

Institute for Legislative and Governmental Affairs



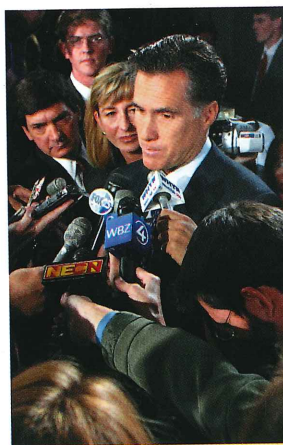
College Hosts First Post-primary Gubernatorial Debate

On September 24, one week after the Massachusetts primary election, the Institute hosted the first gubernatorial debate between Commonwealth Treasurer Shannon O'Brien and venture capitalist W. Mitt Romney. Our distinguished panel included Karen Brown (WFCR radio), Ray Hershel (Channel 40 News), Barry Kriger (Channel 22 News), Professor William Mandel (Western New England College Department of Government), and Dan Ring (*Springfield Union-News*). Jim Madigan, the thoughtful and experienced public television newsman, served as the moderator for the debate. A panel of students, led by our own Anderson

Theodore (SBA president), also asked questions of the candidates that the public submitted.

The debate covered a range of issues that both Ms. O'Brien and Mr. Romney had addressed in the primary election and would address more fully in the weeks following the College debate during the general election campaign. Among the more lively exchanges included topics relating to education, local aid, the budgetary crisis plaguing Massachusetts and the other 49 states, health-care, political patronage, experience, and philosophy of government.

In addition to the content of these outstanding presentations, we were very pleased to greet large audiences that included students, faculty, alumni/ae, members of the bench and bar, civic leaders, the media, and the general public.



The Seventh Annual Supreme Court Review Conference

Held on October 19, the conference comprised the third major event of the fall semester. Inspired by Professor Harpaz seven years ago, this year's panel addressed the major decisions of the 2001-2002 term of the United States Supreme Court. Professor Arthur Leavens began the discussion with the principal cases on search and seizure.

The Legislative Institute hosted four major events during the fall term, 2002, in addition to the continuing legal education programs.

The Institute's first event of the fall semester focused on the transcendent issue of homeland security in a September 20 seminar entitled, "Legal Response to Terrorism." Borne of a conversation among Professors Gouvin, Miller, and Wolf last winter, the Institute was privileged to welcome two special guests to the program: Attorney Victor Bernson, associate deputy general counsel, United States Department of Defense, and Professor Linda Kelly, Indiana University Law School at Indianapolis. Attorney Bernson addressed the issue of terrorism from the perspective of the Pentagon, justifying the extensive powers asserted by the Government in this time of national crisis, reminding the audience that government attorneys carefully reviewed each measure to ensure its compliance with constitutional and statutory standards and precedents. Professor Kelly focused on the impact of terrorism on immigration and immigrants, noting the vast power the Supreme Court has given to Congress and the executive through the years to regulate immigration. She observed that few constitutional limitations constrain the government regarding immigrants.

The panel concluded with presentations by Professors Eric Gouvin and Bruce Miller. Professor Gouvin addressed the murky and clandestine issue of international money laundering. Among other issues, Professor Miller explored the ongoing controversy of prosecuting terrorist suspects before military tribunals rather than the ordinary courts of law. Professor Art Wolf, director of the Legislative Institute, served as the moderator for the program.

(Top photo) Left to right: Dean Arthur Gaudio, Professor Eric Gouvin, Attorney Victor Bernson, Professor Linda Kelly, Professor Bruce Miller, and Professor Art Wolf.

Exploring the five Fourth Amendment decisions in the term, Professor Leavens noted, in agreement with Professor Lenese Herbert at last year's conference, the unpredictability of the Court's search and seizure decisions. Professor John Hill, a visiting professor from St. Thomas University Law School in Miami, followed with an insightful examination of the Court's death penalty jurisprudence. With three decided capital punishment cases during the term (an unusually large number), Professor Hill examined the unexpected ruling that the Constitution forbade execution of even "mildly mentally retarded" defendants. He also noted the inconsistency in the Court's rulings regarding the respective roles of judge and jury in capital cases. In light of the ongoing controversy over the death penalty, especially in light of DNA evidence casting doubt upon such convictions, Professor Hill suggested that the Court might take a more active role in the death penalty cases and perhaps begin to rethink its current position.

