

PROMINENT DEMOCRATS HONORED AT ANNUAL MEETING

Judge Abner Mikva, Senator Hillary Rodham Clinton, and Judge George N. Leighton are among the honorees at the annual ABA meeting in Chicago. *ABA Watch* profiles these nominees below.

Thurgood Marshall Award

Judge Abner Mikva will receive the ABA's 2005 Thurgood Marshall Award from the Section of Individual Rights & Responsibilities at a dinner on August 6. The award recognizes his "outstanding commitment to the preservation and expansion of civil rights." According to the ABA's press release, Judge Mikva "has demonstrated consistent leadership in protecting the rights of the disenfranchised and promoting respect for the rule of law." Supreme Court Justice John Paul Stevens will deliver the keynote address at the dinner honoring Judge Mikva.

Judge Mikva served as chairman of the Illinois House of Representatives Judiciary Committee, as a Democratic Congressman from Illinois, as White House Counsel to President Bill Clinton, as a lecturer at the University of Chicago, and as a federal judge on the U.S. Court of Appeals for the D.C. Circuit.

He is a co-founder and advisor to the American Constitution Society. At its launch, he told the crowd: "Over the years, we have been out-hustled. You can return justice to the law again," demonstrating "that rigorous legal thinking is consistent with liberal values."

Judge Mikva has been an outspoken political commentator during much of his career. He was a sharp critic of the 2000 *Bush v. Gore* decision. Before President Bush's reelection, Mikva criticized the Supreme Court's many 5-4 decisions and suggested that the Senate increase its role in determining the future make-up of the Court because President Bush "does not have the mandate of a national plurality." He wrote that Bush's lack of mandate mattered less for executive branch appointments than for judicial appointments because they are for life and "probably would serve

for many years after the people resolve this political anomaly and elect a president who wins the popular vote." He continued: "Still another reason that the political climate warrants Senate involvement is that the Court itself made the final decision as to who should be president. That judgment raised many doubts about the legitimacy of the court's action." He concluded: "If there are to be changes in its personnel, they ought to be made by a president who has a popular vote mandate. I think the Senate should not act on any Supreme Court vacancies that might occur until after the next presidential election. Changes in the existing delicate balance could put the very legitimacy of the [C]ourt as an institution at risk."

In a 2002 piece for *The Washington Post*, Mikva criticized the Rehnquist Court for limiting areas Congress could regulate; "cut[ting] back substantially on any affirmative action programs that government agencies can conduct, even when legislatively authorized; and continuing "to fester on whether the Constitution guarantees a women's right to terminate a pregnancy."

Judge Mikva has also been highly critical of the Bush Administration's policies on the war on terrorism and the USA PATRIOT Act. He told a gathering at the Chicago Lawyers' Committee for Civil Rights that the Bush administration has pushed through laws that undermined the Bill of Rights and violated the principle of due process and equal justice under the law. He described the USA PATRIOT Act and other legislation passed in the wake of 9/11 as "more serious threats to our liberty" than the terrorist attacks.

With respect to the war on terrorism, Judge Mikva opined that the United States did not balance the need for new security measures with civil liberties, citing the example of the prisoners at Guantanamo Bay. He asserted that American behavior "undercuts our arguments against the abuses of the Cubas and Iraqs of the world." He also sharply criticized the decision by the

Bush Administration to withdraw its signature on the International Criminal Court treaty.

Judge Mikva also suggested that the Bush Administration was not generally following the rule of law, despite pushing rules upon others. He wrote in an editorial with former Clinton Administration National Security Advisory Anthony Lake, "It is not only on issues like the environment, the rights of children, and the scourge of landmines that the United States stands virtually alone in opposing international agreements. We are breaking away not only from our allies but from our own heritage on the most basic issues of human liberty and the rule of law."

