

# Around the Country

“Constitutionalism and the Global War on Terrorism” was the subject of a panel discussion on May 12, 2005, at the third in a series of Washington, D.C. meetings organized by the Academy’s Committee on Congress and the Court. **Stephen J.**

**Trachtenberg**, President of George Washington University, welcomed Fellows and guests to the campus, noting that “over the past 225 years, the Academy has continued to uphold its mission to ‘cultivate every art and science’ with a commitment to increase public understanding of the critical issues of the day. The constitutional questions raised when democratic governments seek to balance civil liberties with national security concerns is the kind of issue that requires the knowledge and insight the Academy is able to provide.”

Moderator **Robert C. Post** (David Boies Professor of Law at Yale

University) noted that the evolving nature of the Academy’s Congress and the Court study exemplifies how Academy projects can broaden their original mandate in response to changing circumstances: “In this case, an initial concern with the tension between the federal legislature and judiciary has expanded to include the stress imposed on constitutional forms of government by the events of 9/11 and their aftermath.”

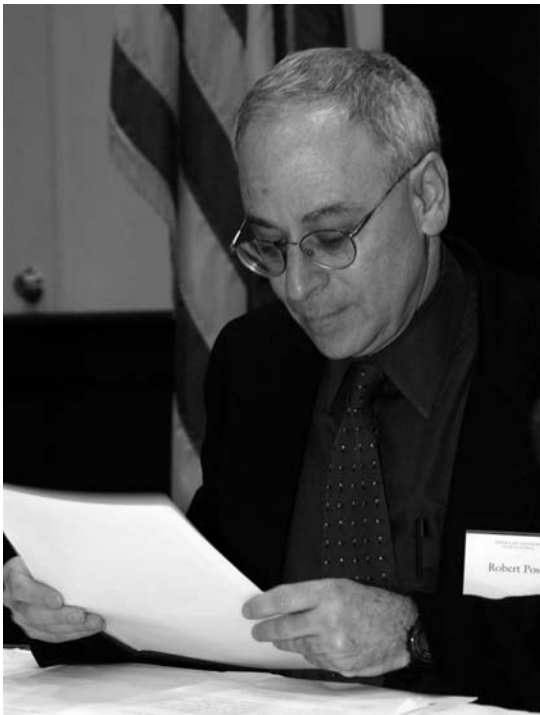
The four panelists offered a variety of perspectives on the state of constitutionalism, taking into account both international and historical perspectives. **Geoffrey Stone**, Harry Kalven, Jr. Distinguished Service Professor of Law at the University of Chicago, argued that historically the United States has overreacted to perceived and actual dangers during wartime. Citing examples from the Alien and Sedition Acts of 1798 to the prosecution of sus-

pected Communists during the Cold War, Stone urged that courts resist the highly deferential approach they have traditionally adopted in times of war and instead assert their critical role as a check against the constriction or the violation of civil liberties.

**The Honorable Patricia M. Wald**, former Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit, discussed the constitutional protection of individual rights in the context of the global war against terror. As an example, she considered the U.S. government’s practice of detaining persons captured in Afghanistan and Iraq for lengthy periods and without trial. Noting that national crises are opportunistically manipulated to overcome constitutions, **the Honorable Charles Fried**, Beneficial Professor of Law at Harvard University, suggested that greater concern should be

focused on the myths of constitutional crises that are manufactured for political ends. He cited McCarthyism and the war against terror as two examples of such mythmaking. **Kim Lane Scheppele**, John J. O’Brien Professor of Comparative Law and Sociology at the University of Pennsylvania, observed that as a direct result of the war on terror, the world has experienced the marked retreat of “constitutionalism,” a political value that includes the principles of constrained government, separation of powers, the protection of individual rights, and the distinction between domestic policing and military functions. In her view, the process is most evident in the fragile democracies of Pakistan, Colombia, and Russia.

The full text of these remarks will be printed in the Winter 2006 issue of the *Bulletin*. ■



**Moderator Robert C. Post** (Yale University)



**Kim Lane Scheppele** (University of Pennsylvania)



**The Honorable Charles Fried (Harvard University) and the Honorable Patricia M. Wald (Washington, D.C.)**



**Geoffrey Stone (University of Chicago)**



**Supreme Court Justice David Souter, Executive Officer Leslie Berlowitz, and George Washington University President Stephen J. Trachtenberg**