

Three Super Achievers Join Faculty

This fall, Richard Bierschbach, Eric J. Pan, and Julie Suk received appointments as assistant professors of law. In making the announcement, Dean Rudenstine said,

“These young and highly accomplished individuals bring fresh thinking and strength to the faculty. All of us on campus will benefit from their practical experiences and exceptional talents.”

Already a familiar face on campus, **Richard Bierschbach** has been a visiting professor here since 2003. He teaches Criminal Law and Corporations and in summer 2005 will be teaching in Cardozo's corporate law program at University of Oxford in England.

Before coming to Cardozo, Bierschbach was an associate in the New York office of Wilmer, Cutler & Pickering, where his practice focused on administrative law, white-collar crime, and

appellate litigation. Professor Bierschbach received his law degree from the University of Michigan, where he was articles editor of the *Michigan Law Review* and the recipient of the Henry M. Bates Award, the school's highest honor for graduating students. He then moved to Washington, DC, clerking for Judge A. Raymond Randolph of the US Court of Appeals for the DC Circuit and for US Supreme Court Justice Sandra Day O'Connor.

In between his clerkships, Professor Bierschbach worked for the US Department of Justice. He served as a Bristow Fellow in the Office of

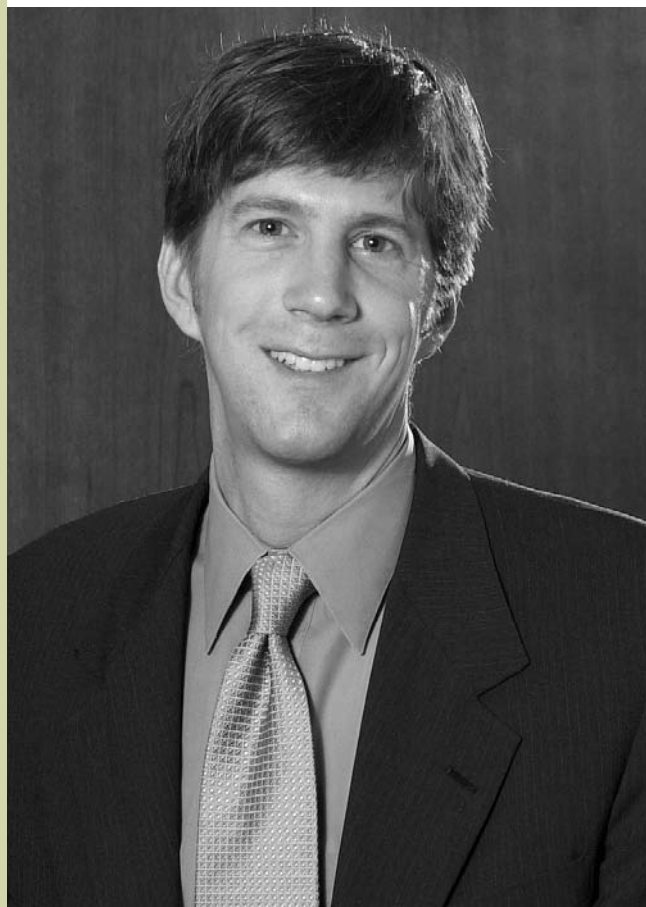
the Solicitor General and then as an attorney-advisor in the Office of Legal Counsel—where, as he noted, he found the work brokering disputes between executive branch agencies especially interesting. “I got some real insights into the system,” he said. “Meeting regularly with the attorney general, the White House counsel, and the heads of various divisions and witnessing all the input that goes into each decision were instructive. Contrary to how it might seem from the outside, it's not uncommon for different departments to bring diametrically opposed opinions to the table on the same issue. These meetings generated interesting policy questions as well as many fascinating legal questions about what the position of the executive branch on a given issue should or could be.”

Speaking about his move into academia, Professor Bierschbach said, “Probably one of the biggest and most enjoyable challenges is in the classroom, presenting the material to students in a way that is comprehensive and nuanced, yet still digestible and engaging.” Outside of the classroom, Professor Bierschbach's teaching subjects converge in one of his current research projects, which is exploring how the criminal law views corporations and other organizations from a theoretical and reform-minded perspective. “We live in an age of organizations,” he said. “And if you look at the state of criminal law doctrine and theory when it comes to grappling with the role of these entities in our lives, it's clear that there's a lot more thinking to be done in this area.”

