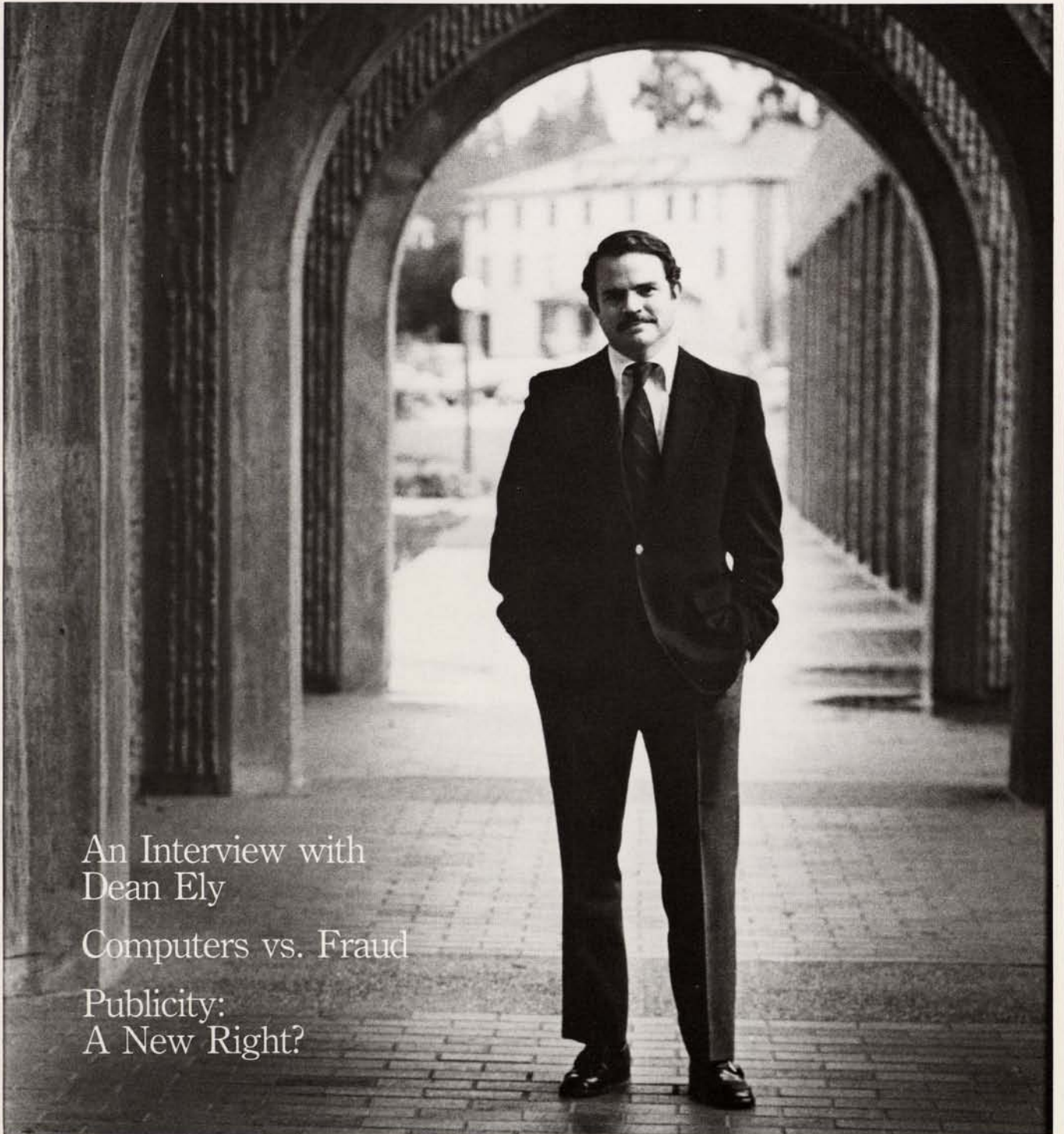


Stanford LAWYER

WINTER 1982/83

VOL. 17, NO. 2



An Interview with
Dean Ely

Computers vs. Fraud

Publicity:
A New Right?

Table of CONTENTS

STANFORD LAWYER

WINTER 1982/83 VOL. 17, NO. 2

Cover photo: David Powers

Editor: Constance Hellyer
Assistant Editor: Michele Foyer
Designers: Mell Hall,
Barbara Mendelsohn

Stanford Lawyer is published semi-annually for alumni/ae and friends of Stanford Law School. Materials for publication and correspondence are welcome and should be sent to: Editor, *Stanford Lawyer*, Stanford Law School, Crown Quadrangle, Stanford CA 94305. ©1983 by the Board of Trustees of the Leland Stanford Junior University. Reproduction in whole or in part without permission of the publisher is prohibited.

Page 2



John Hart Ely:
An Interview with the New Dean

Page 8



Publicity: The New Property?
by Paul Goldstein,
Professor of Law

Computer Matching:
A Potent New Government Weapon
Against Fraud and Waste
by Thomas F. McBride,
Associate Dean for Administration

Alumni/ae Weekend, 1982

The A. Calder Mackay Professorship
and Scholarship Fund

The Robert E. Paradise Professorship
in Natural Resources Law

School News

Faculty Notes

Class Notes

In Memoriam

Alumni/ae Gatherings

2

8

16

20

22

23

24

30

32

67

70

An Interview
with

JOHN HART ELY

John Hart Ely became Dean of Stanford Law School last June. A rare exception to the rule that law schools elevate deans from among their own faculty, Dean Ely was recruited from Harvard, where he was Tyler Professor of Constitutional Law. His formal title at Stanford is Richard E. Lang Professor and Dean of the School of Law.

Dean Ely is recognized as one of the leading constitutional law scholars of his generation. His book, *Democracy and Distrust* (Harvard University Press, 1980), is a seminal work in the field. (On January 7 of this year, it received the Order of the Coif award, given triennially to the outstanding book published in any field of law.)

Only 43 at the time of his appointment to the Stanford deanship, Ely was born in New York City and raised in San Diego and Westhampton, Long Island. He received his AB *summa cum laude* from Princeton in 1960 and his LLB *magna cum laude* from Yale in 1963. Between his second and third years of law school, he wrote the first draft of the brief for Clarence Gideon in *Gideon v. Wainwright*, an episode interestingly recounted by Anthony Lewis in *Gideon's Trumpet* (Random House, 1964).

After graduation, Ely served in the Military Police Corps and then as a staff member on the Warren Commission. He next clerked for Chief Justice Earl Warren, for the 1964/65 term. The next year was spent as a Fulbright scholar at the London School of Economics and Political Science.

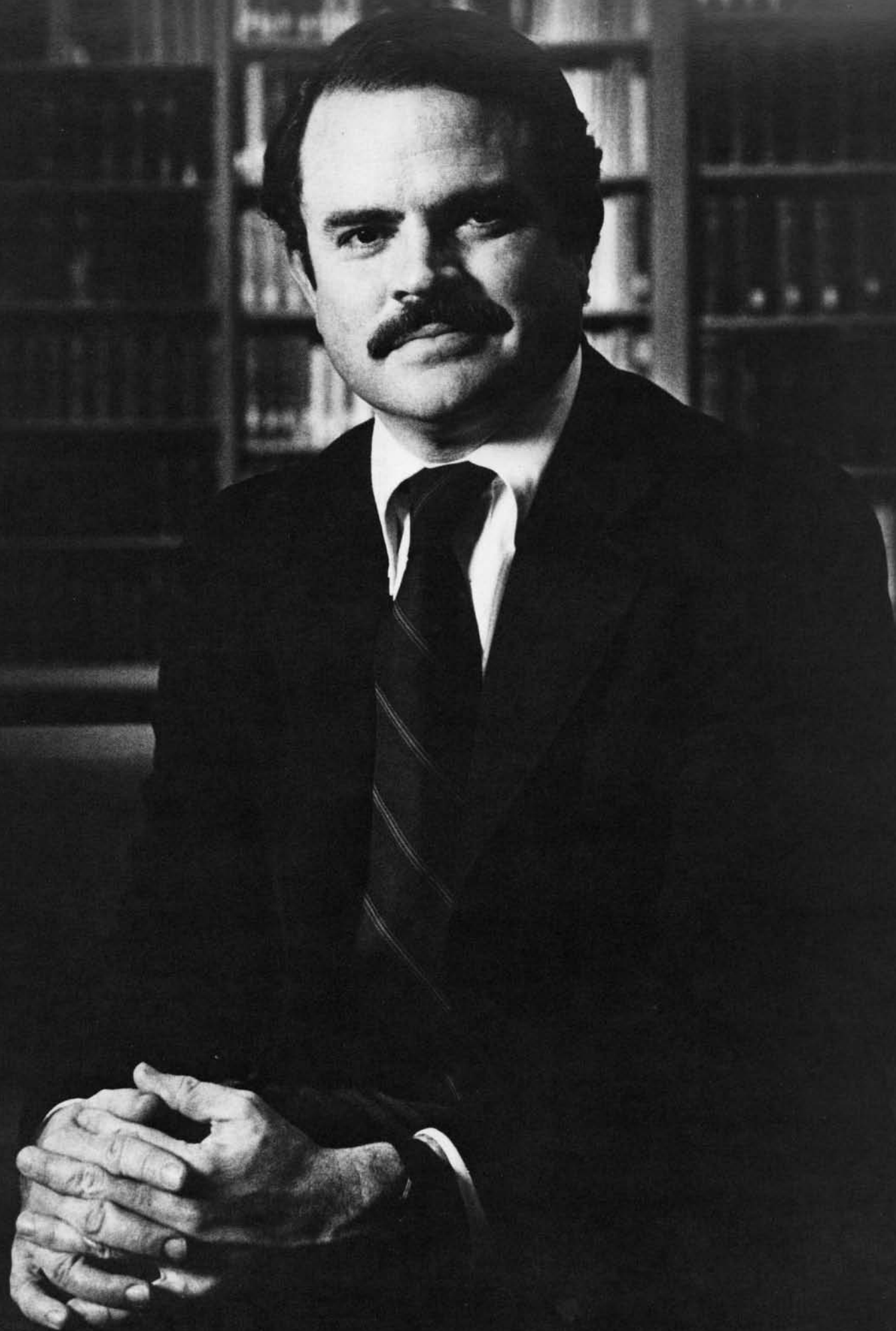
Dean Ely returned to California in 1966 to become one of the founding attorneys of Defenders, Inc., in San Diego, where—following up on the promise made in *Gideon*—he represented numerous indigent defendants charged with felonies, in both federal and state courts.

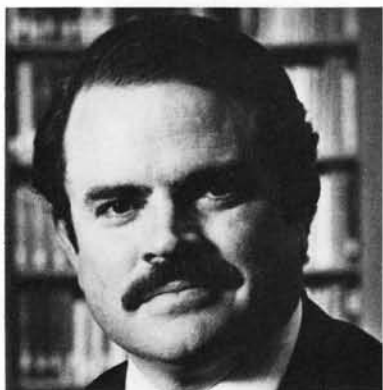
He returned to Yale in 1968 as an associate professor of law, was promoted to full professor two years later, and (largely for family reasons) moved to Harvard in 1973.

Dean Ely gained experience in government during the Ford Administration, when he was General Counsel—the third-ranking official—in the Department of Transportation.

He is a member of the California and District of Columbia bars, and a fellow of the American Academy of Arts and Sciences.

The following interview, which took place in November, was conducted by Constance Hellyer, the School's new publications director.





"The School is on a real high, and I'm glad to be part of it."

"There's already more pedagogical innovation here than at any other of the top law schools. . . . But I think we could do more."

What persuaded you, as a tenured Harvard professor, to come to Stanford?

I've always felt close to this law school. I have friends here and knew Stanford was doing interesting things. Being offered the deanship provided an opportunity to come home to California.

I had published a book in 1980 that really represented a decade of thinking and, happily, ended up saying about what I had hoped it would say. I felt I then had two choices. One was to keep talking about the same subject—constitutional law, judicial review. But I thought there was a risk that I would just end up saying the same thing over and over again—something we see all too often in academia.

The other choice was to take up an entirely new field—probably jurisprudence or criminal law—and spend another decade working up to another book about the field's central issues, which is, for me at any rate, the only kind worth writing. I wasn't quite ready to undertake that long a trek.

This third option—the deanship—came along at the right time.

Do you enjoy being back in the West?

Yes, I do. Of course I miss my friends back East—some of them a great deal—but as far as the general feel of the place is concerned, it isn't even close. This is where a sensible person should live. This is home.

A Harvard colleague described your appointment as "casting against type," for which he congratulated Stanford. What would you say to that?

I think his point was that I am not instinctively authoritarian or hierarchical. I tend to be pretty straightforward—sometimes, perhaps, overly blunt—in the way I deal with people and talk about things. I suppose those were all characteristics that he didn't necessarily associate with deans. I accept it as a compliment and hope it continues to be deserved.

Incidentally, I think Stanford did a very interesting thing in recruiting an outside dean, something that says a lot about the School and what it means to become. It hadn't happened at one of the top law schools for twenty years. (That time too it was Stanford, which recruited Bayless Manning from Yale.)

