

Rosenfeld Recognized by International Community

Receives French Legion of Honor and More

The academic year ended on an extremely high note for Michel Rosenfeld when he received word that on June 4 French President Jacques Chirac signed a decree awarding the Cardozo professor the Legion of Honor, the French government's highest and most prestigious award. It was bestowed in recognition of Rosenfeld's outstanding contribution as a legal scholar and his keen interest in French law and culture. Each year about 10 Americans are recognized as Knights of the Order of the Legion of Honor, founded by Napoleon I in 1802. Past recipients include Ronald Reagan, Colin Powell, Neil Armstrong, Gregory Peck, Robert De Niro, and Estée Lauder. Awards to foreign academics are exceedingly rare.

When asked about the award, Rosenfeld said, "I was surprised and gratified to hear that I had received this honor. To be recognized in this way and be in the

company of such noted Americans is an extraordinary honor."

This award capped a year of triumph for Rosenfeld. In January, prior to stepping down as president of the International Association of Constitutional Law (IACL), a position he had held for five years, he was honored in Santiago, Chile, where he received the key to the city from the mayor and became an honorary citizen. He was in the Latin American country to preside over the Sixth World Congress of IACL, making an address before the Senate, attended by government officials, diplomats, and more than



Michel Rosenfeld participated in commemorative events on two continents. In Spain, he joined Juan José Lucas Giménez, second vice president, Spanish Senate (above), at the 25th anniversary celebration of the Spanish constitution and in Santiago, Chile, the mayor presented Professor Rosenfeld with the key to the city.

500 Association participants from 62 countries. He spoke about the new challenges facing constitutional law in the 21st century as countries deal with the issues of terrorism and globalization and those countries new to democracy let go of autocratic regimes and systems. His proficiency in several languages was on display as he responded to the Vice President of Chile and the head of the Senate in Spanish, read a letter from Giscard d'Estaing and responded and spoke on transnational constitutions in French,

and gave his address in English. During the Congress, Chilean President Ricardo Lagos hosted Rosenfeld at a luncheon at the National Palace.

Immediately upon his return to the United States, Rosenfeld became president of the United States Association of Constitutional Law, an organization he helped found and that is a member of the International Association. The USACL has among its 400 members federal and state supreme court judges, law professors, and select practitioners. Supreme Court

Justices Breyer, Ginsburg, and Scalia are honorary members. Rosenfeld succeeds Prof. Norman Dorsen of NYU. Among the activities Rosenfeld has planned for 2005 is a debate to be held in Washington, DC between Justices Breyer and Scalia on using foreign jurisprudence in US constitutional decisions. Rosenfeld, a leading expert in comparative constitutionalism, believes that the US Supreme Court should look to international court decisions when deciding difficult cases.

Professor Rosenfeld also

serves as editor-in-chief of the *International Journal of Constitutional Law*, I•CON. In that role, he was co-organizer and a panelist at Altneuland: The Constitution of Europe in an American Perspective, sponsored by NYU School of Law and the Woodrow Wilson School of Public and International Affairs at Princeton University.

Among his many other international activities during the 2003–04 academic year, he was one of three foreign speakers at the commemoration of the 25th anniversary of the Spanish

Stack is Honored at 2004 Stanford/Yale Forum

Cardozo was represented for the third year at the Stanford/Yale Junior Faculty Forum. Kevin M. Stack was chosen to attend for his paper "The Statutory President," which develops a framework for judicial review of the President's claims that his actions are authorized by statute. Professor Stack argues that the President's constitutional powers should not shape how courts evaluate the President's claims of statutory authority; rather, that review should be guided by standard principles of administrative law.

Founded in 1999, the forum invites junior law teachers from across the country to submit unpublished papers for "blind evaluation." Each year a few of these papers are selected by a jury for presentation, discussion, and critique by senior scholars at the forum. Barton Beebe and Scott Shapiro had been previously honored by the forum.

This year, senior commentators included the current and former deans of Stanford and Yale Law Schools, who were active throughout the two-day conference. Stack said, "The feedback was constructive, helpful, and energizing. I was impressed with the ambition of the presentations, and the senior faculty commentary was excellent." Prof. John F. Manning, then of Columbia, now of Harvard Law School, was Stack's commentator, offering suggestions on Stack's draft.