Eric Pan comes to Cardozo from the Washington, DC office of Covington & Burling, where he was a member of the corporate, securities, and international practice groups. His practice consisted of mergers and acquisitions, public and private securities offerings, securities regulation, general corporate advisory work, and public and private international law matters.

Professor Pan always intended to join academia, having published several law review articles on international financial regulation and presented to academic audiences in the United States and Europe while practicing at Covington.

richard
BIERSCHBACH





julie
CHI-HYE SUK

law at Cambridge University, England. In addition to a J.D., he has an A.B. in economics from Harvard and an M.Sc. in European and international politics from Edinburgh University, Scotland.

Julie Chi-Hye Suk, who most recently was a fellow at Princeton University's Program in Law and Public Affairs, teaching a seminar on Human Dignity in Law and Political Thought, said she is pleased to be joining Cardozo's faculty, a group known for its intellectual engagement. A strong scholarly interest in the law attracts her to the teaching profession. She remarked that teaching and scholarship are contiguous. "Teaching is a great forum for playing with ideas. Students' fresh perspectives and different intuitions help me rethink my research." She will teach Civil Procedure and Comparative Law.

In Professor Pan's opinion: "Cardozo is the ideal place to teach and research the most challenging aspects of corporate and international law and is one of the most intellectually exciting places in legal academia." Professor Pan intends to give Cardozo a higher profile in the area of corporate and securities law as the new director of The Samuel and Ronnie Heyman Center on Corporate Governance. One of his main objectives will be to bring legal, corporate, financial, and government leaders to campus in order to bridge the gap between academia and the world beyond.

This year, he will be teaching Corporations and International Law. His strong interest in international law developed when, as a law student at Harvard, he worked for renowned legal scholar Prof. Abram Chayes representing the Republic of Namibia in a case before the International Court of Justice. More recently, Professor Pan has been studying the regulation of securities offerings across borders. He noted, "One of the most important questions facing lawmakers and regulators around the world is how to regulate multinational corporations without inhibiting trade, investment, capital raising, and other activities that are essential for the growth of the global economy."

Prior to joining Covington, he was a Jean Monnet Lecturer in Law at Warwick University, England, and served as director of Warwick's Programme in Law and Business. He was also a visiting fellow in international

Professor Suk was born in Korea and emigrated to the United States as a child. She speaks four languages: Korean, English, German, and French. She holds an A.B. from Harvard University, where she graduated summa cum laude, a J.D. from Yale Law School, where she was senior editor of the *Yale Law Journal*, and an M.Sc. and D.Phil. from University of Oxford, where she was a Marshall Scholar and studied political theory. During law school she was a summer associate, first at Hale & Dorr, LLP in Boston and then at Jenner & Block in Washington, DC. After graduating she clerked for Judge Harry T. Edwards of the US Court of Appeals for the DC Circuit. Working alongside Judge Edwards was a powerful mentoring experience. She said, "He exemplifies the best combination of scholarly rigor and a common-sense approach to law and justice."

Professor Suk, who has an article forthcoming in the *University of Illinois Law Review* on antidiscrimination law in the administrative state, is embarking on a study of new antidiscrimination laws in France, focusing on how the legal understandings of "race" and "discrimination" have been influenced by debates about social rights, immigration, the EU Constitution, and the Vichy past.



eric PAN



President Bush with Prof. Lester Brickman (at left) for "A Conversation on Asbestos Litigation Reform."

President Invites Brickman to Make the Case for Asbestos Litigation Reform

Since 1988, Lester Brickman has been working on contingency fee issues and tort reform, making overly "generous" contingency fees his personal turf. In early 2004, Professor Brickman published a treatise-length, massively documented analysis of asbestos litigation with an empirical focus on "screenings," which was widely circulated among the bench and bar. Then he was called to testify before a subcommittee of the House Judiciary Committee on abuses in asbestos bankruptcy proceedings and before the Senate Judiciary Committee on specious silicosis litigation.

Therefore, it was not surprising that when President George Bush addressed the issue of asbestos litigation earlier this year, he invited Professor Brickman to lay

out the case for reform. In addressing the town hall-type meeting on January 7, the President said, "Starting today, we've made it an issue for the year 2005, and I look forward to working with the Congress to get something done."

