

THE DISAPPEARANCE OF A PERSON & THE DEFECTS OF A SYSTEM



**A collection of notes from the trial of five police
over the abduction of Thai human rights lawyer
Somchai Neelaphaijit**

by the
**Asian Human Rights Commission
Hong Kong**



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Cover: Courtroom sketches of the trial by Chumpol Akapanthanon; photograph of Somchai Neelaphaijit at centre

FOREWORD

Throughout Asia, people are abducted and killed by state officers, or people acting on their behalf. There are few serious efforts to counter these killings. Often, more is done to encourage further abductions and killings than to stop them.

After someone is abducted and killed, the state investigating agencies begin their work. They then have various explanations about why they have tried but failed: no one gave evidence; evidence was contradictory, or the perpetrators have covered their tracks.

When there is enough public outcry to arrest someone, their prosecution may be abandoned or not taken seriously after attention has turned elsewhere. In such instances, prosecution is only a face-saving measure that lacks sincerity or genuine purpose.

The public also is confused into supporting the perpetrators of killings and abductions. Voices call out for strong action against criminals and so-called bad persons. State officers use these calls to forge links with these same criminals in order to abduct and kill some more.

The problems are far too serious to be ignored. They will not be solved by simple exhortations or easy formulae. They require deep examination of individual cases and the responses to them of all parts of the state and society, especially the legal system.

The Asian Human Rights Commission has worked on the case of Thai human rights lawyer Somchai Neelaphaijit from the time it became aware of his abduction up to the present time. Among this work, one of the most important activities has been observing and documenting the trial of five accused police.

The disappearance of Somchai is at its heart all about the defects of the policing, prosecution and judicial systems in Thailand. These are defects in common with all those other countries throughout Asia where similar incidents commonly occur, including Bangladesh, Cambodia, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, and parts of India.

This document, "The disappearance of a person & the defects of a system", should therefore be instructive not only for persons concerned with the case of Somchai Neelaphaijit and situation of human rights in Thailand, but indeed for everyone concerned with the defence of human rights and ending of impunity in Asia.

Basil Fernando
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INTRODUCTION

On the night of 12 March 2004, in Huamak district, Bangkok, Mr. Somchai Neelaphaijit, a prominent human rights lawyer was abducted and subsequently disappeared. Five police officers were arrested on suspicion of being involved. They were charged with gang robbery and coercion, as Thailand has no law to prosecute persons for committing a forced disappearance. They pleaded not guilty to the charges. Eventually, one was convicted, on the charge of coercion, to three years of imprisonment. The whereabouts of Mr. Somchai are still unknown. The investigation is continuing.

The Somchai case was the first case in Thailand which the Asian Human Rights Commission (AHRC) sent representatives to attend from its beginning to its end. This close monitoring of the trial revealed many deep defects in the criminal justice system there.

It is hoped that the attention brought to the case by various groups and persons, including the AHRC, will contribute to much-needed efforts to address the problems of policing, the prosecution and judiciary in Thailand. For this reason, the full text of hearing notes and other relevant documentation has been compiled with the assistance of volunteers, and is being made available to the public otherwise unedited, as "The disappearance of a person & the defects of a system".

The body of this document consists of the notes from the monitoring of the court case itself, in chronological order. In addition, it contains a section discussing the qualities of the case by Isabelle Ma Suen Hang, an appendix on the mobile phone evidence presented at the trial, by Danthong Breen of the Union for Civil Liberty in Thailand, and another consisting of a statement by the AHRC at the conclusion of the hearings.

This document is intended as a reference primarily for persons already familiar with the case and the issues. Persons new to both are advised to consult background documents, such as those on the Somchai Neelaphaijit homepage, before proceeding: please visit <http://campaigns.ahrchk.net/somchai>.

The AHRC welcomes any comments or suggestions concerning this document, or other pertinent material on the AHRC website, via letter, fax or email: thailand@ahrchk.net. In particular, notification of any errors in facts, spellings of names or other details would be greatly appreciated.

The AHRC thanks all persons involved in observing and documenting the trial of the five police accused in connection with the disappearance of Somchai Neelaphaijit, and especially his wife, Angkhana Neelaphaijit, and her family, without whose involvement and commitment the case of her husband would never have obtained the persistent national and international interest that it has today.

THE CASE

Case Black Number: 1952/2547

Criminal Court, Room No 811, Ratchadepisek Road, Bangkok

Judge Mr. Suwit Phornphanit and two assistant judges

Public Prosecutors State Attorneys for Criminal Department No. 6
Represented by

1. Mr. Preecha Phansang
2. Mr. Nipon Danwiwat
3. Mr. Anusorn Pattakannakul
4. Ms. Nawapha Rujikanha

Joint plaintiffs Mrs Angkhana Neelaphaijit (& four daughters)
Represented by

1. MrSomchai Sukpuchkit
2. MrSithipong Chandraviroj
3. MrJaruwat Saiyotsae
4. MrSomsak Kruekaew
5. MrSantipab Limchuen

Defendants

1. Police Major Ngern Tongasuk
Represented by Mr. Vorramong Klansupha
Kor Or Ror Mor Nor officer working for the Crime
Suppression Division (CSD)
2. Police Major Sinchai Nimbunkampong
Represented by Mr. Pairaj Yahwong
Investigating officer, Unit 4, CSD
3. Police Sergeant Major Chaiweng Paduang
Represented by Mr. Vorramong Klansupha
Tourist Police investigator, Section 4, Unit 2
4. Police Sergeant Rundorn Sithiket
Represented by Mr. Chatchawan Saengtong
Administrative officer, Unit 4, CSD
5. Police Lieutenant Colonel Chadchai Liamsa-nguan
Represented by Mr. Vorramong Klansupha
Deputy Superintendent, Unit 3, CSD

The charges

The five defendants were accused of participating in a group of 5 persons and upwards in committing robbery and compelling another person to do an act against his will (coercion).

The Penal Code of Thailand

Section 83 Whenever any offence is committed by two persons upwards, those participating in the commission of the offence are said to be principle, and shall be liable to the punishment provided by the law for such offence.

Section 309 Whoever compels the other person to do or not to do any act, or to suffer any thing by putting him in fear of injury to life, body, liberty, reputation or property of him or another person, or commits violence so that he does or does not do such act, or suffer thing, shall be punished with imprisonment not exceeding three years or fine not exceeding six thousand, or both

If the offence according to the first paragraph be committed by making use of arms or by five person upwards participating, or it be committed in order that the compelled be punished with imprisonment not exceeding five years or fine not exceeding ten thousand baht, or both

If the offence be committed by alluding to the power of the secret society or criminal association. Whether it be existent or not, the offender shall be punished within imprisonment of one to seven years and fine of two thousand to fourteen thousand baht.

Section 340 Whoever three persons upwards participates in committing robbery, such person are said to commit gang-robbery, and shall be punished with imprisonment of ten to fifteen years and fine of twenty thousand to thirty thousand baht.

If in the commission of the gang-robbery, even one of the offenders carries arms, the offender shall be punished with imprisonment of twenty years and fine of twenty four thousand to forty thousand baht.

If the gang-robbery causes grievous bodily harm to the other person, the offender shall be punished with imprisonment for life or imprisonment fifteen to twenty years.

If the gang-robbery is committed by acts of cruelty so as to cause bodily or mental harm to the other person, by shooting with a gun, by using explosive or by acts of torture, the offender shall be punished with imprisonment for life or imprisonment of fifteen to twenty years.

If the gang-robbery causes death to the other person, the offender shall be punished with death

Section 340 ter. Whoever commits the offence according to the Section 339, 339 bis, 340 or 340 bis, by wearing the soldier or police uniform, by dressing in order to mistake for the soldier or police, or by carrying or using guns or explosive, or by using conveyance in order to commit the offence, to take such thing away or to escape from arrest, shall be liable to heavier punishment than that as provided in such Section by one half.

The Criminal Procedure Code B. E. 2477

Section 2 In this Code:

(4) “Injured Person” means a person who has received injury through the commission of any offence. This includes any other person who has the power to act on his behalf as provided in section 4, 5 and 6;

Section 5 The following persons may act on behalf of the injured person:

(1) The legal representative or custodian in respect only of offences committed against the minor or incompetent person under his charge:

(2) The ancestor or descendant, the husband or wife, in respect only of criminal offences in which the injured person is so injured that he dies or is unable to act by himself;

(3) The manager or other representative of a juristic person in request of any offence committed against such juristic person

Section 28 The following persons are entitled to institute criminal prosecution in Court

- (1) The Public Prosecutor
- (2) The injured person

Section 30 In a criminal prosecution instituted by the Public Prosecutor, the injured person apply by motion to associate himself as prosecutor at any stage of the proceedings before the pronouncement of judgment by the Court of First Instance.

On 12 July 2004 a preliminary hearing was held to determine the schedule for the trial:

- The Public Prosecutor’s evidence would be presented on the following dates:

- August 9-11, 2005
- August 23 and 26, 2005,
- September 6, 7, 8, 9, 20, 21, 22 and 23, 2005
- October 4, 5 and 6, 2005
-

- The joint plaintiffs’ evidence would be presented on the following dates:

- October 18, 19, 20 and 21, 2005

- The defence evidence would be presented on the following dates:

- November 1, 2, 3, 4, 15, 17, 18, 29 and 30, 2005
- December 1, 2, 13, 14, 15, 20 and 21, 2005

Joint Plaintiff: Mrs. Angkhana Neelaphaijit made a motion to join with public prosecutor as a joint- plaintiff. This motion was opposed by the public prosecutor but was granted by the judge who explained that due to the fact that according to Section 5(2) of the Criminal Procedure Code, the injured person had been so injured that he had died or was unable to act by himself, then the descendent or wife, can act on the victim's behalf. Later the same was extended to her children, upon application.

THE HEARINGS

Testimony for the prosecution

21 March 2005

Witnesses: Mr. Makata Harong
Mr. Sukree Maming

This was not a scheduled date, the original first day of the hearing was set out to be on July 12, this was because the public prosecutor filed a request to the court for adjourning the prosecutor's evidence to be presented at this earlier date, part of the reason being to bring acts of terrorism in the three provinces in the south of Thailand to an end.

Mr. Makata Harong

The public prosecutor brought the witness to testify in court via a Yawee language interpreter. The witness testified that he was arrested on charges of gun robbery at the Fourth Development Battalion, using a large knife for striking people in Narathiwat Province, and acts of terrorism in the three provinces in the south of Thailand. He was arrested while he was sitting at the basement of his house. After the arrest, he was handcuffed and his head was covered with a black bag by the police all the way through his journey to the police station, which took one hour. He did not know which police station he was taken to. After that, he was assaulted by 4-5 police officers to force him to plead guilty on charges of gun robbery and school burning. He did not confess to these charges, therefore the police tortured him with electric currents, and allowed a man to urinate over his head. After being kept in custody at the police station for two days, he was brought to Narathiwat Airport to fly to Bangkok. Before getting on a plane, a cloth covering his eyes was taken off, allowing him to see and recognise the 1st accused (Pol. Maj. Ngern Tongasuk). Then he was brought to the Criminal Court for an imprisonment order. While he was remanded in custody at the Metropolitan Police Training School, Bangkok, he met the other four alleged offenders who were Muslims as well.

Mr. Somchai and friends visited the witness and inquired about the facts of the case. The witness informed Mr. Somchai that he had not committed any crime, and he was coerced to plead guilty by the police. After being remanded in custody at the Metropolitan Police Training School, Bangkok, for seven days, he was taken to Klong Prem Prison. Mr. Somchai helped the witness by asking him to sign in a Letter of Petition addressed to the Ministry of Interior, and the Ministry of Justice. Subsequently, Doctor Khunying Porntip Rojjanasunan, Deputy Director of the Central Institute of Forensic Science, and Mr. Kraisaak Chunchawan, President of the Senate Foreign Affairs Commission, investigated the case and physically examined the witness.

After signing the Letter of Petition, the witness did not see Mr. Somchai any more. He only knew about the disappearance of Mr. Somchai afterwards.

Mr. Sukree Maming

The witness testified that he was arrested by the police on 21 February 2004 relating to charges of gun robbery, school burning, placing nails on the roads, and acts of terrorism in the three provinces in the south of Thailand. However the police only recorded the arrest on 23 February 2004. While he was detained at Tan Yong Police Station, the police committed bodily harm to him, e.g. smacked the base of his ears, urinated on his face, and compelled him to shift the blame to other persons. Later the police used a woolen balaclava to cover his head and assaulted him. The police took him to sleep on the mountain at night, and took him back to Tan Yong Police Station in the morning. He was treated like this for two consecutive days and nights.

On 24 February 2004, he was taken to the airport with another four alleged offenders, to fly to Bangkok. Afterwards he was brought to the Criminal Court for an imprisonment order, and then he was remanded in custody separately from the others at the Metropolitan Police Training School, Bangkaen, for four days. During that time, he was threatened by the police that his daughter would be killed if he reversed his testimony. He recognized the police threatening him as the 1st accused (Pol. Maj. Ngern Tongasuk) who was sitting in the trial room.

On 27 February 2004, Mr. Somchai visited and informed him of the assistance. Accordingly, he told Mr. Somchai about what caused him to plead guilty and the police's assault on him. Mr. Somchai asked him to sign the Letter of Petition addressed to the Ministry of Justice, the Ministry of Interior, and the Office of Attorney General. After Mr. Somchai left, the witness did not see Mr. Somchai again. He was later informed of the disappearance of Mr. Somchai.

28 March 2005

Witnesses: Mr. Chudeeruman
Mr. Manace Mama
Mr. Abdulloh Abucaree

The public prosecutor and the joint-prosecutor brought three witnesses to testify in court, Mr. Chudeeruman, Mr. Manace Mama, and Mr. Abdulloh Abucaree. These three witnesses were the former alleged offenders on charges of gun robbery at the Fourth Development Battalion and acts of terrorism in the three provinces in the south of Thailand. Later the public prosecutor ordered non-prosecution in their cases the same as the cases of Mr. Makata Harong and Mr. Sukree Maming.

All the witnesses testified that they were arrested on charges of gun robbery and acts of terrorism in the three provinces in the south of Thailand in February 2004. During the time of being detained in Narathiwat Province, they were attacked and tortured to plead guilty by the police responsible to the central bureau. In conjunction with Mr. Makata Harong and Mr. Sukree Maming, all three witnesses insisted that Pol. Maj. Ngern Tongasuk, the 1st accused, had taken part in the torture.

Subsequently, when they were kept in custody at the Crime Subjugation Division in Bangkok, Mr. Somchai Neelapaijit had visited them and inquired about the facts the case and their detention. Mr. Somchai assisted them by sending a Letter of Petition to various government departments. After this, they all testified that they did not see Mr. Somchai again. They were only informed of the disappearance of Mr. Somchai on 13 March 2004 via the news media.

Afterwards, when they were imprisoned at the Bangkok Remand Prison, Dr. Khunying Porntip Rojjanasunan, Acting Deputy Director of the Central Institute of Forensic Science, physically co-examined them with a Senate committee to obtain the evidence of alleged torture.

The defence lawyers cross-examined the witnesses with the purpose of rebutting the weight of the prosecutor's evidence on the issue that the witnesses were assaulted by the defendants to force them to plead guilty. One of their tactics was to ask why the witnesses did not complain to the mass media about the fact that they were forced to make a confession. Moreover, when the witnesses were imprisoned at the Bangkok Remand Prison, there were no reports to the prison officer who physically examined the witnesses about incidents of being assaulted. In addition, the defence lawyers also cross-examined to prove that third persons could not know whether Mr. Somchai himself assisted the witnesses by writing the Letter of Petition since the communication between Mr. Somchai and the witnesses during the imprisonment was conducted personally, and no one knew the messages. Besides the Letter of Petition did not have any names or messages stating that it was written by Mr. Somchai. Additionally, although Mr. Somchai did not deal with this case, there were other organizations providing assistance to the witnesses, e.g. the National Human Rights Commission, the Senate committee. Finally, the five accused were neither the police officers who had arrested the witnesses nor the inquiry officials in gun robbery case. Hence, the accused did not have any motives to assault Mr. Somchai.

Relevant points of law

The Criminal Procedure Code

Section 15

“Any matters of procedure not specifically provide in this Code shall be governed as far as possible by the provisions of the Civil Procedure Code relating thereto.”

Section 226

“Any material, documentary or oral evidence likely to prove the guilt or the innocence of the accused is admissible, provide it be not obtained through any inducement, promise threat, deception or other unlawful means ; such evidence shall be produced in accordance with the provisions of this Code or other laws governing production of evidence.”

The Civil Procedure Code

Section 87

No evidence shall be admissible, unless

(1) It related to facts to be proved by any party to the case that is to be adduced, and
Section 95 No oral evidence shall be admissible unless the person called as a witness

(2) has directly and himself seen, heard or know of the fact with respect to which he is to give testimony, provide that this latter provision shall be applied only in the absence of any express provision or ruling of the Court to the contrary

Comment

The reason the public prosecutor and the joint-prosecutor asked the five witnesses to give testimony in court was to prove that all five defendants had a reason for abusing and kidnapping Mr. Somchai. They all had a motive for committing a crime against Mr. Somchai because he had helped the five witnesses through petitioning the government departments for justice. Provided that an investigation was conducted according to the letter of Petition sent to the said government departments, it would affect the official positions and duty of the police involved, especially Pol. Maj. Ngern Tongsuk, the 1st accused, and also their authorities and chiefs in charge. With the pressure generated by Mr. Somchai's action, the defendants had to take action to silent Mr. Somchai, a plan was set up to assault and kidnap Mr. Somchai. He was a threat to the five defendants and any further action by him could have harmful effects not only to the five defendants but to their superiors also.

Although all the five witnesses were not the eyewitnesses who had seen the offence of the accused, they represented presumptive evidence to the fact that demonstrated the motive of the accused for their offence. In addition, they were the witnesses to the character credibility of the five defendants: their aggressive approach at gathering evidence resorting to acts of torture. The fact that the confessions by the five witnesses were induced via torture is admissible as evidence in this case according to the Criminal Procedure Code, Section 87(1) and Section 95(2).

What is interesting is that the court did not allow the mass media and the audience to take any notes during the second taking of the prosecutor's evidence, thus the acts of the five defendants could not be communicated to outside the court room. Was the judge protecting the five defendants?

9 August 2005

Witness: Mrs. Angkhana Neelaphaijit

The public prosecutor introduced the court to the witness as a joint plaintiff in the case and stated that the witness is the legitimate wife of Mr. Somchai and together they had five offspring. A graduate of law, Mr. Somchai had worked as a lawyer and had recently

opened his law office named Somchai Neelaphaijit Law Office. In addition, he was the chairman of the Muslim Lawyers Club and a committee member of the Legal Aid Department of the Law Society of Thailand. Most of the cases Mr. Somchai worked on concerned political issues and public assistance. For example, in 1994 he was the defence lawyer in a school arson case from the deep south, and also in the case of a student of Chulalongkorn University set up on drugs charges by the police. These clients were subsequently acquitted.

The witness told the court that her husband normally left home at 7am to take his daughters to school and university before going to his office. His personal car was a green Honda Civic with license plate number Phor Ngor 6786 Bangkok. Before the incident happened, on 10 March 2004, Mr. Somchai left home at the normal time with his daughters and then went to work as usual. On that day, he had contact with his wife as usual. For instance, he phoned to tell her at 6pm that he had to go to the Thayaburi court but his car was broken and was being fixed. He also told her and their daughters that he would stay overnight in the Bangkapi area with his friend Mr. Wannachai Pannoppha, whose name appears in the list of witnesses.

Afterwards, on 11 March 2004, Mr. Somchai had contact as usual with his wife and their daughters. The witness asked him if he already had dinner and he told her that he had to prepare some documents and after that he would stay overnight with Mr. Wannachai's brother, who has a house in Suan Son Village, Bangkapi.

On 12 March 2004, Mr. Somchai still kept in touch with his family. His final phone call was made at 7.30pm to his daughter. He informed her that he was at that moment in front of the Ramkhamhaeng University and had dinner with a trainee lawyer Mr. Pathomphong Likhit. He told his daughter that he would go to meet some friends before going back home. Then, from 9pm onwards, his family tried to call him but could not contact him.

On 13 March 2004 the joint plaintiff knew that her husband had a morning meeting with the members of the Muslim Lawyers Club in Bangkapi but when she called him, he did not answer. After the meeting, she received phone call from several friends of her husband who wondering about where Mr. Somchai was at the moment. She then felt concerned as it was not normal for her husband to be out of touch.

On 14 March 2004 in the afternoon, Mr. San Chokphong Udomchai, a lawyer at Mr. Somchai's office, called the joint plaintiff and informed her of her husband's disappearance. Then, together with his friends, Mr. San took her to report the case to the police at Bang Yee Rua Police Station. Initially, she told the police that she could not contact her husband and thought that he might have had an accident. On the same day, she got a phone call from Mr. Sitthiphong (Somchai's friend from the Muslim Lawyers Club) who said to her that Mr. Somchai did not attend the meeting held the previous day. She was also informed that he did not appear at Hat Yai airport the day after the meeting at 6pm to plead a lawsuit at the Narathiwat Provincial Court.

On 16 March 2005, at around 1pm, Pol. Gen. Sombat Amornwiwat, the Director General of the Department of Special Investigation (DSI), phoned to the joint plaintiff and told her that Mr. Somchai's car was found at Morchit 2 (northeastern bus terminal). He asked her to go there with some spare keys. While she was going to the bus terminal, Pol. Gen. Sombat phoned her again and asked her to go to the Scientific Crime Detection Division of the Royal Thai Police, because the car had to be examined there. When she arrived at the division she did not meet Pol. Gen. Sombat but was asked to check the car's condition and found that the rear right bumper was hit.

The joint plaintiff added that in mid-April 2004 an inquiry official at the Bang Yee Rua Police Station asked her to sign a document on the arrest of four suspects, all of whom are policemen:

1. Pol. Maj. Ngern Tongasuk
2. Pol. Maj. Sinchai Nimbunkampong
3. Pol. Sgt. Maj. Chaiweng Paduang and
4. Pol. Sgt. Rundorn Sithiket.

All suspects were charged as noted above. Then, the inquiry officer gave the joint plaintiff the details of Mr. Somchai's possessions prior to his disappearance. Subsequently, the police caught the fifth suspect Pol. Lt. Col. Chadchai Liamsa-nguan. The reason that Mr. Somchai was disappeared is likely to have been due to his appeal to the Minister of Justice, the National Human Rights Commission and the Senate in a case in which some police tortured the suspects and forced them to confess to the robbery of weapons from an army camp and school arson in the south (hereinafter labeled 'gun robbery case'). The appeal to that case had been lodged no more than a week before his disappearance. Besides, on 11 March 2004, Mr. Somchai phoned his wife and told her that Mr. San had taken him to a person and who had warned him about somebody who intended to harm him. Mr. Somchai was also asked at the time to give up his campaign to have martial law lifted in the south of Thailand and to declare amnesty for any cases relating to incidents in southern Thailand.

The witness told the Public Prosecutor that she never knew the five defendants and she and her husband never had any family problems. To the fact that the Prime Minister told the media about Mr. Somchai was having family problems [as an explanation for his disappearance], she clarified that she met with the Prime Minister on 20 June 2005 and was told that his news sources were unreliable. She then asked him about an interview he made concerning a group of people abducting Mr. Somchai to Mae Hong Son province. He answered her that this was also misinformation and he thinks that Mr. Somchai might have been taken to Ratchaburi province instead.

Cross-examination

After testifying, the joint plaintiff responded to the cross-examination made by the defendants' lawyer under five main topics relating to the disappearance of her husband:

1. *Family Matters and Adultery:* Before the incident, Mr. Somchai did not come home sometimes. The joint plaintiff stated that her husband suffered from the Hepatitis B Virus, which caused him to suffer from physical exhaustion. So he needed treatment and rest. That is why she had asked her husband to stay overnight with a colleague who lived near his office instead of going home. According to religious tradition, Muslim men are allowed to have four wives. However, it is a sin to have an affair with a woman who is an illegitimate wife. She reiterated that her husband did not have any minor wives. Mr. Somchai usually contacted his family quite frequently. Instead of calling home, he made phone calls to his daughters via mobile phone for fear of the phone being tapped.

The family income was sufficient as Mr. Somchai undertook both cases in the public interest and private cases, some of which provided him with considerable income. Possessions like a Rolex watch and a Mont Blanc pen had been given to him by clients.

2. *Donations:* The joint plaintiff talked about foreign donations, stating that even though Mr. Somchai chaired the Muslim Lawyers Club he used his own money in carrying out cases. The treasurer of the club kept the donation money. For the construction of Ku Bo (Muslim cemetery) Mr. Somchai and his relatives acted as the committee members because the construction needed a budget of over ten million Baht and the Bangkok Council would request the budget along with people's donations. So far no money has been received by the family since he disappeared.

Mr. Somchai had been to Saudi Arabia for the Hadji, to Sri Lanka with the Permanent Secretary to the Ministry of Justice for a field trip on the Islamic religious court and to the Philippines with Senate members. In each of these travels he did not participate in any other activities made by the Muslim Lawyers Club, and the club never got any foreign donations. The joint plaintiff believes this as her husband confirmed to her that he did not get any money from anyone but his lawyer friends, who gave support to each other.

3. *Previous Cases:* The joint plaintiff said that the security cases taken by Mr. Somchai, such as the C-4 bombing case, in which he obtained an acquittal by the court that brought anger from the embassies of Israel and America, and the enlisting of 50,000 names to end martial law in the south, which made some military officers angry, were beyond her knowledge.

It should be noted that there was no question made as to any cases in which police officers were involved directly.

4. *Relations with Lawyer Colleagues and Governmental Officials:* The joint plaintiff talked about the situation of Mr. San Choekong Udomchai, a lawyer at Mr. Somchai's office, who was later found carrying the card of an advisor to the Deputy Secretary-General to the Prime Minister. She said that Mr. San had known and worked with her husband for a couple of years but she hardly saw him at the office although the children knew him well. After the incident, Mr. San was the first to let her know and accompanied her to the Bang Yee Rua Police Station. She does not suspect Mr. San because he and her

husband were good friends. And she does not believe that there was a conflict between Mr. Somchai and his colleagues both in his office and in the Muslim Lawyers Club.

The latest case in which Mr. Somchai had provided legal assistance was to five suspects who were allegedly tortured by the police and charged with robbery of guns and school arson. The five were kept under police custody and later on the court agreed with the motion made by the lawyer and transferred them to prison. This case brought a conflict between Mr. Somchai and the police from the CSD.

5. Testifying to the Investigation Officers: The joint plaintiff did not give any information concerning whether her husband had been threatened or not to the investigation officers because she preferred testifying before the court as she cannot trust any policemen. However, she signed the document for the arrest of the five defendants as she strongly believes that they were involved with her husband's disappearance.

For other matters, such as the case in which a district chief informed that Mr. Somchai was on a list of persons involved in terrorism and submitted it in the form of a circular notice, the government had already checked and confirmed that Mr. Somchai had no connection to the said matters.

After the joint plaintiff completed her response to the prosecutor and testified under cross-examination, the lawyer of the daughters of Mr. Somchai filed a request that they also be joint plaintiffs in this case. The court, under consideration that persons who are really the offspring of Mr. Somchai and act as the injured persons according to articles 5 (2), 2 (4) and 30 allowed the requesting persons to act as joint plaintiffs under the case.

Comments

This taking of the prosecutor's evidence was attended by a great number of press and observers, as the testifying witness was Mr. Somchai's wife. Mrs. Angkhana's testimony and surrounding evidence attested to the fact that Mr. Somchai was actively involved in giving help to the alleged offenders and the accused in cases related to security, the act of which might induce conflicts with certain public officials. In particular, during the 'gun robbery case', Mr. Somchai raised complaints to various departments as to the allegation that the inquiry officials attacked the alleged offenders compelling them to confess to the charges of gun robbery and violence in the south. This has been highlighted as the motive for his disappearance.

However, Mrs. Angkhana's testimony was based on what she had been told by Mr. Somchai and therefore her testimony is considered hearsay evidence, which is normally not admissible to the court as per Section 95(2) of the Civil Procedure Code applied *mutatis mutandis* by Section 15 of the Criminal Procedure Code. An exemption can be made by existing legal provisions or a court order. Even so, in normal procedure, hearsay evidence is taken less seriously than other evidence.

Even so, in Thailand, the weight allocated to the evidence presented in court is entirely dependent on the discretion of the judge. This is because the court records testimony not verbatim but according to its own understanding. The judge speaks into a microphone and it is that is taken down by a stenographer and then read back to the court before completion of the session. It is possible that in this way the court can miss some important testimony and the underlying features or meaning given. Thus, the judge can include or exclude evidence which he/she considers significant or insignificant.

The examination made by the Public Prosecutor seemed broad and did not focus much on details, thus enabling the defendants' lawyers to object. There were no detailed questions about the cases Mr. Somchai was involved with that could cause a conflict between him and police officers, for example, Mr. Somchai got his clients acquitted after exposing fake evidence made by police officers. Such evidence can add to the mounting proof conveyed during Mrs. Angkhana's testimony that the police had a motive for silencing and abducting Mr. Somchai.

When it came to cross-examination by the defence, the topics came from the fifth defendant, Pol. Lt. Col. Chadchai Liamsa-nguan, instead of from the defence lawyers themselves. Pol. Lt. Col. Chadchai is a professional officer, he is skilled in interrogation, and knows how to deviate the questions into matters like adultery, foreign donations and conflicts among lawyers or anger caused to other parties in lawsuits that Mr. Somchai ran and won. This diverts the attention away from the case at hand, which it to determine the guilt of the defendants, and instead concentrates on irrelevant points such as Mr. Somchai's private life and an attempt at degrading his character in the eyes of the judge.

The Participation of Trial Observers

During the trial, apart from several local and foreign media, a lot of officers and representatives from both national and international human rights organizations who were interested in this case attended the trial. Such persons included:

1. Ms. Elizabeth Evatt AC, Ms. Ami Latona and Ms. Preeda Tongchumnum, for the International Commission of Jurists (ICJ)
2. Ms. Mary Aileen D, for the Asian Federation against Involuntary Disappearances
3. Mr. JI. Borobudur, for the Indonesian Association of Families of the Disappeared, a member of AFAD
4. Ms. Pornpen Khongkachonkiet, for the NGOs Coalition on the Protection of Human Rights Defenders
5. Mr. Metha Matkaew, for the NGOs Coalition on the Protection of Human Rights Defenders
6. Pairoit Polpet, for the Union for Civil Liberties (UCL)
7. Two lawyers for the Asian Human Rights Commission, Hong Kong
8. Mr. Matthew Easton, for Human Rights First
9. A representative of Nonviolence International

10 August 2005

Witness: Mr. Kitja Aliishoh

Mr. Kitja Aliishoh, a lawyer in a case of alleged JI rebels and treasurer of the Muslim Lawyers Club stated that he had practiced as a lawyer since 1988 and met Mr. Somchai during the same year because he is also a Muslim lawyer. Besides, he admired Mr. Somchai's professionalism, and he was later invited to work as treasurer of the Muslim Lawyers Club. According to Mr. Kitja, the Muslim Lawyers Club aims to disseminate legal knowledge among people and give legal assistance to anyone who is abused by government officials. Most of the cases supported by the club concern southern Thailand, such as school arson attacks, the case of Toh Kru Heng and the alleged JI rebels. In the JI rebels case he was the lawyer to the 2nd defendant while Mr. Somchai worked for the 1st defendant, Dr Waemahadee Waedaoh. Finally, the court acquitted both the defendants in this case and the prosecutor decided not to appeal.

Mr. Kitja said that before Mr. Somchai disappeared martial law was declared in three southern borders of Thailand. In 2004, Mr. Somchai played a key role in collecting people's names to request that martial law be lifted. As a result, over 20,000 Muslims in southern Thailand and in Bangkok joined the activity. Moreover, Mr. Somchai and his colleagues of the Muslim Lawyers Club gave legal assistance to many cases that involved JI rebel groups in the south of Thailand.

On 26 February 2004, Mr. Somchai phoned Mr. Kitja and informed him that the five suspects of the 'gun robbery case' had been taken to Bangkok the day before. So, on 27 February 2004 both Mr. Somchai and Mr. Kitja went to visit the suspects along with some lawyer colleagues of the club, Mr. Witthaya and Mr. Kamolsak Deewameh. Later, they learnt that three suspects, Mr. Manaseh Mamah, Mr. Sudeerueman Maleh and Mr. Abdulah Arbukaree, were detained at the CSD while Mr. Makata Harong and Mr. Sukri Maming were detained at the Bang Khen Police School. Mr. Somchai then asked his colleagues and Mr. Kitja to meet at the CSD at 10am. After they made a visit at both places, they found that all the suspects had been brutally forced to confess. To prove this, they took off their shirts and the lawyers found that their bodies were covered in wounds from electrical shocks. Mr. Mahaseh's head was bleeding and his body was kicked. Some of them reported that police officers had urinated into their mouth. Mr. Somchai, upon finding out about his, became very upset over the acts of the government officers. Subsequently, he issued a document to the court requesting that the detention of the five suspects be lifted. When the court considered the investigation file and found no progress, they did not grant permission of release and decided to imprison all the suspects. Mr. Somchai also issued a document to all organizations concerned and asked the suspects to recant their ordeal in custody. Afterwards, Mr. Somchai and Mr. Kitja went to deal with a case at the provincial courts in Yala and Narathiwat provinces.

On 10 March 2004 at 12 pm, Mr. Kitja visited Mr. Somchai at his office in Soi Arpapirom, Ratchadapisek 32 Rd, to make an appointment with Mr. Witthaya and Mr. Thanongsak to talk about the case of the five tortured suspects and the preparation of the

budget of the Muslim Lawyers Club. Mr. Somchai told him that he had a friend who worked as a district chief in Narathiwat province. The district chief, whose name Mr. Somchai did not mention, called him and informed him that he was ranked No. 1 in the list of terrorists. However, after Mr. Somchai's disappearance, Senator Mr. Sak Kosaengreung checked this fact with the National Security Council (NSC) office and the administrative division of interior security and did not find Mr. Somchai's name in the list.

Mr. Kitja added that at 4pm, he called trainee lawyer Mr. Pathomphong Likit, who worked at Mr. Somchai's office, and asked him to buy a bus ticket to Chiang Mai province at the Nakhornchai Air Company in Morchit Northeastern Bus Terminal. The witness wanted to talk to Mr. Somchai about having dinner together, but he did not mention the time or the place. At 8pm he called Mr. Somchai, who was at the Chaleena Hotel on Ramkhamhaeng 65, and said that he had just finished his business and was coming for him. Mr. Somchai told him that he had already finished his dinner and felt sleepy so he would go to the house of Mr. Wannachai Pannaoppha's brother in Suan Som Village, Bang Kapi, which is located two kilometres from the hotel. In the next 20 minutes, he called Mr. Somchai one more time to ask if he had already arrived at the friend's house, but the witness could not reach Mr. Somchai, so he assumed that Mr. Somchai was already at the friend's house.

On 13 March 2004, Mr. Kitja had a meeting with the committee of the Muslim Lawyers Club at 9am. Mr. Somchai, who had to attend the meeting with him, did not show up. So he tried to phone Mr. Somchai but could not succeed. All of the committee members tried to contact Mr. Somchai but they all failed. Then Mr. Somchai's daughters informed him that their father had not come home yet, and Mr. Wanchai said that Mr. Somchai had not stayed with his brother either. On 14 March, Mr. Somchai did not show up at the airport, even though he had to go to the Narathiwat Provincial court for the case of the alleged JR rebels. Therefore, along with the other members of the club, Mr. Kitja believed that Mr. Somchai may have been abducted.

Mr. Kitja testified to the effect that there could be two primary reasons for the kidnapping of Mr. Somchai, first was his submission of letters of petition to the Royal Thai Police, various Senate committees and other concerned authorities concerning the 'gun robbery case'. Secondly, Mr. Somchai was attempting to collect 50,000 signatures to support the removal of the martial law in the south of Thailand. Before he disappeared, he had already gathered as many as 20,000 signatures of people from Narathiwat, Pattani and Bangkok Provinces who supported the martial law removal.

Cross-examination

The defence lawyers examined the probable causes for Mr. Somchai's disappearance. Mr. Kitja insisted that Mr. Somchai had never had conflicts with his family or other lawyers in the Muslim Lawyers Club. As to if the fact that Mr. Somchai had represented the defendants in the cases of bombing at the Israeli Embassy, the murder of an officer of the Saudi Arabia Embassy and the 'gun robbery case', might have led to vengeance of the Embassies and relatives of the decease, Mr. Kitja refused to comment on

Mr. Kitja further testified during the cross-examination concerning the managerial work of Mr. Somchai at the Muslim Lawyer Club that Mr. Somchai never solicited for donation. The Club's expenses were covered by contributions from its members and the balance of the Club's bank account only stood around 10,000 baht. As to the trip abroad, they were visits by Mr. Somchai to explore justice systems in other countries with officers from the Ministry of Justice. The trip to Saudi Arabia was intended for participating in the Haj pilgrimage and he never received donations from abroad.

Comments

The witness was a close collaborator and colleague with Mr. Somchai in both the Muslim Lawyer Club and his representation for the alleged offenders related to the cases concerning security in the south. The testimony of the witness strongly suggests the possible conflicts Mr. Somchai had with the inquiry police officers in line with the earlier testimony by Mrs. Angkhana. Mr. Somchai had no other major conflicts which simply ascertain that his disappearance is related to his involvement in cases concerning the political unrest in the south.

