

# Stanford Lawyer

Fall/Winter 1978 Volume 13, No. 2



# Stanford Lawyer

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## Dean's Page

A portion of this issue of the *Stanford Lawyer* recounts the activities of Alumni Weekend, held this year on November 3 and 4 in conjunction with the Stanford-USC game. It was our most successful alumni gathering yet. Some 325 people attended the Friday night banquet and over 250 alumni/ae attended their class reunion dinners on Saturday night. But equally impressive as the numbers was the enthusiastic participation of the alumni/ae in the programs presented at the School, about the School. For a full day and a half our graduates and friends heard about the School's activities: clinical legal education, scholarship in legal history, the research and teaching interests of professors who have recently joined the faculty, new curricular developments, admissions, faculty appointments, and fund-raising and finances.

About the last of these areas, I want to add a word or two. Occasionally alumni/ae tell me that they never hear from the School except when we ask for money. That accusation, in my view, is unfounded. It is undeniable that the School relies heavily on contributions from alumni/ae and friends, but just as vital to our well-being are the time, interest, and emotional and intellectual participation that we also ask you to give. We seek your support through several means, one of which is our publications, such as the *Stanford Lawyer*, which you are reading this moment, and the *Board of Visitors Report*, which you received in November. The Alumni Weekend, with its many hours of programs about the School, is still another.

Many graduates offer their support through participation in the School's various volunteer activities. For example, several alumni/ae are involved in the "Godparent" and Liaison Programs, which provide a means for prospective students around the country to learn about the School from its graduates; others act as "judges" for moot court

and client counseling competitions at the School; many work for the School's Law Fund as Inner Quad or Quad volunteers, or as class agents; and perhaps most importantly, a large number demonstrate their support through the Placement program by representing their firms during the School's interview season. Clearly, alumni/ae participation in the affairs of the School takes myriad forms, and each is vital to the School's educational, as well as fiscal, welfare.

I do not deny that you hear from us about money, nor do I apologize for asking. Private education is beset with financial problems: we are a labor-intensive service institution, and the better we get the more labor intensive we become. With inflation being the new American way of life, it is no wonder that we run short of dollars. Moreover, since there is virtually no foundation or government support of private law schools, we must look to our alumni/ae and friends to make up the difference between our income and our expenses.

The programs described during Alumni Weekend—clinical training, research in legal history, curricular innovation—are expensive, but it is through scholarship and teaching that a law school makes its contribution to legal education and to the profession. It is for these essential functions that we ask your support.

As I said earlier, I am not ashamed to talk about money, but I don't think we should ask for it without describing what we are doing with it. The *Stanford Lawyer* and our other publications seek to do exactly that. Please read the materials we send you. Please come to programs like Alumni Weekend to learn and observe firsthand what we are trying to do at the School. Please consider ways that you might become involved in programs such as the ones I've mentioned. We want to keep you informed about the School because we believe that the better informed you are, the more willing you will be to help.





# The Role of the





# Government Lawyer

**M**any times over the last year and a half I have reflected on the good old days when I was in private practice and later a public defender. Life was relatively simple, although we had to make many difficult decisions about which defenses to raise, which witnesses to call, whether to go to trial at all. Nevertheless, within the balance of law and ethics the clients' best interests dictated the choices. In those days my job as a lawyer was to serve my client and to let justice be served by the adversary system. Now, as a government lawyer, I find that those were halcyon days.

In this job I, and all the lawyers in the Civil Division of the Justice Department, face almost daily great tensions which arise from playing what is essentially a triple role. It is a triple role because the Civil Division represents: (1) over 200 government agencies, including Congress itself; (2) some abstraction, which is called "The People of the United States," or "The Interest of the United States"; and (3) the government itself in its interest in consistency and in its interests that go beyond those of an individual agency. So, we do not have the kind of straightforward representation of a client, which is the essence of the "normal" lawyer's "normal" role.

This concept of the triple role has been stated in many ways, perhaps most classically in the engraving above the Attorney General's office door, which reads, "The United States wins its point whenever justice is done its citizens in the courts." Or, stated in governmentese, a government manual for lawyers reads, "As the largest law firm in the nation, the Department of Justice serves as counsel for its citizens. It represents them in enforcing the law in the public interest." And finally, in academes, Judge Weinstein wrote in the *Maine Law Review*, "One of the most important functions of the government lawyer is to provide a bridge or neutral meeting ground between opposing forces so that viable compromises, which are the hallmark of a functioning democracy, can be developed."

All of these expressions amount to saying that government lawyers have more than a single client. We represent client agencies, the government as a whole, and the people of the United States. As a matter of rhetoric, whether you express it in governmentese or in a law journal or in an engraving, this is all fine. But the application of the ideal in daily life is full of tensions and difficulties. For one thing, our client agencies are just like every other client: they require soothing and hand-holding, they are demanding, and they expect miracles from their lawyers.

Added to the problems which all lawyers have with their clients is the fact that in most instances our clients are also lawyers. We deal with our clients through their General Counsels' offices, and it has been my experience that there is nothing worse than having a lawyer as a client! Why? Because as we all know, no lawyer ever saw another lawyer perform brilliantly or even adequately, since he or she didn't do it exactly as *you* would have done it.

So, I take it with a grain of salt when our client agencies call me and complain about the performance of our lawyers. But they do call and they do complain—regularly. Moreover, in any particular case, it is often difficult to discern what the public interest is or to define what is justice. The client agencies whom we at Justice are in the habit of characterizing as having narrow, parochial interests nevertheless have a claim to an equal or, perhaps even better, discernment about what is best for the people of the United States.

Perhaps most problematic is the fact that we are dealing with clients who do not have a choice of lawyers. In the vast majority of cases, once a problem comes to court the litigating authority is placed in the Attorney General. If we at Justice decide that an issue or argument should not be raised, the client does not have the choice of finding a lawyer who will do a more satisfactory job of representation. And there are real and significant tensions that arise from having clients who are in this position. In many ways,

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the situation is the reverse of that of the lawyer in private practice who must at times feel like a slave to his major clients, knowing that if he does not raise arguments for them and win on the technicalities when necessary the client will take his retainer elsewhere. While the lawyer in private practice is sometimes the captive of his clients, in government practice the clients are our captives. Yet, the pressure to do what the client wants is much the same.

Added to all of the difficulties is the probability that agencies which feel that the Justice Department is not pushing their interest with undivided loyalty can, on that basis, make a case to Congress to get their own litigating authority—to get out from under, as it were. In Washington, this is almost a daily battle. There is constantly a situation in which some agency is trying to slip into some bill their own litigating authority, the power to go into court for themselves. The conceptual argument that has to be made to oppose those bills is abstract and hard to sell. It is that the government should speak with a single voice in court, that the agencies do have inconsistent interests, and that if the litigating authority is reposed in a central place, the government will be better able to do justice, to overlook programmatic or narrow interests of agencies, and to do justice for all the people.

That's an abstract argument, and when an agency is in there talking to their little subcommittee in Congress about how the Justice Department sold them out or did an inadequate job or refused to raise an argument, it doesn't go well. I've played it many times and I'm getting better at it, but it doesn't sell real well.

Finally, there are all the problems that come about because of schedules and pressures of litigation and the personalities involved, especially when you have a situation in which the lawyers at the Justice Department and in the Civil Division are young but they have the final authority. An example is a recent conversation I had with a young woman in the Civil Division who is about five years out of law school, very bright, very accomplished. She is girlish in appearance, low-keyed in manner, and she related to me in horror that she had just met the lawyer she had been dealing with in a Department of Defense case. She had been yelling at him on the tele-

phone and rejecting his written work and she said to me, "It turned out this guy is a sixty-two-year-old grandfather-type. I felt terrible!" (I couldn't help wondering how *he* felt.)

None of the foregoing is to say that in the triple role we play as government lawyers there are not some problems that can be resolved easily—at least conceptually, if not administratively. Part of representing the public interest is that the government should be a model litigator. This does mean that we can be sure and we should strive for the point where technical defenses are not raised in cases that should be reached on the merits. By technical defenses, I refer to the whole range of technical defenses—the brief is on the wrong size of paper and there's not been proper service process, or the sovereign can never be sued.

We should be able, as model litigators, to be sure that settlements that are basically extortionate are not entered into simply because the government has greater staying power and can wear the other side down. I have spent a great deal of time trying to assure that this occurs. I don't say that I've been 100% successful—there are, after all, 40,000 cases a year handled by the Civil Division. We represent many agencies and we also try to supervise the U.S. Attorney's offices in all of which there are civil cases. But I think that there are standards that can be set and the Government should be a model litigator.

**A**s another example of easy cases, recently the Department defended a case in which a Federal employee charged unlawful discrimination in violation of Title VII. After prevailing on the merits, the defendant agency urged the department to seek an award of attorney's fees from the plaintiff. There was no dispute that the suit was both meritless *and* brought in good faith. The agency, though, was just plain angry. One of the things that I have become sensitive to, which I never appreciated before, is how awful it is to be called a discriminator. It gets people very upset. The agency knew there was nothing to the case, but they resented being put through the rigors of a lawsuit and the publicity of the accusation. They wanted the plaintiff to pay, as an example to others.

There was law on their side. In private

sector Title VII cases courts have held that a prevailing defendant could be awarded attorney's fees. On the other hand, the drift of the law in the area and the position supported by the E.E.O.C. and the Civil Rights Division of the Justice Department was that attorney's fees could be awarded to the defendant only in situations of vexatiousness, bad faith, abusive conduct, or harassment on the plaintiff's part. We thought that that was the correct view of the law and we did not, in spite of the fact that the client wanted it, press their claim for attorney's fees. In so doing, we were playing what I have denominated this "triple role." We were representing not only the agency's interest but the government-wide interest, both in the consistency of legal positions and in the vigorous enforcement of Title VII.

That case, though it caused us a lot of trouble in the sense that the agency was very upset with us and felt sold out, was relatively easy. Let me now give you some examples of more difficult ones: An agency fires an employee after considerable due process because he was arrested but not indicted for an act of sodomy in a car in daylight. The employee's work record was fine, and long, and there was no indication that his admitted homosexuality had any nexus with his work performance. He sues to retain his job and for back pay. We don't think that on the law, the case should be defended or can be won, and yet the client agency feels very strongly that they do not want this man back on the job. A respectable legal argument can be made that he has demonstrated a lack of judgment that makes him unfit for his employment in a fairly sensitive job. You can think about what YOU would do in your dual or triple role.

The easy way out of all these situations is to adopt the attitude which one commentator writing about the history of the Civil Division describes as the position of the Civil Division. He writes that it is rather well established that every agency is entitled to be defended, at least in the District Court, almost irrespective of the nature of the practice that is under attack. And the pressures are all toward that end, to give the agency at least one shot, to give the client at least one shot, whatever it wants to raise. I do not believe that that is the mission of the government lawyer. And I don't believe at this point that it



is a fair description of the way the Civil Division operates.