In introducing Professor Brickman, the President said to the large audience gathered at the Macomb Center for the Performing Arts, at Macomb Community College in Michigan, "He's going to give you an expert opinion about all this ... give us a little history and educate people." President Bush first became aware of Professor Brickman's work when he was Governor of Texas. Professor Brickman was retained by the Governor's chief counsel as an expert witness with regard to the \$3.2 billion in

fees awarded to tort lawyers selected by the Texas Attorney General in the tobacco litigation.

In his remarks, Professor Brickman noted that "more than 100,000 workers have died as a consequence of asbestos exposure. But lawyers have taken this tragedy and turned it into an enormous moneymaking machine in which ... baseless claims predominate."

He cited statistics indicating that as many as 70 million new claims against dozens of companies by more than 100,000 claimants were filed in 2003 alone, estimating that perhaps only one-tenth of those individuals are truly affected by asbestos exposure. Brickman said, "But more than 90,000 of these claimants have no illness related to asbestos expo-

sure, as recognized by medical science. These are truly meritless claims."

According to Professor Brickman, "this massive specious claiming" results in delayed and inadequate compensation for the true victims, dozens of bankruptcies, and thousands of suits. Seated on the stage with the President, he asked for "Congress ... to take asbestos litigation out of the courts, and create some kind of administrative process, funded by industry, to pay these claims."

Professor Brickman said later he felt privileged to have been chosen to accompany the President and to have a few minutes of private conversation with him to discuss asbestos litigation reform and related law enforcement issues. "The President has a commanding presence, puts everyone at ease, and is knowledgeable about the subject area."

Recently, the Law School received three pledges of \$300,000 each to provide support for Professor Brickman's research and scholarship in the areas of contingency fees, tort reform, asbestos litigation, legal ethics, and related subjects. Donations came from Bernard Marcus/Home Depot, CNA, and Paul Singer/Elliott Management Corporation.

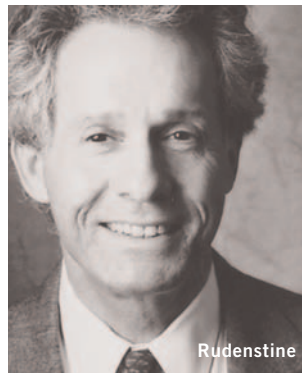
PROFESSIONAL HONORS

Lester Brickman received the 2004 Legal Reform Research Award from the US Chamber of Commerce Institute for Legal Reform. He was recognized for his "hard work in exposing fraud in asbestos cases and other abuses of the legal system ... and [his] efforts in bringing about common sense legal reform." He accepted the award at the organization's fifth annual legal reform summit in Washington, DC. He was the featured speaker at the American Tort Reform Association's annual legislative conference, held in November in New Orleans, where he spoke on asbestos litigation. He also spoke at a training session for fee arbitrators at the New York

County Lawyers' Association in October and discussed contingency fees at the American Enterprise Institute for Public Policy Research in September.

David Rudenstine was the keynote speaker at the Indiana University-Purdue University Fort Wayne Institute for Human Rights conference in December. He spoke on "Breaking the Tradition: The Case for the 640 Detainees in Guantanamo," a version of his article that was published in the fall 2004 issue of *Cardozo Life*.

Richard Weisberg and Adjunct Professor **Kenneth McCallion** were honored at the Yeshiva University Hanukkah Dinner for their "significant victory in court,



proving that banks had victimized Jewish clients during the Holocaust" and their successful efforts in winning for Cardozo \$2.25 million of unclaimed funds for a program in Holocaust and Human Rights Studies. Weisberg's essay "Loose Professionalism, or Why Lawyers Take the Lead on Torture," in which he opposes any slippage in the ban against torture, is included in *Torture: A Collection*, edited by Sanford



Levinson and published by Oxford University Press.

