

# **The 2008 Philip C. Jessup International Law Moot Court Competition Mid-Atlantic Super-Regional Round**

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Keynote Address  
by  
Steven M. Schneebaum

It is a great pleasure to be able to speak to you this evening, in the midst of the exhilaration and the exhaustion of the Jessup International Law Moot Court Competition.

I want to offer a special and warm greeting to all of the citizens of Adova and of Rotania in attendance this evening, as well as to those who have represented them so ably before the International Court of Justice. I was planning to give this talk half in Adovan and half in Rotanian, as a Canadian or a Belgian keynoter would, but I could not decide which should go first, and so decided that American English, the world's lingua franca, would have to suffice. I hope that here, unlike the Shrine of the Seven Tabernacles, or Camp Indigo, interpreters are available in case they are needed.

I thank my friend Meredith Perlman for inviting me to give this keynote talk.

And while I am thanking Meredith, let me ask all of you to join me in thanking her and her team for organizing this first-ever Mid-Atlantic Super-Regional round for the International Law Students Association (hereinafter to be known as "the other ILSA," or "the good ILSA"). Being a Super-Regional Administrator requires super-human effort, and Meredith has done a superb job. I know her well enough to know that she will modestly deflect the praise to those who helped her, so let me also express the gratitude of all participants to Rusty Dalferes, and to Caroline Cowen, our ILSA intern. And of course we could not have had such a successful Competition without the gracious hospitality of George Washington University Law School, nor could we be enjoying this wonderful reception without the generosity of its sponsor, LEXIS/NEXIS.

I want also to thank the judges. After each oral argument, it has become a Jessup tradition for the panel of judges to invite the competitors back into the room after deliberation, to receive feedback on their performance. I hope that you noticed two things. First, the judges will have told you about themselves, and they are an extraordinary group of people: practicing and academic lawyers who care deeply about the future of their profession, and who are doing their part to ensure that the next generation of lawyers is as prepared as can be.

Second, I hope you listened carefully to what the judges had to say about you. This is your opportunity to hear from the other side of the proverbial bench how you came across. Were you

professional? Were you persuasive? Were you passionate? Of course, there is no guarantee that the advice you may have been given is good advice that you should internalize and follow in your career. Perhaps it was, and perhaps it was not. But the point is that it will have been honest advice, given by professionals who know you only as the learned agent for Rotania, or for Adova, just like the judges whom you will someday try to persuade of the righteousness of your real client's cause, in a real court, with real consequences.

The judges deserve more than our thanks, incidentally: they deserve just a small measure of our sympathy. Remember that when they get home after the Competition, they will no longer be addressed as "Your Excellency." People will no longer stand when they enter the room. And if they try to interrupt conversation partners who are just getting to the good part of the story, they will simply appear to be incredibly rude. It is a difficult transition: Your Excellencies, we hope you can make it. There will undoubtedly be spouses or significant others who, this very evening in Washington, will be heard to say, "Her Excellency left the dog outside again," or "May it please Your Excellency to take out the trash."

Over the course of these two days, coaches and judges will have spoken with you mostly about two aspects of the Jessup Competition: learning the law and the facts, so that you can make the best substantive case; and developing a personal style of presentation, so that you can be the most persuasive advocate for your client. But there is a third aspect of Jessup that you will find at least equally important, as you think back on this experience.

That is the extraordinary sense of camaraderie that emerges from this Competition. You will have formed deep bonds with your teammates. You will have found that the strangers on the other side of the room from you – your Adovan or Rotanian opponents – share very specific experiences with you, simply by virtue of your having gone through the Jessup together. And, if you come to the International Rounds in the spring (either as participants or as spectators), you will find hundreds of law students from around the world with whom you also share those same experiences. These memories and bonds will last. Lawyers my age and older – and yes, there are some, since the first Jessup Competition was 49 years ago – who participated in Jessup in decades past remember the names of the countries they represented, and at least the outline of their compromis.

Look around this room. In April, come to ILSA's wonderful Go National! Ball, and look around that room. Your contemporaries, whom you see, are the international lawyers, the foreign office legal advisers, and the attorneys general of tomorrow. And you and they are members of a privileged fraternity or sorority for having shared this experience. The global celebration of international law that is the Jessup Competition is unique, and I hope that each one of you takes every opportunity to experience it. Come back next year and the year after that.

Now let me turn to a slightly more serious topic.

