

## Valedictory

From Nixon unto Nixon - the Tale of a Public Interest Lawyer

c. 2011 Gordon J. Beggs

Born just after World War II, Gordon James Beggs was the first child of James and Lucetta Beggs and the grandson of a Scottish immigrant carpenter. Gordon was joined by sisters Karen and Barbara and grew up in Lansdowne, Pennsylvania. He was confirmed at Lansdowne Methodist Church in 1959. He attended Lansdowne-Aldan High School and graduated second in his class of 1966. He was a member of the Scott's Hi-Q academic challenge team, played varsity tennis and completed a minor in graphic arts. He enjoyed studying and playing chess at Franklin-Mercantile Chess Club in Philadelphia.

Gordon attended the College of the University of Pennsylvania, where he was Phi Beta Kappa, completed an honors major in history and graduated summa cum laude in 1970. He was a dedicated Penn and Big Five basketball fan, reveling in the glory days of the Bilsky, Wohl, Calhoun, Morse, and Hankinson era. He enjoyed life in the men's dorm (Class of '87) and an on campus apartment. He served as student research director of the Philadelphia Social History Project, a comparative study of social mobility among Blacks, Irish, and Germans during the nineteenth century.

Gordon participated in Army ROTC, qualifying as a Ranger and a Sharpshooter and serving as sergeant major, the highest ranking cadet in the third year corps. He did not complete the program, but instead joined the major anti-Vietnam war protests in Washington DC during

the fall of 1969 and spring of 1970 following the invasion of Cambodia and Kent State shootings. He helped form a student chapter of the ACLU on the Penn campus in response to police mistreatment of demonstrators and minorities. He also participated in the Student Tutoring Society.

In the summer of 1969, concerned about the direction of our country under President Nixon, Gordon decided to pursue a career in public interest law rather than teaching history in college, which had long been his career goal. Late that summer, he met Marcie Leopold, the sister of an LAHS classmate, at the school tennis courts, and she became the great love of his life. Two years later, on August 21, 1971, they were married.

Gordon entered the University of Pennsylvania Law School in the fall of 1970. Class garb made it look like the revolution had arrived. Gordon was noteworthy for his black beret complete with Phi Beta Kappa key, yellow tinted wire rim glasses, fatigue shirt, bell bottoms, and combat boots. He carried his lunch with a thermos of coffee and biked seven miles to school each day on a trusty three-speed while Marcie continued to pursue her undergraduate degree in teaching at West Chester State University.

Stymied in his attempt to obtain a clinical placement at Legal Aid due to President Nixon's impoundment of their funds, Gordon visited the ACLU of Pennsylvania and arranged to work there. His first assignment involved a suburb taking the home of an elderly Black man and bulldozing it in on all his personal possessions. The case taught Gordon an unforgettable lesson

about the importance of quality lawyering, as he concluded that all possible claims were irretrievably lost through the incompetent handling of the case by a lawyer who initially represented the client.

Gordon was privileged to work on two major civil right cases as a student at ACLU. In *Peoples' Party v. Tucker*, he developed the legal theory and evidence for a challenge brought by Benjamin Spock and several other candidates and minor political parties to a Pennsylvania statute restricting ballot access for minor party candidates. Gordon assisted at the trial before a three judge federal court in Harrisburg. The court ruled in favor of the plaintiffs and the candidates were listed on the ballot for the 1972 Presidential election. Gordon also developed the legal theory and drafted the complaint for *Sloane v. Smith*, another federal case which secured the right of Penn State students to vote in Centre County where they resided.

In Spencer Coxe, the long time Executive Director of the ACLU, Gordon found an invaluable mentor for the development of a life long values based legal practice. After his clinical course ended, Gordon was selected as a Law Students Civil Rights Research Council Intern, an honor shared by less than 100 law students nationally. He also continued to volunteer with ACLU, serving on the Due Process and Criminal Justices Committees.

In his final year of law school, Gordon secured employment as a legal intern with the Pennsylvania Department Environmental Resources Strike Force. He worked on a civil and criminal matters involving a variety of pollution and sanitation issues. He drafted a brief for the

Commonwealth Court, appeared solo under student practice rules to handle a couple of case conferences at a Common Pleas Court in Northeast Pennsylvania, and settled one of those cases.

Upon graduation, Gordon was fortunate to have public interest employment options in Philadelphia, Chicago, and Cleveland. He chose Cleveland because the position of Executive Director of the Cleveland ACLU allowed him to pursue some political activity and the city offered a great place to live. Gordon came to Cleveland and started work May 1, 1973, the Monday after his last exam and two weeks before graduation. He and Marcie had only \$150 in their bank account at that point. Marcie joined him later and completed the last two courses toward her undergrad degree that summer. In Cleveland Gordon found another mentor in Max Wohl, a retired corporate executive, longtime ACLU supporter and volunteer, and gentle, quiet, unassuming man whose actions spoke far louder than his words.

As executive director, Gordon revitalized the chapter's volunteer operations, establishing numerous committees, including Teachers' Rights, Student Rights, Mental Health, Demonstration Observation, Women's Rights, Lobbying, and "1984." He reestablished the chapter newsletter on a regular publication schedule, welcoming members to the "Winter at Valley Forge" on his opening piece assessing the current threat to freedom. Not surprisingly, he devoted substantial time to the impeachment campaign which resulted in President Nixon's resignation from office in August of 1974.

Throughout his tenure, Gordon served as a public spokesman for the organization, driving to speaking engagements in an old Volkswagen beetle, appearing on radio and TV, crafting news releases and PSA's, and serving as interviewee and on background for local reporters. He also worked with the Resources Committee under the leadership of Harold Levine in the never ending task of attempting to find support for an organization that rarely sided with the majority view on any issue.

Shortly after his arrival, Gordon saw a cover story in Cleveland Magazine entitled "Was Harllel X Jones Framed." Harllel was the leader of the Afro Set, a Black nationalist group, and had been convicted of second degree murder and sentenced to life imprisonment a couple of years earlier. With attorney Russell Adrine, Gordon was instrumental in persuading the ACLU to provide representation Jones and to form a Harllel Jones Defense Committee to support an ultimately successful struggle that was to continue for many years. Gordon communicated with notable civil rights leaders in Ohio and nationally, including Ramsey Clark, former U.S. Attorney General, and then Representative Julian Bond of Georgia, to enlist their support for the committee.

Gordon also began a long tradition of mentoring ACLU law clerks, which foreshadowed his later career in clinical legal education. His first law clerks were Marley Eiger and Mark Frost, both students a CSU. Marley went on to become the Managing Attorney of Lake County Legal Aid in Painesville, OH, and Mark pursued a career as a successful civil rights attorney in Philadelphia, PA.

In 1974, the Cleveland ACLU began to grow. Eileen Roberts was hired to assist with the director functions and an additional law clerk was added to the staff. Cleveland activist, Roma Foldy, began her many years of service as an office volunteer. Gordon was able to take two weeks off to take and pass the Ohio bar exam July.

Gordon's family began to grow as well. October 20 at 5:00 AM saw Gordon speeding toward Kaiser Hospital as snow flurries gently wafted down from the sky. After Marcie intoned, "Slow down. There isn't a fire," the rest of the proceedings occurred as hoped. Gordon and Marcie welcomed Alexis Susan into the world. They purchased their home on Somerton Road in Cleveland Heights and moved in the following February with help from ACLU staff. At the beginning of November of 1974, Gordon's parents traveled from Philadelphia to join him, Marcie, and new daughter Alexis at his swearing-in ceremony as a member of the Ohio bar, which was held in Columbus. It was a very happy time in the Beggs household.

Late that fall Gordon also embarked on a project that was to extend over the next two decades of his life. Legal Aid had received about a dozen inmate letters complaining about various aspects of health care at Ohio State Reformatory in Mansfield, Ohio. The prison had been built between 1886 in 1888 and recently had been the subject of a Cleveland Plain Dealer exposé entitled, "Mansfield Reformatory: it's dirty, decrepit and dangerous." When Gordon and Doug Rogers of Legal Aid traveled to the prison to interview the first inmates, they were met by the warden, Frank Gray, who attempted to resist their entry and demanded to see the inmate

correspondence. After the attorneys showed him the signatures, but not the contents of the letters, he relented and the interviews preceded. Legal Aid and ACLU with expert assistance from Dr. Amassa Ford, joined in filing a class action lawsuit, *Register v. Denton*, in federal court in Cleveland in early 1975. Gordon was joined on the project by Penn law school classmate Frank Hickman and later, good friend Harold Williams, both Legal Aid lawyers, as well as a host of ACLU law clerks. Ed Likover, a Cleveland union activist, would eventually join the office as a full-time volunteer to support this effort.

