

**Remarks of PBA President Andrew F. Susko**  
**PBA Law Policy Forum**  
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On September 11, 2001, nineteen foreign born non-U.S. citizens coordinated multiple airplane attacks on our country, the first foreign attacks on U.S. soil since Pearl Harbor over 60 years earlier, and a day that will, no less, live in infamy. All but two of these perpetrators were in our country legally. Some 6-1/2 years later, the consequences of these murderous actions remain very much in our national consciousness and the reverberations of them continue to shape U.S. policies in the Middle East and here at home.

While the security of our nation and the safety of our citizens are paramount, there are questions as to whether the “war on terror” has been prosecuted within the bounds of the law. Does the primacy of the rule of law give way to defending against the potential threat of another attack on US citizens here at home? Is irreversible damage to the rule of law and our democracy threatened by the actions of our own government or, is a natural and acceptable consequence of a war on terror, that the rule of law is secondary to our national security and safety?

The Pennsylvania Bar Association is proud to present this inaugural Pennsylvania Law Policy Forum examining, in the context of the war on terror and immigration reform, the health of one of our nation’s most important guiding and shining principles: adherence to, and respect for, the rule of law. Make no mistake about it: these issues have great complexity; they provoke profound emotion, and they evade easy solution.

New phrases and words have entered, or have returned to the forefront, of our national discourse and dialogue: detainees and detention of enemy combatants; torture; cruelty to enemy combatants; retention and waterboarding; Guantanamo and Abu Ghraib; Presidential signing statements and writs of habeas corpus; domestic spying; border security, amnesty, guest worker programs, and the City of Hazelton.

How does the rule of law apply in this new and forever changed world - a world where life is brutally taken, and security is threatened daily on the international stage, with terrorists bombing attacks?

The situation in Iraq graphically demonstrates the enormity and the complexity of the problem - where the rule of law breaks down without our military might and, even then, where violence is often the rule of the day, where political accommodation and compromise are frequently seemingly unreachable, and where the threat of a prolonged civil war is very real. Where the rule of law is not the rule of the day, that famous quote comes to mind: "War is politics by other means."

We need only to reflect on these events, playing out daily on the international stage in Iraq, Afghanistan and elsewhere in the Middle East, to know how absolutely critical the rule of law is and how absolutely essential respect for, adherence to, and acceptance of the rule is fundamental to a secure and safe society.

Today we assemble here in historic Philadelphia to participate in an important dialogue about the "rule of law" and the challenges we face as a nation in determining the appropriateness of our conduct in response to the events that have brought us to a war on terror, concern over the very security of our borders, and immigration reform. We hold this Forum with the hope of advancing the public discourse about these most critical and challenging issues of our time. And we do so as lawyers, dedicated to the rule of law and well understanding our own collective responsibility to protect and defend this fundamental underpinning of our democratic society.

Although often invoked by judges and lawyers alike, the phrase, "the rule of law," in the context of today's events, requires more precise definition. In a general sense, the rule of law is "the set of rules, governing our collective and individual conduct, as recorded in our Federal U.S. and Pennsylvania State Constitutions along with the collection of state statutory and regulatory laws and the common law as enunciated by our Pennsylvania Courts."

The observance and enforcement of the rule of law is principally voluntary. Day in and day out citizens, across this great country and residents of this great Commonwealth, conform their own personal and business conduct to the rule of law. At times, however, the rule of law must be enforced, where necessary, through civil or criminal proceedings. And, even so, during times of war, our own legal institutions responsible for the application of the rule of law can come under pressure and, sometimes, under attack.

We only need to look at the recent events in Pakistan to understand the quote from Shakespeare standing for the proposition that: when there is no rule of law; we have anarchy: the Shakespeare quote from Henry the VI (Sixth), Part II:

The first thing we do, let's kill all the lawyers.

The Pennsylvania Bar Association issued the following news release after the actions by Pakistani President Musharraf that well illustrates, as a case in point, exactly how central lawyers and judges are to the existence of the rule of law and I Quote:

“The suspension of the national constitution by Pakistani President Pervez Musharraf, the ouster of the Chief Justice of the Pakistani Supreme Court and the arrest and detention of scores of Pakistani lawyers does violence to the ideal of a free and orderly society governed by the rule of law.

A government functions legitimately by the will of its people, with respect for and adherence to the principle of the supremacy of the rule of law. The legal profession well understands that judges and lawyers are guardians and protectors of this essential principle. The present course of the Pakistani government undermines its legitimacy and provides others who would ignore the rule of law fertile opportunity to gain support in Pakistan. The attack against judges and lawyers severely undermines – and threatens to destroy – the fundamental underpinning of a truly free society, a government that is not above the law.”

