

Message from the Chair

by Robert E. Scully Jr.

If you like what you read in this issue of *Virginia Lawyer*, please consider joining the Litigation Section. It is the largest section of the Virginia State Bar. It publishes a quarterly newsletter, *Litigation News*, which contains articles like the ones presented here on topics of current interest to general civil litigators. The section has no plaintiff or defense bias. It includes big-firm, small-firm and solo-practice litigators. It has a simple mission: to advance the education, training and professionalism of Virginia trial lawyers and improve Virginia's system of justice.

As chair of the board of governors for the Litigation Section for 2004–2005, I have this “bully pulpit.” Allow me to use it to say a few words that represent my own views, not the views of the board of governors of the Litigation Section or those of the Virginia State Bar.

I am concerned that general civil litigators are becoming an endangered species in Virginia, as elsewhere. Specialization is increasing among trial lawyers. We have always had plaintiffs' lawyers and defense lawyers in the personal injury field and domestic relations specialists. Now we have “specialists” in ERISA, employment discrimination, securities fraud, lemon laws, class actions, ECOA, truth-in-lending and a host of other areas of litigation created by legislative action. Specialization is an understandable response to the complexity of modern legislation, the proliferation of judicial precedent, and the multijurisdictional and multidisciplinary nature of many disputes. Specialization is efficient and profitable and allows one to remain competitive in the marketplace for legal services. Yet, paradoxically, while specialization grows among trial lawyers, trial judges must continue to deliver justice with fewer public resources and increased efficiency while remaining generalists.

The loss of the general trial lawyer is perilous for the legal profession, the courts and society. Trial lawyers have been among the great leaders of the bar and of the commonwealth. In recent history, United States Supreme Court Justice Lewis F. Powell Jr., U.S. District Judge Ted Dalton and attorneys Henry Howell, Armistead Boothe and Oliver Hill come to mind (among many others). These men did not lead because they had a narrow set of technical

skills, because they won great courtroom successes, or because they were rainmakers for their firms (though I suspect they did all of those things). They were leaders because they cultivated in themselves that balance of intellect, emotion, courage, perseverance, patience, self-control and judgment that makes a just person. Such men and women not only achieve forensic justice in the courtroom—they pursue social justice outside its confines.

We need such men and women now, more than ever. There are powerful forces pulling our society apart. The pursuit of purely private economic welfare without restraint is the spirit of the age. “Knowledge workers” require specialized skills and training at the expense of shared experience and understanding. Knowledge is exalted over wisdom. History, our connection to the earlier generations, is forgotten by many.

Experienced general trial lawyers possess the antidotes to those social forces. They embrace their profession as a public calling and refuse to concern themselves only with their own economic welfare. They are intellectual generalists who remember and tell the truth that shared experiences and common understandings must be found to hold any society together. They exalt good judgment over simple expedience as the best guide to the good life and a just society. They have a historic sense that provides context and meaning in the midst of the chaos of modernity. For a more articulate and complete view of these observations, see Anthony T. Kronman, “The Law as a Profession,” in *Ethics in Practice: Lawyers' Roles, Responsibilities and Regulation*, 29 (Deborah L. Rhode, Ed., 2000).

Where will we find these leaders of the bar in the future? The rainmakers are too busy finding clients. The specialists are too busy reading the advance sheets. The associates are too busy billing the hours required to become a partner. The aging partners are too busy looking over their shoulders at the “young turks” challenging their productivity and utility.

Virginia needs the general trial lawyer-statesman whose primary passion is cultivating the civic virtues this commonwealth has relied upon for so long, and still needs so greatly.