

Introduction: Three Decades Later, Judge Schermer Is Still a “Judge for All Seasons”

Daniel Keating

I can still remember pretty distinctly the very first time that I met Judge Barry Schermer. It was a Monday in February of 1988, the President’s Day holiday. I had the day off from my job as an in-house bankruptcy attorney for The First National Bank of Chicago. Dorsey “Dan” Ellis, Washington University School of Law’s Dean at the time, had given me an offer for a faculty position at the school to begin in the summer of 1988. After making the job offer, Dean Ellis invited me to St. Louis so that I could meet some more people connected with the law school and the university. At a cocktail reception that Monday evening at Dean Ellis’s home, Judge Schermer, who recently had been appointed as a federal bankruptcy judge for the Eastern District of Missouri, was one of the invited guests.

My first impression of Judge Schermer was quite positive. He was very soft-spoken, yet also intense. He was welcoming and funny in a self-deprecating kind of way. We hit it off right from the start, and he shared with me his hope of co-teaching a seminar with me at some point on Chapter 11 reorganizations. It would be almost two years from that first meeting before the two of us offered our first co-taught seminar, but I had the opportunity to interact with Judge Schermer frequently before then. That’s because Judge Schermer was good friends with one of my new faculty colleagues, David Becker, and the three of us ended up crossing paths over those next couple of years on the tennis court, the basketball court, and the softball field. A love of playing and watching sports is something, besides the bankruptcy connection, that Judge Schermer and I have long had in common.

The Chapter 11 Reorganization seminar was first offered in the fall of 1989, my second year of teaching. Originally, the seminar was to be co-taught by Judge Schermer and me. In one of the first seminar classes of that semester, Judge Schermer asked me if it would be okay if he brought a guest teacher, Lloyd Palans, to join us at the front table. Mr. Palans was a prominent local bankruptcy lawyer from Bryan Cave LLP, so I thought that he would make a fine guest speaker. However, Mr. Palans’s debut as a guest teacher was so impressive that he became “the guest who never left” and continued teaching with us for the next twenty-eight years.

During my first five years at Washington University, I also taught the

basic Bankruptcy course each year. In my sixth year of teaching, however, I agreed to become the Associate Dean of the law school, and that meant I needed to reduce my regular teaching load. The one course I taught that I figured was easily replaceable was basic Bankruptcy, because I knew that Judge Schermer could do a great job teaching that course. Politically, it was somewhat tricky to get the faculty to approve Judge Schermer to teach the basic Bankruptcy course: at the time, our law school's use of adjunct faculty was mostly limited to having them teach the lawyering practice and skills courses. Fortunately, Judge Schermer had the benefit by that point of a few years of outstanding student evaluations in his seminar. In addition, I could vouch personally for his strength as a teacher from teaching alongside him in the seminar. In the fall of 1993, Judge Schermer added the basic Bankruptcy class to his teaching lineup and he has taught both courses ever since.

In light of all of the above, you can see why I was so eager to have Washington University School of Law host a conference and symposium to celebrate Judge Schermer's thirtieth year on the federal bankruptcy bench and his twenty-eight years of dedicated teaching at the law school. However, I cannot take credit for the idea of having such a celebration. That credit must go to Lloyd Palans and David Warfield, both of whom contacted me in August of 2016 to begin planning such an event.

As conferences go, this was an easy one to organize. The challenge for us was not in trying to come up with enough speakers and topics to fill half of a day. Instead, the challenge was narrowing down the possible topics and speakers so that they could all fit in the time-frame that we had in mind. We organized the panels for the conference according to the various "hats" that Judge Schermer has worn in his professional life. We came up with five different capacities that Judge Schermer has served: judging consumer bankruptcy cases, judging commercial bankruptcy cases, serving on the Eighth Circuit Bankruptcy Appellate Panel, mediating especially difficult cases in other bankruptcy jurisdictions, and teaching at Washington University. For each of these capacities, we came up with five potential speakers to form a panel for that particular topic. Amazingly, every single one of our potential speakers agreed to speak at our conference, except for one former law clerk who was going to be in Australia at the time of the conference.

In addition to the conference that was held in the Bryan Cave Moot

Courtroom on Friday, April 7, 2017, my fellow co-organizers and I decided that it would be fun to create a more lasting legacy in the form of a symposium issue of the Washington University *Journal of Law & Policy* to celebrate Judge Schermer's thirtieth year on the federal bench. We invited all of our conference speakers to participate by writing something for this symposium issue and, as you can see from what follows, most of them took us up on our offer.

