

harvard DEFENDERS

Fall 2007

A Letter from the President

Elise Logemann, '08

The 2007-2008 year has been an exciting time for the Harvard Defenders. Our organization is now 75 members strong. About half of our members are 1Ls, and the half are 2Ls or 3Ls. We continue to be the only organization in Massachusetts that offers free representation at show cause hearings for those who cannot afford an attorney. This year, we continued to provide an extensive training program to new members, which included small group trainings in which new members actually got on their feet and practiced direct and cross examinations. For the first time, we are also requiring new defenders to come in and practice their arguments in front of a panel of senior defenders, before first-seating a hearing. Our outreach efforts supply an ample caseload, and we are already getting dismissals and continuances on over half of our cases for the year.

The Defenders Board of Directors, made up of 13 students, continues to implement the organization's charter. We have added a new position of Alumni Director this year, in order to continue organizing Defenders alumni receptions, and to create a formal system for students and alumni to remain in contact. In addition to developing alumni relations, the Board is creating a process for spring admissions for the first time in (known) Defenders history.

We hope that allowing people to join the organization in the Spring semester will ensure that we admit all students dedicated to serving our clients. The Board is also implementing a new computer program called Time Matters—a case management system that we hope will allow us to store all case files in the computer, and move into the age of technology!

I hope that this newsletter finds you well, and provides you with insight into the newest developments at Defenders. Our contact with alumni is improving every year, and we invite all of you to stay in touch. We hope to see you at our upcoming alumni receptions!

Greetings from the Alumni Director

Jeff Garland, '09

It is my pleasure and privilege to serve as the first Harvard Defenders Alumni Director, a new position that the Board created last year to coordinate and grow the organization's relationship with its alumni. Harvard Defenders is lucky to have such an impressive group of alumni, and we want to foster more interaction with you. We current Defenders have much to learn from you, and we hope to stay connected to the organization when we ourselves graduate and spread out across the world.

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www.harvarddefenders.com

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Please let me know how I can best serve you. So far, I have hosted our first ever D.C. reception, arranged our upcoming Boston reception (on December 3—see below for details), added an extra issue of the newsletter (making it semiannual), and have been working to involve more alumni in our various Defenders training events. In the longer term, I hope to build a database of all Defenders alumni, and to start working on connecting current students with any alumni who would be interested in mentoring them or otherwise sharing their experience with them. I welcome any further suggestions you may have. I'm easy to reach via email, at igarland@law.harvard.edu. Please feel free to contact me with ideas or comments, or just to get in touch. I'd love to hear from you.

I have enjoyed getting to know some of you at receptions and other events over the past year, and hope to meet many more of you in the future, including the upcoming Boston reception on December 3.

Goodbye Sara!

Elise Logemann '08

After two years of dedication to Harvard Defenders, Sara Roitman has left us to pursue a J.D. of her own.

Sara was with Defenders for a short time, but she was an extremely valued member of our team. Sara worked tirelessly to keep up the Defenders caseload, advertise our services, maintain member morale, deal with difficult clients, increase contact with alumni, and generally do anything that had to be done. She had extensive knowledge of the Massachusetts court system and was always willing to help with anything we required. Sara was a backbone to the organization, and will be sorely missed.

Though we are sad to see Sara go, we wish her the best of luck in her legal endeavors! She is still close at hand, attending law school at Boston College, and is answering our emails when we have an inquiry that requires her guidance. Thanks Sara, for your unbelievable dedication to Defenders.

Defenders Welcomes New Administrator

Elise Logemann '08

In June 2007, Maria Hermann joined the Harvard Defenders as our new Administrator. Prior to joining Defenders, Maria was the Director of an immigration legal services program at a non profit organization in Pennsylvania. She managed the start-up phase of the organization by setting up several offices throughout PA, NY and NJ. These offices served low-income clients by providing excellent, professional and free legal services. Maria has also performed extensive volunteer work for the International Rescue Commission and Catholic Charities Immigration Services in the San Francisco Bay Area. Maria earned her JD from Indiana University, Bloomington and lives here in Cambridge with her husband and three children.