The Participation of Trial Observers

This day saw fewer observers than March 9, but some friends of Mrs. Angkhana and representatives from local and foreign human rights organizations came, including:

1. Ms. Elizabeth Evatt AC, Ms. Ami Latona and Ms. Preeda Tongchumnum, for the International Commission of Jurists (ICJ)
2. Ms. Pornpen Khongkachonkiet, for the NGOs Coalition on the Protection of Human Rights Defenders
3. Mr. Metha Matkaew, for the NGOs Coalition on the Protection of Human Rights Defenders
4. Pairot Polpet and Mr. Danthong Breen, for the Union for Civil Liberties (UCL)
5. Two lawyers for the Asian Human Rights Commission, Hong Kong
6. Mr. Matthew Easton, for Human Rights First
7. A representative of Nonviolence International

11 August 2005

Witness: Mr. Pathompong Likhit

Mr. Pathompong Likit, an intern lawyer, who was the last person to accompany Mr. Somchai before his abduction. The witness testified that he had been a trainee lawyer for Mr. Somchai since 2003.

On the day of the incident, Mr. Pathompong arrived at the office and went with Mr. Somchai to the law courts at 9am. Mr. Somchai was driving his personal car, a green Honda Civic with license plate Phor Ngor 6786 Bangkok. At 10am, Mr. Pathompong went to the Bangkok City Council while Mr. Somchai had an appointment with his client

in Robinson Department Store on Silom road. They met again at 1pm in the Bangkok Central Bankruptcy Court before returning to their office again in the afternoon.

At 4pm, Mr. Kitja Aliishoh, called Mr. Pathomphong and asked him to buy a 13 March bus ticket to Chiang Mai province. Afterwards, the witness and Mr. Somchai went to the Santichon Foundation in Ladprao 112 to pray. They then went for dinner at Ashma, a nearby restaurant. The dinner was finished at 7.30pm and Mr. Somchai told the witness that he was expecting a call from Mr. Kitja in the next five minutes. But Mr. Kitja did not call him. As Mr. Somchai was feeling sleepy, he departed to stay at a friend's residence. The witness was told to stay and wait to meet with Mr. Kitja alone. .

At 8.15pm, Mr. Kitja gave Mr. Somchai a call saying that he had just left a hotel on Sukhumvit Road and was going to meet them. Mr. Somchai then told him that he felt sleepy and wanted to meet and stay overnight with the brother of Mr. Wanchai Pannoppha at the Suan Son Village, at Lam Sali. So, Mr. Kitja wanted to talk to Mr. Pathomphong and asked him to stay at the hotel until he arrived there to give the bus ticket to Chiang Mai.

The witness further testified that as Mr. Somchai's car was making a turn from the Hotel, there was a pick up truck that he could not remember the brand and another black Nissan tagging along at a distance of 2-3 metres from Mr. Somchai's car. The witness stood and watched for about a minute. The visibility was great due to the lighting of the Hotel.

On 14 March 2004, he went to the office and Mr. Witthaya and other lawyers at the office talked about Mr. Somchai's disappearance.

Regarding the two cars that followed Mr. Somchai, Mr. Pathomphong said that he could not recognize the pick-up and reported that the other car was a black sedan, a Nissan Zerfilo. The point at which Mr. Pathomphong saw the car was around 6-7 metres away.

Mr. Pathomphong told the court that he had heard Mr. Somchai and his friends at the office talk about a phone call made by some police to threaten Mr. Somchai to stop continuing any cases related to the southern violence.

Cross-examination

Mr. Pathomphong stated that the Muslim Lawyers Club was located in the same premises as Mr. Somchai's office. The office rental was not paid by the club but by Mr. Somchai himself. If he does not have enough money, his colleagues at the Club will lend him some. Sometimes, Mr. Somchai has to stay overnight at his office if he has a lot of work to finish. Lately, he had not stayed at the office so often because he would stay at his friends' houses or at a hotel instead.

Mr. Pathomphong said he did not sign his name to the report in which police officers mapped the incident. The officers just put a date in the space of Mr. Pathomphong's name and he saw the document after it had been completed. However, he confirmed that the document is true. On the fact that Mr. Pathomphong told the investigating officer that he

could not recognize the detail of the cars that followed Mr. Somchai's, it was because he wanted to tell the truth before the court only and he was scared of being threatened by some suspects in this case. Then, the defendants' lawyers asked Mr. Pathomphong to read a news article from *Thai Rath* newspaper which stated that the hotel had installed a security camera to record any incidents there. However, no pictures of Mr. Pathomphong with Mr. Somchai were displayed. Nevertheless, a hotel officer said that he saw both of them there at the time mentioned.

Comments

The examination made by the prosecutor mostly followed the interrogation of the investigating officers together with some additional documents.

Most of the inquiries came from Pol. Lt. Col. Chadchai Liamsa-nguan. There were many times that the inquiries were paused because a question from Pol. Lt. Col. Chadchai was expected. The inquiries still concerned the same thing as the previous time: the relation between the club and Mr. Somchai and conflict among the lawyers. This time, Pol. Lt. Col. Chadchai, instead of being with all the other defendants, sat with the lawyers and the court said nothing to him since both plaintiff and defendant can take a seat nearby their lawyer (or lawyer's desk) at anytime in order to consider the facts and support their lawyer.

The witness was the last person to see Mr. Somchai before he went missing, therefore, he is considered a very important circumstantial witness. In light of his testimony, more details of the timing and relevant places could be developed including details about the suspected vehicles that he saw, which may become important evidence to hold the alleged perpetrators culpable.

The Participation of Trial Observers

This time saw a lot more media waiting to get information because of a rumor that Mrs. Angkhana had asked the Witness Protection Office (WPO) to help her for her security.

Moreover, the trial room saw a senator present, Mr. Thongbai Thongpao, also Pol. Maj. Gen. Khattiya Sawasdiphol, and university students as well as some representatives from local and foreign human rights organizations:

1. Ms. Preeda Tongchumnum, for the International Commission of Jurists (ICJ)
2. Mr. Danthong Breen, for the Union for Civil Liberties (UCL)
3. Two lawyers representing the Asian Human Rights Commission, Hong Kong
4. Mr. Matthew Easton, for Human Rights First
5. Mr. Brean, for Federation Internationale de la Droits Humain (FIDH)
6. A representative of Nonviolence International

The AHRC was equally concerned over the safety of Mrs. Angkhana and therefore issued an urgent appeal and sent a letter to all the relevant Thai authorities regarding the need to offer Mrs. Angkhana prompt and proper witness protection. It is interesting to note here

that after much press and public awareness of the vulnerable situation Mrs. Angkhana was in, not only as a witness to the trial but a key campaigner for her husband's case, the former Minister of Justice, Mr. Suwat Liptapanlop, contacted the WPO to ensure that they organise protection for her. However, due to the inadequacies of the current system of witness protection (please refer to a report published by the AHRC regarding witness protection in Thailand) even though Mrs. Angkhana received protection, she terminated it after two months because the protection was provided by the police. This meant that instead of feeling safe and secure, Mrs. Angkhana felt threatened and intimidated by the police officers.

23 August 2005

Witnesses: Mr. Weerachart Pannoppha
Mr. Wannachai Pannoppha

Mr. Weerachart Pannoppha

The witness was introduced to Mr. Somchai by his brother Wannachai Pannoppha five years ago. Before his abduction, on 10 March 2004, Mr. Somchai stayed overnight with Wannachai, whose house was near to the witness' house, in order to discuss fund raising for the Muslim Lawyers Club by setting up a Chinese dish feast. On 11 March 2004, Mr. Wannachai brought Mr. Somchai to the witness' house to spend the night.

On the morning of 12 March 2004, Mr. Somchai drove out to his office. At 6pm Mr. Wannachai called his brother, the witness, to inform him that Mr. Somchai would spend another night at his house. As Mr. Wannachai was busy, it was the witness' responsibility to get the house ready and to greet Mr. Somchai. Then, at 8pm the witness began waiting for Mr. Somchai in front of his house. The witness waited for Mr. Somchai until 10pm but nobody arrived. So he went to bed.

On 13 March 2004, the witness, for fear that Mr. Somchai might have fallen into a ditch near his house, drove around to find Mr. Somchai. However, when he found nobody there and after numerous enquiries, the witness began to suspect that Mr. Somchai had disappeared. He suspected that the abduction occurred between the hours of 8 to 8.30pm.

Cross-examination

The witness told the court that he did not notice how Mr. Somchai was dressed in the morning of 11 March 2004. But Mr. Somchai stayed in the same room and the witness did not know how often Mr. Somchai stayed overnight at other places.

On the day of the incident, the witness used a mobile phone with DTAC system number 01 402 3388. He maintained that Mr. Somchai was abducted between the hours of 8 and 8.30pm. He does not know exactly when the incident happened, though. The car that Mr. Somchai drove on the day was a dark blue Honda Civic. The witness added that he had known Somchai before, although they were not close friends.

The witness said that he did not know the family of Mr. Somchai and did not get involved with the Muslim Lawyers Club. So, he had no knowledge of the club's objectives.

Although the witness did not know how much the club earned from the fund-raising, he knows that the purpose of the fund-raising was for internal management.

Mr. Wannachai Pannoppha

The witness said that he had worked as a lawyer for 14 years and had known Mr. Somchai since he had studied at Ramkhamhaeng University. The witness met Mr. Somchai again when he was responsible for the school arson cases in southern Thailand during 1993, because he needed to consult Mr. Somchai on the case. The witness is a Committee member of the Muslim Lawyers Club. The club is situated at Mr. Somchai's office in Soi Aphaphirom, consequently, the club does not have to pay any office rental. Due to the fact that the club does not have any income, the club's members need to pay for their expenses together. The club reportedly launched a trip once and gained 30,000 Baht, which had been deposited before Mr. Somchai's disappearance. The witness said that the club did not have much money.

The witness frequently worked together with Mr. Somchai on legal cases, and together they had gone to visit the alleged offenders of the 'gun robbery case'. However, the witness stopped becoming involved in the case due to illness. Mr. Somchai had told the witness that he was scared of being abducted when working as a lawyer for these cases.

On 10 March 2004, at 9pm, Mr. Somchai phoned the witness and asked whether he could stay overnight at his brother's because he needed to finish writing invitation cards. Mr. Somchai said he would sleep in the radio broadcasting room, separate from the house, which is located in the Suan Son Village.

On 11 March 2004, Mr. Somchai left the house of the witness's brother. He told the witness that he would go to work. Shortly afterwards, Mr. Somchai called the witness again and said that he wanted to stay another night at Mr. Weerachart's house. That night, Mr. Somchai had told the witness that somebody had informed him that he was listed among the top 40 persons involved in the southern violence.

On 12 March 2004, at 8pm, the witness phoned Mr. Somchai, who was at the Chalina Hotel with Mr. Pathomphong. Mr. Somchai told the witness that he was going to stay at Mr. Weerachart's house and would not wait for Mr. Kitja. The reason that Mr. Somchai waited for Mr. Kitja was that at the time they were preparing for a Muslim Lawyers Club activity and Mr. Kitja was responsible for making the invitation cards. Mr. Kitja needed to get a bus ticket from Mr. Pathomphong, but Mr. Somchai could not wait for him because he felt sleepy. At 10pm, Mr. Weerachart phoned the witness to say that he would not wait for Mr. Somchai anymore as Mr. Somchai had not yet arrived. The witness tried desperately to call Mr. Somchai by his cellphone. He believed that if Mr. Somchai wanted to go home he would inform him.

On 13 March 2004, there was a meeting of the Muslims Lawyers Club. The witness, however, did not attend the meeting because he was busy. At 9am, Mr. Kitja gave him a call and asked him why he could not be at the meeting. Also, he wanted to know about Mr. Somchai because he had called for the meeting and yet he could not be contacted.

Normally, if Mr. Somchai called for a meeting, he never skipped it. Moreover, Mr. Somchai's relatives tried to call him by his mobile phone there was no answer. When they phoned to Mr. Somchai's house, his daughter informed them that her father had not returned home yet. On 14 March 2004, Mr. Somchai's staff called the witness to say that Mr. Somchai had not yet checked in at the airport. So, the witness thought that there might be something wrong.

The time that the incident happened was between 8.30 and 9pm, the witness thought. The distance from the Chalina Hotel to Suan Som Village is about 30 minutes under traffic congestion and 10 minutes without any traffic problems. The car Mr. Somchai drove at the time was a green Honda. Mr. Somchai had used the car for several years. According to the witness, the reason for Mr. Somchai's disappearance was that he issued a document calling for justice after he visited five terrorism suspects and knew that the police had physically abused them.

Cross-examination

The witness replied to the defendants' lawyers concerning the situation from March 10 – 14 as follows:

March 10 Mr. Somchai stayed overnight with the witness at the house of Mr. Weerachart because the witness's house was not vacant. The witness could not remember how his friend was dressed. Mr. Somchai reportedly went to bed at about 11pm.

March 11 The witness met Mr. Weerachart and Mr. Somchai at 6am. Mr. Somchai left Mr. Weerachart's house to work at 7am. He had a t-shirt and trousers. The witness went out afterwards. He did not know if Somchai reached his office or not, although he was told so.

At 9pm, Mr. Somchai returned to Weerachart's house and went to bed at nearly 11pm. On that day, the witness knew that his friend had bought a new mobile phone because the old one had a problem. However, the witness said that he does not know how much the new mobile phone cost.

March 12 The witness did not know if Mr. Somchai wanted to come back and stay at Mr. Weerachart's or not. Until 8pm, Mr. Somchai called him and said that he would return there. At that time, Mr. Somchai was at the hotel with Mr. Pathomphong because they had to wait for Mr. Kitja. The witness recalls that if Mr. Pathomphong had given the ticket to Mr. Somchai it would be more convenient for Mr. Kitja to pick up. This was because Mr. Somchai and Mr. Kitja had a meeting on 13 March 2004 at 9am.

March 13 The witness suspected that Mr. Somchai might have been abducted because he could not contact him.

March 14 The witness contacted his lawyer colleagues of the club. Then, he knew from the lawyers at Mr. Somchai's office that his friend did not go to the south that day.

From the day of the incident until 14 March 2004, the witness called various lawyers using a mobile phone on DTAC systems, no.01 621 3537.

Regarding the office of Mr. Somchai and the Muslim Lawyers Club, there is no maid at the office and it is closed on the weekend, while it is open for a half-day on Friday. Normally, the club holds a meeting monthly during which the minutes are made and kept. The donations and lawyer's fees are recorded, any payment has an accompanying document issued by the club. After Mr. Somchai's disappearance, Mr. Kitja still monitors the club's accounts. There are three persons who can authorize payments: Mr. Kitja and two others, about which the witness said he was not sure.

The cases in which the club offers help are considered according to criteria that the persons involved should be poor and abused or physically hurt. The witness said that he had no idea who had the authority to conduct these cases. But there would be some discussion about the persons to visit the south and monitor the facts. Most of the cases concerning the southern violence were done by Mr. Somchai. The club did not get paid for this work on security-related cases.

Regarding Mr. Somchai's family, the witness said that Mr. Somchai's wife went to his office only when she had some private business. The witness did not know if, when Mr. Somchai held a case, he ever discussed it with his wife or not. He also could not say whether or not Mr. Somchai gave money gained from his work to his wife or not, or where Mr. Somchai bought a Mont Blanc pen and a Rolex watch from. The witness did not have much conversation with Mrs. Angkhana as he mostly spent time talking with Mr. Somchai. The witness said that Mr. Somchai was a family man.

The witness claimed that he had no idea whether the embassies of Israel and America would be angry or not with the case that Mr. Somchai was conducting regarding the C-4 bombing at the Israeli embassy. He had no idea whether the relatives of the Saudi Arabian envoy would be angry or not with the case that Mr. Somchai conducted regarding the murder of the Saudi Arabian envoy, in which the accused were acquitted. He had no information about the arms robbery case from 2004. And he did not know if the collection of signatures from 50,000 people would make some soldiers furious or not.

The witness said that he also put his name on the document to collect 50,000 people's names but he did not know if his colleagues at Mr. Somchai's office would have given their names or not. His friend never told him that he had been threatened because he had not often met Mr. Somchai recently. In conducting cases on security, the witness said that he was never threatened.

The witness added that he did not know about the news that Mr. Thana Benjakul, the former secretary to the Lawyers Council of Thailand, had mentioned to the media that the disappearance might be related to a sum of 500,000 Baht. Mr. Somchai also never told him about getting threatening phone calls telling him to quit conducting cases on security issues.

Reexamination:

According to news reports, a sum of 500,000 Baht from Mr. Somchai's account was used up. Upon verification, the money has been withdrawn from the ATM several times since 2003-2004. The prosecutors referred to the copy of a document showing the payment, but there has been no documentary confirmation.

The witness said that he strongly believes that Mr. Somchai's disappearance resulted from his taking the case in which the police tortured their suspects.

Comments:

The two witnesses are regarded as circumstantial witnesses and were only able to shed light on the probable places and times where and when the kidnapping of Mr. Somchai took place, as well as to verify the fact already told by the previous witnesses that Mr. Somchai had been lending his hand to help alleged offenders and suspects in legal cases that might have led to the motive for his kidnapping.

Furthermore, the witness testimony of Mr. Wannachai illustrates the tactic of the defence lawyers which was to taint the character of Mr. Somchai, alleging he had problems with his family and that he was taking funds from the Muslim Lawyer's Club and collecting illicit donations. All these factors have nothing to do with the current case, and yet the Judge has allowed the questioning to ensue.

24 August 2005

Witnesses: Mr. Ismael Samah
Mr. Sitthisak Konglueh

Mr. Ismael Samah

The witness graduated from Ramkhamhaeng University and took an internship at Mr. Somchai's office since 2002. The witness usually followed Mr. Somchai to conduct cases around Bangkok.

In giving assistance to the suspects in the case of arms robbery and school arson, Mr. Somchai asked the witness to submit a document calling for justice for the five suspects. They signed their names to it on 9 August 2004 at the Special Correction Center of Bangkok. Then, the witness forwarded the document to the Interior Minister, the Office of the Attorney General and the Royal Thai Police office. The witness said he could not remember who else he gave the document to. When he had finished the task, he notified Mr. Somchai.

On 12 March 2004, the day of the incident, the witness phoned Mr. Somchai and told him that the court had asked him to sign a document. The witness was informed of Mr. Somchai's disappearance on 15 March 2004. Before Mr. Somchai's disappearance, the witness heard him saying that somebody wanted to abduct him.

Regarding the work in the south, as far as the witness knows Mr. Somchai did not have any problems with any organizations. The witness did not know the five defendants.

Cross-examination

The witness was born in Tha Nam sub-district, Panareh district, Pattani Province. Although Mr. Hayeedaoh Thanam lives in the same area as the witness, it does not mean that this area has a lot of terrorists. In Panareh district, the witness attended primary level at the Winichai Witthaya School before doing the secondary level at the Bamrung Islam School in Pattani Province. Afterwards, he graduated with a bachelor's degree at Ramkhamhaeng University. He studied religion at home and in other places where the courses were set up. He has studied the Koran with a Thai teacher.

The witness applied for the job to work with Mr. Somchai. He obtained his professional license in 2002.

Concerning the surname 'Samah', he said that it is used widely in southern Thailand. There are a lot of people using this last name, and the witness has a few relatives with the same name but they have not been implicated in any security cases in the south. So the witness said that he does not know Mr. Waeyusoh Samah, who was accused of being involved in the murdering of a judge in Pattani.

The witness did not earn much from working for Mr. Somchai, who would pay the witness 40 Baht each time. The witness received 3000 Baht monthly from his parents. He rented a room with his friend for 1200 Baht. If Mr. Somchai was at the office he would treat the witness to lunch; if Mr. Somchai was away, he would pay for lunch himself.

The witness said that Mr. Somchai rented the office at a yearly lease of over 100,000 Baht with a monthly rental of 1700 Baht. The monthly expense would be 1900 Baht (including water and electricity charges). Mr. Somchai paid all expenses himself. However, whenever he had difficulty paying then some of his colleagues would help him out.

The witness said that he knows Mr. San and Mr. Anucha very well. Mr. San had obtained his professional license at Mr. Somchai's office and had practiced before him, while Mr. Anucha was still an intern lawyer. Before 8 March 2004, the witness went to the court with Mr. Somchai and Mr. Wannachai, after that, he did not go out with Mr. Somchai again.

Since the witness started working with Mr. Somchai in 2002, he knew that Mr. Somchai took security cases, include those of Da-oh Thanam and JI. In neither of the cases did Somchai go to the south of Thailand very often. For other cases, if the suspects were not on bail, their relatives would come to Mr. Somchai's office.

Besides the facts obtained from the suspects' relatives and the suspects themselves, the lawyers of the club or Mr. Somchai himself would sometimes conduct field research, which would be useful in obtaining some more in-depth information.

The witness said that when facts were checked at the office he usually waited downstairs. The activity was not confidential, so anybody at the office could attend it. The witness did not work on every case done by Mr. Somchai. In cases relating to security, Mr. Somchai would let the witness come to the court hearings and select documents. The witness knew that Mr. Somchai did cases for Mr. Wan Muhammed Nor Mata and the alleged JI rebels. Mr. Somchai did not prevent the witness from reading the details of the cases, but the witness did not do that.

Regarding the cause of Somchai's disappearance, the witness said that on 8 March 2004 Mr. Somchai told some lawyers at his office that he might be abducted. Even though there was this threat, Mr. Somchai continued with his daily life without having any protection. The witness has no idea whether what Mr. Somchai said was the truth or a joke. He also does not know whether the disappearance was because Mr. Somchai knew too much about terrorism or not. The witness thinks that the incident was related to the cases that Mr. Somchai often did in southern Thailand. In addition, at Mr. Somchai's office, there are rumours that the police might have conspired in the abduction but until now there is no strong evidence. On the date of the incident, from 8pm until 9pm, the witness did not remember if he was at the National Stadium or not. Nor did he remember what he was doing at the time. In collecting the 50,000 names, the witness said he does not know if the list was completed or not, but he signed it, having no idea if the disappearance of Mr. Somchai would hamper the name collecting.

Regarding the five suspects in the 'gun robbery case', at the time, Mr. Somchai was not their [legally-appointed] lawyer. No names of any police officers were mentioned in the document presented to the relevant Thai authorities and Mr. Somchai did not sign his name on it. The Royal Thai Police office received the document on 12 March 2004, the date that Mr. Somchai disappeared. The document was submitted to Pol. Maj. (Ms) Yuree Chanthanawiwat. The witness does not know whether the Royal Thai Police would have forwarded the document to the office of Police Region 9 or not. Both the lawyers at Mr. Somchai's office and the relatives of the five tortured suspects know that the document was submitted to the office of Police Region 9.

The witness said that he testified to the investigating officers together with Mr. Witthaya and Mr. Kitja at Mr. Somchai's office. The investigating officers had sent some hair and fingerprints of the witness to compare them with those in Mr. Somchai's car, which they found to be a match.

Reexamination

After visiting the tortured suspects, Mr. Somchai drafted the document calling for justice in the 'gun robbery case'. Although he had not been appointed as the lawyer to defend the suspects, the relatives of the suspects had asked Mr. Somchai to help them out.

Mr. Sitthisak Khonglue

The witness is a lawyer who had worked for Mr. Somchai since 2003 as a trainee. He followed Mr. Somchai to conduct cases in both Bangkok and other provinces nearby. He seldom visited remote provinces or the south.

During 2003 the witness was involved in the JI rebel's case from southern Thailand, which was tried at the court of Narathiwat. Somebody warned any lawyers involved in this case to give it up. Although the witness said he does not know who did this, no lawyers gave up the case. Subsequently, the court dismissed the case and it was closed in 2003.

At the beginning of 2004, Mr. Somchai was engaged in the 'gun robbery case'. On February 27, Mr. Somchai, Mr. Kamolsak, Mr. Kitja, Mr. Witthaya Buranasilp and the witness visited the suspects. Mr. Kitja was an interpreter because the suspects spoke in Yawi dialect. From the visit there, it was found that the three suspects were tortured by the police of the Tan Yong Sub-district Police Station. They could not say who brutalized them but said that if they saw the police again, they could identify them. Also, the suspects let the five visitors see the scars on their bodies, backs and heads. Afterwards, the lawyers went to see the rest of the suspects at the police academy in Bang Khen. The two suspects there, Mr. Makata Harong and Mr. Sukri Maming, gave similar testimony to the other suspects, to the effect that they were tortured by the police of the Tan Yong Sub-district Police Station. They had scars on their faces and bodies. Upon the visit, Mr. Somchai told the witness that all the suspects suffered from injustice and there had to be some check on the scars on the bodies of the suspects. Mr. Somchai then issued a document to call for justice to the Justice Minister, the NHRC and the Ministry of Interior.

On 12 March 2004, the witness reached the office at 9am and saw Mr. Somchai already in a car with Mr. Pathomphong. Mr. Somchai said that he had an appointment with a client in Sathorn area, and assigned some work for the witness. At the office, 3 or 4 cars can be parked at the lot behind the building. The entrance to Ratchada Soi 32 is about 50 metres from Mr. Somchai's office. On that day, the witness parked his car at the Ratchada Criminal Court and walked to the office. Mr. Somchai went back there at 3pm with Mr. Pathomphong and the witness submitted the assignment to Mr. Somchai at 5pm. Then he drove to Ramkhamkaeng University to attend a law class. After the class at 8pm, the witness met his friends before going home. He used the route to Ladprao Road. On the way, he met Mr. Pathomphong near the Chalina Hotel.

On 14 March 2004, at 12pm, Mr. Kitja phoned the witness and asked him whether he got a call from Mr. Somchai or not. The witness said that he did not have any contact with Mr. Somchai. Then, Mr. Kitja told him to call Mr. Somchai however, the witness could not get through to Mr. Somchai's phone. After informing Mr. Kitja, the witness went to Mr. Somchai's office at 1.30pm. He met Mr. Pathomphong who had been there before him and they waited for Mr. Somchai until 6pm. The reason that the witness had to wait for Mr. Somchai until late evening was that Mr. Somchai was going get a plane ticket at the office and go to conduct the JI rebel's case in Narathiwat province. However, Mr. Somchai did not come to pick up the ticket and the witness thought that it was not normal

for Mr. Somchai to miss an arrangement. So, he presumes that Mr. Somchai must have disappeared on the evening of 12 March between 8.30 and 9pm, while on his way to Wannachai's brother's house.

Mr. Somchai reportedly had no conflicts with anybody. The witness said that he believes that this incident occurred due to Mr. Somchai's cases on national security. But he said that he cannot confirm this. He said that he did not know the five defendants before.

Cross-examination

On 12 March 2004, the witness did not park his car near Mr. Somchai's. He knows Mr. Kitja well and knows that he drives a black Benz, but does not know exactly which model. The witness does not know if during the working hours Mr. Somchai went out with Mr. Wannachai often or not, nor does he know if Mr. Somchai stayed with Mr. Wannachai often or not.

The witness usually started studying around 6pm to 8pm. On 12 March 2004, at 8.30pm to 9pm, he was not at the National Stadium and did not know if Mr. Pathomphong usually checked his watch or not. The witness's house is located in Nonthaburi. He usually went to the office by car, but not everyday. The route from the office back home depended on the witness, but on the day of the incident, the witness took the Ramkhamhaeng route.

Since the witness began working at Mr. Somchai's office, he had never seen Mrs. Angkhana or her children visit the office. The office also houses the Muslim Lawyers Club. The lease is around 100,000 Baht yearly and the monthly rental is 1700 Baht. Mr. Somchai paid these expenses but sometimes his colleagues helped him. The witness was unpaid while working with Mr. Somchai, but Mr. Somchai gave him 2500 Baht per month, the same amount as Mr. Pathomphong and Mr. Ismael.

The witness said that Mr. Sant was not a full-time lawyer at the office, and only goes into the office once a week. Mr. Anucha was a trainee lawyer there. Both of them were working there before the witness joined. Mr. Sant did not get any cases from Mr. Somchai's office and did not befriend anybody there. The witness said that he does not know if Mr. Sant is a Bangkok resident or not, although he knows that he is not a Muslim.

The witness replied to the defendants' lawyers concerning the situation from March 10 – 14 as follows:

March 10 The witness met Mr. Somchai, who was dressed as normal with a shirt. On 11 March 2004, the eyewitness met Mr. Somchai at the office at 8.30am. But he said that he cannot remember how Mr. Somchai was dressed then. That day, Mr. Somchai bought a new cellphone which cost him 18,000 Baht in cash. He bought it as the old one was broken. Mr. Somchai's car was not out of service that day.

March 12 Mr. Somchai was dressed as usual. The witness said that he cannot remember the clothes' colours. He said that he knew that Mr. Somchai would stay overnight at Mr.

Weerachart's. As far as the witness knows, Mr. Somchai did not usually stay overnight at other places often, but he did in the days before his disappearance. On the day of the incident the witness knew that Mr. Kitja asked Mr. Pathomphong to buy a bus ticket. However, he did not know if Mr. Pathomphong bought Mr. Kitja the ticket for the last bus or not, nor did he know the date of traveling. The witness did not contact RM. Somchai afterwards.

Concerning the fact that Mr. Pathomphong had to wait for Mr. Kitja to give him the ticket, if he had asked Mr. Somchai to give it to Mr. Pathomphong it would have been impolite as Mr. Somchai is his senior. Mr. Pathomphong did not tell the witness that he was at the hotel and the witness did not know that after Mr. Somchai's disappearance there were security cameras at the hotel that failed to record Mr. Somchai on the premises.

March 13 The witness did not go the office and did not contact anybody, but he knew that Mr. Somchai had a meeting with the Muslim Lawyers Club on Rama 9. Mr. Somchai had to attend the meeting as he was the chairperson.

March 14 The witness was asked to go to the office. He waited for Mr. Somchai, in order to give him the ticket, but Mr. Somchai did not come. So, the witness called Thai Airways but the airline could not check any information.

Regarding the security cases taken by Mr. Somchai, the witness said that he conducted these on behalf of the Muslim Lawyers Club. The witness said he knows that Mr. Somchai conducted the case for the accused JI rebels. Their relatives had visited Mr. Somchai at the office. In the case of the five tortured suspects, the witness went to see them with Mr. Somchai, who at the time was not their lawyer. Talking with the suspects needed a translator, as all of them speak Yawi. At the CSD the talk was conducted one-by-one while the meeting was in a group.

In issuing the petition to call for justice for the suspects, no names of police officers were revealed, and no signature by Mr. Somchai had been found. The document was submitted to the Royal Thai Police office on 12 March 2004, the same day in which Mr. Somchai disappeared. Pol. Maj. (Ms) Yuree Chanthanawiwat received the document but the witness said that he does not know if she would have forwarded it to a superior there or not. He said that he also does not know whether the superior officer of the Royal Thai Police office would have forwarded the document to the high commander of the Police Region 9. Submission of a document to the officers of the Police Region 9 can be done by fax if urgent. The witness said that he had no idea of the outcome of the submission or, when informed by the defence lawyer, that the Royal Thai Police office had concluded that the complaint was groundless.

The witness acknowledged that Mr. Somchai was not the core person who collected 50,000 names for the lifting of martial law in the south of Thailand. Mr. Pathomphong and the witness were responsible for verifying the name list, which remains incomplete. The witness said that he does not know if the collection of people's names would upset the soldiers or not.

The witness said that before Mr. Somchai disappeared he had said that an assistant district official called him and informed him that he was number one on a blacklist. However, the officer did not ask Mr. Somchai to stop handling cases. Mr. Somchai also told the witness that Mr. Sant Chokephong U-domchai had taken him to meet a senior person but Mr. Somchai did not tell him who the person was. So, the witness does not know if the person might be Mr. Wan Muhammed Nor Mata, Mr. Areepen U-tarasin or Mr. Den Tohmina.

The witness believed that Mr. Somchai disappeared due to his involvement in the security situation in southern Thailand. Mr. Somchai never had any personal conflict with anybody.

Reexamination

On 13 March 2004, the witness did not go to the office as it was a Saturday. Mr. Somchai had told him that he might be abducted just three days before the incident occurred.

On 27 February 2004 the witness visited the suspects at the CSD. At the time, Mr. Somchai was not their lawyer but their relatives asked him to help them out. Consequently, he was willing to conduct the case on behalf of the Muslim Lawyers Club. Two or three days later, a medical check was carried out on the suspects.

The witness said that he does not know how Mr. Pathomphong testified to the investigating officers. The information that the witness gave to the court is the most accurate and he does not believe that the disappearance concerned the family problems of Mr. Somchai.

Point of view of lawyer following the case

The two prosecutor's witnesses verified the fact that Mr. Somchai had been acting to seek justice for alleged offenders in the case of gun robbery by submitting letters of petition to various authorities. This is part of the prosecutor's efforts to elaborate on the reasons for arising conflicts between Mr. Somchai and the police investigation team.

25 August 2005

Witness: Ms. Chaweewan Yuthaharn

The eyewitness graduated in humanities and communication in 1999. Currently she is working as a salesperson for an automatic doors company. She has been working there for five years.

On Friday, 12 March 2004, at 8.30pm, the eyewitness walked out of Ramkhamhaeng Soi 65 and turned left to the Lamsalee junction because her home was located next to the Huamak Police Station. She walked on the footpath passing the Mae Lah Pla Phao restaurant and the house of the Boonrod Brewery owner. Then, she saw two cars: the one

at the front was a green Honda Civic sedan with light filters on its windows while the one at the back was a black Toyota sedan with filters so dark that one could not see inside. The car at the back had its lights turned on. The cars were parked very close to the footpath. When the eyewitness passed the two cars, she saw a man standing one metre from her. He looked over 50-years-old, with a T-shirt, trousers and glasses. He was not very tall and had grey hair.

The eyewitness confirmed that the picture of Mr. Somchai, which the prosecutor gave to her, was similar to the person she saw. She said that she thinks that he must have known the group of men who were in the second car because he gave them a nod. Then, after the eyewitness walked approximately 50 metres past the men she heard a man shouting, 'Ouch! Ouch!' She turned back and saw Mr. Somchai being pushed into the car by another man. The man looked tall and big, with a black jacket and black trousers. The car into which Mr. Somchai was pushed was parked at the back. Mr. Somchai was pushed through the rear left door and seemed to be resisting. The man outside attempted to close the door. The eyewitness said that she cannot remember on which side of the car the man who pushed Mr. Somchai into the car sat. Then she saw another man from the car at the back walk to the front car and drive it away. She said that she cannot remember how he looked. After that, she went home.

On 15 March 2004, at 12pm, the eyewitness went to a cafeteria at the office and saw some news on Mr. Somchai's disappearance. She called the police after seeing the picture of Mr. Somchai in the newspaper, as he looked similar to the person whom she saw on the day of the incident. The police only asked for her name.

On 24 March 2004, at 8pm, the eyewitness left home for Ramkhamhaeng University. On the way she saw police distributing leaflets seeking information from any person who saw the incident on 12 March 2004. The eyewitness then informed the police and they told her the situation. After that, a picture of Pol. Maj. Ngern Thongsuk was handed to her. After seeing the picture, she said the man in the picture looked like the one who pushed Mr. Somchai into the car.

The eyewitness continued that, on 31 March 2004, the police called her to give her testimony at the investigation division of the Huamak Police Station. One week later, the police sought her for an interrogation. On that same day, the investigating officers asked her to look at three VCDs.

The prosecutors brought out these materials so that the eyewitness could see them again in the trial room. The eyewitness answered that the person seen in the first and third VCDs might have been the one on the night of 12 March 2004. Concerning the second VCD, the eyewitness had told the investigating officers that Pol. Lt. Col. Sinchai Nimpunyakampong and Pol. Sgt. Randon Sitthiket look like the ones she saw on the night of 12 March 2004. After the investigating officers had typed her testimony, he read it to the eyewitness before she signed her name in the document.

The eyewitness told the investigating officers that the man she saw on the day of the incident looked like Pol. Maj. Ngern Thongsuk, but when she saw him in the trial room, she said that she could not recognize him. The prosecutor asked Pol. Maj. Ngern to stand up so that the eyewitness could confirm this. The eyewitness replied that the man on the incident day looked like Pol. Maj. Ngern but she said that she could not remember him exactly.

On the day of the incident, there was light from the lamppost under the bridge. The light helped anybody to see from afar. The court measured the distance and said that the light would make an area of around 10 metres visible. The traffic on that day was not so congested. The eyewitness saw 10-15 passersby. The map showed by the prosecutor was similar to what she saw because it was drawn under her testimony.

The eyewitness said that she does not know the five defendants.

Cross-examination

The eyewitness is a graduate in humanities and communications. She has no knowledge of law or the work of lawyers, but she knows that she will face a criminal penalty if she tells a lie.

The eyewitness said that she does not know that the metropolitan and crime suppression police have conflicts with one another. She also does not know about gambling houses. Mr. Somchai is neither a politician nor a star. Before the incident, the eyewitness had never seen him. The eyewitness said that she saw the picture of Mr. Somchai in the *Thai Rath* newspaper of 15 March 2004 but when shown the *Thai Rath* newspapers of 13-15 March 2004 by the defence lawyer she admitted that she could not see any photograph of Mr. Somchai. The newspaper first published his picture on 16 March 2004.

On 23 March 2004, before the eyewitness testified the investigating officers, the newspapers had reported that on 12 March 2004 there were two cars and some people pushing Mr. Somchai outside the Mae La Pla Phao restaurant. The witness said that on 27 March 2004, before she went to testify to the investigating officers, she did not read the news that said that ‘Mr. Somchai knew the person who abducted him well...’ Then, the defendants’ lawyers asked the eyewitness to read her testimony saying, ‘I was about to go home after my business and I saw Mr. Somchai at the Lamsalee junction. There was a nod like the persons knew one another’ and, ‘The eyewitness believes that the persons might have been known to Mr. Somchai because his face showed no emotion – no anger and no smile.’ The eyewitness read what she testified.

The eyewitness lives in Ramkhamhaeng Soi 71 with her parents and a sister. She has lived there for a long time. She often walks from Ramkhamhaeng Soi 71 to Soi 65, so she can remember the way. The friend to whom the eyewitness made a visit was male. His name is Ekkachai Supan. He did not see her off when she left. The investigating officers did not call Mr. Ekkachai for interrogation.

Ramkhamhaeng Road has three lanes. Huamak Police Station is at the junction with Tek Hang Yu Lane. In front of the lane, there is a police box. The eyewitness said that she does not know if the point where she stood near the police box in front of the Tek Heng Yu Lane is 150 metres away or not. The traffic on the day was congested and the noise sounded louder than normal because there was a traffic jam.

