

Magna Carta—Rule of Law

by Howard W. Martin Jr., 2007–08 VSB President



In this first column written in my capacity as president of the Virginia State Bar, I want to say what an honor it is for me to assume this role; it is surely my highest honor and calling as an attorney. Secondly, I want to say how fortunate the bar is to have had such a wonderful 2006–2007 president in the person of Karen A. Gould of Richmond. Karen has been a diligent and progressive president who has moved graciously and effectively to enhance our relationship with our parent entity, the Supreme Court of Virginia. She has successfully shepherded the bar through several legislative and administrative issues that have been resolved during her year. In a future column I will address some of the items that I would like to continue to pursue as Karen's successor.

However, today I want to discuss the Rule of Law, the foundation of our American legal system. The cover photo of this magazine highlights the Magna Carta, an original of which was displayed in the Virginia Beach Contemporary Arts Center through mid-June this year in commemoration of the Jamestown anniversary. It is Magna Carta (the "Great Charter") from which our state and our nation derive the Rule of Law.

In April of this remarkable four hundredth anniversary year of the founding of Jamestown, the University of Richmond School of Law held a conference specifically dedicated to the Rule of Law. Judges, professors, attorneys, business executives and other distinguished citizens from the United

States, the United Kingdom and elsewhere attended the conference and offered their insights on the Rule of Law. Lord Phillips, Lord Chief Justice of England and Wales, affirmed at the conference the fact that our 1607 Jamestown ancestors brought with them to Virginia (and the entire New World) the Rule of Law.

The 1606 charter that King James I granted to the Virginia Company demanded that persons in the new colony would "...have and enjoy all liberties, franchises and immunities as if they had been abiding and borne within this our realme of Englande...." Guided by that mandate, the Jamestown settlers brought to Virginia in 1607 all the benefits that had been won in 1215 at Runnymede and confirmed in Magna Carta.

That specific fact is commemorated by a plaque on the inside wall of the Memorial Church, the church erected in 1907 on the site of the first house of worship established four hundred years ago in Jamestown. The plaque was installed on the church wall by the Virginia State Bar on May 17, 1959, and it says "Since Magna Carta the common law has been the cornerstone of individual liberties, even as against the Crown." The plaque goes on to say that the principles of Magna Carta "...have inspired the development of our system of freedom under law, which is at once our dearest possession and proudest achievement."

During the conference at Richmond, Law School Dean Rodney A. Smolla

asked some of the participants to state what they believed the term "Rule of Law" means. U.S. Supreme Court Justice Stephen G. Breyer and other speakers asserted that in a democracy, people tend to accept the Rule of Law *even when they don't like it*. The Rule of Law is our choice of *order over disorder*. Judge J. Harvie Wilkinson III of the United States Court of Appeals for the Fourth Circuit, said that to him "...the Rule of Law means a balance between two supreme (values) in our society—liberty and order." In exactly the same vein, over a century ago, General Henry M. Robert, the man who in 1876 created and then wrote the first five editions of *Robert's Rules of Order*, said "Where there is no law, but every man does what is right in his own eyes, there is the least of real liberty." That's the point: We are not really free unless there is ordered liberty under law in our society.

If, as I do, you want to see your definitions and explanations on a piece of paper in order fully to digest them, you might like what Justice Anthony Kennedy said about the Rule of Law at an American Bar Association meeting in August 2006. In summary, Justice Kennedy outlined his definition of the Rule of Law as follows:

1. The Law is superior to, and thus binds, the Government and all its officials.
2. The Law must respect and preserve the dignity, equality and human rights of all persons.

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3. The Law must ensure a free society in which all citizens have a meaningful voice in shaping and enacting the rules that govern them.
4. The Law must devise and maintain systems to advise all persons of these rights, and it must empower them to seek redress of grievances without fear of penalty or retaliation.

This short list, from Justice Kennedy, gives me my best-yet understanding of what is meant by the term “Rule of Law.”

The Rule of Law is critical, as it preserves order in our society. And it is incumbent upon all of us, as Virginia lawyers, to protect and defend it. Further, we ought to explain it, publish it, and educate lawyers and lay persons as to its meaning and importance. Under the Rule of Law, we are meant to have liberty and justice for all. And justice for all means that no one is above the law—not even the king. 𐄂