

Barry S. Schermer:
Lessons in Life and Law

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I first heard of Barry Schermer in 1987, during the farm economic crisis of the 1980s. At the time, Deputy Court Clerk Margie Williams asked if I had met the new bankruptcy judge. I had not. Margie described him as very young, tall, dark and handsome — and, “Oh yes, he walks on crutches.” I asked Margie the reason for the crutches, hoping it was from a different disease than the one which consumed a certain antagonistic law school professor who, unfortunately, was well known to me. According to Margie, however, the injury happened in a sandlot basketball game. I left Margie’s office with serious concerns. Where was the Irish judge? Rumors held that tradition requires at least one appointed bankruptcy judge be of Irish or Scottish descent. Apparently, the fabled tradition was abandoned, for I could not find the *O'Schermers* and their county of origin on my Ireland map.

The next week, Judge Schermer came to Cape Girardeau County, still limping on crutches. Precisely at 1:30 p.m., Judge Schermer slowly assumed the bench. Attorneys, clients, and spectators packed the small bankruptcy courtroom. A knife could cut the tension. The audience expected disaster as the farm crisis had thrown a monkey wrench into the bankruptcy docket. The system was on overload. The docket call began. What’s going on? This guy, Judge Schermer, had read the files. He was polite, insightful, made rulings, plotted case plans for the next docket, and finished early.

Chapter 12 bankruptcy cases then clogged the docket. I walked down the hall near Judge Schermer as he returned to his chambers. Judge Schermer heard through the grapevine that I knew something about farming¹ and he would welcome my suggestions on how to streamline the Chapter 12 bankruptcy process. The sun was out, spring was here, and I sensed we had a winner.

For more than thirty years, Judge Barry Schermer has visited Cape Girardeau County to preside over cases. Appearing more than 360 times, his lessons start at noon and conclude when court adjourns at 3:30 or 4:00

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1. See text *supra* in preceding note.

p.m. We have received over 1,500 hours of Continuing *Legal and Life* Education. He gives us lessons in life. He gives us lessons in law. We need them.

BARBERMAN

I happen to know Judge Schermer's Cape Girardeau barber, Bill. He tells me Judge Schermer appears for his haircut on Mondays after court exactly on time — not a minute early, not a minute late. When he arrives, Judge Schermer climbs into the chair and reads *Quantum Mechanics*. Bill says he cannot tell whether Judge Schermer is even breathing as he cuts his hair. Bill opined that Judge Schermer has a sports car with mechanical problems. I informed Bill, “No, he is practicing-up for reading and understanding that Bankruptcy Code he is always teaching us about.” This practice at the barbershop demonstrates four of Judge Schermer's life and law lessons:

1. Be on time.

2. Learn to concentrate.

3. Don't waste your limited time — it is precious.

4. Eggs and haircuts are cheaper in the country.

UNDOABLE (INVISIBLE, INDIVISIBLE?) EQUIVALENT²

I had one of those Chapter 11 cases against my friend, J. Michael Payne. His creditor demanded the indivisible equivalent or some such thing, but I argued he already had it. We prepared and filed our memos. We went to court Monday afternoon. Our clients were there. They were paying us money to inform Judge Schermer about this indivisible equivalent. Neither Mike nor I had any idea what we were talking about. We were nervous: one must be prepared when dealing with Judge

2. The editors note that “indubitable equivalent” appears in Chapter 11 bankruptcy practice. 11 U.S.C. § 1129(b)(2)(iii).

Schermer. He had read the file and looked at our papers. He is not a judge who asks, “What are we here for today?” or “What’s this case all about?” We were scared.