The forum, founded by two law professors—one from Stanford, one from Yale—is held in alternating years on the

Stanford and Yale campuses, with the Stanford forums focusing on private law and dispute resolution, and the Yale forums on public law and the humanities. This year the forum was held at Yale, and the topics of 16 chosen papers ranged from criminal and environmental law to jurisprudence and philosophy. The goals of the forum stated by the founders include "helping young law school faculty develop their scholarship" and "building a general sense of community among senior and junior faculty."

Stack's paper will be published in the *Iowa Law Review* in 2005.



Constitution held in November 2003 in Madrid. The President of the Spanish Senate chaired the panel where Rosenfeld spoke on "Fundamental Rights under Stress in the Twenty-First Century." He also spoke in Paris at a symposium on Equality and Justice: American and French Perspectives, organized by the University of Paris X and American University Washington College of Law, and lectured to graduate students at the University of Paris I. Later he gave faculty seminars at the Universidad Autonoma de Madrid Law School and University College in London, and taught courses on Comparative Constitutional Equality at the Central European University in Budapest and on the Theory of Political Rights at the European University Institute in Florence.

Alex Stein Appointed to Full-time Faculty; 12 Visit Cardozo in 2004-05

Alex Stein, a frequent visitor to Cardozo, was appointed to the full-time faculty as a professor of law.

"I am very happy and excited to become a member of the Cardozo faculty," Professor Stein said. Prior to taking the new position, he was the Sylvan M. Cohen Professor of Law at The Hebrew University of Jerusalem, where he earned LL.B. and LL.M. degrees and was a member of the University's faculty for 13 years. He also holds a Ph.D. from the University of London.

"Alex is a prodigious scholar of international prominence," Dean David Rudenstine said. "The Cardozo community is

delighted and pleased that he has joined the faculty."

Professor Stein first came to Cardozo in 1995 and has taught evidence and torts classes. Among the schools where he has worked as a visiting professor are Columbia, the University of Toronto, and the University of Miami. In discussing his experience as a new full-time faculty member, Professor Stein said that everyone has been welcoming. "I have many friends here," he said. "The only difference is that now I attend the faculty meetings."

He did note the physical changes to Cardozo's building and said that he is very impressed by the quality of the student body. "I can't tell the difference between students at Columbia and students at Cardozo."

Professor Stein has published widely in the United States and abroad. His work

combines law with economics and moral philosophy. He brings to the classroom the view that an economic analysis of the law should be part of an overall assessment of what justice requires. Professor Stein currently teaches Evidence, Torts, and Medical Malpractice, and said that he worked for months to compile the reading material for the medical malpractice class. While there are textbooks for practitioners, there are no recent books on the subject for law students, he said, noting that assembling his own casebook may be a future project.

Currently, he is putting the finishing touches on *Foundations of Evidence Law*, which will be published in 2005 by Oxford University Press. Professor Stein recently completed an article about overenforce-



David Rudenstine was honored by his alma mater, New York University Law School, with The Legal Teaching Award. Bestowed by NYU's Law Alumni Association, the award honors scholarship and extraordinary dedication to the education and training of law students. Vice Dean Stephen Gillers (left) introduced Dean Rudenstine and presented him with the award. They are pictured here with NYU Dean Richard Revesz.



Alex Stein

ment with **Richard Bierschbach**, a visiting professor who was an associate in the New York office of Wilmer, Cutler & Pickering. Professor Bierschbach is spending his second year at Cardozo teaching Criminal Law and Corporations.

Also returning are **Daan Braveman**, who is teaching Constitutional Law, Civil Procedure, and Federal Courts; and **Uriel Procaccia**, from Israel, teaching Economics of Corporate Law.

In addition to Stein and Procaccia, three other visitors are from Israel. For the fall semester, **Arye Edrei** is teaching Law and Morality, and Jewish Law and the State of Israel. He is a senior lecturer at Tel Aviv University and holds an LL.B., LL.M., magna cum laude, and Ph.D. from The Hebrew University of Jerusalem. Also from Tel

Aviv University is **Assaf Likhovski**, who is teaching Modern Legal Thought. He earned an LL.B. and M.A. from Tel Aviv University, an S.J.D. from Harvard University, and clerked for Chief Justice Aharon Barak of the Israeli Supreme Court. An unusual course, Law and Cinema, was introduced this fall and was taught by **Amnon Reichman**, who is visiting from the University of Haifa. Like Prof. Likhovski, he clerked for Justice Aharon Barak.