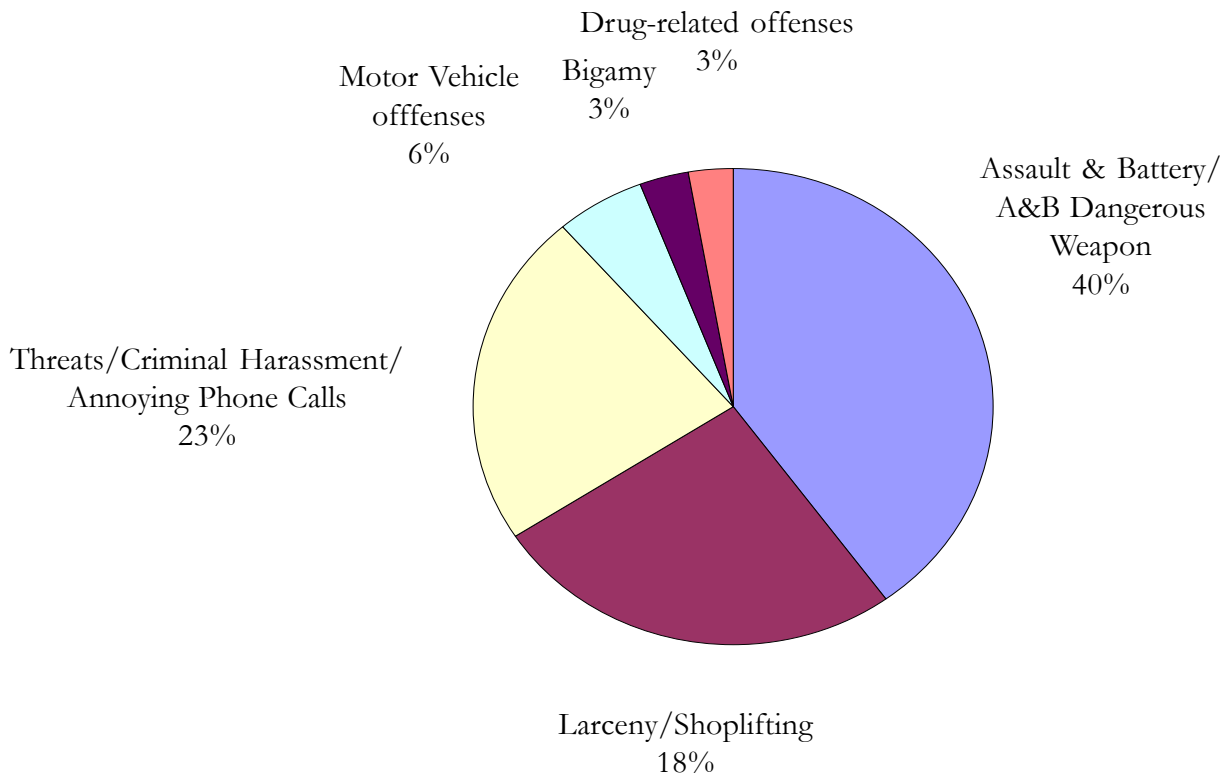
On joining Defenders, Maria commented: "I am so honored to be working with Harvard Defenders to provide professional legal defense to those who may otherwise not have legal assistance. I am also very excited to work with such a terrific group of students who show a high level of dedication, professionalism and compassion to the work they do."

Please Join Harvard Defenders for our Boston Area Alumni Cocktail Reception!

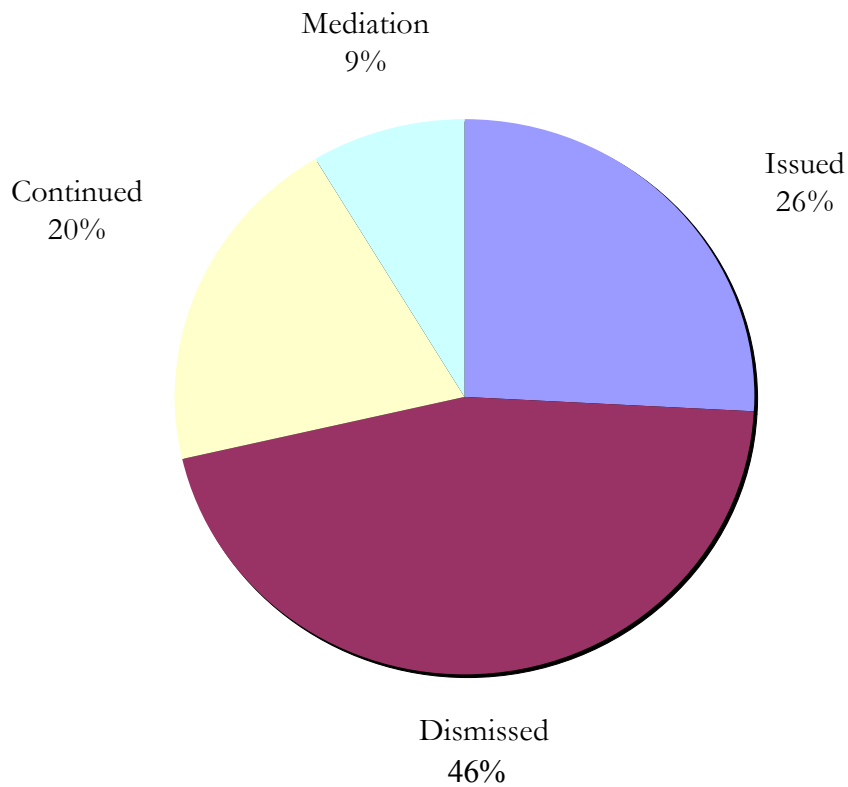
The Ivy Restaurant
49 Temple Place
Boston, MA
Monday, December 3, 2007
6:00-8:00 p.m.