That year Gordon got to experience the joys of home ownership in full measure. All of the windows and trim on their three-story house needed repainting and he undertook to complete the project. At one point he stepped out of the attic through a window, grabbed a gutter and swung himself onto a steeply tilted roof. He found himself sliding down and quickly retreated back to the safety of inside. Ultimately, with the help of next-door neighbor Fred Lucas, M.D., he ended up rigging a heavy rope tie to the bumper of his Volkswagen parked behind the house and extending over the top of the roof to the front of the house. He was able to complete the project with some small measure of safety at that point. There were certainly consolations, however, as the property was adjacent to the old Cleveland Tennis Club, which the family quickly joined. Many delightful summer and fall evenings were spent on the courts. Gordon and Marcie were frequently joined by friend Tom Gerson and sometimes his mother Ellie, who was an ACLU board member and strong financial supporter.

Late in the year, Gordon joined John Shattuck in the case of *Vietnam Veterans Against the War v. Fyke*, a case brought by the national office of the ACLU that was pending in federal court in Cleveland before Judge William K. Thomas. The case was in some ways emblematic of the times. Fyke had participated in meetings of the organization in Kent, Ohio, and had urged a violent response to protest the war in Vietnam. At one point he offered to obtain a grenade launcher for the group. The organization members became so upset with his conduct that they turned him into the local police. It turned out that he was an FBI informant, and this case followed.

As 1976 dawned and the inflation of the 1970s was taking its toll on the family's purse (remember President Ford's Whip Inflation Now buttons? ), Gordon opened a small part-time law practice out of this house. In all, it amounted to less than a dozen cases including landlord-tenant, wills, dissolution of marriage, and a successful commutation petition for a young man incarcerated at Ohio's maximum-security prison in Lucasville. The ACLU leadership looked on this initiative with some disfavor and gave Gordon a substantial raise with the understanding that he would phase out the practice.

The bicentennial year featured a special commemorative ACLU biennial conference in Philadelphia at the University of Pennsylvania. It was very meaningful for Gordon and Marcie to return to the campus where they had dated and join in a great celebration of the struggle for American freedom. They spent a substantial amount of time with Roger Baldwin, then 94, who

had founded ACLU in 1920. Gordon also renewed his acquaintance with Spencer Coxe, who was most proud of the progress that his young protégé had made in the past few years.

1976 also brought Gordon's first ACLU trial experience in the case of *Hoe v. Brown*, a challenge to an Ohio statute which allowed parents to veto a minor's choice to have an abortion without offering any opportunity for a judicial bypass. Because the case concerned a state statute, it was heard by a three-judge federal court in Cleveland consisting of judges Weick, Peck, and Krupanski. Ben Sheerer and Marge Hehr served as co-counsel. Sheerer had the sagacity to recognize that the panel might not want to take evidence on the issue, so Gordon prepared a comprehensive fact proffer for submission to the court. When the court announced that it would only hear argument, Gordon rose and presented the plaintiffs' case for about a half an hour. At one point he fielded a question from Judge Robert Krupansky for which he was well prepared with such speed and decisiveness that there was an audible gasp in the courtroom. Gordon was completely unaware of that particular judge's reputation for severity in dealing with attorneys practicing before him. The judges issued a unanimous decision in favor of the plaintiff and granted preliminary and permanent injunctions against enforcement of the statute.

Harlell Jones' habeas corpus claim also came to trial that year before Chief Judge Frank Battisti of the United States District Court for the Northern District of Ohio in Cleveland. ACLU represented Jones with a crack team of lawyers led by Gary Kelder, who later was Professor of Law at Syracuse University, and Richard Aynes, who was later Dean of the University of Akron C Blake McDowell Law Center. Gordon spent the week of the trial in the court room and

handled ACLU public relations. His effort secured substantial publicity for the case on Cleveland radio, particularly WMMS, a popular rock and roll station. This resulted in a crowd of young people appearing at the court room to watch the proceedings. Interestingly in light of what was to follow, Judge Battisti was upset by so many unkempt youth showing up to watch the proceedings. He announced that it was the court practice to require jackets and ties for males and similarly formal attire for women, and directed all not so attired to depart.

The trial resulted in shocking revelations. Jones had been a target of the Federal Bureau of Investigation's COINTELPRO Black program, which was designed to destroy, disrupt, and neutralize progressive leaders in the African American community. Jones' conviction was for allegedly ordering retaliatory killings of whites after a racial incident at an East side fast food restaurant where he appeared and helped calm an unruly crowd. Later that evening shots were fired from a car on the interstate which resulted in the death of one individual and the wounding of another. The testimony established that the admitted triggerman in the shootings was an FBI informant. This informant, the man who had done the actual shooting, was also charged with murder. He appeared at the trial and testified that Jones had directed the shootings. The informant denied that he had received any promise of leniency. A couple of weeks after Jones' conviction, the county prosecutor dismissed the charges against him, the FBI paid him a sum of money, and he left Ohio. The testimony also showed that the state had secured a statement from a juvenile who was in the car with the triggerman when the shooting occurred. The statement purported to be a complete description of the event, but did not mention Jones in any way except

to identify his picture at the end. The prosecutor did not turn over this statement to Jones's lawyers when they made a request for exculpatory evidence at the original trial.

The turning point in the case may have come with a question ACLU volunteer attorney Gary Kelder asked long time County Prosecutor John T. Corrigan on cross examination. Kelder asked why the admitted triggerman was never prosecuted for the shootings. Corrigan answered that he was unable to establish the *res gestae* or body of the crime. When this answer was given, Judge Battisti stared at Corrigan sitting next to him on the witness stand intently. Kelder had planned an extensive cross exam beyond this question, but sensitive to what had just occurred, said "no further questions" and sat down. When the time came to argue, Kelder focused on that answer to demonstrate that the state's defense to the petition should not be credited because at the time the prosecutor dismissed the charges against the informant, he had the corpse of one victim, a second victim with a bullet wound, and had just secured the conviction of Jones a couple of weeks earlier with this evidence of the body of the crime. Shortly after the trial, Judge Battisti issued an opinion finding that the conviction of Jones in these circumstances denied his right to due process of law and issuing a writ of habeas corpus which gave the state a set period of time to retry Jones. The judge granted a motion for bail and for the first time in six years Harlles Jones stepped outside the walls of the state's maximum security prison a free man. The state appealed the decision over the next few years, but never sought to retry Jones for the crimes.

In late 1976, Gordon applied for and was hired into a position as staff counsel for the ACLU of Ohio Foundation Project on the Rights of the Institutionalized.. The project was headquartered in Columbus and Cleveland, with Robert App serving as director in the Columbus office and Gordon staffing the office of Cleveland. The project focused on conditions in total institutions - prisons, mental hospitals, mental retardation facilities, nursing homes, and juvenile institutions. Gordon's territory covered the northern half of the state. Gordon continued his prison litigation, interviewing inmates at Ohio State Reformatory a few days after he began the project. He got a quick start in the area of mental-health, touring Hawthornden State Hospital just south of Cleveland within the first month of the project. He met with a number of experts in his areas of responsibility, including Mary Anne Mendelson. Her book *Tender Loving Greed* brought the abuse and exploitation of seniors in nursing homes to the attention of the American public and contributed to the adoption of laws regulating these facilities as part of the standards for the Medicaid and Medicare programs. Mary lived in Cleveland Heights and remained a valuable contributor to the project throughout its life.

At the beginning of 1977, Doug Rogers, then director of Ohio Legal Rights Service, engaged Gordon to serve as a delegate counsel at Massillon State Hospital in Massillon, Ohio. Originally built around the beginning of the 20<sup>th</sup> century as a progressive institution to assist the mentally ill, the hospital suffered from inadequate staffing and funding as well as numerous physical plant issues. Because of his status as counsel for an arm of the state established to protect the rights of mental-health patients, Gordon received the cooperation and support of numerous key staff members, including the superintendent, as he attempted to investigate the

issues at the facility. He had access to institution records, toured with experts, and met with staff both on and off business hours. Ultimately the Department of Mental Health agreed that in lieu of a lawsuit it would make certain stipulated improvements in the operation of the facility. Gordon then monitored the changes over a period of years in order to ensure substantial compliance with the agreement. At one point during the monitoring, his investigative presence headed off a proposed lobotomy of a particularly assaultive patient which was moving forward despite a prohibition in state law.