John McCormick, visiting from The University of Chicago, is teaching Constitutional Law II and Theories of Constitutional Democracy. He holds a B.A. from Queens College, a Ph.D. from The University of Chicago, and frequently writes on democratic theory and legal and political philosophy.

Dani James, a visiting research fellow, will teach Criminal Law in spring 2005. She graduated summa cum laude from Columbia University and received a J.D. from Yale Law School. In spring 2005, visitors are **Robert Miller**, who was a John M. Olin, Jr. Research Fellow in Law at Columbia University in 2003-04; **Andras Sajo** of Central European University; **Richard Michael Fischl** of the University of Miami; and **Thane Rosenbaum** of Fordham University.

For more biographical information on visitors, please visit our Web site: www.cardozo.yu.edu.

HONORS AND AWARDS

Lester Brickman testified before the House Subcommittee on Commercial and Administrative Law at an oversight hearing on the administration of large business bankruptcy reorganizations, speaking on whether competition for big cases has corrupted the bankruptcy system. He published in the *Pepperdine Law Review* a treatise-like article on asbestos litigation, "On the Theory Class's Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality," which has been widely circulated and been the subject of considerable media attention, including articles in *The National Journal* and the *St. Louis Post-Dispatch* as well as several major Web sites. He was the featured speaker on asbestos litigation at the Center For Legal Policy of the Manhattan Institute; testified in May before the Committee on Judiciary of the Ohio Senate on a bill to reform asbestos litigation; and spoke on a CLE panel

in San Francisco about ethical issues raised by asbestos litigation.

Malvina Halberstam participated in the annual meeting of the American Law Institute in May and was elected a life member. Earlier in the semester, she organized a new section on national security law for the AALS and was elected the section's cochair. Her article "Belgium's Universal Jurisdiction Law: Vindication of International Justice or Pursuit of Politics?" was published in the *Cardozo Law Review*. A paper on "The U.S. Right to Use Force in Response to the Attacks on the Pentagon and the World Trade Center," which she presented in October 2001, will be published in the *Cardozo Journal of International Comparative Law* and as a chapter in *Perspectives on 9/11*, published by Greenwood Publishing Group.

Barry Scheck and **Peter Neufeld** were honored for "the body of their work and their fierce dedication to

Brickman



Halberstam





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the cause of criminal justice” by the National Lawyers Guild, New York City Chapter, at the chapter’s 67th anniversary dinner. Professor Scheck also sat on a panel at The Florida Coastal School of Law Forensics Conference with Sen. Arlen Specter (R-Pa).

Two months after **Kevin Stack’s** paper “The Divergence of Constitutional and Statutory Interpretation” was posted to the Social Science Research Network eLibrary (SSRN) on March 21, 2004, it was listed as one of the “All Time Hits,” having been among the top 10 downloads in the legislation and statutory interpretation category between January 1997 and May 2004. SSRN is devoted to the rapid worldwide dissemination of social science research and is composed of a number of specialized research networks, including the Legal Scholarship Network. Stack’s paper “The Statutory President” was selected for presentation at the



Carlson

Stanford/Yale Junior Faculty Forum in June at Yale (see story, p. 17). He presented “Brown, Executive Orders, and the Limits of Constitutional Law” at the 2004 Law and Society Association Annual Meeting in Chicago.

BOOKS PAPERS SPEECHES

Barton Beebe’s article “The Semiotic Analysis of Trademark Law” was published in the *UCLA Law Review*. This summer, he spoke on “Cultural Implications of Technological Change” at Central European University in Budapest. In spring 2004 he spoke on “Property Degree Zero” at the Law & Society Association Conference in Chicago and at Cleveland-Marshall College of Law and Cleveland State University. At The Copyright Society of the USA panel held in New York, he spoke on *Mattel, Inc. v. Walking Mountain Productions*.

David Bleich spoke this summer on “A 19th Century Solution to a 21st



Beebe

Century Agunah Problem” at the 13th Biennial Conference of the Jewish Law Association. He also spoke on “The New York Get Law” at the University of Haifa, Israel; and on “Medical Halakhah” at the Rabbinical Center of Europe in Vienna.

David Carlson and **Jeanne Schroeder** were in Holland this summer for a conference on God and Psychoanalysis. They presented “Does God Exist?: Hegel and Things.”