The problem becomes even more complicated when agencies are in conflict with each other. For instance, we had a case in which Amtrak was threatening to eliminate redcap service on a large number of lines. Organizations representing the elderly and the handicapped sued to prevent this. We had to defend Amtrak, but in so doing we were trying to work out alternatives to redcaps to aid travellers who could not handle their own luggage. In the midst of all this, another of our clients, the ICC, decided this would be a fine opportunity to test whether it or the Department of Transportation, which runs Amtrak, has long-range authority over the provision of services. So the ICC sought to interject this issue of authority into the suit by filing its own papers with the court and placing us, with our multiple clients and our triple responsibilities, in a most uncomfortable position.

Time and again, agency clients tell me that they want a position raised that I feel instinctively and legally is incorrect. But as you all know, all cases can be distinguished, all policies are subject to change, and it's very difficult to explain to a client agency that preserving a point for them, or winning a case for them, for that matter, creates risks for other agencies throughout the government.

As a final ingredient, in the difficulties faced by government lawyers there is a situation in which an Act of Congress is challenged on constitutional grounds. There are cases in which both the Department of Justice and the agency charged with implementing the act may have doubts about its constitutionality. The anti-busing amendments to the HEW appropriation are an example. There were many people in the Civil Division and the Civil Rights Division of Justice and in the Office of Civil Rights at HEW who had reservations about the constitutionality of those amendments. There was an argument that it put the client in a position in which it could not carry out its constitutional mandate to provide equal protection of the laws.

On the other hand, the amendments did not do away with busing, but instead said that its use as a remedy should not be up to HEW but should be embodied in a case brought by the Department of

Justice. In this situation, whatever one may think about what is right, the resolution of conflicting interests is generally best left to the adversary process. It might be thought inappropriate for the Executive, rather than the Judicial, branch of government to pass judgment on the constitutionality of a legislative enactment. Moreover, Congress, unlike the agencies, has no Office of General Counsel. While agency representatives can, in a lawsuit, negotiate the amendment of regulations, members of Congress cannot themselves seek to compromise with the parties bringing suit, nor is a statutory amendment a possible subject of negotiation by the Department of Justice.

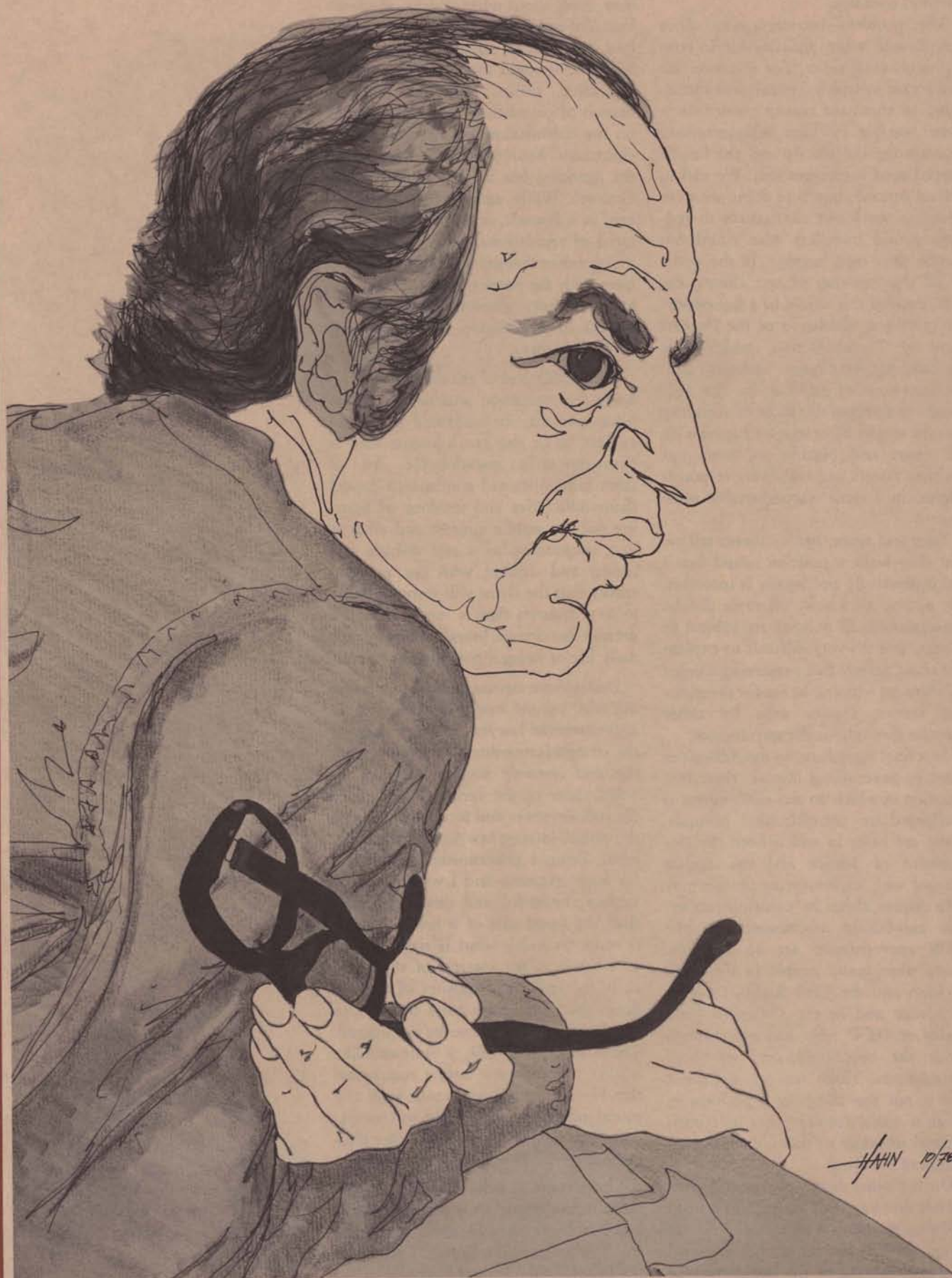
As a result, one of the difficulties with being a government attorney is that at times one may be obligated to defend as best he or she can a statute that is constitutionally questionable. All of these difficulties as I continue to denote them—difficulties and tensions of figuring out the public interest and what is just, responding to a real client's real needs, and dealing with the political reality that the client will respond badly to any decision that is less than a full defense for it—are literally part of the daily life of being a government lawyer.

Under these circumstances, you might ask why anyone would be willing to be a government lawyer. It offers none of the straightforwardness of private practice and certainly not the financial reward, none of the certainty and room for righteousness and total resolution of the public-interest lawyer. On the other hand, being a government lawyer is a far more exciting, and I would submit, various, beautiful and new experience than the usual role of a lawyer. There is room to weigh what is right as well as what is in the interest of the client or in the financial requisites of the law firm. There are many more counters to be played and factors to be considered. There is, if you will, a statesmanlike quality to practicing law, a requirement that lawyers be willing to take legal and moral judgments about right and wrong, willing to insist on changing rather than defending troubling practices.

I have come to believe in this job that there is something truly exciting about being able to say, in spite of all its troubles and ramifications, "I represent the People of the United States."

*Ms. Babcock has been on leave from the faculty since February 1977, when she was appointed Assistant Attorney General of the Civil Division, U.S. Department of Justice. This article is transcribed from an address given by Ms. Babcock at the Stanford Law Alumni Luncheon held on September 12 during the State Bar Convention in San Francisco.*





Drawing by Benjamin W. Hahn '79



# Gerald Gunther: Reflections on a Relationship With His Native Germany

by David Margolick

*"All through the ghostly stillness of the land, the train made on forever its tremendous noise, fused of a thousand sounds, and they called back to him forgotten memories: old songs, old faces, old memories, and all strange, wordless, and unspoken things men know and live and feel, and never find a language for—the legend of dark time, the sad brevity of their days, the unknowable but haunting miracle of life itself. . . . He never had the sense of home so much as when he felt that he was going there. It was only when he got there that his homelessness began."*

THOMAS WOLFE, YOU CAN'T GO HOME AGAIN

While princes, kings, and kaisers were busy shaping modern Germany, the town of Usingen had done little more than quietly persist. Located in the Taunus mountains twenty-seven kilometers northwest of Frankfurt, Usingen was a county seat but a country town, a collection of small shopkeepers serving one another and the farmers who lived nearby. Its population had hovered around 2,000 for centuries, a faithful reflection of the all-encompassing continuity which permeated the lives of its residents.

To be sure, the myriad forces of change—physical, political, philosophical—reached Usingen, but they reached it as they have always reached small towns everywhere: deliberately, with diminished intensity and relevance. Preoccupied with themselves and their families, and buffered by their traditions and their

isolation, generations passed through Usingen, seemingly impervious to the upheavals taking place around them.

## Early Days

Gerald Gunther was born in Usingen on May 26, 1927, the third and youngest son of Otto and Minna Gutenstein. According to local records, his family had lived in the town for at least three hundred years. The family's source of livelihood was nearly as well-established as its place of residence. From the beginning the Gutensteins had been butchers, and the trade had wended its way through successive generations. Traditionally, the eldest son took over the family business, while younger brothers pursued careers in related fields.

Gunther's immediate family had not departed from that tradition. His eldest brother had learned the craft and stood



to inherit his father's business, while the second son had entered the leathersgoods trade.

With their long-standing personal and commercial ties to Usingen, the Gutensteins had always shared in the low-key, comfortable camaraderie of small-town life. Gunther's grandfather had been a member of the local city council, a politico who had passed countless afternoons drinking beer and talking shop with his friends. His father, though showing no similar political predilections, was still most at home with his farmer friends and merchant colleagues, and thought of himself as just one more middle-class shopkeeper.

Though Usingen's residents were primarily Lutherans, Otto Gutenberg's Judaism had in no way diminished his own sense of "belonging" there or isolated him from his neighbors. German anti-semitism was nearly as old and at least as firmly entrenched as the German Jewish community itself, but in Usingen it had never been the divisive, virulent, ghettoizing force it had been elsewhere. Perhaps the co-existence of Usingen's Christians and Jews was characteristic of communities its size; for ethnic stereotypes and racial prejudices, so often the tenets of ignorance, the by-products of fear, do not always thrive on the intimacy and interdependence of small-town life.

Still, such religious tolerance was a function of more than the size of the local population. Here, as throughout the country, Jews *sought* acceptance and assimilation into German culture rather than segregation from it. Intent upon entering the mainstream of German life, they maintained identifiable but informal ties to their Judaism.

Usingen's small synagogue, to which the Gutensteins and some twenty other families belonged, held weekly *shabbos* services, but they were sparsely attended; its minyans comprised primarily the very old and the very young, those recently *bar mitzvah*. Most middle-aged parishioners like Gutenberg attended services only twice annually, during the High Holidays.

Usingen's Jewish population was inconspicuous in one more sense. However tenuous their religious affiliations may have been, Germany's urban Jews had distinguished themselves through their intellectual accomplishments, as professionals, artists, and academicians;

though numerically insignificant, they were a prominent—and therefore, a vulnerable—element of the population.

The Jews of Usingen, however, were merchants and farmers, like everyone else around them. "The bookishness and the stress on education and culture associated with big-city German Jews," according to Gunther, "was a non-existent theme in our small town."