The eyewitness said that she does not know who made the sound, 'Ouch! Ouch!' because she could not see him or her. She only passed the point and heard it. At that time, it was 8.30pm. The passing cars front lights were shining into the eyewitness's face. When the eyewitness heard the sound, she saw the caution lights of the back car were turned on. However, she said that she cannot remember if the lights of the front car were turned on or not. On the footpath there was no light, but each lamppost is around 40 metres from the other. On Ramkhamhaeng Road there are lampposts and telephone lines. So the light is dim. The light that the eyewitness saw came from under a bridge, so she could not see things clearly.

When the eyewitness saw the man passing her, she was by herself. She was walking when she saw him. While she was walking, she did not hear the car stop because it had already been parked. She believed that the cars may have hit and the owners had a full conversation. One said, 'I just had some business and am going home.'

The eyewitness does not know how to drive and has no knowledge about cars. But after she saw the back of the car, she said that she thought it was a Toyota. After she heard the 'Ouch! Ouch!' sound she turned back and saw that the left door of the back car had been opened. There was a person pushing somebody while the others were pulling him or her. The door could hide the person pulling because it is 1.5 metres off the ground. The eyewitness did not see the person who closed the door of the back car and she did not notice where this person was heading to.

On the day of the incident the eyewitness could not remember the details of the persons involved in the situation because she thought that it was not anything serious. The incident happened very fast. She saw around 10-15 persons walking by the place. The eyewitness did not report to the police at the police box near Ramkhamhaeng Soi 65. She did not go to the Huamak Police Station either; that is, she reported nothing to the police. She did not sketch any persons or write anything in her diary or record any tapes.

The eyewitness went to give her testimony again on 31 March 2004, 19 days after the incident (nearly three weeks later). The eyewitness said that she could not remember the persons she met on that day. She just told about the incident to the investigating officers briefly and the officers asked her about the points of the incident without taking her to the scene.

From the first to the third testimonies made by the eyewitness there are differences because she is unsure of some details. The investigating officers gave her only one picture and asked her whether the person in the picture was the one she saw that night or not. The eyewitness saw the pictures of the defendants in the newspaper after the

incident. The eyewitness claimed that she saw the persons pushing on the left side only. Apart from that, she did not see anything. That the investigating officers wrote that the eyewitness stood around 10 metres away comes from their estimate. She does not know exactly how far she stood. During the additional testimony on 21 April 2004, there were some senior officers attending.

Then, the defendants' lawyers had the eyewitness again look at a VCD of the Ramkhamhaeng area at night. The house of the Bunrod Brewery owner could be seen under dim light in front. The noise of the cars was very loud. There were many trees and the light shining directly into the eyes. The eyewitness said that it was so dark that she could not see the alleged criminals.

The eyewitness said that she is not sure if the persons she saw on the other VCD were officers Sinchai and Randorn or not.

She said that in going to give her testimony she did not get any money for transportation.

Reexamination

It is normal that the real situation can be seen more clearly than what is recorded on a VCD. The eyewitness does not know how to record a VCD.

When she heard the sound, the other cars on the road were moving along. However, she could differentiate between the car's noise and the shouting. The eyewitness said that she cannot answer as to who pushed Somchai into the car but can tell how the person was dressed.

The eyewitness does not have any knowledge of light theory. On the day of the incident, the light of the car shone directly to the front and the eyewitness did not notice whether there was a police box located there or not.

The picture of Somchai that she saw in the newspaper was published on 15 March 2004. But the publishing date was 16 March 2004 and the eyewitness read it at noon. [Local newspapers are issued twice a day. If issued in the afternoon, the date carried is that of the next day.]

Since the eyewitness is a graduate of humanities and communications, she does not know how to measure distance.

Comments on eyewitness testimony

The eyewitness came to the court by public bus and alone. The taking of evidence focussed on the alleged abduction, pointing to the persons who may have been involved in the incident. The public prosecutor brought and played the VCD (the pictures on the VCDs were of the defendants and their houses). When the eyewitness was requested to point out the persons allegedly involved in the incident in the court room, her face became serious and full of concern. She refused to watch the VCD, but was required to

do so by the court. The eyewitness then said that any of the persons in the VCDs could look like the persons she saw on the date of the incident. Whenever the public prosecutor asked the eyewitness to look at the defendants and point to the persons she recognized she was too afraid to take a look at them. Therefore she finally denied that she could recognize them. After her testimony in the morning, the court asked the public prosecutor to take care of the eyewitness until the afternoon session. After the afternoon session started, the court brought another senior woman judge to be in the court in an effort to make the witness feel more comfortable.

The cross-examination focused on light theory and the distance from which she could see the incident. The defence lawyers had prepared a model of the place of the incident and VCDs regarding the place of the incident in order to undermine the witness testimony. The fifth defendant kept talking with his lawyers and sometimes he laughed whenever he saw the VCD from the public prosecutor. By contrast, the first defendant looked very serious all the time. The disparities in the witness' testimony concerning the visibility and her distance from the incident can affect the credibility of her testimony. This also speaks to the level of intimidation the eyewitness must have felt in the court room since she was in close proximity to the five defendants who are influential police officers. Furthermore, the questioning by the defence lawyers were mainly based on technicalities such as light theory, since the eyewitness would not know how to answer such questions, this would merely add to the eyewitness' confusion and intimidation.

After the examination, the witness had to go back home by public bus alone. At first, she refused to accept the travel expense provided by the court and the public prosecutor. But she later accepted it as it has to be provided under regulations.

Please note that the file of inquest usually is treated as inferior evidence and commands less attention from the judge than the testimony made during the trial, which is regarded as the best evidence.

However, statements made by witnesses during the inquiry are admissible, but its credibility will be left at the discretion of the judge. If the judge is convinced that the statement made during the inquiry is true and that the witnesses' testimony difference is not justified, the judge may choose to heed the statement made during the inquiry instead.

There were few reporters and trial observers present. There was one reporter from *The Nation* newspaper. There was also staff of the Asian Human Rights Commission. Some of the co-plaintiff's friends came to give her encouragement.

26 August 2005

Witnesses: Mr. Adirek Yimwadee
Ms. Kamolthip Phromtavee

Mr. Adirek Yimwadee

The eyewitness reported that on the date of the incident he stayed at Ramkhamhaeng Soi 73 with Ms. Kamolthip Phromthawee. At around 9.30pm, he went to buy some dinner with his friends--Ms. Kamolthip, Ms. Sunan Kongkem and Mr. Montree Kaokong--on the road in front of Ramkhamkaeng University. While he was walking back to his dormitory, about 30 metres past the Mae La Pla Phao restaurant, he saw two cars parked about one foot from each other beside the footpath. He could not recognize the type of car that was parked in front but he saw that the car at the back had a dark color and was bigger than the front one. At first, he thought that the owners of those two cars were chatting, so he did not pay attention to them. But after he had gone about 30 metres further he heard a shout, 'Let me go. ' The voice sounded a bit hoarse. The eyewitness then looked back and saw four or five men. Two or three of the men were pushing a person into the car and trying to close the door. The eyewitness stated that he did not know how many people were in the back car. Then, he saw the first car heading towards the Lamsalee junction while the second one went straight before taking a U-turn at Huamak Police Station. The eyewitness walked back with his friends after that. He could not remember the appearance of the person who was shouting, because it was dark and he did not pay attention to him because he thought that that person might have been drunk.

A couple of days later, the eyewitness reported that he saw news on ITV and realized that Mr. Somchai had been abducted. He deduced that the incident he had seen on 12 March 2004 was related to Mr. Somchai's disappearance, as the news reported that the abduction took place on Ramkhamhaeng Road, which was where the eyewitness had been the day before.

A few days later, the eyewitness went shopping at Ramkhamhaeng road and met his friends, who were talking to the police and saying that they had seen the incident. Then, the police took them for an interrogation at Huamak Police Station and asked them to identify Mr. Somchai's image. One week later, a police investigator called them for the second interrogation. The eyewitness, his parents, Kamolthip and Sunan were picked up by the police from Nakorn Sri Thammarat province. The eyewitness said that he had to see Mr. Somchai's image from a computerized sketch before making a signed confirmation.

The public prosecutor then showed a picture of Pol. Maj. Ngern Thongsuk to the eyewitness. The eyewitness said that this picture was the one that the police had asked him to identify. Then, the public prosecutor let the eyewitness see a short VCD concerning the five defendants. After the movie, he responded to the fact that he had testified that one person in the movie looked like Pol. Maj. Ngern. The eyewitness said that he was not threatened, but the police investigator had made him answer that the person in the movie was the same as the one he saw on the street. So, the eyewitness did not affirm that it was Pol. Maj. Ngern who was involved in the abduction. And he said

that he did not know who really committed the crime because he only remembered that it was a tall man with dark complexion and another who was not so tall who had a fair complexion. The eyewitness also said that earlier during the inquiry stage of the investigation he had said that he saw a green car because he heard about it on TV. The eyewitness further claimed that what he said to the police investigator was not true but his testimony to the court is true.

Regarding the road conditions on the day of the incident, the eyewitness claimed that the light along the footpath and from the cars was dim due to the trees and darkness. The traffic moved slowly. Apart from the eyewitness and his friends, there were around 15 passersby.

Cross-examination

Regarding the supposed conflict between the Metropolitan police and the Crime-Suppression police, the defence lawyer asserted that since the defendants include crime-suppression officers and the investigating officers are from the Metropolitan police station, these officers charged the defendants with Mr. Somchai's abduction. Recently, some Crime-Suppression police, including one of the defendants, Pol. Lt. Col. Chadchai Liamsanguan, had arrested gamblers in the area under the jurisdiction of the Tao Poon Police Station. Consequently, the police superintendent of the station was fired.

The eyewitness denied that he gave information on the case because the Law Society of Thailand had offered a reward.

The eyewitness said that the road in front of Ramkhamhaeng University is divided into three lanes. There is a traffic light and a police box at the entrance to Ramkhamhaeng Soi 65, where traffic can turn right. At the Huamak Police Station there is a U-turn. The traffic was congested at the time of the incident but the eyewitness said he did not know if there were some police there or not. Another 150 metres away is the Tek Heng Yu Soi, with a police box at the entrance. The traffic was also congested there, with a lot of cars and noise. Every car on the road had turned its lights on. Theoretically, if the lights are turned directly to the face of passersby, those persons cannot see things clearly. The defence lawyers showed a sample picture of the place and asked the eyewitness to identify the point where he was when he saw the incident. Then, they asked him to measure the sight line. The conclusion from this was that the eyewitness could not see the incident clearly because, when he looked back to see the incident, the second door of the second car was open. If he saw something, it could be only the head of a person with a shadow. With regards to Mr. Somchai's appearance, if nobody told the eyewitness who it was he would not be able to recognize Mr. Somchai. The incident happened very fast—in only five seconds.

During the first inquiry on 31 March 2004, the eyewitness and his friends participated in the activity together with Ms. Chaweewan. The investigating officer marked on a whiteboard where each person was during the incident. Then, each was interrogated. The map of the incident was made by the investigators themselves and what the eyewitness did was only to identify the point. Afterwards, the investigators let the eyewitness read

his testimony. However, he could not read the document and it was after midnight so he wanted to go back home. Therefore Mr. Adirek just signed his name without reading the details. It was reported that he had made several testimonies of which each was found to be different depending upon what the investigators suggested. Concerning the interrogation at Chang Klang district, because the testimony could not be conducted as the investigators wished, the eyewitness and his friends had to go to Bangkok.

This was the first time that the eyewitness had seen all the defendants, previously the investigators had shown the eyewitness their sketches only.

The eyewitness did not have any idea as to whether or not the rear car was a Benz 190E, a model that matches the car of Mr. Kitja from the Muslim Lawyers Club. Mr. Kitja drove this car to Mr. Somchai before the incident happened.

Reexamination

The eyewitness said that he did not know who had made the map and the picture that the defendants' lawyers mentioned. He did not know the distance ratio in the map either. He did not have any idea how far apart the lampposts and the trees were. The only thing he said that he knows was that the height of the second car's wing mirror was around 150cms, if measured by his chest, and around 25cms from the footpath. Moreover, he said he understands light theory because he studies art and shading. He claimed that he could distinguish the shout he heard from the car's noise.

The eyewitness said that he had signed the testimony of the police investigators out of fear. In addition, he was afraid of the senior investigating officers.

Kamolthip Phromthavee

The witness said that around 9.30pm on the date of the incident, she was accompanied by Sunan, Adirek and Montree. They left Ramkhamhaeng University for their dormitory at Ramkhamhaeng Soi 73. They went back to the dormitory on foot.

When they were about 30 metres past the Mae La Pla Phao restaurant, the eyewitness saw two cars parked in the first lane. The first car she saw was a green sedan without filters, while the second one was black and so filtered that nobody could see what was inside. Those cars were parked around 1 foot from each other. At the point where the cars were parked, the eyewitness saw an old man of around 50 years old. He was small, grey-headed and using glasses. The eyewitness could not remember how the man was dressed, but she saw him talking with around four or five men. They were standing by the middle of the second car, which had its left door open. The eyewitness and her group of friends then walked past the group of men.

Suddenly, the eyewitness and her friends heard the old man shout, 'Let me go.' They looked back and saw a man who looked around 170cms tall with the neck of the old man in a headlock, and pushing him into the car. The old man tried to kick the car's door open but a tall thin man closed the door, walked to the first car and drove the first car away, heading towards the Lamsalee junction. The second car went straight and took a U-turn at the Huamak Police Station.

On 20 March 2004, the eyewitness heard the news of Mr. Somchai's disappearance, which took place in front of Ramkhamkaeng University. Then, on 23 March 2004, she and her friends met plainclothes policemen seeking anybody who saw the incident on 12 March 2004. So, the eyewitness and Ms. Sunan went reluctantly to report what they saw to the police at Huamak Police Station. She confirmed, nevertheless, that what she had testified to the police investigators there was the truth.

During the investigation proceedings, the eyewitness said that she went to give her testimony many times. The investigating officers asked her to identify Mr. Somchai by pointing at his picture. After she confirmed his picture in the court, the eyewitness was given a picture and had to watch a VDO clip of the five defendants' houses being searched by policemen. However, she could not confirm that all defendants were involved in the disappearance of Mr. Somchai. Although she had testified to the investigating officers that she could identify them, she still claimed that she could not remember the person she had to identify in the lineup room.

Cross-examination

The defendants' lawyers asked questions similar to those to which Mr. Adirek had already responded.

On the purported conflict between the Metropolitan and the Crime-Suppression police, as in Mr. Adirek's case, it was pointed out that the arrest of some gamblers in the area of Tao Poon Police Station by Pol. Lt. Col. Chadchai Liamsanguan had caused this.

The eyewitness also denied that she had reported the incident to the police in order to collect the reward from the Law Society of Thailand. She did not know about this reward beforehand.

The eyewitness said that while she was passing the group of men she did not stare at them and did not notice how many men and women were there at the point where the two cars were parked. The incident happened very fast-about 5 seconds and there was movement all the time. She assumed at that time that it was only a matter of some drunken people having trouble.

Concerning the light, there were seven to eight lampposts along the footpath and the bulbs were attached to stems stretching out around 5 metres. There was light only on the road's surface. In addition, there was a yellow light from below the nearby bridge, which changed to other colors. The defendants' lawyers showed pictures of the trees and other features in the place of the incident. Then the lawyers asked the eyewitness to mark the point of the incident on the map that they had made. It was reported that, on the date of the incident, the traffic was congested in the area and the police were present to direct the traffic, but only in front of the Huamak Police Station.

The eyewitness said that she went to give her testimony to the investigating officer several times, each time she said the same thing. The first time she gave her testimony

was the time she went with Adirek, Sunan and another person she had not known before. When she reached there, the investigators had not yet written any information on the whiteboard. During the making of the incident map, the investigators mostly asked the eyewitness and her friends. The eyewitness said that she told them that she could not remember any of the perpetrators at all. And the police, giving her the defendants' images, did not force her to identify any of them. She was seeing all the defendants in court for the first time.

The eyewitness said that she was not willing to give her testimony to the police because the police initially did not tell her that she would have to testify in court. Also, she was asked only to be present during the interrogation procedure at the police station. After she met with the police investigators, she returned home to Nakorn Sri Thammarat province.

Reexamination

The eyewitness said that she had no idea who made the map of the incident illustrating the distance on the road and the lampposts.

The appearance of the 50-year-old man walking past the eyewitness and the group of men was seen via the light under the bridge and the lights along the road. It was not very clear and although the eyewitness could see their figures, she could not identify any of them. Then, she reiterated that she saw a tall big man putting the old man's neck in a headlock before pushing him into the car.

The place where the incident happened is not a deserted place, because there are a lot of university students passing by without any flashlights. Due to the lampposts, they could see for as far as 30 metres. To see faces, the eyewitness must stand around 10 metres away. The old man that walked past the eyewitness was around five or six metres from her and when he spoke with the men, the old man was only around 2 metres away. The eyewitness informed the investigators of this several times. She had seen the old man's figure when she saw the news.

The eyewitness continued that after the investigating officer finished typing the testimony, she did not read it but signed it. When she read the document before the court one more time, she confirmed that the facts it contains are correct.

Additional comments on the trial process

Examination

The questions from the prosecution are limited to the material given by the inquiry officers, which have exclusive power to conduct the inquiries outside of the court. If the public prosecutors feel that there is insufficient material or are otherwise dissatisfied, they can only send the file back to the inquiry officers to do more work. They cannot check the inquiry process itself to establish whether or not it is correct.

The prosecution has not prepared the witnesses. Therefore, when the public prosecutor has introduced witnesses before the court, they have gone back on the initial statements

they gave to the inquiring officers. This is in part because the information that has been given by the witnesses in the first instance has followed the instructions of the inquiring officials, rather than their own ideas. It is also in part due to the atmosphere in the court, where the unprotected witnesses have to testify in front of a group of police defendants, the weight of the evidence has been weakened.

Cross-examination

The defence attorneys have successfully undermined the evidence given by the witnesses for the prosecution. They have tried to show that the police have been charged due to an internal police rivalry between the CSD and the Metropolitan Police Division. One of the defendants, Police Lieutenant Colonel Chadchai Liamsanguan, is an expert interrogation officer from the CSD and he has coached his lawyers to prepare well for cross-examination.

Distance between the witness and the accused

The witness sits between the two parties: the prosecution and the defence, and he/she also sits very close to the accused. During the cross-examination of the eyewitnesses, the judge had to remind the defence lawyer to stand back from the witness when the judge could not see the witness while he/she was giving his/her testimony. The witnesses are very scared of the police and have lost confidence to respond to the questions raised by the accused because they are sitting and looking at them from a very close distance. The eyewitnesses have refused to positively identify any of the accused, and have looked at the defence lawyer rather than the accused themselves. Whenever the prosecution requests the eyewitnesses to take a look at the accused, they have quickly replied that they did not see any of the accused at the scene of the crime. By contrast, when asked about their memories of Mr. Somchai, the witnesses have all confidently and quickly replied that the person who they saw abducted on 12 March 2004 was Mr. Somchai Neelaphaijit.

The participation of trial observers

Only one journalist from the English-language *Nation* newspaper came to observe and take notes regularly. Four Muslim women came and gave encouragement to Mrs. Angkhana. Some human rights organizations have also been present:

1. Ms. Ami Latona and Ms. Preeda Tongchumnum as representatives of the International Commission of Jurists (ICJ)
2. A lawyer taking notes for the Asian Human Rights Commission, Hong Kong; also around four staff from the AHRC have attended on various days
3. Mr. Brean, as a representative of FIDH
4. Some human rights lawyers

7 September 2005

Witnesses: Pol. Col. Pakorn Kittiwat
Pol. Cpt. Vitawas Chengkum

Pol. Col. Pakorn Kittiwat

The witness is from the Metropolitan Police 4 and is part of the police investigations team. Concerning this case, he was responsible for searching the persons who were at the scene of the crime on 12 March 2004.

The witness fixed the search area from Ramkamhaeng 65 to Lamsalee junction (crossroad), thus the search distance being approximately 200 metres. The police distributed leaflets in the area concerning Mr. Somchai's abduction, in order to find eyewitnesses who saw the incident on March 12.

On March 24 there was a woman named Ms. Chaweewan Yuthaharn who came forward as a witness. She said that at 8pm on 12 March 2004 she saw two personal cars, the first was a green Honda Civic, which had transparent mirrors and the second car was a black Toyota Altis. Both cars were parked nearby Ma La Pra Poa restaurant and had turned on their urgent lights. The man who departed from the Honda Civic was Mr. Somchai Neelapaijit (she knew who the man was after she read a newspaper). Ms. Chaweewan said that after Mr. Somchai left his car, he walked from the front of his car and to a group of men who were standing nearby the second car. Mr. Somchai told the group that he was going that side (his finger pointed to Lamsalee junction) and Ms. Chaweewan thought that the men knew each other therefore she walked past the group. Later, Ms. Chaweewan heard a voice exclaiming, "Ouch, Ouch!" she looked back to the group and saw one man push Mr. Somchai into the Toyota car. Another man who was in the Toyota tried to pull Mr. Somchai into the car. After Mr. Somchai was in the car, the Toyota car drove straight to Lamsalee junction. As for Mr. Somchai's car, the remaining man got into the Honda Civic and drove it to follow the first car. Ms. Chaweewan said that the man who pushed Mr. Somchai into the car was wearing a black jacket and dark pants but she could not remember the man who drove Mr. Somchai's car.

On 31 March 2004, the witness took Ms. Chaweewan to Metropolitan police 4. The inquiry official took 14-15 pictures (printed from the registration office) and asked her to identify the perpetrators. Ms. Chaweewan pointed to Pol. Maj. Ngern Thongsuk and said that Pol. Maj. Ngern looked like one of the men she saw on the date of the incident. During the inquiry stage, Ms. Chaweewan also pointed to the pictures of Pol. Lt. Gen. Boonyarit Rattanakon, Assistant Commissioner General, Pol. Maj. Gen. Jaktip Kunchorn Na Ayutthaya, Deputy Commission of Metropolitan Police Bureau and Pol. Maj. Gen. Krissada Phankongchuen, Deputy Commissioner of Metropolitan Police Bureau.

Ms. Chaweewan mentioned that she saw two men push Mr. Somchai into the back of the Toyota and another man drive Mr. Somchai's car away. But she believes that there was one more person who pulled Mr. Somchai into the car.

Beyond that there were another three eyewitnesses who were taken to the Metropolitan police 8. There was not any award offered to the persons who saw the incident.

From the investigation process it can be concluded that criminals abducted Mr. Somchai on 12 March 2004 during 8pm. The place of incident occurred opposite to Huamak Police Station, past the Mae La Pra Pao restaurant.

The witness did not know the five defendants. The witness never had any conflict with the police from the CSD. But the witness heard about the conflict that was present between the Metropolitan police and the CSD

Cross-examination

The witness acknowledged that there was a conflict between the police from the Metropolitan Police Bureau and the CSD.

During the testimony of Ms. Chaweewan before the inquiry official, she insisted that the inquiry official put 15-16 pictures for her to identify. For the first testimony, Ms. Chaweewan denied to remember the perpetrator. Ms. Chaweewan can recognize only the basic appearance of the perpetrator. The picture she pointed to looks like the perpetrator.

The witness initially refused to cooperate during the inquiry process, for example, she refused to identify the perpetrator from the pictures. Two of the persons from the third party, taken to Metropolitan Police 8 were required to be witnesses. The witness thought that the perpetrators might be the police who know Mr. Somchai.

The witness did not get pressure from the commander but he got pressure from the media to take action on this case because it was a famous lawyer who had disappeared. (During his reexamination by prosecution lawyers, the witness concluded that although there was a general conflict between the Metropolitan Police and the CSD, the investigation team of the Metropolitan Police did not have any conflict with the CSD.) The witness thought the perpetrators might be the police because of what the perpetrator was wearing and the way Mr. Somchai was abducted.

Pol. Cpt. Vitawas Chengkum

The witness reported that he is the police officer from Metropolitan Police Bureau 8. With regards to this case, the witness has obligated to issue letters regarding the cellphone use records (of the five defendants) to the following cell phone companies:

1. Letter to the AIS cell phone company requiring cell phone use record of number 01 889 1479 belonging to Pol. Lt. Col Sinchai Nimpunyakampong, number 01 315 4805 belonging to Pol. Sgt. Maj. Chaiweng Paduang, number 01 378 9634 belonging to Mr. Phichet Artthong, number 01 510 0580 belonging to Pol. Sgt. Maj. Kamnueng Korchalee, number 01 334 0754 belonging to Mrs. Singha Phankaew, number 01 981 7088 belonging to Pol. Sgt. Maj. Mitra Keamsuwan, number 01 337 7523 belonging to Pol. Maj. Ngern Thongsuk.

2. Letter to the Hutchison company requiring cell phone use record of number 06 382 1102, number belonging to Mr. Chatirong Pleannikorn.
3. Letter to the DTAC (Total Access Communication) company requiring cell phone use record of number 01 684 9265 belonging to Pol. Sgt. Randon Sitthiket.
4. Letter to the Orange company required cell phone use record of number 06 567 3838 belonging to Pol. Lt. Col Chadchai Liamsanguan

After receiving the information from the relevant companies, the witness required a geographical map of the cellphone numbers' usage. The witness then gave all the evidence to Pol. Maj. Rawat Thannanon.

The witness denied knowing the five defendants before this case and he did not know the reason why Pol. Maj. Rewat Thananon needed the cellphone use records. After receiving the letters from the companies, the witness was in charge of checking whether the numbers he received were the same as the numbers he had requested. The witness did not look at the documents in detail.

Cross-examination

The witness denied that his commander got the cellphone number before the witness issued the letters to the cell phone companies. The witness acknowledged that the letter from cell phone companies does state that "this document is for official inquiry information use and is not permitted to be used as evidence in court". The letter from the Orange company regarding information about Pol. Lt. Col Chadchai Leamsanguan's usage of his cellphone stated to "remind [the investigators]that the documents were private information and can only be used for the inquiry process only if any person uses the information in the court then this will incur legal prosecution".

The witness denied that to request the cellphone records, a court summon must be obtained first. However, the witness did admit that when the witness received the cell phone records from the company, he only checked the first page to see if the numbers were correct.

The witness owned two cell phones. The first one is registered on behalf of the witness but the second cell phone is registered on behalf of his wife.

8 September 2005

Witnesses: Pol. Lt. Col. Yuree Chantanawiwat
Pol. Cpt. Samrueng Kongmee
Pol. Cpt. Chuchart Meesang
Pol. Sgt. Maj. Thawatchai Chomphunuch

Pol. Lt. Col. Yuree Chantanawiwat

The duty of the witness was to receive any letters sent to the Commissioner-General, Deputy Commissioner-General and Assistant Commissioner-General of the Royal Thai Police. Regarding this case, the witness received a complaint letter sent to the Commissioner-General. Later on, the witness transferred the letter to relevant office that was in charge of such matters, which was the Grievances Division of Royal Thai Police. After receiving the letter the witness kept the records in the database.

During cross-examination, the witness reported that he received the complaint letter on 12 March 2004 at 10.40am. Then the witness sent the letter to the Grievances Division at 11am on the same day. The witness did not follow the proceedings of the Grievances Division to take action regarding the complaint letter. The witness did not tell anyone about the complaint letter.

Pol. Cpt. Samrueng Kongmee

The witness was a police investigator from the Metropolitan Police 8 and he began to investigate this case on 22 March 2004. The way the investigation was conducted was to focus on the people who saw the incident on 12 March 2004 between the hours of 8 and 9pm. The witness's duty was to search from the traffic lights at Huamak Police Station to Lamsalee Junction, a distance totaling approximately 100 metres. On 24 March 2004 the witness found 3 eyewitness; Ms. Kamolthip Phromthawee, Ms. Sunan Kongkem and Mr. Adirek Yimwadee who were present during Mr. Somchai's abduction.

The three eyewitnesses said that on 12 March 2004 they went to buy some dinner. While they were walking back to Ramkamhaeng 75 Road, they were passing Mae La Pla Phao restaurant when they saw two cars parked beside the footpath. The front car was green in colour and the second car has dark tinted windows. At first, they saw the owner of the two cars chatting next to the second car, so the eyewitnesses did not pay much attention to them. But after a while, they heard the shout "let me go", the eyewitnesses saw a tall man trying to push another man into the car. Then he saw another man drive the front car away heading towards Lamsalee junction while the second car went straight ahead before taking a u-turn at Huamak Police Station. Later on the eyewitnesses said that the green car belonged to Mr. Somchai and the person who was pushed into the car was Mr. Somchai. Regarding the perpetrators, the eyewitnesses could recognise only the outline of the person who pushed Mr. Somchai into the car. He man was tall and dark. There was also another person who witnessed the incident, that person was Mr. Montree Kaokong and he agreed to give a statement to the inquiry official.

During cross-examination, the witness reported that he received the order to investigate the case via an oral command from his supervisor. The witness started to investigate from Huamak Police Station to Lamsalee junction, therefore the witness does not know the details of the investigation in the Mae La Pla Phao area. The witness did not distribute the leaflets to the people. At first, when the witness found the eyewitnesses, they did not tell him about the second car bumping the first car, but they did mention that they saw the two cars parked near to each other.

Pol. Cpt. Chuchart Meesang

The witness is a police officer from the Metropolitan Police. His duties are to receive any complaints made via emergency call "191". Most of the complaints received are from the general public. On 12 March 2004, the witness started his duties at 2pm and finished at 10pm. At 8.51pm a man called from a cell phone number 01 583 5815 stating that there were about three men trying to push a man into a sedan but the complainant neither mentioned the details of the sedan nor the car license because he had already driven past the group. The complainant urged the witness to follow up the incident quickly because the place of incident was only located 100 metres away from Huamak Police Station. The complainant could not describe or identify the three men who were committing the crime. At 9.10pm, the witness received a phone call from the Huamak Police Station that they found nothing at the place of incident. After that the witness made a record of the complaints on the computer. The witness does not know who the owner of the cell number 01 583 5815 was.

The witness only knew defendant 5, Pol. Maj. Ngern Thongsuk since they used to work together.

Cross-examination

The witness has some knowledge about the conflict between the Metropolitan Police and the CSD. About the witness's duties, he received 1,400 complaints on an average day and recorded all the complaints on his computer. Most of the complaints he has received were related to traffic accidents and compensation negotiations. The witness's own office has never had any conflict with the CSD.

Pol. Sgt. Maj. Thawatchai Chompunuch

The witness is a Metropolitan Police officer. His duties were to investigate any cases arising from Morchit 2 (North eastern transportation) area located in Kamphaengphet 2, Ladyao, Chatujak. The witness normally started work at 03.30am. On 14 March 2004, the witness saw the car license number Phor Ngor 6786 Bangkok parked at Morchit 2 area at 05.30am. But cars are not allowed to park there, so the witness asked the public relation officer of Morchit 2 to declare and search the owner of that car. Half an hour later nobody had come forward to claim the car. The witness then had to lock the wheel of the car, at 09am. the witness returned to the car and removed the lock.

At 05.30, on 15 March the witness found the same car still parked in the same area, he again applied a lock to the car. On March 16 at 1.30pm the witness received a complaint from Phetchara radio center that informed him there was a person looking for the car,

which had been parked at Morchit 2 area since 14 March 2004. He then informed Phetchara radio center that the car was parked in Morchit 2. On 16 March, at 3pm, the commander of the Scientific Crime Detection Division came to the place where the car was found. The Commander ordered to remove the lock and then move the car to the Scientific Crime Detection Division. In the beginning the witness did not observe the condition of the car. But later on he found that the car had signs of an impact on the left side. The witness has a statement from a taxi driver that the car was parked in Morchit 2 since 20pm on March 13.

Cross-examination

At first when the witness found the car, he thought that it might have belonged to someone who had parked the car to pick up a relative in Morchit 2. As for the bump on the left side of the car, the witness believes a possible explanation could be that some cars driving past the car could have hit it.

9 September 2005

Witnesses: Pol. Col. Dansant Sangworavejphan
Mr. Thanaphat (a.k.a. Phichet) Artthong
Pol. Snr. Sgt. Maj. Mana Kimhan (Kewhan)
Pol. Maj. Noppadol Phankaew

Pol. Col. Dansant Sangworavejphan

The witness is a police officer from the Public Affairs Division. He has duties to produce police information and the their telephone records (name of officer and his/her telephone number) from various branches under the Royal Thai Police and distribute this information to the police officers who have ranks up to Inspector level. The phone number of the five defendants also appeared in the telephone book. The witness has never known the five defendants.

Cross-examination

Information of the telephone records that the witness receives are from various branches of the police, but the witness does not know who the real carrier of the phone is or whether that police officer is the real owner. .

Mr. Thanaphat (a.k.a. Phichet) Artthong

The witness reported that he came from Nakornpratom Province. He has known Pol. Snr. Sgt. Maj. Mana Kewhan for 10 years. Pol. Snr. Sgt. Maj. Mana introduced the witness to defendant 5 (Pol. Col. Chadchai) about five years ago, at the witness's birthday party in his house, which is located at Talingchan district. The witness bought a mobile phone, including the number, and registered the phone under his name at the Big C Super Store, Nakornpratom Province. The witness then gave the phone to defendant 5 as a present. After the witness gave the mobile phone to defendant 5, the phone was solely used by defendant 5. However, Pol. Snr. Sgt. Maj. Mana did use the phone to call the witness to pay the telephone bill because the phone number was cut off. The witness only knew defendant 5.

Cross-examination

If the phone was cut off anybody could pay the bill it did not have to be the owner. Anybody could carry the mobile phone. After the witness gave the mobile phone to defendant 5, defendant 5 said that it was a good present because he could give it to his subordinates to use while they are on duty.

Pol. Snr. Sgt. Maj. Mana Kimhan (Kewhan)

The witness is a Tourist officer who knew defendant 5 for 8-9 years since defendant 5 was his commander. As for Mr. Phichet Artthong, he has known him for 10 years because Mr. Phichet is a truck driver and his house has a truck business. The witness introduced Mr. Phichet to defendant 5 about 4-5 years ago during Mr. Phichet's birthday party at Talingchan district. The witness knows that Mr. Phichet gave a mobile phone to defendant 5 as a birthday present. One year after that birthday party, the witness asked Mr. Phichet to pay the telephone bill since the phone number was cut off. The witness knew defendants 3 and 5.

Cross-examination

The witness had heard about the conflict between the Metropolitan Police and the CSD and about the abduction of Mr. Somchai; the newspaper mentioned that the abduction came from the conflict between the two divisions. Defendant 5 already had his own mobile phone before Mr. Phichet gave a new mobile phone to him as a present. The witness did not know how many mobile phones defendant 5 carries. The witness has called defendant 5's number 01 378 9634 many times and each time his commander has picked up the phone. Defendant 5's under commander said that defendant 5 gave the phone to his assistant to use whenever the assistant was on duty. The witness used to be the assistant of defendant 5 and knew about the conflict between the Metropolitan Police and CSD. For example, in a case of robbery that occurred in Soi Nana, the CSD arrested the criminal before the Metropolitan police did, and this made Pol. Maj. Gen. Krissada Phankongchuen, the Commissioner of the Metropolitan police was dissatisfied with the CSD. Later, during the reexamination, the witness concluded that whenever the witness tried to call defendant 5, he will dial the number: 01 378 9634 both about work and for personal matters.

Pol. Maj. Noppadol Phankaew

The witness worked at the Metropolitan Police Division 7. He uses mobile phone number: 01 334 0754. The witness has known defendant 5 for 4-5 years because the witness used to work at the CSD. On 12 March, at night, defendant 5 called the witness and invited him to travel to Cha Am district but the witness refused to go. However, the witness called his subordinate, Pol. Sgt. Maj. Mitra Keamsuwan to provide alcohol for defendant 5 and other friends. The witness knew defendant 1, 2, 4 and 5 because the witness had worked for the CSD in the past. There were never any conflicts between them. The witness did not know defendant 3 because defendant 3 was a Tourist Police. Currently, the witness can contact defendant 5 via the number: 06 567 3838.

Cross-examination

The witness could not remember what number defendant 5 had used to call him on the date of Somchai's disappearance. The witness worked for the CSD from 1991 and in one of the cases, he arrested some men who had committed crimes in Iran and the witness handed that group over to the Metropolitan Police. The perpetrators of that case escaped from jail, and the CSD had to arrest the men and hand them to the Metropolitan Police again. From this case, it has created the conflict between the two divisions. With regards to Pol. Sgt. Maj. Mitra Keamsuwan, he was the subordinate of the witness. Pol. Sgt. Maj. Mitra worked in the Ratchaburi Police Station but the witness ordered him to work in Channasri junction which connected with Wangmanao Junction.

20 September 2005

Witnesses: Pol. Maj. Gen. Chuan Vorawanich
Pol. Sgt. Maj. Vijak (a.k.a. Mongkol) Phetsuwan
Pol. Sgt. Maj. Meesorn (a.k.a. Mitra) Keamsuwan
Pol. Sgt. Maj. Kamnueng Korchalee

Pol. Maj. Gen. Chuan Vorawanich

The witness is Commander of the Scientific Crime Detection Division. On 16 March 2005, Pol. Maj. Gen. Chuan received a phone call from the Bangyeelue Police Station regarding a car with registration number: Phor Ngor 6786 [the car of Mr. Somchai Neelaphajit] parked at Kampaengphet 2 behind Mochit (north eastern) 2 Transportation Terminus. The Bangyeerue police requested the witness to examine the car and collect the necessary evidence. The Scientific Crime Detection division moved the car to their division of the Royal Thai Police. There, experts came and checked the fingerprints and the 20 strands of human hair found in Mr. Somchai's car. They also found a mark/crack on the right bumper of the car, with red and white rayon on the mark, but they could not identify how the mark had got there. Evidence of a collision was also found on the back of the car, as well as some soil and objects on the mudguard.