Here's why it is interesting: recruiting an outside dean—especially one whose strengths are perceived as being other than diplomatic—is a very gutsy move. A more risk-averse faculty would have appointed one of its own, someone known to be able to get along with everyone on the faculty, someone who certainly isn't go-

An Interview with JOHN HART ELY

ing to rock the boat. When you go outside, you're inevitably taking something of a chance, because you don't know the person that well.

I think Stanford's move said to the law school world, "we're really going for it."

I notice that you tackle your job with a lot of enthusiasm and enjoyment.

I'm loving it. I needed a change and this is it. And I'm in a place that I really care about. The School is in many ways what a law school should be. The members of the faculty are compatible. Despite various political and theoretical differences—which we must never lose—they trust each other and they talk to each other. They worry jointly about how to teach and about the various ideas that they have.

I'm sure we will go through cycles, and other times may not be as good as this. But at the moment, the School is on a real high, and I'm glad to be part of it.

This job must be stressful at times. How do you unwind?

In various ways. My chief obsession used to be with ballet—watching, not performing—but until recently Boston didn't have a decent stage, so that sort of went by the board.

I've more recently returned to the obsession of my youth, with jazz. I not only listen; I also play—jazz piano—seriously if not superbly.

I'm also a serious skier. And I engage in running and miscellaneous exercise, not because I especially enjoy it, but so that I can eat to excess without weighing 200 pounds! Nothing too exotic.

You've been at Stanford for six months now. How would you assess the School?

Stanford is one of the three excellent small law schools in the country, the other two being the University of Chicago and Yale. I believe that the general perception is that, of those three schools, the one whose trajectory is most clearly upward is Stanford.

Of course, they are all very good—only an idiot tries to argue that Babe Ruth was or wasn't a better ball player than Ty Cobb—but I think the general impression is that, of the three, Stanford is the one that feels best about itself, the one that is most clearly getting stronger.

Harvard of course is also excellent, but on an entirely different scale—particularly in terms of student-faculty ratio. It's not really comparable to the other three.

What do you think of the Stanford faculty?

It's an excellent faculty—young, flexible, and creative. I was personally, though not institutionally, chagrined to

learn that my age (44) is above the median for our faculty, whereas I was well below the median at Harvard.

Harvard may be the place—at least it used to be—you look most often for the leading authority on X, Y, or Z. We have some of those here, too. But what we have primarily are the people who within the next five or ten years will be recognized as the leading authorities.

Anyone who understands creativity knows that the people you want to be around are the people who are *about* to be recognized as the titans. Ours is a faculty in the process of doing its most creative work.

The students?

The Stanford student body is also excellent. The LSAT mean (753) is staggering and getting higher. In fact, it's 20 points higher than last year. The students are just frighteningly smart.

The School is also fortunate to have a loyal core of graduates. I've really enjoyed those I've met and look forward to meeting many more.

The percentage of participation by graduates in reunions, local alumni meetings, and annual giving is less than I would hope for—only about 30 percent, as opposed to about 50 percent at both Harvard and Yale. However, our graduates give more per capita than either Yale's or Harvard's. So we're supported reasonably well, though it tends to be by a smaller percentage of people being more enthusiastic.

Are there any changes you'd like to see?

We are already under way—and this was started largely by Charlie Meyers—strengthening the Law and Business curriculum. We've made one very important advance with Myron Scholes, who is coming to us from the University of Chicago as a joint Law-Business appointment. He's one of the nation's leading finance theorists, and I've become convinced by friends here and at Harvard that finance theory is an important direction in which the study of corporate law must go.

With Ken Scott, Ron Gilson, and Roberta Romano—plus Myron Scholes—we are already strong, but are looking to add still more strength in the corporate area, given that the overwhelming majority of our students end up there. We are also in the process of rationalizing ("sequencing," if you will) our business-related offerings.

Do you plan any other curricular changes?

I don't worry all that much about what legal subjects, recognized as such, are and aren't being thought and taught about. The creativity of our faculty, and the in-

*"Ours is a faculty in the process of doing its
most creative work."*

*"What kind of education
would it be . . . if we had a whole
class of upper middle-class
white students?"*

*"The best thing we can do
for our graduates is to continue
to get better . . ."*

telligent demands of our students, will generally adjust those markets here, as they do elsewhere.

I *do* worry somewhat, and think a dean has some obligation to take the lead, concerning subjects that aren't yet fully conceived of as "legal subjects" but are likely one of these days to assert themselves and catch us napping.

Two that come to mind are law and computer sciences, and law and biotechnology. These two revolutions overtaking society are simply bound to have enormous legal consequences, and it's past time for law schools to begin thinking seriously about the issues involved. And while I'm Dean, I think Stanford Law School will be making important strides in both these directions.

The latest student course evaluations—which give the faculty an overall rating of better than 4 on a scale of 1 to 5—indicate that the quality of teaching at Stanford is good. What do you think about this?

The teaching is good. This is a school that cares about teaching. Teaching is not regarded, as it is some places, as an unfortunate impediment to scholarship—as the way you pay the bills, something you have to do in order to do what is really your life's work, which is scholarly work.

Nonetheless, I worry about teaching methodology. The second and third years of law school are perceived by many students as, quite frankly, boring. A great deal of time is spent either working at other jobs, looking for jobs, or in one way or another just not really being engaged by what is going on. Law school often doesn't seem to be holding the students' attention.

So I am interested in supporting the faculty's efforts to introduce more variety into the ways they teach. This is a faculty that is easy to work with in this regard because there's already more pedagogical innovation here than at any other of the top law schools.

We already do a great deal of teaching by way of simulation and videotaping of students' performance of various lawyers' tasks, followed by criticism of what they have done by each other and by the professor.

But I think we could do more. We are looking at what is available by way of computer teaching. Unfortunately, at the moment there's not much. The software is still pretty primitive.

I would like the period I was Dean to be remembered as the one when we finally actually broke the stranglehold of the standard method of law teaching, which—whether it's the old-style sadism or a more modern and mellow "Socratic solitaire"—still involves, 90 percent of the time, nothing beyond a discussion of the logic of some appellate court's opinion.

An Interview with JOHN HART ELY

The boredom in the second and third years—is that a Stanford phenomenon or is it generally true at law schools?

It's definitely a wide-spread, nay universal, phenomenon. In fact, I think we probably do as well as anybody because, as I said, there is more experimentation with teaching methodology here than there is elsewhere. Not enough, though. I'd like to see us even further out front on that one.

Do you plan to teach?

Yes. I just scheduled a seminar—Utilitarianism, Democracy and Judicial Review—for next semester (Spring 1983). I don't plan to use a computer.

One reason that I've changed my plan and *will* teach my first year here is that I want to stop acting on the basis of stereotypes about our students. I want to make sure I know what I'm talking about.

There was a drop in the number of minority students entering the School last fall. Are you concerned?

I am indeed. It's true that when you look at our overall student body, you find a quite healthy minority enrollment of 95 out of 507. But what scares the devil out of me is the possibility of the thing's snowballing—that we might somehow develop the reputation, quite undeserved, of being inhospitable to minority students. The important thing is to stop the drop-off before it becomes a trend, to make sure this year remains aberrational.

Actually, we accepted as many minority applicants this year as we had in prior years. Fewer, obviously, chose to come. Jesse Choper, the new dean at Boalt Hall, tells me that the number of Chicanos there went up this year, and our drop-off was principally among Chicanos. This suggests that financial aid has something to do with it, Boalt's tuition being significantly lower for Californians.

Now I don't think those students who went to Boalt instead of Stanford have ruined their lives. I think Stanford is a better law school, but just between us, Boalt is also a fine school. Those people will undoubtedly go on to successful careers as lawyers. They'll survive.

The question is, how well will *Stanford* survive? In one sense, of course, very well indeed. We could enroll an entire class of people whose LSAT scores are over 750 and who are well able to pay, if we wanted to. We wouldn't have to give a dime in scholarship aid, and we could still have phenomenal numbers.

But what kind of education would it be—in particular, what kind of training for a legal career would it be—if we had a whole class of upper middle-class white students? It sounds a little like Princeton when I went there in the

1950s—full of smart people but not very interesting in terms of what we could learn from each other.

There's a wonderful passage to this effect in *The Education of Henry Adams*, where he talks about Harvard College in the 1840s and '50s: "What caused the boy most disappointment was the little he got from his mates . . . It is more than a chance that boys brought up together under like conditions have nothing to give each other."

Scholarship aid is one of your fund-raising priorities, isn't it?

It's *the* top priority. It's what I mention first to potential major donors.

But it is sometimes hard to sell. An endowed professorship has certain appeals that a scholarship fund doesn't. It attracts more publicity and may, for historic reasons, be thought of as more prestigious. Bricks and mortar—rooms, buildings, and other tangible things—have a similar appeal.

Finally, there is a reaction on the part of some donors—aren't these kids going to be making \$50,000 plus in three years? I understand that reaction. That's why I think we must think more in terms of repayable funds—various "fly now/pay later" systems. In fact, given my druthers, *loan* funds are what I'd most like donated.

The fact remains, however, that for many of our students, things are very rough. They may have built up tremendous debts from college. Frankly, they need a great deal of help, and they need it *now*, which is why financial aid generally is my top fund-raising priority.

What kind of relationship would you like to see between alumni/ae and the School?

I would like a higher percentage of our graduates to feel close to the School. I've been traveling around quite a bit to meet and talk with as many graduates as possible. And I mean to do a good deal more of that.

We can get valuable ideas from our graduates—they help us keep in touch with the profession for which we are preparing people. And even beyond what they can do for us either intellectually or financially, I think it's important for its own sake that graduates be in touch with the School. It's gratifying to us and it ought to be gratifying to them.

They should be proud of having gone here. It's been an excellent school for a long time and is becoming a really superb school.

In a way, the best thing we can do for our graduates is to continue to get better—in that the better we are, the more their degrees will be something they can take pride in. □

What do Elvis Presley, Groucho Marx, Agatha Christie, Bela Lugosi, and Martin Luther King have in common? That's a pretty diverse crew, but the answer is easy. They, their estates, or their assignees were all plaintiffs in right of publicity lawsuits filed within the last several years.

PUBLICITY: The New Property?

by Paul Goldstein,
Professor of Law



My second question is a bit harder. It is the question raised by the title of my talk, *Publicity: The New Property?* Is the right of publicity in fact a property right? If so, is it a new property or is it just a new way of looking at old doctrine? And, what does it mean to say that it is a property right?

There has been much talk in recent years about an emerging right of publicity. At last count, over 31 law review and bar journal articles

have specifically considered the topic. A recent check on Lexis discloses that no fewer than 92 decisions have employed the term since it was coined thirty years ago by Judge Jerome Frank in *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*²

More important, though, than these gross numbers is the *rate* at which discussion and decision involving the right of publicity is growing. We can now expect an average of



PUBLICITY:

The New Property?

one or two reported decisions a month on some aspect of the right of publicity—a right that twenty years ago wasn't litigated more than once a year. This increase is particularly remarkable when you consider that, by and large, it is the product not of legislative intervention but rather of the much slower processes of the common law.

What is the right of publicity? Given the speed with which the right of publicity has developed, it should come as no surprise that the right has been defined—to the extent that it has been defined—in only the loosest possible terms.

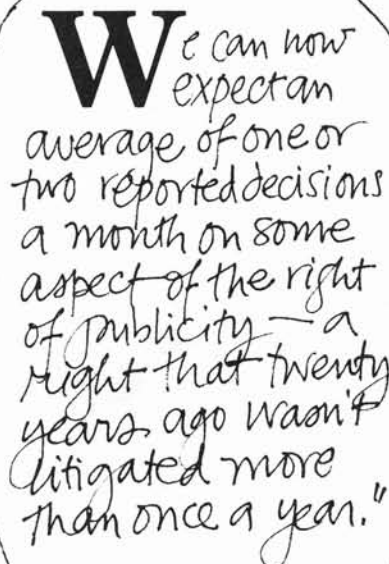
Consider the following composite picture drawn from several leading cases. Elroy Hirsch, as I'm sure many of you know, first gained fame playing football at the University of Wisconsin. Early in his first season at Wisconsin, Hirsch acquired the nickname "Crazylegs" when he ran 62 yards for a touchdown, wobbling down the sideline looking as though he might step out of bounds at any moment, his running style something like a whirling eggbeater. Hirsch went on to play for the Chicago Rockets and later for the Los Angeles Rams. In 1969 he returned to Wisconsin as director of athletics.

Now, say that Defendant Number 1 prints and distributes a poster of Hirsch in a characteristic pose as part of a series of posters of sports heroes that Defendant Number 1 markets across the country.

Say that Defendant Number 2 produces, advertises, and distributes a shaving gel for women, named "Crazy Legs."

And say that Defendant Number 3 made a motion picture many years ago of Hirsch running down the sideline in his unique, whirling eggbeater style, and today licenses that film to television broadcasters for showing during football half times.