At a sister institution, Western Reserve Psychiatric Habilitation Center, Gordon began work on a fascinating case involving the employment of patients at state mental hospitals. Historically under a practice referred to as peonage, the Department had used inmates, as they used to be called, to perform institution supporting labor and pay them munificent rates ranging from \$.02-\$.15 per hour. When a federal court elsewhere ruled that institutions had to pay the minimum wage, the department terminated all the inmates, and the practice ceased. Gordon interviewed Lawrence McKee, a gentleman in his mid-60s who had been involuntarily confined at the institution since 1952. Except for the preceding couple of years he had performed part-time jobs to support the operation of the institution and received just a few cents an hour in return. Interestingly, because of his involuntary commitment, the Ohio statute of limitations did not run on any of his claims. Assisted by Leroy Pernell, a clinical teacher at Ohio State University and later Dean of Florida A&M School of Law, Gordon brought a lawsuit in federal court claiming violations of federal minimum wage law, federal law governing discrimination against the handicapped by entities receiving federal funds, and due process of law. The defendants were all persons serving as the three state department heads from 1952 on responsible for setting the

wages. Gordon enjoyed traveling to numerous locations around Ohio and elsewhere in the country in order to take the depositions of these individuals. The case was vigorously defended by the state attorney general, but ultimately settled with an agreement that gave McKee a job, compensation, and permitted other patients to work and receive a wage calculated under federal law.

In 1977, along with counsel for Legal Aid and the National Senior Citizens Law Center, Gordon also brought a challenge to discrimination in the context of nursing home admissions. At that time it was common practice for new nursing homes to fill beds with state supported Medicaid patients and then ask them to leave as they were able to attract private pay patients at higher rates. In addition, nursing homes would often admit patients as private pay and then asked them to leave when they had exhausted their personal resources, typically proceeds from the sale of family home and all personal savings, so that the home could maximize profitability by placing another private pay patient in the bed. From the perspective of the homes, this was simply a matter of economics, but the practice had a tremendous emotional impact on elderly and infirm patients who were involuntarily forced from the place they had come to view as home. Researchers had identified a phenomenon they referred to as transfer trauma, a significant increase in mortality and morbidity among patients in these circumstances. In this case an individual patient sought to represent almost 100 others who were being discharged by the nursing home at the same time. Gordon was instrumental in securing and developing expert testimony from George Streeter, M.D., a local psychiatrist, and Leon Pastalan, director of the Institute of Gerontology at the University of Michigan. After a bitterly contested hearing at

which the nursing home was represented by Squire Sanders & Dempsey, the second largest firm in town, Judge Robert Krupansky temporarily halted the discharges. He later ruled that the case was supported by a viable claim that the contract between patients and nursing homes incorporated provisions of federal Medicare and Medicaid law limiting the circumstances under which patients could be transferred. Unfortunately he refused to permit the case to proceed as a class action, which left all of the patients except the named plaintiff vulnerable to transfer. Gordon and his co-counsel brought a second case against the same nursing home to challenge a later wave of transfers with the same result; the named plaintiff stayed but there was no relief from the class.

As Gordon was pursuing these cases, he and Marcie were looking forward to the birth of their second child in late April. Marcie's water broke when she reached the seven month point and her physician advised extensive bed rest in order to complete the pregnancy. Ellie Gerson, who was always a great friend to the ACLU and had extended many kindnesses to Gordon, including hosting him when he came to Cleveland for his first interview, gifted her housekeeper Mattie to spend half time with Marcie for the next two in a half months. The program was so successful (or in the alternative daughter number two found life in utero so comfortable) that she had to be induced and arrived a full two weeks late on May 7. Gordon took two days off the following week, reflecting both the paucity of paternity leave during that era and the press of his litigation schedule.

In July, Gordon attended his first meeting of Ohio Council for Human Dignity at a church in Mansfield Ohio. This was an interdenominational religious and civic group concerned with conditions of confinement at Ohio State Reformatory. With substantial support from the Toledo diocese of Catholic Church and the ACLU, the group held semi-monthly meetings and worked to develop support for an effort to close the reformatory.

A little later in the year Gordon traveled just south of Mansfield to Washington Township where he and Professor Robert Willey of CSU Law School met the Carroll family. The Carrolls were providing foster care to up to 10 children under the custody of the Ohio youth commission at their large rural home. The Township had cited them for violating a zoning resolution requiring a single-family residence. The term “family” was undefined in the resolution, and the Carrolls operated the home as a family residence. After Professor Willy argued the case unsuccessfully in the court of appeals, Gordon argued in the Ohio Supreme Court, first on a procedural issue and then a second time on the merits. Also set for argument the second time were similar cases involving group homes for a mentally ill and mentally retarded persons. The Ohio Supreme Court issued adverse decisions in all three cases. A little more than a year later after intervening election swung control of the court to the other party, the court issued still another decision whose reasoning made it clear that the rule of law in the earlier cases was no longer viable. Gordon’s companion cases simply reached the court too soon. He learned one of the great lessons of law practice: timing is...!!!

December 1977 saw Gordon and Frank Hickman engaged in feverish preparation for trial in the Ohio State Reformatory healthcare case scheduled for January 17. Gordon worked virtually nonstop, taking only a few short hours to celebrate the holidays with his family. In early January counsel for the state of Ohio called and asked for consent to a postponement of the trial. He indicated that the state was going to attempt to change its system for delivery of inpatient health care to inmates throughout the state of Ohio. Rather than relying on prison hospitals located within the institutions, the state would utilize community agencies to provide this care. Direction for the effort was to come from Ohio State University Hospital. Since this proposal offered substantial relief for the healthcare concerns addressed by the case, Gordon and Frank agreed to this request on behalf of the class. Over the next few years inmates received high-quality inpatient care comparable to that available to the civilian population throughout Ohio, and this reform was to comprise a substantial part of the settlement in the case.

In April of 1978 Gordon began work on another joint case with Legal Aid, this time co-counseling with Charles Delbaum. They represented an individual plaintiff under the pseudonym Jane Resident in a class-action against the Emmanuel Care nursing home on Carnegie Avenue in Cleveland. This very large facility housed almost 300 patients, virtually all low income persons receiving Medicaid, in deplorable conditions. After preliminary legal sparring, an expert tour of the facility made plain how serious the issues were, and at court conference with Judge John Manos, defense counsel made the surprising concession that they agreed with the basic allegations in the case and that something would have to be done about the facility. Gordon and Charles requested that it be placed into receivership. Judge Manos, who

was never one to shrink from strong measures, agreed and requested that they draft in order. As a result, the facility was taken from the owners and operated by a panel of three expert receivers for almost 3 years. Gordon and Charles made many visits to inspect the home during this time. Conditions dramatically improved as the facility was brought into compliance with Medicaid regulations, and the facility was eventually turned back over to the owners. The case was an outstanding success, and a successor facility continues to operate today.

In August of that year, Charles and Gordon brought a similar case against Abbey Nursing Home on Euclid Avenue in Cleveland. A chapter in Mendelson's book entitled "Mr. Nickel and Dime" had been devoted to this facility and its owner, Max Strauss. The facility was in many respects comparable to Emmanuel care except that it was housed in an old converted single room occupancy apartment building and presented numerous physical plant issues. This case proved a much tougher nut to crack. It was vigorously defended and extensive motion papers had to be prepared and filed. When the defendant's motion to dismiss was denied, they agreed to a consent decree requiring that the facility be upgraded in order to avoid the exposure of a trial. They, however, maintained control of the facility and progress toward compliance with the decree was painstaking. For many years inspection tours of the facility were a regular item on the calendar for Gordon and his law clerks. The case stretched out into the mid-1980s and was only resolved when the facility closed, and Judge Manos imposed a substantial negotiated fine on the facility which was distributed to the individual patients through a trust account which Gordon administered.

That month Gordon also joined Niki Schwartz in the class action intended to close the Ohio State Reformatory which was brought under the name of *Boyd v. Denton*. This prison is known to the public as most of the outdoor scenes in the popular film Shawshank Redemption, starring Tom Hanks and Morgan Freeman, were filmed there. The East cellblock, reputed to be the largest in the world, is shown in Air Force One starring Harrison Ford as the dark, foreboding Russian prison where the rebel general was held prior to his release to the courtyard where he was assassinated. The institution was a huge outmoded bastille which had long outlived its usefulness. It was dramatically understaffed and because of its physical plant, impossible to maintain secure or sanitary. Rapes and assaults were prevalent, and the vermin were the stuff of legends. Programming was virtually nonexistent and it was not uncommon for inmates who were not enrolled in the limited school or make-work job programs to spend virtually all day in their cells. Because this was the largest prison in Ohio and a tremendous investment was going to be required to replace it, the state hired a large law firm in Columbus to fight a largely successful delaying action in the case, and it would take many years to resolve.

1979 was a year of transition. In March, Gordon succeeded Wayne Hawley as the staff counsel at the Cleveland ACLU. In succeeding years he would joke that he was always trying to find a viable payroll at the ACLU. Gordon would ultimately hold six jobs with the organization including his internship during law school.

