

In its mission statement, the American Bar Association declares that it is the “national representative of the legal profession.” And, not surprisingly, as the largest professional legal organization in the world, many policy makers, journalists, and ordinary citizens do in fact look to the ABA as a bellwether of the legal profession on matters involving law and the justice system. This is why debate about the work and the activities of the ABA—and the role that it plays in shaping our legal culture—is so very important.

ABA WATCH has a very simple purpose—to provide facts and information on the Association, thereby helping readers to assess independently the value of the organization’s activities and to decide for themselves what the proper role of the ABA should be in our legal culture. We believe this project is helping to foster a more robust

debate about the legal profession and the ABA’s role within it, and we invite you to be a part of this exchange by thinking about it and responding to the material contained in this and future issues.

In this issue, we offer a preview of the ABA’s annual meeting in San Francisco, including the ABA’s discussion of overcriminalization and the proposed resolution to address the issue. We offer an overview of the ABA’s efforts to reform legal education, and we highlight the ABA’s stance on the issue of same-sex marriage and its support of the Supreme Court decision in *United States v. Windsor*. And, as in the past, we digest and summarize actions before the House of Delegates.

Comments and criticisms about this publication are most welcome. You can email us at info@fed-soc.org.

2013 ABA Awards

ABA Watch previews some of the key honorees at this year’s ABA Annual Meeting in San Francisco.

ABA Medal

Each year the American Bar Association awards its highest honor, the ABA Medal, to one or more recipients who make outstanding contributions to the cause of American jurisprudence. This year’s recipient is former Secretary of State Hillary Rodham Clinton. Secretary Clinton was chosen to receive the award for her “immense accomplishments as a lawyer, the strides she made for women both professionally and civically, and for promoting the interests of the U.S. and human rights abroad,” according to ABA President Laurel G. Bellows. Bellows declared that Clinton “not only deserves this honor, but also the gratitude of the legal profession and the nation.” Clinton attended Yale Law School and served as Secretary of State from 2009 – 2013, New York Senator from 2001-2009, and First Lady from 1993-2001. She was the first female senator to represent the state of New York. Clinton also served as the first chair of the ABA Commission on Women in the Profession in 1987.

Clinton has spoken to the Association a number of times. In 1992, she delivered the keynote address

to the ABA’s Commission for Women in the Profession luncheon. She praised honoree Anita Hill, stating that her testimony in the Clarence Thomas confirmation hearings “transformed consciousness and changed history. All women who care about equality of opportunity, about integrity and morality in the workplace are in Professor Anita Hill’s debt.” In 2005, she was a special Margaret Brent awardee. She also spoke to the Association’s International Rule of Law Symposium that same year.

Thurgood Marshall Award

The ABA will honor Judge Thelton E. Henderson with the Thurgood Marshall Award. The Thurgood Marshall Award recognizes members of the legal profession who contribute to “the advancement of civil rights, civil liberties, and human rights in the United States.” Judge Henderson, a Carter appointee, served as a federal district court judge for the Northern District of California. He assumed senior status in 1998. He previously served as a consultant on the U.S. Commission on Civil Rights. Judge Henderson was the first African American attorney to work in the Civil Rights section of the Department of Justice. Amongst his notable decisions, he struck down Proposition 209, which banned racial preferences in California in the areas of public

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businesses that might otherwise create breakthroughs in energy development.

2013 ABA Awards

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employment, public contracting or public education, as unconstitutional. In its announcement of the award, the Association stated that Judge Henderson is receiving this award for his “pioneering role breaking color barriers, his contributions to social justice, his lifelong government service, and his history in and commitment to the civil rights movement.”

John Marshall Award

Chief Judge Robert M. Bell of the Maryland Court of Appeals will be awarded the John Marshall Award, presented by the Justice Center of the ABA’s Judicial Division. The award is given each year to an individual who has made significant advancements in judicial independence, justice system reform, or public awareness. Judge Bell has served at all four levels of Maryland’s courts, and in 1996, he became the first African-American to lead the Maryland judiciary. The ABA credits Judge Bell with running the Maryland court system according to his “guiding judicial principles: fuller access to justice; improved case expedition and timeliness; equality, fairness and integrity in the judicial process; judicial branch independence and accountability; and restored public trust and confidence in the court system.” He retired from his position as chief justice on the Maryland Court of Appeals in July 2013.

Margaret Brent Women Lawyers of Achievement Award

This year the ABA is awarding the Margaret Brent Women Lawyers of Achievement Award to Hon. Mazie K. Hirono, Sara Holtz, Hon. Gladys Kessler, Marygold Shire Melli, and Therese M. Stewart. This award is named after Margaret Brent, the first woman lawyer in America, and it “honors outstanding women lawyers who have achieved professional excellence in their area of specialty and have actively paved the way to success for others.

Hon. Mazie K. Hirono

Senator Hirono is currently representing Hawaii in the United States Senate as a Democratic member. She

was the first female to be elected as Senator from Hawaii, and she is also the first Asian-American woman to serve in the U.S. Senate. Previously, Senator Hirono was the Lieutenant Governor of Hawaii. She also served in the U.S. House of Representatives and the Hawaii House of Representatives.