Regarding the fingerprints, the witness said that a person not normally involved with scientific crime detection work would not know how to preserve the evidence. Sometimes a perpetrator who knows about this process may destroy the fingerprints before the police find them.

The witness denied knowing any of the defendants.

Cross-examination

The witness denied knowing about the process that the Central Institute of Forensic Science under the Ministry of Justice uses to examine evidence. He said that the Scientific Crime Detection division of the Royal Thai Police has had its standards of working for more than 70 years.

After checking the fingerprints and 20 strands of human hair (12 hairs belonging to persons that testified to inquiry officials, including Mr. Somchai's family members, and

eight hairs whose owners cannot be unidentified) the witness concluded that none of them matched those of the five defendants. The fingerprints also did not match with any in the AFIS (record of previous perpetrators in criminal cases). The vehicle that had caused the collision with Mr. Somchai's car could not be identified. The witness was not able to indicate whether the marks occurred because the car was hit by another vehicle or whether Mr. Somchai's car had hit another vehicle.

Pol. Sgt. Maj. Vijak (a.k.a. Mongkol) Phetsuwan

The witness is a police officer of the CSD. During January-April 2004, the witness worked for Pol. Col. Pisit Pisuthisak, deputy commander of the CSD. Pol. Col. Pisit was one of the investigators handling 'the gun robbery case' in the south concerning the five Muslim suspects. Mr. Somchai had alleged before his disappearance that some CSD police had tortured these five men to force them to confess to charges related to robbery of firearms from an army camp and arson.]

In January-April 2004 the witness had used mobile phone number 01 809 7280 but he insists that he has never called--nor did Pol. Col. Pisit order him to call--mobile phone number 06 382 1102, which was owned by Pol. Maj. Ngern Thongsuk, defendant 1. This testimony conflicts with his testimony to the inquiring officers at Bang Kho Laem Police Station. On 13 and 15 March 2004, he stated that he used his mobile phone to call Pol. Maj. Ngern on his mobile phone. The witness denied ever having known the defendant. He claimed that he was threatened during the inquiry process and signed his testimony with fear. He said that he was also scared to complain to his commander.

Cross-examination

Before the disappearance of Mr. Somchai, the witness knew that there was a conflict between the metropolitan police and the CSD. The witness said that he testified to the inquiring officers from 11am to 3pm of 6 June 2004. He claimed that during 13-15 March 2004, his phone battery was of bad quality so he had left his mobile phone on his table in order to recharge the battery, so anyone could have used it when he was not in the office. He insisted that he was threatened by the inquiring officers.

Reexamination

The witness understood that giving a false testimony both before the court and the inquiring officers are unlawful. He said that Pol. Col. Pisit's room was not crowded. There were only a few persons having business with him who would come in there. The witness said that he took care of his own telephone bills and denied knowing whether or not anyone had used his mobile phone when he was not in the office.

[Note: After the trial, the lawyer of the [joint] plaintiff said that from the phone company had records that mobile phone number 01 809 7280 (belonging to the witness) was used to call mobile phone number 06 382 1102 (belonging to Pol. Maj. Ngern Thongsuk, defendant 1) the total duration of the calls was approximately 2- 3 hours.]

Pol. Sgt. Maj. Meesorn (a.k.a. Mitra) Keamsuwan

The witness is a police officer from Anghthong Sub-district, Muang District, Ratchaburi Province. He has known Pol. Maj. Noppadol Phankaew of the investigation sub-division of Provincial Police Region 7 for more than 10 years. The witness used mobile phone number 01 981 7088.

On the date of the incident, the witness started work around 9pm, patrolling his area with two volunteers. At around 11pm Pol. Maj. Noppadol called the witness's mobile phone and told him that if the "boss" [from this word, the witness understood that it was a person of a higher rank than Pol. Maj. Noppadol] came to his area please provide alcohol for him. Pol. Maj. Noppadol left the Boss's mobile phone number with the witness to coordinate directly with the Boss. Pol. Maj. Noppadol had never asked him to do this job previously. Later, the witness called to the Boss on his mobile phone and the Boss said that if he passed by he would take the alcohol from the witness. [It took a while for the witness to tell this to the court]. The witness understood that if the Boss came he would call the witness again. After midnight, the Boss called him and said the same as he told the witness before. Later on the Boss called the witness again and said that he would not take the alcohol from the witness. The witness continued to do his duties at his police box until next morning. The police box is located at the Huaychinnasri crossroads, nearby Petchakasem Road, which leads to either Bangkok or the Wangmanow crossroads. The witness met Pol. Maj. Noppadol half a month later in order to rent a car and use it for duty.

Later, inquiring officers from the central police called the witness to the Ratchaburi Police Station. The inquiring officers said that the number that the witness had used to call the Boss was 06 567 3838, belonging to Pol. Lt. Col. Chadchai Liamsanguan, defendant 5. Defendant 5 had called the witness at 00. 23am on 13 March 2004 [according to phone company records].

Cross-examination:

The witness had heard of a conflict between the metropolitan police and CSD about arresting perpetrators in criminal cases. The witness testified to the inquiring officers on 14 April 2004, before Pol. Maj. Gen. Krissada Phankongchuen and other high-ranked officers. The testimony started at 4pm and went to until 2am of the next day. From the telephone record belonging to the witness there is evidence that his mobile had been receiving calls from mobile phone number 06 567 3838. But he could not say who used that number. The person who used number 06 567 3838 may not have been the real owner of the mobile phone.

Reexamination:

The public prosecutor examined the area where mobile phone number 06 567 3838 had been used and it appeared from the record that number 06 567 3838 was twice used in Ratchaburi Province.

Pol. Sgt. Maj. Kamnueng Korchalee

The witness is a police officer of the Tourist Police Division. The witness had known Pol. Maj. Ngern Thongsuk, defendant 1, for five years; Pol. Sgt. Maj. Chaiweng Paduang, defendant 3, for six years, since they worked together at the Tourist Police Division; and, Pol. Lt. Col. Chadchai Liamsanguan, defendant 5, for three years as defendant 5 used to be the witness's commander in the Tourist Police office.

The witness used mobile phone number 01 510 0580 and Pol. Sgt. Maj. Chaiweng Paduang, defendant 3, used mobile phone number 01 315 4809. On the date of the incident, the witness and defendant 3 had planned to go to investigate a Filipino robbery gang around Silom and Chareonkrung areas. On the way, there was a problem with the witness's car and defendant 3 called the witness to say that he and his buddy were just going to the Charoenkrung area. The car took a long time to be repaired so the witness was not able to meet defendant 3 on that day. In the evening, the witness went to meet his brother, who was a traffic police officer of Ladprao Police Station, as there was a party among the traffic police at the restaurant located nearby Lamsalee Junction (close to the place of the incident). The witness arrived at the restaurant around 8pm. At that time he still called and received phone calls from defendant 3 and the witness asked defendant 3 to join the party but defendant 3 declined because he said he still had some business with his wife.

From the witness's telephone records, it appears that he had called defendant 3 more than 10 times, but each time the defendant did not tell the witness where his location was.

Cross-examination

The witness had heard that there was a conflict between the metropolitan police and the CSD police over the arrest of some perpetrators in criminal cases. The witness gave his original testimony before the inquiring officers that included high-ranking officers, among them Pol. Maj. Gen. Jakthip Kunchorn na Ayudthaya. After the testimony, the witness signed his name without reviewing his testimony since the inquiring officers threatened the witness with a summons of arrest, if he did not sign his statement. .

Normally the duties of the Tourist Police officers and the CSD are totally separate. The witness knew that defendant 3's wife just gave birth at Ramkamhaeng hospital. The defendant had a duty to be with his wife and baby everyday. The witness knew that defendant 3 had his own house at Ratchaburi Province but he did not know whether or not on the date of the incident defendant 3 had taken his wife and baby back to Ratchaburi Province or not. The witness called defendant 3 many times because his mobile phone had a problem [same as the previous witness] so that is why he had to call defendant 3 many times. The witness said that he knew that defendant 3 had never transferred to work in the deep south.

Brief observations on the above witnesses

Regarding the 1st witness: He refused to respond to the questions put to him by the cross-examining lawyer. For any question, he told the lawyer to look at the forensic report, and the court also asked the lawyer not to ask the witness anymore questions because the witness was the commander of the forensic agency, not the person who did the actual investigation.

Regarding the 2nd witness: He denied calling defendant 1, and said that as his battery was of a bad quality he left it to recharge at the office. However after the trial, the lawyer said that the witness's mobile number had called defendant 1's mobile for 3 hrs.

Regarding the 3rd witness: He declined to give any more information about when the 'Boss' called him a second time. He stopped talking for a while until the public prosecutor asked him the same question again. Later on he said if the 'Boss' passed through his area he would take alcohol for him.

Regarding the 4th witness: He has very close relationships with defendants 1, 3 and 5. At the time when Mr. Somchai was abducted, the witness was very nearby the place of the incident. And at 8pm he called to defendant 3 many times, but the reason he gave was because his mobile phone had problems so he had to call many times in order to get through.

21- 23 September 2005

Witness: Pol. Maj. Thinnakorn Kesornbua

First, the defence counsel objected to the bringing of telephone records as evidence because they are considered confidential and the telephone companies have expressly stated their objection to the evidence being used in court. It is illegal to get the information without permission, in accordance with the Thai Constitution and the Telecommunications Act [not full title]. However, the judge allowed the evidence to be admitted saying that he would consider the arguments for and against the use of the records as evidence at the time of making his decision.

The witness is from the Metropolitan Police Bureau's Investigation Division 6. He was involved in this case when Mr. Somchai's car was found on March 16, 2004. The case was deemed a special case. The investigating officers found that it was impossible to get evidence to identify the perpetrators, therefore the mobile phone use records were used because it was the only way to identify them, even though the mobile phone use record is confidential company information. As the witness is an expert in Information Technology, he has some experience in checking mobile phone use records. The witness started to coordinate with the companies who had provided the telephone service: CAT, GSM, GSM 1800, DTAC, ORANGE and HUTCH. He did an analysis of the mobile phone relations in terms of distance to Mr. Somchai and frequencies, then he drew a diagram. The witness drew the diagram together with Pol. Bunyarit Ratanaporn, Deputy Police

Commissioner; Pol. Lt. Gen. Krissada Phankongchuen, Deputy Superintendent of Investigation of the Metropolitan Police; and Pol. Maj. Gen. Rewat Tannanont, who controlled the investigation process. The process was approved by Mr. Sudjarid Kidkom, the telephone expert from CAT, who was using academic standards.

From the investigation proceedings on 18-19 March 2004 regarding the mobile phone use it was concluded that:

On the morning of 12 March 2004, the user of mobile phone number 06 567 3838 (defendant 5) called to mobile phone number 06 382 1102 (defendant 1) to start their mission. After that, mobile phone number 06 382 1102 called and coordinated the mission with defendant 2 and 3, and defendant 2 contacted defendant 4, who used mobile phone number 01 684 9265. From the mobile phone records it was found that the group had followed Mr. Somchai since the morning of March 12 until the evening, when Mr. Somchai was at the crime scene. After the incident, defendant 5 had contact with other groups, which were: number 06 567 3232 owned by Pol. Col. Pisit Phisuthisak and number 01 337 0754 owned by Pol. Maj. Noppadol Pankaew.

During the inquiry conducted by the witness he found that there was a good citizen who called to 191 and the computer had a record about the incident. There was another eyewitness named Ms. Chaweewan who saw a man who had the same appearance as defendant 1, and Ms. Chaweewan pointed to the picture showing defendant 1's face. Later on a high-ranking commander insisted that defendants 1, 2, 3 and 4 were at the place of the incident. Pol. Maj. Gen. Thanee Somboonsab ordered Pol. Gen. Chanchit Peanlert, Deputy Police Commissioner, to issue summons of arrest for the four defendants.

During 6-11 March 2004 (before the date of the incident) the phone records show that the four defendants had very little contact with each other. But on 12 March 2004 they made 75 phone calls to one another.

During 13-15 March 2005, again the group had very little contact with each other. But on 16-17 the group contacted one another more than 30 times, because Mr. Somchai's car was found at Morchit 2 Northeastern Transportation Terminus.

Later on the police arrested defendant 5.

Brief comment

During the trial, the witness said that he was threatened during his investigation process, and he started to explain to the judge what the threats were. However, the judge stopped him and told him to prepare a written complaint and submit it to the court after his testimony, which he did.

This witness is very important for the prosecution so the defence lawyers pressured him as much as they could. When the senior judge left the room for some time, the defence

lawyer for defendants 1, 3 and 5 shouted at the witness and behaved in a less respectful manner towards the two junior judges who were present.

5 October 2005

Witnesses: Mr. Wisarut Parattrakorn
Mr. Vittaya Buranasil

Mr. Wisarut Parattrakorn

Mr. Wisarut Parattrakorn, legal officer with the AIS telephone company, explained how he was summoned by the metropolitan police investigators in the case and asked to provide information on mobile telephone use by the defendants. He explained that the proper procedure was followed so that the records could be given to the investigators.

Mr. Vittaya Buranasil

Mr. Vittaya Buranasil, a member of the Muslim Lawyers Club, explained how within the last few years Mr. Somchai had handled cases relating to national security in the south, especially those where the accused were tortured in connection with alleged insurgent actions. He explained that just before Mr. Somchai disappeared he was taking up the case of five men who had said that they were tortured by the police. The witness also was assisting in this case.

The witness said that on 10 March 2004 Mr. Somchai said that a government official had told him that his name was on a blacklist.

On 13 March 2004 at 9am he was due to meet with Mr. Somchai along with other members of the Muslim Lawyers Club. In fact Mr. Somchai had called the meeting, but he did not come. He said that usually if Mr. Somchai could not come he would inform the group, but he did not do it this time, and unusually, nobody could contact him.

The witness also said that on 14 March 2004 the staff of Mr. Somchai's law firm called him at 4pm to say that they had still had no contact and that Mr. Somchai was due to fly to Hadyai that evening; however he had not checked in.

6 October 2005

Witnesses: Mr. Plean Eamsamang
Mr. Sonthaya Jakkrapong

Mr. Plean Eamsamang

Mr. Plean Eamsamang was an eyewitness to the alleged abduction, explained that he was stationed as a security guard at a house opposite from the site of the incident and had time to observe the whole event. He said that he saw two persons get out of a rear car, out of maybe four in total, and talk to another person from the front car. Then he heard a cry of "why" and took another look. He saw the persons from the second car pushing the person from the first car, and heard a suffocating sound. He saw the car door closed on the

person and the person who closed the door went to sit in the front seat of the car next to the driver. One of the persons went to the first car and drove it.

In his testimony to the police investigators, the witness had been shown VCD footage and was asked to identify persons in the VCD. He said that he had told them that he couldn't identify anyone exactly, but the man who pushed the other into the car looked like the first defendant, Pol. Maj. Ngern Tongsuk. And the person who went to drive the first car looked like the second defendant, Pol. Lt. Col. Sinchai.

The witness had been summonsed to appear in the court on September 7; however, he failed to come. When he came to the court on this date he was accompanied by an officer of the DSI, suggesting that he had tried to avoid coming to give testimony, and may be under protection.

Mr. Sonthaya Jakkrapong

Mr. Sonthaya Jakkrapong, another eyewitness, said that on 12 March 2004 at about 8:45pm he was driving a motorcycle home when he passed the place of the incident. He heard someone cry out from the left, and looked in that direction. He saw two sedans parked close together and saw about three struggling at the second car. The scene looked suspicious to him, so he stopped his motorcycle opposite the nearby Huamak Police Station and called emergency number 191 and informed of what he saw. Then he drove home. Ten days later he was called by the police to give testimony.

18 October 2005

Witnesses: Ms. Sunan Kongkem
Mr. Montree Kaokong

Ms. Sunan Kongkem

The eyewitness is a university student. She was walking with friends, when she saw two cars (sedans) parked. After sometime she heard a male voice say 'let me go/leave me', so she turned around and saw some men trying to force a smaller man into the second car. At this time she was about 30m away from the scene. She watched until both cars drove away. She was able to see from the light coming from the fence of the house nearby and from the vehicles. She only remembers one man, the one who walked to the first car and drove it away, he was about 170cm tall, around 40 years of age and wearing a checked shirt. However, she does not recognize or know any of the defendants.

A few days later, the eyewitness saw the news about Mr. Somchai's disappearance and said to her friend that they should be careful walking in front of the university, as it can lead to abductions.

A few days later, she saw her friends talking to a group of men, her friend called to her and told the men that she was also an eyewitness. She then learnt that the men were police officers, and they subsequently took her to the police station to take her statement.

Cross-examination

The eyewitness did not know anything about the conflict between the CSD and the Metropolitan police. The eyewitness did not know Mr. Somchai or his family; neither does she know the defendants. The defence lawyer then began asking the eyewitness leading questions such as, “When you turned around at the sound of a voice, you were looking into the light, so the scene was not so clear, right?” To which the eyewitness answered “Yes”.

The eyewitness signed the investigation report, but also signed another document with the map of the crime scene, which she said she had not seen when signing the document. The defence lawyer tried to establish that trees and telephone pole not drawn in the investigation map and thus map was inaccurate, but the public prosecutor then asked the eyewitness if point no. 10 on the map was a telephone pole, to which she responded it was. Prosecutor then asked witness if the map was accurate except for the fact that the investigation officer did not draw any trees, to which she said yes.

The eyewitness was not brought to the scene by the investigation officer to take photos or anything else. According to the photos and actual measurements, the eyewitness was actually 55m away from the scene, not 30m. (At this time the judge intervened saying that such details were superfluous as the facts were already established)

The eyewitness did not think what she saw was an abduction she thought it was maybe an accident or a quarrel, and thus did not think about reporting the incident to the police. She was called in for questioning many times by the investigating officers, who tried hard to get her to identify the events and persons.

She did not read the investigation documents carefully before signing them; she only read them briefly.

Mr. Montree Kaokong

The eyewitness is 23 years old and a student at Ayutthaya from NST province. On 12 March, he was walking past the university with three friends, looking for food. As they walked past a restaurant, the eyewitness saw two cars (sedans) parked next to each other, one had the left signal indicator on, therefore the eyewitness thought it was a car accident (at this time there was no one near the cars).

The eyewitness and his friends had almost walked to the bus station when he heard a male voice call out ‘help’. They turned around and the eyewitness saw a group of 4-5 men talking around the two cars. Then a group of men tried to force a smaller man into the second car, but the eyewitness could not see the person as there was a lot of traffic; the cars had stopped in the road even though the signal was green. The eyewitness watched the incident until both cars had driven off; the first car (green with clear mirrors) went straight, while the second car (darker, with dark mirrors) made a u-turn in front of the police station. Witness was about 30m away from the crime scene. There was no light from the lamp post, but the eyewitness could see what was happening, just not as clearly. There were many other people on the street at the time. The telephone poles and trees

obstructed the vision plus the light was dim. The eyewitness is shortsighted and was not wearing his glasses at the time (-2. 5: can see but not clearly).

A few days later one of the eyewitness' friends brought a policeman to see him, the policeman asked the eyewitness to go to the police station to further investigate the case and make a statement. The police showed the eyewitness a vcd taken in the house of defendant 1 and asked him if he recognized defendant 1 in the video footage. The eyewitness said that the man he saw was very similar to the man he had seen at the incident, but the eyewitness could not identify the perpetrator positively. The eyewitness does not know any of the defendants from before.

Cross-examination

The eyewitness is not sure whether he was 30 or 60m away from scene. He signed the investigation report as well as documents containing a drawn map, but at the time no trees had been drawn on the map.

The eyewitness was unable to see whether the smaller man who was pushed into the car was Mr. Somchai but after watching the news, he thought that maybe it could have been Mr. Somchai.

The eyewitness was then shown photos of the crime scene and asked to identify which trees and telephone poles had obstructed his vision and where the two cars were parked in the model.

The eyewitness thought it might have been a car accident and therefore did not report the incident to the police – there was a police post close by the crime scene and also traffic police at the intersection.

The investigation police took the eyewitness in a car from Ayutthaya to Bangkok for the investigation. They did not tell him that he would have to testify in court.

The eyewitness did not see any abuse committed against the man, just that he was forced into the second car. The investigators asked the eyewitness many times if he could identify the police defendants, but his answers were based on the truth not on force or manipulation.

Comments on eyewitness' testimony

Earlier eyewitnesses spoke of two men engaged in forcing the third person into a car. However, the above two student eyewitnesses saw four or five men surrounding a single figure.

In reply to questioning by the defence lawyer they denied knowing of any inter-police conflict. This indicates that the defence's strategy is still to suggest that the five accused are victims of the conflict. The leading questions posed by the defence team made both eyewitnesses' testimony unreliable and weakened the case for the prosecution. For

example, they agreed with the sympathetic suggestion of the defence lawyer that minor car accidents and subsequent disputes are a frequent occurrence on this busy stretch of road; the incident they observed could well have been such an incident.

This sort of questioning and leading the witness by the defence was not controlled by the judge or objected by the prosecution lawyers. Very little in terms of witness protection was offered to both eyewitnesses, which meant that they were very susceptible to intimidation by the defendants and may have been reluctant to identify the perpetrators.

Furthermore, the police failed to take both eyewitnesses to the scene of the crime to verify their statements with particular concern to the distances the eyewitnesses were from the incident. Therefore, when the eyewitnesses' estimations in court were questioned, this causes the judge to question the credibility of their testimony. Also, there is evidence that the investigating police did not conduct adhere to proper police conduct because they merely presented the documents for the eyewitnesses' to sign without explaining what they were or whether the eyewitness had actually agreed to sign or not.

19 October 2005

Witness: Mr. Surajit Tipprom

The witness is from the Communication Authority of Thailand (CAT), Telecom Public Company Limited. Lots of questions were asked concerning the mobile phone systems, how they work, the GSM waves, other waves, 1800herzt, 900herzt, sectors, cell sites, and base stations.

When a mobile phone call is made, the beginning and ending of the telephone numbers will be recorded, as will the date, name of station, cell site and sector of direction (which is 99% accurate in identifying the direction of the user). The system of recording the information is very accurate, although technical errors do occur (very infrequently). Even if the information is recorded inaccurately, the date and time will be recorded at the base station depending on its own clock. Customers can ask to view this information.

GSM can record GSM; ASI can record GSM but other corporations cannot. When GSM calls GSM, the outgoing number will be recorded. When another wave calls GSM, the incoming call will be recorded as the GSM system does not record other waves.

The witness was involved in this case as he was ordered by the admin committee of CAT to explain the workings of the system to the investigation officers of this case. So he explained to the police how incoming and outgoing calls can be recorded, and what information will be recorded. The witness got information regarding the defendants' phone calls from their service provider.

Pol. Maj. Tinnakorn (the police officer who had asked for information from the witness) analysed all the information according to the GSM system after gathering and examining the evidence and then gave it to investigation officers as a report. He also organised the

information into a diagram (shown in court) and asked the witness to check it – not for accuracy/verification but just to survey it.

The defendants had used the telephone near where the crime occurred from 7am-8pm.

The witness does not know the defendants.

Cross-examination

The witness does not know if Pol. Maj. Tinnakorn studied communications. Also he does not know who gave Major Tinnakorn the information regarding the mobile call records or who certified it. The witness does not know Pol. Maj. Tinnakorn personally or who assigned him to investigate the case of Mr. Somchai. He does not know if the documents submitted to court regarding user information are copies or originals – many seem to be copies. The Corporations know nothing of the users' conversations. According to CAT regulations, user information is not usually given to the police, but to other state organizations such as anti corruption, drug control etc. Records regarding outgoing and incoming calls are usually kept for 3 months, but the witness knows of instances when the records are kept for 10 years. Documents must usually be stamped by corporations, saying they can be used in courts of law – some documents submitted at present have statements saying that the mobile call records cannot be used in courts/investigation. The witness does not know whether the user information will be kept secret – he has not seen any such regulation.

If a base station or cell site is full (many users) the call will be recorded at the nearest station/cell site.

The witness gave his statement to investigation officers based on Pol. Maj. Tinnakorn's documentation. Pol. Maj. Tinnakorn told the witness he would not have to come to court. This is the witness' first time to sign/check documents and to come to court.

The defence lawyers cite numerous examples from documents where the information regarding user information (date, station/cell site etc) was inconsistent – one document would have certain information while another would have other information; for instance, Doc. 111 indicated cell site location at Ratchada 32, but Doc. 74 does not locate the cell site. The witness was asked which document was accurate, but he stated that he cannot always tell. However, the witness states that Doc. 111 has the same information as the billing records, so it must be accurate.

Comments on the witness testimony

In questioning the evidence a defence lawyer continually used the formula, “Was it not possible that...” to which the witness was forced to weaken the evidence by responding, “Yes, it was possible that...” The impression was created that the evidence derived from mobile phone calls was fundamentally flawed.

In previous weeks a young attorney had taken his place at the table for the prosecution. He sometimes intervened to clarify a point of evidence or passed information to the leading attorney. Now he rose to turn the evidence around. As opposed to the line of questioning “Was it not possible that...” he construed questions in the form, “Is it not likely that...” Rather than leaving the witness to fend for himself as best as he could, as had happened in earlier stages of the trial, he led the witness by a series of short and decisive questions to a strong affirmation of the evidence. He was prepared to concede that one call appeared to involve a technical error, explained the non appearance of some calls on the billing account as being due to unanswered calls, and suggested that changes in cell site due to overload were rare events which did not affect the overall dependability of the evidence. The witness now appeared as a conscientious and meticulous interpreter of the phone data submitted by his company.

20 October 2005

Witnesses: Pol. Col. Kajornsak Pansakorn,
Pol. Lt. Col. Tinnakorn Somwandee

Today, a new judge sat as the principal judge in the case, accompanied by two assistant judges.

Pol. Col. Kajornsak Pansakorn

The witness is vice-commander of the metropolitan police, in charge of investigations in his area. He was assigned by his commander to investigate this case. Three orders were given to assign officers to this case (resulting in three different investigation teams): first group, on 17 March 2004, the second group on 31 March 2004, and the third group on 8 April 2004. The witness was assigned to the case on April 8 by his commander, Jakpit. His commander was interested in this case because Mr. Somchai was a lawyer for the accused in the southern crisis, head of Muslim Lawyers’ Club (MLC), and he tried to get 50, 000 names in a petition against martial law in the south.

Mrs. Angkhana went to the police station on March 14 to lodge Mr. Somchai’s disappearance. Mr. Pathompong, Mr. Somchai’s friend and the last person to be with him told the police that Mr. Somchai was warned to leave the case of his tortured clients.

To begin the investigation into the case, the police tried to retrace Mr. Somchai’s movements. On March 10 he was at Swansun village, on March 11 he went to work, and on March 12 he was working in the morning, then he went to court, went back to the office and then went to Cherina hotel near Lamkampaeng with Pathompong to meet Mr. Katchida, who is the treasurer of the MLC, but he was not there so at 8.30pm Mr. Somchai and Mr. Pathompong separated.

Police thought there must be eyewitnesses who saw Mr. Somchai leave the hotel, so Col. Bakorn and his colleagues made leaflets and disseminated them in the area. Some witnesses could confirm that there were four men who took Mr. Somchai in a car in front of the Melaw restaurant on Lamkampaeng street.

After that the investigation team showed photos of people to Ms. Chaweewan, who recognized defendant 1 as one of the men. Then technical investigations also occurred – inspections of telephone numbers etc. The team commander assigned Pol. Maj. Thinnakorn on to do this. The witness team tried to analyse the information gathered by Pol. Maj. Thinnakorn, after which they came up with 3 more accused. They found out that defendant 1 and defendant 4 kept watch on Mr. Somchai the entire day of March 12, from the morning on Ratchada 32 to court, until in the evening at the crime scene the telephone number of the defendant 4 kept appearing. Database of mobile phone information was used to arrest the four accused; the court granted warrants based on evidence gathered by the investigators. The accused denied the charges of armed robbery and did not give statements. After arresting them the investigation team went to their houses to gather more evidence but found nothing. They took photos (including of the accused) and put them on a vcd. One witness recognized the defendant 1 from the photos.

Continued investigations found more evidence; defendant 5 was connected to defendant 1 through telephone calls on March 12; they called each other more than 50 times, although before and after the March 12th the phone calls were much fewer. Defendant 5 was also arrested, however, he denied the charges; denied being at the crime scene, and said that he was shopping at Tesco Lotus, but the witness did not know which branch the Tesco Lotus was in. Defendant 5 actually surrendered himself to the police, but didn't confess to any crime. He went to the police station with his commander and lawyer (Mr. Pornthep). Defendant 5 was from the tourist police, all accused knew each other. The investigation team believed that all five accused were guilty.

When asked about motivation, the witness said that Mr. Somchai was an independent lawyer, chair of MLC, his clients were involved in the south; defendant 1 and defendant 5 were those accused of arresting and torturing Mr. Somchai's clients, from the 'gun robbery case' . .

Police did not compel any witnesses to give testimonies. The witness does not know if any of the accused complained to their commanders.

Cross-examination

The witness graduated from Sampan police academy, and became a police investigation officer his duty is to investigate the accused.

In this case all the witnesses only saw photos of the accused, not the actual persons. There were no documents submitted to the court stating that Mr. Somchai complained of his clients being tortured.

Witness does not know/cannot confirm that Mr. Pathumpong was with Mr. Somchai at the hotel. Also the witness does not know who warned Mr. Somchai to leave the case. The witness did not see the hotel surveillance to see if Mr. Somchai was at the hotel. The witness does not know if all the witnesses could recognize Mr. Somchai at the crime scene.

According to the investigation team order, it was not specified that Pol. Maj. Thinnakorn would be assigned to the case.

The witness does not know how the investigation team got the documents regarding phone usage. The witness did not investigate the case using the testimonies from the witnesses of the defendants as they refused to cooperate. The witness was not aware that defendant 5 was assigned to investigate the armed robbery case from November-March 2004. He was also not aware that 113 persons were on the committee to investigate this case.

Ms. Chaweewan testified on March 18 that the person she saw with Mr. Somchai looked like defendant 1, the second time she said the driver of the car looked like defendant 4 and the third time she said the person looked like defendant 2. She came to the police station herself on these occasions, which she was not compelled to do so.

The witness also questioned Mr. Direk three times – the first time he could not recognise any of the accused, then the second time he was shown the vcd but still could not recognise anyone, but on the third time he confirmed three of the accused. Only the third statement was signed by Direk, after he was taken to the Huamak Police Station by the police. The first two times he had not completed his statement.

The witness also questioned Ms. Kumonthip – the first time she could not recognise any of the accused, the second time she was shown the vcd but still could not recognise anyone and even the third time she could not recognise anyone.

The witness did not investigate Mr. Somchai's case in regard to these aspects:

- internal conflict within the MLC (however, he spoke to some of Mr. Somchai's relatives and friends who said there was no conflict)
- political conflict/government conflict
- southern crisis, martial law

The reason for not investigating these aspects is that the evidence did not point to any of these factors.

The investigation was over in just over two months; commander tried to speed up case as there was lots of attention on it.

Pol. Lt. Col. Tinnakorn Somwandee

The witness is a 35 year old police officer from Payatai police station. He was assigned to this case by his police station on 31 March 2005; belongs to the second investigation team. There were three teams because the commander thought it was an important case. The first investigation team found that Mr. Somchai was involved in the south and the motivation for his disappearance was related to the south and his clients who were allegedly tortured by the police who arrested them.

The witness began investigation by checking the statements made by witnesses found by the first team. They started their work with Pol. Maj. Thinnakorn's information regarding the mobile phone information. The two teams worked separately; one for evidence and persons/witnesses while the other team worked on information.

The witness' team believed that defendant 4 abducted Mr. Somchai. All four were arrested and charged with armed robbery. They denied the charges and investigation. Phone records showed that all the accused were in contact with each other. One accused was involved in security issues in the south. The witness found it abnormal that all the accused called each other so many times. On March 16 they all used their mobile phones to be in contact with each other; same day that Mr. Somchai's car was found, but the witness does not know who found the car. The witness did not question the witnesses of the defendant. The witness does not know of any documents regarding Mr. Somchai's complaint of his clients being tortured (however, the prosecution later said that the prison officials brought a document for Mr. Somchai's clients to sign regarding their torture complaints-the documents existed and someone knew about them).

21 October 2005

Witnesses: Pol. Lt. Col. Sompong Samranchai,
Pol. Lt. Col. Phakorn Samutkiri

Pol. Lt. Col. Sompong Samranchai

The witness is a 50 years old, investigation officer at the Huamak Police Station. He was appointed to this case through an order issued on 31 March 2004 (the 2nd order). The witness was assigned three responsibilities: investigate people detained in political/national security cases at CIB, investigate people at the Royal Thai Police and oversee detaining of defendants. For the first task, the witness went with two other officers to investigate whether or not Makata Harong and five other detainees had been threatened or not – it was concluded that they had not been threatened. For the second task, the witness had to investigate whether the complaint about police abuse of the detainees was true or not; the complaint existed, but when questioned the police officers said nothing.

The witness did not attend all of the meetings of the investigation team because officers had to take turns to work at the station as well.

The defendants turned themselves in.

Cross-examination

Prior to the case, the witness was unaware that Mr. Somchai had represented clients in the south.

The witness' assignment was just to verify that a letter of complaint existed. The witness worked with other officers to question the witnesses –Major Somkhit, Messr Sergeant, Sergeant and Lt. Col.

The witness does not remember if Ms. Saranya was questioned

There was no ill intention in filing objections to the temporary release of the five defendants; this was an important case, the investigating police needed more information, and the defendants were police officers. If they were released, they were in position to destroy available evidence and obstruct the course of justice.

Pol. Lt. Col. Phakorn Samutkiri

The witness is a police officer at the Bangrak Police Station. He is an investigation officer and has been involved in this case since March 15. He was assigned to this case by his superior, Pol. Col. Anurak.

Mrs. Angkhana lodged a disappearance complaint at the witness' police station on March 14. As a result of this, they sent out dispatches about missing persons. On March 16, the witness began to investigate. He went to Mr. Somchai's office, and took statements from some lawyers. Also on 16, the witness was informed by another police officer that Mr. Somchai's car had been found (however, that police officer had been told by a taxi driver about Mr. Somchai's car on March 13, but did not inform the witness until 16) Mrs. Angkhana was informed about the car, she brought the keys along with her. One of Mr. Somchai's friends was there (where the car was found), other officers and the media were also there. The car was then taken for further examination to the forensic department.

The witness then questioned Mr. Wanachai, Mr. Somchai's colleague.

The witness' superior considered this to be an important case because it was significant for the public interest, and the disappeared person was a lawyer, a very competent person, fighting in cases concerning national security. So the witness' superior appointed a working group – an investigation group and an inquiry group. The investigation group was supposed to collect evidence, and the inquiry group was to make the inquiries with Mr. Pathumpong to find out what happened on March 12.

The witness went to Cherina hotel, made a map, and took photos of Mr. Somchai's office. With regards to the students' testimony of witnessing the incident: although the initial statements were taken at Huamak Police Station on March 22, the statements needed to be verified, because the officers at Huamak who took the statements were not assigned to this case (this is why those statements not submitted in court). The witness and some other officers specifically assigned to take witness statements; brought witnesses from their homes to the crime scene and also showed them the map and then asked them to sign the necessary documents.

Cross-examination

The witness has been an investigation officer for 12 years. The defendants were policemen, serving the public and have never been convicted of a criminal offence. They received rewards for their work and were in good financial situations. Mr. Somchai's disappearance does not affect their status.

The witness denies that investigation only focused on one point/allegation; different aspects were looked into, such as conflict within MLA, national security, but no information/evidence was found.

Witness only went to defendant 2 and 3's house, but he didn't find any of Mr. Somchai's belongings there. Report says the same for the other houses. Defendants have not hidden anything elsewhere.

The investigation could not reveal the whereabouts of Mr. Somchai or if he was still alive. The black jacket worn by the man who kidnapped Mr. Somchai was not found. In Mr. Somchai's car, nothing was found relating to defendants, same with their houses (with regards to forensic examination).

The lawyer Mr. Kitchda had the same kind of black car, but the police did not examine it. One witness said one of the men spoke to Mr. Somchai as though he knew him. The witness does not know how the documents were obtained; although the investigation team sent a letter requesting the documents, the documents were sent to Pol. Maj. Thinnakorn. The witness questioned whether the documents were copies/originals. The witness were unaware whether all 55 police officers linked to the 'gun robbery case' in the south were questioned or just the five defendant. Defendant 5 was not in the south at the time of the investigation of the 'gun robbery case', since he was actually attending a police seminar (but his name was included in the list of 55 officers). The witness said that at the time of investigation, they were not given the information about the 55 police officers involved, they only found out later. The 14 pictures shown to the victims of the alleged torture were taken from various places, not just of police officers.

There was no eyewitness to confirm that Mr. Pathompong was with Mr. Somchai on 12 March, it is only Mr. Pathompong's oral testimony.

The hotel guard did not see anyone at 8.30pm. The soil that was found on Mr. Somchai's tires did not match the soil at Cherina hotel.

The eyewitnesses, Mr. Sunan, Ms. Kumonthip, and Ms. Chaweewan were afraid to go to the scene of crime, so they just looked at a map. Mr. Adirek and Mr. Siem (hotel guard) also did not go to the scene.

The witness does not know if other officers took hair and fingerprints from the defendants, and he does not know if such samples were used to match those in Mr. Somchai's car. Samples were taken from Mr. Somchai's colleagues – Mr. Pathumpong, Mr. Ismail, Mr. Kitchda, but the witness does not remember the results. According to the report, hair found in the car matched that of Mr. Ismail, but not Mr. Pathumpong, who was the last person to be with Somchai.

Investigation of Mrs. Angkhana and Mr. Somchai's colleagues cannot be used to identify the defendants.

Investigation of Pol. Maj. Thinnakorn's information regarding mobile usage did not lead to the identification of the defendants.

