

Chapter 8 Humor

By J. SCOTT BOVITZ

It's Only *Au Revoir*: War Stories and Missteps in Advocacy

I am moving up in the world. For the 2019 production year, the *ABI Journal* staff reassigned me to the Consumer Corner column. This is pretty cool. I might ask for a raise.¹

Before I change hats, their team has asked me to submit a this-is-not-*adieu*-but-only-*au-revoir* article for the Chapter 8 Humor column. I suspect that frivolous banter is discouraged in the Consumer Corner.² So, here are my final (for now) tips on developing your courtroom presence, negotiations and civil procedure.

Courtroom Presence

When I went to law school, my mother, Carole June Bovitz, told me that I should become a trial lawyer. She thought I had the gift of gab. “You could be the next Gerry Spence,” my mother insisted. Back then, Spence was just a successful trial lawyer who went on to become “a member of the American Trial Lawyers Hall of Fame.”³

My research showed that Spence did not have a perfect record. He failed to obtain an acquittal in 1986 for (the deceased) Lee Harvey Oswald in a televised mock trial. However, this fact was not persuasive to my mother. “Are bankruptcy lawyers really trial lawyers?,” she asked.⁴

Of course, my mother was confused (on this one single point, and nothing else, ever); bankruptcy lawyers are real trial lawyers. So, as I stress to my mentees, your courtroom presence is important.⁵

Most continuing legal education classes are directed to substantive law or procedural matters — not courtroom tips. So, where can a bankruptcy lawyer pick up the necessary skills and develop a courtroom presence?⁶

Tallant Smith (his real name, watch the spelling) was my acting coach in high school. I won the Best Actor award (twice), so I am sure my acting coach was a genius. I had a recent conversation with Smith (now in his 80s), and he recommended that all trial lawyers enroll for acting lessons. Every lawyer needs more practice at improvisation and observing the audience. I told Smith that a few entrepreneurial folks have already stepped into this field.⁷

As a co-founder of the “Monday Night Lawyer Movie Club Unless It’s on Tuesday,” I have a less expensive alternative. Watch a few courtroom dramas. Take notes. Harvest the best tips from our rich cinematic heritage.⁸

Before actor Matthew McConaughey was appointed as the cooler-than-you-and-me spokesman for Lincoln automobiles, he was cast as scruffy and street-smart attorney Mick Haller in *The Lincoln Lawyer* (2011). This movie holds multiple lessons about client management and courtroom presence.⁹ *The Lincoln Lawyer* teaches that lawyers should always maintain a casual banter with others, including clients, clerks, judges and courtroom staff. For example:

Eddie Vogel: “How’s it hanging, counselor?”

Mick Haller: “A little to the left.”¹⁰

The Lincoln Lawyer also contains a memorable scene about encouraging a reluctant client to pay legal fees:



Coordinating Editor
J. Scott Bovitz
Bovitz & Spitzer
Los Angeles

Scott Bovitz of Bovitz & Spitzer in Los Angeles is board certified in business bankruptcy law by the American Board of Certification and a certified specialist in bankruptcy law by the State Bar of California Board of Legal Specialization. He used to be funny.

1 Actually, the *ABI Journal's* editorial board and authors do their great work for free. At least, that is what the staff of the *ABI Journal* told me, but I'm not so sure. Everyone else drives a nice car or takes a limousine; I drive a repurposed television news van (visit n6mi.com for a photo). When I am in a hurry, I park in the “press” section (on the curb) outside the federal courthouse.

2 In the ninth grade, I was in love with my French teacher. She told me that people only say “*adieu*” at the foot of the guillotine. See “Difference Between *Adieu* and *Au Revoir*,” (Aug. 30, 2013), available at differencebetween.com/difference-between-adieu-and-vs-au-revoir (“Both *adieu* and *Au Revoir* are used to bid farewell, but *adieu* is used when you are not expecting to see the person again as he is either dying or going away forever.”) (unless otherwise specified, all links in this article were last visited on Oct. 22, 2018).

3 Reportedly, “Spence has never lost a criminal case either as a prosecutor or a defense attorney” and (for good measure) “has not lost a civil case since 1969.”