Now, if this were a game show of several years back and we asked, "Will the real right of publicity defendant please stand up?" I fear that each of our three defendants would shuffle his chair and rise, for



We can now expect an average of one or two reported decisions a month on some aspect of the right of publicity—a right that twenty years ago wasn't litigated more than once a year."

each makes a use of plaintiff's name or likeness. More important, each of our defendants has, in more than one case, been found to violate a right that the court called a right of publicity.

But, will the *real* right of publicity defendant please stand up? If we had to pick among our three defendants on the ground of historical authenticity, Defendant Number 1, who manufactured and distributed the "Crazylegs" poster, would be our most likely candidate. This is, after

all, the cause of action that was first expressly labeled a right of publicity in the *Haelan v. Topps* case. The right evolved out of early common law and statutory *privacy* actions for unauthorized advertising or other commercial use of one's name or likeness, actions like the one authorized by California Civil Code § 3344. When the privacy action was brought by someone who had never before been in the public limelight, and whose feelings had been offended by the use of his or her name in an advertisement, it was accurate enough to say a right of privacy had been invaded. But when the cause of action was brought by a sports or entertainment celebrity—whose interest was not so much in maintaining privacy as in cashing in on his celebrity—the privacy label no longer fit. Thus, the term "right of publicity" took its place for this class of cases for which injunctive and monetary relief was aimed at securing a proprietary, rather than a strictly personal, reputational interest.

But what of Defendant Number 2 and the action against the use of plaintiff's nickname on a shaving gel? As in the last case, there has been a use of plaintiff's name or likeness, and so this case might be brought under that sort of privacy-publicity theory as well. But there is also another theory at work here, a theory that, at bottom, is really not very different from the traditional unfair competition action for passing off—falsely representing to consumers that plaintiff produces, sponsors, or at least endorses, the product on which his name is being used. Although courts often call this a right of publicity action, it is really an unfair competition or trademark theory that is at work here.

To realize just how close this class of cases is to traditional unfair competition and trademark cases, you need only contemplate Johnny Car-

son's name gracing a line of men's clothes or Farah Fawcett's name serving as a brand of shampoo. And you can appreciate the subtlety of the distinction between publicity and trademark by considering situations in which the trademark owner is himself a celebrity. What are we protecting when we give exclusive rights to "Gloria Vanderbilt" jeans and "Ralph Lauren" cologne? Indeed, the decision on which I based my composite example, *Hirsch v. S.C. Johnson & Son, Inc.*,³ employed state unfair competition doctrine as an alternative ground to common law privacy doctrine for its holding in favor of Crazylegs Hirsch.

What's in a name? Do courts commit consequential error in calling this cause of action one for violation of the right of publicity rather than one for unfair competition or trademark? Does anything turn on the decision to treat this as an unfair competition action rather than a right of privacy action? I believe, in fact, that much turns on the distinction and that the judicial tendency to group these suits under a single rubric—the right of publicity—confuses rather than clarifies the issues involved. Just to take three examples of the difference: The right of privacy is enforceable throughout the state; the unfair competition right is enforceable only in those areas where plaintiff's name has garnered secondary meaning. Monetary and injunctive relief are standard in the privacy action; damages are rarely given in unfair competition actions, where corrective labeling is a standard remedy. The publicity action, if analogized to the right of privacy, will not survive the celebrity and pass to his estate; the unfair competition right will.

What of the action against Defendant Number 3, who procured and licensed the motion picture of Crazylegs Hirsch running down the sideline? Once again, defendant is,



without permission, using Hirsch's "likeness," in seeming violation of the common law and statutory right of privacy, and its auxiliary right of publicity. For example, in *Zacchini v. Scripps-Howard Broadcasting Co.*,⁴ the "Human Cannonball Case," the Ohio Supreme Court declared that defendant's videotaping and broadcast of plaintiff's fifteen-second exit from a cannon would, if it had not been privileged, constitute an invasion of plaintiff's right of publicity. The United States Supreme Court, reversing on the privilege ground, strongly endorsed the state's power to enforce a right of publicity. In the words of the Court, the "State's interest in permitting a 'right of publicity' is in protecting the proprietary interest of the individual in his act in part to encourage such entertainment."⁵

Yet, although these can be characterized as right of publicity cases, they also look very much like copyright cases protecting an enter-

tainer's act or routine. If copyright can cover an entire football game, then certainly it can cover the game's constituent elements, including the expressive moves of individual players. Hirsch's antic progress down the sideline, like Zacchini's exit from the cannon, is, really, an act—a bit of choreography American style. If the act is fixed in a tangible medium of expression, it will be protectable under the federal Copyright Act. If it is not, it will be protectable under state common law copyright. Indeed, the intermediate appellate state court in *Zacchini* treated plaintiff's claim as one for common law copyright infringement.

Once again, what's in a name? Does anything turn on the decision to treat this as a copyright action rather than as a right of privacy action? Once again, the answer is yes. In some states the privacy-publicity right may last forever; in others it will die with the celebrity. By contrast, common law copyright protec-

PUBLICITY:

The New Property?

tion ends with publication or tangible fixation. Statutory copyright begins with fixation and terminates fifty years after the author's death. Remedies, too, are dramatically different. The privacy-publicity action allows, at most, damages and injunctive relief. Copyright, by contrast, allows, in addition to damages and injunctive relief, lost profits, statutory damages, impounding, and destruction.

What, then, is the right of publicity? What is its governing rationale? Is it a privacy rationale, focusing on personal injury rather than proprietary rights? Is it unfair competi-

tion, with its taint of fraud and passing off? Is it copyright, which carries its own bookish flavor? Or is it a tort, *sui generis*, capable of standing on its own?

Some years ago, the late Harry Kalven observed that one problem with the common law and statutory right of privacy was that it was still unformed, that it had no "legal profile." "We do not know," he wrote, "what constitutes a *prima facie* case, we do not know on what basis damages are to be measured, we do not know whether the basis of liability is limited to intentional invasions or includes also negligent invasions

and even strict liability."⁶

Just the opposite can be said about the right of publicity, which has, in fact, too many legal profiles. It is a genuine multiple personality. One face looks like the personal injury right of privacy tort; another looks like unfair competition and trademark law; and yet another looks like copyright. Obviously, some sorting out is needed if celebrities are to be able to plan their investment and licensing activities, and if lawyers are to be able to give sound and effective advice on both business planning and litigation.

As I indicated earlier, the state legislatures have by and large taken no steps to sort things out, leaving the process to courts and the common law method. The first major issue to arise in courts across the country has been whether the right of publicity survives the death of the celebrity. On one side of the issue is the claim that, because the right of publicity is rooted in the right of privacy, it is a personal right and, like privacy, dies with its subject. On the other side is publicity's aspect as a property right, and the claim that it should be transferable on death like any other property right. The conflict has produced an extraordinary amount of confusion, and some plainly wrong decisions as well.

Just to give you the flavor of the confusion and the conflict: We have the 1979 *Lugosi* decision⁷ in California holding that "the right to exploit name and likeness is personal to the artist and must be exercised, if at all, by him during his lifetime."

We have the 1978 *Factors* decision⁸ in the Second Circuit interpreting the applicable New York law to hold that the exclusive right to exploit Elvis Presley's name and likeness, because it had been exercised during Presley's life, survived his death.

We have the 1980 *Factors* deci-



sion⁹ in the Sixth Circuit holding that under Tennessee law, Presley's right of publicity did not survive, even though it was exploited by him in his lifetime.

Returning to New York, we have the 1981 *Factors*¹⁰ decision, in which the Second Circuit Court of Appeals ruled for the first time that, under New York's choice of law rules, it was Tennessee, not New York, substantive law that applied to the issue before it, and further, that the court must give conclusive deference to the Sixth Circuit's interpretation of Tennessee law that the right of publicity is not descendible.

And then, to complicate things further (and to prove both the Sixth and Second Circuits wrong), we have the later, 1981 decision of a Tennessee Chancery Court in *Commerce Union Bank v. Coors*¹¹ that, under Tennessee law, the right of publicity does survive, after all.

Finally, to bring things back to California, we have the Second Circuit's ruling, last September, in the *Marx Brothers* case¹² that, although the right of publicity survives under New York substantive law, the district court erred in applying New York rather than California substantive law. Why? New York's choice of law rule for property claims made California law dispositive just as, in *Factors*, it made Tennessee law dispositive. And, under California's *Lugosi* decision, the Marx Brothers had no rights that survived them.

As a postscript to all this, I should note that it's really unfortunate that the first major effort at defining the right of publicity had to come in the context of survivability. Since, in these cases, the celebrity is no longer around, there is an understandable—and always implicit—tendency for courts to focus on the competing interests of the heirs and the public, rather than on the competing interests of the celebrity and the pub-

"What is involved here is a question of incentives—the incentives needed to encourage people like Zacchini, Lugosi and Presley to provide entertainment."

lic, with the result that the right has not been given the scope and force that it might have received if the celebrity himself had been waging the cause.

Had the celebrity been present in these cases, it would have been plainly evident to the courts, as it was in *Zacchini*, that what is involved here is a question of incentives—the incentives needed to encourage people like Zacchini, Lugosi, and Presley to originate and provide entertainment.

What good reason is there to require that, for the right to survive, the celebrity must have exploited it in his or her lifetime? We know that the reason usually given is that the celebrity's failure to exploit his name is taken as conclusive evidence that he had no interest in ever exploiting the values of celebrity. Yet, this is plainly wrong. As with any other property right, the celebrity should be free to control the timing of exploitation, including the decision to give his estate the first crack at exploitation. Will real property owned

by a land speculator go, on his death, into the public domain rather than to his estate just because he did not develop the land in his lifetime?

Does the exploitation requirement have any proper grounding in law or policy? Although the courts aren't saying so directly, I might note that there is more than just a flavor of unfair competition law in the exploitation rationale. Unfair competition and trademark law—unlike privacy and copyright law—require that a name or other symbol be exploited if it is to support enforceable rights. If the exploitation rationale is to have any force, this is its proper arena.

The exploitation rationale reflects a more general judicial reluctance to let publicity rights survive at all. Justice Mosk's very thoughtful concurrence in *Lugosi* captured the reason for this reluctance in three questions: "May the descendants of George Washington sue the Secretary of the Treasury for placing his likeness on the dollar bill? May the descendants of Abraham Lincoln obtain damages for the commercial ex-

PUBLICITY:

The New Property?

plotation of his name and likeness by the Lincoln National Life Insurance Company or the Lincoln Division of the Ford Motor Company? May the descendants of James and Dolly Madison recover for the commercialization of Dolly Madison confections?"¹³

The fear, though understandable, is entirely misplaced. As a practical matter, the names of very few celebrities, indeed, will continue to have commercial value a decade after their demise; indeed, in many situations, celebrity values will predecease the celebrity himself. But what of those few names that do have enduring value—like Washington, Lincoln, and Madison and—who knows—Presley and Lugosi? I believe the proper approach is to treat such names and likenesses as part of our cultural life (as we have already done for Washington, Lincoln, and Madison) and to carve out a privilege, analogous to copyright's fair use defense, that would allow their free use by all. Curtailing the right—rather than terminating it, or conditioning it on some such irrelevant factor as exploitation—seems to me the most sensible approach.¹⁴

Now let's look beyond the immediate survivability decisions to see what our crystal ball tells us about the shape the right of publicity will take over the next decade or two. Since we have no legislation dealing directly with the subject, and since, I think, we are not likely to get any, the answer must depend on always risky speculation about what courts will do.

Over the near term—and passing resolution of the survivability issue—I expect that the next generation of right of publicity cases will find live celebrities locked in contract disputes with their licensees over the scope and meaning of the rights licensed. We will also, I think, find

that decision on the right's governing rationale becomes increasingly important as these celebrities sue unlicensed infringers. For example, when Elroy Hirsch sues a downtown boutique selling stockings and tights for unauthorized use of the name "Crazylegs" under Civil Code §3344 (which provides, among other things, that "Any person who knowingly uses another's name . . . for purposes of advertising . . . goods or services . . . shall be liable for any damages sustained . . ."), we can and should expect the boutique to defend that § 3344 doesn't apply at all, that Hirsch's real action is one for unfair competition, and that his nickname has not acquired the requisite secondary meaning in the store's locale.

Similarly, when Hirsch sues for the unauthorized use of the motion picture recording his sideline run, we can, and should, expect the defense that he is really seeking to enforce a right equivalent to copyright, in the subject matter of copyright, and that his state claim is for this reason preempted under section 301 of the 1976 Copyright Act.