To RSVP call Maria (617) 495-8941

Spring/Summer 2007 Cases



Spring/Summer 2007 Case Dispositions



Defenders Holds first D.C. Reception

Jeff Garland, '09

The 2006-07 school year saw two successful Harvard Defenders alumni receptions in the greater Boston area, one in a downtown bar for alumni who live in the region, and one on campus for alumni attending their HLS reunion. Given the large number of alumni who work in the District of Columbia (and the similarly large number of current students who brave the heat each summer to intern there), it seemed only fair to hold a reception there too. So, one evening this past July, current and past Defenders met at Elephant & Castle pub on Pennsylvania Avenue to eat, drink, and catch up.

The distinguished alumni in attendance work as judges, public defenders, and private attorneys in many different fields.

Together with the current students, they spanned a range of more than fifty class years. They compared notes on how Defenders has changed over the years, as well as the various practices that Defenders has taken on, from interviews to trials de novo to show-cause hearings, and even one case that went up to the Massachusetts Supreme Judicial Court. There was also much general discussion and merriment.

Although the next reception or two will be in Boston (including the upcoming reception on December 3), we have not forgotten all the Defenders alumni in other cities, and plan to hold more receptions outside Boston in the not-too-distant future. We hope to see you there!

Fall Training Report

Michael Marks '08 and Tina Matic '09

As we welcome new students to our organization, Harvard Defenders looks forward to continuing our organization's strong tradition of defense advocacy. We believe that the unique opportunity to represent indigent clients at show cause hearings carries with it a heavy responsibility to provide superior representation. Our training series this year thus focuses on training Defenders to establish trusting relationships with clients, to employ creative investigation techniques, and to develop courtroom advocacy skills.

We began the year with a training session for new Defenders that introduced students to the "life of a case." The Training Directors lectured on subjects such as proper intake procedures, effective client interview techniques, and case preparation. Members of the executive board then demonstrated each of these skills before the new students. We were delighted to have Page Kelley, a former Harvard Defender and now a Federal Public Defender for the District of Massachusetts, share her experiences and insight with us.

Ms. Kelley provided a number of helpful tips about how to interact with indigent clients and spoke to us about her career as a Public Defender.

We also gave each new student the chance to participate in a mock show cause hearing later in the semester. With board members acting as client, witness, and clerk magistrate, new Defenders practiced direct and cross examinations as well as summations. We are delighted at the talent and dedication of the new class.

As the Spring semester approaches, we anticipate continuing training sessions to highlight ethics and specific practice skills. Last year, clerk magistrates from several local courts visited Harvard to share their perspectives, and we expect to invite them once again this year. We hope that coupling the passion and dedication of our membership with intensive training will allow Harvard Defenders to continue providing outstanding representation to the Boston community.

Harvard Defenders Alumni Interview

Interview with Judge Frank E. Schwelb '58

This semester, we continue our series of interview by speaking with Judge Schwelb of the District of Columbia Court of Appeals. Judge Schwelb grew up in Czechoslovakia and England before arriving in the United States at the age of fifteen. He graduated from Yale University and then went to Harvard Law School, where he graduated after spending time in the U.S. Army. Throughout his distinguished career he has dedicated himself to public service, and Defenders is grateful to be able to interview him for this newsletter.

