

I HAVE THE BLUES—A TRIBUTE TO THE HARRY FLECHTNER

*Stefan Kröll**

The normal way of honoring a leading academic like Professor Harry Flechtner upon his “retirement” from regular University life is a substantive contribution on an interesting legal question connected with his field of research. As this issue of the *Journal* is full of such contributions on the CISG by colleagues, I decided to write a more personal piece focusing on the various roles Professor Harry Flechtner played at the Willem C. Vis International Arbitration Moot (Vis Moot). They show in my view the second and often underestimated role of a truly leading academic, i.e. that of a devoted and inspiring teacher.

For their book “What the best law teachers do,”¹ the three authors made a four-year survey of American Law Schools. After asking first for nominations by students and colleagues they then tried to synthesize the principles by which those professors teach. The authors deduced seven relevant criteria from their survey which led to the exceptional and lasting learning of the students which they considered to be a hallmark for inclusion on the list. Looking at these criteria I would not have been surprised to see Harry Flechtner on the list of the twenty-six professors listed. That he did not appear on the list was probably because the authors concentrated their survey primarily on classroom teaching and on U.S. students. If they had adopted a broader approach and had asked the international students participating in the Vis Moot, I am confident that Harry Flechtner would have been on the list. I have to admit that I cannot base that evaluation on any personal attendance in any of his classes. For the actual classroom teaching I have to rely on hearsay from other colleagues and the various teaching awards he has won at Pitt Law. Looking at three of the most relevant criteria I can, however, rely

* Stefan Kröll acts regularly as an arbitrator in national and international cases and is seen as one of the leading German experts in the field of international arbitration. He is an Honorary Professor at Bucerius Law School, Hamburg and one of the Directors of the Willem C. Vis Arbitration Moot in Vienna.

¹ SCHWARTZ, HESS & SPARROW, WHAT THE BEST LAW TEACHERS DO (Harv. Univ. Press 2013).

on my own experience in the Vis Moot context. These criteria are Personal Qualities, Relationship with Students and Creative Teaching Activities.

My first personal contact with Harry Flechtner dates back to the early days of the Vis Moot after I had started coaching the Vis team at Cologne University in 1998. At the beginning, it was merely an occasional chat in the Dachgeschoss, primarily about how to motivate the students and the performance of the various teams. In my first years as a coach, the competition element of the Vis Moot still played an important role for me, as it does for a number of other young (and not so young) coaches. I measured the success of my teams primarily by the prizes they won and their ranking in the competition. Thus, I was amazed to see that the two professors responsible for the Pittsburgh team, Harry Flechtner and Ron Brand, both leading scholars in their fields, seem to pay more attention to other objectives than making it to the elimination round with the Pittsburgh Team. In particular, they apparently did not engage in any form of micro-management of the different speakers, discussing and improving individual arguments. Instead, they concentrated on the broader picture giving the students more leeway to develop their own arguments. They always emphasized the broader educational element and were interested more in the general progress their team made than progressing in the competition.

With experience I realized that this is actually what the Vis Moot is primarily about: getting students interested in two new and fascinating legal topics, i.e. international contract law and international arbitration, and broadening their understanding for the diverse legal cultures coming with these topics. All it needs as guidance from the legal side is to provide the students with a solid knowledge of the underlying principles, the necessary structure, and the background for them to develop their own ideas and argument. At the same time, you need a lot of interpersonal skills to keep the students interested in a way that makes them go the extra mile beyond their ordinary law school curriculum. They must feel that they are part of an international community, going through the same experience which is looking forward to a lifetime event in Vienna.

While standard teaching and personal connections with your team can contribute to that on the level of each individual team, it needs more at the institutional macro level. Creativity is required, and that is Professor Flechtner's major contribution to the development of the Moot at the institutional level. Being a devoted musician, he came up in 2005 with the two songs which since then have developed into a kind of (inter)national

anthem for the student moot community: *The CISG Song* and *Mootie Blues*. Their performance by Harry Flechtner in the Konzerthaus in Vienna is every year one of the highlights of the opening ceremony and definitively that part which leaves the most lasting impression with the students. In particular, *Mootie Blues* summarizes the experience of the students over the last six months. Long days and nights in the library, restricted social life outside the moot . . . but being part of an international community of students from all over the world meeting finally in Vienna.

For the students there could hardly be a better start for the event in Vienna which was the focal point of their intense preparations over the last months. By that time, most of the students already know the songs by heart due to the numerous Youtube recordings which exist. But seeing it performed by one of the celebrities of the CISG, often cited numerous times in their briefs as the author of the leading commentary on the CISG from the common law world (Honnold & Flechtner, *Uniform Law for International Sales under the 1980 United Nations Convention*), is an experience in itself.

And for the third song, “summarizing” the issues in the problem of the particular year, there are few limits to Harry’s creativity. We have seen solo performances, duets with other leading lights in the area, background choirs or choruses, and a musical performance of phantom of the opera. Whatever it is, it is a crucial element of the students’ experience in Vienna. That applies in particular for students coming from countries where professors are less approachable than in the U.S. and definitely less approachable than Harry Flechtner. His outstanding academic achievements in the field of international sales law are evidenced by his membership in the CISG-Advisory Committee, a private but institutionalized gathering of many of the leading experts on the CISG worldwide. Irrespective of that, I have never heard from a student who was afraid to approach Professor Flechtner with a question. Assuming that humbleness is correctly identified as one of the most important features of the best teachers, Harry Flechtner definitively ticks that box.

From my own experience, I can testify that Harry also has the second mentioned personal feature of an excellent teacher: a genuine and unlimited interest in the topic. He is the only person who writes me emails after the Moot is over and probably everyone is fed up with the problem after having heard it argued at least fifty times. Harry by contrast wants to know whether certain arguments, which were not run by any of the teams were in my mind when I wrote the problem. The arguments are usually very convincing but

not suitable to be raised during the competition. They required not only a deep understanding of the CISG and related areas of comparative and national law, but also more time to elaborate them than the speakers have during their presentation.

The third important feature which characterizes a good law teacher is his care for the students. How Harry cares for his students is proven by an incident during this year's moot. Until then we had never received any complaint from Harry about the behavior or grading of any of the arbitrators which have judged his teams. This year the directors of the Vis Moot received directly after a hearing of one of his teams an email from an obviously furious Harry Flechtner. Apparently one of the arbitrators had dominated the whole hearing and had made comments which infuriated Harry in such a way that he threatened to terminate his participation in the Moot if we were to continue to schedule that arbitrator. He was not concerned about the grading—which was actually very good—but about the feelings of his students who had prepared for months without a chance of properly presenting the case. Unfortunately, due to an oversight from our side, this arbitrator was then to judge one of the teams belonging to the “Pitt-Consortium” in the next round without us having a chance to talk to him. We did, however, receive an email from Harry directly after that hearing asking us to ignore his previous mail, as the arbitrator had this time behaved impeccably to the teams and had given valuable advice. By the time we received the email it had not yet been clear whether the team advanced or not. The only thing Harry cared for was that the students enjoyed their hearing and the experience it provided.

I hope we can convince Harry to extend his farewell tour to the Vis-Moot for some years so that next year is not the last time that we can open the Vis Moot with the *Mootie Blues*. I am certain that there are still several years of students which hope to benefit from one of the best law teachers and a great academic, not only by reading the 5th edition of the Honnold/Flechtner but also by being arbitrated by him in Vienna. Harry, you have a standing invitation to the opening ceremony as well as to the preparatory Schnitzel at Figlmüller. Ad multos annos.