

**“THE FIRST THING WE DO,
LET’S KILL ALL THE [INTERNATIONAL] LAWYERS”**

**Remarks of Steven M. Schneebaum
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This Jessup week, and this Spring Congress, mark the end of my six years as Chairman of the Board of Directors of the International Law Students Association. This gives me the right – at least I claim that it does – to a valedictory address, and it seemed to me appropriate that the people to whom I should direct my closing remarks are you, the students, for whom this Association exists.

It has been a privilege to hold this position, and to be able to help in some small manner in the establishment and development of this exciting organization. We Board members have frequently been heard to complain about the difficulties of our role, largely because in a student association, there is by definition no continuity, no institutional memory. But of course that is also the strength of a group like this. The student membership of ILSA today has no single individual in common with the membership when I first assumed the Chair of the newly independent Association in 1995. Each generation gets to make its own rules, and its own mistakes. And yet the successes of each generation are that much more special because they are original, not cumulative.

As someone who loves being a lawyer, and especially an international lawyer, I wanted my farewell message to focus on the adventure on which you are about to embark. It is said that lawyers are unpopular in America today, or at least we seem to enjoy thinking they are. Politicians like to run against lawyers. Our excesses are the stuff of jokes. Shakespeare’s line from Henry VI, Part Two, is repeated as an illustration that these thoughts are not new: “The first thing we do, let’s kill all the lawyers.” But questions have to be asked: What in the world was Shakespeare thinking of? Why did he want to incite violence against such a pleasant, even loveable, segment of the population?

Let’s begin by asking what Shakespeare’s character was really saying.

Jack Cade, Dick Butcher, and their two accomplices were failures at all they attempted. They were incompetent as tradesmen, they were illiterate and lazy, and they could not succeed even as thieves. Their hope, such as it was, lay only in the possibility that the order of things could be overturned, not to establish reform, or justice, or a new social structure, but so that they could steal without penalty.

Here is Jack Cade’s platform:

There shall be in England seven halfpenny loaves sold for a penny; the three-hooped pot shall have ten hoops; and I will make it a felony to drink small beer. All the realm

shall be in common, and in Cheapside shall my palfrey go
to grass. And when I am king -- as king I will be -- there
shall be no money; all shall eat and drink on my score;
and I will apparel them all in one livery, that they may
agree like brothers, and worship me their lord.

It is in response to this that Cade's friend Butcher replies, "The first thing we do, let's kill all the lawyers." And Cade goes on:

Nay, that I mean to do. Is not this a lamentable thing, that
of the skin of an innocent lamb should be made parchment?
that parchment, once scribbled o'er, should undo a man?
Some say the bee stings; but I say 'tis the bee's wax, for I
did but once seal to a thing, and I was never mine own man
since.

So why do Cade and Butcher want to kill all the lawyers? Because it is the lawyers who will oppose their scheme. It is the lawyers who will stand and defend those who would be the conspirators' victims. It is the lawyers who will ensure that promises duly made be kept, that order for the common good be respected, and that neither Cade nor any other man in England will be worshipped as the people's lord.

So long as lawyers are on the job, Cade's rebellion cannot succeed. So long as lawyers are on the job, the law, not any demagogue, will reign supreme.

A condemnation of lawyers? No: Shakespeare's is the highest praise. And it is the most profound challenge.

We in America at the beginning of the twenty-first century really do know this, even if we occasionally act otherwise. We know that, to the extent that the scourge of racism is being lifted from our land, it is through the uses of the law, and thanks to the activities of lawyers. To the extent that we enjoy cleaner air and water, safer workplaces, greener and more accessible public spaces, this could not have happened without the hard work and dedication of lawyers. And to the extent that we can hold out the prospect of equality of opportunity and equality before the law, lawyers and judges, lawmakers and law teachers, are the ones – the only ones – upon whom we must depend for support.

And as a guarantor of rights and a protector of our fellow human beings, irrespective of their nationality, who otherwise have no protection, international law is now also beginning to come into its own:

■ Fifty years ago, the ways in which a country treated its own citizens were thought – with only a very few exceptions – to be of no legitimate international legal concern. That has changed.

- Fifty years ago, the ways in which the nations of the world traded with each other were subject to little international legal scrutiny. That has changed.

- Fifty years ago, how nations risked damage to their environments, how they set up means of communication and transportation, how they protected their intellectual property and developed their natural resources: none of these was the subject of an international legal regime. All of that has changed.

And the pace of change increases. Your generation will continue to manage that change, in all of those areas and in others we cannot now even imagine. That is the enormous challenge that all of you will face as you grow and develop as lawyers.

Some of you are familiar with the landmark human rights case of *Filartiga v. Pena*. In that 1980 decision of the United States Court of Appeals for the Second Circuit, Judge Irving Kaufman held that international human rights law, as it develops and matures, is part of the law of the United States, and can be relied on as the source of rights – as the rule of decision – in litigation before the courts of this nation.

As justly famous as Judge Kaufman’s decision has become, what happened next is equally important. Once it was established that United States federal courts had jurisdiction to vindicate the human rights of individual citizens of other nations in cases properly before them, the case was remanded for trial, in order to determine the liability of an alleged torturer, and to determine the award of relief. The defendant defaulted, and the court proceeded to convene a hearing on damages. The plaintiffs put on a compelling case, not only of the pain and suffering that they and their 17-year-old son and brother had undergone, but of the appropriateness of punitive damages to be awarded against his murderer.

Judge Eugene Nickerson granted damages, including the punitive element. The Judge held that, whatever might once have been true, international law is not “a mere system of benevolent yearnings, never to be given effect.” Rather, international law, and the law of human rights in particular, is a system of legally enforceable rights and obligations that attach to individual people, based solely on the fact of our common humanity.

To say, as some do, that international law is not law is simply silly. That Amnesty International still denounces states that torture their citizens, and that nations do not always live in peace, no more demonstrate the absence of a legal system than the prevalence of jaywalking suggests that there is no law in New York City. The legal system is honored, not in the breach but in the observance, every day, in ways so numerous and so routine that they defy notice. Just for example, international transportation and trade are embarked upon with confidence and certainty now, because there is in place a firm international regime accepted as law. Your generation will expand such regimes even further.

That is the international legal order that will soon welcome you as its newest practitioners, teachers, and scholars.

So what do you have to do to accept this challenge? You have to do a few things more difficult than passing the Bar exam, and even more nerve-wracking than participating in the Jessup. And you have to keep doing them throughout your professional lives:

- You have to read and think and write about the law. You have to participate actively in it as the law develops. You have to care about whether the international legal order is doing, as Garrison Keillor would say, what needs to be done.
- You have to work hard at learning to communicate: to speak clearly and precisely and creatively, to advocate for your client to the best of your ability, and to act on the premise that a lawyer who does not get her message understood is not doing her job as a lawyer.
- You have to be hungry to learn about other cultures, other languages, other ways of looking at history, at the world, and at the law itself. An international lawyer has to have an insatiable appetite and an unquenchable curiosity about international affairs.
- And you have to work at developing your humanity. The international legal system requires architects and draftsmen, designers and safety engineers, maintenance staff and even laborers, who understand what they are building and why. People will live in the structure they are making, and as people ourselves we have to ensure that the building serves their purposes.

Shakespeare's thugs knew that lawyers posed the ultimate threat to the possibility of their success. It is extraordinary that anyone could misunderstand that homage to the nobility of our legal profession, and its vital role in defending what is just.

Your challenge, then, 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.