Gordon joined in a wide variety of Cleveland ACLU cases, and this document would become unduly lengthy if it included more than the briefest summary of selected cases. One of

the first, which developed into a real adventure, was *Anderson v. Ohio High School Athletic Association*. Gordon along with Nelson Karl and Curt Isler of Arter & Hadden represented all of the high school soccer players and their parents, about 24,000 people, in a class action to challenge restrictions on independent and out of season play. The plaintiffs got a temporary restraining order against the rules which was extended by agreement of the parties until trial. The trial did not occur until approximately 9 years later because apparently no district judge wanted to handle the case, and it kept getting passed off to newly appointed judges. Plaintiffs finally lost the case after a three day trial, but the judge granted an injunction pending appeal so the rules remained ineffective for an additional two years until Gordon lost the argument in the US Court of Appeals. The case went before a very hostile panel which repeatedly asked questions and then interrupted him with another question before he could complete an answer. Unfortunately, Marcie as well as a large group of somewhat rabid soccer fans were in attendance for the argument. It was a good litigation lesson for Gordon; as a result that he would never permit any similar occurrence in the future. The net result of the case was that for years high school soccer players were able to fully participate in independent and out of season play. One of these, from North Olmstead, became a goalie for the United States World Cup team and helped propel them to their best result in the history of the competition.

Another very interesting case was *Cerjan v. Fasula* , where Gordon joined in representing a deputy sheriff who campaigned against the incumbent. He was assigned to a unique jail detail where he was locked in with the inmates and then fired when he did not resign as a result of this task. The case was one of the first trials conducted by newly appointed Judge

Ann Aldrich and resulted in reinstatement and damage award in favor of Cerjan, which was affirmed on appeal.

Gordon also participated in the Court of Appeals, U.S. Supreme Court, and attorney fee litigation in *Akron Center for Reproductive Health v. City of Akron* with Steve Landsman from Cleveland-Marshall College of Law and attorneys from the national office of the ACLU. The case resulted in the invalidation of a number of ordinances restricting abortion, but its reasoning was later disavowed in another Supreme Court decision.

The Cleveland school desegregation case, *Reed v. Rhodes*, was still active at this time. Gordon filed a couple of amicus briefs at the request of the NAACP. Probably the most significant resulted in a ruling holding the state responsible for participating in the financing of a remedy in the case.

Like many ACLU attorneys, Gordon had the opportunity to represent the Nazi party or an offshoot. He negotiated permission for them to conduct a demonstration in a Parma municipal park. Fortunately, prior to his initially being hired in Cleveland, a volunteer attorney named Ben Sheerer had represented an individual who wanted to wear a swastika in the public audience section of a Cleveland city Council meeting. Some members had resigned in protest at that time, so Cleveland did not suffer significant membership losses when the Illinois ACLU represented the Nazis in Skokie, Illinois, or as a result of this effort on Gordon's part.

Gordon also assisted with what was ultimately a sad chapter in the litigation history of Harlrel Jones. Dick Aynes spearheaded an effort to recover damages for Jones' unlawful conviction and imprisonment. Statute of limitations questions in Ohio civil rights cases presented some difficult issues at this point, and Judge Battisti ruled that the case was untimely filed. He was affirmed by the Sixth Circuit Court of Appeals, and the US Supreme Court denied the petition for certiorari. In a similar case out of New York just a couple of years later, the Supreme Court granted review and ruled in a way that indicated that, as Jones' ACLU counsel had argued, the Ohio two year personal injury statute of limitations should have applied and the case indeed had been timely filed. Legal process offered no way to obtain relief for Jones at this point.

The case of *Marotta v. Creasy* filed in 1980 offered a stark counterpoint to the effect that substantial justice can sometimes be achieved where the norms of litigation are ignored in favor of concepts of honor. This case involved the decertification or removal from Medicaid program of a small nursing home named Cuyla as it sat on the border of Cuyahoga and Lake counties. This was a family owned facility and the owner administrator had actually grown up in the facility. Cuyla was required to comply with Life Safety Code requirements. The owner hired an architect, obtained financing, and undertook construction. These efforts were cited as deficient and the home was slated for removal from the program which would have resulted in the transfer of virtually all of its 25 or so patients to other facilities and its ultimate closure. The home brought an action in Federal District Court in Columbus to challenge the closure using an experienced nursing home attorney, but the request for a temporary restraining order to block the transfer of the patients was denied.

At that point the nursing home ombudsman program contacted both ACLU and Legal Aid to urge that we undertake to represent patients who desired to remain in the facility. The ombudsman program pointed out that the facility had not a single citation for any deficiency in the provision of care under the Medicaid standards and that it was regarded in the community as an excellent caregiver. Shortly thereafter the family of every patient facility contacted ACLU or Legal Aid to request representation. Gordon served as lead counsel in this case and worked with attorneys from Legal Aid to file a case in federal court in Cleveland claiming that the patients had a property interest in their residence and that they were entitled to participate in a hearing to determine whether there was justification for their removal. Again, a temporary restraining order would be necessary because the transfers were imminent. Because the assigned judge, Tom Lambros, was unavailable, the request was heard by the miscellaneous judge who that day was John Manos. Defendant's counsel representing the US Department of Health and Human Services, the Ohio Department of Health, and the Ohio Department of Public Welfare did not get very far arguing that the plaintiff's claims were insubstantial. The judge responded that he had extensive experience with plaintiff's attorneys and granted the motion before his clerks even had time to complete their reading of the application.

The case was set for a hearing on the plaintiff's motion for preliminary injunction which would extend indefinitely until trial. The parties waived opening arguments because briefs had been submitted. Gordon was part way through the examination of the first witness when the judge announced a recess and asked the parties to join him in chambers. He then asked counsel for each party to explain the position that they were taking in the case. At the time Gordon thought the judge just wanted further background to understand the case he was about to hear. Like everyone else he was shocked when upon returning to the courtroom Judge Lambros stated that he had had discussions with counsel in chambers, that he understood the evidence in the case, and that he was granting the plaintiff's request for a preliminary injunction to indefinitely halt the transfer of the patients.

The issuance of a preliminary injunction requires a trial type hearing and is appealable. Gordon spoke to counsel for each of the defendants to ascertain their position. The state defendants were content to leave the preliminary injunction in place in order that the home have an opportunity to correct the deficiencies and obtain recertification. The local Assistant United States Attorney, however, stated that this client always appealed these orders as a matter of policy, and an appeal to the United States Court of Appeals for the Sixth Circuit was filed shortly thereafter.

One of the interesting things about litigating against the United States is that different counsel routinely handles each level of the case, so the appeal went to the appellate division of the Justice Department in Washington DC. There it was assigned to an attorney named Wendy Keats, who had been one of Gordon's best friends at Penn Law. Wendy had a similar interest in

public interest law and frequently wore an olive fatigue shirt which nicely complemented Gordon's style of dress. Gordon immediately called her and explained the situation with the nursing home, indicating that the state defendants wanted it to continue in operation because of the high quality of care provided. Because the Justice Department was freely granted continuances in litigation, Gordon suggested that if the briefing schedule could be extended sufficiently, it might be possible for the home to make the necessary corrections. Wendy agreed to this approach and requested about a half dozen extensions of the briefing schedule with Gordon consenting to each one. In the meantime the home retained a new architect, obtained financing, and had a contractor make the necessary corrections. When this process was completed, Gordon and Wendy jointly moved for a remand to the District Court to make a determination whether the case was moot. Judge Lambros was pleased to rule that it was and dismiss the case. Since Gordon had no basis in law to ask the Court of Appeals to affirm the preliminary injunction and without the school tie would not have been able to secure any accommodation from the Department of Justice, the result was nothing short of miraculous.

1980 also brought a significant change in Gordon's personal life. Though he had commuted to law school on a bicycle, the move to Cleveland came in the aftermath of the Glenville shoot out. It did not seem safe to bicycle across the east side of Cleveland. Gordon finally met Martin Cooperman, who worked for the computer department at CSU and had been doing this for several years without significant incident. Gordon began biking the 8 miles each way back and forth to the ACLU office which was then on West 6<sup>th</sup> Street Gordon was also enticed to join the Cleveland Touring Club and soon was riding metric centuries (62 miles) and centuries (100 miles) on the weekends. This leisure activity became popular with the entire

family as Marcie joined in the fun and Gordon purchased a trailer to pull the kids on short Wednesday night rides and some longer weekend rides. Cries of “faster daddy, faster” would echo through his memory for many years. Over the years many of his ACLU Law clerks would join Gordon in the commuting, and at one point there was a six person caravan to the office.