I always find myself inspired when I witness Jessup Moot Court Rounds, at any level, for a very specific reason. I always see in them conclusive evidence that international law survives, despite what the newspapers may suggest, that interest in it flourishes, and that it will continue to be a force for progress around the world in generations to come. This year is no exception. Yet the

context of this year's Competition, and the very content of this year's compromise, suggest a strong, even a compelling, need not to let ourselves be complacent.

Adova and Rotania may be fictional – I hate to break it to you – but the problems that they present to us for analysis in the 2008 compromise are all too real. Ms. Samara Penza may not really exist, and there may not really have been any deaths of innocent worshipers or workers at the Shrine of the Seven Tabernacles. But as all of you who have lived and worked with this problem since last October know, the issues presented are on the cutting edge of international law scholarship, and are in the crucible of public discussion and political debate.

I wish that this were not so.

I wish that, in 2008, we were not considering to be open questions in international law whether nations may torture people in detention, or whether it is permissible to cross borders to remove terrorist suspects from other jurisdictions by force of arms. I wish that we were not having to bring together the finest law students in the world to present both sides of the question whether due process guarantees are human rights. I wish that it was not considered open to disagreement whether military commissions have jurisdiction over civilian detainees, or whether civilians captured during times of armed conflict may “fall between the cracks” in the Geneva Conventions, and therefore may have no rights at all.

I wish that one could have any measure of confidence that international law will be the deciding factor as countries answer questions like these for themselves.

And, more than anything, I wish that the country most responsible for taking these settled issues and making them unsettled, calling into question not only the content but the relevance and therefore the existence of international law, were not my country, the United States of America.

A legal system requires that its constituents agree to be guided by it (unless it can be backed by absolute coercive force). And that means that every subject of the law must acknowledge that, on occasion at least, the law requires conduct that the subject would not choose, or forbids conduct that he does choose. A legal system in which consensus – or custom, in the language of international law – is vital, and where there is neither a legislature nor an executive, is especially dependent on the acceptance of its status as law on the part of its subjects.

Today, the United States – by all accounts the dominant member of the world community economically, militarily, and culturally – has acted as if it does not accept the basic premise that it is bound by international law. It is betraying its noble history of encouraging the development of international norms, and has become the leading force in the world acting to prevent international custom from maturing into law. The question is not whether we violate the law more than anyone else does (an empirical question, which is almost surely to be answered in the negative), but whether the law applies to us at all (a question of principle).

The result of this, of course, is to make your jobs as entry-level international lawyers studying in this country even more difficult than they would otherwise be. For you will need not only to master the material, but also to be able to defend the claim that international law is worth preserving, or, more accurately, is worth restoring to the role that the entire world seemed ready to accord to it not so very long ago.

It is a fundamental and daunting challenge that you are being asked to confront, as you begin careers as lawyers, and as international lawyers in particular.

But if you believe that the law is the best, if not the only, antidote to the abuse of power, then you know what you have to do. If you believe that the existential problems facing us – be they environmental degradation, religious fanaticism, or economic imbalances – can best be addressed through systems of justice inspired by the rule of law, then you know what you have to do. If you are confident that the goals we set for ourselves as individuals, as societies, and as a planet can be achieved only if there is a level playing field guarded by the law, then you know what you have to do.

In his play Henry VI, Part Two, Shakespeare set out a conversation between two thieves who plotted, in their rambling and lazy way, the overthrow of the Government of England. After one of them, Jack Cade, describes his goal – which is, among other things, that the people “will agree like brothers and worship me their lord” – the other ne’er-do-well, Dick Butcher, interrupts, saying “The first thing we do, let’s kill all the lawyers.” The lawyers, quite simply, are the impediments that will prevent achievement of their plans. They must be eliminated if the planners are to have any hope of success.

It is remarkable how often that line is misunderstood. Shakespeare meant, quite obviously, to lay out in his crystalline way what I have been trying to say to you. And, as is so often the case, his words are even more timely today than they were when they were written more than four centuries ago.

Your challenge is to prove that Shakespeare was right. Lawyers may not stand by as justice is trampled, and as the weak are abused by the strong. International lawyers may not remain passive witnesses as the international legal order descends into anarchy.

Your challenge is nothing less than this: to be the kind of lawyer – the kind of international lawyer – that Jack Cade and Dick Butcher knew that they would have to kill.

Good luck. And thanks for being part of the Jessup.