Judge, can you tell us briefly what you did after graduating from the law school in 1958?

Sure. From 1958 to 1962, I was an associate at Mudge, Stern, Baldwin & Todd (later [Richard] Nixon, Mudge, Rose, Guthrie, Alexander & [John] Mitchell) in New York City. I also did volunteer work for the ACLU, most of it on “sit-in” cases at the outset of the civil rights revolution of the late Fifties and early Sixties. In October, 1962, I joined the Civil Rights Division of the U.S. Department of Justice, and I worked there for 17 years. In the early and middle Sixties, I was assigned to voting discrimination cases in Mississippi. From 1969 to 1979, I headed the Division’s Housing Section, and I was in charge of enforcement of the Fair Housing Act throughout the United States. That was exciting and rewarding work!

In 1979, I was appointed by President Carter to the Superior Court of the District of Columbia. In 1988, I was appointed by President Reagan to the District of Columbia Court of Appeals, which is the highest court in the D.C. system. I am the only judge in the country to have been selected for the bench by these two presidents. My wife Taffy won’t let me get too full of myself about that; she says it proves that I have no principles whatsoever!

What sort of cases did you work on for Voluntary Defenders?

Well, when I was with the Voluntary Defenders (1954-55 and 1957-58; I was in the Army from March 1955 to January 1957) we were not permitted to appear in court.

Most of what we did consisted of interviewing potential clients in the jails at Charles Street and, I think, North Cambridge. We also interviewed witnesses from time to time. We all wished we could go to court, and sometimes we watched trials being handled by the Boston Voluntary Defender. There can be problems when law students are permitted to try cases prematurely. I must say that, as a judge, I have seen some pretty raw kids “representing” clients in court, and sometimes the supervisors were not so wonderful either. I stress, though, that I am sure that even in my day, Harvard Voluntary Defenders would have received far better training and supervision than some student counsel who appeared before me in the Superior Court did. I am glad that Harvard Defenders can go to court now, especially with their inspiring motto: “Reasonable Doubt at a Reasonable Price.”

Are there any memories that stand out from those days?

There are two entirely different incidents that come to mind. When I was competing for a position on the Voluntary Defenders, I explained that I come from (now former) Czechoslovakia and that I speak pretty good Czech. Boston has, or had, a significant Polish-speaking population, and I thought that I might be able to help out with Polish-speaking witnesses, since the two languages are both Western Slavic and are supposed to be similar to each other. Perhaps my knowledge of Czech and purported understanding of Polish contributed to my selection as a Defender; who knows? Anyway, a case with Polish witnesses soon came up, and I tried to interview this Polish family. Unfortunately, in the real world, Polish is not as similar to Czech as I had hoped, and the level of comprehension between the witness and me was less than overwhelming. I don’t know that my supervisors were too pleased, and I recall feeling glad that I had already become a Voluntary Defender!

The second memory involves something far more serious. As I recall, the practice then was for the incumbent Voluntary Defenders to choose the membership from the next class. I recall that when the selection period came up, the representative of the Boston Voluntary Defenders told us that we could not select any “girls.” He said that our potential clients would not be willing to speak frankly to “college girls.” I am embarrassed to say that at the time, nobody protested or, so far as I know, even gave the matter much thought.

It's important to put this into context: as I recall, there were 493 men and 20 women in my original law school class, but I was a civil rights guy, my dad was deputy director of the U.N.'s Human Rights Division, and I was a member of the NAACP. If the Boston Voluntary Defender representative had said that we were not permitted to have any black or Latino or other non-white members, I would have been outraged, and I would not have been shy about saying so. Still, it was a different world then with regard to equal opportunity for women, and I probably believed that the stated rationale about defendants not speaking openly to women made sense, especially in cases of rape or other sexual crimes. Anyway, we had no female Voluntary Defenders while I was at Harvard. (To the best of my recollection, we did not have any non-white members either, but nobody told us that we couldn't, and the class, as I recall, was virtually all-white.)