Looking, with somewhat greater trepidation, into the more distant future, I think that it is likely that for most, if not all, important purposes—including descendibility—publicity will, over time, come to be treated as a property right. This means that, in the context of business planning, it will become mortgageable. In the litigation context this means that the choice of law rules will, as in the *Marx Brothers* case, be property choice of law rules. Remedies will include injunctive relief, with both preliminary and permanent relief generally available, and monetary awards will include those traditionally given for property thefts—accounting for profits lost to the celebrity or gained by the infringer, or both. And, in the context of

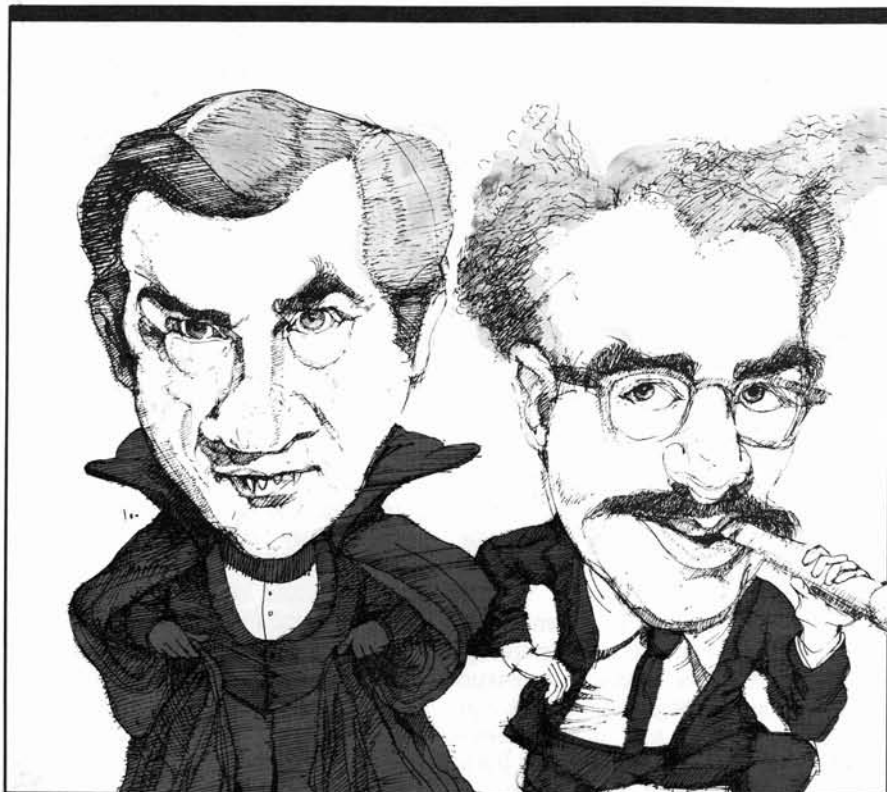
marital dissolution and estate planning, it will be appropriate to ask, Is it community property?

On what do I base this prediction? Doesn't the existing authority on the descendibility issue suggest that courts will split—some taking the property approach, others the personal injury approach? I think not, and let me give you my reasons for thinking not:

First, with the descendibility issue presently resolved, the next generation of questions is likely to involve living plaintiffs in contract disputes with their licensees and in infringement suits against unauthorized users. Both contexts, because they are preeminently commercial, will make it clear to the courts called on to resolve these issues that property rules are better calculated than more restricted doctrines like privacy to resolve the interests at stake.

The clash in these cases, as in all property cases—real property and intellectual property—will be between the need for incentives to private investment and the need for free public access. To be sure, some of these decisions will strike the balance for the side of free public access. The more important point, though, is that it will be a property interest, not a personal, reputational interest, that is on the other side of the balance.

Second, all of the analogical bases for the right of publicity—with the exception of the pure, personal right of privacy—are grounded in property concepts. The common law and statutory copyright grounds have a clear property basis. And so, for that matter, does unfair competition which, in its dilution and endorsement aspects, effectively represents a right valid as against the world, rather than a limited right as against passing off. In its trademark manifestation it is even more clearly a property right.



Summary

Where did the right of publicity come from?

Clearly it came in substantial part from the effort to accommodate the statutory and common law right of privacy to the economic interests of celebrities. Yet privacy is not the right's only source. As we have seen, unfair competition and trademark law represent a thriving and fertile source, as do common law and statutory copyright.

Where is the right of publicity now? Right now, as we have seen, it is in the process of being sorted out, with primary attention focused on the issue of descendibility, and with the decisions shuttling between this country's three entertainment capitals—Los Angeles, New York City, and Tennessee.

Where is the right of publicity going?

Over the short term, it will continue to go through a sorting-out process. But, with attention shifted from the *post mortem* context to lifetime transactions, courts will in this context be forced to confront the central and consequential question: what is the right's governing rationale?

It will be important to attend closely to their answers. Will courts parcel out the right to its common law pigeonholes—privacy, unfair competition, copyright? Or will they construct a true and separate right of publicity, pieced together, a bit here and a bit there from common law doctrine?

Although the route to be taken is by no means clear, one thing seems certain: the right *will* move in the direction of property, and we would do well to plan accordingly.

Footnotes

1. See, e.g., *Factors Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215 (2d Cir. 1978) (Elvis Presley); *Groucho Marx Productions, Inc. v. Day and Night Co., Inc.*, 689 F.2d 317 (2d Cir. 1982); *Hicks v. Casablanca Records*, 464 F. Supp. 426 (S.D.N.Y. 1978) (Agatha Christie); *Lugosi v. Universal Pictures*, 160 Cal. Rptr. 323, 603 P.2d 425 (1979); *Martin Luther King, Jr. Center for Social Change, Inc. v. American Heritage Products, Inc.*, 508 F. Supp. 854 (N.D. Ga. 1981).
2. 202 F.2d 866 (2d Cir. 1953).
3. 90 Wis. 2d 379 (1979).
4. 47 Ohio St. 2d 224, 351 N.E. 2d 454 (1976).
5. 433 U.S. 562, 573 (1977).
6. Kalven, *Privacy in Tort Law—Were Warren and Brandeis Wrong?* 31 LAW & CONTEMP. PROBS. 326, 333 (1966).
7. *Lugosi v. Universal Pictures*, 160 Cal. Rptr. 323, 603 P.2d 425.
8. *Factors Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215.
9. *Memphis Development Foundation v. Factors Etc., Inc.*, 616 F.2d 956.
10. *Factors Etc., Inc. v. Pro Arts, Inc.*, 652 F.2d 278.
11. 7 Med. L. Rptr. 2204.
12. *Groucho Marx Productions, Inc. v. Day and Night Co., Inc.*, 689 F.2d 317 (1982).
13. 160 Cal. Rptr. 331, 603 P.2d 433.
14. See *Factors Etc., Inc. v. Pro Arts, Inc.*, 652 F.2d 278, 387-388 (1981) (Mansfield, J., dissenting).

This article is the text of a luncheon address delivered at the California Continuing Education of the Bar, First Annual Competitive Business Practices Institute, in San Francisco and Beverly Hills, 22 and 29 October 1982. I am grateful to my colleague, Marc Franklin, for his helpful comments on an earlier draft of this talk.

Professor Goldstein joined the faculty of Stanford Law School in 1975 after eight years on the law faculty of the State University of New York at Buffalo. He is a graduate of Brandeis (AB) and Columbia (LLB) universities. His publications dealing with intellectual property include several law review articles and the casebook Copyright, Patent, Trademark and Related State Doctrines (2d ed., Foundation Press, 1981). □

Computer Matching: A Potent New Government Weapon Against

FRAUD & WASTE

By Thomas F. McBride

The Long Term Computer Matching Project, sponsored by the President's Council on Integrity and Efficiency, was established to promote the use of computer matching and related applications of modern information technology to help prevent and detect fraud and overpayments in government programs.

That fraud and overpayments exist and amount to billions of dollars in losses to the government every year is beyond dispute. The General Accounting Office estimated overpayments from five major benefit programs amounted to \$867 million in fiscal year 1979—\$639 million in federal funds and \$228 million in state funds.¹ By 1982, they estimated that, without corrective action, federal expenditures, because of overpayments in these five programs, would exceed \$1 billion.

It is also apparent that the public increasingly has gained the perception that cheaters are successfully exploiting the nation's taxpayers and that management countermeasures have been insufficiently effective. This undermines not only support for the continuation of government programs, but also respect for the government itself. These are among the reasons the project was adopted and got under way.

There are 58 government benefit programs in which eligibility for participation depends on financial need as determined by an applicant's income and assets. In fiscal year 1980, federal and state expenditures for these programs amounted to \$102.6 billion.

In addition, there are the large insurance and entitlement programs,

such as Social Security and Unemployment Compensation, for which participation depends on such status factors as an individual's age, employment, and prior payments into insurance-type funds. Social Security retirement benefits will probably cost some \$150 billion this year, and it is estimated that state/federal costs for unemployment compensation may total some \$26 billion for FY 1982.

There are also other tremendous government expenditures involving such matters as highway construction, public works, and defense contracting. Audits and investigations have amply demonstrated that fraud and waste occur in all of them and that modern computer applications can be employed effectively to help contain costs, prevent fraud, and detect overpayments.

Before discussing the organization and activities of the Computer Matching Project, however, there is one concern that I wish to address: that is the apprehension that computer matching may lead to possible invasions of privacy and violations of individual rights.

Questions involving rights and privacy have been of concern to the Project from the beginning. In fact, the work plan for the Project's operational phase characterizes its overarching purpose as expanding the use of computer matching and related techniques "with effective safeguards to protect the rights and privacy of individuals."

What we are talking about is, in effect, drawing a balance. On the one hand, government managers must responsibly employ the most modern and effective means available to en-

sure that the taxpayers' money is not being wasted through fraud and error. On the other hand, safeguards must be maintained to make certain that privacy rights are protected.

We believe that as far as federal departments and agencies are concerned, the necessary safeguards to prevent abuses of modern computer technology that could violate individual rights or invade privacy are in place and are in compliance with the Federal Privacy Act of 1974 and with the Office of Management and Budget's Guidelines for Conducting Computer Matching Programs that are based on it. According to procedures that have been laid down, one of the salient privacy concerns often expressed—that computer matching will incrementally lead to the development of a national data base containing complete information on everyone, that can be freely accessed and used—is patently impossible.

The Guidelines specify that as soon as a match is performed, the file that was used must be returned to the agency that supplied it or must be destroyed. Lists of the matching items or "hits" have to be destroyed as soon as investigations have been conducted. Thus, no files accumulate.

In addition, there must be administrative, technical, and physical security safeguards for all files being matched in order to prevent unauthorized access. Files cannot be duplicated or disseminated within or outside the agency performing the match. They can be used or accessed only to match the files previously described and agreed to in writing.

Furthermore, files cannot be used to extract general information about

individuals that has nothing to do with the match being performed. Thus, fishing expeditions are precluded.

These safeguards, along with Congressional review and alert public interest groups, prevent misuse and abuse that could potentially result in harm to individual rights and privacy.

To put concerns about privacy and individual rights in further perspective, one must understand how computer matching actually occurs. If a person examines records to discover possible similarities, duplications, contradictions, or other related material, clearly he or she has to scan or search through the files. A computer programmed to do a match, however, simply picks out and prints only specific items that match. Nothing else emerges from the machine. In this respect, computers are much less intrusive with regard to individual privacy than are people.

It should also be recalled that computers do not make decisions. What the computer does is provide a list of apparently common or related items, which are no more than possible leads for investigation, follow-up, and verification. Computers do not and cannot automatically establish that fraud exists. They do not mechanically cut off benefits or payments.

Background

The first large-scale use of computer matching in the federal sector was Project Match, conducted in 1977 by the Department of Health, Education, and Welfare. The project, which grew out of matches of welfare-recipient and wage data going on at the state level, matched state welfare data with federal, military, and civilian employee records. The match found 3,071 individuals who had been overpaid. Another 2,168 people were identified as ineligible to receive benefits.

I was Inspector General at the Department of Agriculture at the

There is no good reason why taxpayers—those whose tax payments make humanitarian government programs possible—should be held to higher standards by the government than people who benefit from such payments.

time. Seeing the results of Project Match, I began to look at my own department to see where these techniques could be applied. The Food Stamp Program, which in 1978 paid over \$5 billion in benefits (now over \$10 billion) with recipient income as the primary basis for benefit eligibility, was the obvious choice.

We decided to concentrate on specific geographic areas and to rely on the wage data gathered by the unemployment insurance program. The "hits" we found were then compared with other income-based programs to see if overpayments had also occurred in them.

This technique proved its worth everywhere it was applied. In Memphis and Nashville, Tennessee, for example, over 1,600 cases of underreported income in the Food Stamp Program were found through computer matching. Of these cases, 667 were also participating in the Aid to Families with Dependent Children (AFDC) program and 735 in the Medicaid program; 95 were receiving Supplemental Security Income, and 144 were receiving housing assistance. The losses from these programs for the verified cases were over \$3 million. More than 1,200 cases had benefits terminated or reduced, with monthly savings for the Food Stamp Program of over \$80,000. There have been over 400 indictments to date. It was estimated that there was a \$1 return for every 5 cents spent on this matching project.

Matching techniques are valuable not only in welfare programs, but also in other programs. In 1978, we matched emergency loans of the Farmers' Home Administration during 1977 with disaster loan records of the Small Business Administration. We found 123 excess duplicate

loans amounting to \$2.3 million. By the end of 1981, over \$1.25 million had been recovered. The match cost only \$50,000.