Susan Crawford’s article “Promoting Innovation and Economic Growth: The Special Problem of Digital Intellectual Property,” co-written with Elliot Maxwell, was published by the Council on Economic Development. She presented “People, Bits and Atoms to Law” at The Brain Conference in California and spoke on “The Accountable Net” at the Aspen Institute in Washington, DC, the Berkman Center, and the Harvard/Yale Cyberscholar Working Group. She was a



Crawford

panelist at the 14th Conference on Computers, Freedom, and Privacy in Berkeley, CA, speaking on “Who Are You? The Basics of Identity, Authentication, and Privacy Today” and presented “Copyright and the Internet” to the New York State Bar Association Intellectual Property Law Section.

E. Nathaniel Gates was a panelist at the Annual Meeting of the Law School Admission Council in Ft. Lauderdale, speaking on “Does Hybridity Trump ‘Races’?”

Marci Hamilton delivered the keynote address, “Balancing Individual Liberty and National Security,” and sat on a panel at this summer’s National Conference of Appellate Court Clerks in Alaska. She spoke on The First Amendment and federalism at the American Constitution Society Supreme Court Roundup held at the National Press Club. In spring 2004, she spoke on “The Supreme Court’s Term”

at the Federal Judicial Center Program for Judges in the Second and Third Circuit Courts, and discussed "Religious Institutions, the No-Harm Rule, and the Public Good" at Brigham Young University. She also spoke on "Religion in the Schools" at a Princeton University conference on The Supreme Court and American Politics.

Justin Hughes visited Laos and participated in a series of discussions at the United States Embassy in Vientiane. In separate sessions he spoke to officials, artisans, students, and the general public on protecting intellectual property, legislation and how to draft it, and the importance of intellectual property protection for the Laotian economy. He and Barton Beebe represented Cardozo at the 4th Annual Berkeley-Cardozo-DePaul IP Scholars Conference in August, presenting works in progress. Hughes also spoke on "Peer-to-Peer and Other Internet Copyright Litigation" at Fordham Law

School's 12th Annual Intellectual Property Law and Policy Conference, on "Fair Use and Access Rights" at the Information Ecosystems Conference at Michigan State University, on "Are Intellectual Property Rights Under Attack?" at the Federalist Society in New York, "The US System for Collective and Certification Marks for Geographical Indications Protection" at the AIPPI Japan International IP Symposium in Tokyo. He also moderated a panel of federal district court judges at the New York State Bar's Intellectual Property Section conference on E-Litigation and Forensic Discovery.

Kyron Huigens has four publications forthcoming: "Is Strict Liability Rape Defensible?" in *The Theory of the Criminal Law's Special Part*, edited by R.A. Duff and Stuart P. Green and published by Oxford University Press; "Fletcher's Rethinking: A Memoir" in *University of Tulsa Law Review*; "Duress Is Not a

Justification" in *Ohio State Journal of Criminal Law*; "On Aristotelian Criminal Law: A Reply to Duff" in *Notre Dame Journal of Law, Ethics & Public Policy*. He presented "Is Strict Liability Rape Defensible?" at the Louisiana State University Law Center conference on The Theory of the Criminal Law's Special Part.

Lela Love presented a workshop and moderated a panel at the ABA Section of Dispute Resolution's Annual Conference in New York. She spoke on "Justice in Mediation" at the Yale-Quinnipiac Dispute Resolution Workshop and was a panelist for the ADR Committee Program at the NYS Bar Association Annual Meeting.

Jeanne Schroeder's book *The Triumph of Venus: The Erotics of the Market* was published by the University of California Press. In Brisbane, Australia, she was the keynote speaker at the Griffith University Faculty of Law Seminar on "Right is the Symptom of Law's

Trauma." She spoke on "Envy, Jealousy, and Insider Trading: The Case of Martha Stewart" at both Boston University School of Law and Brooklyn Law School.

Paul Shupack coauthored *Simon's Guide to Cooperative Organizations under Revised Article 9*. He spoke in April at the Association of the Bar of the City of New York's program "New York's non-Uniform Uniform Commercial Code."

Alex Stein's article recommending appointment of plaintiff attorneys in class actions through special auctions, "Auctioning for Loyalty: Selection and Monitoring of Class Counsel," was published in *Yale Law and Policy Review*.