Investigation of the five torture victims also did not lead to the identification of the first defendant

According to rules and procedures of police investigation (chap 8, art 260, 264), you have to get at least five people who look the same, dress the same and then get witness to identify. So you need five photos of different people. The witness believes it should be ok if they put more than one defendant in the same set of photos.

According to the law, when a crime occurs in a certain jurisdiction, police officers are automatically authorized to conduct an investigation. Therefore, the investigation done by the Huamak officers on March 22 is legal.

Before questioning the 4 students, the witness was ordered to question Mr. Sonthiya, who was a motorcyclist who saw the crime and called police patrol/emergency services. Mr. Sonthiya said he saw someone being forced into a car. The second map was based on Mr. Sonthiya's statement; he signed the map but was not sure if the scene occurred in front of the restaurant or house 2367. He was not sure because he was passing by on his motorbike; the two locations were adjacent, maybe 10-20m apart.

The witness also conducted inquiries with the security guard of house 2367, Mr. Siem, who said he heard the sound of brakes and thus went to see. He saw two cars and heard a woman's voice calling. He then saw some men pushing someone into the car, but not sure if person was male/female.

The witness was also instructed to conduct an inquiry of Ms. Chaweewan at the Metropolitan police department; the witness prepared a map and Ms. Chaweewan verified it. Mr. Yuan was another eyewitness.

Subsequently police officers recommended Mrs. Angkhana to file a complaint regarding the robbery and coercion at Huamak Police Station; even if it is not a disappearance, it was obvious that a criminal offence had occurred in the jurisdiction of Huamak

The witness was unaware that police officer Tawachai was informed by a taxi driver that Mr. Somchai's car was parked in the spot it was found since 12/13 March. On 13 March, Mr. Kitchida took a taxi to the northern terminal to take a bus to Chiang Mai at 9.30pm. The police officer got the call from a taxi driver at the same time saying that Mr. Somchai's car was parked there. The witness not sure if the police have tried to look for or question the taxi driver.

Pol. Maj. Thinnakorn was not appointed to investigate this case by any official letter. The witness was unaware that Pol. Maj. Thinnakorn's boss, Pol. Maj. Gen. Krissada and the head of the CSD had some conflict.

No sketch was made of the accused from the witness testimonies. The witness was not aware that Mr. Somchai had not been appointed as the lawyer of the five torture victims. Complaint letter also does not mention that Mr. Somchai is the lawyer. Only Mr. Somchai's colleagues would know that Mr. Somchai was interested in the case.

The witness did not investigate whether Mr. Kitchda would benefit from Mr. Somchai's disappearance; he did not find any information regarding any conflict between the two men.

The witness investigated each place Mr. Somchai went to on March 12, but he did not go to places where the defendants were supposed to be (according to phone records) to find out whether there were any eyewitnesses for the defendants. The witness also does not know (and did not interview) those who had called the defendants on that day.

Witness took hair samples of three lawyers and fingerprints of three others, as well as of Mr. Somchai's children: these were taken because these people had been in the car with Mr. Somchai, so their samples had to be eliminated. The witness did not use automated fingerprint comparing database.

Reexamination

Although investigations can be done by investigation officers as well as policemen, interrogation can only be done by interrogation officers. This is why initial investigation reports of March 22 cannot be used, because they were done by investigation officers. Also, it is the responsibility of the investigation officer to set up theories for a case; the interrogation officers follow these. They can use their own initiative if they come across relevant information, but the interrogation officers must check with the investigation officers. The authority to call witnesses lies with the investigation officer.

The letter from the telephone companies providing the telephone records states that information cannot be used in court, but there is no such legal basis, so the documents can be used in court as evidence. The witness was told by a policeman that without this statement, the telephone companies would not give the records, but the witness does not know if this is true or not.

The reason the defendants were charged with robbery and assault was because there was no further evidence to charge them with abduction. From the witness' investigation, there is indication that Mr. Somchai disappeared because of his involvement with the 'gun robbery case'.

Mr. Somchai's other properties such as his watch, pen, and mobile phone have not been found; only his car was found. The witness does not know why the car was left in the parking lot. The car was found with a crashed bumper – Ms. Chaweewan said that she remembered a group of men from both cars talking to each other. If there was an accident, then both parties would be talking.

People close to Mr. Somchai have said that the victim did not know the defendants, but the witness cannot prove whether they knew each other or not.

The witness could not verify the accuracy of the map, model or photos (in terms of what distances were).

In the map there were no trees/poles and other documented measurements, but the witness went to the scene to make the records. The witnesses saw map before they signed it.

In the police rules and regulations, there is an example of how personal ID should be done; but this is just an example, one does not have to do the identification in that particular way. Regulations for identification of photos are not as clear as that of personal id, so the police just follow the procedures adopted for personal id. According to the memorandum of understanding for personal id procedures (amendment to rules and regulations) it is stated that any procedures that go against the memorandum are considered void. The memorandum states that personal id must be done before the face of the suspect is shown to the public. However, once the faces are shown to the media, specific id procedures set out in the rules and regulations must be followed.

On March 22, during police investigations, witnesses were asked to describe the appearance of the suspects. After they told the police officers, the officers tried to find similar persons (the police did not show photos first and then attempt to get witnesses to identify the photos). On subsequent investigations (30-31 March) the witnesses were shown photos, but at this time the persons in the photos were only suspects so specific procedures were not followed. The witnesses were not influenced by photos of the defendants in the media.

Comments on the witness testimony

The final witness at this stage of the trial was the policeman responsible for procuring and collating the evidence submitted to the Attorney General. It was clear that he had performed the task dutifully rather than with great understanding. The three defence lawyers seized the opportunity to mount an all out attempt to discredit all the evidence of the case. Questioned on the inability of witnesses to clearly identify the aggressors and their plea of memory failure, the police witness simply said that they were afraid to identify the accused and could not be persuaded to do so. A second lawyer accused the policeman of ignoring the procedure required to identify wrongdoers. Quoting from a handbook of police procedure which he placed before the witness, he pointed out that identification must be made from a choice of at least five similar persons or five similar photographs for each of the accused. Clearly this had not been done.

The often repeated objections to the mobile phone evidence were again raised, to which the present witness could give no reply.

A third angle of attack questioned the whole investigation. It was pointed out that there were no answers to fundamental questions, for example that forensic examination of Mr. Somchai's car showed no trace of clay or dust to confirm that it had been parked at the hotel where he was said to have had dinner on the evening of the abduction.

Why, it was asked, were so many relevant issues not investigated such as the financial records of the funding for Mr. Somchai's activities or the possible intervention of a foreign influence? Could the policeman produce a list showing the reasons for the elimination of other possible lines of investigation? Nor was the evidence submitted as detailed as it should have been.

Under such a barrage of questioning the witness appeared distressed and the judge suggested he leave the courtroom to regain his composure. Again the young attorney rose to adjust the perspective of the evidence for the prosecution. He had again prepared a list of short and decisive questions but had difficulty leading this slow witted witness. The attorney probed the witness on two distinct functions of those assembling the evidence, investigation and interrogation. This witness was an interrogator and did not have to justify the paths of investigation. In fact the evidence was detailed enough given the time available. He reminded the witness that the requirement of 5 persons or photographs in determining identity applied to the process of arrest, not to the present case where the five accused had surrendered to the police, providing photographs as required. Over an hour of often difficult interpretive questioning of the witness the attorney could again present the evidence as a credible basis for the serious charge. The court had begun the sitting soon after 9am and prolonged the session until 9pm in the evening.

1 November 2005

Witness: Pol. Lt. Col. Sunthorn Kongklab

The witness is a police officer from Humark Police Station. He was the investigator and inquiry official in this case since 4 April 2004. The witness was responsible for the examination of the finger prints and checking the warrants of detention of the alleged offenders for the Court. When the evidence was collected, the Court issued a warrant of arrest for Defendants 1-4 on 8 April 2004, who were taken to the Payathai Police Station on the same day. The inquiry official received the arrested persons (defendant 1-4) and was responsible taking their statements regarding their whereabouts during the date of the crime. He then had to make a record of the defendants' statement and record down that the defendants had been notified of their statement's content. It was revealed that the defendants and their lawyers had not signed their name on this record of notification.

After collecting more evidence, the inquiry official believed that there was one more offender involved in Mr. Somchai's disappearance. Therefore, the inquiry official requested the court to issue a summons of arrest for Defendant 5 on 30 April 2004. After arresting defendant 5, he was delivered to the Payathai Police Station on the same day. During the inquiry process, defendant 5 denied he was involved in the alleged crime and

said that he was not at the crime scene when the incident occurred. Defendant 5 then signed his statement.

Besides making the statement of inquiry, the witness was also in charge of making the note of detention. When the inquiry process is completed, the inquiry official has to submit an opinion to the prosecution with regards to the five defendants. Since being in charge of these duties, the witness has never received any complaints regarding unfair allegations. Out of the five defendants, the witness knew defendant 1 only because the witness used to be defendant 1's lecturer.

Cross-examination

The inquiry process: The witness believed that the five defendants had a motive to abduct Mr. Somchai because the five defendants were threatened by Mr. Somchai's involvement in cases concerning national security in the south of Thailand. On the date of arrest, the lawyers of the defendants mentioned that the inquiry official did not follow the standard regulations for identifying the alleged offenders or their pictures. Defendants 1-4 and their lawyers did not sign the note of inquiry because the charges had not been completed yet.

The lodging of complaints: Defendants 1-4 could not make the complaints because they were kept in detention so the defendants could not know whether the inquiry official followed the regulations of the inquiry process or not.

The testimony of the eyewitnesses: They always changed their testimony, for example, in his first statement to inquiry officers, Mr. Adirek, the eyewitness said that the person who pushed Mr. Somchai into the car was tall but not bald. However, in his last testimony he said that the man who pushed Mr. Somchai into the car wore a jacket, dark trousers and had a bald head. The witness said that the testimony changed because the eyewitness's memory was triggered and he remembered more details of the perpetrator.

Since the witness was the inquiry official of this case, he therefore had the power to submit his opinion to prosecute the defendants.

Reexamination

The witness said that it was not necessary to arrange the identification of the alleged offenders or their pictures for every case. If the identification was certain then the inquiry official had to follow set regulations. However, in this case, the inquiry officials arranged the pictures for the eyewitnesses so that the suspects could be identified; the pictures were not used to identify the alleged offenders. On the date of arrest, the defendants stated that defendants 1-4 did not sign their names on the note of inquiry because the charge had not been completed, the witness said that the defendants could lodge the complaints or consult their lawyers but on that day it appears that the defendants did not make any complaints.

2 November 2005

Witness: Mr. Sak Korsaeung

The witness is a senator and the former president of the Law Society of Thailand (LST; now Lawyers Council of Thailand). The witness has known Mr. Somchai for more than 20 years. In the LST, Mr. Somchai provided legal assistance to people on the legal aid program and he was the vice president of the Human Rights Committee of the LST since 2002 until the day he disappeared. Mr. Somchai was also the chairperson of the Muslim Lawyers Club, he had provided legal assistance on cases concerning national security in the south and other case such as the case involving a student of the Chulalongkorn University who was framed on drugs charges by the police. This client was subsequently acquitted

With regards to the 'gun robbery case', on 13 March 2004 the witness received phone calls from Mr. Somchai Homlaor, other lawyers from the south and Mr. Somchai's family stating that Mr. Somchai had disappeared. The witness acknowledge that 2-3 weeks previously, before Mr. Somchai was abducted, he had assisted the case of the five suspects charged with gun robbery and school arson who were being kept under police custody . Mr. Somchai went to visit those suspects and found that they had been brutally tortured and forced to confess to crimes that they had not committed. Subsequently, Mr. Somchai issued a document to the court requesting the detention of the five suspects to be lifted. When the court considered the investigation file and found no progress, it did not give permission for the five suspects release and instead decided to transfer them to Bangkok Prison to be detained. Mr. Somchai also lodged complaints to organizations concerned for example to the Ministry of Interior, Ministry of Justice, the Royal Thai Police, the Attorney General's Office, the NHRC, Members of Parliament and the Senate Office with concerns for the 5 suspect's treatment and detention. After Mr. Somchai had disappeared the witness set up a committee to consider the disappearance of Mr. Somchai. After the committee was set up, the witness, with Dr. Khunying Pornthip Rojanasunant- the deputy director of Central Forensic Science Institute of the Ministry of Justice, Dr. Pradit from the NHRC went to visit the five suspects who said that they were tortured using electrical shocks, causing severe burns to their testicles and penis. Another suspect claimed he had been made to stand naked on his toes on a chair, with a rope around his neck for a whole night. He would have died if he had fallen. Dr. Pradit made medical check up records and he has submitted them in a report to the Human Rights Committee.

Apart from the above case, the committee also looked into other issues that might link in with Mr. Somchai's disappearance. The cases are as follows:

1. The prime minister gave an interview that Mr. Somchai has some conflicts with his wife and so Mr. Somchai had run away to Bangkok. After checking the grounds of this issue, the Committee found that Mr. Somchai did not have any conflicts with his family. He is a family man and furthermore, Mr. Somchai resides in Bangkok he is not from the south.

2. Mr. Somchai could possibly have conflicts with other people. The Committee found that Mr. Somchai did not have any conflicts with other people
3. The use of martial law in the south, Mr. Somchai found that the people live in insecurity and fear, suspects can be kept in detention for 7 days without receiving any charges. Out of concern for this, Mr. Somchai began collecting 50,000 names in a petition to lift martial law.
4. Some government officials came to testify to the Senate office, giving theories for Mr. Somchai's disappearance:
 - (a) Pol. Gen. Sombat Amornwiwat, from the DSI office said that Mr. Somchai's assistance of the five suspects from the 'gun robbery case' could have been one of the reasons for his disappearance.
 - (b) The Commissioner of the Metropolitan Police Bureau also said that the assistance of the five suspects and the lodging of complaints by Mr. Somchai may have been one of the reasons for his disappearance.
5. Mr. Somchai's friend from the Muslim Lawyer Club said that one of Mr. Somchai's friends who works as a government officer in the south called Mr. Somchai and told him that his name was in the list of terrorists. The Committee checked this fact but did not find Mr. Somchai's name on the list.
6. Connections with supposed foreign donations to the Muslim Lawyer Club, the Committee checked this fact but did not find that the Club received any foreign donations.

The witness said that the Human Rights Committee has faced some obstacles in their search for explanations for Mr. Somchai's disappearance, for example, the committee had invited the prime minister, Deputy Prime Minister Gen. Chaowalit Yongchaiyut, the former and the present Commissioner-General of the Royal Thai Police many times to provide more information so that they may know the ground for Mr. Somchai's disappearance but none of these persons attended.

Cross-examination

The national security cases that Mr. Somchai had accepted have mostly been acquitted by the courts; it could be possible that the families of the injured persons may be angry with Mr. Somchai. After the Commission checked with Mr. Somchai's friends, they found that Mr. Somchai had never created any dissatisfaction amongst the family or injured persons involved in the national security cases. If other people have that idea it may be because Mr. Somchai is an obstacle to officials who did not get a promotion.

On the fact a complaint was lodged against the Royal Thai Police, a committee was set up by the Royal Thai police to verify the complaint, the committee concluded that the

facts were not utterly baseless. But the witness said that the committee had never received any clarification or results from the Royal Thai Police.

The witness stated that the violence in the south was getting worse because access to the justice process were closed to them. In the past, Mr. Somchai could fight for the alleged offenders to attain justice. It cannot be said that because Mr. Somchai has helped in the acquittal of these alleged offenders that the violence in the south has escalated. The reason for this increase of violence is due to the lack of justice for these peoples.

Reexamination

The witness stated that Mr. Somchai had never had any conflict with other persons. Regarding the mobile phone records made by the five defendants, the police should investigate this further. Also, more steps should be taken to see who else could be involved with Mr. Somchai's disappearance.

Testimony for the defence

3 November 2005

Witnesses: Pol. Maj. Ngern Tongasuk (Defendant 1)
Pol. Maj. Sinchai Nimbunyakampong (Defendant 2)

Pol. Maj. Ngern Tongasuk (Defendant 1)

The witness is a police officer from CSD. He said that he was never ordered to work in the south or investigate the five suspects in the 'gun robbery case'. He went to the south just to guard the High Commissioner and the prime minister on February 22, 2005 when the High Commission told the press about the arrest of the five suspects. On the date of the press release the witness found that his name was on the arrest record as being involved in the case, but the witness did not know about the case and also did not sign his name on the arrest record. In the complaint lodged by the five suspects, the witness' name was not included as one of the persons who had tortured the five suspects.

On 12 March 2004, the witness said that he had got drunk and arrived home at 4 am and was subsequently involved in a quarrel with his wife. He then left Bangkok to stay with his brother in Rayong Province for awhile. Before he left Bangkok he went to the CSD office in order to check his work. He left his two mobile phones, with numbers 06 382 1102 and 01 337 2534 on his office table and he had switched them off. The witness reached Rayong Province before mid day and met his brother at the Navy Camp. His brother gave him the keys to his house so that the witness could take a rest. The witness returned to Bangkok at 8pm on the same day because he thinking of his child. When he reached Bangkok, he went to the CSD in order to collect his mobile phones and then he went back home. The witness does not agree with any telephone use records/documents collected by the police investigator of this case as admissible evidence.

On 8 April 2005 when the witness was presented to the inquiry officials, the witness found that the inquiry officials did not adhere to set guidelines in their investigation of the case:

1. The inquiry officials did not arrange the eyewitnesses to identify the alleged offender. If this process was arranged, the witness is confident that the eyewitness would not identify him because he was not one of the perpetrators.
2. The inquiry official gave an interview to media giving information that the witness was involved with this case.
3. The documentary evidence, the (eye) witnesses and the forensic evidence could not prove that the witness was involved with this case.
4. The inquiry official could not sketch the picture of the suspects because the eyewitnesses could not recognise the perpetrators.
5. He was not among persons in the picture from the *Bangkok Post* showing the five torture suspects.
6. The report of the medical doctor in the prison states that they could not find torture wounds on the 'gun robbery' suspects. The witness believes that such a complaint made by the five suspects has merely conjured up to protect themselves.

When the witness was bailed out for a week, the public prosecutor had to submit the prosecution's file to the court against the witness. Therefore the witness had no chance to lodge a complaint against the charges. In this case the witness also found that there were more than 1,000 pages of documents to investigate and to examine the eyewitnesses of this case to demonstrate that there are faults in their testimony. The Public Prosecutor should have spent more time to investigate the case. Beyond that, any evidence that may have been beneficial to the witness, the inquiry official did not include in the file.

About the relationship between the witness and the other defendants, the witness said that he used to see defendant 2's face but did not have any close relationship with him. The witness used to see defendant 3 when he was a tourist police. The witness has never seen defendant 4 before, and defendant 5 used to be his commander.

The witness has submitted his work record to the court for consideration. The record demonstrates that he was a good police officer who did his job well.

Cross-examination

The witness received the order orally from his commander to go to the south on 22 February 2004 to guard Pol. Gen. Kovit Wattana (the current Commissioner General of the Royal Thai Police) and another high commander.

On the day of Mr. Somchai's disappearance, when the witness had reached his brother's Navy Camp, the witness just showed his official card and the security guard allowed him to get into the camp. It was the same procedure when the witness left the camp to go back to Bangkok, He does not know that while he left his mobile phones in the office, his assistant would use them or his assistant could have lent his mobile phones to other peoples to use.

On 8 April 2004, the witness did not request his lawyer to participate the inquiry into Mr. Somchai's disappearance. The witness denied that Pol. Sub. Lt. Ponthep Suwannawichein was his lawyer and the witness stated that he did not know Pol. Sub. Lt. Ponthep before. When the witness was in prison for 61 days, some people went to visit him. The witness does not know what the process to lodge a complaint is and he acknowledged that to lodge a complaint in prison is a strict process.

In this case, the witness never had any conflict with Pol. Maj. Gen. Jakthip Kunchorn Na Ayuthaya or any other inquiry officials. But the inquiry official could have been ordered by this commander to arrest the witness and the other defendants as scapegoats in this case.

Reexamination

The defence lawyers concluded that the objective to putting the witness' name on the arrest record was to improve his chances of getting a promotion but the witness does not know who put his name on the record. The witness does not accept the telephone use records because the records sent to the Court are a copy and have only been approved by the legal section but not by the telephone use expert. The witness used to know defendant 5 but when defendant 5 was transferred out of the tourist police office then they were no longer in contact. The witness will not verify the map made by the inquiry officials. The witness also confirms that the inquiry officials did not follow set regulations in the identification of the alleged offenders or in the identification of their pictures.

Pol. Maj. Sinchai Nimbunyakampong (Defendant 2)

The witness is a police officer from the CSD. The witness said that in 2002 he was ordered to follow up a murder case transferred from Rayong province. From his investigations he found out who the perpetrator was and therefore requested a summons of arrest from the court on 1 March 2004. Afterwards, he sent defendant 4 to look for the murderer. Defendant 4 later reported that the murderer was a motorcycle driver and working around Chareon Krung Rd, the murderer had relatives in Ramkamhaeng Rd.

On March 12, the witness ordered Pol. Sgt. Maj. Chamnan Saichantuek and Pol. Sgt. Maj. Prayoon Phongsupa, his subordinate to investigate the murderer in Chareon Krung Rd (the telephone use record of defendant 2 appears in this area on March 12). His subordinate came back and reported that they could not find the murderer in the said area. At 7pm, the witness ordered his two subordinates to search for the murderer again at Ramkamhaeng Rd, but both subordinates did not have mobile phones so the witness gave his mobile phone to Pol. Sgt. Maj. Chamnan and defendant 4 gave his mobile phone to Pol. Sgt. Maj. Prayoon.

At around 10pm, both the officers came back to the CSD office and returned the mobile phones to the witness and to defendant 4. They reported that they could not find the murder because Ramkamhaeng Rd. is very wide and the area was crowded with people. If they had more information, then they are confident they could catch the murderer. The witness went back home to Nakornpatom Province at 10.30pm. On March 13-14, the witness remained at his home to rest.

The witness does not accept the telephone use records compiled by the police investigator and he says that the telephone use records are incorrect.

On 8 April 2004, the witness knew about the summons of arrest. Defendant 5 brought the witness, defendant 1 and defendant 4 to Payathai Police Station. Then defendant 5 requested the inquiry officials to arrange the eyewitnesses to identify the alleged offenders but Pol. Maj. Gen. Jakthip refused to run the process of identification. In the inquiry process, the witness did not have a lawyer to represent him. When the witness checked his testimony, he found that the charges were not completed by the investigation officers so he decided not sign his name on the note. Later on, he was kept in detention and the next day, he was brought to his house to search for evidence.

The witness and the other defendants were detained in prison for 61 days and found out that on last request for detention, the inquiry official had already submitted the file to the public prosecutor. Therefore the witness, against the request of the inquiry official, applied to the court for bail and it was allowed.

Since the inquiry official had already submitted the file to the public prosecutor, the witness had no chance to lodge a complaint.

The witness also claims that he was framed by the inquiry official. The arrangements for the eyewitness to identify the alleged offenders did not adhere to the standard regulation adopted by the police. From his experience as an inquiry official for 13 years, the witness knows that there have been flaws in the practice of the inquiry officials in this case. To investigate a case, the inquiry official must spend at least 2 months in collecting all the details but in this case it only took 20 days for the evidence to be gathered. The witness denied he knew Mr. Somchai so there was no reason for him to abduct Mr. Somchai. The witness did not get any order to work in the south.

His relation with other defendants: the witness used to see defendant 1 at the CSD. The witness has never known defendant 3. The witness knew of defendant 5 but they do not have a close relationship and defendant 5 is not his commander.

The witness has submitted his work record to the court for consideration. The record demonstrates that he has so far done a good job as a police officer.

Cross-examination

The witness does not know that the police from the CSD have the power to control and detain any suspect or alleged offender in the south. The witness did not know whether defendant 5 was ordered to work in the south or not. The witness also did not know that, before the date of the incident, Mr. Somchai had lodged a complaint about the five suspects because the witness did not handle the 'gun robbery case'.

On 8 April 2004, the witness said that the inquiry process was not correct because the charges were not completed. Therefore the witness decided not to sign his name in the note of examination. Pol. Sub. Lt. Polthep and others came to visit the witness while in prison.

Nowadays both of Pol. Sgt. Maj. Chamnan and Pol. Sgt. Maj. Prayoon have their own mobile phones.

Reexamination

The witness said that when the eyewitness mentioned that they could identify the alleged offender if they saw his face again, the inquiry official should have immediately arranged the eyewitness to identify the alleged offenders. The witness does not have any conflicts with the inquiry officials but the inquiry officials may have framed the witness because of a conflict between commanders or between the two organizations.

Further issues

Since Mr. Sompong, the previous public prosecutor was absent, a new public prosecutor, who had never handled the case, came instead. In the afternoon the new public prosecutor requested the court to postpone the trial because he was very new and needed time to know about the case. The court said that there are at least 5-6 public prosecutors responsible for this case and if the court allowed the case to be postponed every time a new prosecutor came, it might not be fair on the defendant. So the court did not allow the postponement of the trial but did give the public prosecutor 20 minutes to prepare the case.

Defendant 5 requested to be the witness in the last schedule of the trial. The judge allowed this because it was up to the defence parties to consider whether they wanted to allow defendant 5 to be a witness.

Also, the defence lawyer requested the judges to see evidence out of the court- go to the crime scene- on 16 December 2005 at 8.30pm but the court did not allow this.

4 November 2005

Witnesses: Pol. Sgt. Maj. Chaiweng Paduang (Defendant 3)
Ensign Nak Thongsuk

Pol. Sgt. Maj. Chaiweng Paduang (Defendant 3)

The witness was the police investigator under the Tourist Police Bureau. On the date of the incident, the witness was ordered by his commander to investigate the case of a gang of Filipinos who had stolen property from tourists. From 11am to 7pm, the witness went to investigate the case together with Pol. Snr. Sgt. Maj. Krairat Sricheingpim, they went to Silom Rd, Surawong Rd. , Chareon Krung Rd. , and Bangrak Rd. The witness reached a house located at Ramkamhaeng 34 Rd where the Filipinos were suspected to be staying at around 8pm.

On 4 April 2004 at 8pm Pol. Maj. Gen. Krissada Phankhongchuen, the deputy commissioner of the Metropolitan Police Bureau and Pol. Maj. Tinnakorn Kesornbua came to the Tourist Police Office in order to investigate the witness. The Commander of the witness was also being questioned by the investigating officers. Pol. Maj. Gen. Krissada asked the witness about what he did on 12 March and the witness replied that he had gone with Pol. Snr. Sgt. Maj. Krairat to investigate the Filipino robbery case until 7pm. Later on Pol. Maj. Gen. Krissada asked the witness' Commander to wait outside the investigation room, while the questioning of the witness continued. Pol. Maj. Tinnakorn said "You must tell the commander the truth, I have all the evidence" and Pol. Maj. Gen. Krissada said "I know what you did on March 12 if you tell me about Somchai, I'll keep you as the witness". When the witness refused to implicate he had been involved in the incident, Pol. Maj. Gen. Krissada shouted at him and said "don't tell lies, if you weren't a police I would have kicked you", he also said "since you won't tell me what happened, I'll ask Pol. Lt. Gen. Bunyarit to examine you instead". The witness was waited for Pol. Lt. Gen. Bunyarit until 11pm. But he did not come and Pol. Maj. Gen. Krissada and Pol. Maj. Tinnakorn went back without making any notes of their investigation. Subsequently, the witness found the media had alleged that the witness had confessed to the incident. The witness believed that Pol. Maj. Gen. Krissada or Pol. Maj. Tinnakorn was responsible for giving an interview to the media.

On 8 April 2004, the witness's Commander took the witness and other peoples who had a similar appearance as the witness to Payathai Police Station where they were handed over to the inquiry official at 8.30pm. Defendant 1, 2, and 4 were already in Payathai Police Station. Defendant 5 requested the inquiry official to arrange the eyewitnesses to identify the alleged offenders but Pol. Maj. Gen. Jakthip refused to do so, then the inquiry official took the witness in for examination and kept him in detention the whole night. Next day, the police took the witness to search for evidence at his house in Ratchaburi province but the police found nothing. Later on, the witness was transferred to the Bangkok prison. In prison, the witness wanted to lodge a complaint but he found that it was very difficult to lodge.

The witness does not accept the telephone use records made by the police investigators. In this case, the witness felt that the inquiry officials were not fair because any information that could have been beneficial to him was not included in the file submitted to the prosecution by the inquiry officials. After talking with the other defendants, the witness found that none of the others had given their testimony before the warrant of arrest was issued.

The witness knew defendant 1 when he was at the tourist police but the witness has never had any communication with defendant 1 because he worked in a different unit than defendant 1. The witness has never known defendant 2 and 4. Concerning defendant 5, he used to work for the tourist police but moved to a different department in 2000 and the witness has never been in contact with defendant 5 since.

Cross-examination

The witness concluded that since he worked as a state official, he never received any disciplinary punishment. Defendant 5 used to be his Commander but the witness does not have any close relationships with Defendant 5.

On March 12, 2004, the witness did not call defendant 1, 2, 4 and 5, neither did the four defendants call the witness either. After March 12, the witness found out about Mr. Somchai's disappearance but he did not pay much attention to this case because he was not handling it. On the date of the incident, the witness did not notice that he had called Pol. Sgt. Maj. Kamnueng 28 times. During the inquiry, the witness felt that the examination did not follow standard regulations. The witness shared this problem with his Commander who could have made a complaint against the investigators, but the Commander did not do it because he was very busy.

On April 8, the witness denied knowing Pol. Sub. Lt. Polthep, his lawyer. During the investigation, the inquiry officials said nothing to the witness. The inquiry official made notes of the examination and gave this to the witness but the witness did not sign the note. The witness does not have any conflicts with the inquiry officials and the witness has no idea why the inquiry officials have targeted him and his Commander, maybe they are angry with the witness or his commander or the CSD. The witness does not accept the telephone use records made by the police investigator. Even though the copies were approved by the officer of the company, that officer was not a telephone expert.

While the witness was detain in Bangkok prison, some friends, relatives and his wife went to visit him. His wife said that it was not easy looking for a lawyer as his representative because the law society had convinced many lawyers in Thailand not to support the defendants on this case. Therefore it was very difficult for the witness to lodge a complaint.

Reexamination

The witness said that if he had lodged a complaint and alleged that Pol. Maj. Gen. Krissada, whose rank is higher, had abused his position, it could affect the witness in getting a promotion.

The witness has submitted his work record to the court for consideration. The record demonstrates that the witness is a very good police officer.

The witness claims that he was framed by the inquiry official.

Ensign Nak Thongsuk

The witness is the younger brother of defendant 1. He is a navy officer of Surasee Camp, Rayong province. On March 12, 2004, while he was working at the navy camp, defendant 1 came to the camp at around 12am. Defendant 1 looked very tired so the witness gave his dormitory key to defendant 1 so that his brother could take a rest. The witness went back home at around 6pm and defendant 1 was still sleeping. Later on, the witness had dinner with defendant 1 and found out that his brother had quarreled with his wife. After dinner defendant 1 said that he was thinking of his child and decided to drive back to Bangkok at 8pm. One month after that, the witness discovered that the defendant 1 had been arrested. The witness went to visit defendant 1 in the Bangkok Prison twice and told him that since he had visited the witness on the date of the incident, defendant 1 could not have been involved in the abduction of Mr. Somchai.

Cross-examination

If a guest came to the navy camp, they must show their identity card before the security guard allows them to enter and the guard must keep the guest name on record. Defendant 1 did not inform the witness in advance when he came to visit the witness. But defendant 1 did tell the witness that he did not have his mobile phone with him. When the witness went to visit defendant 1 in prison, he asked defendant 1 why he had been arrested since last year he had just got an award for good work. Defendant 1 replied that he had been framed and will defend his innocence before the court. Defendant 1 never asked the witness to lodge a complaint.

Reexamination

If a guest came to the navy camp, the guest must show their identity card. The guard would then keep their name on record. In the case of Defendant 1, the guard has not kept his name on the record because he was a state officer. The witness did not know about the legal process so he did not know how to lodge a complaint. Defendant 1 can visit the witness without informing him in advance because the witness worked within the army camp.

Note

In the afternoon session, Judge Taweesak Srisuwan sat on the bench instead of Judge Suwit because Judge Suwit was at a meeting in the Supreme Court.

Public Prosecutor Sompong came to the courts before defendant 4 gave his testimony. Prosecutor Sompong requested the court to postpone the examination of defendant 4 until the next hearing. This was because Prosecutor Sompong had just finished his other case and his examination of defendant 4 would take more time. Prosecutor Sompong also had

to go to the province at 4pm. The defence lawyer objected to this request because it would not be fair on the defendants. But Judge Taweesak Srisuwan agreed to postpone the examination of defendant 4. .

15 November 2005

Witness: Pol. Sgt. Rundorn Sithiket (Defendant 4)
Pol. Lt. Col. Chadchai Liamsa-nguan (Defendant 5)

Pol. Sgt. Rundorn Sithiket (Defendant 4)

The witness is head of a subdivision within the crime unit. On 12 March, the witness, accompanied by defendant number 2 and two other police officers gathered together to join an investigation. They got met at the crime division canteen. The plan was to look for a suspected person, Mr. S, and arrest him.

The group of officers went to the Belonging area where an investigation was conducted until 3pm. The witness returned to the station at 5pm. He reported to his supervisor and told him that he could not find Mr. S.

Defendant 2 asked the other two police officers to go to another area to look for Mr. S. The two officers did not have mobile phones so the witness and defendant 2 lent their mobile phones to them. This was a command by the witness's superior.

The two police officers left the station at 9pm. The witness remained at the CSD, waiting for another person related to the drugs trafficking case that he had been working on. That person – their spy - reached the station at 8pm, together with another person. At 8.30pm the spy and policemen went to a nearby area to look for drug traffickers. The witness remained at the station waiting for the officers to call him. After some time the witness went home.

The witness did not know Mr. Somchai and has never seen him. The witness was in the area where Mr. Somchai was, but he did not follow Mr. Somchai because he was doing another investigation.

The witness thinks the phone records document is not correct. The document has not been verified properly by the company. The document has been used to link the defendants to being involved in the incident.

This case is about the conflict between the Metropolitan police and the CSD. According to the high officer of two units, the witness heard that they are trying to investigate cases for promotion.

When the witness presented himself to the police after he was named in the Somchai case, there was a lot of media present. His supervisor asked defendant number five to bring defendants 1-4 to the investigation room. Defendant 5 then prepared the policemen who looked like the defendants. The real defendants did not need to be identified.

The witness did not have any personal conflicts with Mr. Somchai. The investigating officers did not find any of Mr. Somchai's belongings in the house of the witness during the raid. The witness does not know any of the other witnesses. The only reason the witness is involved in this case is because the Metropolitan Police wanted to finish the case and therefore needed to blame the crime on someone. The witness has not been involved in any operations in the south of Thailand.

The witness does not know defendant 1 or defendant 5. He has seen defendant 5, but does not know him in person.

The witness did not file a petition earlier because he did not want to ask for help from the others. It was public knowledge that the defendants would not be given lawyers and the witness's wife told him this. He did not think they would get any assistance in this case.

The witness got some awards due to cases he did on drug trafficking. He got a special promotion and benefits when he was working on a case in Chiang Mai.

Cross-examination

The witness only knows defendant 5. He does not know defendant 5 personally, he just works in the witness's office. Defendant 5 has worked in the office for about two or three years.

The witness has been working with defendant 2 for four or five years.

He has been using the same telephone number for four or five years. Sometimes when the police officers do not have mobile phones they use public telephones. However, it is not as convenient.

The witness does not know what has happened with the drug trafficking case that he was working on at the time of Mr. Somchai's disappearance. He thinks maybe one person was arrested.

The witness does not always go back to the office to report his findings, sometimes when there is nothing to report then he does not report anything. Even when sometimes there is nothing to report, standard police procedures is that a report should still be written, but the witness did not write a report for his investigations.

The witness does not know whether there were any eyewitnesses prepared for the suspects' line-up. The witness did not ask for help from defendant 5 because he had not been arrested. Even though the witness felt the arrest was unfair, he did not lodge a complaint because he did not think that defendant 5 could do anything about it, so he just denied all the charges and refused to sign the investigation report. The witness had read the investigation report, but did not sign it.

The witness's duty is an administrative officer, working on book-keeping. He has direct assignments given to him by defendant 2 and sometimes others as well. When the witness has conducted an investigation, he can submit his reports verbally or have them written down. He can even make a phone call to defendant 2 on his mobile to report his findings.

On the day of the incident, the witness was given instructions by defendant 2 to go out and investigate. The plan for that day's investigations was to go to a motorcycle taxi area. They investigated in that area until 3pm. The witness was not wearing a uniform but he did have a weapon on him. The witness did not make any phone calls to his supervisor because he had no more details, and his supervisor did not call him either.

After 3pm, the witness went back to the CSD. Neither the witness nor defendant 2 submitted any written report. They just submitted their findings verbally.

To borrow a mobile phone from another police officer is normal practice because the witness's boss pays his phone bills he gives his mobile phone to others whenever they ask him to.

The witness does not know if defendant 2 has any other mobile numbers. The witness does not remember if the spy has a mobile phone.

The witness was detained for 61 days in prison on charges of robbery of Mr. Somchai. He is still currently dismissed from his job. On the day that he was charged, he arrived at the police station with defendants 1 and 2. The witness did not look for a lawyer because his wife said that there would be no lawyer willing to help the witness.

Reexamination

The standard procedure for drug trafficking would be for the spy to give the police information. Normally, the witness would give the spies his telephone number. The spy would come to the CSD office directly. The witness would later contact the spy by phone – any phone.

The result of the internal investigation regarding the witness's involvement in the 'gun robbery case' was that he had not been involved.

The witness has worked under defendant 2 for five years and has known defendant 5 for three years. He has used the same number for five years.

The police investigation report was not compiled in his presence. It was done in another room then they brought it for the witness to sign.

On the day that the witness was presented to the police, he did not request bail.

