



Pauw, Pestman and Ianuzzi Leave Khmer Rouge Court ‘Farce’ Behind
Joe Freeman
December 21, 2012

Josh Rosensweig, one of three international lawyers grabbing the reins of the defence for Khmer Rouge tribunal defendant Nuon Chea, admits he is not a very combative person.

It isn't a shocking revelation, but it does say something about what to expect when Rosensweig, along with Dutchman Victor Koppe (who has been on the team since 2007 but wasn't involved in the day-to-day proceedings) and a third, to-be-determined international counsel, take over from the three previous lawyers for Nuon Chea, Khmer Rouge Brother Number 2.

Jasper Pauw, Michiel Pestman and Andrew Ianuzzi, who served as the main team since Case 002 against three of the regime's leaders began more than a year ago, stepped down this month, citing government interference that prevented them from best defending their client. Cambodian attorney Son Arun is staying as national counsel.

While the parting with Nuon Chea was reportedly civil, there was little love lost between the lawyers and the court. When the Post interviewed Pestman and Ianuzzi this week, they called for the United Nations to withdraw from the “farce”.

The embittered words came from a team that tangled with the Trial Chamber and engaged in a futile battle to call members of the government to testify.

Rosensweig, who started as an intern with the Trial Chamber in 2010, and has worked with the defence team for six months, is not nearly so forceful in person, yet he said yesterday that his game plan won't differ from his predecessors'.

“I don't think there is any intention to deviate from the substance of that strategy at all. Will the style be different? Surely, everyone's style will be different,” he said, adding that he can't speak for Koppe, who didn't respond to an interview request.

In the realm of style, the differences are apparent. Ianuzzi is a quick-talking, chain-smoking criminal defence attorney cut out of a John Grisham novel. As for Pauw and Pestman, the two Dutch lawyers personify what everyone thinks Dutch lawyers are like in real life: erudite, urbane, vaguely bearded.

The previous trio used their brew of wit and legal know-how to lambast Trial Chamber decisions they deemed illegitimate.

Anne Heindel, a legal advisor for the Documentation Center of Cambodia, described the approach as an attempt to continually raise political interference, “either to have that acknowledged or shut down, and to make their point thereby”.

A feature of that, she said, were questions to witnesses about the so-called K5 project, a line of inquiry the Trial Chamber silenced because of its perceived irrelevance to the charges.

In the mid 1980s, the ruling government enlisted hundreds of thousands of people to dig trenches and plant mines to seal off the border with Thailand and block infiltrating Khmer Rouge guerrillas. Many perished.

Rough estimates from the Khmer Rouge era say that between 1975 to 1979, about 1.7 million Cambodians died. If the court attributes deaths to Nuon Chea, Heindel pointed out that his defence can suggest that some deaths, like the ones at K5, aren’t attributable.

“If it were raised as a demographic issue, the court might listen to it. The thing is, these issues have been raised as political interference issues instead of on their merits,” she said. In the past, when the team has tried to raise it, they have said Prime Minister Hun Sen may bear responsibility for the resulting deaths.

“I hope the new team comes in focusing on why these issues are important in defending Nuon Chea.”

In the course of serving their client, the three departing became known for rabble-rousing.

They signed onto motions to disqualify judges. They pressed witnesses on their remembrances of current Foreign Minister Hor Namhong and Prime Minister Hun Sen. Judges cut off their microphones.

Ianuzzi quoted rap lyrics, poked fun of Judge Silvia Cartwright’s Damehood honorific, and was booted out of court. After the Trial Chamber filed complaints to bar associations back home, Ianuzzi, in full chutzpah mode, offered to deliver his personally.

“Whether what they did was a distraction or an impressive fight, I think [they were] both at different points in the proceedings,” said Clair Duffy, tribunal monitor for the Open Society Justice Initiative. “Many of the fair trial issues they have raised have had at least some merit – for example, their repeatedly raising the issue of senior sitting Cambodian government members refusing to comply with court summonses: this relates directly to Nuon Chea’s right to examine and have examined witnesses against him.”

Duffy said she has heard from people familiar with the tribunal that they expect the new team to adopt a courtroom method more similar to that of Michael Karnavas and Ang Udom, the collected, if at times confrontational lawyers for ex-Minister of Foreign Affairs Ieng Sary.

Until sessions start back up in January, though, there is no way to tell. Rosensweig is using some of the time to read through the entire trial transcript.

“All I can say is, as long as we work on the case, we are going to try and make arguments that we think are important, and those include arguments that are exculpatory for Nuon Chea,” he said. “Where is that going to get us? I don’t know the answer to that. But if we are not going to do it, there’s no point of us being there.”