4 “In 1986, Spence defended ... Oswald, the deceased assassin of U.S. President John F. Kennedy, against well-known prosecutor Vincent Bugliosi in a 21-hour televised unscripted mock trial sponsored by London Weekend Television in the United Kingdom. The mock trial involved an actual U.S. judge, a jury of U.S. citizens, the introduction of hundreds of evidence exhibits and many actual witnesses to events surrounding and including the assassination. The jury returned a guilty verdict.” See “Mock Trial: *United States v. Oswald*,” Wikipedia, available at en.wikipedia.org/wiki/Gerry_Spence#cite_ref-11.

5 Following up on a conversation I had with a young lawyer at a recent bar function, there is a clear distinction between a “manatee” and a “mentee.” See “Mentee,” *Merriam-Webster*, available at merriam-webster.com/dictionary/mentee (a “mentee” is “one who is being mentored”). See also “Basic Facts About Florida Manatees,” Defenders of Wildlife, available at defenders.org/florida-manatee/basic-facts (a “manatee” is “a large aquatic relative of the elephant”). We were in a noisy environment, so perhaps I misheard the young lawyer.

6 If you have not attended ABI's Annual Spring Meeting, block out April 11-14, 2019, on your calendar. You really have not lived until you attend 14 panels and sit down to a few meals with 1,000 of your (as my mother also used to say) “little bankruptcy friends.” See abi.org/events for a calendar with the annual meeting and regional events with programs on (ahem!) substantive law and procedural matters.

7 In Santa Monica (down the road from Hollywood), Michelle Danner provides acting classes for lawyers “to help lawyers convey their messages in the courtroom.” See Michelle Danner Acting Classes at the Edgemark Centre of Arts, available at michelledanner.com/acting-classes-lawyers. See also Michelle Danner, IMDb, available at imdb.com/name/nm0200403/?ref_=nv_sr_1 (“Michelle has taught acting for the last 24 years and has worked with many A-List Actors privately and on set including ... Penelope Cruz ... Salma Hayek ... Michelle Rodriguez and many others.”) If your law office is in rural Idaho, the school offers online acting classes, but you would definitely miss the hallway banter with these screen sirens.

8 See “America's 10 Greatest Films in 10 Classic Genres,” *American Film Institute*, available at afi.com/10top10 (AFI “defines ‘courtroom drama’ as a genre of film in which a system of justice plays a critical role in the film's narrative”). The “Monday Night Lawyer Movie Club Unless It's on Tuesday” meets in Los Angeles; our events are listed at bankruptcydog.com, along with more traditional bankruptcy CLE programs.

9 During a Los Angeles Bankruptcy Forum interview with Hon. Alex Kozinski (ret.) of the Ninth Circuit Court of Appeals, he identified *The Lincoln Lawyer* (2011) as one of his favorite lawyer movies.

10 Quotes, *The Lincoln Lawyer*, IMDb, available at imdb.com/title/tt1189340/quotes/?tab=qt&ref_=tt_trv_qu.

Haller, the lawyer, speaking to Harold, the client: “Rule one. I get paid or I don’t work.”

Harold: “Right. Don’t worry. I got your money.”

Haller: “Exactly. You got it. I don’t.”

Harold: “It’s coming. I talked to my boys.”

Haller: “Listen, Harold. I looked on the list of people I trust. You’re not on it.”

Harold: “Law says you can’t just quit. The judge won’t let you. I looked it up.”

Haller: “Pay close attention.”

Shift to a courtroom scene.

Haller: “Michael Haller for the defense, Your Honor. If I may, I’d like to carry this over.”

Judge Powell: “You have a reason, Mr. Haller?”

Haller: “Having trouble locating a witness, Your Honor. An indispensable witness. A ‘Mr. Green.’”

Powell, with a knowing nod: “How much time do you need?”¹¹

To improve your oral arguments, revisit *To Kill a Mockingbird* (1962), with Gregory Peck as Atticus Finch, a lawyer in the Depression-era South:

To begin with, this case should never have come to trial. The state has not produced one iota of medical evidence that the crime Tom Robinson is charged with ever took place.... The defendant is not guilty — but somebody in this courtroom is.... Now I am confident that you gentlemen will review, without passion, the evidence that you have heard, come to a decision and restore this man to his family. In the name of *God*, do your duty.