It was about this time that I became Inspector General for the Department of Labor, where matching had been done at the state level since the early 1970s to verify eligibility for unemployment benefits.

There are 41 states that collect wage data quarterly by either the state-administered unemployment insurance program or the state tax department, and a 42nd (Minnesota) will begin collecting this information in 1984. This data is compared with information on recipients of AFDC, general state assistance, Food Stamps, and Medicaid, as well as other social service programs.

In Illinois, the comparison with the AFDC files has yielded over \$12 million in monthly grant dollar savings since 1975. Expected savings in New York from wage matching, including the unemployment insurance program, is over \$114 million from 1979 to 1983.

Costs for the Wage Reporting System and the matching program (including development costs) are expected to be \$28 million over the same time period.

It was becoming more and more apparent that computer matching was a quick, efficient, and highly effective means of detecting fraud and overpayments. In addition, the privacy concerns voiced by many at the onset of Project Match did not materialize. These results, along with the need to demonstrate vigorous action to protect the integrity of benefit programs, were the impetus for the Long Term Computer Matching Project of the President's Council on Integrity and Efficiency.

But we must also be alert and sensitive to the possible dangers of going too far, making sure that an appropriate balance with privacy concerns is struck.

The Matching Project

Approved in September 1981, the Long Term Computer Project, chaired by the Inspectors General of the Departments of Health and Human Services (HHS) and Labor, sought to encourage and facilitate computer matching.

The Project does not run computer matches per se. The Project works on gathering and sharing information on computer matching and removing obstacles to the use of these techniques. It was clear that little information flowed concerning the use of matching technology and the results among federal agencies, among the states, and between state and federal levels. It was also reported that the wider use of matching was inhibited by a broad array of legal, administrative, technical, and coordination difficulties.

To accomplish this work of gathering and sharing information and removing obstacles effectively, the Inspectors General brought federal and state program administrators into the Project early. Fifteen states and the District of Columbia, with a total of 26 representatives, sit on the Project's four working groups. There are 65 federal representatives.

The Project began by first surveying federal and state agencies to see what they had done in computer matching. A great deal was going on. We needed to make this information widely available to program administrators, not just to those directly working on the Project.

The Project publishes a quarterly newsletter on computer activities. The newsletter highlights significant federal and state matches and related activities, unique techniques and approaches, and problems that should be considered in conducting a

match. It goes to over 800 federal and state agencies and officials, and to interested citizens as well.

Through the federal and state representatives, an extensive network of contacts for computer matching and related activities has been built and is still growing. It is through this network and the newsletter that the Project has been able to serve as a broker. People interested in doing a particular type of match are put in contact with others who have done it before. If someone has encountered a problem in doing a match, ideas for resolving it can often be found through the network. By simply putting people in contact with each other, ideas for matching projects and ways to perform matches more efficiently are generated.

The Project also sought to address the numerous obstacles and difficulties blocking greater computer matching activities, through four working groups, composed of the federal and state representatives. The groups were organized around major issue areas—legal and administrative issues, state/federal cooperation, technology and programming, and match opportunities. As Inspector General of the Department of Labor, I led the working groups on Legal and Administrative Problems and on State/Federal Cooperation.

Three issues taken up by the former group may be of particular interest:

Privacy safeguards. A team drawn from the working group of the Project participated with Office of Management and Budget representatives to revise the OMB's Guidelines for Conducting Computer Matching Programs, with particular attention to privacy concerns. A revised version of the Guidelines—considerably more simple and practical—was pub-

lished by the OMB and went into effect on May 11, 1982.

The new Guidelines reflect our commitment to maintain all the statutory requirements laid down in the Privacy Act of 1974. They require that the use of data be compatible with the purposes for which they were collected and that routine use notices be published in the *Federal Register*.

They also go beyond the Act's basic requirements in several significant provisions. For example, the new Guidelines provide for public notice that matching is being conducted. They also call for specific information regarding the plans and purposes of matches and written statements regarding the use, safeguarding, and disposition of files involved in matching efforts.

These new Guidelines derive from our insistence that the rights and privacy of individuals must be protected and that matching must take place openly with full public knowledge.

Access to Tax Information. Access by program managers to certain categories of tax information for anti-fraud purposes would contribute greatly to efforts to verify eligibility for needs-based benefit programs. However, the Tax Reform Act of 1976 and IRS interpretation of it have served to make virtually all categories of tax information unavailable for verification and anti-fraud efforts.

When access to tax data is suggested, concern is frequently expressed that IRS data includes a wealth of information about everyone in the United States and that it would be inappropriate and undesirable for such information to circulate freely throughout government. We strongly concur, and we are not advocating access to charitable, medical, or other deductions or payments.

Third-Party Information. A valid distinction can be made between information supplied by the individual taxpayer and financial information provided by such third parties as

employers, banks, insurance companies, and stockbrokers.

There is now adequate evidence that great savings would result if third-party information on assets and income were available and used to ensure program integrity. The results recently reported of the initiative of Massachusetts authorities in using data available from state banks and financial institutions under provisions of state law clearly indicate this. On the basis of experience thus far, Massachusetts officially estimates that state savings in the range of \$136 to \$306 million will be made in the AFDC program alone; projected savings, if implemented nationwide, could reach \$8.8 billion.

Availability of other categories of third-party information in possession of the IRS would undoubtedly further increase savings and curtail overpayments.

Failure to employ information that is available deprives us of basic and necessary safeguards against deliberate fraud. In our estimation, there is no good reason why taxpayers—those whose tax payments make humanitarian government programs possible—should be held to higher standards by the government than people who benefit from such payments. Taxpayers are well aware that their tax returns and information submitted by third parties on their behalf are subject to computer matching to make certain that they are complying with the tax laws. Why should beneficiaries of needs-based programs not be subject to the same sort of safeguards to ensure that they are complying with the laws that specify conditions of eligibility for participation in such programs?

If Congress has seen fit to amend the Tax Reform Act to permit release of taxpayer-supplied information to assist in collection of debts owing to the government and to permit locating absent parents for child-support purposes without undermining compliance, the third-party supplied information should be made

available to verify eligibility for benefit programs to save the large sums that are lost through fraud.

Summary

A basic issue running through the legal and administrative considerations I have raised is that of balancing the competing interests of privacy and individual rights on the one hand, and the legitimate government interests of eligibility verification and program integrity on the other. We must be sure that benefits are going to the right people, to those who are fully eligible to receive them. But we must also be alert and sensitive to the possible dangers of going too far, making sure that an appropriate balance with privacy concerns is struck.

Ultimately, the Congress must resolve any problems that may develop and specify both the degree to which data should be made available from tax authorities, Social Security, employers, banks, and financial institutions, and also the procedures and conditions under which such availability takes place. These are not decisions that should be left to program administrators and auditors.

It is urgent that Congress address the need for carefully drawn legislation that will properly balance privacy concerns against the need to obtain the data necessary to ensure program integrity and reduce fraud and waste. □

The above text (slightly abridged) is the prepared testimony presented by Dean McBride December 15 to the United States Senate's Committee on Governmental Affairs, Subcommittee on Oversight of Government Management.

McBride headed President Reagan's Computer Matching Project until his appointment, effective October 25, as the School's new Associate Dean for Administration (see page 24). On November 18, he defended the President's efforts against fraud and overpayment on "The MacNeil-Lehrer Report."

Computer Unearths 'Cadaver Caper'

The Social Security Administration recently stopped payments to 1,618 dead beneficiaries and recovered \$591,000 in erroneous payments, through a computer matching project involving 11 states and New York City. The project, which is now being extended throughout the country, is expected to save the Administration millions of dollars.

The match involves a comparison of Social Security records with city and state death certificates and with Veterans Administration computer files.

The overpayments uncovered were, for the most part, due to governmental inefficiency rather than fraud on the part of citizens. Survivors had usually reported the deaths. The checks that arrived thereafter were generally put aside rather than cashed.

The majority of deceased recipients had been dead for 15 to 20 months. But payments for one deceased woman continued for eight years. Her daughter returned 90 uncashed checks worth \$23,000 to the Social Security Administration.

This project is a good example of how computer matching can contribute to efficient operation of government programs," McBride comments. "In effect, the government was using matching to monitor itself more than the citizens."

"I'm also heartened," he added, "at what this exercise shows about the honesty of the average American."

Dean Ely would like to point out to those graduates who have asked what we are doing to collect delinquent student loans that Dean McBride will be heading up the effort. Deadbeats beware.

Graduates Return for Alumni/ae Weekend 1982



University President Donald Kennedy (right) and his wife, Jeanne (left), join Dean Ely, Cheryl (Mrs. L. N.) Duryea, and law alumni at the banquet Friday evening.



Associate Dean Keith Mann mingles with graduates.



Professor Emeritus Lowell Turrentine chats with John Cranston ('32) during the Alumni Dinner Dance.



Robert Carmody ('62) and friends meet again at their class reunion.

Over 450 Stanford Law graduates and their spouses returned to campus October 15-17 for Law Alumni Weekend. For many it was the first occasion to meet Dean John Hart Ely since he assumed leadership of the School last July.

Festivities began Friday evening with a banquet and dance at the Sharon Heights Country Club. Before the band struck its first notes, Dean Ely and University President Donald Kennedy gave a special welcome to members of the Half-

Century Club and to the Classes of 1937, 1942, 1947, 1957, 1962, 1967, 1972, and 1977.

On Saturday morning, the faculty presented a series of talks on topics ranging from public interest litigation on behalf of children, to law and economics, transnational law and nuclear arms control, and the moral responsibilities of lawyers.

Before zipping off to the Stanford-USC football game, alumni picnicked in Crocker Garden. You'd never suspect Stanford had lost from the high-spirited reunion celebrations

that evening in classmates' homes and nearby hotels.

The weekend concluded with a Sunday brunch where the Dean discussed his impressions of the School and the challenges facing his administration.

Plans are now under way for the 1983 Law Alumni Weekend and Reunions for the Classes of 1928, 1933, 1938, 1943, 1948, 1953, 1958, 1963, 1968, 1973, and 1978. Be sure to mark October 7-8 on your calendar. □



1977 classmates Tobin Rosen and Kathy Purcell confer.



William Murane ('57) participates in an impromptu discussion following faculty presentations.



Myrl Scott ('55) greets Jerome Muys ('57) and his wife, Barbara, in the Cooley Courtyard.



Dennis and Barbara Farrar were among the celebrants at the Class of 1962's Twentieth Reunion.

New Professorship Endowed by A. Calder Mackay

A Calder Mackay, a prominent Los Angeles tax attorney, named Stanford Law School as a major beneficiary in his will.

His bequest—the largest gift of its kind to the School—has made possible the creation of a newly endowed A. Calder Mackay Scholarship Fund as well as a professorship named in his honor.

Mackay, who died in 1981 at the age of 90, developed close ties to Stanford, first as a parent of Stanford students, and then as a volunteer and major donor.

Both his sons, John Calder Mackay (AB '42, JD '48) and Richard N. Mackay (AB '45, JD '49) graduated from Stanford, and his daughter, Leah, was married to a Stanford Law graduate, the late F. Lee Coulter (LLB '57).

"We are delighted and grateful to be the beneficiaries of Mr. Mackay's generous bequest," said Dean John Hart Ely of the Law School.

"The new A. Calder Mackay Professorship endowed through his gift will help us attract and hold outstanding faculty members. And the endowment income designated for Mackay Scholarships will help make a Stanford legal education available to talented students of limited means," Dean Ely said.

Mackay was born in 1891 on a farm in Granger, Utah. He received his bachelor of arts degree from the University of Utah in 1915 and his law degree from George Washington University in 1917.

Following a tour of duty with the Army in World War I, Mackay served as secretary of the Italian



A. Calder Mackay

War Damages Board of the American Peace Commission. In 1919 he returned to Utah and began the general practice of law.

Three years later, he was named special attorney to the Bureau of Internal Revenue in Washington, DC, where he successfully litigated many major issues raised by the Commissioner. He was selected to represent the IRS Commissioner in the first case tried before the Board of Tax Appeals, now known as the United States Tax Court.

Mackay entered private practice in 1926, specializing in the field of taxation, and was a founding member of the Los Angeles law firm of Mackay, McGregor, Bennion & Higson.

He contributed to the growth of many business organizations, notably Don Baxter, Inc., the company that pioneered the commercial preparation of intravenous solutions, and Pharmaseal, a leader in the field of disposable health care products. After these two companies merged with the American Hospital Supply Corporation, Mackay served on the American board of directors, until becoming, at the age of 76, an honorary director for life.

Before retirement he also served on the board of Pendleton Tool Industries, Inc., and Pacific Employers Insurance Company.

Mackay was president and director of the Donald E. Baxter Foundation for fifteen years, during which the Foundation presented the Stanford University Medical Center with endowments for the Donald E. Baxter Professorship in Pharmacology and the Donald E. Baxter Laboratories for the Study of Cardiovascular Diseases.

Mackay was also a donor to the Hoover Institution. In 1957 he was named a Stanford Associate, in recognition of his continuing service and generosity to the University.