Judge Mikva also criticized the Bush Administration's decision not to permit the ABA to pre-screen its judicial candidates. He stated at the time that the Bush Administration "really shot themselves in the foot on this ABA thing. When you are picking judges, you want all of the information on problems as early as possible. Sometimes you can go ahead with it, and sometimes you don't. But the later you find out about it, the more embarrassing it can be." At the time, White House Counsel Alberto Gonzales explained it would be inappropriate to grant a "preferential, quasi-official role" to the ABA, as it took public positions on political, legal, and social issues coming before the courts.

Judge Mikva and his wife are the founders of the Chicago-based Mikva Challenge Grant Foundation, which seeks to engage young people in the democratic process. Last year, the program encouraged young people to volunteer for the presidential candidates of their choice, gathered young people together to watch the Democratic presidential debate, created an action plan on education reform, and facilitated internships.

Margaret Brent Awards

U.S. Senator and former ABA leader **Hillary Rodham Clinton** leads the

list of women honored by the ABA Commission on Women in the Profession with its Margaret Brent Women Lawyer of Achievement Award. This award, first bestowed in 1991, "honors outstanding women lawyers who have achieved professional excellence in their area of specialty and have actively paved the way to success for others."

Special Award Honoree Senator Clinton served as the first chairman of the

ABA Women's Commission in 1988. After graduating from Yale Law School, Senator Clinton joined the Rose Law Firm as one of its first women associates in 1976. In 1978, President Carter appointed her to the board of the Legal Services Corporation. She served for twelve years as First Lady of Arkansas and for eight years as First Lady of the United States. She was appointed by her husband to chair the Task Force on National Health Care Reform. Congress rejected her plan in 1994, and further plans

for reform were abandoned. In 1995, she led the American delegation to a United Nations Conference on Women in Beijing, China. In 1996, the First Lady authored *It Takes a Village and Other Lessons Children Teach Us*. In 2000, she was elected to the U.S. Senate in New York.

On Senator Clinton's webpage, she lists her priorities when it comes to women's issues. She writes, "I continue to press for equal rights for girls and women by fight-

ABA TASK FORCE ON UN HUMAN RIGHTS COMMISSION RELEASES REPORT

In June, the American Bar Association's Board of Governors adopted recommendations offered by the ABA Section of International Law's Task Force on Reform of the United Nations Commission on Human Rights. The recommendations urge fundamental reform of the process by which the United Nations addresses human rights.

The ABA Task Force, established in January of 2004, conducted monthly meetings last year at which it heard testimony from a wide variety of government officials, think tanks, nongovernmental organizations (NGOs), and former U.S. Ambassadors to the Commission. The witnesses all agreed on the need to reform the Human Rights Commission, finding that it failed to fulfill its mission to promote and protect human rights. The primary cause of that failure, according to the Task Force, "is the increasingly politicized nature of the Commission, which has severely compromised the capacity of the Commission to take action in response to serious human rights violations." In particular, the ABA Task Force report severely criticized the Commission for failing to adopt a resolution condemning the genocide in Sudan.

The Commission's membership includes many countries with questionable human rights records, including Bhutan, China, Cuba, Egypt, Eritrea, Mauritania, Saudi Arabia, Sudan, Swaziland, Togo, and Zimbabwe. In 2001, United States was voted off the Commission though it has since rejoined. In 2003, the Commission was chaired by Libya.

The ABA Task Force concluded other aspects of the U.N. Human Rights

Commission also hindered its effectiveness, including its large size, its status as a subsidiary of the Economic and Social Council, and its restricted meeting schedule.

The Task Force proposed replacing the Commission on Human Rights with a Human Rights Council. The proposed Council would have the status, size, and discretion necessary to fulfill its responsibilities as the leading human rights inter-governmental body in the U.N. structure. While the ABA Task Force agreed with some recommendations of reform recently suggested by the U.N. Secretary General, it rejected and modified others.

The ABA proposed that the Council should be a standing body of the U.N., with fewer members than the current Commission. The Council members would be elected by the General Assembly subject to a two-thirds majority. The Council should adopt a Code of Conduct under which members would pledge to honor their human rights obligations and to cooperate fully with the Commission's investigations.