You can copy this text. What bankruptcy judge would not be moved by your references to God and a bankruptcy judge’s “duty” during oral argument?¹²

You should also study *The Verdict* (1982). When the facts and the law are against your client, you might want to echo Paul Newman’s closing argument:

Attorney Frank Galvin: “You know, so much of the time we’re just lost. We say, ‘Please, God, tell us what is right; tell us what is true.’ And there is no justice: the rich win, the poor are powerless. We become tired of hearing people lie. And after a time, we become dead ... a little dead. We think of ourselves as victims ... and we become victims. We become ... we become weak. We doubt ourselves, we doubt our beliefs. We doubt our institutions. And we doubt the law. But today you are the law. You *are* the law. Not some book ... not the lawyers ... not the, a marble statue ... or the trappings of the court. See, those are just symbols of our desire to be just. They are ... they are, in fact, a prayer: a fervent and a frightened prayer. In my religion, they say, ‘Act as if ye had faith ... and faith will be given to you.’ *If* ... if we are to have faith in justice, we need only to believe in ourselves. And *act* with justice. See, I believe there is justice in our hearts.”¹³

I really don’t know what Newman was trying to say in this closing argument, but his approach worked on the jury. So, it might work on a bankruptcy judge.¹⁴

Negotiations

Bankruptcy professionals are negotiators. In order to improve your skills, you could take a class. For example, the University of California at Irvine offers an extension class in “The Art of Negotiation.”¹⁵ I recommend a simpler path. Volunteer as a bankruptcy mediator. After handling a dozen cases or so, you will almost certainly change your style and approach to all negotiations.¹⁶

Years ago, I played tournament chess. In chess, “a skittles room is where one goes to play for fun while waiting for the next formal game.” A skittles room is also the place where grandmasters will stand over your shoulder and tell you (a mere duffer) how your entire game could or should have been played (on both sides).¹⁷

Shortly after becoming a bankruptcy mediator, I adopted the backroom skittles approach to negotiations. If my client does this, then your client will do that, and here is where we are going to end up, so let’s settle now. Here is how it works.

I call up the other lawyer. If we can stand each other, I take that lawyer to lunch. “Look,” I will say over the appetizer, “I’m going to file this motion. If the judge agrees, I win. Your client loses.” “Dude,” my opponent will respond over the main course, “I’m going to oppose the motion. You don’t have the evidence. If the judge denies your motion, your client will never work in this town again.” “Yes,” I will retort over dessert, “But my client might move back to the Country of Arugula, and then how are you going to collect?”¹⁸

As we drink our coffee, we will agree to tell our clients to split the difference and settle the case. I always pick up the check for lunch, which helps a little.

Go ahead and try this. Your negotiations will improve and you will help out your local bankruptcy court with your volunteer work on the mediation panel.

Civil Procedure

You probably thought law school crushed the humor out of law students and lawyers. Not so.

Years ago, I wrote a song entitled “341(a) Rap” for the annual meeting with bankruptcy trustees. Every year, many anonymous users (or software robots) still download the song.¹⁹

14 FAQs, *The Verdict*, IMDb, available at imdb.com/title/tt0084855/faq?ref_=tt_faq_2#fq0011117 (“With no other tactics to use against the defense, Frank presents his closing summation in which he reminds the jury that they are the law and that they should ‘act with justice.’ After deliberating, the jury returns to the courtroom and, in a surprise move, returns a verdict of guilty. They then ask whether they can increase the amount of the award, and the judge says yes.”). You can thank Chapter 8 Humor because now you do not have to watch the film all the way through.

15 See “The Art of Negotiation: About This Course,” UCI, available at coursera.org/learn/art-of-negotiation (“Participants explore how current approaches to negotiation strategy and tactics are used, what negotiation entails, types of negotiation relationships that exist from hard bargain to win-win, to fully partnered relationships and personal ones. The course explores the personal and behavioral characteristics of an effective negotiator. Participants discuss how empowerment, power, and authority affect the negotiation process and outcome.”).

