

One Judge's Journey to Why – A Search for Meaning and Purpose

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The week had been one of those that make you question your choices in life. Monday, as always, started with my criminal docket. It was probably my attitude, but working through the 80 cases, one after another, had an impersonal, assembly-line feel to it. The day had started poorly with the People seeking to dismiss one case due to the defendant's death—one of our more promising probationers. She had one of those rare personalities that shined through her orange scrubs and silvery shackles at the podium. Though she recited the clichés of change learned in countless hours of mandated therapy, she gave you the impression she could make it. Unfortunately, this time her demon was heroin and the dose was too high. The start to this day drew me back to an all-too-familiar ground, wondering why I do this, what the point is. . .

I went through the rest of docket mechanically, guarding my reserves as much as possible. But then came one of my self-representeds late in the day. Usually intelligent, insightful, and engaging (if also aggravating), he had gotten it into his head on this day that he needed to speak his own version of legal latin while in the courtroom. I could not coast through that one and mustered what procedural fairness skills I could, struggling to decipher what he was trying to communicate and make him feel heard. After my third, "I'm sorry Mr. Jensen, I'm just not following you," he growled in exasperation "officio juris ignorante." Despite my mood, this had me fighting to control a smile. I acknowledged that I had understood him this time and that he may well be right.

So that was the highlight of my day, summoning my most empathetic self available only to get, in return, "juris ignorante." And, worse, I agreed that I probably deserved it. The week went downhill from there and, by the end, I was fighting to tamp down those darker feelings of regret, frustration, and purposelessness.

Conveniently, I had a little escapist busman's holiday right around the corner. I was headed half way around the world to do some sightseeing and give some lectures. My host was David Mundy, a law professor in South Korea and point person for a UNICEF program to promote the rule of law in developing nations. That Saturday, I found myself boarding a plane for a 27-hour trip. As I put my bags on the scales, I tried to shed the buildup of detritus from, as the old courthouse joke goes, watching good people at their worst. Instead, I looked forward to marveling at humanity's potential reflected in the stone temples known collectively as Angkor Wat near Siem Reap, Cambodia.

Without telling me, Prof. Mundy had wisely arranged the schedule to build toward our work. We began with sightseeing

that gave me time for decompression and emersion in Cambodia's culture. Without telling me, he had also planned a catalyst for reflection and growth as he put me to work.

We spent the first days traipsing around the temples, roadside butterfly farms, and rice paddies by open air tuk-tuk. We were awed by millennia old temples with their intricately detailed stone carvings and friezes telling ancient tales of gods, demons, and humanity. The lines and louvres of French colonial era buildings helped bridge the ages while meals of traditional Khmer ("Keh-my") dishes revived our weary bodies. The towering carved faces of benevolence at temple Bayon were the epitome of serenity and completed my decompression.

As we finished a sumptuous breakfast on the third day, Prof. Mundy surprised me. "I won't be with you this morning but I set up a driver for you. He'll take care of you." I walked outside and Narith came into my life.

He stood about 5'4" and square shouldered with a wiry athletic build. He had a weathered and expressionless face with a blank cast to his right eye. He gave off a less-than-friendly vibe. He motioned me into the back of his tuk tuk, tugged on his helmet, and climbed aboard the front motorcycle. He twisted half around toward me, tossed back a heavily accented "war museum" at me, nodded, and gunned the spluttery little motor of the tuk tuk.

Seeking peace of mind, I was none too enthusiastic about visiting a "war museum," but I could see no easy way to bridge the gaps of noise, and language between me and my driver. I had also placed myself so completely in Prof. Mundy's hands that I had no idea where else I could direct him to take me. So, I settled back into the warn vinyl seat of the tuk tuk to see what the morning would bring.

We drove on the rough local roads to the outskirts of Siem Reap and found ourselves on a narrow, hard-as-rock dirt track bordered by moldy cement walls that formed a kind of splotchy grey and white canyon eight feet high. We saw no other people or traffic for the last half mile. The wall on the left suddenly ended and we pulled into an empty dirt parking lot under some trees. There sat a modest cement-and-mold structure with a coarsely tiled roof somewhat like a weathered picnic pavilion at a state park back home.

