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Amicus Curious



Marc R. Kadish of Mayer Brown LLP (left) watches Cambodian law students perform in a simulated trial as part of his recent trip to the city of Phnom Penh, where he helped teach a two-day trial advocacy program.

Chicago lawyer teaches Cambodians trial skills

By Maria Kantzavelos
Law Bulletin staff writer

Thirty-four years — almost to the day — after the Khmer Rouge regime took over the Cambodian city of Phnom Penh, emptying it of residents in a prelude to a four-year genocidal rampage, Marc R. Kadish transplanted himself from the Chicago office of Mayer, Brown LLP to the infamous Killing Fields, and Tuol Sleng, known as the Museum of Genocide.

He arrived in the city in mid-April, on a mission to teach trial advocacy to Cambodian law students.

And those first two stops on his trip was a way for Kadish, Mayer, Brown's director of pro bono activities and litigation training, to prepare for his lessons.

"I knew that the Khmer Rouge had killed

most of the legal profession that existed in Cambodia, and I knew that I would be helping to train a new generation of Cambodian lawyers," he said. "I thought that going to those two sites would put me in a proper frame of mind."

It did.

"It enhanced the seriousness of the undertaking I was about to start," he said.

It only took about 30 minutes to walk the two-acre Killing Fields site. But Kadish spent hours viewing the torture chambers and cells, and photos of tortured victims and former prison guards on display in the museum, which had housed a school before it became a prison, where an estimated 20,000 people had been tortured and killed, or killed later at the Killing Fields, he said.

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“It emphasized, to me, for a society to follow rules of law, to have rights for people accused of wrongdoing, to have presumptions of innocence and all the panoply of rights we’re used to, none of which were followed by the Khmer Rouge — and they murdered about 2 million of their fellow citizens in four years,” Kadish said.

Kadish was invited to serve as an outside consultant to a two-day trial advocacy program offered annually to Cambodian law students through the American Bar Association’s Rule of Law Initiative, which operates public service programs in roughly 40 countries.

He joined Steven Austermler, a Chicago lawyer who moved to Cambodia a few years ago to serve as a legal education advisor as part of the ABA’s initiative there.

In his approach to teaching some 160 Cambodian students from seven Phnom Penh law schools, Kadish said he set out to avoid being guilty of “what I would call ‘legal imperialism.’ ”

“The Cambodian system at this particular point is based on the French system, and it’s the inquisitorial system, as opposed to the adversarial system,” Kadish said. “They’re just now beginning to think about and permit lawyers to question witnesses.... They seem to be on the cusp of letting lawyers become more involved in their legal system.

“We were being very careful to make certain that we weren’t saying to them, ‘You must follow the American and British system because it’s the best.’ ”

Rather, Kadish was aiming for this message to the students: “This is the way the adversarial system works; you should try to determine which aspects of it might work for your society.”

With the help of an interpreter who translated his English into Cambodia’s Khmer language, Kadish got to work with lectures on the nature of the adversarial system, and demonstrations of opening statements, closing arguments and direct and cross-examinations. The program also included student performances in simulated cases of rape and aggravated assault.

As part of his lectures, Kadish showed scenes from his favorite film, “To Kill a Mockingbird.”

“I thought To Kill a Mockingbird fit in nicely,” he said. “It was basically about the failings of the adversarial system. You had a black man in the South, charged with the rape of a white woman in the [1930s], and there was no way he was going to get a fair trial.”

He had two main points in showing the movie clips.

“One is that the adversarial system, in and of itself, doesn’t guarantee justice — you need

more than that,” Kadish said.

“My lesson to them was that things can change, and that 75 years later, not every juror is a white male, not every lawyer is a white male, that African-Americans can sit wherever they want [in the courtroom], and that a young black lawyer is now president of the United States.”

Kadish, who graduated from law school in 1968, was active in the anti-Vietnam War movement. As a new lawyer, he worked in the legal aid arena in Chicago, representing conscientious objectors, draft resisters and people who were arrested at demonstrations.

Decades later, his thoughts during the 20-hour-long plane ride to Cambodia turned to memories of the early 1970s.

“Basically, my memories or knowledge of Cambodia were the American excursions or bombings in the earlier 1970s, which led to Kent State [shootings of college students, some of whom were protesting the American bombings of Cambodia] and the Khmer Rouge,” Kadish said. “I was thinking about where I was when Kent State took place, and thinking about what could’ve led to the Khmer Rouge.

“Nations or people seem to go insane from time to time. How could the Cambodians let something like that happen? ... Unfortunately, I think part of what happened is that the American bombing destabilized Cambodia and turned many Cambodians against the notion of Americans.

That helped the Khmer Rouge fill that vacuum.

“Even though the Khmer Rouge only ruled exclusively for four years [from 1975 to 1979], the society was at some form of civil war, some form of violence, until the early [1990s],” Kadish said. “They only had their first free elections in ’97 or ’98. So some semblance of democracy has returned to Cambodia only within the past 10 years.

At the end of the teaching program, several of the students sat down with Kadish for more talks. They asked questions like how do you really choose a jury, Kadish said.

“They wanted to engage in great lengths in a discussion about what you do,” Kadish said. “They seemed to be very excited and very sincere.”

As he closed his lesson, Kadish made another reference to his favorite film.

“I told them that if I come back in 15 years, I’d want to hear that ‘To Kill a Mockingbird’ is a popular movie in Cambodia, and that their children would respect and love them the same as Finch’s children loved him, and that I would find them leaders of a Cambodian society dedicated to the rule of law.”