Today we will be looking inward to reflect on our own country's policies in the context of our conduct in the war on terror and immigration reform. It is through this introspection and critical analysis that the rule of law remains vibrant and is protected and preserved in a functioning and healthy democracy. Questions about our own conduct, including the use and scope of Presidential Powers, wartime powers, the role of Congress in the areas of domestic surveillance, the Patriot Act, FISA, and attempts to regulate immigration and bring security to our borders, must all receive continued careful and deliberate scrutiny.

Questions about the use of powers by our government and its conflict with the rule of law have been raised before.

Nearly 150 years ago, our nation fought a civil war with equal rights at the center of a terrible, bloody struggle. During that struggle Abraham Lincoln suspended a right fundamental to fairness of our justice system; he suspended writs of habeas corpus. President Lincoln's rationale for doing this was embodied in his remarks at the Executive Mansion in Washington given on June 12, 1863, to a group from Albany, New York:

“Habeas Corpus, does not discharge men who are proved to be guilty of a defined crime; and its suspension is allowed by the constitution on purpose that, men may be arrested and held, who can not be proved to be guilty of defined crime, ‘when, in cases of Rebellion or Invasion the public Safety may require it.’ This is precisely our present case – a case of Rebellion, wherein the public Safety does require the suspension.”

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That our country faced similar issues which threatened our nation's very survival at the time of our own civil war, affords us the opportunity to pause and examine the current events critically and to reach for consensus and solutions based on a full appreciation of that history.

Democracy is not perfect, and is most challenged at war time. We as lawyers and a legal community are guardians of our justice system and the rule of law; we have a proud tradition of preserving and protecting the rule of law even when the cause may not be popular. The judicial branch of government, as we well know, was founded, in part, to protect against the tyranny of the majority.

Secretary of State Condoleezza Rice, at an ABA Rule of Law Symposium in November of 2005 emphasized the primacy of the rule of law in the following way: And I quote:

“America strives to realize our calling as a nation of laws, not of men, a nation that holds all governments and citizens, especially our own, to principles that transcend mere brute force or will to power. When Americans violate the law, whether in our country or in foreign lands, we do and we should hold them accountable for their crimes as we saw in the aftermath – after the horrific events that sickened us all at Abu Ghraib.

The virtue of the rule of law is not that it erases all human imperfection but that it upholds a standard of justice that enables democratic societies to improve themselves over time.

America is a country of laws. We will always be a country of laws. And we will remain an international leader because we will be committed, not simply to our strength but to our love of liberty, our support for democracy and most of all, our devotion to the rule of law.”

The guiding purpose of this Law Policy Forum is to elevate the discussion of important issues of the day right here in Pennsylvania and this year, given the Presidential election, to give attention and focus to two issues that are playing out on the national campaign: the war on terror and immigration reform.

There is one final point that must be made here this morning at the outset: that the existence rule of law requires an independent and vibrant judiciary, as well as an active and engaged organized bar to preserve and protect the rule of law.

To illustrate the importance of an independent judiciary in protecting the rule of law, I want to share a story with you that was related to me by a retired Justice of the Polish Supreme Court, Teresa Romer. I met her Honor at a PBA Labor Law Section Dinner here in Philadelphia when she, and other judges from Poland, were our guests of honor.

Justice Romer first became a judge in Poland in the late 1950s. Poland has a proud history of fierce independence. Even though it fell under Soviet Union Communist domination, as a vestige of its independence, judges were not required to become members of the Communist party. Although most judges did, Judge Romer never joined the Communist party.

Many of you will recall the marches in the streets of Warsaw in 1981 led by the charismatic labor leader Lech Walesa. The world stood transfixed during this politically-charged, intense moment in history when literally hundreds of thousands of Polish citizens stopped working and took to the streets. While the world waited, the legal question of whether there could be a “Solidarity Union” and whether that union would have the right to strike in Communist Poland was assigned to none other than Judge Teresa Romer, then a trial court judge. Now, there was no doubt how the Communist party wanted the case decided, but Judge Romer held fast to her independence and integrity and, despite great personal risk to herself and family, she ruled that workers had the legal right to unionize and had the right to strike. The rest, as they say, is history.

Why do I share this story with you here today?

Judges, along with all lawyers, are on the front lines of protecting the rule of law. Every person in this room, every lawyer, every judge, every journalist, every person in this room has a stake in insuring that our justice system remains independent, stable and free to protect the rule of law. At risk are those rights we hold most dear. Rights that can only be fully protected when our judges are truly independent; independent to follow the rule of law, not independent from the rule of law; independent to reach the right decisions even in the face of opposition from the will of a powerful majority.

We all, as lawyers, are and must be on the front line of protecting the rule of law. And so it is entirely appropriate, and even necessary, that we come together today for this inaugural Law Policy Forum to examine and discuss critically, in an open and frank manner, the impact the war on terror and immigration reform have on the rule of law in this country and abroad.

Thank you all very much.