So it was with the Gutensteins themselves. Together, they owned no more

than a dozen books, mostly the myths and assorted odd-ball novels which invariably find their way into even the least literate of households. Formal schooling was seen as little more than a means to a trade; higher education was an unwarranted and unproductive luxury.

Had these been ordinary times, Otto Gutenberg's youngest son would not have broken this long-standing tradition; there is little doubt that he, too, would have become a butcher or tanner





or leathergoods worker. But the 1930s in Germany were not ordinary times, as each member of the Gutenstein family soon discovered.

### The Spread of Hatred

Though in *Mein Kampf* he had advocated the immediate gassing of twelve to fifteen thousand Jews, Adolf Hitler moved deliberately in initiating the "Final Solution" in Germany.

For the first five years of the Third Reich, anti-semitic policy was implemented incrementally, primarily through legislation, with each successive act designed further to segregate and stigmatize the nation's Jews. In 1933, for example, Jews were barred from the practice of law and from service on juries. Soon thereafter, Jewish participation in "German" theater and entertainment was prohibited; and in 1935, the Nazi government banned all marriages between gentiles and Jews.

For the purposes of prejudice, Usingen soon ceased to be a sleepy, isolated town. The various official anti-semitic proscriptions legislated on the national level worked their way, quickly and insidiously, into the conduct of the community. Otto Gutenstein's business was subjected to numerous restrictions and to a series of harassments, including the nationwide boycott of Jewish merchants orchestrated by the Nazis in 1933.

Still, Gutenstein, like millions of other democratic Germans, Jews and gentiles alike, refused to see portent or a likelihood of permanence in the Nazis and their anti-semitic efforts. He had, after all, won an Iron Cross in World War I. As one deeply committed to the German nation and firmly rooted in its soil, he looked upon Nazism as an aberration, a political fad. Nazis were riff-raff, ne'er-do-wells and vagabonds, not the patriotic Germans he knew.

Even when, in 1935, he was charged with "unsanitary" slaughtering of cattle and thrown into jail, Otto Gutenstein remained loyal. The charge, apparently fabricated by a disgruntled ex-employee with Nazi sympathies, should have been laughed out of court. Nonetheless Gutenstein was to remain imprisoned for three weeks; it was only because he knew both the local jailer and judge that his incarceration was so short and so relatively tolerable.

Ironically, these courtesies, and not the animus underlying the entire episode,

stuck in Gutenstein's mind. Surely, he felt, if such friends continued to respect him, things were still reasonably under control. To him the incident only lent further credence to the distinction he had drawn between "good" Germans and Nazis; it actually heightened his sense of belonging, his resolve to remain in Germany.

### School Days

Unlike his father, and, to a lesser extent, his brothers, Gerald Gunther was neither blinded by old loyalties nor insulated by old friendships. Six years old in 1933, he was too young to have acquired either.

Indeed, it was precisely because of his youth, because he had come into consciousness as Hitler was coming into power, that he was the first member of his family to sense what was to come.

Gunther entered Usingen's *Volksschule* in the Fall of 1933. Around that time, the man who had been teaching first grade, a Social Democrat, was fired for his political sympathies, and his replacement, a leader of the local Nazi Party, wasted no time in implementing the new order.

Along with his sole Jewish classmate, Gunther was relegated to the corner of the classroom, where the two were subjected to repeated anti-semitic taunts and ridicule. There, he would be called upon only reluctantly, only after his "Aryan" contemporaries had failed to respond.

"You should be ashamed of yourselves and the disgrace you've brought Aryan culture," the teacher would declare on such occasions. "The Jew kid knew the answer and you didn't."

### Personal Development

Gerald Gunther's formative years were spent, then, in a protracted and confusing search for identity. They were years filled with intense and often conflicting images, a time when his boyhood loyalties did battle with his better instincts.

These were years in which his classmates wore the uniforms of the *Hitler Jugend* (Hitler Youth) to school and bombarded him with nasty words and catcalls, "usually with *Jude* thrown in somewhere," while his family remained steadfast in its patriotic intention to wait things out; a time when, thinking of himself as a German, he spent countless hours following the exploits of German

athletes through newspapers and radio broadcasts, only to hear once more of Aryan superiority and "Jewish conspiracies."

Ultimately, Gunther was to effect his own personal settlement with the hostility which surrounded him, a settlement which not only made the present more bearable but which profoundly influenced his future development.

To earn the recognition he was denied at school, he became an especially conscientious student. He came to relish any opportunity to embarrass his Nazi teachers—and simultaneously, to puncture Nazi racial ideology—by upstaging his classmates. To follow the events swirling around Germany and Europe, he read incessantly, borrowing books and combing through newspapers. Most importantly, he learned to endure and even to cherish the isolation that events had imposed upon him, to parlay his ostracism into an opportunity to discover his own passions and inner resources.

Gunther remembers his youth in Germany as "a collection of moments on my own"; and the devices which served him well in those difficult moments, detachment, scholarship, quiet introspection, have remained with him—and are easily recognizable to those who know him now.

Gunther had decided early on that the time to leave Germany had come, but he was forced to agonize through what he calls "the eternally drawn-out decision process" by which each member of his family eventually arrived at the same conclusion.

But in the middle and late 1930s, the noose which had been fastened around him from his first days in school soon began to tighten around the rest of them. His older brothers' friends from the Weimar days no longer came around; the two were barred from the local soccer teams; and later, they were prohibited from continuing their education beyond grade school. Furthermore, the restrictions placed on Otto Gutenstein's butcher shop became increasingly onerous as successive legislative decrees from Berlin effectively dismantled all Jewish business in the country.

By September, 1938, thousands of Jews had already fled Germany. Still the Gutensteins remained, until the morning of Rosh Hashanah—the first day of the Jewish New Year. Then, on that holiest of days, as even the least observant of



the town's Jews prepared to attend services, the windows of Usingen's synagogue were smashed, and stink bombs were thrown inside the building.

The incident was, in many ways, an ominous prelude to the *Kristallnacht* or "Night of the Broken Glass" one month later, when Jewish homes, businesses, and places of worship throughout Germany were systematically vandalized and thousands of Jews were arrested and sent to concentration camps. And it marked the turning point for Otto Gunterstein. Gunther vividly remembers his father's walk back from the synagogue that day, and how he had cried, in anger and disbelief, "*They can't do that! They can't do that!*"

In what his son describes as "an immediate, impulsive, emotional reaction" to this experience, Gutenstein finally concurred with the judgment made several years earlier by his youngest son, and ultimately reached by some 300,000 German Jews. He decided to leave the country, and as quickly as possible.

A day or two after Rosh Hashanah, Otto Gunterstein bade *auf wiedersehen* to friends whom he was never to see again. Within three days, he and his family were aboard a train headed west, for Holland. The train remained stalled at the German frontier for twenty-four anxious hours, the border having been sealed while Chamberlain and Hitler deliberated in Munich over the fate of Czechoslovakia.

Ironically, they were free to cross only after Britain acceded to Hitler's "last territorial claim in Europe"—and sacrificed the Sudetenland. "They opened the border," Gunther reminisces, "and I cheered for appeasement."

Gerald Gunther, age eleven, had at long last left Germany. He was only dimly aware of the horrors that he was leaving behind—and even less certain about his own future; for when he arrived in New York City three weeks later, his English was insufficient to read even the *Daily News*.

\* \* \*

Four decades have now passed since Gerald Gunther left Germany. For nearly two-thirds of his life, he has been an American citizen. He has spent most of that time pursuing his great love: the study of the American Constitution. For Gunther the refugee, it was a passion born not only out of academic interest,

but also out of respect and gratitude; it is probably no coincidence that two other distinguished immigrants—Felix Frankfurter and Alexander Bickel—have shared this passion.

To the superficial observer, though, Gunther's European origins appear to play only a minor role in his present life and thoughts. He is, after all, an American scholar preoccupied with uniquely American processes and personalities. Indeed, my visit to his office today interrupts his continuing work on a biography of Learned Hand.

His immediate environment—the walls of books, the plush and trendy office furniture, the balmy fairyland of a campus outside—lend further credence to this sense that the past has been extinguished by the present. It is almost as if the world view of even the most complex and resilient of personalities could not encompass two images, two experiences, as incongruous as Stanford University and Nazi Germany.

Yet while Gunther has not dwelt on the past, neither has he tried to ignore it. More than provide much of the impetus for his career decision, the legacy of Gunther's childhood experiences was, for many years, sufficiently intense to influence his daily conduct in numerous ways.

Gunther's first years in America were characterized by his almost wholesale hostility to all things German. When the war ended and the fate of European Jewry became fully known, his antipathy was further intensified; three of his aunts were among the victims of the Holocaust. Then, too, the roots of his attitude were derivative as well as personal, intellectual as well as emotional. They took hold as the experiences of friends and the horror of the idea underlying the whole epoch gradually sunk in.

He expressed this animus in many ways and for many years. He would read no material related to Nazi Germany. He supported the so-called "Morgenthau Plan," which sought to strip post-war Germany of its remaining industrial capacity and reduce it to an agricultural state. He not only refused to buy a German car for himself, but chastized others who did.

And he had great difficulty treating individual Germans, particularly those old enough to have been politically conscious during the Hitler years, with anything but complete contempt. More than

once, he could not control the hostility he felt during such encounters. For always, he asked himself the same questions: "What the hell were they doing through it all?" "What could they have done to stop it?" As late as 1966, when he was to be on leave for the year, and toyed with the notion of living in Germany, the idea was rejected by his wife; she was convinced the experience would prove too aggravating for him, and they decided to live in England instead.

Even so, by December, 1966, Gunther had concluded that the time had at last come to return to Germany, at least to visit if not to stay. True, the old, generalized bitterness remained, but it was in conflict with another, more powerful impulse: curiosity.

In going back to the place of his birth, Gunther wanted to discover the subtleties which had previously been obscured by his own prejudices. Like Thomas Wolfe, he hoped his return would provide answers, or at least insights, to the many vexing questions that remained, about a nation and its people, about his home town, about his father, about himself.

#### Usingen Revisited

Not surprisingly, Usingen was among the first of Gunther's stops on that first trip back. The town had, he discovered, grown somewhat over the intervening years, as it had become more of a satellite of Frankfurt: its residents now numbered 5,000 or so. Most of the expansion, however, had occurred around the periphery of the community; the village center was, according to Gunther, remarkably unchanged and easily recognizable, save for the efforts of the city fathers to "antique" the buildings by exposing plaster from their facades and thereby exposing their original beams.

The Gutenstein's home was also pretty much intact. There had been a forced sale of it in 1938, when they left Germany, to the family which lived there still. Little had changed in the interim except for Gunther's own perspective; after three decades of expansive American living, he could not get over how small the house now seemed to him.

There had remained in Usingen few people whom Gunther remembered, and even fewer he actually wanted to see. He sought out some of the town's older Social Democrats, those citizens who had believed in democracy and stood up



against Nazism, vocally at first and silently when they could no longer speak. And he visited his father's friends, to whom he was still known, after so many years, simply as "Otto's youngest."

Together, these discussions showed Gunther a degree of pluralism within the German population that he had not previously recognized. They forced him to reassess some old and easy stereotypes, to view the Germans more as individuals than as an amorphous mass, to treat them with greater sympathy and understanding.