Over the years, I have come to realize how ridiculous and how unjust the then-prevalent attitude vis-à-vis women was. I should have recognized this even in 1954. I do believe that since those days, I have compensated in some measure for my obtuseness. Of my 44 law clerks while I was an active judge, 30 were women. As a Civil Rights Division attorney, I brought and litigated a good number of sex discrimination suits on behalf of the United States. But although more than half a century has passed since we accepted without question a discriminatory "male only" policy, I am still bothered by my silence in the face of what I should have known to be injustice. Fortunately, in respect of this particular issue, our country has become a better place. Indeed, I was pleased to learn that today, the President and Vice President of the Harvard Defenders are both women – a marked change from my days in the organization!

Has Defenders had any effect on your career with the Civil Rights Division and then as Superior Court and Court of Appeals judge?

Indirectly rather than directly. After I graduated from law school and went to work at the law firm, a music group we represented wanted to form a membership corporation. A senior associate called me in and asked me to handle the matter. I asked if I was supposed to write a memorandum about the membership corporation law. He said no, that I should set up the corporation. Frankly, I did not have the faintest idea what he was talking about. In my years at Harvard Law School, nobody had taught me anything like that! I knew a lot about distinguishing cases, and maybe I could recite the Rule in Shelley's Case, but to set up a membership corporation? He might as well have asked me to construct a cellular telephone!

My service with the Voluntary Defenders, on the other hand, was different from the rest of my very theoretical legal education. We were primarily dealing with real people, not with appellate precedents. The facts were critical; in most instances, they were far more important than fine distinctions based on legal doctrine. And by talking to and interviewing clients and witnesses, I came to realize, not just intellectually but in my gut, that the facts of a case do not appear on a silver platter, that the lawyer has to go out and find them and has to assess the credibility of folks who talk to him or her.

Also, one quality that we Voluntary Defenders had was conscientiousness, and years later I sometimes thought about that when, as a trial judge, I observed some lawyers who had been appointed to represent indigent defendants and who were regularly altogether unprepared. In fact, there were a few whose body language revealed their distaste for their clients. Vigorous representation of our clients was somehow an unquestioned aspect of what we did as Voluntary Defenders, and that reason alone would be enough to make me grateful for the opportunity to have served in that organization.

Do you think your experience with Defenders has influenced the way in which you think about the arguments made to you in criminal cases?

It's hard to answer that. A judge comes to the bench with a whole lot of different experiences, and he or she is a product of all of them. In my own case, I was shot through the liver in a hold-up on March 16, 1980, three months after being named to the Superior Court. I don't think that this encounter with violence has impaired my impartiality in criminal cases, or even in cases involving handguns, but it certainly is a part of who I am. I was also a Voluntary Defender, I thought like one, and I probably acquired some instincts based on having been one. It is a part of me, maybe not as big a part as it would have been if I had been able to try cases, but a part of me nevertheless.

What impresses you most in an advocate before you? Do you recall any particular advocates or arguments that have been especially effective?

It is hard not to belabor the obvious when one answers this question. Assuming that counsel has sufficient intellect to do the work of an attorney, whether in the trial court or on appeal, the most important requirement for a good litigator is that he or she be prepared. Know the facts, know the law! Spellbinding oratory may be effective in a few cases, but in my experience, even the most eloquent attorney is likely to lose if the case or argument has not been prepared properly.

When I was a young attorney in the Civil Rights Division, I was in the habit of "spicing up" my briefs by using some uncomplimentary adjectives about our segregationist adversaries. John Doar, one of our country's greatest attorneys and civil rights heroes, who later was counsel to the House Judiciary Committee at the hearings on the impeachment of Richard Nixon, said to me one day: "Frank, you're a good writer, but I want you to use only nouns and verbs, not adjectives and adverbs." This was sound advice. Many lawyers, even on appeal, spend their time denouncing the adversary; "egregious" is often the adjective of choice.

I cannot emphasize too much how counterproductive this style of argument can be. The judges on an appellate court are impartial, and they want the cases decided on the merits. Counsel's purported opinion that something the other side did was egregious or outrageous, or that the adversary is a villain, does not help the judges at all to perform their task of deciding the case fairly. On the contrary, this type of advocacy detracts from the credibility of the party's entire submission.

Some of my former law clerks ("law twerps," in Schwelbian parlance) have told me that when they joined firms and tried to follow the foregoing advice, the partners have told them that their tone is too neutral and insufficiently partisan. This kind of "take no prisoners" approach may, of course, impress the client. In fact, I sometimes suspect that a brief using this style was written to please the client rather than to persuade the court. All I can say is that, in the long run, the client is less likely to be pleased with the outcome if the attorney argues in this way. And although I have focused on this response in appellate practice, I think that the same principle holds true in the trial court.

