

Tribute to Harold Schwab

By Steven B. Prystowsky

There is an old Talmudic saying:

When Death summons a man to appear before his Creator, he has three friends.

The First, what he loves most, is his earthly possessions accumulated over a lifetime. But they cannot accompany him one step;

The second friend is relatives and friends. But they can only accompany him to the grave and cannot defend him before the Judge;

It is his Third friend, his Good Deeds and reputation who go with him and appear before the Almighty to argue on his behalf.

GOD—BE PREPARED FOR A LONG AND PERSUASIVE SUMMATION,

Harold was a great trial lawyer. He was the Tom Brady of trial lawyers.

Harold did not actively engage in sports—I doubt he ever played golf—but while he was in his 50s Harold accomplished a feat that is beyond most of us: He ran and finished the New York City Marathon. He pounded over 26 miles of New York City pavement in five boroughs. Why, you probably ask, did Harold at his age and work schedule undertake such a difficult challenge?

The answer is simple. One day Harold decided he wanted to run the marathon. He was not a runner or a jogger. But after he decided to run the marathon, he trained every day, running a few miles at a time until he was ready to run the distance. And after running each day, Harold nonetheless arrived at the office at his usual time.

Harold was enrolled in ROTC when he attended Harvard College. At Harvard, he married Ronnie, a Radcliffe student. It was a beautiful merger of two great schools for 65 years.

After graduating, Harold worked for his father at his textile mill in Rhode Island from 7 a.m. to 3 p.m. His day, however, was not over. From 5 p.m. to 11 p.m., he attended and graduated from Boston College Law School.

While taking the New York State Bar Review course, he received notice that the U.S. Air Force assigned him to Clovis, New Mexico to serve as a First Lieutenant in JAG.

On his first day of active duty in the Air Force, his commander handed him two court martial files and the manual for court martial.

Harold immediately pointed out that he had never taken moot court mock trials and had, in fact, never been

in a courtroom. He was told: "Now was the time to learn, and learn fast." And Harold did. He learned how to argue on behalf of his clients, examine witnesses and present opening statements and summations.

Harold's decision to be a trial lawyer was influenced by his exposure in the Air Force to trying approximately 200 special court martials and general court martials, where he gained trial experience and expertise.

Harold passed the New York State bar exam while on active duty, but did not immediately practice law. After his discharge from the Air Force, Harold returned to work for his father in the New York office as a vice-president. His new position required him to "peddle the piece goods"—a job Harold maintained he did not enjoy.

Harold decided it was time for a career change. He wanted to try cases. But Harold knew nothing about New York law firms. His college roommate recommended he seek a position at an insurance company where they try cases.

One day he stopped unannounced at the Consolidated Mutual Insurance Company located in Brooklyn. He was told it had no attorney positions available but suggested he try the law firm of Emile Zola Berman and A. Harold Frost, where the insurance company sends its cases for trial.

Shortly thereafter, while "peddling piece goods" to a naval outfitter on Vesey Street, Harold decided to visit Berman & Frost even though he had no job interview scheduled. He was interviewed by a junior partner who referred him to a partner. Finally, the managing partner, A. Harold Frost, interrogated him.

Harold recalled that at the interview, Mr. Frost, in a "gruff" manner, said: "You don't even know what a bill of particulars is." Harold agreed, but insisted that he will learn soon enough—if he was hired.

Even though he was offered less money than he was receiving working for his father and there were no benefits, Harold accepted a position with Berman and Frost.

In 1967, he was made a partner at Berman & Frost. and remained there until it was dissolved in 1974. During the 14 years he was with Berman & Frost, Harold tried cases involving product liability issues. He also lectured and wrote articles.

He defended cases against some of the legends of the plaintiffs' personal injury bar at that time, including Robert Conason, Harry Lipsig, Al Julian, Joseph Kelner and Peter James Johnson.

After the dissolution of Berman & Frost, he and three former Berman & Frost partners, Howard Lester, Mel Katz

and Thomas Dwyer, formed the firm known as Lester Schwab Katz & Dwyer in 1974.

Lester Schwab, from its inception, became a leading defense firm in New York and the country, especially in products liability. Harold represented large automotive companies, such as Chrysler and Honda. Harold frequently defended the motorcycle giant Harley Davidson.

Whenever Harold's adversaries saw Harold in court and he was handling one of their cases, they knew he was there prepared to try the case.

As a trial lawyer, Harold tried to verdict over 125 major cases in both state and federal courts involving claims of product liability and personal injury—a record few attorneys can claim. He tried the first case establishing the law of strict liability in tort in New York. Many of his cases are regularly cited in decisions, briefs, and memorandums of law.

As Harold's reputation as a trial lawyer spread, so did Lester Schwab's. It expanded to over 75 lawyers. The new lawyers needed guidance in practical aspects of the law not taught in law school, such as how to conduct discovery and finding and hiring the right experts for a case.