They also helped him to appreciate his father's ties to the town and his stubborn reluctance to leave it, for many years a source of misunderstanding between father and son. Otto Gutenstein's friends, who had lent him support in his bleakest hours, had, in a sense, helped arrange a rapprochement between Otto and his "youngest" thirty years after the initial breach had occurred and four years after Otto himself had died.

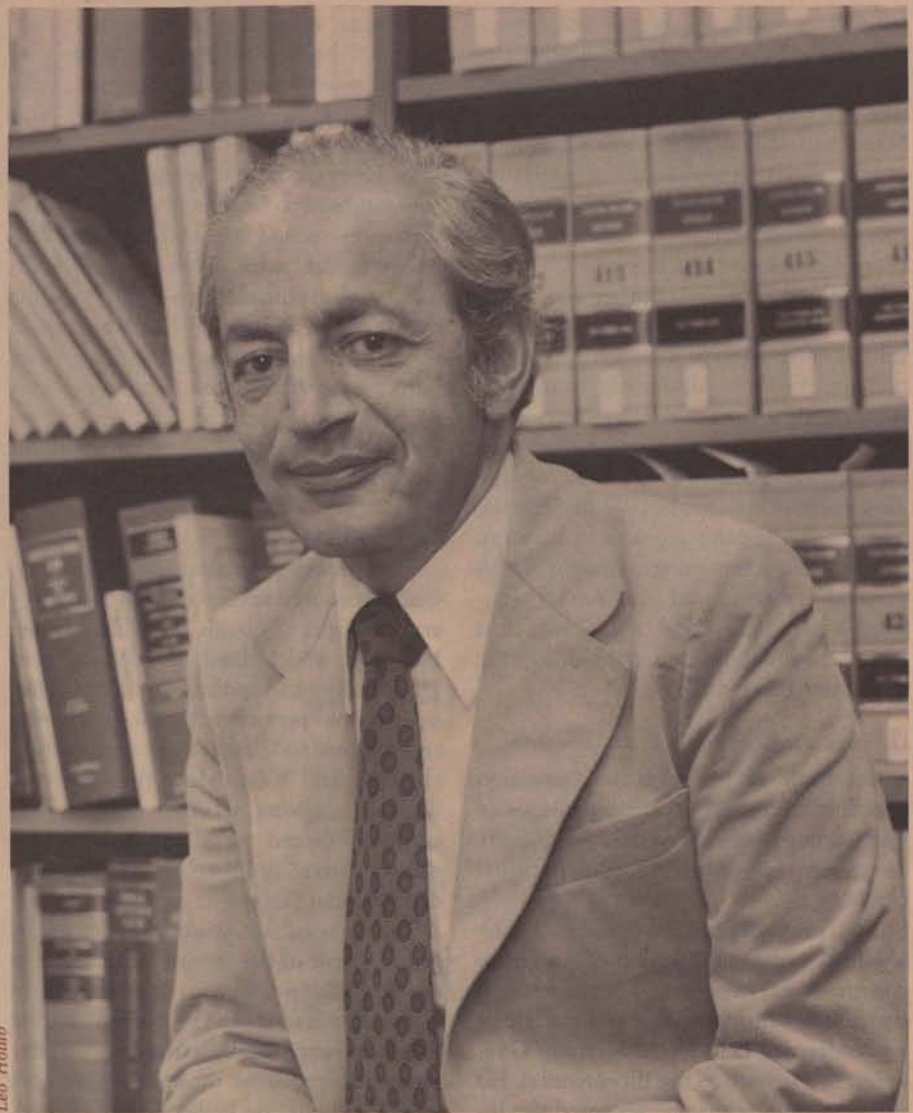
Gunther was to learn something else in the course of these discussions. With one exception, all of his male classmates in the *Volksschule* had been killed in World War II. They were 17 years old in 1944, and they had died in France, in Germany, on the Eastern Front, cannon fodder for a desperate army going down to defeat. Only those boys once relegated to the corner of that classroom—Gunther and his one Jewish contemporary—had survived.

To all outward appearances, then, Usingen had reverted to its former, sleepy self. Gunther and his family had planned to stay there for a few days, and by the middle of the second afternoon he was, he says, "feeling quite mellow" about the whole experience.

His mood was to change quickly, however, when he walked over to the local Jewish cemetery, where many of his ancestors were buried.

Usingen's synagogue had been set afire on the *Kristallnacht*, and the last Jewish residents of the town had fled shortly after that. But in the cemetery that day, Gunther discovered that the desecration of Usingen's Jewish community had apparently continued even after the town had been freed of Jews.

Most of its tombstones had simply disappeared, having been carted off for building material. Others had been smashed. Now, only two partially broken stones, along with scattered chips of



Leo Holub

marble, remained. The names were still recognizable on those two vandalized remnants; one was that of Gunther's grandmother.

The visit, said Gunther, was "a good, chilling reminder of what had actually gone on in Usingen." He and his family left town almost immediately after they left the cemetery.

Throughout his travels, first in 1966 and again two and one-half years ago, Gunther continued to find disquieting reminders of the German past in the German present.

Some were easily spotted, such as the rise of a neo-Nazi party throughout the country. In Usingen itself, for example, the restaurant which thirty years earlier had been the headquarters of the local Nazi party was once again serving in that capacity. And the town's only other restaurant, owned by a family of Social Democrats, had recently been vandalized.

Gunther discovered, too, that while some Germans seem intent upon reenacting their nation's past, they may well be outnumbered by those who refuse to acknowledge anything at all about it.

Local baedekers describe Dachau simply as "a pleasant suburban residential area"; those attempting to find the concentration camp there, where thirty thousand prisoners died, receive little assistance from the usually-precise German road signs.

Furthermore, middle-aged tourguides, feigning either ignorance or forgetfulness, blithely ignore various Nazi historic sights. Gunther bristled with anger when his guide in Munich drove by the site of the 1923 putsch, and alluded to only some obscure event which had occurred there a century earlier.

He was to be subjected to such calculated oversights again, and, in Nurem-



berg, he could no longer contain himself. He had pointedly asked the *spieler* the location of the one-time Sportstadion, where hundreds of thousands of Nazis had staged their awesome rallies, only to receive a timid plea of ignorance in reply. "I got furious," Gunther now recalls, "and started to curse him in every German word I knew."

Gunther experienced other sensations during his trips which, though more subtle, were equally evocative and disturbing. Visits to ostensibly innocuous settings, to a *hofbrau* cellar, for example, reminded him anew of the regimented, volatile temperament of the anonymous German mass. Watching the patrons slowly getting drunk on beer and singing wandering songs, singing which gradually degenerated into a noisy, raucous unison, he "had the sense of a crowd turning into an animal, getting more and more nasty."

#### German Democracy

On both of his trips to Germany, Gunther has examined the operations of the German judicial system, especially its system for enforcing constitutional rights.

Two summers ago, he was asked to be a member of a small group of American constitutional experts at a conference on constitutionalism in Bonn and Karlsruhe—a conference held as the German Government's tribute to the Bicentennial. He candidly admits that he accepted the invitation with "a special satisfaction that borders on revenge." While there, Gunther was impressed with the quality of the Justices of the German Constitutional Court, and with their sense (and the sense of many democrats) of waging an uphill battle to implant individual rights and democratic political processes into Germany.

After that conference, he spent four weeks on the faculty of the Salzburg Seminar in American Studies. His students were primarily European lawyers, with Germans comprising the largest contingent. Again, he found them uniformly likeable as individuals, uniformly committed to democratic ways.

Yet each occasion left him with grave doubts about the depth and breadth of that commitment among the general populace, doubts which were strengthened by the recent rightward shift of the German electorate this past summer. His travels confirmed for him the persistence

of certain "especially German characteristics": "the love of orderliness, an impatience with political debate, a readiness to follow superior authority and not ask too many questions."

In contrast to his attitudes when he first returned to Germany, Gunther completed his second trip with a greater capacity to deal with Germans as individuals, and a considerable ability to like many of the individuals he met. But at the same time, he departed with a greater basis in experience for the reservations he had always held about Germans *en masse*, and with reinforced doubts about Germany's political future.

#### Last Vestiges

Upon leaving Salzburg that summer, Gunther toured several countries in Eastern Europe. Though Czechoslovakia, Hungary, and Poland are distinct geographically and politically from Germany, one pervasive theme lent unity and purpose to Gunther's European travels, East and West. More than the customary curiosity of the tourist, that common thread was "an almost compulsive drive" to search out remnants of European Jewry.

There was, of course, little to be found. Most of the Jewish community in Eastern Europe, like its counterpart in Germany, had been murdered during the war years, and attrition has pretty much succeeded in those few instances where annihilation had previously failed.

But like the once-secularized German Jews in the 1930s, Gunther found that such adversity had imbued his own Judaism with new relevance and fervor. He sought out services in the few functioning synagogues which remained; he visited Jewish museums and cemeteries; and he made one final appointment with the past: he went to Auschwitz.

When the Gutensteins had fled from Germany, they had, in effect, escaped from Auschwitz. Like the cemetery in Usingen, Auschwitz was a final resting place, but for an entire religious culture rather than for one small religious community. Here, a million Jews perished, and their civilizations—the proud traditions of German Jewry, as well as of the Yiddish-speaking Jews to the East—had perished along with them.

Like the cemetery, too, Gunther's relatives were buried in Auschwitz, or at least he thinks so. It is only the least of the whole tragedy that he could never

be sure where they died. And like the visit to the cemetery, the visit to Auschwitz was a searing, haunting experience.

After thirty years of silence, Auschwitz remains, says Gunther, "an absolutely horrifying place." Everything about it—its size, its manner of construction, its organization—is as terribly overwhelming as its very reason for being. The wooden barracks of its forced labor camp, where thousands existed until sapped of their last modicum of strength, are now gone, but the chimneys remain—and remain as far as the eye can see. The quarters built at the adjacent extermination camp were not so seemingly improvised—they were built of brick, built to endure.

And if Auschwitz is a monument to evil, it is also a monument to what Hannah Arendt called "the banality of evil." The museum at the camp, maintained by former inmates, displays the bureaucratic legacy of the Holocaust, the letters, the directives, the memos intended, as Gunther says, "to speed up the processes by two minutes or to save x man-hours, statistical projections about how much more efficiently they could kill people."

In another part of the museum are monuments of a different sort, roomfuls of suitcases, spectacles, shoes, and human hair, systematically organized and separated, which the victims had left behind.

Gunther's moments at Auschwitz were the final, and the most intense, of the many intense experiences he encountered last summer in Europe. Throughout it all, he was reminded of how much a survivor he truly is, that he had somehow managed to stay alive when so many others—his classmates, his generation, his fellow Jews—had not.

Fate was to give him a second break as well. For having allowed him to endure, it also provided him with the chance for an education. It is a measure of Gerald Gunther that he considers the second gift to have been as great a blessing as the first—that his love of learning is the very essence of his love of life.