Mackay's large bequest to Stanford was motivated by "appreciation of Stanford's commitment to excellence in education and of the education Stanford provided his sons and grandchildren," according to his son Richard N. Mackay.

Richard is now a partner in Mackay, McGregor, Bennion & Higson, the Los Angeles firm his father helped found. He has also become a director of American Hospital Supply Corporation and president of the Donald E. Baxter Foundation.

John Calder Mackay, A. Calder Mackay's elder son, is a noted real estate developer, who founded Mackay Homes in 1950.

Their sister, Leah Mackay Coulter, lost her husband in a 1979 airline crash and lives in Los Angeles.

Three of A. Calder Mackay's nine grandchildren—Calder Mead Mackay, Sally Ann Coulter, and Nancy Louise Coulter—earned their bachelor's degrees at Stanford. □

Robert Paradise ('29) Gives Fund for Professorship in Natural Resources

Robert E. Paradise and his wife, Ione, have endowed a new chair at the School, titled the Robert E. Paradise Professorship in Natural Resources Law.

Mr. Paradise, who is now 75 years old, retired in 1974 and lives in Arcadia, near Los Angeles. A portion of his gift was made in the form of an annuity trust.

The first holder of the new Paradise chair is Professor Howard R. Williams, a well-known authority on natural resources law who has taught at Stanford since 1963.

"The Paradise chair will help ensure Stanford's continued leadership in a legal field that vitally affects the future of the West and the nation," Dean Ely said. "And the chair will always be more distinguished for having as its first holder a scholar of unsurpassed strength, respect, and influence in the field."

Mr. Paradise has been an active supporter of Stanford for many years, and a member of the Law School Board of Visitors from 1972 to 1975.

He earned his undergraduate (AB '27) as well as law (JD '29) degrees at Stanford, graduating with great distinction. He was elected to both Phi Beta Kappa and the Order of the Coif.

"I feel enormously indebted to the Law School for giving me my first mature sense of intellectual identity," Mr. Paradise said recently, as well as for "the benefit of Stanford's mental discipline and standard of excellence."

He originally provided for the Professorship in his will, he explained, but "altered that plan when I realized that the pleasure I receive from a present gift greatly outweighs the satisfaction I might expect to experience at the exact moment my testamentary gift would have become effective."

Mr. Paradise is currently a co-owner of Anacapa Oil Corporation, which is active in producing gas in the Sacramento Valley. For eight years before his formal retirement in



Robert and Ione Paradise



Professor Williams

1974, he was general counsel of the Ralph M. Parsons Company, an international engineering and construction firm.

A specialist in oil and gas law, he also served, from 1937 to 1944, as assistant general counsel with Richfield Oil Corporation, predecessor to ARCO. Paradise was previously (1929-37) with the law firm of Gibson, Dunn & Crutcher in Los Angeles. He returned to private practice in 1944 as a partner in Krystal & Paradise.

Mrs. Paradise, who graduated from UCLA, has been a leader in the American Association of University Women for many years, and served

as president of the AAUW California Division from 1968 to 1970.

The Paradises have two daughters, Lisa (Mrs. Gus Van Der Stad) and Carol (Mrs. Leo C. Black).

Professor Williams, the new Paradise Professor in Natural Resources, frequently serves as a consultant to governmental agencies and law firms. He was a member of the California Law Revision Commission from 1971 to 1979, including four years as vice-chairman and the final year as chairman. He has also been a trustee of the Rocky Mountain Mineral Law Foundation for the past fifteen years.

Professor Williams was named in 1967 as the first holder of another endowed chair, the Stella W. and Ira S. Lillick Professorship in Law, and remains Lillick Professor emeritus. He became an emeritus professor upon his official retirement last year, but was promptly recalled to teach his specialty of oil and gas law.

Williams was born in Indiana and educated in Missouri, earning his bachelor's degree at Washington University in St. Louis. He studied law at Columbia University in New York, where he was a member of the law review. During World War II, he saw active duty as a member of the Army field artillery.

Williams joined the law faculty of the University of Texas in 1946, serving for a time as acting dean. He was named to the Columbia Law School faculty in 1951 and held its Dwight Professorship from 1959 until his departure for Stanford in 1963.

Williams has written several books, including the definitive *Oil and Gas Law* (with Charles J. Meyers), an eight-volume work with annual supplements and an abridged edition. Among his other works are the *Manual of Oil and Gas Terms* (also with Meyers), which has had five editions. Williams has also published in the areas of property, trusts, wills, and estates.

He and his wife, the former Virginia Merle Thompson, were married in 1942 and have a son. □

School Names New Deans for Administration and Student Affairs



The full complement of deans (left to right): Diaz, Smith, Ely, Mann, and McBride.

Two vital appointments by Dean Ely last fall have restored the School to full strength on the administrative dean level.

The new appointees are Thomas F. McBride, associate dean for administration, and Margo D. Smith, assistant dean for student affairs.

Vacancies in these posts both occurred in June, within days of Dean Ely's arrival from his previous position at Harvard. First there was the unexpected and much-mourned death, June 3, of Joseph Leininger, associate dean for administration since 1970. Second was the celebrated elevation, June 11, of LaDoris Cordell, then assistant dean for student affairs, to the Santa Clara Municipal Court bench.

Deans McBride and Smith join two incumbents: J. Keith Mann, associate dean for academic affairs, and Victoria S. Diaz, assistant dean for development and alumni/ae relations.

"In Keith, Tom, Vicky, and Margo, we have a set of deans (pride of deans?) of truly remarkable strength," Dean Ely wrote in a memo to faculty and staff, adding with wry relief that "I will at long last be able to become the figurehead I have aspired to be."

The new deans are introduced below:

Thomas F. McBride, the School's associate dean for administration since October 25, has a distinguished record of public service, most recently as inspector general of the U.S. Department of Labor.

"McBride's ability and integrity have been praised by virtually everyone he's worked with," Dean Ely said in announcing the appointment. President Reagan personally cited McBride last March as one of the three outstanding managers in government (in a talk to the National Association of Manufacturers).

In addition to his Labor Department duties, McBride headed the President's Computer Matching Project, a key element in the Administration's antifraud program. [An article

about the project—based on McBride's testimony December 15 before a Congressional committee—appears on pages 16-19.]

From 1973 to 1975, McBride was associate Watergate special prosecutor, heading the campaign-contributions task force. This resulted in prosecution of more than thirty individuals and twenty major corporations.

He was earlier with the Peace Corps (1965-68), as director in Panama and as deputy director of the Latin America region.

McBride has also served as director of the Bureau of Enforcement of the Civil Aeronautics Board (1975-77) and inspector general of the U.S. Department of Agriculture (1977-81).

"There's a time when any of us should leave government," he said soon after his arrival at Stanford. "For me, that time had come."

"I wanted to get into a university setting but not jump from one bureaucracy to another. Stanford Law School impresses me as being not only unbureaucratic but even mildly anti-bureaucratic. I suspect this is due to its relatively small size, innovative attitudes, and the good sense of the Dean, faculty, and staff."

Associate Dean McBride plans two major "special initiatives" during his first months at Stanford: "Participating in

the review of student aid programs and the larger problem of financing an increasingly expensive legal education; and working closely with the faculty and staff figuring out how we can use word processing and computers to do more work and do it more efficiently."

Born in Elgin, Illinois, McBride, 53, attended the University of Iowa and then graduated from New York University with a BA in English. He earned his law degree (LLB, 1956) at Columbia University while working summers as a seagoing purser and nights as a cargo checker on the West Side piers of Manhattan.

After completing law school, McBride served in the rackets bureau of the district attorney's office in New York County, and, during the Kennedy Administration, as a trial lawyer in the Organized Crime Section of the Justice Department. He also worked (in 1969) as deputy chief counsel for the House Select Committee on Crime.

Dean McBride has been a member of the adjunct faculty of George Washington University, where he taught courses on criminal justice management and public administration reform.

His publications include six *Inspector General Reports to the Congress* and *Team Policing* (Police Foundation, 1972), which he coauthored.

His wife, Catherine H. Milton, is author of *Women in Policing*, *Police Use of Fatal Force*, and *Little Sisters and the Law*, as well as coauthor of *History of the American Negro*.

How does Dean McBride feel about his move to Stanford? "Very pleased indeed."

Margo D. Smith, a 1975 graduate of the School, returned December 1 as assistant dean for student affairs.

At the time of her appointment, Mrs. Smith was a trial lawyer with the U.S. Attorney's Office in San Jose. She was previously deputy district attorney with the Santa Clara County District Attorney's Office, also in San Jose.

"I am convinced," Dean Ely said in his announcement to the School, "that Margo will be able to work very effectively with all our students and student organizations. In addition, she will be unusually effective in our continuing effort to attract qualified minority students to Stanford."

Formerly Margo Dianne Richmond, Mrs. Smith was born and raised in Rossford, a small town near Toledo, Ohio. She attended San Jose State University, earning a BS in microbiology and premedical studies, and worked as a medical technologist for three years before entering law school.

"Deep inside I always wanted to be a lawyer,"

she said in a recent interview. "But it was a while before I realized that it was okay for me to become one."

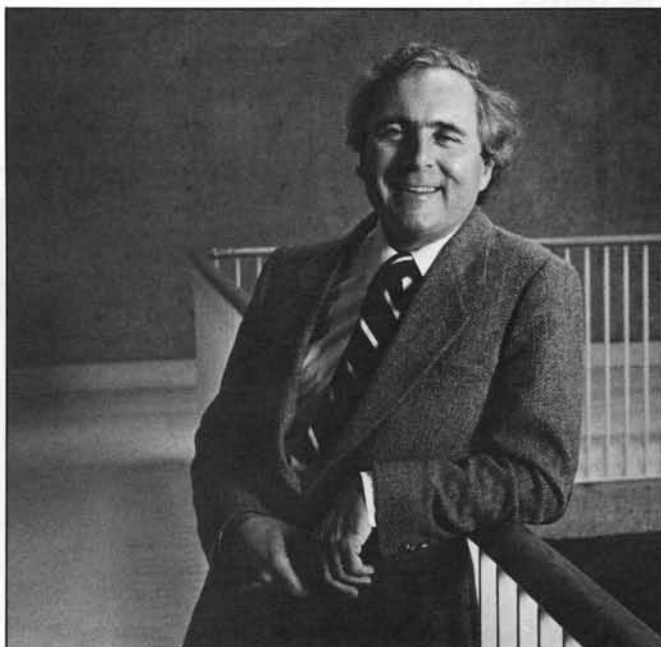
Her primary focus at Stanford, she says, "is to guide and counsel students and to attract new students to the School. Stanford offers minority students the same advantages it offers all students—absolutely topnotch legal training and prestige."

Smith, Dean for Student Affairs



Dean Smith is married to Ezekiel L. Smith, a Stanford Business School graduate, who is Stanford manager of telecommunications. "We're a Stanford family," she observed, "and very happy about it." □

McBride, Dean for Administration



Leading Finance Theorist Recruited with B School

Stanford Business School has joined with the Law School to make Stanford's first Business/Law appointment: Myron Scholes, MBA, PhD, who became a Stanford professor of finance and law on January 1.

A leading financial theorist, Professor Scholes, 41, was previously with the University of Chicago's Graduate School of Business as Edward Eagle Brown Professor of Banking and Finance. He has also directed Chicago's Center for Research in Security Prices.



Professor Scholes

"We are always delighted to steal someone from Chicago," Dean John Ely recently said, "especially someone as distinguished as Myron Scholes. He will add real strength to our Law and Business Program and be a valuable resource for our corporate law and other teachers."

Professor Scholes was the prime mover in developing the finance teaching program at Massachusetts Institute of Technology, regarded as one of the most demanding programs in the Sloan School.

His research interests have recently expanded from finance theory to include interactions between business and law, particularly in the securities and tax areas. (Scholes's knowledge of the tax code is legendary.)

Professor Scholes was at Stanford during the school year 1981/82 as a GSB distinguished visiting professor of research. He became involved in a number of ongoing investigations with Stanford faculty at the Law School, Center for Advanced Study in the Behavioral Sciences, Hoover Institution, and Computer Science Department.

He and Law Professor Kenneth Scott are currently looking at such problems as how to determine damages in suits where a company has failed to make disclosure. They are also interested in the uses of theories and models to measure the consequences of changes in corporation and securities laws.

Born on July 1, 1941, in Timmins, Ontario, Scholes did his undergraduate work at McMaster University, graduating in 1959. His MBA and doctorate were earned at the University of Chicago in 1964 and 1969, respectively.

Scholes's major publications include: "The Pricing of Options and Corporate Liabilities" (coauthored with Fischer Black) in the *Journal of Political Economy*; "Dividends and Taxes: Some Empirical Results" (with Merton Miller), also in the *JPE*; "A Simulation of the Returns and Risk of Alternative Put Option Investment Strategies" (with Robert Merton and Matthew Gladstein), in the *Journal of Business*; and "Dividends and Taxes" (with Merton Miller), in the *Journal of Financial Economics*.

Professor Scholes plans to take up residence at Stanford this summer. □

Welcome, Dean Smith

The arrival of Margo Smith as assistant dean for student affairs was celebrated December 9 with a reception at the Faculty Club.