Pol. Lt. Col. Chadchai Liamsa-nguan (Defendant 5)

The witness studied in the police academy and has been in the police force for twenty years. He was not involved in any cases in the south, including the 'gun robbery case'. He did not know Mr. Somchai. His name was included in the 'gun robbery case' because in that case almost the entire staff of the CSD was recorded down.

The witness does not have a direct working relationship with any of the other defendants. They work in different areas. The witness has rarely seen defendant 4. Although Mr. Somchai's clients in the 'gun robbery case' claim that the witness had visited them, the witness replies that he has not visited them.

The witness only learnt through the media about the other accused. He asked them and they said that they were not involved in the case. When he found out that they weren't involved he phoned around for the other people who looked like them. A number of officers dressed in civilian clothing, together with the media were in front of the witness's house when they came to search it. A person from the Metropolitan Police identified himself and said that he had a search warrant. He said another senior officer would be coming along shortly. The witness knew that senior police officer personally so he asked the officer to go into his home. He asked the police why they had come to search his house. The police officer said he did not realize it was the witness's home but that he had a search warrant to search this house. The witness told them that he would not voluntarily let them search his house. In support of him, one policeman left the house. The police said that they would only look around a little – perhaps just in the servants quarters. The witness told them that if they thought their actions were legal, then they could go ahead and look around. The media were involved in that scene.

Later the witness went to the court and submitted a petition regarding the house search. No record could be found therefore the search document must have been forged. The house search warrant was for a different house. It should have been for defendant 3.

On April 20, the witness got transferred to Police Region 4. His new assignment was to look at high technology crime. On April 29 there was news that an arrest warrant had been issued for him. On April 30 the witness's supervisor took him to the nearby police station. The media were already waiting for them.

The witness asked them to show him the document. On page two, the last paragraph, it said that he was involved with others in a robbery and assault. At that time the CSD police who came with him argued with the Metropolitan police over his arrest. Pol. Gen. Achirawit Supanpesat of Police Region 4 commander at that time, (currently Assistant to Chief Police Commission, Kovit Wattana), tried to bail the witness out, but this was rejected. The witness's wife tried to bail him out too.

When the witness was in the prison he became a teacher and people came to him. He met a number of people in jail who wanted his help.

On June 1, there was a request from the prison to the court as to why the Metropolitan Police needed an extension on the witness's detention. The extension was denied and all the defendants were released.

The witness found irregularities in the police investigations. For example, the investigations were done through an experienced investigator, however, the report of witnesses were significantly different. One witness said he saw defendant 1, but later he could not identify defendant 1. Later again he said he could identify them all.

The eyewitnesses have not gone to the crime scene. The witnesses say they are scared. The information from eyewitnesses was in conflict with what the investigator would like the story to be.

At that time there was no suspect identified so how could the eyewitnesses be scared of people that they did not even know.

Some of the distances that have been identified with by eyewitnesses were in conflict with reality.

The investigator did not take photographs of the incident sites. But every police has a camera. The witness thinks they did not take them because they would have been in conflict with eyewitness' accounts.

There were many irregularities with the photo session. For example, five pictures must be placed together for the eyewitness. But in this session there was only one. The investigators also have to have a police record of such a photo session. One eyewitness saw a suspect from the back but when a photo was provided, it was from the front. A back photo should have been used. One eyewitness testified that he only signed a blank page. One policeman testified he went to investigate physical assault and could not see any evidence. The sand and soil evidence did not match. The full investigations findings were not forwarded by the prosecution (*defendant 5 later admitted that this was not correct*). The investigator did not submit all the DNA reports. Maybe there was some hidden investigation report. There is no evidence that Mr. Somchai was last seen at the Malina Hotel.

(Defendant 5 played and submitted a VCD showing footage of the place where Mr. Somchai was allegedly taken. He wanted to highlight that it was too dark and too noisy for any eyewitness to get a clear view of what they saw took place).

(Defendant 5 also created a replica model of the crime scene (very professionally done) to try and demonstrate that the map the prosecution used was out of scale and wrong. He stated that the map was no longer used (this was later found to be untrue)).

Normally anyone can use anyone's mobile. What is said in conversations on those mobile phones is private.

The witness was adamant that the phone records were forged and the investigators had clearly cut and paste them. The document should therefore not be used in court. Perhaps one of the witnesses made up the document.

The witness normally gives that number away to his subordinates because he knows that telephone has a bad battery. He had it during March 10-16 and did not turn it on. The mobile phone documents said that it was used, but he did not turn it on. The document showed three outgoing calls on March 12 and six incoming calls. But this is impossible because the phone was off and therefore the document is forged. Line one and three on the document are clearly cut and paste. Some other parts of the record are forged.

(Judge said both sides have a right to submit written documents on what evidence the court should specifically look at).

Some of the documents are hand written. Some of the documents have been reproduced using Excel programmes. Document no. 68: The document has only been cut and paste – not full document. Some of the documents conflict with other documents. The signature is different on both documents. Document nos. 114 and 115 are fraudulent as they are not originals from the company.

The witness has stated that there is a conflict between the CSD and the Metropolitan Police regarding the jurisdiction of cases. *(Went on to detail many cases to provide evidence of this)*

False information was released in the media, which led people to conclude that the alleged suspects were guilty or involved in this case.

When the four defendants presented themselves to the police, there was huge media presence. Because of the propaganda in the media, the public has already concluded that the witness must have been involved.

An order was given by the Royal Thai Police Commissioner so that the witness can still work.

The witness normally receives an award every year by his office. Two years ago he got promoted. When he received his most recent award there was public outcry because of his alleged involvement in the Somchai case.

The witness feels that this case is not fair on him, his family or the other defendants because the investigations have been fraudulent.

16 November 2005

Witness: Pol. Lt. Col Chadchai Liamsa-nguan (continued from yesterday)
Pol. Col. Songsak Raksaksakul
Pol. Lt. Col. Somkuan Puengsab

Pol. Lt. Col. Chadchai Liamsa-nguan

Photo identification session was not done according to the correct procedure. One eyewitness said that he would not verify a document regarding the photo identification, because he said he did not properly see the suspects on the night. During a previous investigation, a witness gave false evidence in court. He said he saw the incident, but the person's lawyer gave him money to say something. He was found guilty and has already served six months in jail. Police Lieutenant Chadchai sent a complaints letter to the Law Society of Thailand to request the lawyer to be withdrawn from his duty.

The witness has a number which is available in the police records.

Not all of the interrogation reports of all the eyewitnesses have been submitted, so the witness requests that they are. There were some discrepancies between the eyewitness' statements and court testimony.

Cross-examination

The prosecution asked the witness how he knew the specifics of the evidence given to the forensics when this information was not given in court. The witness said that he did not know.

The prosecution said that the map submitted by the investigating police officers, which the witness has accused of not being to scale, was actually compiled by the Royal Thai Police and is still used by them. Regarding the identification session, there is a new regulation that the eyewitness does not need to come face to face with the suspect (Article 261). Additionally, the eyewitness has the right not to return to the incident site.

(The witness then tried to prove that where the phone record came from was not transparent. He used his own letter to request the phone records from the company and then the company letter replied that the company could not provide such information. Therefore, why and how the metropolitan police could get such information?)

The witness said that the person who had verified the phone records was not a legal officer and not an expert. However, the prosecution rebutted this saying that the documents were sent by the company so the company must have approved it. The witness agreed with this.

The witness said that he had never contacted defendant 2 because he worked in a different unit to defendant 2.

With regards to the mobile phone bill, the witness gives money to the other policeman and he pays the bill. The phone was returned on March 10. The battery was low. The witness did not replace the battery. After March 16 the witness bought a new battery and the phone became active again. So during March 10 to 16, the phone was not used. On March 16 the witness gave the phone back to the police officer. The phone was with the witness between March 10 and 16 but it was never turned on.

The witness' mobile phone was constantly contacting another officer; however, the witness cannot remember whether he had called this number.

The witness stated that people saw him at a department store at the time of the incident. After shopping, he went home.

The witness said that he has never called the other defendants.

When asked what he did on the March 12, the witness replied that he was at the office the whole day. Everyone was there and everyone saw that he was there. On March 13 and 14, he stayed at home. He cannot remember if he left Bangkok on March 13.

(Defendant 5 was initially transferred to another department then he returned to his original office, but to a different unit).

The witness admitted that he and defendant 1 may have worked on the same case once but during different stages of the investigation.

The witness says that he was on a four month training course up to March 8; however, he was not able to prove this.

The witness said that he has five or six numbers. Sometimes he uses all of them because he has credit on all of them.

The chief of the CSD told the witness to take the other defendants before the police on the day they presented themselves. The witness did not wear his uniform on that day.

From 8-9pm on the day of the incident, the witness ate at a department store. The store cameras will have footage of him. He played with the cameras because he wanted it to capture him. When he went back to the store to get a copy of the videotape, fifteen days had passed so the videotapes had been taped over. The security person at the department store said a letter could be provided, but he never sought it. He was at the department store alone. A seller near the department store saw him.

When asked by the prosecution why the witness did not ask the man and the security to come before the courts as eyewitnesses, the witness replied that he did not know.

(Next month defendants 1- 4 will submit a petition letter asking to be reinstated in their jobs.)

The witness said that the conflict between the Metropolitan police and the CSD was the reason for the accusations made against him.

The witness did not recommend defendants 1- 4 to submit a petition letter; that was up to them.

Pol. Col. Songsak Raksaksakul

The witness was the deputy investigator of police during the gun robbery case. He was on the police investigation committee for the gun robbery. Four of the suspects admitted involvement in the gun robbery. They also admitted to setting fire to schools in the area and cutting down trees to obstruct the movement of military vehicles. The suspects said they were paid money for their involvement.

There was no report of torture. They confessed in front of their own legal representatives. The witness examined the bodies of the suspects and found no evidence of torture.

The witness does not know who put the five defendants' name on the list of police officers involved.

Cross-examination

The witness was very careful in looking after the security of the suspects. The five suspects were initially detained under martial law. During the gun robbery case the witness came to know of defendant 5. He did not know defendant 5 before that.

The police who came to the south did not need to report to the witness. The witness does not know the persons from the Crimes Suppression Unit.

Pol. Lt. Col. Somkuan Puengsab

The witness was head of unit 2 during the gun robbery case. The suspects were not ill-treated. The witness asked the suspects if they had been ill-treated and they said no.

Cross-examination

The witness examined the suspects fully clothed.

Reexamination

Many people's names go on the list of police working on the case, but amongst them very few are actually involved in the case.

The witness cannot remember whether he visited the suspects or not on the 22 or 23.

17 November 2006

Witnesses: Mr. Cheawcharn Chotinant
Mr. Veerawut Phromphet
Pol. Maj. Nitinai Wangyanai

Mr. Cheawcharn Chotinant

The witness was a legal representative for the three suspects in the gun robbery case. He was contacted by the police investigator. The Chairman of the local Law Society assigned him to the suspects. He is a volunteer lawyer through legal aid. The investigation police informed the three suspects of their criminal association charges. The witness did not notice any marks of torture on the suspects and they did not mention torture.

One suspect confessed that he had received money from other suspects for his involvement in the gun robbery.

The witness contacted the Muslim lawyers Club to get involved in the case but they said that they had young children and were therefore too afraid to become involved.

Language issues – the suspects could understand the witness very well, but it was difficult for them to communicate in return.

The witness saw no use of intimidation by the police. The police were treating each case separately.

Cross-examination

When the suspect spoke, he spoke Thai, but very slowly and with a strong accent. The witness did not see any other suspects. He did not know what the police did with the suspects once he was finished with them. After the initial session with the suspects, the witness never met them again.

The witness cannot remember how long he has volunteered with legal aid.

He could not understand all of the local language of the suspects. He could not remember who called him about the gun robbery case. But then he rang the Chairman and the Chairman asked him to go. He cannot remember who contacted the other lawyer to attend. He cannot remember how he had gone to the police station or whether he had gone to the police station with the other lawyer. (The witness then corrected himself and said the police accompanied him to the station).

The interrogations started at 8pm and finished at 1.30pm. The witness returned home with the other lawyer. He knew there was a reenactment session in the morning, before the interrogation in the evening.

The witness never spoke the local dialect with the suspects.

(A statement shown to the court reveals that he did not ask the suspect about torture, but to the defence lawyer, the witness said that he had).

(The witness said that the suspects signed a document stating that they understood Thai well, but this does not mean they understood the meaning of all the questions posed to them).

The witness had testified to the police after the suspects reported custodial torture.

Reexamination

The suspects signed documents stating that they were not threatened when giving their confession.

The witness did not read out word for word the statement to the suspects. He just read the general outline of what was said.

Mr. Veerawut Phromphet

The witness was the other volunteer lawyer representing one of the five suspects of the 'gun robbery case'. He was contacted by the Law Society of Thailand to represent Mr. Abdul Larcari. The witness sat next to the suspect and asked him if he was alright and he nodded his head. He did not say if he had been tortured, but he confessed to cutting down a tree.

The witness said that he did not see defendant 1 on that day. The witness realised that later the suspect complained that he had been tortured. The suspect understood and communicated in Thai. The witness had checked the statement after it had been typed out.

Cross-examination

The witness had arrived at the station at 9-10pm. The police had not started the interrogation process when the witness arrived. He interviewed Mr. Abdul from 9-10pm to 1am. There was no problem with the communication. Each accused had their own investigating officer. The witness did not observe the investigation of the first accused. He was there but he did not listen. He could not see any marks on his body.

(The prosecution pointed out that the suspect was wearing southern dress and was therefore predominantly covered.)

The investigation took one hour and the witness sat five to six metres from his client.

The witness has worked for four years in the volunteers lawyers programme. He resigned early this year. He cannot remember if he was involved in a case in the south involving a police shooting.

He had gone to the police station alone, but when he returned home, it was with another lawyer. He cannot remember what car he traveled in.

(When the suspects made a torture complaint they also complained that they needed an interpreter.)

Reexamination

The defence lawyers asked the witness, if Mr. Abdul had gone through grade 12 education, then why would there be need for an interpreter, to this question, the witness did not reply.

The witness was asked whether there were any signs of torture on Mr. Abdul's body, such as, on his wrists, face, neck etc. The witness replied in the negative.

Pol. Maj. Nitinai Wangyanai

The witness got an assignment to investigate the allegations of torture by the five suspects. He investigated the case by giving instructions to his subordinates to interrogate the five suspects. They interrogated the suspects and the two Law Society lawyers, together with two policemen.

The witness submitted the report to the Royal Thai Commission. They gave no further requests for additional investigations on this matter.

Cross-examination

The witness was on the list of those who investigated the gun robbery case. His name was on the list of the arresting committee. But his signature was not there and he did not participate in the arrest.

The witness knew about the operation, the arrest, interrogation etc. but he did not participate in the arrest.

He knew the five were detained under martial law. He met the suspects during the time of martial law detention. He did this at the instruction of his supervisor who thought he was a legitimate person to head the fact-finding committee.

29 November 2005

Witnesses: Pol. Lt. Col Somkuan Puangsab
Pol. Cpt. Pratchayawat Damrongsiri
Pol. Maj. Jirapop
Pol. Sgt. Maj. Manob

Pol. Lt. Col. Somkuan Pangsab

The witness is from the CSD and he was the co-investigator in the 'gun robbery case'. He had interrogated one of the five suspects in the case; Makata Harong in Bangkok at the central prison.

When the witness was interrogating the suspect he found the suspect's condition to be normal. There were no wounds or bruises on his body but the witness did not ask the suspect whether he had been subjected to torture. The suspect did not inform his legal representative, a lawyer from the Muslim Lawyers Club, about the alleged torture.

On 11 May 2004, the witness did an investigation of the case for the public prosecutor. During his investigation there was still no report of physical harm from the suspect. The location of the police station, Tan Yong Police Station, was open, next to a main street. No-one could have done any secret interrogation there. The witness was in the south to investigate another case. The witness does not know any of the suspects in that case.

The witness can identify defendant 5, but he worked in a different unit. The witness had seen Mr. Somchai in court when he was the legal representatives for the J. I rebels because the witness was the co-investigator in that case. However he did not have any conflicts with Mr. Somchai.

Cross-examination

The witness knew that a petition had been filed by the five suspects during the police detention. The witness stated that he saw with his own eyes that Mr. Makata was in a normal condition. He only interrogated Mr. Makata. The language used during the interrogation was Thai. Another officer typed the interrogation; the witness checked and signed it. The lawyer from the Muslim Lawyers Council was the legal representative and also the interpreter. In normal circumstances, the suspect informs the police if they cannot speak Thai. There have been many Muslim suspects that have informed the police that they cannot speak Thai, they normally request a Muslim lawyer.

The witness had asked the suspect whether he had been subjected to torture, but this was not included in the interrogation report.

Reexamination

When the witness was interrogating Mr. Makata, the suspect's language ability in Thai was good, he could reply to the questions in Thai.

Pol. Cpt. Pratchayawat Damrongsiri

The witness is from the CSD, he is a duty police officer who acted as a police investigator in the 'gun robbery case'. He was initially involved when an officer requested an extension of detention (total of 12 days) for the five Muslim suspects. It was the second extension. The witness met the five Muslim suspects, and their condition looked normal. A Muslim lawyer objected to the request for detention and declared that the five Muslim suspects should be detained in prison instead of the CSD. The witness was not sure who petitioned the letter of objection, it could have been Mr. Somchai.

The witness also participated in the interrogation of Mr. Makata on 11 March 2005. During the interrogation the witness did not see any signs of torture and the interrogation was conducted in Thai because the suspect understood Thai. Mr. Makata did not inform the witness of earlier incidents of torture.

The witness has seen defendants 1 and 2 but he does not know them well. He does not know defendants 3 and 4. He does know defendant 5. The witness does not have any conflicts with the defendants. Finally, the witness does not know about Mr. Somchai nor his family, neither does he have any conflicts with them.

Cross-examination

The witness knew of the five Muslim suspects who have complained of being subjected to torture; he had interrogated Mr. Makata. During the witness's visual inspection of the alleged torture victims, he was not able to see what was underneath the clothes. The witness had been in Tan Yong Police Station for several days and he said that the atmosphere there was quiet during most days; few people came to the station.

Before the request for detention extension, the witness was not involved in the case. The witness was responsible for drafting the second extension. He only met the suspects when the second extension was requested. According to the details of the letter of request, it stated that a Muslim lawyer was defending the suspects. On March 4, the same lawyer submitted a motion to the court alleging ill treatment and torture and requested a court order. A doctor then examined the five suspects. During that time, the court felt a need to submit an interrogation report. The court gave a late decision. The court allowed the extension and decided that the suspects needed to be detained in prison and not to be detained in the police department.

In the interrogation report it stated that the Muslim lawyer participated and was also the interpreter in the investigation. The Muslim lawyer said that the interrogation was done in the suspects' local dialect and not Thai. The witness did not know that Mr. Somchai and other Muslim lawyers had visited the five suspects earlier.

If an interpreter was needed then one questions whether the suspects could communicate fully in Thai

Reexamination

During the interrogation Mr. Makata spoke both in Thai and in his local dialect. The witness stated that he did not know that the suspects needed medical treatment because they did not tell the witness about their injuries.

Pol. Maj. Jirapop

The witness is from the Tourist Police Department; he was involved in the 'gun robbery case' as an administrative officer. He was in charge of compiling the police names on the arresting report. When he saw the five Muslim suspects their conditions were normal.

The witness had typed defendant 1's name on the arresting report because although defendant 1 had not been involved in the 'gun robbery case' it was common practice to include all the names of police officers, regardless of whether they were involved or not in the case. It determines whether there is a promotion in the future or not. Defendant 1

had not given his consent to be in the report. He did not sign on the list of officers involved.

(New evidence is then presented to the judge. It is a video recording of the reenactment of the five Muslim suspects receiving money.)

In the video all 5 of the suspects were interrogated. According to the location of Tan Yong Police Station (*A photo of Doc 162/163 of map of Dang Yong police station is presented*) the location is open air and it is difficult to perform any ill-treatment or torture.

The witness does not know the five defendants in person. He has seen them and he does not have any conflicts with them. The witness does not know any of the five Muslim suspects prior to the 'gun robbery case'. The witness did not know Mr. Somchai or his family.

Cross-examination

According to document 128, the witness was in the Police Commission and the appointed officer responsible for the investigation. Since the witness was a member of that Commission, he must know that the five suspects were investigated under Marshall Law.

The witness included defendant 1's name on the list of police officers involved in the 'gun robbery case' because the defendant was in the south accompanying General Wattana. He had arranged the media meeting therefore his name was on the list.

The video presented as evidence was not continuous; it was cut in certain places. According to the photos, the witness was involved in the reenactment, arresting report and interrogation report. But the witness says that he was only the administrative officer and thus, not involved in the investigation process.

During the witness's time in the south, he was assigned to Unit 3 of the Tourist Police Department. The witness only met the five Muslim suspects when the Central Police received the information from the Provincial Police. He was not involved in torture, he is more like a co-ordinator thus the provincial police are the unit responsible for the detention of the suspects.

Pol. Sgt. Maj. Manob

The witness worked in the CSD; he is the subordinate of Pol. Maj. Pappon, who is friends with defendant 1.

On March 11 2005, the witness had stayed in the office in Unit 2 of the CSD. Defendant 1 came to the office at around 7 am on March 12. The witness opened the door and Defendant 1 left the office. Later, when defendant 1 had come back, he asked the witness to keep his mobile phone. The witness was to receive phone calls if someone tried to call. The witness left the office at around 9.00- 10am and went to arrest a person for extradition related to drug trafficking. Later, the witness went out to arrest Mr.

Mohammed. The witness had gone to a jewel shop in Silom area to arrest yet another person.

(The defence produced an arrest warrant to the judge but there is no evidence that the person was actually arrested.)

The witness returned to the office at around 4pm. When he had arrested Mr. Mohammed, he kept defendant 1's phone in his bag. The witness sometimes picked up the phone to answer calls, and sometimes did not. The witness stayed in the office overnight. The witness gets paid to stay overnight. His home is in a different province so it is more convenient to stay in the office. Defendant 1 came back at around 11pm, there had been many phone calls to defendant 1, but none of them were from the boss. Then defendant 1 took the phone back.

Later, on 13 March the witness was assigned to investigate another case. The witness did not know where defendant 1 had gone on March 12.

The witness does not know defendants 3 and 4, but he met defendants 2 and 5 because he is from the same unit as them. The witness does not have any conflicts with the five defendants.

The witness did not know Mr. Somchai or his family.

Cross-examination

The witness is an investigator and also an administrative officer. Normally during investigations he has to wear a uniform and does investigations with another partner. The witness is able to contact other officers via a mobile phone. The witness has a mobile phone. The witness does not have a walkie-talkie because normally CSD do not use a walkie-talkie and just use a mobile phone.

The room that the witness stayed overnight in was not a single room, it was shared by many people. But when defendant 1 entered the room, there was only the witness left in the room. Defendant 1 asked the witness to look after the phone which was in the drawer under the desk- it was a common desk so everyone could store things there. The witness could not remember the brand names of the two mobile phones. Neither could the witness remember the colour of the mobile phones. When the witness picked up the mobile phone, he could not remember if there were any miss calls on it. Although it was a common desk, no-one else was in the room, but there were many people who did walk in and out of the room. The witness asked another colleague to look after the mobile phones. He did not use the mobile phones. He does not remember the numbers of the mobile phones.

When the witness came to the office in the evening, at around 10 to 11pm, there were no other police officers present. When defendant 1 came into the office he was wearing civilian clothing, but the witness cannot remember what exactly defendant 1 wore. After defendant 1 left the CSD, he did not come in the next morning.

This was the first time that the witness kept defendant 1's mobile phone.

(The prosecutor presented Document 165 for the witness to look at)

The witness was then questioned about the fact that the document does not have the name of Mr. Mohammed who was supposed to have been arrested by the witness. The witness replied by stating that the spelling was different.

(The prosecutor tries to establish whether the witness really did go to arrest someone and keeps asking the witness details of how to get to the destination where the arrestee was)

The witness was asked about keeping the mobile phone. He did not know how many miss calls were on the mobile phone. The witness cannot remember who called, but there were no phone calls from the 'boss'.

Reexamination

The defence established that defendant 1 had called in to ask the witness to keep the mobile phones, and he called from the office number. The witness remembers March 12 so well because on 13 March he could go home.

Although according to the arrest records, the witness did not arrest Mr. Mohammed, this was because he was not investigating Mr. Mohammed at that specific time, he was investigating a group who had opened a shop to conduct illegal business. It was called the RCC company and the witness was there to search the premises after there were complaints from the American DEA Unit (drug trafficking). The witness got three names and arrested three suspects. He has a description of the suspects and their photos.

30 November 2005

Witnesses: Pol. Cpt. Subin Yala
Mr. Sakda Kulsuwan
Pol. Cpt. Prayun
Police Officer Channon

Pol. Cpt. Subin Yala

The witness is from the CSD, he has worked in this department for 15 years as a police investigator. Defendant 2 is the witness's supervisor. About two or three days before March 12, the witness made an appointment with a spy relating to a drug trafficking case. The witness made the appointment on March 12 at 8pm at the CSD office, in the room of defendant 2.

On March 12, defendant 2 arrived at the office after 7pm. In his officer were police officer Thawee, police officer Manob, defendants 2 and 4, and the spy, whose name was Sakda Kulsuwan. During the meeting, the group talked about the sources of drug trafficking, and the names of drug traffickers the spy could identify. The spy told the police officers that a drug trafficker he had identified was in Ramkhamkaeng (which is

near where Mr. Somchai disappeared). The plan was to meet another person and to arrange for a transaction to buy drugs.

The witness went with police officer Thawee and Mr. Sakda to the location where the drug trafficker was supposed to be, to organise a transaction. It was an operation to entrap the drug trafficker. The witness left the office at around 8.30pm and went to a restaurant named Lonlau. This was near Ramkhamhaeng. Mr. Sakda was to look out for the drug trafficker. The group spent twenty minutes in the restaurant and then the witness and officer Thawee returned back to the CSD office. They got back after 10pm where they met up with defendants 2 and 4. The witness reported to defendant 2 that they were not successful in entrapping the drug trafficker and then he asked to leave the office.

The witness knows defendants 1, 2 and 4. But he does not know defendants 3 and 5. He did not know Mr. Somchai or his family.

Cross-examination

The witness has worked for 2 to 4 years with defendant 2 as his supervisor. He was partners with police officer Manob, police officer Channon, and police officer Prayon. The witness was wearing civilian clothing during his meeting with defendant 2 and 4.

(The prosecutor then proceeded to ask detailed questions about the colour of the clothes the witness and other officers were wearing, what kind of blue, material.)

When the witness was driving to the location of the drug trafficker, there were a total of three persons in the car. The witness does not remember how many persons were in the restaurant. They sat at in the right corner of the restaurant. The witness ordered a coffee. After the witness and the other officer left the restaurant they headed straight back to the CSD where they met up with defendants 2 and 4. : I don't remember, we sat on the right corner of the restaurant.

It was the first time that defendant 2 had asked for a meeting. The witness is not under defendant 2, normally he takes commands from another police officer. The police in the CSD can have joint operations with other units. This was the first time that he has worked with police officer Thawee. Police officer Thawee is not the witness's permanent partner. The witness cannot remember when the last time he had a joint assignment with police officer Thawee. As for police officer Manob, the witness can only remember working on a case with him in 2003. He cannot remember working together in more recent cases.

The witness cannot remember whether he met defendants 2 and 4 the next day, March 13, when he went to work. The witness cannot remember if he saw police officers Thawee or Manob the next day, but he did meet them one week later.

The witness met defendant 4 two or three years ago when he was working as a police investigator.

When the witness meets the suspected drug trafficker, they do not normally call for backup, they just observe the suspect and his movements.

The witness has his own mobile phone, as do police officers Thawee and Manob. The witness's mobile company is *Orange*.

The witness did not make a written report regarding the drug trafficking case because he did not feel it was necessary. The witness does not remember how many times he has met the spy, Mr. Sakda.

Mr. Sakda Kulsuwan

The witness is a spy for drug trafficking case that defendants 2 and 4 were involved in investigating when Mr. Somchai disappeared. The witness has worked with defendant 2 since 1999 in the entrapment of drug traffickers. In 2003, the witness was working some cases with defendant 2.

The witness learnt there was a drug trafficker selling drugs in the Ramkhamkaeng area, the witness studies at Ramkhamkaeng University and lives in that area. Therefore the witness went to see defendant 2 at the CSD office. The witness found that the drug trafficker had a lot of amphetamines. On March 12, the witness arrived at the CSD office at 8pm where he met defendant 2, defendant 4, police officers Thawee and Manob. The group discussed about the drug trafficker and defendant 2 assigned the witness to go with police officers Thawee and Subin to find the drug trafficker. They went to a restaurant named *Lonlau*. They looked for parking spaces and then went into the restaurant. The witness asked around to see if the drug trafficker was there or not, he was informed that the drug trafficker had not been in the restaurant or area for two days. The witness told the police officers and said that if he received anymore information on the case then he would inform them.

However, the witness did not hear from the drug trafficker. The witness does not know defendants 1, 3 or 5. Neither does he know Mr. Somchai or his family.

Cross-examination

The witness had several successful cases with defendant 2 in 2004. There are no records of this because it is standard practice that records are not kept, however the witness did receive money amounting to 50,000 baht as a reward.

The witness had never met the other police officers who were with him in the office, on March 12. The witness then proceeded to describe what everyone in the meeting was wearing on that day.

The prosecution then asked what type of restaurant *Lonlau* was, to which the witness answered that it was a sheltered restaurant, with about 10 tables, half the size of the court room he is in now. The witness and the police officers reached the restaurant past 9pm.

The witness has reported other cases to defendant 2, apart from drug trafficker cases, but he cannot remember the details. The witness has worked with defendant 4 for some years. The witness became a spy when his brother (a police officer who is the subordinate of defendant 3) asked him to keep an eye out for drug traffickers and other criminals. The witness specialises in amphetamines. He has never received any threats from drug traffickers because none of them know he is a spy.

The witness has a mobile number. The witness does not know defendant 2's mobile number. He has known defendants 2 and 4 since 1999. He only knew police officers Thawee, Manob and Subin on March 12.

The entrapment procedure was to invite the drug trafficker out and meet up with him in the restaurant. There was no plan to buy drugs from the drug trafficker therefore there was no need to carry large sums of money. Thus, there was no record of this meeting in police records. On March 12 they just wanted to know who the drug trafficker was.

Pol. Cpt. Prayun

The witness has worked in the CSD for 11 years and is a subordinate to defendant 2. On March 10, defendant 2 had asked the witness to make an appointment with him to meet at 8am on March 12.

In March 12, the witness met with defendant 2, police officer Chamnan and defendant 4 at the CSD canteen. Defendant 2 told the witness to go on an assignment. The assignment was to look for Mr. Sommsak who was given an arrest warrant. The witness was to look in the Chalankung district. Mr. Sommsak was a motorcycle engineer.

(The defence then presented document no. 69, the arrest warrant, and a photo of Mr. Sommsak, as evidence in the court.)

The case of Mr. Sommsak is a murder case. The witness went with police officer Chamnan and defendant 4. They parked the car in Phaphaochai Police Station and divided to look at different motorcycle taxi locations. The plan was to meet up again at 3pm regardless of whether they had found the suspect or not. The witness did not find Mr. Sommsak so he went back to the car and waited for the others.

Only defendant 4 had a mobile phone. They then went back to the CSD office to find defendant 2 and report their findings. They were asked to wait for defendant 2. At about 7pm the group went into defendant 2's office. They were asked to go the Ramkhamkaeng area to look for Mr. Sommsak. According to defendant 4, Mr. Sommsak had relatives near the Ramkhamkaeng University.

The witness with police officer Chamnan went to look for the suspect, but they did not have any forms of communications with them. Therefore, defendant 2 and 4 lent their mobile phones for them. Defendant 2's mobile phone was given to police officer Chamnan, and defendant 4's mobile phone was given to the witness. The witness and police officer Chamnan agreed to return the mobile phones before 10pm. They then left

the office around 7pm, when they got to Ramkhamkaeng University, they walked around the area showing pictures of the suspect to passers by. They also looked in the dormitory and apartments in the area.

The witness did not use defendant 4's mobile phone. No-one called the phone either. After 9pm, when the witness could not find Mr. Sommsak, they went back to the office around 10pm to report back to defendant 2 and return the mobile phones.

Although they could not find the suspect, they did arrest his relative.

The witness did not know Mr. Somchai or his family.

Cross-examination

The witness has known defendant 2 for 8 to 9 years. Police officer Chamnan is the witness's partner. Defendant 4 is from a different unit to the witness: unit 4, but when defendant 2 was telling the witness about the assignment, defendant 4 was in the room too. The witness has known defendant 4 for 3 to 4 years. It is not unusual for defendant 2 to request police officers from a different unit to work on a case together.

Defendant 2 was wearing civilian clothes on March 12, but the witness does not remember in detail what defendant 2 was wearing. Defendant 4 was not wearing his uniform, but was wearing long trousers. The car the witness was driving that day was a blue Honda with a Bangkok number plate.

The witness left the officer around 9am and reached Phaphaochai building at 10am. The witness asked police officer Chamnan to look around the Phaphaochai Police Station, while the witness went on a different route. Due to the fact that they did not have any form of communication, if they found the suspect then it would be difficult because there was no way of contacting each other or the supervisors at the office to ask for further instructions.

At 3pm the witness returned to the car first, followed by police officer Chamnan, defendant 2 arrived 15 minutes later. They went back to the CSD, where the witness had a little rest. There were a total of 4 people in the office. The meeting for the second operation was in defendant 2's office.

The mobile phone given to the witness by defendant 4 was a black Nokia, the mobile phone given by defendant two was also a Nokia. The witness has borrowed the defendants' mobile phones on numerous occasions even though he is from a different unit to defendant 2.

Even though mobile phones are essential for the job, the witness does not have one, nor does he have a walkie-talkie. He thinks they are unreliable compared to mobile phones.

In the evening when the witness returned to the CSD office, he saw defendant 4 in the common room. He was in the same clothes as in the morning. When the witness returned

the mobile phones, he did not see officer Chamnan because officer Chamnan had used a motorcycle, whereas the witness had used a car. When the witness returned to the office he asked other officers whether officer Chamnan had returned the mobile phone and they said 'yes'. The witness did not see officer Chamnan further that day.

During the witness's first assignment to find suspect Mr. Sommsak in the afternoon, he had parked his car not at the Phaphaochai Police Station, but an area opposite the Police Station near a temple. During the investigation, the witness looked at many motorcycle taxi stations. The witness had walked until Chereunkung Road: the exact location being the Chinatown area which is not exactly on the road. The witness had looked at approximately 60 motorcycle taxis.

(The witness changed from his previous testimony, in which he initially said Lankham, not Chinatown)

The witness did not have a mobile phone, but he did have one until October 2004. The witness does not remember the number of the mobile phone he had borrowed from defendant 4. Normally, when the witness goes out to investigate a case, he accompanies other officers with good communication kits. If he really needs to contact someone then he will use a public telephone. Although the witness states that he did not make any calls out with defendant 4's phone nor were there any calls in, according to the phone usage records, there were three telephone calls into the mobile phone at 21:21 pm.

Reexamination

The witness states that if he saw the suspect and he had no mobile phone then he would use a public telephone. The witness sometimes used defendant 2's mobile phone and sometimes defendant 4's mobile phone.

Police Officer Channon

The witness worked for the CSD since 1999. He work related to investigations and arrests according to the instructions given by his office. Defendant 2 used to be his superior.

On March 12, the witness had an appointment to meet defendant 2 regarding investigations into a murder case. Defendant 2 was the leading officer in the case. The officers convened at the CSD canteen for an 8am appointment. The meeting was to discuss the day's investigations. The group was to divide into three teams and instructed to go to the Chalankung area in Yalawat (Chinatown). The witness received the necessary photos and warrants of arrest for the suspect. The witness then left with the group of officers at around 9am. The witness used the personal car of police officer Prayun. They parked in front of the Phaphaochai Police Station at around 10am. They looked around the police station and used the photo of the suspect to look around the motorcycle taxis. The witness and the other officers did not have a mobile phone so they planned to use a public telephone to call defendant 2 if they saw the suspect. After an unsuccessful investigation, the group went back to the car at around 3pm and returned to the CSD. When they got back to the CSD there was another assignment.

The witness went to see defendant 2 to get instructions on the next assignment. The witness got instructions to go to Ramkhamkaeng. Before he went to his second assignment with police officer Prayun, he asked defendants 2 and 4 to borrow their mobile phones. The witness got a mobile phone from defendant 2. They decided that they would go back to the CSD office at 10pm to return the mobile phones. They went to look at the Ramkhamkaeng University area and its surrounding areas also. The witness used a motorcycle to go and officer Prayun drove a car.

The witness and officer Prayun spent almost two hours- from 8pm to 10pm in the Ramkhamkaeng area looking for the suspect. Due to the fact that the area was large, the witness and officer Prayun decided to split up to look. Afterwards, having failed to find the suspect, they returned to the office and reported to defendant 2 that they could not find the suspect.

The witness did not use defendant 2's mobile phone to call out, neither were there any calls in. After the witness's initial investigation into the suspect, another unit was assigned to look for Mr. Sommsak. The suspect was arrested in another province.

The witness has seen defendant 1 but not talked to him. He worked with defendant 2 and 4 and was only familiar with defendant 5.

The witness had not known Mr. Somchai or his family.

Cross-examination

The witness has known defendant 2 for 8 to 9 years. He has known defendant 4 for 4 to 5 years. He was under the supervision of defendant 2 for 6 to 7 years. He was in unit 1 regional 4 together with defendant 2, they were in the same regional units but different sub-units. Each sub-unit officer can be called to work for a leader of a different sub-unit in a regional unit. Previously, before CSD, the witness worked in a special branch unit: Intelligence.

The witness does not have a communication kit therefore he has to accompany an officer who has one. The witness admits that it is difficult to work without any communication device. The witness had bought a mobile phone a year ago and sometimes does use a walkie-talkie.