The Task Force recommends guidelines designed to focus its mission on fundamental human rights and the rule of law, to promote responsible behavior by Member States, to strengthen the role of the Democracy Caucus of Member States, and to enhance the professionalism of the investigative processes.

To strengthen the new Council's investigatory processes, the Task Force specifically recommends that the capacity and credibility of rapporteurs should be strengthened through the expansion and updating of professional rosters, training

manuals, and the use of common investigative protocols. The Council should allow ample time for rapporteurs to present their reports. The rules of the complaint procedure should be revised to promote greater transparency.

The Task Force proposes reforms to enrich the contribution of the High Commissioner for Human Rights by enhancing its effectiveness. The Task Force recommends that the special rapporteurs be required to present their reports to the High Commissioner immediately after completion rather than on an annual basis. The Task Force also recommends that the High Commissioner produces and circulates up-to-date compilations of the rapporteurs' findings well in advance of each session of the Council and that the High Commissioner be empowered to present a rapporteur's report to the U.N. Security Council in cases of an imminent human rights crisis.

Finally, the Task Force proposes enhancing the role and contributions of NGOs. To facilitate NGO communication and interaction, the Council should appoint a coordinator and remove the strict requirements governing NGO speaking time during meetings.

Despite its criticisms, the Task Force recognizes that the Commission has done important work in exposing cases of serious human rights violations and hopes that reforms to the Commission will only make it more effective, particularly in addressing countries with poor human rights records.

ing to protect Title IX, which provides equal opportunities for girls and women in sports, championing legislation that would ensure that women earn the same amount as men for equal work, and more. I have strongly opposed President Bush's move to deny critical health care services to women in developing countries and am continuing the work I began as First Lady to reduce the number of unintended pregnancies, especially teen pregnancies." She also has lobbied to increase funding for Title X, the only Federal program devoted solely to the provision of family planning and reproductive health care.

Senator Clinton's web page also trumps her support for *Roe v. Wade*. According to her Web page, "Her commitment to supporting *Roe* and working to reduce the number of abortions, by reducing the number of unwanted pregnancies, was hailed by the *New York Times* as 'frank talk... (and) a promising path.'"

Senator Clinton is the author of several books, including her autobiography, *Living History; It Takes A Village: and Other Lessons Children Teach Us; Dear Socks, Dear Buddy: Kids' Letters to the First Pets; and An Invitation to the White House*.

Mary Ann McMorow serves as Chief Justice of the Illinois Supreme Court. She was first elected to the bench in 1976 when she won a position on the Cook County Circuit Court. She was first elected to the Illinois Supreme Court in 1992 as a Democrat. In 1997, she wrote the court's majority opinion in *Best v. Taylor Machine Works*, striking down tort reform legislation. The Court ruled that the Civil Justice Reform Amendments of 1995 enacted by the legislature violated the Illinois Constitution. She described the legislation as encroaching on the powers of the judiciary. Critics derided the decision as judicially activist, and many accuse the decision of opening up Illinois to countless, baseless lawsuits.

Judith L. Lichtman is immediate past president and senior advisor to the National Partnership for Women and Families in Washington, D.C., which she led for thirty years. The National Partnership is a "nonprofit, nonpartisan organization that uses public education and advocacy to

promote fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of work and family." According to its website: "As a vocal and effective advocate on the issues that are most important to women and families, we will press for family-friendly workplace policies and fight discrimination in all its forms. We will represent women and families in the health care debate and protect women's reproductive rights. And for our future and our children's future, we will support confirmation of judges who respect our civil rights and civil liberties."

In her position as president, Lichtman litigated cases and lobbied for legislation such as the Pregnancy Discrimination Act, the Civil Rights Act of 1991, and the Family and Medical Leave Act. According to the ABA, she created institutions such as the Women's Law and Public Policy Fellowship Program and EMILY's List to "give women lawyers a voice in the profession." The Fellowship Program, based at Georgetown, allows fellows to focus on women's rights issues. EMILY's List, according to its website, "is dedicated to taking back our country from the radical right wing by electing pro-choice Democratic women to federal, state, and local office... Our immediate focus is to win elections to turn back the Bush Republicans and their right-wing agenda."

