

Marvelo Judges Moot Court

By Alan Nelson

I came from the bottom of the bucket. Pulled in at the last minute. They didn't have enough judges for a problem that combined the issues of the constitutionality of the Religious Restoration Act and the Americans With Disabilities Act. So less than a day before, I received a call imploring me to judge a moot court competition round.

The combination of issues didn't seem appropriate. Or logical. Then I read the rule that we couldn't question the appropriateness of the combination of issues.

I read the bench brief e-mailed to me the afternoon before I judged. I drove over to the law school. In the hallways I could easily pick out the contestants, some reading notes, some pacing, some going to the bathroom. The smell of fear and adrenalin in the air brought back memories.

The judges milled around in a reception area eating snacks, drinking coffee and cokes. Most kept checking their phones for e-mails and texts from the office. It's the usual buzz before the jousting, and the contestants are ready to tilt at their windmills.

The judges are called. I'm assigned to one courtroom. At the last moment, I was shifted to a courtroom where one of the judges recognized a new hire. As a result, he announced a conflict of interest and recused himself.

I sat down by an out-of-town lawyer dressed as if he was before the U.S. Supreme Court. In fact, his black suit billowed like a judge's robe. He had already declared he was the chief justice before I came in.

One of his associates had briefed the bench brief. I stared at it. It was three times thicker than the brief we'd been e-mailed. This same associate had printed out the dozens of cases. I noticed the tabs, highlights and cross-reference markers. I wonder to what client the hours were charged.

Then the first speaker rose to speak. He was dapper. The definitive dapper lawyer-to-be. But to my jolted amazement, his words barely peeped to the surface of my awareness before the honorable chief justice took the issue, talked to it, wrestled it, and lectured on it. He trotted out arguments in a nice little row, ran them around the ring, and jumped them through hoops of flaming gas.

At first I felt inadequate, trying to swim in an enormous infinity of ignorance. Someone who takes a task seriously is to be admired. There was a pause as the chief justice looked about beaming. The first speaker tried to take the floor again.

"Yes, Your honor, I agree with that framing of the issues at hand ..."

"There's an ick, food on your tie," the chief justice interrupted.

The lawyer looked down, flushed brilliant red, examining a tie he'd bought for the competition. I looked too -- and could see nothing. Neither could the speaker. But he pretended to scuff something away.

"Oh," said the chief justice. "It's my glasses." Then, as if it bore the greatest relevance, he began to speak of Scalia with a familiarity, as if they were fellow justices, and then as if he was Scalia. I never made the connection between imaginary food on a tie and Scalia.

The second lawyer on the petitioner's side rose to speak. She never began. Our chief justice began to question her, not waiting for but a fragment of the answer before launching into a question unconnected, at least to my average mind. I asked one question regarding the legislative history of a statute, as prompted by the bench brief, and it startled the chief justice. He began to answer my question with one of his own. I realized we were not going to hear the speaker speak. We were going to listen to questions, and explanations of the reasoning of those questions, and digressions of those questions, and asides in those questions meant as humorous and intellectual. His very expression invited you to mark him as a thinker.

I think the five other humans in the room felt just as trapped as me. The chief justice was transported to a world where he was a real justice, and all hung on his every word.

"And all the great opinions are written in English," he said.

We all did a double take on that. Even the associate raised her eyebrows.

The Respondent's first lawyer rose to speak. He actually blurted two sentences in a rapid squawk before our chief justice cut him off with another question that turned into an impromptu exposition on how difficult it would be to represent his side of the issue. Then he started down a rabbit trail, which led to a fox trail, then to a wild goose chase. I've never seen so many digressions from one point of law to another point of law within such a few precious minutes of the Respondent's time. It was a bizarre cleverness, as if Fellini sat in a director's chair nearby directing a flick on appellate process.

Then the fourth and last lawyer rose to speak. He looked like Hugh Jackman playing Wolverine in *X-Men*. He had a country twang, but he was powerful, by far the most charismatic. The chief justice began questioning him and to our amazement, Wolverine easily handled him, answering his questions fully while making his points. Wolverine had the three previous speakers to analyze the situation and made the most of it.

However, it appeared to unsettle our chief justice to hear arguments coming from someone other than himself. He looked about, disoriented, and finally frowned at Wolverine.

It came time to rate the speakers on a variety of issues. As I began filling out the rating sheet, I realized that I really didn't know the abilities of the first three speakers because you're taught never to cut off a judge, to always be extremely polite. I made my best guesses, and then gathered the other two justice ratings to give to the bailiff outside. As I did, I sneaked a peek at our honorable chief's rulings. I was not surprised to see Wolverine getting the lowest scores from the chief.

I shook my head. I handed the rulings to the bailiff. Just like a real court, the rules allow you to get a shot at justice. But it's not guaranteed.