

By Professor Arthur D. Wolf, Director

# INSTITUTE FOR LEGISLATIVE AND GOVERNMENTAL AFFAIRS

## FALL 2010 SUMMARY OF PROGRAMS

By recent tradition, the first Institute event of the fall semester is the commemoration of Constitution Day, celebrating its signing on September 17, 1787. This year, however, on September 7, we held the first debate among the candidates for Hampden County District Attorney. The retirement of DA William Bennett, first elected in 1990, created the vacancy. The article on page 12 discusses the debates the Institute hosted and the election of Mark Mastroianni '89, as the new District Attorney.

### CONSTITUTION DAY

On September 17, Professor James W. Gordon presented the annual lecture on Constitution Day: "Civil Liberties During the American Civil War." Professor Gordon described the contending positions of historians in relation to Lincoln's suspension of the (*writ of*) *habeas corpus*, and the use of military arrests and military commissions to prevent and punish civilian opposition to the War. The traditional view was that Lincoln and the military made widespread use of military arrests to silence or punish those who opposed the War. More recent empirical scholarship suggests that these arrests and military trials were far less widespread than previously assumed, took place primarily in the border states and in the occupied South, and involved guerrilla activity, spying, law-breaking in military camps, or active, tangible support for the South's war effort, rather than mere verbal opposition to Lincoln's policies. Professor Gordon concluded that the proposition that Lincoln greatly expanded the war powers of the Presidency in fighting the Civil War is not in dispute, but that the traditional view that he used military arrests and military trials to violate fundamental civil liberties everywhere in the North is not supported by the recent scholarship.

As a prelude to the 15th Annual Supreme Court Review Conference, Professors Leora Harpaz, Bruce Miller, and I presented an overview of the work of the Supreme Court and its key decisions during the October 2009 Term. Eleven days later on October 16, Professor Giovanna Shay joined us for our 15th Annual Supreme Court Review Conference.

Professor Harpaz began the conference addressing four key First Amendment cases: two involving the religion clauses and two involving the free speech clause. In the religion cases, the Court rejected a claim for campus recognition by a religious organization that refused to comply with a law school's non-discrimination policy. It remanded a case in which the plaintiffs challenged a cross on public property, which Congress then transferred to private ownership.

I discussed two federalism cases, starting with the Court's decision that the Second Amendment right to keep and bear arms for self-defense in the home, as defined in *District of Columbia v. Heller* (2008), applies to state and local governments through the Due Process Clause of the 14th Amendment. The Court also ruled that Congress may, with the aid of the Necessary and Proper Clause, authorize the United States Government to commit civilly a mentally ill, sexually dangerous federal prisoner, who has served his prison sentence.

Professor Shay explored the criminal law cases, which have constituted a large part of the Court's docket in recent years. She addressed the three *Miranda* decisions the Court decided last term. While the government "won" in all three cases, she noted that the Court still seems committed to the centrality of the *Miranda* warning.

Professor Miller concluded the individual presentations before the final panel discussion. He discussed the Court's decision that accepted the constitutional claims of corporations (and inferentially unions) to contribute without limit to political campaigns, striking down a key feature of the McCain-Feingold Act. Professor Miller also explored the decision upholding, against First Amendment challenge, a federal criminal statute that prohibits, as material support for terrorist activity, training of members of a group designated by the Secretary of State as a Foreign Terrorist Organization on the peaceful uses of humanitarian and international law.



(Top L to R) Professors James Gordon and Leora Harpaz; (Bottom L to R) Professors Art Wolf, Bruce Miller, and Giovanna Shay