T.J. Mullin is a St. Louis bankruptcy attorney who has practiced bankruptcy law since 1973 and has represented more individual debtors in bankruptcy than any other lawyer in the St. Louis area. In his essay, "What We Want in a Judge," Mr. Mullin focuses on the human side of his bankruptcy practice, initially outlining the various reasons why individuals end up filing bankruptcy. Mr. Mullin next asks what characteristics the various parties in a bankruptcy case—debtors, creditors and attorneys—would wish to find in their bankruptcy judge. After going through that list, Mr. Mullin concludes that Judge Schermer has the knowledge, patience, kindness and fair-mindedness that are critically needed in an area such as bankruptcy, which "is not a happy action."

Switching from the human side of consumer bankruptcy to the legal side, Judge Kathy A. Surratt-States and Wendell J. Sherk combine to co-author an article entitled, "Barry Schermer: His Consumer Bankruptcy Greatest Hits." Judge Surratt-States has the unique distinction of being both a former student of Judge Schermer's as well as a current colleague on the bankruptcy bench for the Eastern District of Missouri. Mr. Sherk graduated one year earlier than Judge Surratt-States from Washington University School of Law and has practiced consumer bankruptcy law exclusively for over twenty-five years in the St. Louis area. Together the two co-authors walk the reader through some of the most important consumer bankruptcy decisions that Judge Schermer has authored in his long career, both as a bankruptcy trial judge and as a member of the Bankruptcy Appellate Panel for the Eighth Circuit.

Tom K. O'Loughlin II is a bankruptcy attorney in Cape Girardeau, Missouri, who has practiced before Judge Schermer for thirty years. In "Barry S. Schermer: Lessons in Life and Law," Mr. O'Loughlin recounts how Judge Schermer's monthly hearings in Cape Girardeau became an occasion for the local bankruptcy lawyers there to receive not only "1,500 hours of Continuing Legal Education," but "1,500 hours of Continuing

Life Education.” Mr. O’Loughlin’s essay is a mix of lessons learned from Judge Schermer along with specific memorable anecdotes gleaned from three decades of working with the Judge.

In “The Examiner – Back to the Future,” Mr. Palans tells the story of the *Apex* case,¹ one of Judge Schermer’s earliest “mega cases.” Mr. Palans explores how that case enabled Judge Schermer to create a new paradigm for the use of the bankruptcy examiner. Mr. Palans, who was appointed by Judge Schermer as the examiner in the *Apex* case, explains how his expanded role as examiner enabled a multi-million dollar case to be handled effectively and expeditiously. In particular, Mr. Palans’ broad authority as examiner to investigate claims and causes of action available to the estate and to serve as a de facto special master for the case served as an important precedent and a useful working model for future bankruptcy cases.

In an interesting historical piece, Judge Robert J. Kressel presents a mini-history of the creation of the Bankruptcy Appellate Panel for the Eighth Circuit Court of Appeals. Judge Kressel’s essay, “Judge Schermer and the Creation of the United States Bankruptcy Appellate Panel for the Eighth Circuit,” traces the origins of the Eighth Circuit’s BAP in 1996, which included both Judge Kressel and Judge Schermer as original members of the panel. Judge Kressel’s essay notes that the creation of the BAP panel in the Eighth Circuit was initially met with skepticism by some observers, but most of the skeptics have had their doubts erased now that the panel has successfully heard bankruptcy appeals for twenty years.

Judge Charles E. Rendlen III and his long-time career law clerk, Abigail B. Willie, collaborated on an essay that details Judge Schermer’s impressive skills in the mediation arena. The essay details Judge Schermer’s efforts to bring multiple parties to a global settlement in the U.S. Fidelis bankruptcy, an incredibly complex and high-stakes case involving pre-petition criminal fraud by the debtor. Judge Rendlen’s contribution to the co-authored essay is to describe the complexities of the case at the point when Judge Schermer was brought in to mediate it. Ms. Willie adds a section at the end of the essay that outlines the various skills necessary to be a successful mediator, and how Judge Schermer

1. *In re Apex Oil Company*, 101 B.R. 92 (Bankr. E.D. Mo. 1989).

impressively fits the bill for all of those requirements. This essay wins the award in this symposium for the cleverest (and longest!) title: “The Cerebral Hercules and the Bankruptcy Hydra: How Judge Schermer Slayed a Multi-Headed Monster While Deep in the Heart of Texas (and What Any of This Grecian Hero Analogy Has to Do with a Little Bit of Yiddish).”

Another impressive aspect to Judge Schermer’s career is how he has volunteered to serve as a fill-in bankruptcy judge in other jurisdictions that have had too many cases and not enough bankruptcy judges. One of Judge Schermer’s regular fill-in assignments was in Miami, in the United States Bankruptcy Court for the Southern District of Florida. Allison Day is a Miami bankruptcy lawyer who had the opportunity to practice in front of Judge Schermer on more than one occasion. Her essay explores the law surrounding involuntary bankruptcies that use one particular Miami-based case, *In re Rosenberg*.² Ms. Day portrays *Rosenberg* as a cautionary tale for attorneys who might be considering filing an involuntary bankruptcy petition against a debtor. Her ironic title for this essay is “How Not to Use the Involuntary Bankruptcy Process.”