In the early 80s Gordon had the opportunity to engage in significant litigation under the Freedom of Information Act to shed light on federal government abuses. He brought or joined in bringing cases on behalf of Harlles Jones as highlighted above, Sydney Peck, a national anti-Vietnam war leader based in Cleveland, and the ACLU itself. He was extremely fortunate that the Peck case was assigned to William K. Thomas, an old-fashioned judge who took his responsibilities on the bench extremely seriously. Over many years the judge held numerous hearings at which Gordon appeared and argued in order to sort out the various issues. The case was a delight to litigate because it provided Gordon with the opportunity to give free rein to his love for the study of history as he canvassed records and reports of the FBI's COINTELPRO program and other illicit government activities directed against political minorities, the civil rights movement, and those who opposed the war in Vietnam. Gordon had some significant success in securing the release of records, including the first recorded decision by judge to overrule a national security exemption claim. On one trip to the court, the judge's staff was kind enough to tell Gordon's dad, who had always expressed some discomfort with Gordon not pursuing a career in big-money law, that Judge Thomas considered him one of the finest lawyers Cleveland.

In the ACLU case, it was fascinating to learn that the government had conducted surveillance of the ACLU activities during the McCarthy era. This included board meetings at a law firm office in the Union Commerce Building where those in attendance included the very same William K. Thomas who later sat on the federal bench and Jack Day, later a well respected judge on the Ohio Court of Appeals for the Eighth District in Cuyahoga County. Judge Manos presided over this case, and in his own unique style assured that there was effective, albeit informal disclosure of the records.

Gordon had the opportunity to deal with the issue of a nativity scene in the Christmas display within the rotunda of Cleveland City Hall. His approach was to negotiate with the city in order to enhance the secular elements of the display so that the nativity scene could remain consistent with current law rather than demand the suppression of a meaningful religious form of expression for many of the city's residents.

The 1980s saw a government effort to begin to heal the damage to both the national psyche and to individuals that was a result of the tragic war in Vietnam. There was a recognition that many veterans had emerged from service with bad discharges of one form or another, and that these discharges were hampering access to decent jobs for many who had served their country. The government greatly expanded what had been only a narrow opportunity to challenge these discharges and opened the limitation period so that veterans from the Korean War could participate. Eileen Roberts secured funding for some staffing to work on this issue and Gordon began to refresh his knowledge of military law from his ROTC days and familiarize himself with the procedures. Beginning in early February of 1981, he began to see clients and

develop cases for the discharge review boards and boards for correction of military records of all branches of the service. Many of these boards rode circuit and held periodic in-person hearings in Cleveland at which Gordon appeared with the veteran applicant. There were many, many joyful victories, and it was really amazing to see how meaningful these cases were to the veteran and how much healing they brought. Gordon handled more than 75 of these cases over the course of the decade, and as a repeat player often received a warm welcome from the military officers who comprised each panel.

In the early 1980s, Gordon also began a tradition of service to nonprofit boards which was to extend until to his retirement. He took place a on the Nursing Home Ombudsman Program board, supporting the stellar staff work of Mike Rust and Roland Hornbostel to train lay advocates and provide public information regarding nursing home care. Gordon finished his service as vice president of that organization. He also served on board of the Big Buddy-Little Buddy program, which provided mentors for youth, and later in the decade, the Emergency Shelter Coalition, which advocated on homelessness issues.

1981 brought a significant challenge of a personal nature and a new direction in Gordon's life. His mother, who was then living in Burlington Iowa, was diagnosed with Hodgkin's disease. As a gift of love, he decided to bicycle out and pay her a surprise visit. He did a number of training rides of 100+ miles, including the Tour of the Scioto River Valley from Columbus to Portsmouth Ohio and back in two days, to prepare for the ride. Martin Cooperman and John Bersee, another cycling friend, accompanied him on these trips. The week before Gordon was to leave John was laid off from his job. He had both the time and inclination to make the trip with

Gordon. They headed west, bikes loaded with camping gear, making just over 90 miles per day. Generally the weather was good, though they finished one day in Indiana with heavy rain and booked an inexpensive hotel to dry out. They ate in small mom-and-pop restaurants and for the most part enjoyed the quiet of lightly traveled country roads. Passing through small towns led to conversation with the locals, and at one point they were featured in a newspaper article. Fortunately road and mechanical mishaps were at a minimum though at one point along a small farm connecting road, Gordon was unable to outspurt a huge German shepherd that came snarling after the bikers and had to blast it with Halt, the pepper spray used by most mail carriers. On the return trip, they would encounter the same dog which took one look at Gordon who was trailing and decided to chase John!

Just beyond Peoria, Illinois, Gordon and John were inching their way up a steep hill on a narrow two-lane highway with on coming traffic and a steep drop-off instead of a shoulder to the right. They heard a diesel horn and glanced back to see a tractor-trailer truck which obviously had no intention of slowing down. Both shifted into high gear and went for the top of the hill with everything they were worth. Gordon crested the hill a few feet ahead of the front bumper of the tractor-trailer and pulled off. He had inflicted terrible stress on his leg and was unable to ride more than a couple of halting miles before they had to stop for the night. Gordon had been a nominal Christian attending the United Methodist Church in Lansdowne Pennsylvania, where his mother had taught kindergarten Sunday school for 32 years. That night in great pain Gordon poured out his heart and soul to God in frustration over his mother's illness and his own injury. In response he experienced such an inflow of love and healing that he could never again doubt that there was a God or that God cared for him. The next day they completed the 30 plus miles to Burlington. By the time they arrived at the house, his father had already gone to work.

Gordon knocked, but there was no answer. Instead, their small dog named Marble came to the door. (Gordon had found this dog as a stray years before at Penn and had brought it home to his parents). Gordon let the dog out and was standing in his bike clothes and helmet petting it with his mother came to the door. Surprised to see the dog outside, she opened the door and asked, “Can I help you , sir?” When Gordon responded with a smile and said, “Hi Mom,” her jaw dropped, and John snapped a picture. Her reaction alone practically made the whole trip worthwhile. His dad quickly came home and they enjoyed a pleasant visit of several days, after which Gordon biked back to Cleveland. The kids were pretty impressed with Dad’s legs by the time he came home, as they felt more or less like steel.

A short time after his return home Gordon and Legal Aid attorneys were embroiled in another controversy regarding an attempt by a nursing home to withdraw from the Medicaid program. Heather Hill was regarded as one of the premier facilities in the greater Cleveland area and was also a nonprofit nursing home. Along with staff from the Nursing Home Ombudsman Program Gordon and the other attorneys considered strategies for litigation based on the home’s receipt of federal funds for construction. Fortunately they communicated with members of the foundation community in the process of gathering facts. The major Cleveland foundations had contributed substantial sums of money to this facility and were able to bring enough pressure to bear that the home decided to stay in the program and the crisis was averted.

Beggs authored or co-authored multiple briefs in ten different cases in the United States Supreme Court, but his only trip to the court occurred in *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, where he second chaired the argument given by Tom Buckley, a volunteer attorney and CSU Law Professor. Buckley, with the assistance of volunteer attorney

Ben Sheerer, had successfully tried this case in the Southern District of Ohio federal district court. The case challenged an Ohio statute which required minor parties to disclose their contributors and expenditures. The Socialist workers party had only about 40 members in Ohio. The organization had for years been subject around the country to retaliation, harassment, and destructive acts. In the modern era, it had never been a serious contender in any election. The case asserted that in these circumstances the first amendment prohibited disclosure of the organization's finances unless the state had a compelling need for this information. The discovery in the case provided extensive confirmation of the adverse action directed at the party, and its bulk was simply astonishing - 40,000 pages of records and surveillance material reports.

The case was set for argument on First Monday, the first Monday in October when the court traditionally opens, October 4, 1982. Gordon and Tom were present for the opening of the court by the Solicitor General United States, and Gordon sat next to this gentleman, who introduced himself as Rex Lee and warmly welcomed Gordon to the court. The case was scheduled for the last argument slot in the morning with half an hour allotted to each side. It was somewhat humorous, but in this case fortunate, that the court always stopped argument precisely on the noon bell and reconvened for the remainder of argument at 1:00 PM. The counsel making the argument were escorted by the United States marshals to the head of the line in the cafeteria so they could obtain their lunch at the back in plenty of time to continue the argument.

There is an ebb and flow to every argument for the court. Tom had experienced some difficult exchanges with Warren Burger, then Chief Justice and no particular friend of civil liberties, and had just gotten a couple of skeptical questions from Thurgood Marshall, who we

expected to be much friendlier to the case. At the break Gordon, who had the luxury of watching the exchanges without having to respond to them, suggested that in the seven minutes remaining, Tom should pitch hard to Justice Marshall using the case of *NAACP v. Alabama*, in which the Supreme Court had recognized a similar First Amendment right of privacy in the organization's membership lists because of the hostility toward the organization which persisted in the southern United States. Marshall, of course, was once the general counsel of the NAACP and the architect of its national school desegregation policy. This strategy succeeded. Marshall's questioning began to reference that case and advocate for the ACLU side. When the 6-3 decision was issued by the court, Justice Marshall authored the majority opinion affirming the District Court holding that the Ohio statute was unconstitutional.