BOOKS PANELS PAPERS

Paris Baldacci was one of the organizers of a conference sponsored by the New York County Lawyer's Association and several law schools on The [New York City] Housing Court in the 21st Century: Can It Better Address the Problems Before It? His paper on the duty and role of the court to assist pro se litigants in



PROF. WILLIAM SCHWARTZ HONORED

Nearly 100 current and former students, professional colleagues, friends, and family joined Prof. William Schwartz (left) at a party celebrating his 50 years of teaching. The student-organized event was spearheaded by Robin Grossman '05, who has taken all of his classes: Property, Trusts and Estates, and Estate Planning. She said, "He's an engaging teacher who explains information so well that I can take it all in and remember everything that he taught me." She helped raise \$30,000 in gifts for the Law School. Sumner Redstone (right), Viacom chairman and CEO, made remarks and gave a donation of \$25,000 on behalf of his company in honor of Professor Schwartz. Cadwalader, Wickersham & Taft and a private donor also gave gifts to the Law School. Former Secretary of Defense William Cohen, a personal friend who was Professor Schwartz's student at Boston University Law School, could not attend but in a letter read at the ceremony wrote, "With the calming manner and wisdom of a Talmudic scholar, and the timing of a comedic genius, Professor Schwartz made his lectures memorably entertaining as well as brilliantly illuminating."

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evidentiary hearings will be published in the *Cardozo Public Law, Policy and Ethics Journal*. He was also a panelist at the annual continuing education meeting of Housing Court Judges sponsored by the New York State Office of Court Administration, at which he presented “Petitioner’s Prima Facie Case: Evidentiary Issues.” His article “Lawrence and Garner: The Love (Or at Least Sexual Attraction) That Finally Dared Speak Its Name,” was published in the *Cardozo Women’s Law Journal*.

Barton Beebe spoke on “Trademark Law and Parody” at the New York County Lawyers’ Association CLE panel, Fair Use and Parody: Misappropriation of Intellectual Property

or Creative Expression for Art’s Sake? Last summer he spoke on “Global Trademark Regulation, Trademark Regulation and Freedom of Expression,” and “The International Debate Over Geographical Indications, Intellectual Property in Comparative Perspective” at the Center for Media and Communication Studies at Central European University in Budapest.

J. David Bleich spoke at a number of conferences in Europe this winter, including the Conference on Human Genetic and Reproductive Technologies, sponsored by the Islamic Educational, Scientific and Cultural Organization and held in London. He presented “Humanity and Creation: The Natural World.”



In addition to organizing and convening Cardozo’s conference Bellhead/Nethead: The FCC Takes On the Internet in September, **Susan Crawford** presented “Screen Work” at Harvard Law School’s Berkman Center 2004 Internet & Society Conference, Votes, Bits & Bytes in December; “Global Connections” at the 2004 Yale Law School Reunion in October; “The Accountable Net,” at Georgetown University’s Liberty By Design: Internet Technology, Policy, and Law, also in October; and “The FCC in the Digital Age,” at Stanford Law School, in September. In the spring, she delivered the keynote, “Attacks on Freedom to Connect,” at Isen.com’s conference and presented “First, Do No Harm: The Problem of Spyware” at a conference cosponsored by the Berkeley Center for Law and Technology.

Toni Fine, director of graduate and international programs, spent a week in Brazil meeting with educators, lawyers, and judges to share ideas about legal education and the US legal system as it relates to the ongoing Brazilian process of judicial and other legal reforms.

Malvina Halberstam moderated “International Law:



The 2004 Term of the US Supreme Court,” a panel that included David Rudenstine, at International Law Weekend, organized by the American branch of the International Law Association. As a panelist there on “The Vienna Convention on Consular Relations After Avena,” she suggested that legislation amending the federal habeas corpus statute may be the solution to implementing the International Court of Justice (ICJ) decision in *Avena*, a case brought by Mexico against the United States on behalf of 52 Mexican nationals who had been sentenced to death in various US jurisdictions. This was allegedly in violation of the Vienna Convention provision that if a national of another state is arrested he must be informed that he has a right to consult the consul of his country and a right to have the consul notified of his arrest if he so requests. The ICJ held that the Convention established rights that could be invoked by individuals and that the United States is obligated to provide judicial review of its own choosing in the cases in which the right had been violated. Her article “*Alvarez-Machain II: The Supreme Court’s Reliance on the Non-Self-Executing Declaration in the Senate*



MALVINA HALBERSTAM (at right) organized a meeting at Cardozo for members of the Israeli Knesset involved in drafting a constitution for Israel. Prof. Louis Henkin (center) was among the scholars who attended. Member of the Knesset Michael Eitan (at left) is chair of the Committee on the Constitution, Law and Justice.

