

A Tribute to Judge Barry S. Schermer: Judge, Teacher, Friend & the Lessons Learned

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I am twice blessed.¹ First, to have learned from the Honorable Barry S. Schermer as a student at Washington University School of Law and as his law clerk for many years; and second, now to use the skills he so determinably taught to give honor to him and recognize the gift he has been to so many. This tribute arises from the celebratory bankruptcy conference hosted in the Judge's honor earlier this spring at Washington University School of Law recognizing his thirty years on the bench and twenty-eight years of service as an outstanding teacher at the law school. The conference was known as a "festschrift," a term that I have come to learn etymologically means "a festival writing" or a "celebration writing."² The term fits perfectly for an event celebrating Judge Schermer because it esteems him as scholar, devoted teacher, and cherished friend of the university and bankruptcy bar.

As part of that wonderful gathering, the symposium consisted of five panels, each panel comprised of five speakers who focused on a distinct area of the Judge's contributions to the practice and body of bankruptcy law. The panels reflected on Judge Schermer as a jurist presiding over consumer and commercial cases, as an appellate judge, as a mediator, and

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1. Speaking of mercy, the young attorney Portia recites one of Shakespeare's famous speeches:

The quality of mercy is not strain'd,
It droppeth as the gentle rain from heaven
Upon the place beneath:
it is twice blest; It blesseth him that gives and him that takes

WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE, act 4, sc. 1., <http://shakespeare.mit.edu/merchant/merchant.4.1.html>.

2. *Festschrift*, DICTIONARY.COM, <http://www.dictionary.com/browse/festschrift> (last visited July 15, 2017).

as a teacher/mentor. I spoke on his role as teacher and as mentor, emphasizing lessons learned in the classroom and as a law clerk. What follows are portions of my comments amplified with “lessons learned” from serving as one of his law clerks and from the experiences of those practicing before him. Indeed, each speaker, twenty-five in all, revealed common characteristics and lessons for which we are all better attorneys and better people as a result of our time with the Judge. His seemingly instantaneous analysis, practical wisdom, work ethic, procedural efficiency and even his humor have had an unparalleled and lasting influence on our bankruptcy community. His strengths call us individually to achieve.

My spoken thoughts identified three key lessons learned as a student of Judge Schermer’s in the bankruptcy seminar. The first lesson was his modeling collegiality among practitioners, jurists, and academics. It brought a change of atmosphere to the classroom. The Chapter 11 seminar, in my experience, offered a new approach to a code-based course. It was first and foremost a writing seminar, and then a course on Chapter 11 of the Bankruptcy Code taught in round-table format. In practical effect, it taught us how to write informational and persuasive memoranda, but its broader impact was to teach us how to approach legal conflicts and find resolution by understanding the varied interests involved in bankruptcy (debtor, various creditor groups, case law precedent, and the court), and to think about solutions that might address those competing positions.

The second lesson I learned as a student was the message that the bankruptcy field itself is a wonderful, interdisciplinary field. History tells us that bankruptcy practice was at one time a less-esteemed field, dealing with mere money and people’s failures. Yet, as students of Judge Schermer (in the classroom and courtroom), we often heard him say bankruptcy is the best legal field: it incorporates every other discipline of law; it requires the combined skills of legal and practical analysis; it offers a collegial community; and it invites creative solutions.

The third lesson, an enduring one which was integral to working as his law clerk, was the practiced art of writing. In the seminar, Judge Schermer demanded conciseness from his students, most of us third year students about to be practicing attorneys who were skilled at generating lengthy

papers. Instead, the Judge taught that “less is more,” and he provided instruction on how to achieve that.

Recently, I came across an article Judge Schermer gave me on my first day as his law clerk some twenty-five years ago. The article was a reprint Judge John Godbold’s presentation in 1990 at the Workshop for Bankruptcy Judges in Austin, Texas. It conveyed what became Judge Schermer’s philosophy and approach to writing. Judge Schermer taught and modeled these principles over his decades of teaching and judicial service, and thus, I believe the main points are worthy of repetition as a legacy from him. He taught:

1. Be Concise:

The goal of the writer is to be received and understood, focusing only on the topic at hand. “Nothing that the writer does should be an obstacle to this process. Excessive words must not intrude and choice of words must not [either]. Ego must not interfere, nor the wish to straighten out the law . . . nor the desire to demonstrate publicly the writer’s great legal ability and strong research.”³ Judge Schermer followed these precepts and shared them with his law clerks.

2. Have an Outline and Use Headings:

Plan what you intend to say. Thinking is the greatest part of writing. Then organize and guide the reader with headings.

3. Tell the Reader What You Are Writing About:

Immediately state the nature of the case. Doing this gives perspective. It metaphorically paints the forest before you fill in the trees. In his article, Judge Godbold reported that a group of judges selecting an opinion with the best opening sentence chose one that began with the simple statement: “This is an entrapment case.”⁴ Judge Schermer followed this approach as well.

3. John C. Godbold, former United States Circuit Judge for the Eleventh Circuit, Effective Opinion Writing, address at the Workshop for Bankruptcy Judges in Austin, Texas (Mar. 9, 1990).

4. *Id.*

4. Know your Facts – the Law & Issues:

Tell only the necessary facts. State the applicable law clearly and focus on discrete issues. Doing so requires preparation, study, and the discipline needed to avoid extraneous matters.