Here beyond the city's confines, the area was dead silent except for the periodic buzzing of insects. The morning was still young and the museum did not appear to be open yet. At 80 degrees, this was the cool of the day. While the air was heavy with humidity, the sour smells of the decaying rain forest that dominated yesterday's temple marches were just a light

The events in this essay are true. However, some timelines, individuals, and facts have been consolidated and changed to protect individ-

uals who face risks each day due to their work to promote the rule of law.

background to the more pleasant aromas of turned soil, cut wood, and blooming flowers.

It didn't look like a museum. The entryway structure by the shed—and the trees beyond—suggested more the start of a forest hiking trail in Washington State than a museum. However, there was a large hand-painted and weathered sign that said “War Museum” and, underneath it, a tank, fighter jet, artillery piece, and other weapons were splayed. My driver motioned me to go in while he started rummaging under the tuk tuk's seat.

I walked past the rusting rocket-propelled grenade that was mounted on a post and had “entrance” crudely painted on it. I went with some trepidation, not sure in the silence if I was really supposed to be there. Once in, it gave the impression of some militaristic botanic garden. Portions of the greenery were carefully manicured, and crushed stone pathways wove through the features. Those features, instead of being exotic plants, were battlefield debris. No pristine Smithsonian restorations here. Each rusting hulk appeared as it must have been found, long after battle and cannibalization. There were a handful of skeletal tanks, helicopters, artillery, and other devices of war. There were also several crude and moldering lean-to sheds forming the edges of the grounds.

Soon after I walked in, I was joined by a Khmer sporting a broad smile. In very passable English, he introduced himself as my free guide; a common feature of area attractions other than the temples is a personal guide that joins you upon entering, working for tips alone. My driver, Narith, appeared suddenly as if springing from the foliage. He stepped toward my friendly new guide firing staccato Khmer at him. After some initial sharp noises from the guide, he visibly shrank under Narith's hardening onslaught before leaving quickly. I took this exchange to be capitalistic combat over the tourist dollar and was mildly amused. Then I realized this exchange would compel Narith to give me the full tour treatment to justify chasing off the guide. I could not refuse under the circumstances. My already bleak outlook for this particular excursion and hopes for an early exit were dampening quickly.

I spoke no Khmer and Narith's English was shrouded in the strongest accent I had yet heard. He began his explanations as I fell in behind him on the pathway. He spoke in a low voice that compounded the difficulties of understanding. Picking up only about one in ten words, I soon abandoned the chore of trying to decipher the rest. I began to tune Narith out and focus on the broken English of the little placards scattered through the warfare garden. In hindsight, I can recall the frequent pauses when Narith awaited a response from me on some question. He was trying diligently to reach me but without success. Narith persisted, though, and today I am glad he did.

As we walked, I called up my knowledge of Cambodia's modern history and found it sadly limited. I had taken a class in college on the Vietnam War in which a single lecture covered the rise of the Khmer Rouge and the short, genocidal existence of Democratic Kampuchea. I had also seen the movie *The Killing Fields* a couple of decades ago. I thought of this history as regrettable but distant and disconnected from me like World War II. However, as we walked, Narith's broken lectures began to draw me in. I also found that the more I genuinely tried to

hear him, the easier his words became for me to understand. I learned that the fall of the Khmer Rouge regime at the end of the 1970s marked only the start of a new phase of the Cambodian civil war. The war would rage on until the late 1990s, as would the infamous Pol Pot. The ancient temples I had been visiting were still a heavily mined part of the battlefield and inaccessible to visitors well past 1990, when I had graduated law school.

A realization began to dawn on me: Narith was nearly as old as I and must have some direct experience with the “history” he was sharing with me. So I began to ask questions, but not about the displays.

“Yes, born here” with outstretched arms. We were in the regional capital, Siem Reap. “Family fled Khmer Rouge. ... Refugee camps cross border, Thailand. ... Father, army, die. ... Mother, me could not.”

When the Khmer Rouge cadres arrived, they evacuated the cities. Siem Reap had a population of about 200,000 people. Like all other Cambodia cities, Siem Reap was depopulated practically overnight. Five-year-old Narith and his mother were caught up in that evacuation. They were given notice of mere minutes and told to leave everything behind. In the chaotic rush, they were separated from the rest of their family. But, somehow Narith and his mother managed to stay together—at first.

“We were put in the fields. They call us ‘new people,’ very bad to be new people.”

A short time later, the cadres would separate Narith from his mother and raise him communally as a matter of policy to limit the “corrupting influence of parents.” He stayed in those fields under the Khmer Rouge for many years. He received no schooling other than periodic ideological indoctrination. I asked him what those times were like.