Professor Harpaz, making her seventh appearance at the annual Conference, explored the Court's decisions in the areas of free speech and religion. She first addressed two key cases involving child pornography, a very controversial issue in light of general public outrage over such publications. The Court invalidated a federal statute making illegal "virtual child pornography" and remanded a second case challenging the Child Online Protection Act to the lower court for further consideration of the constitutional questions. Professor Harpaz also addressed the Court's important ruling upholding Cleveland's school voucher program under which poor children receive government money that could be used to attend parochial schools.

Following Professor Harpaz, Professor Miller, also making his seventh appearance, addressed again the federalism decisions of the Court. Noting its three sovereign immunity cases, he stated that the Court continued its expansion of state immunity in private litigation, while making clear that injunctive relief for federal constitutional violations was still available against individual state officers. Professor Miller concluded with a discussion of the Court's decision invalidating state law speech restrictions on the campaigns of candidates running for elected judgeships.

Finally, Professors Harpaz, Hill, and Miller concluded the conference with a lively discussion of affirmative action programs, focusing on the current controversy at the University of Michigan that is before the Supreme Court. With insightful and passionate comments from the audience, the panelists sought to provide a legal, social, historical, and moral framework for this concluding topic.

The Institute's last program for the fall term occurred on November 2, three days before the general election. We had the honor of presenting a conversation with Senator John Kerry over the congressional resolution authorizing the President to take appropriate steps to address the crisis in Iraq. Senator Kerry had promised constituents who oppose United States intervention in Iraq that he would address the issue publicly and respond to questions.

Continuing Legal Education

Among its varied activities, the Institute for Legislative and Governmental Affairs cosponsors continuing legal education programs. With the assistance of Patricia Plasse, the western Massachusetts representative for the State Bar Association (the "MBA") and Linda Moye, director of Law Alumni Relations, we are able to offer such programs to our graduates and the bar at large. The MBA has generously provided deeply discounted rates for our alumni and students to attend these programs.

Together with the four western Massachusetts county bar associations (Berkshire, Franklin, Hampden, and Hampshire), the Institute



and the MBA presented four outstanding seminars during the fall term, 2002.

The Basics of Divorce Practice (October 1)

The CLE program on divorce featured Chair Mary Socha, one of our mainstays on domestic relations programs, and Attorney Ronald Kaufman of Amherst. The session covered ethical issues, preparing financial statements, securing temporary restraining orders, discovery, settlement, and trial preparation.

Public Law Basics (October 15)

The public law program was part of a week-long program that the School of Law offered covering a range of issues in public interest practice. We were privileged to have Juliana Rice, assistant attorney general, and Maria Mossaides of the Massachusetts Technical Collaborative, serving as cochairs of this unique session. Joining cochairs Rice and Mossaides on the panel were Attorney Peter Sturgis, State Ethics Commission, Attorney Alan Cote, supervisor of Public Records in the Office of the Secretary of State, alumna Jane Davidson Montori '79, assistant district attorney, and Attorney Judy Zeprun Kalman, assistant Attorney General and a member of our faculty. The panelists conducted a lively discussion of public records, open meetings and state ethics law, and the roles of private and public attorneys in advancing public interest law.

Business Organization Basics (October 28)

The second half of the fall CLE programs addressed commercial issues: business organizations and bankruptcy. The business organizations seminar focused on the "various alternatives available in the organization of a business enterprise." Our distinguished panel of experts included Attorneys David A. Parke and Amy E. Morrissey, and Professors Susan R. Finneran and Fred Royal (a School of Law favorite).

Recent Developments in Bankruptcy Law (November 14)

The bankruptcy program, the inspiration of Judge Henry Boroff (a member of our faculty and federal bankruptcy judge for Berkshire, Franklin, Hampden, Hampshire, and Worcester counties), drew a very large audience for a very hot topic. Addressing recent court decisions and pending legislative changes, the panelists moved through a variety of current issues. In addition to cochairs Judge Boroff and Attorney Jonathan R. Goldsmith, the representative panel included Attorneys Richard T. King (assistant U.S. trustee), Denise M. Pappalardo, Joseph B. Collins, alumnus David W. Ostrander '89, Gary M. Weiner, and Steven Weiss. ♦