Early in 1983, the ACLU had sufficient funds to hire a staff attorney to support the legal program. Gordon was promoted to the legal director, and the organization selected Gail White, who had been a law clerk to Federal District Judge Leroy Contie in Akron. Gail provided strong support to the legal program and did some particularly fine work on the ultimately unsuccessful challenge to the chapel at Cleveland Hopkins Airport. Gordon also had the opportunity to support her in her first trial of the habeas corpus claim which had been assigned to her by the federal court.

That year Gordon and Nikki Schwartz succeeded in negotiating a consent decree in the case of *Boyd v. Denton*. The decree provided for the ultimate closure of the institution and interim relief in the areas of desegregation, enhanced programs and activities, and extensive remediation of environmental concerns. The decree also called for monitoring by plaintiffs

counsel, and Gordon, Nikki, and the ACLU Law clerks were to be frequent visitors to the institution until the early 1990s. They were well supported in this entire effort by Ed Likover, who had joined the offices as volunteer paralegal and was also supplementing Max Wohl's efforts with intake. The monitoring was not passive, as a number of motions were filed to enforce the degree, and at one point a preliminary injunction was sought and granted in order to alleviate a particularly egregious overcrowding situation in a large dorm just outside the main walls of the institution.

Gordon and Marcie remarked on how quickly time flies as they journeyed back to Philadelphia for the 10<sup>th</sup> reunion of his law school class. It was pleasant enough to enjoy the company of former classmates and a fine meal served around the Goat, a statue which had been a traditional meeting place during their student days. Two things were remarkable. One was the high positions to which a number of classmates had risen, including partners in large law firms and general counsel and vice presidents of major companies. The second was how much many of the class had aged. Marcie commented that many of them appeared to be in their 60s at that point and opined that Gordon had at least chosen a career which, while stressful, allowed him to maintain his youthful vigor.

Gordon's contact with retired Judge Manuel Rocker beginning in late 1984 tested all his problem-solving skills. A well regarded jurist, Rocker had authored frequently published decisions while sitting on the bench in Shaker Heights and had in retirement written an article on merit selection of judges. After the publication of the article, his assignments from the Chief Justice of the Ohio Supreme Court to sit as a retired judge ended entirely. This was something of

a problem because as symbolized by his huge expensive cigars and a Lincoln Continental sedan, the judge definitely had a lifestyle to maintain. As Rocker told the story he had attempted to contact the Chief Justice by telephone to no avail. He therefore drove to Columbus and presented himself at the chief justice's chambers to ask why he was no longer getting assignments. According to Rocker, the Chief Justice responded, "It's that damn article. You know that is the only way they are ever going to get me out of here." Rocker explained that the article was not meant as a challenge, but he believed that justice in Ohio will be better served if judges were selected by merit rather than elected. The meeting did not bring a resolution of the issue.

Rocker filed a suit in federal district court in Cleveland claiming a violation of his First Amendment rights, but quickly found himself out of his depth for litigation purposes when the attorney general moved to transfer the case to Columbus. Rocker arranged a lunch with Gordon to describe the problem and sought ACLU assistance. Before filing on his own, Rocker had attempted to obtain counsel, and his difficulty was completely understandable. Attorneys do not go out of their way to have an opportunity to bring a case against the chief justice of the state's highest court. In addition, at the time there was a concern that the Office of Disciplinary Counsel was being used for political purposes based on some of the proceedings that had brought. Gordon hit on the idea of securing an attorney from Pennsylvania ACLU who could come in to do the case, but would not otherwise have to deal with courts in Ohio. He and his family traveled to Pittsburgh where the judge met with Mike Rosenfeld, an ACLU volunteer who agreed to represent the judge. It was still necessary to have local counsel from Columbus, and Louis Jacobs who felt his tenured position at the Ohio State University law school was sufficiently

secure, agreed to assist. After a relatively short time in litigation, they were able to reach an accommodation. The Chief Justice did not admit fault, and Rocker began to get assignments again. Unfortunately, though, his lovely wife of many years was diagnosed with pancreatic cancer and passed away as these events were unwinding. Gordon befriended Rocker and maintained contact with him after the case.

The 1985 ACLU biennial conference in Boulder Colorado was a memorable experience for Gordon. Set up against the majestic Rocky Mountains, it afforded some spectacular bicycling opportunities. One day he spent several hours riding up into the mountains toward Estes Park. He noted the cruel paradox that as his need for oxygen increased with altitude, there was correspondingly less available. He returned to the outskirts of the city in a single hour at speeds that at times exceeded 50 miles an hour despite frequent application of this brakes. During the conference he had the pleasure of meeting and chatting with Ruth Bader Ginsburg, the general counsel of the national ACLU who would later be appointed justice of the United States Supreme Court. The next week he joined the family for vacation in Phoenix where he cycled extensively through the Valley of the Sun.

Gail White took a job with Cleveland Legal Aid, and was replaced by Lois Robinson who had been a star ACLU law clerk. Lois brought a great deal of energy and enthusiasm to the representation of the clients and the institutional litigation. Gordon mentored the development of her practice skills, including an appeal that she argued before the Sixth Circuit Court of Appeals in Cincinnati seeking hearing type due process protections for employees suspended by the city of Cleveland. While the decision in that case was adverse, Gordon co-authored an amicus brief

with the national ACLU that contributed to a stunning victory recognizing the right of public employees to a predetermination hearing in the case of *Cleveland Board of Education v. Loudermill*.

In July 1986 Gordon's mother passed away after her long battle with cancer. He flew to Philadelphia with her and his dad on her last day. He planned to stay for the funeral the following week, and Marcie took the car to a local repair shop to have it serviced for the trip to Philadelphia with the children. She rode Alexis' bicycle and hit a stone at Euclid Heights and Coventry on the way home. She crashed, was unable to get up, and needed help from the neighbor to return home. Another neighbor visited her in the afternoon and found her crawling to the bathroom. At that point they insisted she go to the hospital. She called Gordon a little later to report that she had a non-displaced fracture of her hip. Gordon told her he was coming home and took the next flight out of Philadelphia, reaching their house shortly after Marcie returned home from the hospital. Unfortunately her prescription for pain medication had been incorrectly written, and she had been unable to fill it. Seeing his wife in considerable pain Gordon called their healthcare provider, referred to his legal background, and forcefully demanded that it be corrected and called to the pharmacy immediately.

At that point Gordon and Marcie were to begin a six-week stay on the living room couch because she could not take the stairs. At the end of the week, a friend watched Marcie as Gordon flew back to Philadelphia for his mother's funeral and returned the same day. Marcie's 35<sup>th</sup> birthday was just a few days later and Gordon threw her a big surprise party to add a little joy to an otherwise difficult time. All the preparations were done off-site. Friends and neighbors came and moved the furniture from the porch to the backyard as Marcie rested in the living room

completely unaware of what was going on. When the party began, she announced to the assembled multitude that her husband was one sneaky guy. Thankfully she made a full recovery and was well enough that by Thanksgiving they could travel to Philadelphia to visit his dad and attend Gordon's 20<sup>th</sup> high school reunion.

The next year Marcie would return the favor on the birthday party when Gordon reached 40. His dad flew in from Philadelphia for the celebration, and Gordon thought they were going out to dinner. They stopped at the home of their good friends, the Lucas family, where Marcie said they needed to pick something up. Gordon did not intend to go in, and it was only when their little three-year-old William came out with a well staged request to come in to see their Christmas tree, that Gordon allowed himself to be led in by the hand by the little tyke. Once he got to living room, he encountered shouts of "surprise!" from a nice gathering of Cleveland friends. Marcie did a clever spoof of Gordon's penchant for bicycling to the great amusement of all, and it was a very memorable evening.

1988 was an election year and Gordon embarked on a series of challenging cases that were to extend until the end of his time with the ACLU. The Rosen case which established the right to have an independent candidate designation on the Ohio ballot allowed Gordon to give expression to his interest in history. With the assistance of assistance of Kermit Pike at the Western Reserve Historical Society, Gordon developed a strong historical record regarding the importance of signage and emblems in the Ohio elections. George Sapin, a local advertising executive, offered helpful testimony on the importance of branding and communications. Gordon

won the case of the District Court and successfully defended an appeal in the United States Court of Appeals for the Sixth Circuit.