Lichtman has lobbied against many of the Bush Administration's nominees and policies. In 2001, she spoke out after John Ashcroft's nomination as Attorney General, stating, "President-Elect George W. Bush's nomination of John Ashcroft for Attorney General is an affront to women and people of color who rely on the federal government to promote fairness and equal opportunity. He is an extremist who has consistently opposed measures to promote civil rights and women's rights in this country." Under Lichtman's leadership, the Partnership launched its "Agency Watch" Project to monitor the Administration's policy and rule making activities as well as its judicial nominations.

Lichtman supported the *Gratz* and *Grutter* racial preferences cases decided by the U.S. Supreme Court in 2003. At the time, she stated: "Women have an enormous stake in the outcome of these cases because affirmative action has been the key

to much of the progress women have made over the last three decades. Affirmative action has been an essential tool for remedying longstanding discrimination and opening the doors of opportunity for all women—white women and women of color. While opponents invoke pernicious racial stereotypes to fan the flames of division, in truth affirmative action programs are vitally important to leveling the playing field for both women and men, consistent with this nation's shared values of fairness and equal opportunity."

Earlier this year, she opposed the strategy contemplated by Senate Republicans to end the use of the filibuster against President George W. Bush's judicial nominees. She signed a letter by the group "Not in Our Name" as a "civil rights leader." The letter alleged that the "nuclear option" would leave "nothing to stop the majority from cutting off debate on regressive proposals concerning issues such as education, civil liberties, national security, and veterans' benefits. Further, ending judicial filibusters would endanger carefully constructed programs such as Social Security and health care and pose a great threat to laws designed to protect equality of opportunity."

Loretta Collins Argrett, a graduate of Harvard Law School, served as the Assistant Attorney General in the Tax Division of the U.S. Department of Justice during the Clinton Administration. She taught at Howard University Law School and currently serves as a mediator and ethics consultant.

Mary Cranston, a Stanford Law graduate, is chair of Pillsbury Winthrop. She is the first woman to lead an AMLAW 100 law firm. Earlier in her career, Cranston led initiatives in San Francisco law firms in the late 1970s and early 1980s "to promote gender friendly policies such as maternity leave and part-time schedules." The *National Law Journal* named Cranston one of the 100 most influential lawyers in the United States. She is an expert in class-action procedural and trial issues.

Carolyn Dineen King, a Yale Law School graduate, is the first woman appointed to the U.S. Court of Appeals for the Fifth Circuit, the first woman to serve as its chief judge, and the first woman to

chair the Executive Committee of the Judicial Conference of the United States. She was nominated by President Jimmy Carter to the Fifth Circuit in 1979. Prior to becoming a judge, she was engaged in private practice in Houston, including ten years at Fulbright & Jaworski. According to her ABA profile: "A beneficiary of the Civil Rights Act, King was hired in 1962 at a large law firm as the first woman to be paid the same salary as the men starting at the firm. She courageously quit her job in protest after being passed up twice for partner, setting an example and forcing the firm to offer equal opportunities for women. Since her appointment to the bench, she has ensured that more than half of her law clerks are women, and her influence on the appointment of women judges is significant."

ABA Medal

The 2005 ABA Medal, the highest award offered by the ABA, will be presented to **Judge George N. Leighton**, a retired federal trial court judge in Chicago.

ABA President Robert Grey stated in announcing the award: "It is an honor for the ABA to recognize this valiant champion of human dignity. As a lawyer, he put his own career on the line for the sake of his clients, to the point that he faced indictment for inciting a riot because he fought in court to secure safe residency for an African-American family attempting to move into a segregated Chicago suburb

in 1951. He represented those accused of crimes and those denied their rights, with a passionate commitment to assuring the government operates according to law. As a judge, he upheld the free speech rights of African Americans and Nazis, protecting the rights of all."