“Much work, little food.” He repeated these words a couple of times and, about those years under the Khmer Rouge cadres, he would say no more.

As I thought about how close we were in age, his experiences became more real and disturbing. About the age I was when I got my first job as a busboy, Narith was taken into the Cambodian army. As a young teen he was eventually assigned to a landmine unit. The landmine became the weapon of choice for both sides in the Cambodian civil war and they blanketed the countryside. He told me the average life span (by this, he meant until killed or maimed) in the section laying land mines was three months. The average life span in the section clearing mines was three days.

We walked over to one of the lean-to display sheds and he picked up one of the many, many samples of different types of landmines used in Cambodia and we sat down on a log bench. “This the kind got me.”

He rolled up his pant leg and knocked on his hardened calf. This took me completely by surprise; I had not realized he had any injuries, much less a missing leg. I numbly mimicked him and knocked on his leg as well—disbelieving what I had just done and withdrawing my hand in deep embarrassment.

Narith went on to provide more detail about the various displays but I was uncomfortably adrift by this point. When we

**“Much work,
little food”**

“I began to feel like Scrooge anticipating the arrival of the third ghost”

finished and returned to the tuk tuk, I stopped Narith from tugging on his helmet and motioned him to sit across from me in the back of the tuk tuk. A glimmer of suspicion was beginning to take hold that Prof. Mundy had not paired me with a random driver this morning.

“Narith, what did you do after the army?”

He told me of the international group (known as NGOs) that did the surgeries on his leg and supplied him with his prosthetic leg. He told me of the schooling the NGOs helped him get and how, after the war, he was able to join one of the first schools for lawyers. He trained to be a judge. He explained how happy he was when he managed to get assigned to his ancestral village outside Siem Reap. As refugees had been returning to the area, he hoped to find or learn the fate of his family.

I had learned enough about post-war Cambodia to know that bribery and corruption are rampant. Narith’s path would have required significant influence, financial or otherwise, to achieve. I also knew that judges are not paid a living wage and that driving a taxi or tuk tuk is a common sideline for the village judge. Part of Prof. Mundy’s planning began to dawn on me.

“Narith, are you a judge?”

“No,... no more.”

Private ownership of land is a relatively new phenomenon in Cambodia. A judge must approve any transfer of land to private hands. About two years ago, the leading family in the area brought a transfer of land to Judge Narith for approval. The transfer was corrupt and Judge Narith refused to approve it. The leader of the family, a former Khmer Rouge cadre, ordered this obstacle removed. In his part-time job as a taxi driver, Narith picked up three men the next week. Once Narith had taken them down a remote road, they jumped Narith and beat him savagely. He recalls that they took particular delight in clubbing him with his own prosthetic leg. They began to focus on his head, caving in his skull. They drove off in his taxi leaving him on the roadside to die. Narith awoke days later in an international hospital in Siem Reap with no idea how he got there.

No investigation was made. No person was prosecuted and no outrage, or even concern, was expressed. The national government declared Narith to be brain damaged after the “accident.” He was involuntarily retired from the bench with no benefits.

I sat back numbly trying to process all I had heard this morning. Narith matter-of-factly mounted the front motor bike again, twisted half around, and announced that we would now visit the stupa at Wat Thmei. I knew that a “Wat” could be the equivalent of a massive cathedral or a simple neighborhood church. I had no idea what a stupa was or why we were going. But this time when we set out, I had a different kind of reluctance. I fully trusted that if Narith were taking me there, it would be worthwhile. I also worried it may be too worthwhile. I began to feel like Scrooge anticipating the arrival of the third ghost.

We drove back into the city and arrived at the typical walled

grounds of an operating, modern Buddhist temple. This was Wat Thmei. Narith motioned me to go in. But this time it was clear he would stay with the tuk tuk and I would have to undertake this part of the journey on my own.

While surrounded by a bustling city, the spacious grounds inside the walls were deserted. I saw first the wat, the temple—beautiful but much like dozens of others I had seen. Then I saw the reason for the visit. The memorial is crudely assembled on the edge of the central plaza. There are two peeling sign boards with faded photographs under glass, looking much like an outdoor notice board. Next to that is a large kiosk, the stupa, more than a dozen feet tall with four or five foot wide side walls made of clear panels of glass.