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*This article is reprinted, in slightly edited form, from the Stanford Law School Journal of November 2, 1976.*

*David Margolick is a graduate of the Class of 1977. Currently living in New York City, he is pursuing a career in legal journalism.*



*True ease in writing comes from art,  
not chance,  
As those move easiest who have  
learned to dance.*

ALEXANDER POPE

**T**he lawyer makes his or her living by the communication of ideas, orally and in writing. Nothing is more basic to the lawyer's craft than the precise and effective use of words.

Yet, the most common complaint law schools receive from law firms about recent graduates is their inability to write and research properly.

In an effort to remedy this problem, the Stanford law curriculum places strong emphasis on the development of written and oral skills. During their three years at the Law School, students must complete a minimum of three courses (beyond the prescribed first-year program) in which research papers or other written work is required in partial or complete fulfillment of the course work. However, the fundamentals for the research and writing that will be required in the second and third years, and, indeed, throughout each student's professional life, are provided in the first-year program, *Research and Legal Writing; Legal Bibliography*.

Few, if any, students come to law school experienced in the art of legal writing. They must be acclimated to the form and techniques of the lawyer's basic working skills, including oral argument, drafting, brief writing, and scholarly legal writing. And as any lawyer knows, expertise in these skills can only come through application and practice, and after exacting criticism.

At Stanford, the first-year research and legal writing program provides students with the opportunity to develop their skills through a series of written exercises and rewrites of these exercises; individual critique sessions; weekly classes on various aspects of researching and writing; and a moot court exercise.

Administration of the course rests with a small but extremely capable group of instructors known as Teaching Fellows. Drawn largely from among recent law graduates with law review or equivalent research, writing and editorial experience, the teaching fellows are assigned to the small class sections in each of the first-year courses (Civil Procedure, Con-

tracts, Criminal Law and Torts in the first semester; Constitutional Law, Property, and two courses in statutory analysis, Consumer Transactions and Legislation: Disclosure and Confidentiality in the second semester).

Working closely with the individual faculty member in each course, the teaching fellow devises exercises that relate to the substantive material of the course, while introducing the students to various research and writing skills.

In the first semester students typically are assigned three exercises of graduated difficulty. The first is usually a synthesis exercise involving a fact pattern and three to five cases, and the students are asked to draft a short memo evaluating the "client's" position. In the second exercise a fact pattern is given but the students must research and apply the cases to write a memo. The third assignment is open-ended requiring considerable research and resulting in a lengthy memo.

Each assignment is submitted to the teaching fellow for comment. Individual conferences are then scheduled to allow the teaching fellow to focus on each student's specific problems. Often the corrected assignment is returned to the student for rewriting.

In the second semester the teaching fellows are rotated to work with different small sections. Most of the semester is devoted to a moot court problem, which takes the students through the various stages: researching the problem, drafting a statement of facts and issues, writing a brief, and finally, arguing the brief in a moot court setting, using local attorneys as judges. The last assignment of the year usually involves a drafting problem.

At the end of each semester one student from each small section is chosen by the teaching fellow and faculty member to receive the Hilmer Oehlmann, Jr. Prize for exceptional work in *Research and Legal Writing*.

Prior to the first writing assignment and running throughout the year, the students also attend lectures in legal bibliography to learn about the organization and use of the library. The lectures are conducted by Law Librarian J. Myron Jacobstein and members of the library staff.

In addition to devising the writing exercises and holding individual conferences, the teaching fellows conduct sev-

## Stanford's Teaching Fellows: Helping Students Master the Language of the Law



eral section meetings during the year to provide background on the assignments, as well as to discuss related topics not raised in the exercises.

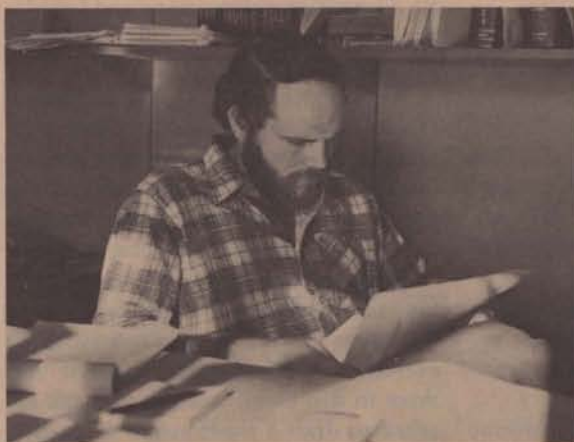
Clearly, the success of the first-year research and legal writing program is directly related to the talents and commitment of the teaching fellows. When teaching fellows were first added to the faculty some twenty-eight years ago, the Law School *Bulletin* described the type of applicants desired as possessing "a creative turn of mind and an enthusiasm for the instruction methods peculiar to small seminars and individual interviews." These qualities have continued to characterize Stanford's teaching fellows through the years. This year's fellows are no exception.

There are currently six fellows at the School, two of whom are here for the second consecutive year. While as a group the teaching fellows are as diverse in their interests and talents as any six individuals could be, they share strong legal writing skills and an interest in the academic side of law. Indeed, many teaching fellows are attracted to the Stanford program because it provides an opportunity to pursue an advanced degree, as well as a chance to try teaching.

One Fellow who chose Stanford for both of these reasons is Coeta Chambers. A 1977 graduate of Santa Clara Law School, Coeta is spending her second year as a teaching fellow while she finishes work on a Master of the Science of Law (J.S.M.) degree. "I came to Stanford because I wanted to try out teaching," Coeta explains, "and I found after a year that I absolutely loved it." In addition to her responsibilities at Stanford, Coeta is also teaching a first-year course in Torts at Santa Clara.

Marcia Speziale chose Stanford's program for reasons similar to Coeta's. She, too, is here for a second year and working on a J.S.M. During her third year at the University of Connecticut School of Law, Marcia investigated ten legal writing and research programs at law schools around the country and decided that Stanford offered the best program. In describing her experiences as a teaching fellow, Marcia singles out "working with the students" as the most rewarding aspect of the job, a fact that is further demonstrated in this year's additional responsibility: co-teaching an undergraduate course in Law and Morals with Law Professor Thomas C. Grey.

*Betty Dawson pauses after class for further discussion with Prof. Robert Rabin (left) and Greg Boecker.*



*Gene Frett prepares his next assignment.*



Although her long-range career plans include teaching, Marcia will spend next year clerking for Judge James M. Fitzgerald, U.S. District Court, Ninth Circuit, in Alaska. Following the clerkship, she would like to try private practice for a few years and then go into teaching.

Both Coeta and Marcia became teaching fellows through the School's normal selection process. In the fall of each year, Stanford sends notices to the law review offices and Dean's offices of all the law schools accredited by the Association of American Law Schools. The notice describes the program and invites interested students to apply directly to the Chairman of the Research and Writing Committee. Each year the School receives between 75 and 100 applications, primarily through this process. Offers are made in early January to the finalists.

Several factors are considered in the selection process, including law review or other writing experience, grades, recommendations from faculty or former teaching fellows, and related work experience. When possible, interviews are arranged between the applicants and members of the Committee or its Chairman.

Though many applicants learn about Stanford's program through the notice sent by the School, several apply through different channels. This year two teaching fellows, Betty Dawson and Brad Seligman, both 1978 graduates of Hastings, applied at the encouragement of a Hastings faculty member and former Stanford teaching fellow.

Both Betty and Brad bring strong qualifications to their roles as teaching fellows. While at Hastings, Betty gained

extensive writing and teaching experience as associate articles editor of the *Hastings Law Journal* and as a tutor in Hastings' Legal Education Opportunities Program (LEOP) for minority students. She also spent a semester as an extern to the California Supreme Court, working with Justice Stanley Mosk. Though Betty's future plans include practice with a small firm, she hopes to devote some time to teaching law or law-related classes at the undergraduate or high school level.

Like Betty, Brad conducted a tutorial seminar under the aegis of LEOP, as well as individual tutorials in legal writing. During his second year he externed for Justice Mathew O. Tobriner of the California Supreme Court. Moreover, as note and comment editor of the *Hastings Law Journal*, he worked with ten students on writing assignments. Brad combines a strong interest in teaching and scholarly writing with an interest in litigation, which he pursues through volunteer work with a community legal services office.

Often the School receives independent inquiries about the legal writing program from prospective applicants. This was the case with Gene Frett. A 1978 graduate of Northwestern School of Law, Gene decided to postpone going into private practice for a year and felt the Stanford program offered him the opportunity to experience the academic side of law and to try California living.

Assigned to Professor Paul Brest's small section in Civil Procedure, Gene quickly became an integral part of the course. Unlike most of the small sec-





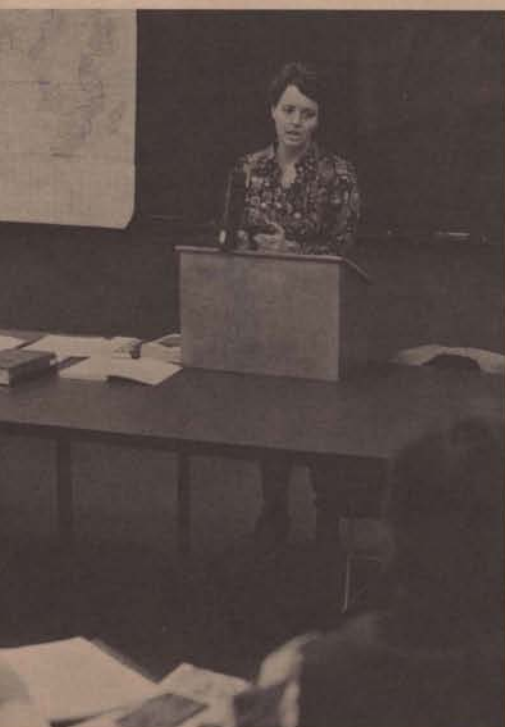
*Marcia Speziale, shown below with David Brown, finds working with the students the most enjoyable part of her job.*



*Barbara Buggert lends some assistance to Lauren Wismer.*



*Brad Seligman critiques a writing assignment.*



*Coeta Chambers meets with her small section to discuss an upcoming assignment.*

tions, which are taught by the Socratic method, Professor Brest's section involves a simulated litigation problem that enables students to participate in various phases of litigation, viz., interviewing, drafting pleadings, taking discovery. Gene's writing assignments, therefore, evolve from the "litigation." Moreover, the class is divided between plaintiffs and defendants for certain exercises and Gene assists Professor Brest in instructing the two sides.

When not correcting memos or assisting Professor Brest, Gene attends classes in economics, a subject relevant to his interest in antitrust. In June, he will return to Chicago, where he hopes to become an associate with an antitrust firm.

Though most teaching fellows come to Stanford immediately after graduation from law school, occasionally experienced attorneys become involved in the program. This year, Barbara Buggert, a 1974 graduate of the Law School and an associate with the San Francisco firm of Lillick McHose & Charles, is taking a year's sabbatical from the firm to be a teaching fellow. Assigned to Professor John Barton's small section in Contracts, Barbara has found that her experience in practice, which involves a large amount of arbitration work, has been extremely useful in developing problems for the class. To illustrate, one assignment she devised involved drafting an arbitration agreement. She divided the class in half, having each side represent a "client." Each side was also given certain facts unknown to the other side. The two sides were then instructed to negotiate a new agreement.