In June, **Martin Stone** presented "Meaning and Interpretation" at the Central European University, Budapest and in March presented "Stanley Fish on Interpretation" at a Cardozo faculty workshop. He presented "Interpretation in

Schroeder



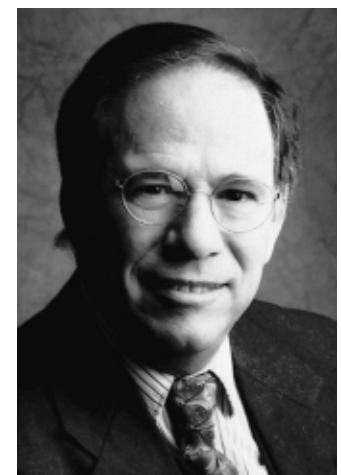
Gates



Hamilton



Shupack





Stone

Law and Literature” at the 4th Annual Meeting of Italian and American Philosophy in Rome. “On the Old Saw, ‘Every reading of a text is an interpretation’: some comments” was published in John Gibson and Wolfgang Heumer’s *The Literary Wittgenstein*, published by Routledge Press. “Theory, Practice and the Ubiquity of Interpretation” was published in *Post-modernism and Sophistry: Stanley Fish and The Critical Enterprise*, edited by Gary Olson and published by SUNY Press.

Suzanne Stone is spending the 2004–05 year visiting Harvard Law School as the Joseph and Caroline Zelaznik Gruss Professor of Jewish Law. She is teaching Civil Procedure as well as Authority in Jewish Law, and Jewish Law and the Supernatural. In spring 2004, she curated a public forum at the Center for Jewish History, addressing “Religion, Responsibilities, and Relations: Responses to Mel Gibson’s Film, *The Passion*.” Speakers exam-

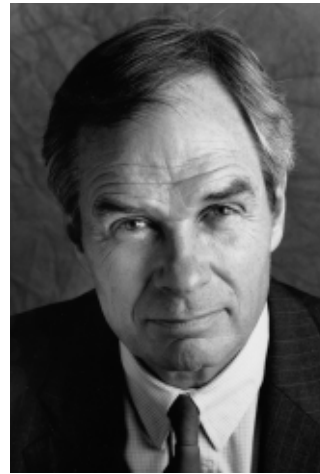


Stone

ined reactions to the film among Jews, Christians, and academics. Professor Stone also presented “Folktales of Jurisdiction” at Yale Law School and “Just War: A Comparative View” at Fordham Law School. She spoke on “Religion, State, and Jewish Divorce” at the JCC Series on American and Jewish Law. Her article “Truth and Illusion” was published in *The Jewish Quarterly Review*; “A Jewish Perspective on Human Rights” was published in *Society*; “Orthodoxy and the Public Square of Ideas” was published in *Tradition*; and “Gender and Justice in Rabbinic Thought” was published in *Women and Gender in Jewish Philosophy*.

Peter Tillers lectured in China at Sichuan University School of Law on “Picturing Factual Proof in Legal Proceedings” and then spent the summer teaching Evidence at Seattle University.

Paul Verkuil was among the faculty at the CityBar Center CLE Program on



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Administrative Law. He taught Federal Basics.

Richard Weisberg is contributing to *Torture in the Age of Terrorism*, to be published by Oxford University Press. He taught a mini-seminar this summer on “Law and Literature: Towards a Hermeneutics of Earthly Justice” at The School of Criticism and Theory at Cornell University. The program is for faculty members and graduate students in literature, the arts, the humanities, and related social sciences to explore recent developments in literary and humanistic studies. In the spring, he spoke at the University of Paris on “Codification in Law and Literature.”

Ellen Yaroshefsky’s paper “Wrongful Convictions: It is Time to Take Prosecution Discipline Seriously” will be published in the *UDC Law Review*. She spoke this spring on “Ethics for the Immigration Lawyer” at the CityBar Center for Continuing Legal Education, on



Weisberg

“Ethics for the Entertainment Lawyer” at the Association of the Bar of the City of New York, and on “Ethics in Litigation” at the New York County Lawyers Association.

ADJUNCTS/VISITORS

Eric Freedman, visiting scholar, gave the Williams Falls Lecture on “Vichy France and the Holocaust: The Spoliation and Restitution Dimension” at the University of Maryland.

SAVE THE DATE

THE NUREMBERG TRIALS: A REAPPRAISAL & THEIR LEGACY
March 28–29, 2005

Marking the 60th anniversary of the trials, the conference will feature former Nuremberg prosecutors Ben Ferencz and Whitney Harris; former Chief Judge of the International Criminal Tribunal for the former Yugoslavia Patricia Wald; former Chief Prosecutor for the Sierra Leone Special Court David Crane; and prominent academics Michael Marrus and William Schabas.

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