A graduate of Howard University and Harvard Law School, Leighton settled in Chicago and practiced civil rights and criminal defense law before being elected as a judge in Circuit Court of Cook County in 1964. From 1969-1976, he served as a justice on the First District Illinois Appellate Court. In 1976, he was appointed to the U.S. District Court for the Northern District of Illinois. Throughout his career, he was active in the NAACP (serving as president of the Chicago Chapter), the ACLU, the ABA, and several other community organizations. He was also active in the state and local Democratic party until becoming a judge, including the Richard J. Daley mayoral campaign and the John Kennedy presidential campaign. Until 2004, he taught at John Marshall Law School.

His famous cases include a successful challenge to an Alabama constitutional amendment (known as the Boswell Amendment case) establishing a constitutional knowledge test as a prerequisite for voting and a successful 1950 challenge to a segregated school system in Harrisburg, Illinois.

Allies for Justice Reception Honoree

At the Allies for Justice Reception, sponsored by the National Lesbian and Gay Law Association (NLGLA), the ABA's Section of Individual Rights and Responsibilities traditionally honors a bar member who, in their position of leadership, has allied with the lesbian, gay, bisexual and transgender community to make a "noteworthy contribution to the struggle for civil rights and equality before the law." This year, the IRI Section & the NLGLA will honor Yale Law School **Dean Harold Koh**. He will be honored, according to the IRR Section, because of Yale's "leadership against the Solomon Amendment, and also for his personal commitment to promoting equality, as evidenced by his role as counsel of record for the human rights organizations' amicus brief in *Lawrence v. Texas* which may prove to be an important decision for the incorporation of international human rights law into U.S. jurisprudence."

The Solomon Amendment provides for the Secretary of Defense to deny federal funding to institutions of higher learning if they prohibit or prevent ROTC or military recruitment on campus. On November 29, 2004, a divided panel of the U.S. Court of Appeals for the Third Circuit issued a preliminary injunction against the enforcement of the law based on the First Amendment.

THE ABA AND THE SUPREME COURT (CONTINUED FROM PG. 1)

With the resignation of Supreme Court Justice Sandra Day O'Connor, *ABA Watch* decided to take a closer look at the Association's past record in evaluating nominees to the Supreme Court and how that procedure will evolve this summer.

Organization

The Standing Committee on the Federal Judiciary is composed of fifteen members—one from each judicial circuit except the Ninth Circuit (which has two representatives), and one member-at-large. Terms last for three years, and members may serve up to two terms. The Committee evaluates candidates according to their integrity, professional competence, and judicial temperament. With respect to the Supreme Court, "The Committee's investigation is based on the premise that the Supreme

Court requires a person with exceptional professional qualifications. The significance, range, and complexity of the issues considered by the justices, as well as the finality and nationwide impact of the Supreme Court's decisions, are among the factors that require the appointment of a nominee of exceptional ability." Committee members in partnership with teams of law professors and lawyers conduct interviews and extensively study the legal writings of the nominee. Nominees are then rated as "well qualified," "qualified," or "not qualified." The rating is then reported to the White House, the U.S. Department of Justice, all members of the Senate Judiciary Committee, and the nominee. Members of the ABA Committee historically have testified at the nomination hearing before the Senate Judiciary

Committee about the rationale behind the rating.

Early Controversies

Even before the formation of the ABA Standing Committee on the Federal Judiciary, early bar leaders voiced their views on prospective nominees. In 1916, President Woodrow Wilson's nomination of Louis Brandeis to the Supreme Court resulted in much controversy. Opponents feared that Brandeis had committed ethical improprieties with clients and that he would subscribe to a "radical" judicial philosophy with few constitutional limits. ABA president Elihu Root and four former ABA presidents signed a letter opposing the nomination and sent it to the Senate Judiciary Committee. Former ABA presidents Moorfield Story and Peter Meldrim signed