Barbara found the exercise to be very successful, because "it gave the students a feel for what practice can be like." She has found that her practical experience is of great interest to the students and a subject they enjoy discussing.

During her year at the School, Barbara, who is a commercial arbitrator for the American Arbitration Association, is working on an article on recent amendments to the California Arbitration Act, which she hopes to publish.

Since its integration into the first-year curriculum nearly twenty-five years ago, the research and legal writing program has become one of the hallmarks of a Stanford legal education. Moreover, it is widely regarded as one of the most effective programs of its kind in the country. According to Associate Dean J. Keith Mann, who has worked with the program since its inception, three factors distinguish Stanford's program: (1) It is integrated into the substantive courses to give greater relevance to the exercises; (2) It is conducted through small class sections to allow the individual attention students need; (3) It is staffed by well-qualified, dedicated teaching fellows.

But the true measure of how well the program is doing, Dean Mann observes, is the reactions of the students after spending the summer following their first year as law clerks. "Often they will tell me that they had a definite leg up on the clerks from other law schools in knowing how to write a memo and in finding their way around the library. And when the students' impressions are reiterated by the employers, then we're sure we've done a good job."



# Impressions of a First-Year Student

by Piotr S. Gorecki



"A Preponderance of the Evidence"



"In Search of a Neutral Principle"



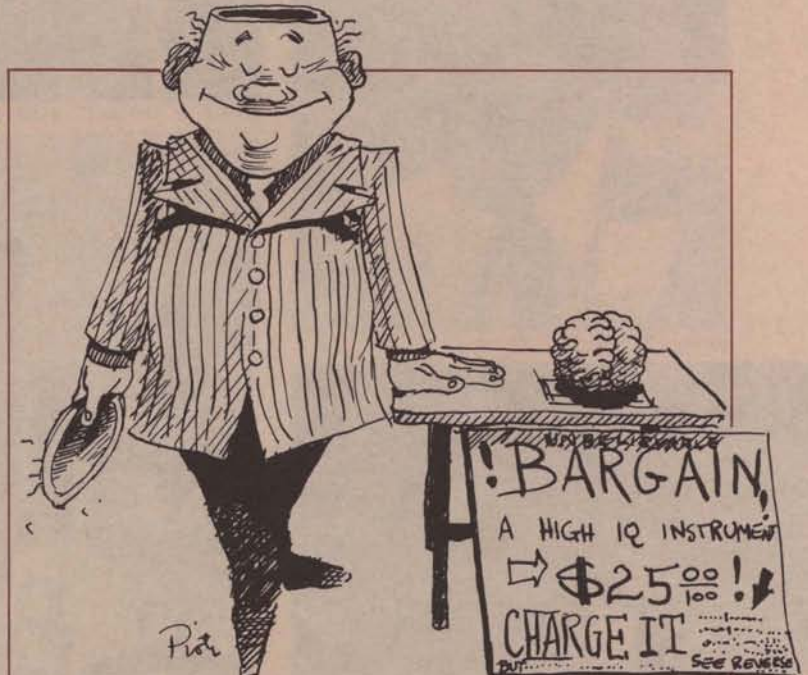
"Unconscionable on Its Face"



Piotr Gorecki was a first-year student at the Law School during 1977-78. He is currently a graduate student in the Department of History at Stanford.



"Deferential Scrutiny With Bite"



"Thinking Like a Lawyer"



"The Law Residence"



"More Than a Mere Scintilla"





Robert E. Paradise '29



Lunch in Crocker Garden



Assistant Professor Carol M. Rose



Coffee break in Cooley Courtyard



Charles H. Page '58 and Douglas B. Jensen '67



Hon. Peter M. Katsufakis '58



Samuel A. Sperry '68

David K. Leavitt



Members of the Class of 1918,  
Melbourne L. Leavitt and Carl S. Kegley.



# Alumni Weekend November 3-4, 1978



Talbot Shelton, A.B. '37  
and Assistant Professor Rose



Banquet speaker Professor John Kaplan



Associate Professor Charles C. Marson  
(left) conducts a critique session in his  
class in Injunctions.

On November 3 and 4 alumni returned to the School for two days of social and scholastic activities. Several hours of mind-stretching classroom sessions were interspersed with pure fun in the form of a tour of the Filoli estate, a students' reception for alumni at Crothers, the Alumni Banquet, the Stanford/USC football game and class reunion dinners.

The classroom sessions covered a wide range of topics, beginning with a panel on clinical education, which included Professors Michael S. Wald, Miguel A. Mendez, Charles C. Marson and William T. Keogh '52, Lecturers Donald T. Lunde, M.D. and Stuart L. Kadison '48, and students Nancy K. Heidorn '79 and William B. Chapman '79. The panel discussed current clinical offerings at the School, specifically courses in Juvenile Law, Advanced Criminal Law, Appellate Advocacy, Criminal Trial Advocacy and Injunctions. As part of the presentation on his course in Injunctions, Professor Marson invited the alumni to observe his class in action as he critiqued a videotaped exercise. In addition, students Nancy Heidorn and Bill Chapman shared experiences in clinical courses.

In another class session four new members of the faculty discussed their work and interests at the School. Assistant Professor Thomas H. Jackson, a 1975 graduate of Yale Law School and former clerk to Supreme Court Justice William H. Rehnquist '52, talked about expanding horizons in the commercial law field, using as an example the impact of developments in the corporate finance field, such as secured financing, on the study and practice of commercial law. Assistant Professor Mark G. Kelman (Harvard JD '76), former director of criminal justice projects at the Fund for the City of New York, discussed ethical problems inherent in the practice of law and student concerns about legal ethics. Assistant Professor Carol M. Rose, a 1977 graduate of the University of Chicago Law School and former clerk to the Honorable Thomas Gee, U.S.

Court of Appeals, Fifth Circuit, focused on the impact of psychology on child welfare and placement law. Finally, Professor James E. Krier, formerly a member of the law faculty at UCLA and an expert in Environmental Law, discussed the appearance of "market-type techniques" in the area of environmental regulation.

The widely varied types of American legal history currently being pursued at the Law School was the topic of a class session that featured Professors Lawrence M. Friedman, Thomas C. Grey and Gerald Gunther. Professor Friedman opened the program with a brief accounting of two empirical studies he has been involved in during the last five years. The first is a comparative study of the work of the California superior courts of Alameda and San Benito Counties from 1880 to the present. Summarizing some of his findings, Professor Friedman noted that though the makeup of the two counties was markedly different, Alameda being urban and San Benito rural, he discovered that the work of the two courts was surprisingly similar. The second study examined the criminal justice system at the turn of the century, specifically 1880-1910, as depicted in the court files, arrest records and newspapers of Alameda County. Professor Friedman added that the study, which resulted in a book, is the first ever done on this period, all others having focused on the colonial period.

In contrast to Professor Friedman's "grass roots" approach to legal history, Professor Thomas Grey described his research, which is primarily jurisprudential. He is at work on a book he hopes to complete in the near future. It examines the question, "Can the courts *legitimately* engage in judicial review on any basis other than the interpretation of the Constitution?"

The current research interests of Professor Gerald Gunther represent yet two more approaches to legal history, as exemplified by his recently submitted 4500-page manuscript for a history of



the Marshall Court, written for the Oliver Wendell Holmes Devise History of the Supreme Court of the United States, and his biography of Judge Learned Hand, which he hopes to complete by 1982. Professor Gunther described his work on the Marshall Court as "an institutional history," while the Hand study is a "highly personal biography," written by Hand's former law clerk and designated biographer. Professor Gunther observed that the fact that such a wide diversity of legal history research interests could be pursued simultaneously at Stanford Law School is one of the great strengths of the institution.

The final classroom session of the weekend was a report on the School, presented by Dean Charles J. Meyers, Professor William Cohen, Chairman of the Admissions Committee, Associate Dean J. Keith Mann, Professor Robert L. Rabin, Chairman of the Appointments Committee. Dean Meyers opened the session with some statistical comparisons with last year. Tuition, he noted, was up 9% this year to \$5280, and is expected to rise again in 1979-80. Nevertheless, applications received for the 163 places in the Class of 1981, which entered in September, totaled 3,531, up 16% from last year. Turning to placement, Dean Meyers noted that this year 480 employers would be coming to the School to interview students for summer

and permanent positions. This figure represents an increase of 150 employers, or 31% over last year.

Professor Cohen elaborated on the School's admissions policies, pointing out that this was the "year of Bakke." He said that the U.S. Supreme Court decision has forced many schools to re-examine their admissions policies, but that Stanford Law School has always admitted minority students on the same basis of academic achievement and promise used for non-minority students. He added that the School has always been careful to avoid creating "a separate but unequal law school within the Law School." This year's entering class is 12% minority. Women make up 34% of the class. Professor Cohen added that there is a slight increase in older students in the class, which reflects both his preference for greater diversity within each class and his belief that older students can contribute more to the classroom as a result of their previous experiences.

Associate Dean J. Keith Mann talked briefly about the curriculum. He distributed copies of this year's course offerings to illustrate how little the curriculum has changed over the years. He pointed out that the most significant change is the introduction of clinical courses, and he added that the School is hoping to do more in the tax and busi-

ness areas, as soon as faculty specializing in those areas can be recruited.

Faculty appointments was the subject of Professor Rabin's talk. He described the work of the Appointments Committee and the process by which faculty appointments are made. He reiterated the School's commitment to strengthening the faculty in the tax and corporate/business areas.

Mixed with the intensive and intellectually stimulating classroom sessions was a generous measure of social activities, including the annual Alumni Banquet. Hilarity prevailed as Professor John Kaplan, renowned for his lively wit, gave the banquet address, "Laments on the Sad State of the World for Deserving People Like Himself." The fun continued with Emeritus Professor Moffatt Hancock, Associate Professor Joseph E. Leininger and Hastings Assistant Professor Althea L. Jordan, who presented "The Law in Song and Satire."

The weekend climaxed on Saturday evening with reunion dinners for the Classes of 1928, 1933, 1938, 1948, 1953, 1963, 1968, and 1973. Though the Class of 1928 was the oldest class to hold an organized reunion, two members of the Class of 1918, Carl S. Kegley and Melbourne L. Leavitt, held an informal reunion of their own to celebrate their return to "The Farm" sixty years after graduation!



*Dean Meyers discusses the state of the School*



# HUG VS. SHELL OIL

## OR HOW ONE MAN BEAT THE COMPUTER

*This story, which was taken from a newspaper account of a humorous speech given to a service club in Reno, Nevada, illustrates how a normally frustrating experience with computer billing can be both fun and funny.*

It all began one ordinary day in August a couple of years ago when Procter R. Hug, Jr., then an attorney in Reno, had his car battery charged and the service station attendant "returned with a wild, excited look in his eye and informed me in breathless tones that my Shell Oil credit card was being confiscated."

It ended, some months and miles of correspondence later, with Hug becoming a living legend for the employees at Shell.

Sandwiched between were a lot of verbal sparring, threats of criminal action and enough computerized snafus to suffice a military theater of operation.