Resolution Giving Advice and Consent to the Covenant On Civil & Political Rights” will be published in the first issue of the new peer journal *National Security Law & Policy*.

Marci Hamilton argued before the United States Courts of Appeals for the Second and Seventh Circuits challenging the constitutionality of the Religious Land Use and Institutionalized Persons Act (RLUIPA). She is an advisor on constitutional issues to the Tort Claimants’ Committee in the Portland Archdiocese bankruptcy proceeding. She appeared before the New Hampshire

Supreme Court in a clergy abuse case, arguing that the First Amendment does not bar tort claims against a church in clergy abuse cases; she also argued constitutional issues for clergy abuse victims in the consolidated cases in Northern California. In November, she spoke at Seton Hall on the constitutional ramifications of church bankruptcies, and she presented a paper, “The Theological Origins of the Separation of Church and State in the United States,” at a January conference in Paris, France.

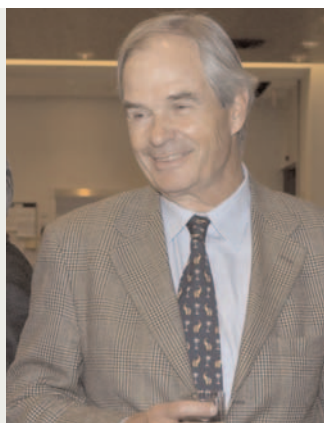
Justin Hughes visited Singapore in November, speaking at the Singapore Intellectual

Property Academy on “Protection of Databases in the United States.” He spoke on database protection at the University of Washington. He was recently named to the advisory board of the new Intellectual Property Institute at the University of Richmond Law School.

Monroe Price, who was named chair of the Center for Media and Communications Studies at Central European University, is visiting for the year at the Annenberg School for Communication at the University of Pennsylvania. His book *Media and Sovereignty* was translated and published in Russia, and a

paperback version was published in the United Kingdom. He produced for Internews, an international nonprofit that supports open media worldwide, an analysis of media reform in Pakistan, and for the National Commission on Media and Communications in Iraq a video on media practices and rules concerning the coverage of elections.

Michel Rosenfeld spoke on “The Other in Comparative Law” and on the making of the constitution of Taiwan at panels in New York, one at New York University School of Law and the other at the New Century Institute Conference. In the fall,



PAUL VERKUIL, JEANNE SCHROEDER, and LELA LOVE (clockwise from top right) celebrate with students and colleagues at a book party, hosted by Dean Rudenstine, in honor of each of their recent publications: Professor Verkuil’s second edition of *Regulation and Deregulation* and the fourth edition of *Administrative Law and Process*; Professor Schroeder’s new book, *The Triumph of Venus: The Erotics of the Market*; and Professor Love’s *Dispute Resolution: Beyond the Adversarial Model*, a textbook published by Aspen Publishers, of which she is a coauthor.



Leana Amaez '05 of the Black, Asian, Latino Law Students Association (BALLSA) presents the Leadership In Diversity Award to E. NATHANIEL GATES at the annual BALLSA Alumni Dinner. Professor Gates was honored for his commitment to promoting diversity.

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he visited Canada, speaking at the University of Toronto Law School on “The Migration of Constitutional Ideas” and at the International Conference in Social and Political Philosophy at the University of Guelph. He gave a public lecture on the “Legal and Moral Limits in the Struggle against Terrorism” at the Institut des Hautes Etudes Sur La Justice in Paris, and was a panelist at Towards a European Constitution: Process of Integration or Issues of Discord? at The Hebrew University in Jerusalem.

Barry Scheck joined the cast of *Guantanamo: Honor Bound to Defend Freedom* one night and participated in a question-and-answer session following the performance at The Culture Project in New York City. The nonfiction play is based upon interviews with detainees, their families, and attorneys, as well as press conferences with government officials.

In November, **Paul Shupack** spoke at the New York State

Bar Association program on Secured Transactions Under Revised Article 9 and Proposed Revision to Article 1 of the Uniform Commercial Code.