Harold was always there to assist not only the associates but also the junior partners as well. Harold lectured Lester Schwab attorneys regularly on key legal topics, such as: "How to Try a Case," "Direct Examination of an Expert," "Use of Demonstrative Evidence" and "Opening Statements and Summations." When Harold lectured at the firm it was standing room only.

Harold's knowledge of the law and trial practice and his sterling character were major reasons that young attorneys sought his guidance. Harold's door was always open—never closed. Harold was always courteous. He treated everyone with respect whether you were a file clerk, secretary, associate or partner. He never berated anyone. If he criticized an attorney's work, he did not embarrass the attorney. The attorney knew Harold's criticism was to make him or her a better lawyer. In the 38 years that I had the privilege to work with Harold, I never heard him yell at anyone or even raise his voice.

After Harold passed away, I received emails from many of his friends, including judges and former Lester Schwab attorneys who worked closely with Harold. Three emails stand out. They describe Harold in words that convey the tremendous loss we have suffered in his passing.

Kings County Justice Larry Martin writes:

Harold was a remarkable man. He was fearless in the courtroom. I witnessed his courage as well as his stellar trial skills, first as a judge before whom he appeared and later as his client in my defamation action.

As a sitting New York State Supreme Court Justice, I was the subject of a series of false newspaper articles. Harold came to my aid and over the course of several years represented me. He was able to obtain an appellate ruling that I had been defamed and that the reporting was "sloppy and inaccurate."

In the course of that litigation, we became close friends. We learned we had a lot in common. For example, we were both former Judge Advocate General Corps lawyers. We made each other laugh loud and often. We thoroughly enjoyed each other's company. Harold entertained me at the Harvard Club and I and my wife Mirlande entertained Ronnie and him at the Comus Club Ball. Harold was generous to a fault; our friendship transcended race, which is, sad to say, no small feat in our society.

I am proud and privileged to have been his friend.

Howard Hershenhorn, now a named partner in one of the country's leading plaintiffs' personal injury firms, was perhaps one of the attorneys who worked closest with Harold. His everlasting praise of Harold captures Harold's professionalism and humanity.

As a person and a young lawyer, Harold Schwab was my mentor and he was also a father figure to me. I owe much of my success to him. He was the best defense trial lawyer I have ever known, and we have truly lost a giant of the profession.

Harold taught me that there is absolutely no substitute for hard work, very hard work. He never said it but rather he led by example. When I was an associate in my 20s and we were preparing for trial, most times I left the office at midnight. When I left Harold was still in the office. I tried to make it my goal to never leave before him but sometimes that was impossible to do. He worked harder than any other lawyer that I have ever known.

Howard continues:

Watching Harold at trial was truly like watching a master at work. When Harold tried a case he owned the court-room. He owned his adversary, the judge and, most importantly, the jurors. He was truly the very best! Only he could convince a jury to find in favor of a defendant who was not at fault for the serious injuries plaintiff sustained.

Harold's favorite things to do to prepare for trial were experiments. He would typically take the proposed alternative design, install it in a product and show how the accident happened anyway.

Harold was also a great storyteller. He often told stories about when he was in the judge advocate general program. When he told his stories you could see the human side of him.

Other attorneys who worked with Harold echoed the same sentiments as Howard.

Jim Yukevich, who worked closely with Harold defending Honda lawsuits, credits Harold with helping him achieve success on the West Coast. Jim has 40 attorneys working for him in California.

He emailed me his "love letter" to Harold. I will read a few excerpts from his two-page letter.

Dear Harold,

I am sure you are looking down and seeing us now. You helped so many of us to start our careers to grow as lawyers and people and in some cases like mine, leave the nest and fly on our own.

You demanded excellence, but helped us up when we missed our mark. You brought class and pride and camaraderie to our office. You and Howard Lester taught me—a Catholic boy—to "dress British but think Yiddish." You believed a senior partner should attend the special events in your attorneys' lives. You introduced me to Sharon. We married and had two beautiful kids. You went to their christenings with Ronnie, Mel, Steve and many of our partners.

You loved your kids and were always so proud of them when we talked. Although you were extremely successful, you always remained a man of the people.

I have so many things I would like to say. I wish we had a few days to be together again. Looking forward to seeing you in the future but not too soon.

Your Los Angeles partner and friend,

Jim.

Harold was not only a role model for young attorneys on how to defend a lawsuit but also how to be a decent person—a mensch. Every attorney who had any contact with Harold could not help observing how dignified he conducted himself. It was years before Harold accepted "dress down" days in the office.

Harold was a prolific writer and an eloquent lecturer. He authored over 32 articles on the law and trial practice in publications published by legal associations.

Harold lectured extensively around the state on legal issues before judges, legal associations, and law schools. Extensive is an understatement. I counted 166 lectures Harold gave during his legal career. He was also interviewed on radio stations on legal issues.

