

Institute for Legislative and Governmental Affairs Concludes Successful Inaugural Year



The Joint Committee on Health Care of the Massachusetts Legislature. (Photo courtesy of *The Healthcare News of Western Massachusetts*)

"The decision in *Bush v. Gore* is so unsettling that we should 'shun' the judges who supported it, in the true New England tradition," so intoned Professor Bruce Miller at the recent Institute-sponsored seminar on the United States Supreme Court's presidential election cases. He was so outraged by the decision that he thought lawyers and judges should take whatever steps they can to send a clear message to the justices that "political" decisions of this sort are totally unacceptable.

One of several events that the Institute hosted this inaugural year, this seminar addressed the question: "Presidential Election 2000: Where Are We Now?" Professors James Gardner, Taylor Flynn, and Arthur Wolf joined Professor Miller on the panel that explored the range of views regarding the decisions in the Supreme Court's cases involving the last presidential election.

Professor Gardner explored the federalism aspects of the decisions: *Bush v. Palm Beach County Canvassing Board* (Bush I) and *Bush v. Gore* (Bush II). Noting that this Supreme Court has been especially solicitous of state and local governments, he observed that the Supreme Court was not very deferential to state authority in these cases. For the

most part, he noted, state and local officials conduct elections from registration for voting through the final certified results. Federal responsibility is on the periphery. Here, however, the Court imposed uniform federal standards with respect to counting ballots, a standard that may be impossible to meet.

Professor Flynn examined the constitutional aspects of the decisions, namely, placing the holding on the Equal Protection Clause of the 14th Amendment. In *Bush v. Gore*, she noted, seven justices supported the conclusion that a state cannot order a statewide recount without first having uniform statewide standards by which the recount is undertaken. This follows from the idea of "one person, one vote," which first entered the Supreme Court's lexicon in the reapportionment cases. Relying on the Equal Protection Clause is a very "activist" approach for this Court, Professor Flynn observed. "Whether this decision is *sui generis* or whether it will serve as an important precedent in voting cases remains to be seen," she concluded.

Professor Wolf spoke to the reform measures that were under consideration in the state and national legislatures. He noted that legislators have proposed reforms in three areas of

* Professor Wolf serves as the Director of the Institute for Legislative and Governmental Affairs.

the electoral process: (1) pre-election day matters (i.e., registration and ballot review); (2) election day activities (i.e., voting machinery and disqualifying voters); and (3) post election day conduct (i.e., counting and recounting ballots). As of April 12, the day of the seminar, at least Florida, Georgia, and Illinois have made significant changes in their Election Day procedures. All have adopted or will soon adopt optical scanning equipment to reduce the amount of voter and mechanical error in casting and tabulating votes.

Congress is also considering providing financial assistance to state and local governments to upgrade their voting equipment. States are discussing better ways to register voters and make sure those registered are allowed to vote on Election Day. "Don't expect any changes in the Electoral College, however," Professor Wolf noted. "Of the approximately 200 proposals made since 1789, only the 12th Amendment, ratified in 1804, has passed," he concluded.

The seminar on the presidential election was one of the many events the Institute sponsored for the 2000-2001 academic year. Among the various undertakings in its first year of existence, the Legislative Institute, during the fall semester, sponsored: (1) the fifth annual Supreme Court Review Conference (with Professors Harpaz, Herbert, Leavens, Miller, Stonefield, and Wolf); (2) a seminar on the International War Crimes Tribunals sitting in The Hague, The Netherlands, and Arusha, Tanzania, created to address the violations of international criminal law occurring during the Balkan and Rwandan armed conflicts (featuring Professor Michael Scharf and Attorney Gordon Wentworth); and (3) the first seminar on Presidential Election 2000 (with Professors Harpaz, Miller, and Wolf).

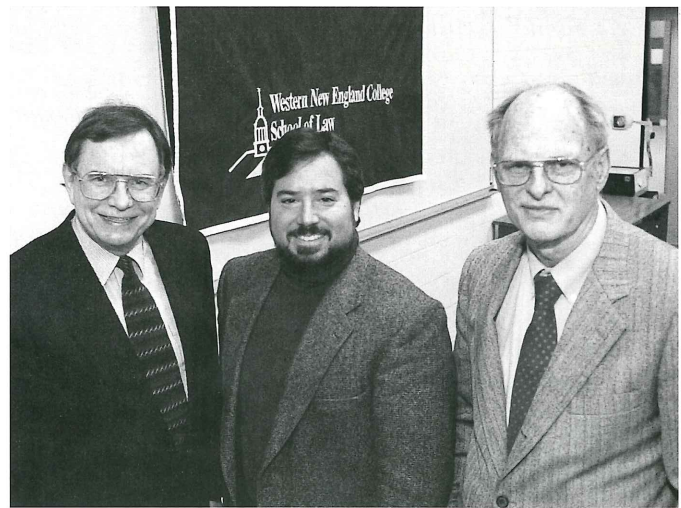
During the spring semester, the Legislative Institute sponsored a second session on the Presidential Election 2000, discussed earlier, and cosponsored, with the Massachusetts Bar Association and the Law School's "Lawyers, Practice, and Professionalism" series, a seminar on the recent amendments to the Federal Rules of Civil Procedure. Our distinguished panel included United States Magistrate Judge Kenneth Neiman, Attorneys Susan Fentin '96 (chair), Sandy Dibble, Alan Katz, and Professor Bruce Miller.

Furthermore, on May 14, the Institute hosted hearings of the Joint Committee on Health Care of the Massachusetts Legislature (the "General Court") (see photo). The hearings focused on staffing levels at nursing homes, hospitals, and other health care facilities. They are part of a continuing series in which the Institute invites committees of the State

Legislature to conduct their hearings at the Law School. In this manner, citizens and other interested persons in Western Massachusetts have easier access to their elected officials. Holding hearings here also facilitates testimony and attendance by local residents, who may find the trek to Boston inconvenient and difficult.

Under Legislative Institute supervision, law students also participated in various externships and independent studies relating to legislative and governmental affairs. Moreover, Director Wolf presented lectures to students on legislative process, and participated in outside conferences and consultations on legislation specifically and institutes and centers generally.

The Legislative Institute is currently planning programs for the academic year 2001-2002. For example, the sixth annual Supreme Court Review Conference will occur in the early part of the fall semester. We are also considering seminars on the proposed amendments to the Federal bankruptcy code and electronic recording of legal documents. Each graduate should make sure the Alumni Office has an updated email address, since we use such lists to publicize Institute events. Please contact Professor Wolf at awolf@law.wnec.edu if you have any additional ideas for programs or if you wish to assist the Institute in its work. If you are an elected official whose duties include legislative work, please provide that information also to the Alumni Office. ♦



Professor Art Wolf; Professor Michael Scharf, director of the Center for International Law and Policy at the New England School of Law; and Attorney Gordon Wentworth at the seminar on the International War Crimes Tribunals.