Realizing that his credit card had been cancelled because he had failed to pay a \$218 statement that arrived at his home while he was on vacation, Hug sent to Shell headquarters in Tulsa a \$218 check which, in a moment of pique, he had torn in half. He indicated that he would send a proper check "when I receive your apology and evidence that you have sent a copy of it to all local Shell dealers to whom you have sent the notice of confiscation."

Shell agreed to Hug's request, and Hug sent a valid \$218 check.

Expecting this to be the end of the

incident, Hug was greatly surprised to discover that "Shell managed to paste the old (first) check together in the most remarkable way and cash it." Shell also cashed the second check.

Hug requested, in several letters, that the \$218 be refunded, noting that his wife had "doubted the wisdom of having put him through law school, since he handled these affairs of moment with such ineptness."

Then, in February, Shell sent a check for \$200 to Hug, rather than \$218, and shortly thereafter, a second check for \$200.

"A gleam came into my eye," Hug recalls. "Barbara, my wife, said: 'You wouldn't.' I said I would—and I did. I cashed them both."

Shell then muddled the situation even further by advising Hug that they were stopping payment on one of their checks—in the obscure amount of \$249, and also demanded that Hug send in another check for \$249. Hug declined, saying that he did not want to play the "Shell Game" anymore and would prefer to quit while he was ahead. Hug suggested, "Maybe one of your other customers would like to play the game."

A raft of correspondence ensued, culminating in a "final demand" letter from Mr. "J.J.," whose tone suggested that Hug's standing with the company was lower than an earthworm's. However, this letter was followed shortly by one from a Mr. "W.H.," calling Hug "one of Shell's better credit card customers" and inviting him to try their new stereo system.

Then, like a thunderbolt, a letter from a credit card company arrived, inform-

ing Hug that his Standard Oil credit card privileges had been withdrawn because of his problems with Shell. Hug recalls the horror of actually having to pay cash for items during this period.

More demands from Shell and more responses from Hug followed. Finally managing to get his Standard Oil credit card restored, Hug decided to strike one final blow for justice and suggested to Shell that "we compromise by my paying what I owe, as I just don't want to pay a whole lot more than that." He suggested that "we forget the service charges, because, you must admit, everything considered, the service hasn't really been that good."

In August, nearly a year following the fateful day at the service station, Hug's credit standing was fully reinstated.

*Postscript:* On December 17, Hug was alarmed to receive a call from Shell's chief criminal investigator who, it turned out, only wanted to wish him a merry Christmas and to say that he was using Hug's file as a "training aid." What's more, Hug was sent a Christmas card, signed by all the department employees designating Hug as their "Official Hero." The card noted: "To retain our image, we have mailed this on December 23rd—no way it can arrive by Christmas."

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*Procter R. Hug, Jr. has practiced law in Reno, Nevada, since his graduation from the Law School in 1958. In 1977 (despite his dealings with Shell) he was appointed by President Carter to the United States Court of Appeals for the Ninth Circuit. Judge Hug is a member of the Law School Board of Visitors.*





## 1979 Supreme Court Clerkships Announced

Three recent graduates have been chosen to fill United States Supreme Court clerkships for the 1979 term. They are Robert V. Percival '78 of Des Moines, Iowa; Mary Ellen Richey '77 of Concord, Massachusetts; and Fredric C. Woocher '78 of Palo Alto.



Mr. Percival received a B.A. *summa cum laude* in Political Science and Economics from Macalester College in 1972. While an undergraduate he

was a National Merit Scholar and was awarded a Danforth Fellowship for graduate study. At law school he was managing editor of Volume 28 of the *Stanford Law Review*, for which he received the Board of Editors' Award for outstanding contributions to the *Review*. During all three years of law school, Mr. Percival received awards for outstanding academic achievement, including the First-Year Honor and the Second-Year Honor for highest grade point average in the class, and the Nathan Abbott Award for highest grade point average in the graduating class. In addition to his J.D., Mr. Percival received an M.A. in Economics from Stanford. He is currently clerking for Judge Shirley M. Hufstедler '49, U.S. Court of Appeals, Ninth Circuit. His Supreme Court clerkship will be with Justice Byron R. White.

Ms. Richey was awarded a B.A. *summa cum laude* in Linguistics and Far Eastern Languages in 1970 from Radcliffe, where she was a member of Phillips Brooks House



and the Radcliffe Choral Society. Before coming to law school, she was a Field Training Supervisor for Pan American Airways. At law school she was

a member of the *Stanford Law Review*. Upon graduation she was awarded the Urban A. Sontheimer Third-Year Honor for the second highest grade point average in the class. She was a law clerk to U.S. District Court Judge Charles B. Renfrew in San Francisco in 1977-78, and is now associated with the San Francisco firm of Farella, Braun & Martel. She will clerk for Justice Lewis F. Powell, Jr. on the Supreme Court.



Mr. Woocher received a B.A. *magna cum laude* in 1972 from Yale, where he was awarded the Angier Prize for Outstanding Undergraduate

Research Project in Psychology. At law school he was president of the *Stanford Law Review* for Volume 30. He also authored the Note, "Did Your Eyes Deceive You? Expert Psychological Testimony on the Unreliability of Eyewitness Identification" (29 *Stanford L. Rev.* 969). While at law school he did graduate work in Stanford's Department of Psychology, for which he was awarded a National Science Foundation Graduate Fellowship, and from which he received a Ph.D. in Cognitive Psychology in 1977. During 1975-77 he was an expert witness and advisor on eye-witness identification for the Santa Clara County Public Defender. Mr. Woocher is currently clerking for Judge David L. Bazelon, U.S. Court of Appeals, D.C. Circuit. He will

clerk for Justice William J. Brennan, Jr. on the Supreme Court.

## Some Facts About the Class of 1981

Applications for the Class of 1981 totaled 3,531, an increase of 16% over last year. Of 572 applicants admitted, 163 actually enrolled: 108 men, 55 women. There are 19 minority students in the class: 6 Blacks, 8 Chicanos, 2 Native Americans and 3 Puerto Ricans.

The average GPA for the Class is 3.76 and the average LSAT is 726.

The average age is 24; 15 members are over 30. Twenty-two members hold advanced degrees: 5 Ph.D.s and 17 Masters.

Eighty-three colleges are represented, with Stanford contributing 14, followed by Harvard/Radcliffe with 9, Yale with 8, and Princeton and Notre Dame both contributing 5.

Of the 409 admitted who did not enroll, 195 chose to attend other law schools (94 went to Harvard, 33 to Yale); 22 chose graduate study in other fields; the remainder chose not to attend for a variety of reasons, including financial considerations and the decision to postpone law study for a year.

## New Assistant Dean

LaDoris Hazzard Cordell '74 is the new Assistant Dean for Student Affairs. She replaces Victoria S. Diaz, a 1975 graduate of the School, who is on leave to teach at the University of Santa Clara





Law School.

Ms. Cordell received a B.A. in drama and speech from Antioch College in 1971, while at Law School she was president of the

Black Law Students Association and vice-president of Law Association. During 1973 she participated in the School's extern program as a law clerk to Hon. George W. Phillips, Jr., Superior Court, Alameda County. In 1974 she became the first recipient outside the South to be awarded the NAACP's four-year Earl Warren Fellowship for young black lawyers. Following graduation she became a staff attorney at the San Francisco office of the NAACP Legal Defense Fund. In 1976 she opened the first private law office in East Palo Alto.

As Assistant Dean for Student Affairs, Ms. Cordell will be responsible for recruiting students for the Law School, overseeing the student organizations, and counseling and assisting students with personal, academic and career problems.

## Students Establish Public Interest Law Foundation

In response to a growing need for financial support for work in public interest law, Stanford law students have established the Stanford Public Interest Law Foundation (SPILF), a member-supported foundation with the principal objective of funding projects and fellowships in public interest law.

Modeled after the Berkeley Law

Foundation, SPILF will fund one-year projects "to eradicate discrimination, expand educational and economic opportunities, improve minimum living standards and health care, protect the environment, increase consumer influence, and broaden access to judicial and legislative processes."

A nine-member Board of Directors, chosen by the membership, has primary responsibility for soliciting and selecting grant proposals, and for supervising and supporting grant recipients. The Board comprises two alumni/ae members, one student, two public interest attorneys, one private attorney with *pro bono* experience, one faculty member, one layperson active in community affairs, and the president of the Foundation.

Current Board members, who were elected in November, include Chairperson Helene Linker '74, who is with the Natural Resources Defense Council in Palo Alto; Professor Paul Brest; James Ware '72 of Blase Valentine & Klein in Palo Alto; Steven Dunham of Morrison & Foerster in San Francisco; Edith Eddy, who runs Stanford's Action Research Liaison Office; Baylor Hicks '80; Karen Chapman '79, President of SPILF; Eileen Sobeck '78, who is currently a Fellow at the Center for Law in the Public Interest in Los Angeles; and Clifford Hender '78, who is clerking for Judge Ben. C. Duniway '31, U.S. Court of Appeals, Ninth Circuit, San Francisco.

Membership in the Foundation is open to individuals committed to sharing a portion of their income to finance proposals chosen by the Board of Directors. According to SPILF President Karen Chapman '79, the membership to date includes more than 100 current students and recent graduates, and pledges exceed \$14,000.

SPILF is currently seeking meritorious grant proposals in all areas of public interest law. The Foun-

dation hopes to fund the first project in January.

## Commencement 1978



On June 18 more than 1,000 parents and friends attended Commencement exercises for the Class of 1978.

Following opening remarks by Dean Charles J. Meyers, Eileen Sobeck '78 presented the 1978 John Bingham Hurlbut Award for Excellence in Teaching to Professor Paul L. Goldstein. Professor Goldstein then gave the Commencement Address.

Robert V. Percival was named Nathan Abbott Scholar for highest grade point average in the class. The Urban A. Sontheimer Prize for second highest grade point average went to Douglas A. Tanner, who also received the Frank B. Belcher Award for the best academic work in Evidence.

The Olaus and Adolph Murie Award in Environmental Law was shared by Daniel W. Meek and Charles B. White. Lesli E. Omohundro received the Carl Mason Franklin Prize for the most outstanding paper in International Law. Robin B. Hamill and David J. Hayes were awarded first and second prize, respectively, in the Nathan Burkan Memorial Copyright Competition.

Sixteen members of the Class were elected to Order of the Coif, the national law school honor society. They include John H. Bau-





man, Edward J. Beder, Jr., John A. Bogdanski, John P. Broadhurst, James L. Carpenter, Charles W. Cunningham, John F. Emanuel, Randolph J. Haines, Clifford B. Hendler, Marvin Meisel, Stephen J. Narkin, Robert V. Percival, Jeanne L. Schroeder, Douglas A. Tanner, Fredric D. Woocher and Michael G. Yoder.

Following the Class Response, given by Class President John C. Barron, a champagne reception for the graduates was held in Crocker Garden.

## New Alumni Relations Director

Joan B. Johnston became the new Director of Alumni Relations on April 15, when she replaced Joyce Firstenberger, who joined Stanford's Institute for Mathematical Studies in the Social Sciences as Assistant Director of Administration.

