



**Release: Embargoed for AM Editions,  
Monday, July 24, 2006**

Contact: Nancy Cowger Slonim  
Phone: 312/988-6132  
E-mail: slonimn@staff.abanet.org

**ABA BLUE-RIBBON TASK FORCE FINDS PRESIDENT BUSH'S  
SIGNING STATEMENTS UNDERMINE SEPARATION OF POWERS**

WASHINGTON, D.C., July 24, 2006 – Presidential signing statements that assert President Bush's authority to disregard or decline to enforce laws adopted by Congress undermine the rule of law and our constitutional system of separation of powers, according to a report released today by a blue-ribbon American Bar Association task force.

To address these concerns, the task force urges Congress to adopt legislation enabling its members to seek court review of signing statements that assert the President's right to ignore or not enforce laws passed by Congress, and urges the President to veto bills he feels are not constitutional.

The Task Force on Presidential Signing Statements and the Separation of Powers Doctrine was created by ABA President Michael S. Greco with the approval of the ABA Board of Governors in June, to examine the changing role of presidential signing statements after the Boston Globe on April 30 revealed an exclusive reliance on presidential signing statements, in lieu of vetoes, by the Bush Administration.

In appointing the special task force Greco said, "The use of presidential signing statements raises serious issues relating to the constitutional doctrine of separation of powers. I have appointed the Task Force to take a balanced, scholarly look at the use and implications of signing statements, and to propose appropriate ABA policy consistent with our Association's commitment to safeguarding the rule of law and the separation of powers in our system of government."

The task force report and recommendations will be presented to the ABA's policy-making House of Delegates for adoption at its upcoming Annual Meeting Aug. 7-8. Until the ABA House has taken formal action, the report and recommendations represent only the views of the task force.

The bipartisan task force, composed of constitutional scholars, former presidential advisers, and legal and judicial experts, noted that President George W. Bush is not the first president to use signing statements, but said, "It was the number and nature of the current President's signing statements which ... compelled our recommendations."

The task force said its report and recommendations “are intended to underscore the importance of the doctrine of separation of powers. They therefore represent a call to this President and to all his successors to fully respect the rule of law and our constitutional system of separation of powers and checks and balances.”

The task force determined that signing statements that signal the president’s intent to disregard laws adopted by Congress undermine the separation of powers by depriving Congress of the opportunity to override a veto, and by shutting off policy debate between the two branches of government. According to the task force, they operate as a “line item veto,” which the U.S. Supreme Court has ruled unconstitutional.

Noting that the Constitution is silent about presidential signing statements, the task force found that, while several recent presidents have used them, the frequency of signing statements that challenge laws has escalated substantially, and their purpose has changed dramatically, during the Bush Administration.

The task force report states, “From the inception of the Republic until 2000, Presidents produced fewer than 600 signing statements taking issue with the bills they signed. According to the most recent update, in his one-and-a-half terms so far, President George Walker Bush ... has produced more than 800.”

The report found that President Bush’s signing statements are “ritualistic, mechanical and generally carry no citation of authority or detailed explanation.” Even when “[a] frustrated Congress finally enacted a law requiring the Attorney General to submit to Congress a report of any instance in which that official or any officer of the Department of Justice established or pursued a policy of refraining from enforcing any provision of any federal statute, ... this too was subjected to a ritual signing statement insisting on the President’s authority to withhold information whenever he deemed it necessary.”

“This report raises serious concerns crucial to the survival of our democracy,” said Greco. “If left unchecked, the president’s practice does grave harm to the separation of powers doctrine, and the system of checks and balances, that have sustained our democracy for more than two centuries. Immediate action is required to address this threat to the Constitution and to the rule of law in our country.”

Greco said that the task force’s report “constructively offers procedures that consider the prerogatives both of the president and of the Congress, while protecting the public’s right to know what legislation is adopted by Congress and if and how the president intends to enforce it. This transparency is essential if the American people are to have confidence that the rule of law is being respected by both citizens and government leaders.”

The bipartisan and independent task force is chaired by Miami lawyer Neal Sonnett, a former Assistant U.S. Attorney and Chief of the Criminal Division for the Southern District of Florida. He is past chair of the ABA Criminal Justice Section, chair of the ABA Task Force on Domestic Surveillance and the ABA Task Force on Treatment of Enemy Combatants; and president-elect of the American Judicature Society.

"Abuse of presidential signing statements poses a threat to the rule of law," said Sonnett. "Whenever actions threaten to weaken our system of checks and balances and the separation of powers, the American Bar Association has a profound responsibility to speak out forcefully to protect those lynchpins of democracy."

The other task force members, whose brief background information follows, are William S. Sessions, Patricia M. Wald, Mickey Edwards, Bruce Fein, Harold Hongju Kho, Charles Ogletree, Stephen A. Saltzburg, Kathleen M. Sullivan, Mark Agrast, Tom Susman, and adviser Alan Rothstein.

The task force recommendations urge Congress to adopt legislation to permit the president, Congress or other entities to seek court review any time the president claims he has the authority, or states his intention, to disregard or decline to enforce all or part of a law he has signed, or when he interprets the law in a manner inconsistent with the intent of Congress. Currently, Congress lacks legal authority to seek judicial review in those circumstances.

The task force also urges the president to use his veto power, as all prior presidents have done, instead of a signing statement when he believes all or part of a bill is unconstitutional, in keeping with the Constitution's requirement that the president either approve or disapprove in their entirety laws presented to him by Congress.