The stupa is filled to a height of about ten feet with human bones. On one side are the long bones of the body from legs and arms. They are stacked neatly in alternating patterns to give the stack structural integrity as you might stack sticks of wood. On another side, a wall of skulls—mostly intact but with jagged gaps from the final killing blow—all facing you. After several minutes of staring at them, I found myself counting each inhabitant of the orderly rows. I counted 84 full skulls, but I wouldn’t swear to my accuracy.

Eventually, I made it to another side that was comprised of hip and jaw bones. I found the jaw bones particularly disturbing for some reason. I can’t think why—maybe because I had a toothache that would bloom to require a root canal on my return—but they seemed to be the most real, the most tangible, the most *alive*. I stood for a long time gazing at those jaw bones, bewildered by thoughts and emotions sparked by my time with Narith and thoughts of his family’s experiences. Foolishly, I wondered if any of Narith’s family happened to be among these bones chosen for display in the memorial and then I felt a tug on my hand. I looked down and watched as an orange robed monk lifted my hand and tied a braided red bit of string around my wrist. When he finished, he looked up into my face. I realized I was smothering in the weight of the sadness this place represented. After a long moment, he patted my hand and turned away, as silently as he had come.

Since then, I have asked several people about the meaning of the braided string. Some call it a “baci” and I was given many explanations ranging from a memorial or good luck talisman to a gimmick for tips. Given our times and profession, I prefer the explanation from a Reiki Master that it is a reminder to the wearer to show compassion to all.

Since my return, I have read obsessively about the Cambodian civil war. The reign of the Khmer Rouge killed one quarter of the population—that would be more than 60,000 people in my home town. The cadres killed anyone they deemed a threat to their radical ruralization plans—anyone with education, with authority in the old regime, who had been a factory worker, or who lacked the calloused hands of a farm laborer. The Khmer Rouge cadres were disastrously incompetent at all but destruction and killing. Nonetheless, Pol Pot managed to destroy the old society more completely and control the people more absolutely than any other modern revolutionary. Most of the survivors existed for years in near starvation and a state of stupor. People had no homes, no stores, no courts, no banks, no private possessions, no currency, no cars, no bicycles, not even their own hand tools.

After Siem Reap, I rejoined my host and we went to Phnom Penh to meet with members of Cambodia's legal community. The people I met frequently told me a version of a central story. While the specific numbers changed, the thrust of the story remained the same: When Democratic Kampuchea was toppled, among the 6 million or so survivors, only 8 people with legal training remained alive in the entire country. In my modest community of a quarter million people in Colorado, we have about 50 judges alone and well over 1,000 lawyers—all would have been tortured and executed by the cadres in Democratic Kampuchea. While many people were killed for revenge, disobedience, or control, the Khmer Rouge particularly targeted lawyers, judges, and teachers because of the unique threats they posed. These groups shepherded a core dedication to ideals of fairness, the rule of law, and the potential of the individual. Worse, they had the abilities to infect others with these ideas and the latent skills to realize upon those ideas.

One can debate at length the cultural characteristics and specific triggers of the unique horrors of Cambodia's modern history. But most societal breakdowns have a common foundation. When a critical mass of the population believe that they have no voice, that the society is fundamentally unfair operating at the whim of an insider elite rather than governed by accepted norms, and that they are being hurt as a result, an ugly backlash is likely. Pol Pot had no particular leadership gifts, was not uniquely charismatic, and had no compelling philosophy. What he had was the pain, disillusionment, and anger created by a system so unfair that it molded people into the raw material for his cadres that would practice nightmarish inhumanities at his direction.

As frightening as the stories from Narith were, our final conversation was more chilling. We talked of his world today. With furtive glances around us to ensure we were not overheard, he spoke with acidic bitterness of unfairness and the dominance of a disconnected, self-dealing, and uncaring elite. While he still saw his life as better than in the days of the killing fields, he likened it to the conditions that bred the overthrow of the old regime. In the harshness of his description of his family's treatment today, it took little imagination to see the cold, hardened edge of a potential cadre forming anew.

Years ago, a mentor of mine told me that every person you meet in life has a lesson to teach you. "Your job is to learn it." On my long return flight, I pondered the lessons Narith had to teach me. At its core, I think Narith's lesson is the thread of our "why." We in the judiciary are the gritty smithy in which the elegant theories called "rule of law" are wrought and merged into reality before daily break testing.