16 Hon. Barry Russell started (and still leads) a successful bankruptcy mediation program in the U.S. Bankruptcy Court for the Central District of California, available at cacb.uscourts.gov/mediation-program. The program’s mediators have settled approximately two-thirds of the cases sent to mediation over the past two decades. In addition, ABI and St. John’s University School of Law host the “Forty-Hour Bankruptcy Mediation Training” program at St. John’s’ Manhattan campus. This year’s event takes place Dec. 9-13; visit abi.org/events for more information or to register.

17 See “Skittles,” Wikipedia, available at en.wikipedia.org/wiki/Glossary_of_chess#Skittles (definition of skittles room). In law school, I was a player in a Hollywood club (a house) where World Champion Robert James (Bobby) Fisher once lived and played. While I never met Fisher, I endured multiple tongue lashings from lesser grandmasters for my disappointing tournament and casual play.

18 I know. Arugula is a vegetable. Don’t be writing to my editor.

19 See “341(a) Rap,” available at bovitz.biz/Mp3/266_341a_Rap.mp3 (a parody of a silly debtor set to a Latin beat at 113 BPM, with lyrics by San Diego certified bankruptcy specialist Michael T. O’Halloran and music by your author).

11 The scene is available at youtube.com/watch?v=z11FzN_mmXs.

12 Quotes, *To Kill a Mockingbird*, IMDb, available at imdb.com/title/tt0056592/quotes/?tab=qt&ref_=tt_trv_qu.

13 Quotes, *The Verdict*, IMDb, available at imdb.com/title/tt0084855/quotes/?tab=qt&ref_=tt_trv_qu.

continued on page 88

Chapter 8 Humor: War Stories and Missteps in Advocacy

from page 57

Since then, I have been collecting links to music videos produced and posted by creative law students. Surprisingly, many of these musical numbers relate to civil procedure. I encourage you to type “civil procedure,” “comedy” and “song” into your favorite search engine. You will discover such gems as:

- A rap song from students at St. Thomas University School of Law on federal jurisdiction;²⁰
- The “Villanova Civ Pro Rap”;²¹
- “Must be the PJ!”;²²
- “Shake Off Personal Jurisdiction”;²³

20 See “Civil Procedure: Subject Matter Jurisdiction Rap with Lyrics,” available at youtube.com/watch?v=JJshouC8hpM (the chorus is “subject matter jurisdiction”).

21 See “Civ Pro Rap,” available at youtube.com/watch?v=-uyudPaLhVc (“[A] civil action starts when you file the complaint.”).

22 See “Must Be the PJ!,” available at youtube.com/watch?v=_YF7svjxp3Q (a submission for a Civil Procedure, Personal Jurisdiction Video Contest — “Case dismissed”).

23 See “Shake Off Personal Jurisdiction,” available at youtube.com/watch?v=3-fx7lh6M (*Georgetown Law Review*, “*Pennoyer* says no way, way, way.”).

- “Don’t Stop Me Now”;²⁴ and
- “Full Faith and Credit.”²⁵

If you want to go a little farther afield, I highly recommend the following :

- “WestLaw Story”;²⁶
- “Law School”;²⁷ and
- “Hello.”²⁸

*Au revoir!*²⁹ **abi**

24 See “Don’t Stop Me Now,” available at youtube.com/watch?v=8rh9oPLjIMc (*GW Law Review* 2013, “My brief’s only six words long, and my argument’s full of inconsistencies, so don’t stop me now.”).

25 See “Full Faith and Credit,” available at youtube.com/watch?v=0Xg0bo75Y0Q (*CLS Law Review*, “I want some systematic contacts wherever your long arm can reach.”).

26 See “WestLaw Story,” available at youtube.com/watch?v=A3vpSxoGHKw (*West Side Story* parody from Columbia Law “Revue”).

27 See “Law School,” available at youtube.com/watch?v=9mTbofSUBso (Tyler Murray and Chocolate House Ghost, “My best friend works at the Starbucks, but I don’t know her name. I just know how I feel when she hooks me up with caffeine.”). Be sure to watch the outtakes at the end of the song.

28 See “Hello,” available at youtube.com/watch?v=HsQ_EJ46jg (a Columbia Law “Revue” interview song).

29 The foregoing videos are my parting gift to the staff editors of the *ABI Journal* (they have to verify my citations). Have fun!

Copyright 2018
American Bankruptcy Institute.
Please contact ABI at (703) 739-0800 for reprint permission.