The Israeli Supreme Court delivered a recent decision with far-reaching implications for human rights in the presence of terrorism (*Daher v. State of Israel*) and based its decision on a theory of liability—“evidential damage”—developed by **Alex Stein**. Professor Stein wrote about the theory in *Tort Liability under Uncertainty*, coauthored with Prof. Ariel Porat of Tel-Aviv University. The court awarded tort compensation to a Palestinian civilian accidentally injured by Israeli soldiers fighting Palestinian militants, because the Israeli army and the police failed to properly investigate and document the incident. Therefore the court held them responsible for evidentially incapacitating the claimant and liable for damages. At the University of Chicago Law School John M. Olin Law



Scheck



Shupack

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Martin Stone spoke on “Tradition and the First Person”



Stone

and Economics Workshop, Professor Stein presented a paper on overenforcement, coauthored with Richard Bierschbach and to be published in the *Georgetown Law Journal*.

Ed Stein sat on a CLE panel in the fall for New York State judges and their staff entitled “Same-Sex Marriages and Civil Unions: The Changing Legal Landscape” at the New York State Judicial Institute. At Hofstra Law School in October, he presented “Past and Present Proposed Amendments to the United States Constitution Regarding Marriage,” a paper that will be published in the December 2004 volume of the *Washington University Law Quarterly*. An electronic version appeared in *Issues in Legal Scholarship*, at <http://www.bepress.com/ils>



E. Stein

at the Cardozo conference on Authority, Text and Tradition, held in October.

Peter Tillers’s “Picturing Factual Inference in Legal Settings,” which suggests that properly designed visual representations of complex chains of inferences from evidence can perform a valuable function for litigators, is in *Gerechtigkeit-swissenschaft*, edited by B. Schünemann, M.-Th. Tinnefeld, and R. Wittmann and published by Berliner



PROF. ELLEN YAROSHEFSKY (left) was presented with the **Legal Aid Society 2004 Pro Bono Award** for ongoing consultation and valuable training on ethical issues for the criminal practice staff. She is shown here with **Chief Judge Judith Kaye**, who attended the ceremony.

Wissenschaftsverlag. He has been appointed to the editorial board of the new electronic *The Journal of the Forensic Institute*.

Ed Zelinsky continued to pursue his suit contesting double state income taxation, appearing at a press conference with Connecticut Senator Christopher Dodd and testifying before the House Judiciary Committee. Zelinsky is challenging a New York tax law, arguing that as a telecommuter he is being unfairly taxed by both his home state of Connecticut and the state of New York, where he derives his income.

ADJUNCTS

Hal Abramson, who teaches Representation in Mediation, won the Center for Public Resources Book Award for his new textbook, *Mediation Representation: Advocating in a Problem-Solving Process*.

"Let's Get Ready To Rumblllllllllle ! The Gloves Come Off In The Tyson Fee Fest," by **Michael Schreiber**, who teaches Lawyering Skills and Legal Writing, appeared in the *Norton Bankruptcy Law Review*, which also recently published his articles "Class Action Remedies for Lenders' Bankruptcy Abuse: The Titanic has Left Port and it's Full Steam Ahead" and "Shadowboxing In The Ninth Circuit BAP: Court Wins By Technical Knock-Out."



Charles Yablon participated in "The Changing World of Corporate Lawyers in the Wake of Sarbanes-Oxley," a discussion of the critical issues facing practicing lawyers, especially those on corporate staffs or working with corporations. Panelists were (from left) David Rosenfeld, associate regional director, Securities and Exchange Commission; Irwin H. Warren, partner, Weil Gotshal & Manges; Professor Yablon; David D. Brown IV, chief, Investment Protection Bureau, New York Attorney General's Office; and Lance D. Myers, partner, Holland & Knight LLP. Evelyn Konrad '05, subcommittee cochair of the New York County Lawyers' Association's Securities and Exchanges Committee, moderated.



AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

Michel Rosenfeld (at right) participated in a historic public discussion between US Supreme Court Justices Antonin Scalia and Stephen Breyer at American University's Washington College of Law earlier this year. The Justices addressed such topics as using foreign court precedent in deciding US constitutional cases and whether the US should take into account shifting world standards on social and moral issues such as the death penalty. Professor Rosenfeld, who made introductory remarks as president of the US Association of Constitutional Law, the event cosponsor, is shown here with (from left) Washington College of Law Dean Claudio Grossman, Justices Breyer and Scalia, and New York University Law Professor Norman Dorsen.