

COMMITTEE SHOWCASE

Introducing the Task Force on the Rule of Law

THE ROLE OF LAW IN OUR NATION

By Stephen L. Kass

Stephen L. Kass is Chair of the City Bar's Task Force on the Rule of Law.

In the wake of Independence Day, it's an appropriate time to consider the role of law as a foundation for the independent and democratic nation that we celebrate every year. Our democracy is not based on military prowess, economic success, or a popularly elected leader, but on a government accountable to the citizens and the Constitution from which it derives its power. When we celebrate independence, we mean not only independence from foreign colonial tyranny, but also independence from any circumstances at home that undermine our democratic system of government and the balance of powers among the three separate branches of government. At the core is a reaffirmation of the insistence that our leaders and citizens alike comply with the laws that bind our community together and protect the rights enshrined in our Constitution and the ideals proclaimed in the Declaration of Independence.

As lawyers, we know that courts play an indispensable role in enforcing those rights and that our profession bears a special responsibility to protect both the independence and integrity of those courts and the commitment to the rule of law on which our democracy rests.

In the aftermath of the terrorist attacks on our country on September 11, 2001, the New York City Bar Association created a special **Task Force on National Security and the Rule of Law** to monitor and report on the actions taken by our government officials to combat the threat posed by organized terrorism to our nation's security while respecting the fundamental rights of citizens, visitors, and defendants, both at home and abroad. Over the past 18 years, as summarized in an excellent report by its chair, **Mark Shulman** [see next page], the Task Force on National Security spoke forcefully on behalf of the Association and its members when fundamental rights were violated by federal officials engaged in interrogation or detention practices prohibited by domestic or international law, or when executive branch officials threatened to circumvent Congress's exclusive power to declare war against a foreign adversary.

Recognizing that threats to our democracy can come not only from terrorism and unlawful responses to terrorism, but also from erosion of the rule of law at home, the Association has now broadened the role of our Task Force to include a broader range of official actions that implicate and present challenges to the rule of law in our nation, especially actions that undermine the role of our courts and the duty of elected and appointed officials to comply with the laws under which they exercise authority. The

newly-named **Task Force on the Rule of Law** includes representatives from the Association's **Committees on Federal Courts, Civil Rights, Immigration and Nationality Law, Military Affairs and Justice, International Law, and International Human Rights**, as well as its **Task Force on the Independence of Lawyers and Judges**. Although we will, where appropriate, consider government actions abroad, our focus is on questions of compliance by our own government with controlling domestic and international laws and the long-term consequences for our democracy, our security, and the world community.

We also intend to share our findings with both the legal profession and the larger community, and to do so in ways that are timely, accessible, and effective. In view of the rapidly changing news cycle that now characterizes public discussion of important legal issues, we will include a rapid-response team within our Task Force in order to permit the Association to have an effective voice when matters of governmental compliance with law are debated in the public arena. We also hope to sponsor open debates so that differences of opinion can be aired concerning, for example, competing claims to authority over immigration, war powers, or treaty obligations.

We will also focus particular attention on the role of the Department of Justice in enforcing our nation's laws and setting the standard for other government officials to do the same. Within our membership, questions have been raised and, in some instances, reports issued, about the Department's role, for example, in connection with the operation of U.S. immigration courts, the consideration and recognition of asylum claims under U.S. and international law, compliance with court orders relating to the conditions under which asylum applicants are detained, testimony by government officials before Congressional committees, editing and release of the Mueller report, and other matters. In each of these areas, we will cooperate with other City Bar committees that have special expertise in or primary responsibility for substantive areas of law, as well as other bar associations that share our concern that our nation continue to be one where the rule of law is recognized and respected by all elected and appointed officials.

The Task Force intends to meet monthly and has already begun its work. We welcome applications for membership from Association members prepared to undertake this work on a timely basis and suggestions from both members and other lawyers of subjects that warrant the Task Force's consideration. ■