When asked about the specifics on March 12, the witness was very vague, for example, he did not remember the clothes he was wearing on that day, he did not remember the number plate of the car he drove, he cannot remember if he sat in the front or back of the car. He cannot remember if he saw any other police officers when he left the CSD building. He cannot remember how many officers met up in the evening for the second investigation.

The witness did not ask for the telephone number of defendant 4's mobile phone so that he could call officer Prayun (who had borrowed defendant 4's phone) if he saw the suspect.

(This action is questionable since if the witness did not know how to contact officer Prayun then what was the point of him borrowing the mobile phone?)

The witness did not report back on his findings and investigations, but he says that the police normally only record burglaries. The witness knew that officer Manop was working in a different unit.

The prosecutor during his cross-examination pointed out that the location in which the witness conducted his first investigation, near Phaphaochai Police Station, had only 2 by-streets and motorcycle taxi parks. However, the witness had replied that he had visited many motorcycle taxi parks. The witness said that he had investigated for 5 hours, but could not remember how many motorcycle taxis he had visited.

On the day of the incident, the witness did not actually see defendant 4 hand his mobile phone over to officer Prayun, but he did see officer Prayun holding a mobile phone. The witness was asked whether he knew the phone directory of the police, to which the witness replied in the negative. The prosecutor then shows the telephone directory to the witness and court and then asks the witness whether the number he pointed to in the directory was the number used by defendant 2 for work. The witness did not know.

Reexamination

The witness explained that he did not ask for defendant 4's mobile number when it was given to officer Prayun because the witness was in a rush. If he did see the suspect then the witness would call the office and ask to speak to defendant 4. The witness's memory was vague on March 12 because his father had just passed away.

1 December 2005

Witnesses: Pol. Cpt. Kreingkrai Phrompakdee
Wife of defendant 3

The witness is from the Tourist Division and is in charge of interrogating foreign tourists in Bangkok. The witness is in charge of division 4, 5 and 6. On March 12, the witness's boss asked him to go to the Tourist Division to investigate a Filipino gangster on Silom Road. The witness arrived at the office around 7pm. The witness does not know defendants 1, 2 or 5, he used to see defendant 5 but he does not know him that well. The witness did not know Mr. Somchai or his family.

Cross-examination

The witness has worked with the Tourist police for more than 10 years. He has known defendant 3 for 12 years and has worked together with him, as partners, for 5 years. Within an area, a 'batch' of 8 police officers are in charge of inspecting the area.

Defendant 3 was in one of those 'batches'. The officers needed to travel in pairs for support, they never work alone.

In terms of communication, the witness uses a mobile phone, but sometimes uses a walkie-talkie. The witness has used the same mobile number for 5 years. His partner, defendant 3, also uses a mobile phone, but the witness cannot remember his number.

The instructions to inspect Silom Road for Filipino gangsters were not written down, it was a verbal order. It was a general outline of the duty given that day. During the investigation it was impossible for the witness to split with his partner since they always work together. The witness wore civilian clothing that day, but he cannot remember what he wore specifically. He can remember that defendant 3 was wearing jeans and a T-shirt, but he cannot remember the specific colour of the T-shirt. On the day of the incident, the witness used defendant 3's car to drive to Silom Road for the inspection because he felt that defendant 3's car is smaller. The car is brown but the witness cannot remember the licence plate number.

(The prosecution criticised the witness saying that he had known defendant 3 for over 10 years and yet he could not remember his license plate number)

The witness said that he remembers it was a Toyota Corolla. The witness could not remember what he did with defendant 3 when they got to Silom Road, they could have patrolled it, but that was all he remembered.

The witness knows that defendant 3 has a wife, and he used to visit defendant 3's son at hospital. But the witness has never been to the house. The witness does not call defendant 3's home number because he meets him on a daily basis at work.

In practice tourist police work for 24 hours, and have little time to rest. Before any investigations, the officers need to call a meeting, which are normally held every month. Everybody has to attend the meeting. Technically, officers need to sign if you attend a meeting; however, the witness stated that he did not sign anything. On the day, there were no specific targets, but the officers needed to be careful of the Filipino gangs.

When the prosecutor asked the witness detailed questions regarding the Filipino gangs, the witness failed to answer the questions, mostly replying 'I don't know'. For example, he could not remember whether any arrest warrants were issued against the Filipino gang, the gangers' names. The witness did not arrest any Filipino gangsters on March 12.

The witness has known defendant 3 for over 10 years and yet he has testified very little information regarding defendant 3's family background. The witness does not know who defendant 3 called on the day of the incident.

Reexamination

The witness did not use his police radio for communication because he feared that he might be recognized. From early March to April, the witness never stopped working.

Wife of defendant 3

The witness is the wife of defendant 3; she used to work at Ramkhamkaeng Hospital. She and defendant 3 have a daughter who is one and a half years old. The witness has stayed in her current address since 1999. Defendant 3 began to stay in the house since 2002.

(Judge is shown pictures of where the witness and defendant 3 lived)

The witness used to work at the Ramkamhaeng Hospital. The witness gave birth to her child in the same area. *(Birth certificate, document no 274/277 is presented to the judge as evidence)*

On March 12, defendant 3 went to work at 8am and the witness asked him to come home early because their daughter was not feeling well. Defendant 3 then got home at around 7pm and remained in the house taking care of his daughter. The witness does not know the other defendants.

The witness started work at the hospital in 1989, but quit after 2 months and then started working again until 2005. The witness officially lived with defendant 3 in 2003. She did not know Mr. Somchai, nor his family.

Cross-examination

The witness was an assistant physician in the examining room. She worked from 8am to 7pm. Whenever there were staff shortages, the hospital asked her to take on extra hours. Since having her child, the witness was not able to take on late night shifts and normally works 5 days a week. Holidays are not specific they can be any day, but the witness needs to inform her boss in advance of her day off. The prosecutor then asked whether the witness could get a working schedule for March 12. *The prosecution is so keen on emphasizing the working schedule because the witness does not have a set schedule for working on March 12. There is no evidence that she really waited for her husband to come home to their ill child.*

Defendant 3 comes home most of the time around 8 to 9pm. Their daughter normally has a babysitter, but it costs 100 baht to take their daughter to the babysitter. Defendant 3 worked almost everyday and came home every night.

The symptoms of their daughter's illness were fever and vomiting, she was sick before dawn. The witness did not take her daughter to see a doctor because the next day she was well again.

When defendant 3 was detained, the witness used to visit him once a week. Defendant 3 did not ask the witness to petition a letter of complaint against the police investigators because he felt that it would not do anything.

Reexamination

Since the witness worked with doctors and nurses she was able to treat her daughter's illness, there was no need to take her to the hospital. The reason the witness did not submit a petition on behalf of her husband was because she saw in the newspaper that the law society would not help any of the defendants.

The reason that the witness remembers defendant 3 came home on March 12 was because she was watching the television concerning Mr. Somchai's disappearance and she was sure that her husband was not involved because he had come home on that date.

(The defence is trying to establish that the witness had good and reliable memory)

This was the last witness for the defence and signaled the conclusion of the trial. The judgment of the case was given on 12 January 2006.

THE JUDGMENT

On 12 January 2006 at 1.45pm five judges read the verdict of the case regarding the five defendants. The following notes are based upon the reading of the verdict in court, not upon the definitive written judgment.

Summary of the prosecution

The victim, Mr. Somchai Neelaphaijit was Chairman of the Muslim Lawyers Club and had been working as a legal representative for the suspects involved in cases relating to national security offences. Mr. Somchai was the defence lawyer for Mr. Makata Harong and 5 other detainees who were arrested for the gun robbery on January 4. They were sent to Bangkok where the five detainees reported that they had been physically abused in order to gain a confession from each of them. They were allegedly forced to take their cloths off, spat on and humiliated by the police officers. On 10 March, Mr. Somchai sent a complaints letter on behalf of the 5 detainees with respect to their treatment to the Minister of Interior, the Royal Thai Police Commissioner, Parliament house, Senate office, and the Ministry of Justice. Mr. Somchai's defence work offended the five defendant/police officers who are on trial in this case.

Defendant 1 and the other defendants allegedly pushed Mr. Somchai into their car and defendant no. 2 drove Mr. Somchai's car, which he later parked at Morchit 2 Bus Terminal Station. On 16 March 2004, the police investigator found Mr. Somchai's car that the five defendants had allegedly robbed. On 8 April 2004, defendants 1-4 presented themselves to the police and on 30 April 2004, defendant 5 also presented himself to the police. The five defendants denied all charges.

On 16 June 2004, the persecutor together with Mrs. Angkhana Wongrachain, the wife of Mr. Somchai acting as co-plaintiffs (and later Mr. Somchai's four daughters became co-plaintiffs also) pledged the lawsuit against the five policemen allegedly involved in the robbery of Mr. Somchai who has now disappeared. The defendants took a car, watch, pen and mobile phone belonging to Mr. Somchai, which valued at a total of 903,460 baht. To this date, there is no information on the whereabouts of Mr. Somchai or whether he is alive or dead.

Telephone records indicate that the five defendants had followed Mr. Somchai from the morning of 12 March 2004 until the moment he was abducted. The telephone records show that among them there were a total of 75 phone calls on the day that Mr. Somchai disappeared and on 16 March 2004 when Mr. Somchai's car was found, the phone records indicate that between them the five defendants had made 30 phone calls to each other using the same phone.

Defendant 5 was the supervisor of defendants 1 and 2. Defendant 1 was also one of the enquiry officers involved in the January 4 gun robbery case in Narathiwat.

The court has heard all the witnesses and their evidences for the prosecution. There were 43 witnesses presented in front of the court including 7 eyewitnesses and the telephone record evidence including the analysis of the extensive use of their mobile phones by the five defendants before and after the crimes were committed.

Issues the court considered

The location of Mr. Somchai

The court believed that the phone records of the times when the mobile phones of the five defendants were used corresponded to the times that were stated in the testimony of Mr. Phatompong Likit who was with Mr. Somchai from the morning of 12 March until Mr. Somchai's disappearance. His detailed memory about where they both were and the time in minutes was very clear. During his testimony in court he could answer the defence lawyer without hesitating and with confidence. The defence lawyer did not produce any evidence that demonstrated otherwise. In addition the testimony of Mr. Kitja also referred to the times and places he went to with Mr. Somchai. The defence lawyer did not produce evidence to counter this.

Therefore, the court believed that on March 11, Mr. Somchai left his home and stayed overnight at a friend's house in Suan Son area. On the morning of March 12, he left his friend's house to go to his office. The mobile phone records indicate that the five defendants had followed Mr. Somchai from the morning of 12 March 2004. Mr. Somchai left his law office in Ratchada Soi 32 together with Mr. Pratompong Likit, an intern lawyer, and traveled by Express Way to the Court of Bankruptcy. At 2.30pm he traveled to the Civil Court of Southern Bangkok, and at 6pm he went praying at the Santichon Foundation. At 7pm, Mr. Somchai had dinner at a restaurant in Ladprao district then he went to Chalina Hotel in Ramkhamhaeng Soi 65. After dinner, he stayed there to wait for Mr. Kitja, a lawyer friend, but Mr. Kitja did not turn up. Thus, Mr. Somchai left Chalina Hotel by car from Ramkhamhaeng Soi 65 and turned left to Lamsalee. While driving, his car was crashed into and he was forced to park along the footpath. The car that had crashed into Mr. Somchai's car parked then behind his car. Subsequently, Mr. Somchai was robbed and had disappeared.

The locations of the defendants

Defendant 1

On 22 Feb 2004, defendant 1 was not involved in physically harming the gun robbery suspects. Even so, defendant 1's name appeared in the police arresting record of the five suspects due to his duty as one of the officer's responsible for providing security escort to the then Deputy Police Commissioner, Pol. Gen. Kovit Wattana, who was one of the leading police officers responsible for the three provinces in the south.

According to defendant 1's testimony, on 12 March 2004, he had a fight with his wife and drove past the CSD. In the morning he met with Pol. Sgt. Maj. Manob who was sleeping in the office. Defendant 1 left his two mobile phones on his desk in his office.

He drove his car to Rayong and then used a public phone to call Pol. Sgt. Maj. Manob. He ordered Pol. Sgt. Maj. Manob to keep his two mobile phones and to only answer the calls from his police supervisors. Pol. Sgt. Maj. Manob was not to use the mobile to call anyone. Defendant 1 did not know Mr. Somchai. Defendant 1 alleged that the mobile phone records should not be admissible as evidence because they are fraudulent.

Defendant 2

Defendant 2 stated that from 8am -12pm on 12 March 2004, he was at the office of the CSD. At 7pm, he lent his mobile phone to another police officer to investigate a case near the Ramkhamhaeng area. He waited at the CSD office and at 12pm he went back home in Nakonpathom Province.

Defendant 4

Defendant 4 stated that he worked under the supervision of defendant 2. During the day he went out to investigate a case and returned to the CSD office at around 5pm. At 7pm, defendant 4 together with defendant 2 lent their mobile phones to two police officers to investigate a case near Ramkhamhaeng area. At 10pm, the two police officers returned back to the CSD office and returned the mobile phones to defendants 2 and 4.

Defendant 3

Defendant 3 stated that the whole day he had gone out on investigations near the Bang Rak area and at 8pm he had returned to his accommodation near Ramkhamhaeng area and had stayed with his daughter, who was sick.

Defendant 5

Defendant 5 stated that he was going through superintendent training from February to 8 March 2004. He was not involved in the police operation in the southern provinces of Thailand. He did not know Mr. Somchai. However, his name was on the list of police officers ordered by the Royal Thai Police to investigate the 'gun robbery case' on the south of Thailand, but defendant 5 said that he did not receive such an order. On 12 March 2004, he was in the CSD office and at 8pm- 9pm he went to the Lotus Department Store near the CSD office.

All the defendants have raised the issue that the office of Metropolitan Police has had some conflict with the CSD police office. Defendant 5 referred to some of the personal conflicts he has had with Pol. Maj. Gen. Krissada Phankongcheun of the Metropolitan Police.

Telephone records as evidence

The court heard the cross-examination on the telephone evidence. An issue was raised regarding whether the evidence was obtained by lawful means or not and whether it was fraudulent or not. Questions also arose as to whether the telephone evidence could only be used for the investigation of the case and not as evidence in the court. The court gave the following considerations on this issue.

According to the Criminal Procedure Code in article 226, documentary evidence and oral evidence from an eyewitness can be used in the court unless it is obtained through any inducement, promise, threat, deception or other unlawful means. The court documents no. Jor 58-59, 62-64, 68-70, 72, 74, 76-78, 80-82 were obtained from the official request referred to in court documents no. Jor 60, 61, 63, 65, 73, 75-79. The court considered that the telephone evidence was not obtained by unlawful means from the AIS Telephone Company and Digital Phone Company. There was no prohibition according to the law which restricted the use of these documents in court.

However, the court has considered in detail the admissibility of one of the phone records (court document no. Jor 111). The court found that the record was a photocopy and not an original, the document included some marks, evidence of erased areas and some records were missing. This document did not seem to be the original document from the telephone companies referred to by the prosecutor. A legal representative of the telephone company came to testify in front of the court that the records were retrieved from a European-standard computer system. Pol. Maj. Thinnakorn Kesornbua, police enquiry officer, who had testified about the analysis of the phone records, could not clarify in many cross-examination questions from the defence lawyers about the repetition of some numbers or the presence of double telephone records for the same minute. Document no. Jor. 111 had some errors, which affected the testimony of Pol. Maj. Thinnakorn Kesornbua who was not a telephone analysis expert witness. There were some doubts about this document as reliable evidence. If the prosecutor did not bring an expert witness to testify on this document then it could not have enough evidentiary weighting to make an impact.

Concerning the court documents no. Jor. 114-115, these two documents were produced by the Business Relation Office of AIS Telephone Company. Mr. Witsarut, from the legal office of AIS, who had testified in front of the court, stated that the documents were the true copies. He had signed his signature as it was an internal procedure between two units in the same company.

Pol. Maj. Thinnakorn testified in court that court documents no. Jor 96-96 and 109-110 were charts that were made by using telephone records from court document no. Jor 111. Since Jor 111 was not admissible, this affected the credibility of documentary evidence no. Jor 96-96 and 109-110.

Even though, the telephone records can be heard as evidence in court. The court believed that the mobile phones corresponding to the numbers could have been used by anyone. Therefore the court was not convinced with the prosecution's argument regarding the locations of the defendants using the telephone records. The court would consider the other evidence produced by the prosecution further.

Eyewitnesses

The prosecutor brought to the court 7 eyewitnesses who were not related to the case and did not know the five defendants. All the eyewitnesses' testimony verified the fact that the incident did occur and in the manner as stated above by the prosecution.

There were three eyewitnesses who testified that they saw Defendant 1 at the crime scene and that he had pushed Mr. Somchai into the car that was parked behind his.

Ms. Chaweewan Yuthaharn, an eyewitness, testified during the police investigation that on the night of the incident, she saw a man of big build, with a bald head, wearing a black jacket, white t-shirt and dark colored trousers at the crime scene. The man looked similar to defendant 1 who had allegedly pushed Mr. Somchai into the car that the defendant and his group had prepared. She gave testimonies to the police enquiry officers three times. The second time she stated that defendant 2, in a picture which the police had shown her, looked similar to the man who had walked to Mr. Somchai's car and driven it away. The third time she testified that she was not sure whether defendant 2 in the VDO was the man who drove Mr. Somchai's car away or not.

It also appeared that she had later called the 191 phone line and learned that the police were looking for eyewitnesses of the abduction. She identified herself and voluntarily testified with the police. Ms. Chaweewan did not know Mr. Somchai or the five defendants. The officer who had received the 191 call came to testify accordingly that there was a phone call made to report about the incident. The court believed that this eyewitness' testimony was reliable and there was not any conspiracy or any plan to help anyone. Even though her statements during the police enquiry were different from her testimony in front of the court, her evidence was still regarded as reliable. The length of time from the incident and the police enquiry to the court hearing period was more than one year. During her court testimony it was obvious that she was afraid and intimidated so she did not identify defendant no. 1 in court.

Mr. Adirek, was also an eyewitness, in his first statement to the police during their enquiry he said that he saw a Thai person about 170-180 cm in height, with no beard and was dressed nicely at the scene of the crime. In his second statement with the police enquiry officer, he identified the photo of Pol. Maj. Ngern, who was similar in appearance to the man whom Mr. Adirek had seen. In his third statement, he was asked to watch a VDO. He testified that among the group of men, there was a bald headed man and confirmed that defendant no. 1 was the person he saw at the crime scene. He testified that he was afraid when he identified Pol. Maj. Ngern in the VDO because he feared possible reprisals. Nevertheless, Mr. Adirek felt that defendant 1 looked similar to the person in the crime scene. Mr. Adirek's character in front of the court showed that he did not feel threatened by the court environment. For example he requested a jacket when he was too cold, he told the court that he was hungry during the court hearing and he also requested more money as the fee the court provided was not enough. The court believed that Mr. Adirek's testimonies were reliable because he had volunteered himself as a witness during the police enquiries, rather than being coerced to be a witness. Even

through his three testimonies had some differences the court accepted as fact that he saw Mr. Somchai being pushed into the car by a man who was similar in appearance to defendant no. 1.

Mr. Siem testified that on the night of the incident, there were two cars parked next to each other. The man whom he could see looked similar in appearance to defendant no. 1. He was of a big build and wore a black jacket. Mr. Siem heard some voices and saw a man being pushed into the car. His testimony corresponded with the eyewitness testimonies of Mr. Adirek and Ms. Chaweewan.

Defendant 1 argued that he had gone to see his brother in Rayong province because he had a fight with his wife and had left his two mobile phones at his CSD office. Defendant 1 only had his brother to testify in court to support his alibi. The court believed that due to the fact that his brother was a close relative, he would help defendant no. 1, therefore the brother's evidence should be carefully considered. About forgetting his mobile phones, the court considered this as an irrational action. The argument about the irregularity of the police investigation such as not holding the suspect identification session or not having sketches of suspects was regarded as of minor detail and there were no compulsory regulations attached to these proceedings. The proceedings only depended on the considerations of the inquiry officers.

The verdict

The court believed the fact that defendant no. 1 and a group of three or five persons had coercively abducted Mr. Somchai by pushing him into the car that defendant no. 1 and the group had prepared. One of the individuals in that group had driven Mr. Somchai's car away from the crime scene.

This act is an offence under Section 309 paragraph 1 of the Penal Code of Thailand, but the act was not an offence under Section 309 paragraph 2 because with the latter act, arms must be used as a weapon. The act that was committed by defendant no. 1 was also an offence under Section 391. Even though the abduction violated several sections of Thai criminal law, by using Section 309 as the violated section the heaviest punishment could be served on the guilty party.

The court found defendant 1 guilty and sentenced him to 3 years imprisonment and acquitted defendants 2, 3, 4, and 5.

The offence was that of robbery; even though the actions of defendant 1 seemed more like an offence of kidnapping/abduction. The court heard more than enough evidence to support the latter offence, however, in Thailand there is no criminal legislation against forced disappearances or abductions without finding the body. The offence could not be murder because Mr. Somchai's body is still not found. A question also arises as to whether there really was an offence of robbery because there is no hard evidence that defendant 1 and his group had actually intentionally targeted and taken Mr. Somchai's

property. Was the intention to take the property or was it to take Mr. Somchai? If it was the latter, then no robbery of property had taken place.

Concerning defendants 2 and 4, there were eyewitnesses' testimonies about seeing a group of men who had looked similar to them. However, defendants 2 and 4 had no obvious or distinguishable appearances; the eyewitnesses could not pick them out from any other ordinary person.

There were no eyewitnesses who saw defendant 3 at the crime scene.

With regards to defendant 5, there was no eyewitness who had identified that defendant 5 was at the crime scene. However, the prosecution stated that defendant 5 had masterminded and planned the whole operation via phone calls made among the other four defendants. The phone records are problematic as reliable evidence therefore the prosecution do not have enough solid evidence on the involvement of defendant 5. There was no eyewitness to testify that defendant 5 had planned or masterminded the whole operation of the crime or that he was involved in the incident.

A FAIR TRIAL?

– *Isabelle Ma Suen Hang, Researcher, Asian Human Rights Commission, Hong Kong*

The disappearance of Somchai Neelaphaijit is an historic case in the fight for civil liberties in Thailand. It is the first case of its kind where accountability could be placed on the Royal Thai Police, an institution that has enjoyed impunity for decades. The potential for reform, if all the guilty parties were convicted, would be far-reaching and set the precedent for subsequent legal action by civilians who have been subjected to abuse by law enforcement officials. Victims of torture and abuse could finally get redress. However, this flame of hope has been reduced substantially by the decision of the judge in this case. Only defendant 1 was held accountable for his actions and sentenced to imprisonment. The other 4 defendants were acquitted. This is a small victory for justice but it is not a decision that can be celebrated because the trial revealed severe faults in the Thai justice system. If these faults were remedied then one can be certain that it would not only be defendant 1 who is held accountable, but all five defendants would be judged guilty. Many of the problems stem from the fact that the Somchai Neelaphaijit trial was not a fair trial in accordance with international standards.

Some of the key characteristics of a fair trial:

- The right to equality before the law and courts
- The right to trial by a competent, independent and impartial tribunal established by law
- The right to a fair hearing
- The right to a public hearing
- The presumption of innocence
- The right not to be compelled to testify or confess guilt

A key aspect to a ‘fair’ trial is the aspect of equality, both for the defendant and the victim. However, from the court observations, it is evident that the defence are more powerful and have more influence in the court room than the prosecution. This breaches the supposed ‘equality of arms’ that is supposedly present in a ‘fair’ trial.

‘Equality of arms’ in a trial process means that both parties are treated in a manner ensuring that they have a procedurally equal position during the course of the trial, and are in equal position to make their case. It means that each party must be afforded a reasonable opportunity to present its case, under conditions that do not place it at a substantial disadvantage vis à vis the opposing party.

The principle of equality of arms ensures that both parties have a reasonable opportunity to prepare and present its cases on an equal footing. Its requirements include the right to adequate time and facilities to prepare a case, including disclosure of all the necessary materials.

In Thailand, police officers enjoy impunity from accountability and can wield a certain amount of power against Thai civilians and authorities. This is reflected in the Somchai Neelaphaijit trial; all the defendants were high ranking police officers so to some extent they dominated over the prosecution parties and were in complete control of the trial. This can be seen in the court procedures and the presentation of the evidence. If the defence party dominates the trial proceedings, then this would influence the decision-making powers of the judge who could and has given judgment in the defendants' favour.

The court process

The judge

In Thailand, the weight allocated to the evidence presented in court is entirely dependent on the discretion of the judge. This is because the court records testimony not verbatim but according to the judge's interpretation and understanding. The judge listens to the evidence and arguments presented by both the defence and prosecution. He then speaks into a microphone and the judge's words are then taken down by a stenographer and read back to the court before completion of the session. In this way, it is possible that the court can miss some important testimony and the underlying features or meanings given.

The judge can include or exclude evidence which he/she considers significant or insignificant. For example, on 29 November 2005, during the examination of defence witness, Pol. Maj. Jirapop, the defence presented new evidence to the judge. It is a video recording of the reenactment of the five Muslim suspects receiving money. The prosecution was not previously alerted to this piece of evidence and therefore could not prepare any questions or object to its admissibility. When the prosecution did object, on the day of the trial, over the admissibility of the evidence, the judge replied that he would watch the evidence and then decide on its admissibility during his judgment. This brings the impartiality of the judge into question because even if he decides to disregard the evidence, he has already heard it and it will subconsciously affect his judgment.

In December 2004, there was a change to Thai law regarding the admissibility of evidence. The new law meant that new evidence could not be submitted during the trial. All evidence presented would have to be put on a list and then presented to the judge at a pre-trial hearing. Here, the parties would be able to object to evidence that each party was going to present and the judge would decide on its admissibility. This meeting occurs as soon as the case is accepted into the court and the judge is not exposed to the evidence during the trial unless it is admissible. Thus, inadmissible evidence is not able to affect the judge's impartiality. However, the Somchai Neelaphaijit case was accepted by the court in June 2004, thus the new laws on admissibility of evidence did not apply to this case. Thus, either party could submit fresh evidence during the trial without prior consent of the judge or opposition party. Therefore, the Somchai Neelaphaijit case cannot be labeled as entirely fair.

Another issue that caused great surprise to the AHRC and could have potentially affected the fairness of the trial was the proposed changing of the principal judge in the case. In

the middle of the week of October 19 2005, the judge revealed that, due to his assignment to another office, an alternative judge would replace him for the remainder of the trial. In the 1997 Constitution of the Kingdom of Thailand the hearing of a whole case by the same judge is a recognized right, as is the exclusion of judgement by a judge who has not personally heard all the evidence. While an exception is allowed for a change of judge due to his changing office, the particular importance of the Somchai Neelapaijit case and its complexity surely requires continuity on the judicial bench and the postponement of a transfer of the principal judge to another office until a judgement is given.

The AHRC was very concerned with regards to the changing of the judge and therefore issued an urgent appeal to urge the governmental authorities of Thailand to suspend the changing of office until the end of the Somchai Neelapaijit trial ([UP-123-2005](#)).

After the AHRC's steadfast appeals to the Thai authorities, on the trial date when the alternative principal judge was supposed to appear, Judge Supot Pornpanich was still the principal judge and he continued to be until after the judgment was given.

A criticism of the Judge Supot Pornpanich was his lack of ability to control the court room. Defendant 5 seemed to be running the trial. Often he sat with his lawyers and was clearly instructing them. He addressed the judge directly, even when he was not on the stand. He left the room on more than one occasion and was seen talking to witnesses that were to take the stand. Additionally, a defence lawyer took notes and then got an assistant to go and copy the notes. But the assistant was then giving the upcoming witnesses copies of the notes to inform them about what was taking place in the court room.

Defendant 5 spoke extensively about the phone records and that he believed they were forged. He pointed to the documents saying that they were not complete and that they clearly they had been cut and paste. At the same time he admitted to the prosecution that he was not an expert in investigating or analyzing phone records. Yet the judge allowed defendant 5 to speak for close to an hour about the authenticity of the records.

Furthermore, the judge did not control the cross-examination attitude or questioning by the defence. The following is an excerpt of a reexamination by the defence on 19 October 2005, on defence witness: Officer Channon:

D = defence *W= witness*

- D: You don't remember some details on 12th March because your father has passed away?
W: Yes.
D: Normally police officers do not use walkie-talkies because others can then easily identify the police officers?
W: Yes.

This demonstrates the tactics of the defence lawyer. He would ask leading questions in order to 'cover-up' holes that were discovered by the prosecution lawyers' cross-

examinations. The judge should disallow this because it taints the testimony given by the witness since a testimony is supposed to be recollections of the witness' memory of an event. He should not be the mouthpiece for the defendant to negate his guilt. The defence would also adopt a very aggressive form of cross-examination against prosecution witnesses: shouting at them, or standing very close to the witness stand while questioning them. This intimidates the witnesses and affects the quality of their testimony. This is exacerbated by the layout of the courtroom, where the witness is sandwiched between the prosecution and defence bench with the defendants sitting less than two metres away from them.

The prosecution

According to the Criminal Procedure Code, the public prosecutor begins his or her role after receiving the investigation file from the police. Additional investigations may be conducted if the public prosecutor decides that the evidence in the investigation file is unclear or insufficient for the issuance of a prosecution order, but this would be conducted by the police not the public prosecutor. The only one prosecutor who has a direct power to investigate is the Attorney General. He can conduct or directly survey the investigation of the case as enshrined in Article 20 of the Criminal Procedure Code. The Attorney General is also empowered to delegate this authority to the inquiry official, as he thinks appropriate. Since the public prosecutor does not take part in the investigation from the outset, problems sometime occur with regard to the question of miscarriage of justice and malpractice by the authorities concerned. The prosecution's case is completely dependent on the evidence provided by the police investigators. Therefore the prosecution's role is limited by the law. If the police are negligent in their investigation, then the prosecutors would not know about this, they can only rely on what they have been given by the police to build their case. This is detrimental for the prosecution's case because the defence lawyers, having police officers as defendants would have limitless resources and access to witnesses. However, the prosecution cannot collect witnesses itself; it is the investigating police who gather the witnesses. What is more, it was apparent in the Somchai case that the Metropolitan Police Bureau failed to collect and properly analyse all available evidence that could answer questions arising from Somchai's abduction. The police did not follow correct procedures and allegedly coerced and intimidated witnesses into giving testimonies. Even one of the investigators, Pol. Lt. Col. Phakorn Samukiri of the Bangrak District Police Station, admitted under oath that in his personal opinion maybe there was not enough detail in the investigation.

Several aspects of the trial point to this:

- i. The investigation neglected to properly inquire after the vehicle that was allegedly used to abduct Mr. Somchai. According to several eyewitnesses, they saw a black sedan parked behind Mr. Somchai's green Honda Zerfilo, but there was a failure to positively identify the model of the car. This information regarding the car used by the perpetrators is a key piece of evidence that if properly investigated may allow the car to be traced. Still, the police appear to have not adequately taken this into consideration.

ii. Many of the procedural gaps in the police investigation came to light during the trial process. The collection and recording of eyewitness testimonies was extremely problematic. The police did not begin to distribute leaflets in the vicinity of the area until March 24, although the case was opened on March 15. None of the eyewitnesses were taken to the scene of the crime to verify whether or not their statements were accurate. As a result, there were many factual problems in each eyewitness's testimony. Some of the police investigators also testified only that they were given oral orders to conduct investigations into the case, raising questions in court over precisely who was and was not involved in the inquiries.

iii. The alibis and past histories of the defendants were not properly investigated. According to Pol. Lt. Col. Phakorn Samukiri, he had investigated each place that Mr. Somchai had gone on March 12, but he had failed to interview each defendant to find out where he purportedly was at the time and to check whether there were any witnesses to support the alibi. Furthermore, whereas the five defendants had initially denied that they know each other, during the course of the trial it became apparent that this was not the case and that they had in fact had prior relations. However, these - and the possible links to other accomplices in the crime - are not known to have been thoroughly explored by the police investigators.

iv. Serious questions persist over the forensic science work conducted in relation to the investigation. According to Pol. Maj. Gen. Chuan Vorawanich, commander of the Scientific Crime Detection Division, his division investigated Mr. Somchai's car on March 16, and examined the fingerprints and 20 strands of hair they collected. They found that eight of the 20 strands of hair were unidentified and none of the fingerprints matched with the records of previous perpetrators in criminal cases. However, during the witness' testimony he did not mention whether any of the fingerprints matched with the victim's own fingerprints. Normally, there must be fingerprints of the driver himself. There is concern that the police may have unintentionally destroyed some of the vital forensic evidence. More importantly, Dr. Khunying Porntip Rojanasunant of the Central Institute of Forensic Science (CIFS) is known to have also investigated the vehicle, site and route of the alleged abduction; however, no evidence from Dr. Porntip nor from the CIFS was presented in court.

v. The details of the phone records of the five defendants were not fully investigated. This is perhaps the strongest piece of investigative work and evidence presented to the courts. The mobile phone records show that the five accused had called one another 75 times in the hours before the disappearance of Mr. Somchai on March 12 2004. By contrast, they had called one another rarely in the days before and after that. The calls were also made from areas close to where Mr. Somchai was known to have been at the time. After Mr. Somchai's car was found on March 16, the number of calls between the five suddenly increased again to more than 30 calls. The five defendants all offered incredulous and at times contradictory explanations as to why the records were wrong or they were not using the telephone at the time. There is still a wealth of information to be derived from the telephone records especially since the phone records of the fifth defendant, Pol. Lt. Col. Chadchai, the most senior of the five officers and a key figure in the alleged abduction, were not released.

vi. Eyewitnesses to the alleged abduction reversed or undermined their pre-trial statements during their testimony in court, raising questions over the methods used by the Metropolitan Police Bureau in obtaining evidence. For example, Ms. Chaweewan Yuthaharn was shown a video of the defendants during the investigation and according to records she positively identified the first defendant, Pol. Maj. Ngern Tongasuk, and the fourth defendant, Pol. Sgt. Rundorn Sitthiket. But in court she became hesitant and could no longer recognise him. This pattern was repeated with two other eyewitnesses: specifically Ms. Kamolthip Phromthawee and Ms. Sunan Kongkem. Whenever the prosecution requested the eyewitnesses to take a look at the accused, they quickly replied that they had not seen any of them. But by contrast, when asked about their memories of Mr. Somchai, the witnesses replied that the person they saw abducted was Mr. Somchai.

vii. There is no evidence of any investigation into who ordered the five accused or other persons to abduct Mr. Somchai. It is widely accepted that whoever was responsible for the carrying out of the abduction, they were acting on instructions from a superior or superiors. The AHRC are not aware that any further investigations were conducted other than the five accused in the case, to link them to others in the chain of command that may have been responsible for giving orders. At various stages, senior figures in the government have reportedly made observations on what they have heard about the abduction. The wife of the victim has herself stated that the prime minister told her that her husband was taken to Ratchaburi Province. There has been no attempt to investigate senior government figures and identify their sources of information, or other reported evidence linked to the abduction to persons in positions of authority. Nor were any senior police officers called to testify in the court for this purpose.

Moreover, the case for the prosecution has been undermined by the constant changing of the public prosecutor. The prosecution was assigned the case on 8 June 2004 and a Committee Working Group consisting of senior legal experts took up the case. The case was divided up so that each senior expert was responsible for a certain day. Due to the continuous system of the case, sometimes when the Mr. Somchai case was scheduled to be heard, the time clashed with other cases the senior experts were representing. However, the prosecution gave priority to the other cases. Thus, some experts were not able to attend the Mr. Somchai trial and were replaced by others. This explains the fact that on several occasions, AHRC court observers noticed that a new prosecutor would be present and would know very little about the case. For example, in the afternoon of 3 November 2005, the previous public prosecutor, Mr. Sompong, was absent therefore a new public prosecutor came instead. He had never handled the case and requested that the trial be postponed so that he could read through and know the case. However, the judge did not allow this and only gave the prosecutor 20 minutes to prepare. This speaks to the little importance that the public prosecution office gave to the Mr. Somchai case and the inequality of arms that existed in this trial since the same defence was involved in the case from beginning to end.

The AHRC was concerned over this disparity and therefore sent letters to the relevant authorities urging them to ensure that the public prosecutor's office stops replacing the public prosecutor.

Evidence

The main source of evidence came in the form of witnesses both for the prosecution and for the defence. However, what was apparent in the trial was that many prosecution eyewitnesses' testimony in court was different to their statements during the inquiry stage. For example, Ms. Chaweewan Yuthaharn was shown a video of the defendants during the investigation and she stated that they were probably the same persons she saw when the kidnapping took place. But when it came for her to testify in court, she became hesitant and could no longer recognize the defendants. A similar occurrence was seen when Ms. Kamolthip Phromthawee, Ms. Sunan Kongkem and Mr. Adirek Yimwadee gave their testimonies. Whenever the prosecution requested the eyewitnesses to take a look at the accused, they quickly replied that they had not seen any of them. But by contrast, when asked about their memories of Mr. Somchai, the witnesses have all confidently and quickly replied that the person they saw abducted on March 12 2004 was Mr. Somchai. It is puzzling how the witnesses cannot recognise some of the perpetrators even when they were standing next to Mr. Somchai. This indicates to us that the witnesses could be subjects of threats and intimidations by the defendants or their associates. This is evidenced by the testimony given by Pol. Maj. Thinnakorn Kesornbua of Metropolitan Police Bureau Division 6 who was in charge of compiling the mobile phone records of the five defendants, who stated that he was threatened during his investigation process.

The vulnerable situation that the key witnesses and eyewitnesses were in gave grave concern for the AHRC and letters were sent to the relevant authorities asking for protection to be offered to the witnesses.