During his legal career, Harold was a member and officer of numerous legal associations. The list is too long to read. But to name just a few:

- The New York State Bar Association where he served as a chair of the Trial Lawyers section. He also edited its *Law Digest* for a number of years.
- He was one of only 500 attorneys nationwide invited to be a fellow of the International Academy of Trial Lawyers.
- He was a past Chairman of the New York City Chapter of the American Board of Trial Advocates, a past Vice President of the Federation of Insurance and Corporate Counsel.
- Until recently he was a member of the Committee on Character and Fitness for the Appellate Division, First Judicial Department. As a committee member he devoted 20 to 40 hours a year interviewing applicants for admission to the Bar.

In 1992, Harold was honored by the Trial Lawyers Section, UJA-Federation—Lawyers Division. In 2013, Harold received the Lifetime Achievement Award from The New York City Trial Lawyers Association. And last year, the Trial Lawyers Section of the New York State Bar Association honored him for "Outstanding dedication and commitment to the advancement of trial lawyers."

Harold had been listed repeatedly as one of the "Top 100 New York Metro Lawyers" and as a Super Lawyer.

In 2017, the New York State Bar Association published its Fourth Edition of *Medical Malpractice in New York* and dedicated it to Harold Schwab and two other attorneys. The dedication reads in part:

In recognition of [your] generous contribution of time, effort and experience [in] fostering [the] goals and aspirations of [the] members of the Trial Lawyers' Section. [You] for more than 40 years of

[your] professional life, made us proud to be lawyers.

As most of you know, Harold enjoyed writing and telling war stories. In 2014 and 2015, he authored articles for The New York State Bar Association *Journal* entitled "War Stories from the New York Courts" and, not surprisingly, "More War Stories from the New York Courts."

At award receptions, Harold always entertained the audience with his war stories.

A tribute to Harold would not be complete if I did not include at least one of his war stories. I know this is not the norm at a funeral service. But knowing Harold, if he were standing here next to me he would say: "Steve, you cannot complete the tribute without at least one war story."

Harold, I will not disappoint you.

One of Harold's experiences happened when he was a "novice" attorney preparing a defense case for Zuke Berman. The plaintiff claimed that she sustained a low back injury after being struck by a free moving cart in a supermarket parking lot. Harold agreed with the insurance adjuster's assessment that the case appeared to be a phony. When he informed Mr. Berman that the plaintiff's attorney was Paul O'Dwyer, he was told to check the accident out personally because "if Paul has the case, it's legitimate."

The next day Harold went to the supermarket. He observed a significant slope extending down into the parking lot—a fact that was not noted in the adjuster's report.

Harold experimented. He released one of the shopping carts at the top of the slope and observed it "free-wheeling like a missile" to the very spot where the plaintiff had been standing.

Harold concluded that "liability and causation were established." He reported the results of his experiment and the case was settled that week.

To Harold cross-examination was an art. And Harold was the consummate artist.

In *Weiss v. Chrysler Motors*, plaintiff claimed she lost control of her 4-year-old Chrysler Imperial because Chrysler manufactured a metallurgical defective part in steering linkage known as a Pitnam arm stud. At trial, the jury was impressed with plaintiff's expert who insisted he was an expert in cadology, which he defined as the scientific study of automobile accidents. On cross-examination, Harold quickly exposed the expert's lack of qualifications:

Q. Did I understand you to say earlier that your field of expertise is cadology?

A. Yes.

Q. And cadology is the scientific study of automobile accidents?

A. Yes.

Q. You are a cadologist?

A. Yes.

Q. How many cadologists are there in the United States?

A. One.

Q. Who.

A. Me.

Q. If I were to submit to you that last night I looked at my son's 3-volume edition of *Webster's International Dictionary* and was unable to find the words "cadology" or "cadologist," would you say that I was mistaken?

A. No.

Q. And if I were to submit that the words "cadology" and "cadologist" do not appear in the *Random House Dictionary*, would you say that I was mistaken?

A. No.

Q. If not in *Webster's* or *Random House*, could you tell me where the word "cadology" comes from?

A. I invented it.

Q. You invented it?

A. I invented it.

Q. Did you perchance register or trademark this word with the United States government?

A. Yes.

Q. So no one else can use it?

A. That's right.

Q. That's why you are the only cadologist?

A. Yes.

Following a one-month trial, the jury returned a unanimous verdict in favor of the defendant. It obviously did not accept the testimony of plaintiff's cadologist.

Harold was not a quitter. His love for the law and trial work never diminished. When he was ill—even seriously ill—he never considered giving up practicing law. Less than a year ago, Harold updated his resume. It was 31 pages long. Yes, Harold could not wait to return to the courtroom.

I read of a man who spoke at the funeral of his friend. He referred to the dates on his tombstone from the beginning to the end. He noted that first came the date of his birth. But what mattered most of all, he said, was the dash between those years. For that dash represented all the time that he spent on earth. And now only those who loved him know—what that little dash is worth.

Harold, may you rest in peace.