Gordon confronted the public hysteria surrounding the AIDS epidemic in a case which challenged routine HIV testing of local firemen. Unfortunately, the case was unsuccessful as the District Court ignored the testimony of leading experts from University hospitals and the Cleveland clinic that the chance of transmission in this line of work was infinitesimally small. In this case the client chose not to pursue an appeal.

In a case close to home Gordon challenged a political sign ban in Cleveland Heights. This case again afforded another opportunity for some interesting research at the Western Reserve Historical Society and a fair amount of fieldwork as Gordon with Vanessa Roberts and Sonia Winner photographed numerous homes with holiday decorations, banners, and signs of various types. Judge Manos, who had handled so many of the nursing home cases, granted judgment to the plaintiff without a trial and ruled the ban unconstitutional.

In the late 80s Gordon began to serve on additional boards. He chaired the Church and Society Work Area at Church of the Saviour United Methodist Church and at the millennium was Lay Leader of the church.. In 1989 he was elected to the board of the nationally acclaimed Community ReEntry ex-offender program which provided advocacy, training, and job opportunities for adults and youth formerly involved with the criminal justice system. He served 21 years on this board, including two 3-year terms as secretary, one term as vice president and one term as president.

The late 80s were a time of considerable stress and transition for the ACLU. Max Wohl retired after many years of faithful service. Harold Levine, the key fundraiser in Cleveland was afflicted with brain cancer and ultimately passed away. Without force of his personal contacts the organization's revenue stream was to be considerably reduced. Lois Robinson took a job with Niki Schwartz' law firm, and split positions for a period of time. Meanwhile, the state office had experienced a significant fire. Benson Wolman, the longtime executive director, departed for law school and ultimately private practice of law. Bruce Campbell, the state legal director, went to work for the Columbus Bar Association. Gordon was promoted to state legal director and concentrated his efforts on recruiting volunteer attorneys around the state to handle the cases.

In 1990 Gordon worked on one last case in the U.S. Supreme Court for the ACLU. He co-authored an amicus brief with attorneys from the national office in *Wilson v. Seiter*, which established the standard of liability in eighth amendment cruel and unusual punishment cases arising in prisons. The court said that deliberate indifference to serious penological needs would violate the eighth amendment.

In May of that year he suffered his only serious bicycling accident, going over his front handlebars and breaking three front teeth and lacerating his face. Harold Williams and Lois Robinson visited and were quite surprised by his changed appearance. Gordon jocularly suggested that he might leave the teeth as they were in order to enhance his effectiveness in negotiations. After all who would want to argue with a crazed-ice-hockey-player-lawyer?

In September the State of Ohio was kind enough to invite Gordon and Niki Schwartz to the formal opening of the Mansfield correctional institution and the decommissioning of the Ohio State Reformatory which they had labored so long to close. They got a full tour of the new institution, which was certainly a dramatic improvement over its predecessor.

That November Gordon applied for a job as staff attorney at the Fair Employment Practices Clinic at Cleveland-Marshall College of Law, Cleveland State University. He was hired out of a pool of about 125 applicants. On January 4, 1991, he did his final docket at the ACLU. It turned out to be well worth working those few days at the beginning of January. The ACLU had for many years discussed desirability of a pension program for its employees. Later that year he learned that the national ACLU board had instituted a pension program for all employees working as of January 1 and had required the Ohio ACLU to fund a pension covering his entire period of service. As he made the transfer to CSU, Gordon calculated the attorneys fees earned as a result of his efforts in ACLU cases, which totaled well over a million dollars and was sufficient to cover his salary for the entire time he worked for the ACLU.

Because of his extensive litigation experience Gordon was able to incorporate numerous practice opportunities into the clinic teaching at CSU. He was in trial with Ken Kowalski from the clinic as his co-counsel in the firefighter HIV testing case the first week and a half of the spring semester. The case provided a great opportunity for student observation and discussion. He incorporated simulations on HIV testing, First Amendment retaliation, depositions, and motion practice in the clinic teaching.

Before the end of the first semester he began to meet with Kevin Chavez, a student he had encountered at a Church of the Saviour youth group activity, for weekly prayer. The next year a small group of students gathered under the banner of InterVarsity Christian Fellowship for a regular Bible study at the school. This group was succeeded by the Christian legal Society and Gordon served as their advisor through the end of his time at CSU.

In December at the end of Gordon's first year of teaching his wife, Marcie, received a call from Kaiser Permanente advising her of a scheduled mammogram which had been requested by her doctor out of the blue. It yielded a positive result, and in January Gordon went with her to the hospital for a biopsy. At that point both of them were reading devotional booklets called Our Daily Bread. The morning's text included verses 17-18 from Psalm 118, which state: "I will not die but live, and will proclaim what the Lord has done. The Lord has chastened me severely, but he has not given me over to death." The verses touched both of them. After meeting with the physician and receiving a diagnosis of breast cancer, Gordon and Marcie went home and shared the news and their tears with Alexis and Ariel. They then went out to Marcie's favorite restaurant for lunch. By the end of the afternoon the kids and Marcie were all working on their school work, and Marcie suggested that Gordon attend his regular Monday night Bible Study Fellowship class. Gordon went, heard the lecture, and then went on to a small group discussion room. His leader took one look at him and asked what was wrong. When Gordon explained what had happened, the leader told him that he should listen to Dr. Dobson's radio program at 10 that night because there was a panel discussing breast cancer.

The show included three women and a physician discussing in a very real way the disease and the challenges of dealing with it. One of the participants was an elderly Virginia woman who had been diagnosed about 20 years earlier and had a complete mastectomy with no recurrence. She had a delightful voice which captured both their attention as she spoke. She indicated that upon her diagnosis she was extremely angry with God and opened the Scriptures to a random passage which he quoted: "I will not die but live, and will proclaim what the Lord has done. The Lord has chastened me severely, but he has not given me over to death." Chills went up and down Gordon and Marcie's spines as they shared the sense that the God of the universe had just spoken to them directly, affording reassurance that things would turn out all right. Nonbelievers would of course suggest that this was mere coincidence, but they would have to admit what an extraordinary coincidence it was, as statistically the odds of encountering two verses from the Bible from completely different sources on that particular day are the result of two divided by the total number of verses in the Bible squared, which is a mighty small number indeed.

Marcie had surgery followed by chemotherapy and radiation treatment. She scheduled her treatments on Friday so she could come home and be ill for the weekend, venturing out only to teach youth Sunday School. Gordon picked up all of the other household chores with some very meaningful help from Alexis and Ariel. Marcie was determined to finish her treatments in time to go to Phoenix in August to be with her sister Jamie who was expecting a child. That summer when the radiation equipment began to break down frequently, resulting in postponements of treatment for large numbers of patients, Marcie told the staff call her at any time, and she would come in for a treatment. Once after doing this on her next visit they told her

they could not understand what had happened because the unit was fixed and they treated her only to have it break down immediately after, so she was the only patient who received treatment that day. Marcie was able to complete her treatment by August in time to be with her sister for the birth of her baby Samantha on Marcie's birthday. Marcie has had no recurrence of the cancer.

Gordon and Marcie had a special opportunity to share their faith as part of the Billy Graham Crusade held in Cleveland in 1994. Both trained as counselors and attended every session of the Crusade. Dr. Graham preached at all the adult sessions, but Psalty, a children's storybook character, handled one session for children and in for that audience proved to be an even more powerful evangelist than Dr. Graham. Many of the children present came forward when the salvation appeal was given. Gordon was delighted to be confronted with a half dozen bright eyed young children with which to discuss a faith commitment. What he did not see immediately was the dozen children standing behind him. He had everyone sit down and spoke patiently to each child to help them make a decision for faith.

That same year he had a special treat when Jean Packard who as a young woman had been one of the secretaries of the ACLU joined the CSU employment law clinic as office manager. She would continue in that capacity and serve as a trusted friend through the remainder of his employment.

Gordon also became interested in classroom teaching and writing. He had taken over the class room component of the clinic for the first semester students and developed a syllabus

focusing on pretrial practice. He began to teach poverty and law and later disability discrimination in employment. He also supervised the Cleveland-Marshall extern program. Based on his contact with expert witnesses during his ACLU years, he wrote an extensive article on novel expert evidence in civil rights actions and was fortunate enough to have it published as the lead article in the American University Law Review for 1995. He wrote several essays on Scripture-based themes that were published in various law journals. The first appeared in the Wake Forest Law Review and treated the subject of legal ethics from the perspective of the book of Proverbs in the Old Testament. A summary later appeared as an opinion piece in the American Bar Association Journal. A second dealt with professionalism issues based on the book of Ecclesiastes. Gordon did presentations on both these articles at numerous law schools including New York University and the University of North Carolina at Chapel Hill. A third piece addressed challenges in judging based on the writings of Moses. It also formed the basis for a continuing judicial education class that Gordon provided to all of the judges of the Common Pleas Court of Cuyahoga County.