To function, a society must have a fair and *trusted* system for resolving disputes ranging from the most picayune of daily life to the most momentous. Without palpably fair rule of law in the resolution of those disputes, resentment, bitterness, and vendettas ultimately break a society down to the rule of tooth and claw that will quickly fill a stupa with bones. A civilized society's very existence, with all the human potential it unlocks, turns not only on the quality of our work but, critically, also on the perception of the quality of that work. That's the thread of our why.

I was full of good intentions on my return to work. But, as

I shouldered global jet lag to face a Monday morning criminal docket swollen by my absence, I found enthusiasm for time-consuming and personally draining "procedural fairness" ideas flagging. One of the first cases I called was a sentencing for a mature frequent flier in the system. I did not give him the sentence he wanted. As it was the start of the day, I still had the energy to explain my reasons as well as acknowledge his disappointment. As he shuffled over toward the other in-custodies, his body language became more agitated and I was suspecting my procedural fairness efforts likely accomplished nothing more than an increase in his anger. I had already announced the next case when he turned and announced loudly to me that he had something to say.

If you have experience in the criminal courts, you know how dicey a moment like this is. We had a courtroom overflowing with people and tension as well as a dozen people in custody and only two, already occupied, deputies to handle them. Every trial judge fears letting off the spark that will ignite the courtroom into a scene from the Jerry Springer show with chairs flying. I was about to cut off my defendant when I looked down at the card on my bench with the four pillars of procedural fairness on it: Voice, Neutrality, Respect, Trustworthy. To this old card I had just appended a new red braided string.

So I took a deep breath and said, "Mr. Jones, please go ahead." What followed was truly unexpected. Mr. Jones launched into several minutes of high praise for the court that had just given him that disappointing sentence. He turned and addressed the other in-custodies, telling them how he had been in many courts and how different this one was. He said that here, he had always been called by name, had always been listened to, had had his questions answered, had always felt taken seriously, had always been treated fairly, and had always felt respected. For one of the few times in my life, I was left speechless.

I do not share this anecdote to brag for, in candor, I recognize the examples he gave as coming from mentors much wiser than me. But I share this as a reminder that what you do with every person in your courtroom and how you treat that person has a lasting impact. Most of us will likely never get a glimpse of that impact and we can easily doubt its existence. Each person that leaves your courtroom, whether participant or observer, leaves after an intimate experience with our rule of law. With each case you handle thoughtfully and fairly, you tip the scales a little more in favor of rule of law and the flourishing of human potential it permits. You also add one more pebble to the wall that holds back the creation in your community of that stupa filled with bones. Whether you are lucky enough to have a Narith or voluble Mr. Jones cross your path to point it out to you, what you do every day is important—even crucial.

In eighth-grade social studies, Mr. Keach would give us extra credit for watching Frank Capra's *Why We Fight* films from World War II after school. The films explored not only the history that led to our involvement in the war, they tackled

"among the 6 million or so survivors, only 8 people with legal training remained in the entire country"

an express discussion of the core principles that compelled us to make personal sacrifices for the aid of others—the principles that we like to think make us who we are. In Cambodia, every member of the rebuilding legal profession told me that same story about lawyer genocide. I tend to think that was their version of *Why We Fight*, and they carry it with them every day.

I often wonder why we in the judiciary in this country so rarely take the time to consider why we do what we do, why we took those pay, prestige, and career-potential cuts. Just like everybody else, periodically we need to recharge, reenergize, and rededicate ourselves to our mission. As Anne Bradford and Rob Rebele explain in this issue, finding meaning and purpose in one's work has a host of benefits. I am lucky. After my visits with Narith and Mr. Jones, I carry my own *Why We Fight* film reel around in my head. All I have to do is glance down on my bench and look at a small braided red string to reconnect with my why. I urge you: Take some time to reconnect with *your* why, and you will find yourself healthier and happier for the effort. Then, take a moment to help one of your colleagues do the same. The civil in our society will be a good measure stronger for it.



In addition to being a trial judge in Colorado Springs, Colorado, David Prince serves as a co-editor of *Court Review* and is a member of faculty for the National Judicial College teaching primarily judicial leadership and management skills, as well as case management. David helped found an award-winning civics education program called *Judicially Speaking* and is a frequent writer and speaker on issues of interest to the judiciary. Relevant to this essay, Judge Prince teaches rule-of-law programs in developing nations of Southeast Asia through UNESCO.



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