalizing a rigid sentencing regime, and rarely questioning the testimony of prosecution witnesses. They are not open to reflect critically on the ways in which they work, even when on the rare occasions when opportunities to do so —such as the mock trial and play discussed as Case 1—are made available. Junior judges are easily flustered when something unusual takes place, struggling to respond effectively: they often need to consult their superiors about how to proceed. Matters are not helped by the fact that so many younger judges come from a narrow strata of Bangkok middle-class Sino-Thai society and have little understanding of the socioeconomic context in which most crimes take place.

Thai judges are now very well paid and judgeships are pursued by the brightest and most ambitious young lawyers. These elite professionals, moreover, were directly charged by the late king with enacting justice and protecting Thai society from immorality and corruption. Yet the reality of judging in Thai trial courts rarely matches this lofty image.

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Instead, judging is tedious, boring, mechanical, bureaucratic, and repetitive. Reconciling high idealism with the daily grind is a major challenge for Thai lower-court judges.

The most senior judges tend to win assignments in or near Bangkok. That means that the youngest and most inexperienced judges are typically posted to the most distant—and often the most difficult—settings. As this article has shown, this introduces a major tension. Young judges feel they lack authority to make any judgments other than those that follow well-established routines, yet routinized case handling does not necessarily produce justice. To depart from the routines requires approval from their superiors, which is often not forthcoming. How can these young judges fulfil their mandate to instill moral values and justice in society when they are forced again and again into the narrowest possible conception of their role?

The Thai judicial system strongly discourages judges from forming ties with the local community—or even becoming familiar with its distinctive history and culture. Justice, in other words, is highly abstract and decontextualized. Furthermore, because many judges are so young and inexperienced, they lack an understanding of Thai society in general. The tension here is between justice as contextually specific vs. justice as an abstract and universal ideal. How can these young judges even begin to understand the testimony they hear or the issues that bring the litigants before them? Can their judgments be seen as fair and legitimate if they fail to take social realities into account?

The tension between context-specific judgment and abstract justice may have some connection to the distinction between common-law and civil-law perspectives. One interviewee mentioned that common-law training has little value in a civil-law system such as Thailand: the conventional view of civil-law jurisprudence is that it promotes a more abstract form of justice that does not (and should not) consider social or cultural realities. Perhaps Thai judges feel that the only way to escape the rigid requirements of decontextualized justice is by channelling cases into mediation, where the abstract codified principles of civil-law jurisprudence need not be applied.

Cases 8 and 9 involved mediation by the judges: formal and informal, respectively. Mediation proceeds on a very different principle—not the application of abstract rules in a yes-or-no decision, but an attempt to hear and reconcile competing realities. In other words, unlike adjudication, mediation is necessarily context-specific. Some of the judges I encountered clearly believed they could be more "judicious" when they took social context into account and invoked ideas of mediation. Yet, as soon as judges left the formal frame of the courtroom—with its raised dais and royal iconography—to sit around a table with contending parties, they struggled to assert their authority. This was especially true for young judges in a society where deference to elders is a deeply ingrained norm.

From my perspective, "good" judges were those who assumed an activist role in trials, intervening where necessary to get facts straight and to allow the defence teams every opportunity to put their cases across. Many judges tried their very best to perform well within the limitations of the system, questioning witnesses themselves and putting considerable effort into understanding the often messy events that culminated in the criminal trial before them. Other judges looked for creative alternatives to harsh sentences, exploring mediation and trying to resolve troublesome and intractable cases in non-standard ways, by dropping some or all of the charges. They wanted to negotiate a solution that worked best for all parties, rather than proceeding mechanically to another pointless custodial sentence.

Yet, it was obvious that some of these "good" judges were considered mavericks or outliers in the system: they could find themselves parked in the provinces for decades and passed over for promotion. One judge told me he was nervous about proposing informal mediation during trial hearings for fear of possible complaints. Generalizing about the conduct of criminal trials in Thai courts of the first instance is difficult but, despite the many examples of judicial creativity, there remains considerable room for improvement. Wherever possible, Thai judges in lower courts should be strongly encouraged to avoid

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sending minor offenders to overcrowded jails and to pursue the least-worst outcome from criminal proceedings.

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