Judge Schermer called our case. He mentioned he had read our memorandums and motions. He said, “Now, Tom this is what you will argue.” He turned to Mike and said, “Now, Mike, this is what you will argue.” He told both of us, “but you have to consider these three cases” and explained about the indivisible equivalent. Mike and I gave each other the Spanky and Buckwheat⁴ double take. We later agreed that neither of us would argue anything remotely close to the information Judge Schermer gave us. This is the lesson:

5. Don't berate, educate.

IRS MAN

In another Chapter 11 case, the United States government sent an IRS tax lawyer from Washington D.C. to torpedo the debtor’s reorganization. During the pretrial matters, the lawyer called me, perhaps deservedly but with insulting inflection, a “Country Rube.” I wanted to teach him a few lessons about the anvil tune out behind the barn, but the Rules of Professional Conduct prohibit such activities.⁵

On the day of trial, the IRS lawyer showed up with a wheelbarrow full of documents marked “Government Exhibit 1.” I, the Country Rube, was not intimidated by its massive volume. The IRS lawyer offered it into evidence, and Judge Schermer asked if I had any objections. When I declined, Judge Schermer clenched his jaws, gave me the x-ray-vision-superman-eye-look and said, “Well I do.” He then asked the IRS lawyer just what was in “Government Exhibit 1” that he wanted the court to know. The IRS lawyer flim-flammed and lectured Judge Schermer on the workings of the Bankruptcy Code. After a few sentences, Judge Schermer interrupted, “Mr. IRS Man, you don’t tell me about the Bankruptcy Code and I won’t tell you about the IRS Code. ADMISSION DENIED.” Here

4. See e.g., *Our Gang* (Metro Goldwyn Mayer 1938).

5. See Mo. Sup. Ct. R. 4-1.14 (regarding clients with diminished capacity).

are the lessons:

6. Don't sandbag the court.

7. Don't let anyone else sandbag the court.

8. Keep your eye on the ball.

BOND MAN

Bond Man was a bond lawyer who occasionally appeared in Judge Schermer's court in Cape Girardeau. He worked in an office with a single light hanging from an electrical cord and a card table for a desk. He had reviewed bonds for at least twenty years. He was mad at the world. He looked like Scrooge Marley. He spoke and moved like the Wicked Witch of the West. I was in the courtroom when he began his presentation. After a few sentences, Judge Schermer stopped him, smiled, and said, "Mr. Bond Man, we are all friends here." Bond Man looked around the courtroom. Other lawyers also smiled at him. Bond Man started over and did a good job. Here is the lesson:

9. If possible, make friends of your adversaries.

ACCOUNTANT MAN

I called an accountant as my first witness in a Chapter 11 case. After ten minutes, he was still talking about his resume and something called GAAP, which was difficult for everyone in the courtroom to understand. I noticed Judge Schermer squirming. Judge Schermer likes fastballs, right over the plate. I stopped the Accountant Man, telling him we had to get to the point and that we needed language that all the boys down home can understand. Accountant Man changed course, did a good job and quickly got to the essential point. Here are the lessons:

10. Stand up.

11. Call your best witness first.

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12. Get to the point.

13. Sit down.

14. Call your second-best witness last.

15. Get to the point.

16. Sit down.

17. Don't make things more complicated than they already are.

FREE THROW LINE

I was in Judge Schermer's basketball court sitting near the free throw line in that big building in downtown St. Louis. Judge Schermer was presiding over the airline case.⁶ The airline company apparently spent too much on peanuts and Royal Crown colas. It was broke. Barb Sutton buzzed through to Judge Schermer and announced that the airline company's lawyer was returning the Judge's phone call. Judge Schermer took the call. He said "Mr. Airplane Lawyer, Miss Smith cleans airplanes for the debtor. She has a serious health problem and is having difficulty getting medical providers to help her because of coverage concerns with the bankrupt airplane company. Take care of that for me, will you?" As the recipient of similar calls from Judge Schermer, I knew the job would get done. The lesson:

18. Don't forget the little people.

Most of us will be little people at one time or another.

If you come to know or appear before Judge Schermer and you are a two, Judge Schermer will make you a four. If you are a four, he will make

6. *In re Trans World Airlines*, 185 B.R. 302 (E.D. Mo. 1995).

you an eight. For me, if you find a turtle on a fencepost, you can be pretty sure he had help getting there. I wish there was time for thirty more years of lessons in life and law. Judge Schermer is the Zen master of law and the giver of life lessons. He is one of the few lifetime contacts who most of us remember as someone who was a big influence in our lives. Good fortune smiled on us the day Barry Schermer became a judge. If you ordered a trainload of the best judges in America and they sent only Judge Schermer, you would have substantial performance.