During the Clinton administration, Congress changed the Legal Services Appropriation Act in ways which unfairly handicapped federally supported legal aid societies in providing representation to their clients. In response Gordon drafted a short piece titled “Defend the Rights of the Poor” which was published in *The Catholic Lawyer* by St. John’s University Law School in New York. Gordon felt called to respond to the challenge of the article and with strong support from Dick Sering of Lutheran Metropolitan Ministry and other local church and bar leaders established a small nonprofit organization under the name of Christian Legal Services of Cleveland to provide volunteer legal services to the poor. Gordon was elected founding

president. In 1998 the group received funding from the Cleveland and Gund Foundations and was able to hire staff and commence operations. Over the next eight years the group would recruit nearly 100 volunteer attorneys and provide legal services almost 8000 people. The group, however, was unable to attract substantial support from the Cleveland legal community and ceased operations in 2006 due to a lack of funding. For Gordon, the closure was almost like the loss of a child.

Throughout the 1990s, Gordon was an active Habitat for Humanity volunteer. He would load up a few tools on his bicycle and traveled down to the East side construction sites. He worked on the two small ranch homes that were the initial construction project and on 17 additional houses as the years passed. He did a wide variety of tasks, including framing, siding, insulation, interior carpentry, landscaping, painting, and drywall, which became his specialty. One day when Ariel was a Senior in high school (Alexis had previously volunteered as well), Gordon agreed to take her down to work on a Cape Cod house that was being built. As a precautionary measure on behalf of his daughter, he bought two construction helmets. Gordon and Ariel were putting cross braces on for joists above the first floor when someone on the second floor kicked over a can of nails. All the nails cascaded down through the open framing and bounced harmlessly off dad's construction helmet.

For more than half of the years Gordon would spend at the clinic, he concentrated on major civil litigation with students participating in supporting roles. As a clinical teacher, Gordon had the opportunity to participate in a number of interesting cases. *Fifer v. College of*

*Wooster* challenged the termination of an assistant in the college's development department on disability discrimination grounds. The students conducted extensive discovery and successfully opposed the motion for summary judgment by the college. Gordon taught a summer trial advocacy clinic to prepare the case, and it settled just prior to the scheduled trial. Because the case was so fully developed, Gordon used it for many years as a simulation to teach pretrial practice in the clinic.

*Mahoney v. Radio Free Europe / Radio Liberty* was a great adventure for Jane Picker, Ken Kowalski, and Gordon as faculty and all the clinic students as well. Ostensibly because the case was too expensive to litigate, the EEOC had withdrawn from representing the plaintiffs, who lived and worked in Germany and had challenged their mandatory retirements as violating newly enacted extraterritorial provision of the Age Discrimination in Employment Act. The EEOC provided extensive discovery and the students participated in completing the process. The clinic filed a rare summary judgment motion on behalf of the plaintiffs, which was granted, and the case was set for trial on the issue of relief before the Hon. Louis Oberdorfer, an outstanding federal judge sitting in the District of Columbia. The trial lasted seven days, with Jane Picker and Gordon doing the presentation, and the students sitting with them at counsel table and assisting. The jury returned a verdict of \$1.2 million dollars in back pay and liquidated damages. The court also ordered that the plaintiffs be reinstated. While a decision was ultimately reversed on appeal based on a foreign law defense, in the interim the clinic had negotiated settlements for the clients which amounted to several hundred thousand dollars and an attorney fee award of almost \$150,000 to the clinic.

*Steele v. Voyale* was an unusual case because it was resolved with a default judgment. Jacqueline Steele was the only female employed on the shop floor of a large company that fabricated steel racks to hold car parts on the production lines of General Motors and Ford. She had worked for the company for years and had received regular raises. A new supervisor was hired and told Steele that women did not belong on the shop floor. Within a month she was terminated based on a fabricated incident involving the supervisor's son who was also employed at the company. Two students interviewed Ms. Steele and filed an EEOC complaint and then a lawsuit on her behalf. The company did not respond to the complaint or the clinic's subsequent motion for a default judgment. Only after clinic students attached a portion of one of the company's accounts did they respond with a motion for relief from the judgment. Gordon handled the hearing on the motion with assistance from clinic students. The court denied the motion, but did allow the company a hearing on the issue of damages, which Gordon again handled with student assistance, and the court entered a substantial award of back pay and attorney's fees. The company appealed to the Sixth Circuit Court of Appeals in Cincinnati, and students participated in the briefing under Gordon's direction and attended the argument which Gordon presented to the court. The decision was affirmed, and the clinic celebrated a wonderful victory at a lunch hosted by Ms. Steele.

*Bartzis v. American Red Cross Blood Services Northern Ohio Division* was a case in which Gordon and the students had the privilege of representing the mother of a clinic student who had been terminated from her job as a volunteer recruitment coordinator. The students filed suit claiming that the termination violated the Americans with Disabilities Act and the Age Discrimination in Employment Act. Students participated in extensive discovery in the case and

drafted the response to the employer's motion for summary judgment. When the court granted the motion, students worked on the briefing for the Court of Appeals and participated in preparing for mediation under the direction of the conference attorney. This resulted in a successful settlement of the case. As with Fifer, Gordon used the case as the basis for a semester long simulation on pretrial practice.

In the second half of Gordon's employment with the clinic the emphasis shifted to student representation of clients in unemployment compensation cases. These were great learning cases for students as they got to interview the client, analyze the case, counsel the client, conduct a hearing preparation session, and do direct and cross examination and present closing arguments at a hearing before a hearing officer who was a lawyer. With the declining economic climate in Ohio, Legal Aid was overwhelmed with these cases, and clinic students provided a substantial service to the clients and the community by assisting. Gordon also continued to supervise students on various discrimination and other claims, including a successful challenge under the Family Medical Leave Act to a major healthcare institution's termination of a nurse who missed work due to symptoms indicating a possible miscarriage. The case resulted in a private settlement and unfortunately could not be used for teaching purposes for subsequent students.

In addition, Gordon provided leadership to the law school clinical teaching community. He lead small group discussions at American Association of Law Schools Clinical Conferences. He also served for several years on the prestigious AALS Clinical Awards Committee, which

served to select annually the outstanding clinician and outstanding emerging clinician for the entire country.

Gordon experienced some wonderful blessings in his personal life. Marcie continued to maintain her health and teach productively at Roxboro Middle School in Cleveland Heights. His daughter Alexis married Ted Olsen in 2000 and took up residence in Chicago, where Alexis works as a nonprofit organization consultant and Ted is the Managing Editor of Christianity Today magazine. They presented Gordon and Marcie with a grandchild, Leif, in 2006 and another, Grace, in 2009. Daughter Ariel was selected to participate in Teach for America, essentially the Marine Corps of American teaching, and served in Chicago public schools for six years, then moved to Tucson where she taught in a charter middle school.

Gordon visited Scotland including, St. Andrews in 1999. Something must have stirred in his blood, as the next year at age 52 he took up golf. The next year he notched a hole in one on a 204 yard par three hole, and at that point was probably hooked for life. Not surprisingly, he developed a strong interest in golf history. He enjoyed the movie Greatest Game Ever Played about the amazing 1913 U.S. Open victory by Francis Ouimet, a twenty year old amateur, in a playoff over British greats Harry Vardon and Ted Ray. In that era golf was played with hickory shafted clubs, and so Gordon picked up a wood shafted club when he saw it for sale at Western Reserve Historical Society, and began to chip with it on the living room rug. Seeing this, Marcie bought him a starter set for Christmas on eBay and launched a devotion to hickory golf that by 2007 saw Gordon playing hickories exclusively and participating in tournaments in several states. While the game was certainly challenging, indeed sometimes punishing, he developed a

great fondness for Oakhurst Links in West Virginia and Foxburg in Pennsylvania, courses that dated to 1884 and 1887 respectively and offered opportunities for play with hard rubber gutta-percha balls of the type used between 1850 and 1902.

Late in 2010 a number of factors came together that made it opportune for Gordon to announce his retirement from teaching. His announcement was delivered in the form of a riddle first conveyed in a telephone call to his four-year-old grandson Leif: What are you after you are tired and recover and then become tired again? The answer is RETIRED, as Gordon would be January 15, 2011, after 20 years of teaching and practice in the Employment Law Clinic and 20 years with the ACLU prior to that. Leif was very pleased and excited, as was Gordon. In perhaps a supreme irony, Gordon had a student enrolled in the clinic at the time named Sunny Nixon, who, reminiscent of his own student days, displayed an extraordinary dedication to serving the public interest. Thus his career as a public interest lawyer had bookends. It was from Nixon unto Nixon!