Sponsored by Stanford Women Lawyers, the event attracted a lively mix of people from both the School (deans, faculty, staff, and students) and the community (Dean Smith's husband and family, former classmates, colleagues, and interested law graduates).

Dean Smith is joined here by Keith Mann, associate dean for academic affairs. □



Margo Smith and Keith Mann

Fa-la-la-la-la

A surprising wealth of musical talent was revealed at the annual Law School holiday party December 22.

Placement Director Gloria Pyszka and two former staff members—Peg Dickson Gitelson and Betsy Scroggs—sang several medieval and modern carols, artfully accompanied on piano by Associate Dean Thomas McBride, with descants by Dean John Ely on flute.

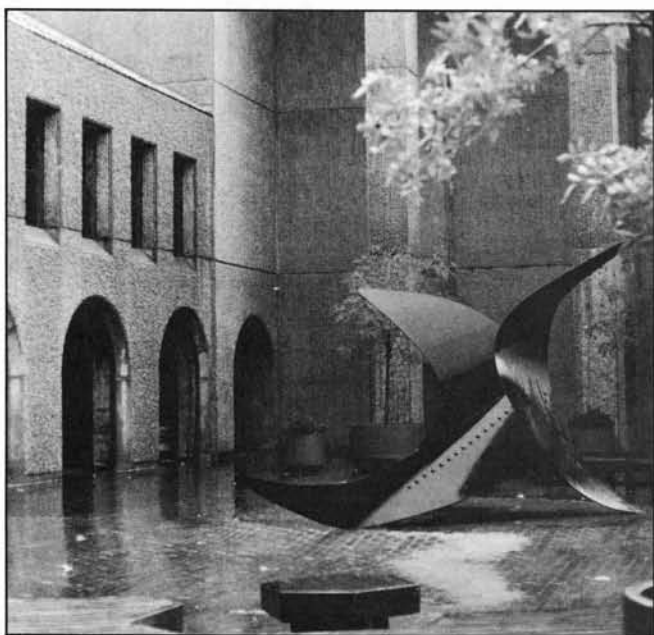
Distant sleighbells brought a hush of anticipation. Santa Claus—with a voice uncannily like that of Professor John Kaplan—ap-



peared at the head of the main staircase, descending to join a cluster of children waiting below.

A round of familiar carols followed. Outside, dusk fell, along with a major blackout that doused lights all over the Bay Area. Happily unaware in the candlelit lobby, we raised our voices in joyous song. All was calm, all was bright. □

Foul-Weather Friend



Calder's *Le Faucon* reigned in solitary grandeur over the Crown Quad courtyard, during record-breaking rains that drenched the Bay Area for the second year running. [Photo by Michael Powlen, Class of 1984.] □

Niles '83 Debates Russians

Third-year student Margaret Niles recently returned from the Soviet Union, where she and two other American students participated in debates at eight universities and institutes in six cities.

The debate subject was "War and Peace in the Systems of Values of the Soviet and American Societies." Each member of the two teams gave a 10-minute speech, followed by at least 30 minutes of vigorous questioning directed primarily at the Americans.

"I found myself getting very evangelistic about our system," Niles says.

"The United States is certainly not perfect, but at least we are free to talk about that fact and try to change it."



Margaret Niles

Niles and her teammates—a Slavic studies graduate student and a business student—debated entirely in Russian, which Niles learned at Harvard (BA '77) and honed during seven months as a guide at a 1978/79 U.S. exhibit in Moscow, Kishinev, and Rostov-na-Donu.

"The Soviets were surprised when each member of our team freely admitted not voting for Reagan in 1980," she reports. "In their society, 'political dissidents' would hardly be chosen to represent their country abroad! Soviets have a hard time understanding why we think our freedoms of expression and opportunity are so important.

"The Soviet press depicts the U.S. very negatively," Niles adds. "It was a challenge to set the record straight by filling in missing information or providing different perspectives."

Niles, 27, is associate managing editor of the *Law Review* and president of the International Law Society at Stanford. After graduation, she will clerk for Judge Eugene Wright of the Ninth Circuit Court of Appeals in Seattle, where she plans to settle.

"Who knows?" she says. "Someday trade may pick up with Vladivostok."

[A report on the Soviet-American debates was broadcast March 21, on the PBS "Frontline" series.—Ed.] □

Job Hunting? Recruiting?

You can get help from the School's Office of Law Placement.

The Office compiles and mails a listing of openings every two-to-three weeks free of charge to SLS graduates. "We know that alumni have accepted positions listed in the publication," says Placement Director Gloria Pyszka.

Graduates interested in receiving the listing should write or call the Placement Office. The telephone: (415) 497-3924.

Mrs. Pyszka urges potential employers among the alumni to inform the Placement Office of openings, providing job descriptions, qualifications sought, and name and address of the contact—or, if preferred, a post office box. Job seekers should apply directly; the Placement Office does not collect and forward resumes.

Each job seeker is, however, encouraged to send the Placement Office a resume, with a description of position sought and geographic preference.

"Even though staff time limitations prevent us from active searches on behalf of alumni," Mrs. Pyszka explains, "we are happy to put applicant and employer together if we hear of something promising." □



New Smith and Friedenrich Scholars Thank Donors

Mrs. Audrey Smith (*above, center*) joined Dean Ely and Assistant Dean Victoria Diaz for the annual luncheon with recipients of Samuel Morton and Audrey Spence Smith Scholarships. This year's Smith Scholars are third-year law students Stephen Easton and Eva Carney.

A similar event (*below*) was held November 30 for Mrs. Edith Friedenrich, her son John ('61), Jonathan Greenfield ('71), and other law associates of Mrs. Friedenrich's late husband, David ('28). Dean Ely and the current David Friedenrich Memorial Scholar, Martha Sanchez ('83), were among those present to express appreciation for gifts to the endowed fund.

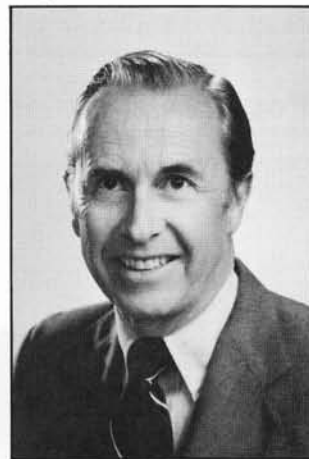
Scholarship donors are frequent and welcome guests of the School. □



SU Honors O'Connor and Stephens

John J. O'Connor III and George E. Stephens, Jr., both received Stanford Associates Awards in 1982 for exemplary continuing volunteer service to the University.

Another lawyer known to many readers, Max G. Kolliner (AB '31), was also among the nineteen individuals so honored last year. Mr. Kolliner, who earned his law degree at Harvard in 1934, is of counsel to Myers & D'Angelo of Los Angeles.



John O'Connor ('53)

O'Connor is a double Stanford graduate (AB '51, LLB '53) and past president (1980 and 1981) of the Law Fund. He was cited in the award "for giving energetically and generously of time, leadership and ideas to Stanford University for two decades, for providing vital support to the Law School for a decade, and for being the Law School's 'Man in Arizona.'"

This is the second time O'Connor has been singled out for his volunteer service to Stanford. In 1976 he was awarded a Certificate of Outstanding Achievement by the Stanford Associates. He also served on the Law School Board of Visitors from 1976 to 1979.

O'Connor is presently a partner with the firm of Miller & Chevalier in Washington, DC.



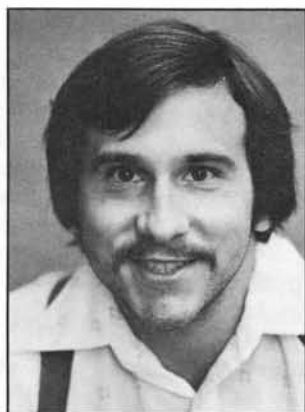
George Stephens ('62)

George Stephens's contributions are also measured in decades, including, in the words of his award citation, "serving as area vice-president, Law Quad program, for both Northern and Southern California simultaneously."

Stephens is a partner in Paul, Hastings, Janofsky & Walker, of Los Angeles, and specializes in probate and trust law and estate planning.

The Stanford Associates Award is given to individuals whose efforts on behalf of the University show "a quality of caring and an uncommon gift of self, time, and energy." □

Sternick '83 Wins Prinzmetal Award



Mike Sternick

Michael J. Sternick, a third-year law student, won the 1981/82 Prinzmetal Award of the Beverly Hills Bar Association. His winning paper, prepared for Professor Howard Williams's Oil and Gas course, was titled "The Effects of Revenue Ruling 77-176 upon Oil and Gas Farm-out Arrangements."

Sternick and a second winner (Jeffrey Epstein of Whittier College) were presented with their awards January 20 at a ceremony in Los Angeles. In addition to receiving a cash prize, each will see his paper published in the Beverly Hills Bar Association journal.

The Prinzmetal competition is open to all students attending an accredited law school in California.

Sternick is warmly appreciative of Professor Williams, whom he describes as "a really great guy."

Sternick graduated from Lehigh University,

Pennsylvania, in 1980, with BS degrees in both accounting and finance. His career interest is tax law, which he plans to pursue as an associate (beginning in June) of Pendleton & Sabian, a Denver law firm.

For the moment, however, he is enjoying life as a resident assistant of the Delta Tau Delta

fraternity (recently cited in *Newsweek* magazine for its "seemingly endless parties").

Sternick's Stanford studies have been supported in part through the Stella W. and Ira S. Lillick Scholarship Fund and the Eleanor and C. Fenton Nichols Law Scholarship Fund. □

Stanford Beats Cal! Big Deal for Law Review



A stellar performance by winning pitcher Steve Easton and towering home runs by Paul Cassell and Mike Klarman led the Stanford Law Review to a crushing 15-6 victory over the California Law Review in the first annual "Big Deal" softball game, November 20.

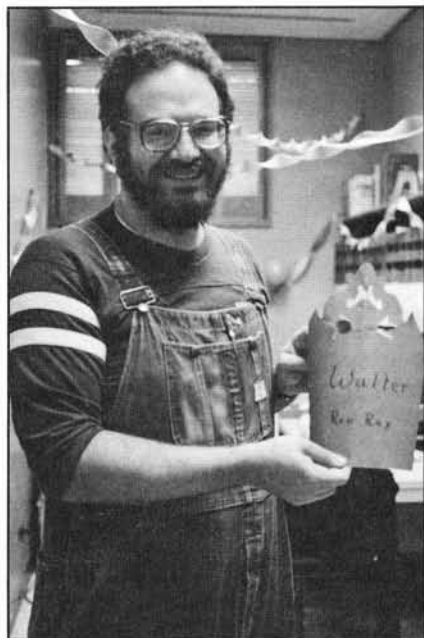
The Stanford squad used its superior athletic ability, good looks, higher LSATs, and greater earning potential to bounce back from early problems, including a 1-0 California lead and faulty directions concerning the location of Underhill Field.

The turning point of the game was a crisp Tony Richardson to Barb Gaal to Geoff Berman double play that thwarted a potentially dangerous Cal rally in the third inning. Mike Zigler stopped two other Berkeley threats with amazing shoestring catches in left field.

"Nobody could stop us today, not even the officials. As a matter of fact, the officiating was excellent, unlike that in another game," noted Easton in an obvious reference to "Mr. Touchdown" and his disgusting zebra-suit comrades from the 1982 football Big Game.

Although the Stan. L. Rev. squad was invited to the prestigious "Hall of Shame" softball bowl game, the invitation was refused out of sympathy for the cheated football team. "It's a package deal," said Easton. "There's no way they're going to get Steve Easton unless they agree to take John Elway, too."

[Reprinted from the Stanford Law Journal (student newspaper), December 3, 1982.] □



Surprise!

Members of the Law Review surprised editor Walter Kamiat with a birthday celebration, affectionately dubbing him "Rev Rex." □

Faculty Notes

William F. Baxter, Wm. Benjamin Scott and Luna M. Scott Professor of Law, described his activities as President Reagan's antitrust chief to Stanford law students during an October visit to the campus. His appearance was sponsored by the student-run Stanford Law Forum. Professor Baxter is currently serving in Washington as U.S. Assistant Attorney General.

Professor **Mauro Cappelletti** began a two-year term January 1 as president of the UNESCO-sponsored International Association of Legal Science. He is also serving as chairman of the Law Department of the European University Institute, a graduate research center operated by the member states of the European Economic Community. A native of Italy, Professor Cappelletti divides his time between Stanford's Palo Alto and Florence campuses, teaching comparative law and conducting research.

He is currently directing a major international project, cosponsored by the EEC and the Ford Foundation, on "Prospects for European Legal Integration in Light of the American Federal Experience." The four-year study (1980-84) involves twenty teams of European and American scholars working in tandem. Stanford Law participants, in addition to Cappelletti, include Professors **Lawrence M. Friedman** and **Thomas C. Heller**. Several Stanford law graduates and students have also been involved, including Bryant Garth ('75), David Golay ('77), Gwendolyn Griffith ('81), Robert Helm ('82), Betty Meshack ('82), and Robert Wise ('84).