Sara Holtz

Sara Holtz owns and operates ClientFocus, an organization that “helps women lawyers become successful rainmakers.” She wrote a book on this subject entitled, *Bringin’ in the Rain: A Woman Lawyer’s Guide to Business Development*. Previously, Ms. Holtz served as vice president and general counsel at Nestle Beverage Company and division counsel at Clorox Company. She was the first woman to chair the Association of Corporate Counsel.

Hon. Gladys Kessler

Judge Gladys Kessler is a senior judge on the U.S. District Court for the District of Columbia. She was appointed in 1994 by President Bill Clinton. Previously, she served as an associate judge on the Superior Court of D.C. She has also worked for the New York City Board of Education and owned her own public interest law firm. Judge Kessler has held the office of president in the National Association of Women Judges and serves on the ABA Conference of Federal Trial Judges.

Marygold Shire Melli

Ms. Melli is the Voss-Bascom Professor of Law Emerita at the University of Wisconsin Law School and an affiliate of The Institute for Research on Poverty. She has served as associate dean of the law school, and as chair of the University Committee, which is the executive committee of the university faculty. Ms. Melli was previously vice-chair of the Wisconsin Supreme Court’s Board of Lawyer Competence, as well as chair of the National Conference of Bar Examiners. She is a member of the American Law Institute and the International Society of Family Law where she currently serves as a vice-president and as chair of the Scientific Committee.

Therese M. Stewart

Ms. Stewart is the chief deputy city attorney for San Francisco, California. She has become well-known for her work in the California state and federal court cases regarding same-sex marriage. Previously, she was a litigation partner at Howard, Rice, Nemerovski, Canady, Falk & Rabkin. She served as a lead attorney on the

Proposition 8 case in California. Stewart served as the first openly gay president of the Bar Association of San Francisco, as well as the first co-chair of its Committee on Sexual Orientation.

Reforming Legal Education: a Two-Track Approach

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concluded its last review of accreditation standards, and followed on the heels of calls from within the ABA for the Committee to make further reforms.

Although the Committee initially expected its current review to last two years, the review is now approaching the end of its fifth year. The Committee hopes to conclude by the end of 2013. One possible reason for this delay is the magnitude of financial and educational problems facing the legal academy. A second reason is the Committee's membership structure. Committee bylaws prohibit members from serving more than six years. As a result, the Committee experiences frequent membership turnover, leading to instability and impeding progress.

The Committee's primary focus is to review all eight chapters of the ABA's accreditation standards. Although the Committee has approved recommendations for most accreditation standards, the Council has decided to postpone consideration of the recommendations, until the Committee submits all proposed reforms. Several of these reforms have loosened costly regulations on law schools. For example, the Committee has recommended the ABA require only that students have "reliable access" to essential legal materials, rather than mandating schools own physical copies of such materials. The Committee also supported removal of the requirement that law schools maintain a student-to-faculty ratio better than 20:1. Other recommendations, such as raising the required number of experiential coursework credits, will give students more practical legal training. The Committee also considered the LSAT's role in law school admissions. After much back-and-forth the Committee could not agree on whether the ABA should mandate LSAT use or allow schools to experiment with other admission procedures. As a result, the Committee submitted two competing recommendations: maintain a somewhat lessened LSAT

requirement or delete the requirement altogether.

The Committee is still considering two particularly contentious issues pertaining to faculty tenure and student performance. At its most recent meeting, the Committee approved four competing proposals that amend the ABA's current standard, which implicitly requires that accredited law schools offer faculty tenure. The first proposal clarifies the status quo by making the provision for "tenure or a comparable form of security of position" an express requirement. The second proposal does not require tenure, but mandates a "security of position" that provides, at minimum, five-year presumptively renewable contracts following a probationary period not to exceed seven years. The third proposal leaves "security of position" undefined, but requires schools to offer all full-time faculty the same security, governance, and other rights regardless of academic field or teaching methodology. The fourth proposal does not require any security of position. Although the committee expressed preference for the second proposal, the Council has not yet indicated which option it will approve.

The Committee is also considering, but has not yet approved, a plan to simplify and strengthen bar exam performance requirements for law schools. Currently, 75 percent of a law school's graduates in three of the past five years must pass the exam in order for the school to retain accreditation. Alternatively, a school can retain accreditation if the first-time exam passage rate among its graduates is no less than 15 points below the national average for first-time exam takers. The new standard would eliminate both of these requirements and mandate 80 percent of each school's graduates pass the exam within two calendar years following graduation. The new proposal may also change the method law schools use to calculate the passage rate of its graduates.

Track Two:

Task Force on the Future of Legal Education

While the Standards Review Committee has moved slowly but with some concrete results, the Task Force has moved relatively swiftly but has not yet produced recommendations, nor have its public meetings suggested clear movement in any direction. Formed by the ABA in August 2012 and chaired by former Chief Justice of the Indiana Supreme Court Randall Shepard, the 19-member Task Force has a two-year mandate to broadly examine the challenges facing legal education. Recognizing the pressing nature of these challenges, the Task Force advanced its timeframe and now expects to release preliminary findings