If the president believes a bill pending before Congress would be unconstitutional if enacted, he should communicate his concerns to Congress before the bill is passed, according to the task force.

Additionally, the task force urges Congress to enact legislation requiring the president promptly to submit to Congress an official copy of every signing statement he issues. Any time the president claims authority or states his intention to disregard or decline to enforce all or part of a law he has signed, the legislation should require him to submit a report to Congress, available in a public database, setting forth in full the reasons and legal basis for his position, said the task force.

Presidential signing statements are not new, according to the task force, which notes that "Presidents have issued statements elaborating on their views of the laws they sign since the time of President James Monroe." But under President Ronald Reagan, "For the first time, signing statements were viewed as a strategic weapon in a campaign to influence the way legislation was interpreted by the courts and Executive agencies as well as their more traditional use to preserve Presidential prerogatives." The report also notes that President Clinton, like his predecessors, used signing statements, but to a significantly lesser degree, and different purpose.

Among President Bush's signing statements, the task force noted refusals to carry out laws involving "Congressional requirements to report back to Congress on the use of Patriot Act authority to secretly search homes and seize private papers, [and] the McCain amendment forbidding any U.S. officials to use torture or cruel and inhumane treatment on prisoners."

Where legislation has mandated reports to Congress on special matters, such as the Intelligence Authorization Act of 2002, the signing statement treated the requirement as only advisory, said the task force. The task force said President Bush's signing statements are "particularly adamant about preventing any of his subordinates from reporting directly to Congress."

With more than 410,000 members, the American Bar Association is the largest voluntary professional membership organization in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law in a democratic society.

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Information regarding the 10 task force members in addition to Chair Sonnett follows:

- William S. Sessions, now in private practice in Washington, D.C., is a former director of the Federal Bureau of Investigation, chief U.S. District Court judge for the Western District of Texas, U.S. Attorney for the Western District of Texas, and chief of the Government Operations Section of the U.S. Department of Justice.
- Patricia M. Wald, most recently a member of the President's Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, is a former chief judge of the U.S. Court of Appeals for the District of Columbia Circuit, and trial and appellate judge on the International Criminal Tribunal for the former Yugoslavia. She was an assistant attorney general for legislative affairs in the Carter Administration.
- Former Rep. Mickey Edwards, a lecturer at Princeton University's Woodrow Wilson School of Public and International Affairs and director of the Aspen Institute-Rodel Fellowships in Public Leadership, served in the House Republican Leadership as a member of Congress from 1977-1992, was a founding trustee of the Heritage Foundation, former national chair of the American Conservative Union, and director of policy advisory task forces for the Reagan presidential campaign.
- Bruce Fein, a constitutional lawyer and international consultant with The Lichfield Group, was associate deputy attorney general and assistant director of the Office of Legal Policy of the Department of Justice under President Reagan. He also served as general counsel of the Federal Communications Commission, an adjunct scholar with the American Enterprise Institute, and a resident scholar at the Heritage Foundation.
- Dean and professor Harold Hongju Koh of Yale Law School is one of the country's leading experts on international human rights and national security law. A former assistant secretary of state, Koh advised former Secretary of State Madeleine K. Albright on U.S. policy on democracy, human rights, and the rule of law, and also served as an attorney in the Office of Legal Counsel of the Department of Justice.

- Charles Ogletree, the Harvard Law School Jesse Climenko Professor of Law, and Founding and Executive Director of the Charles Hamilton Houston Institute for Race and Justice, is a prominent legal theorist who has made an international reputation by taking a hard look at complex issues of law and by working to secure the rights guaranteed by the Constitution for everyone equally under the law. The Charles Hamilton Houston Institute for Race and Justice (<http://www.charleshamiltonhouston.org>), named in honor of the visionary lawyer who spearheaded the litigation in *Brown v. Board of Education*, opened in September 2005, and focuses on a variety of issues relating to race and justice, and will sponsor research, hold conferences, and provide policy analysis.
- Professor Stephen A. Saltzburg of George Washington University Law School was associate independent counsel in the Iran-Contra investigation and deputy assistant attorney general in the Criminal Division of the U. S. Department of Justice. He is the incoming chair-elect of the ABA Criminal Justice Section and serves in the association's House of Delegates.
- Professor Kathleen M. Sullivan of Stanford Law School, was dean of the school for five years. She heads Stanford's Constitutional Law Center, has taught at Harvard and University of Southern California law schools, and is a visiting scholar at the National Constitution Center. A nationally known constitutional law expert, she is co-author of a leading casebook in constitutional law.
- Mark Agrast, a senior fellow at the Center for American Progress in Washington, D.C., is formerly counsel and legislative director to Rep. William D. Delahunt (D-Mass.) and aide to Rep. Gerry E. Studds (D-Mass.). He is a member of the Board of Governors of the American Bar Association, chairs the ABA Commission on the Renaissance of Idealism in the Legal Profession, and is a past chair of the ABA Section of Individual Rights and Responsibilities.
- Tom Susman, a partner in a Washington, D.C., law firm, has served as general counsel to the U.S. Senate Judiciary Committee and several of its subcommittees, and in the Office of Legal Counsel of the U.S. Department of Justice. He is a member of the ABA House of Delegates, past chair of the ABA Section of Administrative Law and Regulatory Practice, and has served on the ABA Board of Governors.
- Alan Rothstein is an advisor to the task force. He is general counsel to the Association of the Bar of the City of New York and coordinates the extensive law reform and public policy work of that 22,000-member association. He also serves in the New York State Bar Association House of Delegates.