Ms. Johnston is a graduate of



Simmons College. A community activist, she has spent several years as a lobbyist for low-to-moderate income housing for the elderly in Palo Alto.

She is a longtime member of the League of Women Voters, having served on the governing board for seven years and as President of the Palo Alto League from 1975-77. In March of 1977, she resigned as President of the League to run a successful write-in campaign for a seat on the Palo Alto Unified School District Board of Trustees, capturing 79% of the vote and a five-year term of service. She is

now Vice-President of the Board and a member of the California Elected Women's Association for Education and Research (CEWAER). Ms. Johnston is married to James P. Johnston, a professor of Mechanical Engineering at Stanford. They have five children.

## Five Scholars Visit School

Each year the School is host to visiting scholars from all over the world who come to use the research facilities of the library and to work with individual faculty members. This year there are five visiting scholars at the School.

Wieslaw Karsz, Associate Professor of Law at the University of Lodz, Poland, is conducting research on the legal regulation of the economy, with particular reference to the role of legislation. Professor Karsz is here under the auspices of the Council for International Exchange of Scholars.

Rudolph Pietzke, a member of the research staff of the Max Planck Institute for Patent, Copyright and Competition Law in Munich, is at work on a comparative study of antitrust law and industrial property rights.

Katsuhiko Takaike, a practicing attorney from Japan, is studying for the J.S.M. degree. Mr. Takaike is concentrating on labor law and working under the supervision of Professor William B. Gould, a labor law specialist.

Kouji Tsubaki, Assistant Professor of the Waseda University School of Commerce in Tokyo, is spending his second year at the School compiling research in the area of international commercial transactions, with emphasis on legal problems related to the

shipment of goods.

Koichiro Yamaguchi, Professor of Labor Law at Tokyo's Sophia University, is conducting a study of comparative labor law, focusing on contracts of employment under Japanese, American and Italian law.

## New Law Fund Director

Dean Meyers has announced the appointment of Linda J. Feigel, a 1970 graduate of Stanford University, as Director of the Law Fund.

Ms. Feigel will head the School's annual fund drive, which includes



coordination of a nationwide network of alumni volunteers. Since graduation, she has held various positions at Stanford, the most recent

being East Coast Area Director of the University's Annual Fund. Her other positions have included Director of the University's Quad Program (involving annual gifts of \$100 to \$1,000) and the Phonathon Program.

Since 1975 she has been an undergraduate academic advisor and a member of Cap & Gown Alumnae Board, which she chaired in 1977.

## School Receives New Scholarship Support

This past year the School has had the good fortune to be able to offer additional student financial aid because of the establishment





of several new scholarships and the augmentation of existing scholarships. Funding has been provided by individuals, a law firm, a foundation, a corporation, and by bequest.

The Palo Alto law firm of Ware, Fletcher & Freidenrich pledged \$100,000 for the David Freidenrich Memorial Scholarship Fund, in memory of Mr. Freidenrich, an alumnus of the Class of 1928. Individual members of the firm will make annual contributions to the Fund until it reaches this amount.

Deane F. Johnson '42 and Mrs. Anne Johnson of Los Angeles endowed a second scholarship at the Law School, the Alma O. Johnson Scholarship Fund in memory of Mr. Johnson's mother, with an initial gift of \$20,000.

Mrs. Sigismund Kurtzig of San Francisco endowed a scholarship fund in memory of her husband. Mrs. Kurtzig's gift of \$38,200 established the Sigismund and Charlotte Kurtzig Scholarship.

A \$50,000 contribution from the Lucille Ellis Simon Foundation and Mrs. Lucille Ellis Simon of Los Angeles was used to establish the Theodore Weisman Scholarship, honoring Mr. Weisman, a prominent attorney in Los Angeles and an alumnus of the Class of 1931.

The Carl B. Spaeth Scholarship Fund for disadvantaged students, established in 1972 by Victor H. Palmieri '54 of Los Angeles and Miles L. Rubin '52 of New York City, received additional substantial support from three major sources. Messrs. Palmieri and Rubin each pledged \$50,000 on a one-to-one matching basis over the next five years, and the Occidental Exploration and Production Company made a grant of \$50,000 to the Spaeth Fund.

The Helen Howard Jones Scholarship Fund also was increased by \$250,000 from the further distribution of Mrs. Jones's estate.

A gift of \$125,000 from Mr. and

Mrs. Carl G. Stockholm of River Forest, Illinois, has been used to establish the Carl G. Stockholm Scholarship Fund. The Stockholms made their gift in memory of Robert Crown, a close personal friend of the Stockholms, for whom the School's library is named.

Awards from these scholarships were made to forty-four students this academic year. Because of the generosity of the School's alumni and friends, a total of 159 students are at present receiving scholarship aid, 30% of the School's student body.

Acknowledging these new funds, Dean Charles J. Meyers noted that scholarships remain a top priority for the School. He pointed out that with tuition currently \$5,280 and certain to rise in 1979-80, scholarships provide opportunities which otherwise would not exist for many students desiring, and deserving of, a Stanford legal education. He added that though the sources of this aid and the purposes for which it is given are widely varied, they serve but one goal: to make Stanford Law School accessible to every qualified student, regardless of his or her financial situation.

## Faculty News

In May Professor **Anthony G. Amsterdam** received the William O. Douglas award for "selfless dedication to the freedom and dignity of the human spirit." The award is made annually by Public Counsel, a public interest law office established by the Beverly Hills and Los Angeles Bar Associations.

**Lawrence M. Friedman**, Marion Rice Kirkwood Professor of Law, has been awarded a grant from the Russell Sage Foundation for a study on "Legal and Social Perspectives on Recent Changes in Retirement Policy." His latest book,

*American Law and the Constitutional Order: Historical Perspectives* (co-edited with Professor Harry N. Scheiber of the History Department at UC San Diego), was recently published by Harvard University Press. Professor Friedman is currently serving as president-elect of the Law and Society Association. He will begin a two-year term as president next summer.

Professor **Paul L. Goldstein** spent the fall semester on leave from the Law School to work with the Real Estate group of the Business Department of Morrison & Foerster in San Francisco.

In July Professor **William B. Gould** participated in the Kyoto-American Studies Summer Seminar in Japan with the support of a Fulbright-Hays award from the Mutual Educational and Cultural Exchange Program.

In late spring, Chief Justice Burger named **Gerald Gunther**, William Nelson Cromwell Professor of Law, to the Federal Judicial Center Advisory Committee on Experimentation in the Law. The Committee, comprising federal judges and scholars in law, philosophy and psychology, is studying ethical and constitutional questions raised by the use of controlled experiments in the evaluation of innovations in the legal system. During the summer, Professor Gunther prepared his recently published 1978 Supplement to his widely-used casebooks on constitutional law. In September, he was a speaker at the Inaugural Conference, in Philadelphia, of Project '87, an effort by the American Historical Association and the American Political Science Association to prepare the next major bicentennial, that of the 1787 Constitutional Convention. He also lectured on equal protection to about 60 appellate judges as part of the American Bar Association's Appellate Judges' Seminar series.





(According to a recently published study by the Institute for Scientific Information, Professor Gunther's 1972 *Harvard Law Review* article on that subject—equal protection—was the most frequently cited law-related article in the social science literature during the 1969-1977 period.) In July, he participated in a Symposium on the Selection, Discipline and Removal of Federal Judges in Aspen, Colorado, called by the American Judicature Society and the Aspen Institute for Humanistic Studies. A major focus of that conference was the controversial Nunn-DeConcini bill to establish a system for the discipline and removal of federal judges outside of the traditional impeachment channel. He has resumed work on his biography of Judge Learned Hand.

Assistant Professor **Thomas H. Jackson**, with Associate Professor John C. Jeffries, Jr., of the University of Virginia, presented a paper on the commercial speech doctrine at a workshop at the University of Virginia Law School, which was held in September. The paper will be published in the *Virginia Law Review*. In October, he attended a conference in San Diego on "Freedom of Contract," sponsored by the Institute for Humane Studies-Liberty Fund, Inc. He has recently completed an article inquiring into the economic bases of contract damages in cases of anticipatory repudiation, which appears in the November issue of the *Stanford Law Review*.

During August, Professor **James E. Krier** spent two weeks as the first visiting scholar at the General Counsel's Office of the Environmental Protection Agency in Washington, D.C. The Office is experimenting with the Visiting Program as a means to familiarize academic environmental lawyers with the inner workings of one of the nation's largest and most important regulatory agencies. Professor Krier spent his time observing agency deci-

sionmaking processes and talking with agency personnel at all levels—both within and without the Office of General Counsel. Professor Krier reports that the impressions he gathered in his time with the EPA have added considerably to his understanding of the problems faced by the agency and the means it uses—some good, some not so good—to cope with them. The next visitor to the EPA will be Professor Bruce Ackerman from Yale Law School. If the program continues, the result should be not only a better informed academic community but a better informed agency as well.

During 1977-78, Associate Professor **Miguel A. Mendez** was an instructor at New Lawyer Training conferences sponsored by the Legal Services Corporation. The purpose of the conferences is to train legal services lawyers who are recent law school graduates in basic advocacy skills, including interviewing clients, taking depositions, negotiating and trying cases. In August of this year, he participated in a seven-day experimental program held in Albuquerque to teach advocacy skills to lawyers with three to ten years experience. The program dealt with the purposes of direct and cross-examination; impeachment techniques, particularly through prior inconsistent statements found in depositions; the handling and effective use of documents; and opening and closing statements. In July, Professor Mendez was a member of a faculty panel at a Legal Education Opportunities Program seminar held at Hastings School of Law. Funded by the Ford Foundation, LEOP is designed to encourage minority students to study law. The faculty panel discussed their views on law school, their expectations of students, as well as the significance of the case method and the importance of research and legal writing.

**John Henry Merryman**, Sweitzer Professor of Law, presented a paper on "The Inter Vivos Transfer of Property" to the Tenth International Conference of Comparative Law held in Budapest in August. He lectured on "What Is Western about Western Law?" at Tokyo University Faculty of Law in October. His casebook, *Comparative Law: Western European and Latin American Systems, Cases and Materials*, co-authored with Professor David S. Clark '69, University of Tulsa College of Law, was published by Bobbs-Merrill in September.

**Charles J. Meyers**, Richard E. Lang Professor and Dean, has served as Vice-Chairman of the Governor's Commission To Study California Water Law since the group was established in May 1977. The Commission held six workshops to aid in the preparation of its report and four public hearings on the Draft Report. The Final Report is expected to be delivered to the Governor and Legislature in early January. The Commission is the first official group to consider comprehensive changes in California water law in 65 years. It has concentrated its attention on ground water regulation, promoting voluntary transfer of water to more valuable uses, protection of instream uses and improvement in adjudication and administration of water rights.

Professor **Robert L. Rabin** has recently completed a book, *Perspectives on the Administrative Process* (Little, Brown and Company), which is a set of essays, notes and questions dealing with how the administrative process works. The book is designed to supplement an administrative law casebook. In September, he spoke at a public interest law conference held at Buffalo Law School. His talk dealt with the impact of public interest law on the administrative process.



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