It is very important that protection is offered to witnesses, especially eyewitnesses or else if they suffer from intimidation then they will not accurately give an account of what they saw. Thus, the guilty parties are able to escape accountability. A lot of weight is placed on an eyewitness' testimony since they are the ones who saw the incident occur, in this case, the main reason that defendant 1 was convicted was due to the eyewitness testimonies of Ms. Chaweewan and Mr. Adirek Yimwadee. They had described one of the perpetrators which had a similar appearance to defendant 1. If the other eyewitnesses had the courage to point out the other perpetrators then the other defendants could be found guilty.

Detailed observations concerning the situation of witnesses in the Somchai trial were made in a report on witness protection in Thailand by a report of the Asian Legal Resource Centre in June 2006 (Protecting witnesses or perverting justice in Thailand, *article 2*, vol. 5, no. 3, online: www.article2.org).

Given the problems associated with witnesses as a form of evidence, more emphasis should be placed on forensic evidence. This was the approach of the prosecution, who during the trial, presented evidence relating to the location and time of mobile phone calls made by Mr. Somchai and the five defendants. The phone evidence was interpreted to charge that the five accused had correlated with each other in trailing the movements of

Mr. Somchai throughout the day of his abduction; the calls ceased with his abduction, and resumed between the accused a few days later when the abandoned car of Mr. Somchai was discovered by police.

This was the first time that telephone usage had been used as a form of evidence, and it also revealed that the Thai courts were not sufficiently accustomed or trained to digest such evidence. It was clear that the judge himself had difficulty grasping the meaning of the evidence and at one time retired from the court to study the matter in his own quarters. The inexperience of the Prosecutor and police in handling such evidence also led to difficulties. A major problem was the understanding that mobile phone records rested on highly abstruse communications technology which only an expert in electromagnetic communications could interpret. In fact, interpretation of the evidence rests largely on an arrangement of records and is a task of book-keeping rather than technological understanding.

Thus, little weight was placed on the phone documents as a form of evidence. The mobile phone evidence was not taken into consideration in arriving at a verdict. The reasons given were that the record of phone calls produced in court was not an original record, but a photocopy. The document also included some marks, evidence of erased areas, and some records were missing. The police enquiry officer presenting the phone evidence was not a telephone analysis expert witness and could not clarify issues raised by the defence relating to the repetition of some numbers or the presence of double records for the same minute.

This is unfamiliar territory for both the court and the lawyers, therefore greater steps should be made to understand the evidence at hand so that it can be used to its full potential.

The Nature of Mobile Phone Records

(Taken by document prepared by Danthong Breen, Union for Civil Liberty, Thailand, in appendix)

Call Data Records (CDRs) are produced every time a user makes a call or sends a SMS message. The CDRs are produced in the switch where the call or message originates. CDRs are then gathered in a centralized database and used for billing and other purposes. Each CDR contains the following:

- Originating number (A-Number)
- Terminating number (B-Number)
- Originating and terminating mobile equipment number
- Time and Length of call
- Initial serving Base Station

CDRs can be filtered on any of the above parametres. This means that one can not only obtain a list of all calls made to/from a certain SIM, but also to/from a certain phone, regardless of which SIM was used. By looking at the serving Base Transceiver Station,

the location of the subscriber can be pinpointed to the accuracy of a cell at any time the subscribers sends or receives a call or a text message. Such information certainly has great evidentiary value.

Legal Authorities may obtain CDR information from network providers. Such information may be used in various types of criminal investigations. The CDR information is usually delivered to the authorities according to defined search criteria. These can for example be all calls originating from a certain number, or all calls tied to a certain base station. The latter may be useful for instance in a homicide investigation, where one wants to determine who has been in a certain area at a certain time.

The amount of information resulting from such a search can be vast. As exemplified in the Somchai Neelaphajit case, problems may arise in combining data supplied by different network providers when phone records of several phones are correlated. It is necessary to indicate unanswered calls and a conflict of calls made at the same time. There exist tools for organizing large amounts of data and extracting valuable information. It is not a matter of extensive professional knowledge relating to the phone medium itself. A witness presenting the evidence need not be familiar with the theories of electromagnetism which underlie the technology. We do not require a librarian who presents evidence about the reading selection of an accused to be proficient in the techniques of printing or bookbinding. The analysis begins from the records and their arrangement in a relevant order. The physical dimensions of the phone cells through which the calls are relayed are known and can be referred to where necessary. It is not necessary to enter into details of antenna height and the like. No system is perfect and the location of an individual call may be queried. But the locations of a large number of calls can be made with the overwhelming probability which suffices in all areas of knowledge. Ordering the times and locations of calls to track a victim or suspect is akin to the task of accountancy in making sense of a multitude of individual purchases and sales at various locations to produce a coherent financial report.

The analysis of mobile phone evidence has become as important an area of forensic analysis as fingerprint and DNA analysis. Police who use the tool of phone record analysis have learned by experience the methods of presenting such evidence. Computer tools have been evolved to analyse the data, the most renowned tool for such analysis being Analyst Notebook. It is necessary that the Prosecutor's Office take account of the complexity of the method and use the services of professionals to instruct in the use and preparation of evidence which must be presented before a court. It became evident in the Somchai trial that the policeman assigned to assemble the phone evidence had undertaken the task with honesty and diligence, but that he lacked the experience to eliminate ambiguities in the data and to present them with the full conviction of which this powerful tool is capable. It is also certain that a great wealth of information is still contained in the data concerning the identities of others involved in the conspiracy to abduct Somchai. It is a tragedy if this information is allowed to lie undisclosed.

Reform

Currently both the defendant and the plaintiff are appealing therefore, a careful consideration of the possible reforms or changes of the judicial system in order that Thailand adheres to her international obligations.

Proportionality

In ethics and law, “Let the punishment fit the crime” is the principle that the severity of penalty for a misdeed or wrongdoing should be reasonable and proportional to the severity of the infraction.

Mr. Somchai was abducted and since his body cannot be found, there is a very high possibility that he is dead. According to the above principle of proportionality, the perpetrators should be charged with murder. According to section 288 of the Criminal Code of Thailand:

“Whoever, murdering the other person, shall be imprisoned by death or imprisoned as from fifteen years to twenty years”.

However, in the Somchai case, the perpetrators were only charged with gang robbery, the maximum punishment being imprisonment for twenty years. This was because the body of Mr. Somchai could not be found, and therefore there was lack of evidence for murder. But the charge, and the subsequent sentencing of defendant 1 for three years imprisonment is not reflective of the severity of the crime.

Therefore, in order to provide redress for the victim and his family, and to adhere to the principle of ‘letting the punishment fit the crime’, Mr. Somchai’s abduction should be labeled as a ‘forced disappearance’ under international law.

A forced disappearance occurs when an organisation forces a person to vanish from public view. The victim is first kidnapped and then illegally detained, often tortured and finally executed and the corpse hidden. Typically, a murder will be covert, with the body disposed of in such a way as to never be found. The person simply vanishes, as in the case of Mr. Somchai. According to article 7 of the Rome Statute of the International Criminal Court, which Thailand has signed but has not ratified yet, “forced disappearances” qualify as a crime against humanity and thus there is universal jurisdiction to bring the perpetrators to justice.

In order to bring the perpetrators of Somchai’s abduction to accountability and justice, Thailand must ratify the Rome Statute so that the international provisions are incorporated into the law of Thailand.

Admissibility of evidence

A problem with the Somchai case was the fact that the newly introduced admissibility of evidence laws were not applicable. In December 2004, there was a change in Thai law so that new evidence could not be submitted during the trial, all evidence has to be reviewed and decided before the trial begins. This adheres to the principles of equality within a fair trial because it prevents the defence from introducing evidence in the middle of the trial. Such action is detrimental to a fair trial because it does not give the prosecution the chance to access the evidence admitted by the defence or contest its admissibility. The Court of Appeal must adopt the new admissibility laws on evidence in order to prevent inequality in the justice system.

Another issue that needs to be addressed is the admissibility of the eyewitness statements. The problem with their evidence is that their statement during the inquiry stage is different from their testimony during the trial. In the former, the eyewitnesses are confident in their identification of some of the defendant, but during the trial, they become reluctant to point out the defendants. Therefore, how can their evidence be considered as reliable? According to admissibility rules, it is up to the discretion of the judge whether to accept the testimony during the inquiry stage or during the trial. However, in this case, a conviction mainly based on eyewitness' testimony that could not be repeated during the trial will give grounds for an appeal by defendant 1 and could be grounds for an acquittal. Therefore, the prosecution must get in contact with the witness protection office, to ensure that the witnesses are adequately protected. This way they would not feel intimidated by the defendants and be able to confidently point out the defendants whom they saw on the night of Mr. Somchai's abduction, during the trial.

Improvement of telephone evidence

The telephone evidence in this case is of paramount importance because it has the potential of placing the defendants in the location where Mr. Somchai was abducted. However, currently the judge has placed very little weight on the telephone documents as evidence. This is because currently there are many disparities that the witness could not explain. For example, there were marks on the documents as if someone had erased some information, and some numbers were repeated with the same time, but the witness could not explain why. A large reason for the doubt over the telephone evidence is due to the witness who had tried to explain the contents of the documents. He was not an expert in telecommunications and could not explain the anomalies that appeared. If an expert was hired then he could explain and persuade the judge that the telephone evidence is in fact a very reliable piece of forensic evidence.

A further factor that could boost the reliability of the telephone evidence would be for the investigating police officers to visit the locations where the defendants said they were and verify their alibis. The investigating police in the Somchai case had failed to visit the locations that each defendant said they were at and try to find witnesses to support the defendants' statement. The majority of the defence witnesses to support the alibis of the defendants are police officers. This is very problematic because there is a probability that

the witnesses are corroborating with the defendants in order to be their alibis, the reality of the situation could be that the witnesses never saw the defendants that day at all. But, due to the lack of investigation by the police officers, there is no evidence to support this line of thinking. If it were true though, then the defendants would not have an alibi and then the accusations that the defendants were the perpetrators who abducted Mr. Somchai would be very probable.

Conclusion

The Somchai Neelaphajit case is the first of its kind in the Thai criminal justice system. In Thailand, state officials are in a privileged position whereby even if they commit any wrongful acts they generally enjoy immunity from the criminal justice system. Due to this, state officials, in particular law enforcement officials have abused their positions of authority. Many Thai people accuse these officials of being corrupt and guilty of alleged acts of torture. But, in the past there have been very few avenues of redress of victims of abuse, until the Somchai case. The Somchai case is the first criminal case where state law enforcement officials have been indicted for a crime, and one of them has been charged. It is landmark case in terms of offering solidarity for all victims of torture or abuse from state officials to come forward and complain against their perpetrators.

However, there are many flaws in the Somchai case which negates from the international doctrine of a 'fair trial', the case is still dominated by the defence and the defendants, given their positions of authority in society are able to exert a certain amount of influence against other police officers, state officers, and the witnesses, especially the eyewitnesses who feel intimidated and threatened by the defendants. This has resulted in an inequality of arms and has been detrimental to the case for the prosecution, meaning not all the guilty have been made accountable in this case. It is the hope of the AHRC and of the many human rights defenders concerned with the justice system in Thailand, that the reforms set out above will be achieved in order for justice to be served on the guilty parties, not just in this case but also in future cases.

APPENDIX I: ISSUES CONCERNING MOBILE PHONE EVIDENCE

– Danthong Breen, Union for Civil Liberty, Thailand

On 12 January 2006, judgement was given in Bangkok Criminal Court on the case relating to the abduction of Somchai Neelapaijit. The charge against five accused was one of conspiracy to steal items belonging to Mr. Somchai, namely a car valued at 600,000 baht, a Rolex watch valued 277,560 baht, a Mont Blanc pen valued at 7,000 baht, and a Motorola mobile phone valued 18,900 baht; a total of 903,460 baht.

The case against the accused depended on the account of witnesses who had seen the abduction of Mr. Somchai on Ramkamhaeng Road at 8.30pm on 12th March 2003 and on extensive records of mobile phone calls made by Mr. Somchai himself and on phones belonging to the five accused.

One of the accused was identified by a witness as one of those who had carried out the abduction. The identification was made during police interrogation but retracted during the court proceedings. However, the judge accepted the original identification as a basis to condemn the accused to four years imprisonment.

During the trial, evidence relating to the location and time of mobile phone calls made by Somchai Heelapaijit and the five defendants was presented over a five day period. The phone evidence was interpreted to charge that the five accused had correlated with each other in trailing the movements of Somchai throughout the day of his abduction; the calls ceased with his abduction, and resumed between the accused a few days later when the abandoned car of Somchai was discovered by police.

The mobile phone evidence was not taken into consideration in arriving at a verdict. The reasons given were that the record of phone calls produced in court was not an original record, but a photocopy. The document also included some marks, evidence of erased areas, and some records were missing. The police enquiry officer presenting the phone evidence was not a telephone analysis expert witness and could not clarify issues raised by the defence relating to the repetition of some numbers or the presence of double records for the same minute.

In introducing the evidence from mobile phone records the Prosecutor claimed that this was the first occasion that such evidence was presented to a Thai court. It was clear that the judge himself had difficulty grasping the meaning of the evidence and at one time retired from the court to study the matter in his own quarters. The inexperience of the Prosecutor and police in handling such evidence also led to difficulties. A major problem was the understanding that mobile phone records rested on highly abstruse communications technology which only an expert in electromagnetic communications could interpret. In fact, interpretation of the evidence rests largely on an arrangement of records and is a task of book-keeping rather than technological understanding.

The conviction of the accused on witness evidence that could not be repeated in court is likely to be questioned in an intended appeal with every chance of annulment. Meanwhile the vast quantity of evidence contained in mobile phone records remains a point of issue. Presumably, procedural issues such as the submission of a direct computer print out of the record, and the necessary signatures to every page can easily be corrected in an appeal hearing. But there remains the problem of dealing with an unfamiliar technology and understanding both its scope and its limitations. The present article is written to present examples of use of the technology, primarily in India and the UK, to allow assessment of a form of evidence which is now widely accepted and to illustrate the uses to which it may be put. Concluding remarks will draw conclusions for use of the evidence in the case relating to Somchai Neelapaijit.

1. The Gujarat Killings

The value of mobile phone records in revealing the details of criminal conspiracy are dramatically illustrated in an investigation into horrendous racist riots which took place in Gujarat in 2002. Police investigation had failed to identify culprits and as analysis revealed, the police themselves were among the culprits. All legal proceedings arising from the killings were dismissed 'for lack of evidence'.

The state of Gujarat lies in the West of the Indian continent, open to the Arabian Sea and sharing a border with Pakistan. In Naroda Gaon and Naroda Patiya on the outskirts of Gujarat's largest city, Ahmedabad, there lived about 1000 daily wage earning Muslims. On 28th February 2002 there occurred a horrendous massacre. A raging Hindu mob of 5,000 to 10,000 attacked the villages, screaming "Burn the Muslims alive". There followed events without equal in the history of human depravity; 83 were killed, many burned alive. Witnesses told of the inactivity of police and 2100 riot cases brought against the perpetrators were eventually closed as witnesses feared to testify in court. Those accused of instigating and leading the riots were able to claim that they were elsewhere at the time. Police and government officials denied that they were aware of what was happening throughout the day and during a full five days of the worst communal violence in recent history. Two years passed and the crimes were no longer a legal issue. Police ignored two computer discs containing records of 500,000 phone calls made from February 25 to March 4, 2002 in the city of Ahmedabad. The calls listed included calls made by and to the key riot accused, top police officers, including the police commissioner, top government officials, and even the Chief Minister's Office, while Naroda burned.

Analysis of the phone records made by reporters of the Indian 'Sunday Express' provide a convincing example of the power of mobile phone evidence, drawing on the fact that the record of each call includes cell phone tower location identifying the physical location of the caller and the person at the other end. A summary of the analysis displays the extent of the conspiracy which lay behind the riots.

Charges of involvement against pathologist Jaideep Patel, general secretary of Vishwa Hindu Danshed were dismissed for lack of evidence. However phone evidence showed

that Patel was in Naroda when the massacre began. He left for Bapunagar where killings also occurred, and later returned to Naroda. On the previous day, 27th February, Patel had been in continual phone contact with police, party and state officials. At 11.58 pm he brought 58 persons killed in coach S6 of the Sabormati Express to Ahmedabad.

On February 28th the Ahmedabad erupted. At 10.30am attacks began on a Muslim neighbourhood. By evening 38 persons had been burned alive despite frantic phone calls for help. The worst massacre took place in nearby Naroda Patiya where attacks began at 11 am. Fires burned for nine hours. 83 men, women, children were killed, most being burned alive. By midnight of that day the death toll reached 125. Maya Kodneni was the Bharatiya Janata Party MLA from Naroda. On the day of the massacre she claimed to be working as a practicing gynaecologist in Narodna one kilometre from the site of the massacre. A legal case against her was closed for lack of evidence. In contradiction to her claim to be elsewhere her phone record showed that she was at the site of the massacre at 12.30pm and that she was in continual contact with those accused, with police officers, and top politicians.

P. B. Gandia was the District Police Commissioner in both areas. Cellphone records show that he spent a lot of time outside his jurisdiction in areas that reported little violence. He claimed that he came to know of the violence only at 9.30pm on February 28th, 2002. However his phone records show that he was in constant touch with the riot accused, including Patel and Kodneni. From 2.30pm to 9pm he was in regular contact with two police officers located at the site of the massacres. He also received calls from the Chief Minister's Office, police and Ministry officials throughout the day.

Joint Commissioner of Police of Ahmedabad, M. K. Tandon was in charge of areas where the worst two massacres took place. He claimed that he had been unaware of the events as they occurred, suggesting that jammed telephone lines were to blame. But his cellphone records reveal that he too was constantly in touch with the police officers in direct charge of the riot-hit areas. Tandon refused to comment on the cellphone evidence. Former Congress Member of Parliament Ehsan Jafri was burned alive with 37 others in Gulborg Society on 28th February 2002. Cellphone records show that Jafri called for help to a party colleague who in turn phoned the Director General of the police, the Police Commissioner, the city's mayor, and the leader of the Opposition. But Gulberg continued to burn. Phone calls between police, officials, and riot instigators continued throughout the day.

The network of conspiracy behind the Gujarat massacres is clearly revealed by the cellphone records. It is unlikely that judicial proceedings and punishment will follow when government officials, police, politicians, and prominent civilians are all implicated. One can only hope that one day the case may come before the International Criminal Court where justice known may also become justice done. Meanwhile the value of an analysis of phone records is clearly exemplified. Of course as the technique becomes known the perpetrators of such crimes will be warned. But if criminals cannot avail of mobile communications the crimes which depended on continual networking between the perpetrators cannot reach the same scale as before.

2. The nature of mobile phone records

Call Data Records (CDRs) are produced every time a user makes a call or sends a text message. The CDRs are produced in the switch where the call or message originates. CDRs are then gathered in a centralized database and used for billing and other purposes. Each CDR contains the following:

- Originating number (A-Number)
- Terminating number (B-Number)
- Originating and terminating mobile equipment number
- Time and Length of call
- Initial serving Base Station

CDRs can be filtered on any of the above parameters. This means that one can not only obtain a list of all calls made to/from a certain SIM, but also to/from a certain phone, regardless of which SIM was used. By looking at the serving Base Transceiver Station, the location of the subscriber can be pinpointed to the accuracy of a cell at any time the subscribers sends or receives a call or a text message. Such information certainly has great evidentiary value.

Legal Authorities may obtain CDR information from network providers. Such information may be used in various types of criminal investigations. The CDR information is usually delivered to the authorities according to defined search criteria. These can for example be all calls originating from a certain number, or all calls tied to a certain base station. The latter may be useful for instance in a homicide investigation, where one wants to determine who has been in a certain area at a certain time.

The amount of information resulting from such a search can be vast. As exemplified in the trial of Somchai Neelapaijit, problems may arise in combining data supplied by different network providers when phone records of several phones are correlated. It is necessary to indicate unanswered calls and a conflict of calls made at the same time. There exist tools for organizing large amounts of data and extracting valuable information. It is not a matter of extensive professional knowledge relating to the phone medium itself. A witness presenting the evidence need not be familiar with the theories of electromagnetism which underlie the technology. We do not require a librarian who presents evidence about the reading selection of an accused to be proficient in the techniques of printing or bookbinding. The analysis begins from the records and their arrangement in a relevant order. The physical dimensions of the phone cells through which the calls are relayed are known and can be referred to where necessary. It is not necessary to enter into details of antenna height and the like. No system is perfect and the location of an individual call may be queried. But the locations of a large number of calls can be made with the overwhelming probability which suffices in all areas of knowledge. Ordering the times and locations of calls to track a victim or suspect is akin to the task of accountancy in making sense of a multitude of individual purchases and sales at various locations to produce a coherent financial report.

The analysis of mobile phone evidence has become as important an area of forensic analysis as fingerprint and DNA analysis. Police who use the tool of phone record analysis have learned by experience the methods of presenting such evidence. Computer tools have been evolved to analyse the data, the most renowned tool for such analysis being Analyst Notebook. It is necessary that the Prosecutor's Office take account of the complexity of the method and use the services of professionals to instruct in the use and preparation of evidence which must be presented before a court. It became evident in the Somchai trial that the policeman assigned to assemble the phone evidence had undertaken the task with honesty and diligence, but that he lacked the experience to eliminate ambiguities in the data and to present them with the full conviction of which this powerful tool is capable. It is also certain that a great wealth of information is still contained in the data concerning the identities of others involved in the conspiracy to abduct Somchai. It is a tragedy if this information is allowed to lie undisclosed.

3. Examples of mobile phone record evidence in legal trials

3.1 The Soham murders

Holly Wells and Jessica Chapman were both ten years old when they went together in the evening of August 4th 2002 to go to a local shop in the English village of Soham. When they did not return an intense search began for them. Among those who came forward to report having sighted them was Ian Huntley, caretaker at Soham Village College. His agitated testimony aroused police suspicions and searches of his house revealed burned fragments of the shirts worn by the girls. Later the bodies were found in a woodland near the house of Huntley's father. However, Huntley had an alibi; his girlfriend Maxine Carr asserted that she had been with him at all times during the evening of August 4th. The case is an example of the use of mobile phone records to convict a murderer.

The first breakthrough linking Huntley directly to the girls came from the record made when a mobile phone carried by Jessica Chapman was switched off. When a mobile phone is switched off the process is recorded by the cell site mast providing the last signal. A police map showed the route the girls would have taken to the shop and examination of the mobile phone record revealed that the only place where the switch off could have registered on the cell site listed in the record, was inside or just outside Huntley's house. Such precision in locating the source of a call is made possible by the tendency to use smaller transmitters that cover small areas, often no more than 100 metres at a time. Faced with this evidence Huntley admitted that the girls had entered his house but claimed they had died in a bizarre accident.

The evidence of Maxine Carr who had provided an alibi for Huntley was discounted when records of her mobile phone use showed that she was visiting her mother on the evening of August 4th at a location 100 Kms away from the scene of the murder. This evidence also cleared her of direct involvement in the murder. Further phone evidence of Huntley's own phone use after the murder showed his movements in and around Soham, including his visit to a garage which replaced the unworn tyres on his car. Despite such efforts to eliminate evidence of taking the bodies to burial in the woodland, traces of fibres were found in the car and elsewhere leading to Huntley's conviction for murder.

Maxine Carr was imprisoned for four years on a charge of impeding justice by her false testimony. Mobile phone records were crucial in revealing the part which each had played.

3.2. The Omagh bombings

On 15 August 1998 a car bomb was detonated in the town of Omagh, Northern Ireland. 31 people died and a further 300 were injured. A dissident group known as the Real IRA admitted responsibility. A wealthy pub owner and builder, Colm Murphy, was convicted by Dublin's Special Criminal Court in Ireland of conspiracy to cause the explosion. The conviction of Murphy depended on mobile phone evidence and admissions made during police interrogation. He had lent his own mobile phone and another borrowed from a relative to a high ranking figure in the Real IRA. The two phones were tracked in mobile phone records on a journey from a location in the Irish Republic to Omagh and back again on the day of the bombing. Both phones were used in Omagh and the explosion took place fifty six minutes after a second call. The prosecution also revealed that Mr. Murphy's phone was active at the site of another explosion two weeks earlier in which 38 persons were injured.

The conviction was later quashed on appeal that police had falsified the text of admissions made by Murphy during interrogation and a retrial was ordered. The case became complicated by the claim that the Northern Ireland police had not acted on three warnings given before the explosion with some details of location and timing of the bomb. It was suggested that failure to act on the warnings followed from a need to protect two British agents who had penetrated the Real IRA. This kind of complexity attaches to many trials relating to militant activity in Northern Ireland. The mobile phone evidence was not contested illustrating the factual value of such evidence over live witness but also illustrating that mobile phone evidence is hardly sufficient in itself to gain a conviction. A retrial has not yet taken place.

3.3 The Prada Boys

In November 2003 telecoms evidence was crucial in the conviction of five London robbers, nicknamed the Prada Boys, who targeted the rich to fund their liking for designer clothes and shoes.

In a series of violent robberies, the gang followed its victims home, threatened them at knifepoint and made off with watches and jewellery worth £2 million. Their victims included George Kirya, high commissioner of Uganda, and Lady Homa Alliance, who was told she would have her fingers cut off if she did not give them the code to her safe. But one mobile phone call received by a member of the gang as they carried out the raid, proved to be its downfall.

Lady Alliance memorised the number, while she was being held, from the gang member's mobile and Met detectives employed the services of a telecommunications cell site expert who reviewed 40,000 mobile phone calls made by the gang members.

The expert was able to place the gang at the scene of 12 aggravated burglaries across London. At Harrow Crown Court in November last year, the Prada Boys received sentences totalling 45 years as a result.

3.4 The Essex Boys

While mobile phone evidence is routinely used by the police when linking people to crimes it may also be a useful tool for those trying to prove their innocence.

In 1998 Jack Whomes and Mick Steele were jailed for life for the murder of three Essex gangsters who were found shot dead in a Range Rover parked in a quiet lane near the village of Rettendon, Essex, England.

A supergrass {police informant}, Daren Nicholls, who claimed to have been the getaway driver, told the trial Whomes had phoned him from the lane after the killings. The two men were convicted wholly on the evidence of the informant who was a drug dealer with convictions for dishonesty. He had sold the rights of his story to a TV channel for 10,000 to 15,000 pounds, and admitted to another police informant that his story was all lies.

David Bristowe, an expert witness on mobile phones who had already given evidence in the Soham trial, has examined the evidence for the crucial phone call which Nicholls claimed he received. Using Whomes own mobile phone he made sixty calls at various places in the lane and not one of these was routed through a cell site at a place called Hockley, as the prosecution had claimed for the phone call received by Nicholls. Whomes claimed that he had phoned Nicholls from a carpark more than a mile away where he was picking up a broken down car belonging to Nichols. Bristowe made 20 trial calls from this location and more than one third of them connected via the Hockley transmitter.

On appeal, the sentence against Whomes and Steele has been upheld. The two still vehemently protest their innocence and their lawyer is bringing their case to the House of Lords and, ultimately, to the European Court of Justice. Convinced of their innocence he provides the legal service free.

The case shows the difficulty of presenting complex phone evidence in a case where trial is by jury, but also the required diligence in the case of the expert witness who has experimented extensively with the actual mobile phone used and in the locations involved in the evidence. Legal opinion is very suspicious of the evidence given by Nichols who was freed from his drug conviction in recompense for his testimony and which he only offered when he had been arrested with 10 Kg of cannabis four months after the murders took place. The demands for justice in the case continue, backed by the new phone evidence submitted by an expert.

4. Summary

Mobile phone records have become a key element of virtually every major criminal case and often prove more valuable than DNA or fingerprint evidence. In the past five years dozens of murderers have been convicted as a result of evidence about their mobile phones or those of the victims. Detectives routinely contact mobile phone networks and obtain details of phone calls made by and to a murder victim from prime suspects. The cooperation of phone companies often remains ambiguous and clear legislation is required in each country to legalize the request for records and their provision in cases of criminal charge. Companies should be required to keep mobile phone records for at least two years.

Most organized criminals are aware of the dangers of being tracked by their mobiles. Professional drug dealers and armed robbers often buy pay-as-you-go phones as they plan a crime and dispose of them immediately afterwards. Others attempt to establish alibis by sending an accomplice with their phones to a distant place to make calls proving that the owner was not present at the scene of a crime. But the increasing availability of mobile phones and their ready use can still provide a net to catch the guilty and exonerate the innocent.

What becomes clearer is the complexity of record evidence. The investigation of a single crucial call in the Essex murder case required extensive experimentation by a forensic engineer. By contrast, the analysis of 40,000 calls in the case of the Prada Boys seems to have been relatively straightforward. Phone evidence in the case of the Soham murders played an essential role in leading the police to Huntley and in denying his alibi. Details of the evidence required the intervention of a forensic expert. Other cases, the Ohmagh bombing and the Essex boys are still ongoing. In each the mobile record evidence is necessary but not sufficient, illustrating a principle that mobile phone evidence is often essential to conviction but not sufficient in itself.

5. The Somchai Case

I believe that the mobile phone records available to the Somchai case can be the basis of firm evidence against the five accused. The fact that the evidence was not accepted by the court relates to unfamiliarity with this form of evidence and the negligence of the prosecution in not taking account of the difficulties which arose in the presentation. It is incredible that a team of prosecutors and a supporting team of solicitors were not aware of the need to present unaltered, original, and properly signed documents. Difficulty in the proper presentation of the data is certainly due to inexperience; similar difficulties occurred in the courts of other countries where successful objections were raised by defence counsels. As this form of evidence has become of such importance it is imperative that training be provided for prosecutors, lawyers, and the police in its use. In the case of the Somchai abduction there is no alternative but to hire a competent expert from abroad to represent the evidence. The correlation of calls to and from six different mobile phones over an extended period is complex. It must be handled by an experienced person using known tools of analysis. While the mobile phone cell size in Bangkok may

still be larger than elsewhere, mapping of roads within the cell area will allow sufficiently precise locations to be determined. The difficulties with timing, overlapping of calls etc. are likely to be minor and may be satisfactorily explained, we are dealing with probability beyond doubt rather than with mathematical certainty.

The case of Somchai Neelapaijit is of immense importance to Thailand and its human rights reputation. The records contain other information which has not yet been revealed. Apart from assuring conviction in a retrial of the five accused it is most likely that the conspiracy which lies behind the abduction and the involvement of higher authority will be revealed. The game is certainly worth the candle!

APPENDIX II: DSI MUST PROMPTLY & ASSERTIVELY ANSWER THE QUESTION: "WHERE IS SOMCHAI?"

– A statement by the AHRC, 2 December 2005, AS-123-2005

December 1 was the last day in the trial hearings at the Bangkok Criminal Court over the alleged abduction and subsequent disappearance of human rights lawyer Somchai Neelaphaijit by five police officers last 12 March 2004. The judgment is scheduled to be given on January 12. Whatever the outcome on that day, the basic question, "Where is Somchai?" remains unanswered.

Angkhana Neelaphaijit, the wife of the disappeared lawyer, was not in the court on that last morning. Instead she was meeting with the Justice Minister of Thailand, Police General Chidchai Wanasatidya, to complain about the lack of progress in the continued investigation into her husband's disappearance by the Department of Special Investigation (DSI), which on July 19 was given the task of answering that question. According to Angkhana, she herself has heard nothing from the DSI, and fears that it is not doing its job.

Many high expectations now rest with the DSI. The department, which is under the Justice Ministry, is the only one in Thailand not under direct control of the police with the authority to investigate and commence prosecutions in criminal cases. It is in effect the de facto agency for investigating serious complaints against the police in Thailand.

Unfortunately, the DSI does not have such a good record. Take the murder of prominent environmentalist Charoen Wat-aksorn in June 2004. The killer has reportedly said that he killed Charoen due to a personal dispute: the wife of the victim has complained that the DSI has been unable to produce evidence to tie him to the alleged masterminds of the murder. Then there is the death of Phra Supoj Suwajano a year later: the DSI is said to have come up with nothing, despite having been assigned to the case shortly after the monk was slain. And most recently, Ekkawat Srimanta, the victim of heinous genital torture by the police in Ayutthaya, withdrew his civil case, apparently after reaching an agreement with the perpetrators, saying that it was all a "misunderstanding": it is not known whether or not the DSI is proceeding with its inquiries into that incident.

In an attempt to encourage greater initiative by the DSI in the case of Somchai Neelaphaijit, the Asian Human Rights Commission (AHRC) today wrote to its director-general, Police General Sombat Amornvivat. In its letter, the AHRC requested that the DSI pay special attention to several key issues that have arisen during the trial of the five policemen. The AHRC has had observers present in the court throughout the trial, and has based its comments to the DSI on what these persons have seen and heard.

And from what they saw and heard, the metropolitan police investigation was bungled from the start. Investigators failed to collect and properly analyze all available evidence that could answer questions about the abduction, did not follow correct procedures and

allegedly coerced and intimidated witnesses into giving testimonies. As a result, the following questions are still unanswered, despite weeks of testimony before the court.

1. What car was used to abduct Somchai?

Eyewitness statements vary. No attempt appears to have been made by the police to cut through the confusion and positively identify the vehicle. As a result, a key piece of evidence has been neglected.

2. Did the police investigators follow procedure?

There seem to have been many irregularities in the collecting and recording of eyewitness testimonies. Eyewitnesses were not taken to the crime scene to go over their statements, apparently because they were too afraid. As a result, different facts came out in the court, and eyewitnesses were easily confused. Two eyewitnesses said they signed documents without reading them. They also complained that they were not told that they would have to testify in court and had come against their will. Some police investigators said that that they were given only oral orders to conduct investigations, which explained why their names were not on investigation records. The defence attorneys alleged that the police investigators did not follow proper arrest procedures. One defendant accused them of forging documents, although his accusation was not substantiated.

3. Do the defendants really have alibis?

Media reports of the trial suggested that they do, but observers in the court felt that the appearance of alibis was due mainly to the failure of the police to properly investigate the defendants' stories. Much more could have been done to search for all details of the defendants' whereabouts on and after March 12 and determine if they were telling the truth or not.

4. Where was the forensic science?

Only Police Major General Chuan Vorawanich, commander of the Scientific Crime Detection Division, testified on the findings of forensic tests. A few hairs and fingerprints, which didn't reveal anything, were all they found he said. However, hairs were unidentified, evidence could have been removed, and questions remain over having police forensic scientists investigate a crime alleged to have been committed by other police. The Central Institute of Forensic Science under the Justice Ministry also investigated the scene and the victim's car, but no one from that agency appeared in court.

5. What about the phone records?

The strongest prosecution evidence produced was the mobile phone records of the five defendants. The court heard how investigators were able to obtain the lists of phone calls that had been made and establish that in the hours before Somchai was abducted the defendants called one another 75 times from areas close to where the crime occurred. By contrast, they rarely called one another in the days before and after. When Somchai's car was found on March 16, the number of calls suddenly increased to more than 30. The court heard telephone company representatives explain that these records are 99 per cent accurate. However, the five defendants produced convoluted and confusing explanations

as to why the records were wrong: they were forged; the phone was with another person; the phone was on the desk and anyone could use it; the phone was switched off, etc.

All the talk about phone calls left observers with many more questions than answers. What about the duration of the calls? (For how long would it be possible, for instance, for someone to use a phone left on another person's desk? Five minutes? Fifteen minutes? An hour or more?) Why were there many gaps in the phone call records reported in the court? Why was the phone record of the fifth defendant, who many observers view as the ringleader of the alleged five perpetrators, not produced in the court? Why weren't all calls in and out of the defendants phones analysed and reported on? It seems that there is still a mine of information in the mobile phone records that could be dug up and used by more canny investigators.

6. Were the eyewitnesses threatened? Were investigators threatened?

The eyewitnesses all reversed or undermined their pre-trial statements during their testimonies in court. Why? Three said that they could not identify any of the defendants. One said that he couldn't identify them, that he never could, and that he had been pressured by the police investigators to say that he could. He said that he was afraid of them and so he did what they said, although he admitted to the court that he was also afraid of the defendants because they too are police.

Two police officers involved in the case also told the court that they had been threatened and intimidated by other officers during the investigation. One began telling his ordeal to the court, but was instructed to submit a written complaint instead.

7. Who ordered the abduction?

It is widely agreed that the alleged perpetrators weren't the ones to come up with the idea of abducting Somchai Neelaphaijit. Someone else did that; they took the order. So who was it? Has any attempt been made to follow the chain of command? Why weren't senior officers called to the court who could answer such questions? Have there been any interrogations of senior government figures who reportedly said that they "heard" things about the abduction. Somchai's wife has herself stated that the prime minister told her that her husband was taken to Ratchaburi Province. How did he know? Has there been any attempt to subpoena him, or the Interior Minister of the time, or anyone else who may have some sources or information that could answer these questions?

These are just a few of the questions arising out of the hearings into the abduction of Somchai Neelaphaijit. They are of course not only questions for the DSI, but questions for all institutions and concerned persons in Thailand, because they speak to deep problems in the policing, prosecuting and trying of suspects there. Somchai's story is the story of every victim of disappearance, extrajudicial killing or torture in Thailand. It is the story of every court case gone wrong; messed up due to poor police work, disinterested legal work and the absence of channels for complaints and means to obtain redress.

The role of the DSI in this case, and in all serious cases of human rights abuse that come to its attention, is captured in the closing recommendations of the UN Human Rights Committee to the Government of Thailand in July 2005 that it "should conduct full and impartial investigations into [all] such other events and should, depending on the findings of the investigations, institute proceedings against the perpetrators... [and] also ensure that victims and their families, including the relatives of missing and disappeared persons, receive adequate redress..." [CCRP.CO.84.THA, 28 July 2005, Paragraph 10]

So the Department of Special Investigation has some work to do. Almost two years have passed since 12 March 2004, and yet we are still forced to ask, "Where is Somchai Neelaphaijit?" This is intolerable and unacceptable. The Asian Human Rights Commission today again calls for widespread public support for Angkhana Neelaphaijit in her demands that the DSI at last accept responsibility for promptly and assertively bringing the perpetrators to justice for their crimes: for the sake not only of her family and husband, but for all victims of police abduction, torture and murder in Thailand.