In preparation for our panel discussions about Judge Schermer's career, many of the speakers exchanged stories of our courtroom experiences appearing before him in court. Collectively, we noted how his passion for teaching, his procedural efficiency, and his work ethic manifested themselves in how he ran his courtroom. Again, a common theme emerged and another list of "lessons learned" evolved. Not unlike his writing lessons, these start with preparation, organization, and conciseness.

1. Motion Practice in Fifty Words or Less:

Judge Schermer's often-heard first admonition to counsel appearing before him is to state your name, who you represent, and why you are in court. While this is simple and efficient, it is frequently a revelation to attorneys.

2. Know Your Case – the Facts & Law:

Judge Schermer works hard. He knows the content of pleadings and expects informed and organized presentations from those appearing before him. Attorneys needed to be able to state the Code section under which they were proceeding and the relevant (only the relevant) facts of the case. He would ask questions and often guide attorneys when needed. But, patience can wear thin as occurred, for example, after a day-long trial on an objection to discharge. A young attorney had good facts, but presented them in a convoluted fashion without connection to any element of the cause of action for which they were offered to support. When Judge Schermer asked the attorney to which section of 11 U.S.C. § 727 the evidence applied, the reply came, "It's all jumbled together, your honor." Translated, that meant the court was to figure out the attorney's case; unfortunately for this young attorney, that was not going to happen. Ultimately, Judge Schermer admonished the attorney to present evidence the next

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day only if counsel could state beforehand to which element of section 727 it applied. In doing so, Judge Schermer encouraged the attorney to think and organize before presenting the case.

3. Trial Organization:

In years predating mandatory pretrial conferences, Judge Schermer issued pretrial orders requiring counsel to exchange exhibits and to mark and make copies (preferably in a binder) for the court and opposing counsel. These copies were to be tabbed and numbered. With this process, the Judge forced upon counsel the necessary thinking and organizing needed for a well-planned trial.

4. Proposed Orders:

While it may seem simplistic, Judge Schermer's wise advice to counsel was to prepare a proposed order prior to trial and then revise it immediately after trial concluded. He taught that the order is counsel's opportunity to establish the record and doing so when details are fresh in mind is best. That effort requires discipline and hard work.

5. Communication/Conflict Resolution:

Judge Schermer expected an honest assurance that, before coming to court, counsel had tried to resolve a dispute. That lesson also is common sense, though counter-intuitive to litigation. Further, he allowed debtors or creditors who appeared in court to speak when they requested, honoring their needs and preserving their dignity. Demonstrating both wisdom and compassion, he would allow debtors to select dates by which they would make payments so they had ownership in the final result of the bankruptcy case.

While all these courtroom lessons might seem rudimentary, the best lessons of life are often those derived from simple truths. Judge Schermer taught a generation of attorneys the benefit of common sense in the courtroom, and, in doing so, he created an incredibly efficient process. Ultimately, he worked to have that process codified into a set of local rules for Chapter 13 cases in the Eastern District of Missouri, and those rules

operated as a driving force behind codifying procedures for a complete set of local rules for the bankruptcy court. Coming full circle, those rules then became more material for Judge Schermer to teach in the classroom, and at seminars where he was a frequent favorite speaker.

I would fail to adequately convey the person of Judge Schermer if I were to leave out of a tribute to him some details regarding the day-to-day life lessons he taught. Working closely with him for many years, Judge Schermer became and remains a respected and trusted friend. His work ethic led him to pursue visiting judgeships in New York, Florida, and Colorado, and he traveled regularly to other locations for mediation and speaking engagements. Furthermore for his entire term on the bench, as far as I recall, he has traveled monthly to the Southeast Division of the Eastern District of Missouri holding court in a more rural portion of the state. It is a venue and community that he cherishes. In addition, he sat as a judge on the Bankruptcy Appellate Panel for the Eighth Circuit traveling to where it was most convenient for appellate counsel to appear. As his law clerk, I was fortunate to join him on these assignments. One learns a lot traveling and working together, so from those experiences I offer a final, light-hearted list of “lessons learned” from Judge Schermer: first, travel must be efficient; second, food is a priority; and third, embrace what you enjoy.

1. To manage travel, he taught (and we law clerks learned):

Wear comfortable walking shoes — with much shorter legs, it’s an effort to keep up; bring cash for tips and tolls (and quarters for parking meters); take an early flight in case it is cancelled; arrive early, arrive early, arrive early; and plan your dinner strategy in advance (food being a constant priority).

2. Food is very important:

We learned: Hot dogs at the ball park during afternoon games are a fitting reward for hard work; cookies from Missouri Baking Company or any well-made lemon bar ensures a few moments of levity; when it comes to barbeque or beef, bigger is always better, and the distance to access such food is not relevant; and greasy diners are a secret favorite. Judge Schermer has a keen list of such diners in all travel venues and you learn quickly the value of “not

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fancy, just good”; and again, take money for tips and quarters for the meter.

3. Enjoy:

Judge Schermer taught us to enjoy our work and time with others. Whether he was working long hours, attending Cardinals’ spring training, March Madness, youth sports for his daughter, coaching youth basketball, teaching at Washington University, participating in hundreds of seminars, developing a court’s local rules, or embracing the bankruptcy court and legal community through trivia events and personal friendships, Judge Schermer modeled a commitment to work, friends, and family that is unmatched and well-deserving of recognition. He is a compassionate leader, scholar, and a respected mentor and friend. His life’s work has made a lasting impression on me and will continue to bless those fortunate to learn from him. Thank you, Your Honor.