One of the most scholarly and substantial pieces for this symposium issue was written by Mr. Warfield, one of the co-organizers of the conference. Mr. Warfield’s well-researched and heavily footnoted historical piece, “The Three Giants of Bankruptcy Law in St. Louis,” looks at a few past and present notable figures with St. Louis roots who have played a prominent role in the history of bankruptcy law in this country. Mr. Warfield’s article explores how Jay Torrey, a St. Louis commercial lawyer, played a key role in drafting this nation’s first permanent bankruptcy statute in 1898. Next in line is Walter D. Coles, a St. Louis bankruptcy referee in the early twentieth century who served that role for thirty-six years and published extensively in the area of bankruptcy law. Third and fittingly is Mr. Warfield’s account of the contributions made by his paper’s final bankruptcy “giant,” Judge Schermer.

In 2003, our Chapter 11 Reorganization seminar recruited a permanent substitute co-teacher, local bankruptcy attorney Dave Going, who would

2. *In re Rosenberg*, 414 B.R. 826 (Bankr. S.D. Fla. 2009), *subsequently aff’d* 472 F. App’x 890 (11th Cir. 2012).

fill in the third seat at the table whenever one of the regular three co-teachers had a conflict. Mr. Going has invariably ended up teaching three to five sessions each year, so he has had a birds-eye view of Judge Schermer's considerable teaching skills. Using that first-hand knowledge, Mr. Going's essay, "What Makes a Good Teacher?," explores how Judge Schermer uses his unique teaching skills not only in the seminar classroom but also in his courtroom.

Darrell Clark was a student of Judge Schermer's in the early 1990s and then did a two-year clerkship for him starting in 1993. Mr. Clark now practices bankruptcy law as a partner at Stinson Leonard Street's D.C. office. In "Lessons Learned While Clerking," Mr. Clark highlights seven different important lessons for practice and for life that he learned during his two years working in Judge Schermer's chambers. "As someone looking for a mentor in law," Mr. Clark explains, "I landed in the right place."

Emily K. Cohen has a long history of working with Judge Schermer in various capacities. First, she was a student in both his basic Bankruptcy class as well as the Chapter 11 Reorganization seminar. Second, following graduation from law school, Ms. Cohen served as Judge Schermer's term law clerk. Finally, after eight years in practice, Ms. Cohen returned to Judge Schermer's chambers to serve as his career law clerk. With that perspective, Ms. Cohen wrote an essay that reflects on the various lessons that Judge Schermer has taught her throughout all of those experiences. The title, appropriately enough, is "Judge Barry S. Schermer: A Teacher of Law and of Life."

Along the same lines, Sandra F. Louis had the experience of sitting in Judge Schermer's very first Chapter 11 Reorganization seminar and then, after several years in practice, served two terms as his law clerk. Ms. Louis also worked with Judge Schermer in her capacity as Bankruptcy Court Attorney Advisor in the Eastern District of Missouri. Ms. Louis' essay, "A Tribute to Judge Barry S. Schermer: Judge, Teacher, Friend and the Lessons Learned," explores some of the important lessons that she learned from Judge Schermer in areas as diverse as legal writing, oral communications, travel efficiency, food, and overall balance in life.

Cynthia Woolverton has practiced bankruptcy law for almost twenty years before Judge Schermer, and for the past six years she has co-taught the basic Bankruptcy course with him. With the rich perspective that

2017]

Introduction

7

comes from both of these connections with Judge Schermer, Ms. Woolverton shares some of the many lessons that she has learned from the Judge in her essay, “Mortgages and Mentoring: My Career with Judge Barry S. Schermer.”

My own contribution to this symposium issue draws upon my twenty-eight years co-teaching the Chapter 11 Reorganization seminar with Judge Schermer and highlights the issues that Judge Schermer has had the most fun teaching in that setting. I also win the alliteration award with the title of my article: “Judge Schermer’s Top Ten Topics to Teach.”

Judge Schermer’s essay closes out the symposium contributions with his focus not on his own accomplishments but rather on the many people who have helped him get to where he is now. As Judge Schermer notes in his introduction, quoting Mr. O’Loughlin, “When you see a turtle on a fence post, you know he had some help getting there.” Judge Schermer’s piece, “A Tribute to Those Who Helped Me Get Here,” is a colorful account of his rise to bankruptcy prominence that highlights the many colleagues and friends who contributed to his success along the way. It is a fitting final essay to this symposium issue, because it captures the “other-centered” nature of Judge Schermer’s perspective on life that has helped make him so effective in all of his different roles.