I do recall one particular argument that especially impressed me. The case was *Federov v. United States*, 600 A.2d 370 (D.C. 1991) (en banc). I had been the dissenting judge when the division ruled, 2:1, in favor of the appellant. *See* 580 A.2d 600. The full court voted to hear the case en banc, and going into the oral argument, I had the sense that four of the other judges agreed with me and that, of the seven members of the en banc court, only the two members of the division majority favored reversal of defendant's conviction.

The attorney who argued the case for the appellant had taken it over only a couple of weeks before oral argument, because prior counsel had accepted a job with the government. I do not remember the details of that argument, but I do recall that the skill and persuasiveness with which counsel responded to the judges' questions, her carefully thought out theory (arguing, as I recall, from prior counsel's brief), her meticulous preparation and knowledge of the record, and her devastation of opposing counsel's contentions, caused a seismic shift in the court's take on the case.

At one point, temporarily overwhelmed by counsel's presentation, I thought that I was going to vote for reversal too, and that the appellant would prevail 7:0. As it turned out, I ultimately returned to my original position and was joined by two of my colleagues in voting for affirmance. Still, counsel's brilliant performance undoubtedly changed what seemed like a sure 5:2 defeat into a 4:3 victory, and 4 votes were all that she needed in order for her client to prevail.

The attorney in this case was a young Public Defender named Carol Steiker. She is now a professor at Harvard Law School. I believe that she was previously a Harvard Voluntary Defender as well. I have always thought that if any one oral argument was the best I have heard as an appellate judge, this was it. I have sometimes thought of calling Professor Steiker and telling her this, but for some reason I never got around to it. Shame on me! Anyway, Carol, if you happen to read this interview, you will learn how much I admired your representation of your client. And this compliment is coming from one of the three judges who voted against your position! Believe me, all of my colleagues were impressed too.

Do you have any suggestions for current Defenders about their time at law school or their careers afterwards?

I think that many of my ideas on this subject have emerged in my earlier answers. I do want to emphasize that being a lawyer is more than just theory. It is all very well to understand the doctrinal underpinnings of the doctrine of consideration, but a lawyer also needs to know how to draft a contract, set up a corporation, effect service on a local government, interview a witness. Law schools should teach more of this practical know-how than they did when I studied law, and I suspect that they probably do.

As the highest court of the District of Columbia, one of our functions – not the most pleasant one – is to discipline attorneys. When I first joined the Court of Appeals, I was astounded by the wrongdoing in which some lawyers, even high-ranking and respected ones, engage. *See, e.g., In re Abrams*, 689 A.2d 6 (D.C. 1997)

But a lot of violations of the rules of professional conduct, which may lead to suspension or worse, as well as to professional disgrace, result from inattention to the rules rather than from malign intent. Decent people are sometimes disciplined too. I suppose that I am preaching to the choir, but please, as you start your careers, familiarize yourselves with the ethical rules and don't break or even bend them!

In recent decades, the practice of law has become too much like a business and too little like the noble calling that it is supposed to be. Billable hours now seem to be the most important consideration. Young attorneys at the large firms work long into the night and make unbelievable amounts of money. One of my 2003-04 clerks earns about 50% more than I do, if you include bonuses etc. I have nothing against money, but there is more to being a lawyer than making rich people richer and becoming rich yourself. Millions of people in this country cannot afford legal services. Whatever kind of work a new young (or not so young) attorney undertakes, he or she should find time to assist his or her less fortunate fellow-citizens. I tried to do this by helping to enforce the equal opportunity laws, but there are dozens of other ways to serve. I hope that every young attorney and law student who reads this interview takes this thought to heart.

Is there anything else you'd like your classmates and other alums to know about you and what you've been up to since graduation?

Well, I have been a lawyer for almost half a century, and a judge for almost 29 years. It has been an enormously rewarding experience for me, and together with a good marriage and tolerable health, it has made me, at 75, a pretty happy man. I guess I will end with a portion of the judge's song from *Trial by Jury*, the first of the operettas by Gilbert and Sullivan:

*Though all my law be fudge
Yet I'll never ever budge
But I'll live and die a judge
And a good judge too!*

Judge Schwelb would be pleased to respond to any questions or comments that readers may have for him. His email address is fschwelb@dcca.state.dc.us.