Professor **Robert C. Ellickson** travelled to Charlottesville, Virginia, last June to speak at the Conference on Teaching Property sponsored by the Association of American Law Schools.

Jack H. Friedenthal, George E. Osborne Professor of Law, is serving as special master in a case

New Editor Invites Suggestions

"I'm interested in hearing from graduates," says Constance Hellyer, the School's new Director of Publications. "This is your magazine, and we want it to be as useful and interesting to you as possible."

Connie replaces Cheryl Ritchie, who resigned last fall, after eight years with the School, to spend more time with her growing family.

Connie studied European civilization at Mills College, earning a Phi Beta Kappa key in her junior year. After graduation, she moved East, spending eight years in New York publishing, first as a researcher/reporter at *Newsweek* magazine and then as editorial researcher to several authors, including Theodore H. White (for *The Making of the President 1964*).

Connie has also had a busy freelance writing career, with articles in *History Today* (London), *Glamour*, the *Encyclopedia of Psychiatry*, *Social Science Information*, *Stanford Magazine*, and *Stanford MD*.

She comes to the Law School from the Northern California Cancer Program (a research consortium including Stanford), where she served as communications director. Connie was previously assistant director for publications in the Stanford Medical Center development office.

"It's a delight for me to work with people as verbally sophisticated as lawyers," she says. Readers with ideas and comments are encouraged to call Connie, at (415) 497-9301. □

Connie Hellyer



brought by former property owners on Guam, to collect fair compensation for land taken by the U.S. government following World War II. The case is being tried by Judge Robert F. Peckham ('45), the presiding judge of the U.S. District Court of Northern California.

Professor Friedenthal is Stanford University's representative to the National Collegiate Athletics Association (NCAA) and to the Pacific-10 Conference. He is also, for the fourth year, chairing the Law School Admissions Committee, in addition to teaching courses in civil procedure, evidence, and conflict of laws.

Professor **James Lowell Gibbs, Jr.**, is the proud parent of a new Rhodes Scholar: Geoffrey Gibbs, 21, a Harvard economics major. Gibbs *père*, a Stanford professor of anthropology, teaches the Botswana section of a Law School course, *Radically Different Cultures*.

In late summer, **Gerald Gunther**, William Nelson Cromwell Professor of Law, completed work on the 1982 supplement to his constitutional law casebooks and lectured on equal protection before an Idaho conference of appellate and trial judges from six western states. More recently, he agreed to serve on the advisory boards for two public television stations (KQED in San Francisco and WQED in Pittsburgh) planning documentary programs to commemorate the bicentennial of the Constitutional Convention of 1787.

Professor Gunther has also been named a member of the University's Program Committee for the newly established John S. Knight Professional Journalism Fellowship program. In addition, he served as a panelist at two sessions of the annual meeting of the Association of American Law Schools, discussing problems pertaining to the writing of judicial biography and to the constitutional amendment process.

Professor **Thomas C. Heller** is in Italy at Stanford's Florence campus and the European University Institute. His seminars deal with tax and monetary integration in the European community, as well as capital and labor flows between northern and southern Europe.

Professor Heller gave a presentation last November 20 at the University of California, San Diego, on "America's New Immigration Law," focusing on the relationship between the Administrative Procedure Act and the prospective enforcement of the pending amnesty or legalization program. This work, he explains, is part of "an effort to develop at Stanford an institute concerned with the economic relations between the United States and Mexico, with particular emphasis on the legal regulation of labor and capital flows in the western regions of both nations."

Professor and Law Librarian **J. Myron Jacobstein** represented the Library at a January meeting of the Law Committee of the Research Libraries Group, held in connection with the annual meeting, in Cincinnati, of the Association of American Law Schools.

A. Mitchell Polinsky, professor of law and associate professor of economics, was one of three economists selected to teach the first Advanced Economics Course for Law Professors on Tort Law and Products Liability, sponsored by Emory University's Law and Economics Center. The course was held at Dartmouth College last July. In October he attended a conference in Denver on "The Role of Economics in Legal Education," sponsored by the Association of American Law Schools and the Emory University Center. In December he lectured on product liability at UCLA's Law and Economics Seminar. His book, *An Introduction to Law and Economics*, was recently published by Little, Brown & Co.

Professor **Robert Rabin** has been named a University Fellow for 1972-74 by Stanford President Kennedy. The honor, which is given to only four faculty members each year, carries with it five months of salary support for independent projects, as well as a special Fellows program of meetings on University-wide concerns. Rabin is currently a fellow at the Center for Advanced Study in the Behavioral Sciences, where he is working on a book on environmental decision making. A second edition of his book *Perspectives on Tort Law* (Little, Brown & Co.) is now in press, as is a third edition of *Cases and Materials on Tort Law and Alternatives* (Foundation Press), which Rabin and the original author, Professor **Marc Franklin**, have prepared together.

Professor **Deborah Rhode** has been nominated by the Yale Alumni Association as a candidate for the Yale Corporation, the university's governing body. A study by Professor Rhode on the Equal Rights Amendment ratification campaign will be published in April as the lead article in the first issue of a new scholarly journal, *Law and Inequality*. Professor Rhode will also appear on a panel concerning legal ethics at an April conference sponsored by the Public Interest Clearinghouse.

Professor **Byron Sher** was sworn in December 6 to his second term in the California State Assembly. A Palo Alto Democrat, he rolled up "quite a comfortable" vote total of 68 percent against three opponents last November. Sher will chair the Assembly's Criminal Justice Committee, as well as serving on the committees for Transportation and for Energy and Natural Resources. His Stanford Law courses—offered in the fall when the legislature is not in session—include Contracts and a seminar on legislation. □

Alumni/ae GATHERINGS

Dean John Hart Ely has, since his arrival at Stanford last summer, been a featured guest at several gatherings of Law graduates and friends.

The **American Bar Association** meeting in August was the occasion for the first such meeting—a dinner in San Francisco at which Dean Ely shared “Reflections on Stanford Law School and Legal Education.”

The **Los Angeles Law Society** held a reception in his honor August 25, through the good offices of Society President Stephen Harbison ('68), Hugh McMullen ('71), and the firm of Argue, Freston, Pearson, Harbison & Myers. A smaller reception, hosted by Walter Weisman ('59), was held the next day for Inner Quad and other major donors.

Alumni from throughout California had an opportunity to meet the Dean at the **State Bar Convention** in Sacramento, where the School held its annual luncheon for graduates September 13. John Kaplan, Jackson Eli Reynolds Professor of Law, gave the keynote address, “What Should We Do About the Insanity Defense?”

The **San Diego Law Society** arranged a series of homecoming events in November for native son Dean Ely. Some fifty Stanford law graduates and spouses attended the reception November 23 organized by Society President Ted Graham ('63) and hosted by Luce, Forward, Hamilton & Scripps. A luncheon earlier that day, hosted by Robert Caplan ('60) and Barton Sheela ('50), gave Inner Quad and major donors a chance to talk with the Dean at leisure. The Stanford partners of Gray, Cary, Ames & Frye capped the Dean's visit to San Diego with an elegant dinner November 24.

The next week, two Northern California alumni—George Sears ('52) and Charles Legge ('54)—hosted a reception in San Francisco, at which the Dean was pleased to meet and thank **Inner Quad** members



San Diego compadres John Ely, Alfred Ferris, Charles Rees, and David Gill.



Dean Ely with fellow San Diegans.



San Diego host Ted Graham (center) greets Laura Kerl and Richard Murphy.



Robert Caplan (right) and Barton Sheela (left), with Assistant Dean Victoria Diaz, at San Diego Inner Quad luncheon.



George Sears, Jerome Braun, and Thelton Henderson at Inner Quad reception in San Francisco.



Los Angeles alumni with Dean Ely.



Los Angeles Judge Cynthia Hall ('54) with (left to right) Stephen Harbison, Myrl Scott, and Joseph Coyne.



Judge Winslow Christian with Inner Quad members Paul Ginsburg and Chris Burdick, in San Francisco.



Judge John Cole ('50) and Peggy Stern Cole ('49) in Los Angeles.

from the city and East Bay, as well as other generous friends of the School.

A variety of other Stanford Law gatherings—many featuring members of the faculty—were held throughout the country.

The **Oregon Law Society** was visited last August 29 by Jack Friedenthal, George E. Osborne Professor of Law. Discussions at the Portland meeting ranged from admissions policies and procedures to issues in intercollegiate athletics. The Oregon group met again October 1, in Eugene, for breakfast during the state bar convention.

Special events for new graduates and law clerks were held during the summer by societies in **Los Angeles, Washington, DC, and New York**. The New York gathering was a luncheon, hosted by Kendyl Monroe ('60), while the Los Angeles affair—an annual picnic—included admitted students.

November 12, the **Los Angeles** society sponsored a presentation by two Stanford-educated judges—The Honorable Cynthia H. Hall ('54) of the U.S. District Court and John L. Cole ('51) of the Los Angeles County Superior Court—on their "Views from the Bench."

Capitalizing on its strategic location, the **Washington, DC, Society** enjoyed meeting February 2 for cocktails with Supreme Court Justice William Rehnquist ('52). Just one week before, the group welcomed Professor Kaplan for a talk about the state of the Law School and various burning political issues. Washington area law graduates were also invited to join their Stanford Business School counterparts on January 13, at the New Zealand embassy, for a presentation and social hour with Ambassador L. R. Adams-Schneider.

You will be invited, during coming months, to other Stanford Law events. A warm welcome awaits you and all graduates and friends of the School. □

Unclassified ADS

Stanford Law Review

*Now in its 35th year of
publication*

Timely research articles, project
reports, notes, and book reviews

Subscription: \$21/year (\$24 overseas)



Stanford Law Review
Crown Quadrangle
Stanford, CA 94305

THIS SPACE AVAILABLE

Readers are invited to submit brief, non-commercial notices of interest to fellow Stanford Law School alumni/ae. For example: houses for exchange, condominiums in exotic climes, club memberships, works of art, books (new, rare, and unpublished), back-date journals, season (and off-season) tickets, racehorses, or Type A workshops.

Please address items to:
Editor, **Stanford Lawyer**
Stanford Law School
Stanford, CA 94305

SLS3839C

*New and
Elegant*

Stanford Law School Ties and Scarves

Men's tie, all silk, by Givenchy of Paris. Modern 3" width. Navy background with Stanford Law School shields of purple, white, and red. \$25.00 postpaid.

Women's scarf, all silk, 24" square. White background, with border and shields in lavender and red. \$22.00 postpaid.

ORDER FORM

Please send:

- _____ men's tie(s), at \$25 apiece, postpaid.
(California residents add \$1.63 sales tax.)
- _____ women's scarf(ves), at \$22 apiece, postpaid.
(California residents add \$1.43 sales tax.)

Payment in full of \$_____ is enclosed.
(Please make checks payable to Stanford Law School.)



NAME

ADDRESS

CITY

STATE

ZIP

If questions, call: (415) 497-2730.

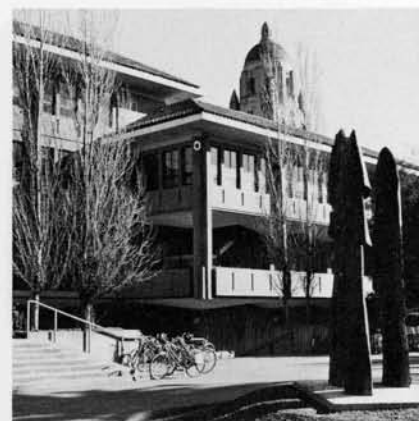
Return this coupon to:

Elizabeth Lucchesi, Director of Alumni/ae Relations,
Stanford Law School, Stanford, CA 94305.

Stanford Business School announces

the 32nd Session of the

Stanford Executive Program



An eight-week executive program in management education, which counts among its alumni many distinguished leaders of American and international business.

The Graduate School of Business also offers the following executive programs annually: Financial Management Program, Marketing Management Program, Executive Program in Organizational Change, Executive Program for Smaller Companies, General Management Program (Singapore), and International Investment Management Program (Geneva).

Qualifications include senior management responsibility and sponsorship by company or organization.

For information contact:

Mrs. Fran Rinaldi
Assistant Director—SEP
Graduate School of Business
Stanford University
Stanford, California 94305
(415) 497-2921

Coming EVENTS

July 28•August 4

American Bar Association Convention, in Atlanta. For information about Stanford Law Alumni/ae reception, call Elizabeth Lucchesi, Director of Alumni/ae Relations, (415) 497-2730.

September 10•14

California State Bar Association Convention, in Anaheim. For information about Stanford Law Alumni/ae luncheon, call Elizabeth Lucchesi, (415) 497-2730.

October 7•8

Stanford Law Alumni/ae Weekend, at Stanford. For information, call Elizabeth Lucchesi, (415) 497-2730.

STANFORD UNIVERSITY
Stanford Law School
Stanford, California 94305

Nonprofit Organization
U.S. Postage
PAID
Stanford University
