



February 2008

Stand In The Place Where You Live."

Letter from the Editor

Well, we are off and running for a new year of "Commentaries," and hope everyone is back and ready to start the new year with WALs.

We are pleased to kick off the new season with Bob Gaudio, our resident wine expert, whose program for tonight's meeting is: "Stop Your Whining: a Simple Guide to Choosing the Right Wine with Dinner."

Already some members are reporting planned programs for the new year that are "must attend" events for 2008.

The Augusta Levy School will have its annual Autism Conference here at The First State Capitol on April 22,

2008. CLE credits are being planned.

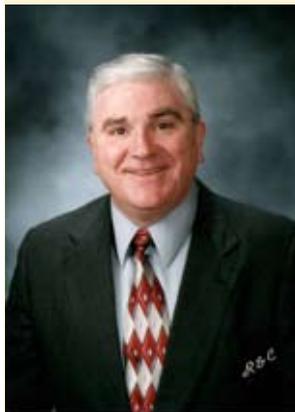
Cassidy, Myers, Cogan & Voegelin, L.C., will celebrate its 30th Annual St. Patrick's Day Open House here on Friday, March 14th, 2008. No CLE credits are anticipated.

If you are a member and want to announce a program or event that you are planning this year, let us know, and we will include it in the "Commentaries."

We look forward to working with our members and their guests in the upcoming year, and wish you good reading, and good night, tonight.

O' C of D.

Tullamore Dew Profiles Daniel Frizzi, Jr.



When he's not practicing law, writing, teaching or lecturing, Dan Frizzi can often be found enjoying the view from 5,000 feet in his single-engine Cherokee Six aircraft. A licensed pilot, the Bellaire native enjoys flying, and at one time considered a career as a commercial pilot before deciding to practice law.

Frizzi is a graduate of Bellaire High School,

the Ohio University College of Business and the Ohio Northern University Pettit College of Law. He married his high-school sweetheart, Penny, and together the couple made a commitment to return to Bellaire to work and raise a family. Penny is a licensed radiographer currently working at the Belmont County Board of Elections as an election clerk.

The Frizzis are parents to three children. Most will remember daughter Danielle, 30, a former reporter and anchor on WTOV-TV who has cracked a major media market; today she is a journalist with Fox Channel 8 in Cleveland. Son Jared, 26, shares his father's pas

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*Please considering
renewing your
membership for 2008 -
CALL TODAY.*

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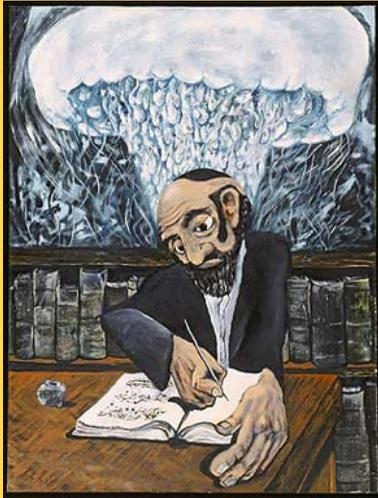
Commentaries

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Ask Bartleby



Imprimis: I am a man who, from his youth upwards, has been filled with a profound conviction that the easiest way of life is the best. — *Bartleby, the Scrivener* Herman

Melville

Dear Bartleby,
Do you have any new books to recommend that may be of interest to our members?
~William Francis Xavier Becker

Indeed I do; here are two recent volumes that every West Virginian should read:

“Don’t Buy Another Vote, I won’t Pay for a Landslide. The Sordid and Continuing History of Political Corruption in West Virginia,” by Allen H. Loughry II, with forewords by U.S. Senators Robert C. Byrd and John McCain. (McClain Printing Company, Parsons, WV ,2006)

“Bringing Down the Mountains: The Impact of Mountaintop Removal on Southern West Virginia Communities,” by Shirley Stewart Burns. (West Virginia University Press, 2007)

Yours Truly,
Bartleby, the Scrivener

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Dan Frizzi Profile

passion for flight, working as a licensed aircraft and power plant mechanic for Executive Jets in Cincinnati. The Frizzis’ youngest child, Matt, is employed by Maxim Healthcare, also in Cincinnati.

Dan started the practice of law in 1977 in a partnership with Jack Malik and Charlie Knapp, both of whom went on to become judges. He did a stint as law director for Bellaire in the early 80s, and since 1991 has been a solo practitioner with a

general law practice. He enjoys his practice, he said, because “there’s always something new and different. The work isn’t as routine as you might find in a more specialized practice.”

Blackstone members might be surprised to learn that Dan is an avid local historian and the author of two books. His 1993 “An American Railroad Portrait” chronicles the railroads of Eastern Ohio, and “A Bicentennial Salute to Col. John Hamm Sul-

“I would have to say that teaching is what I really enjoy doing.”

~Daniel Frizzi

livan” is a biography of the president of the first railroad to reach Belmont County. Sullivan is the man who laid out the town of Bellaire.

Frizzi speaks on these and other topics of historical interest; he has taught business law, law for accountants and other courses at Ohio University and Wheel-

ing Jesuit University, and currently is developing a course on international business law. “I would have to say that teaching is what I really enjoy doing,” he said.

He also enjoys golf and photography, and manages a large collection of photos of trips to the mountains with his family to chase trains. ☺

The State of Justice:

Does Civility Really Matter? (adapted from a recent WALS CLE program)



The word “incivility” comes from the Latin, “incivilis,” which means “not of a citizen,” and is premised on the idea that “civility” is a fundamental structural component to society, and that its opposite can degenerate into rudeness, and constitute a threat to civic virtue and respect for the rule of law.

Everyone seems to agree that civility is fundamental to the workings of a democratic, pluralistic state because it is the political (communal) equivalent of “respect,” which acts as a calming or moderating influence on social life. Everyone also seems to agree that civility is not the same as the “rule of law.” Rather, it might be said that both civility and the rule of law are necessary to a democratic, pluralistic state and that “civil-

ity” in itself assists in the maintenance of the “rule of law” by fostering habits and customs of a community that precede and may obviate the need for resort to litigation, the courts, or other instrumentalities of the rule of law.

In that sense, “civility” may seem antagonistic to the idea of “litigation” as a zero-sum game, where the system is premised on ending up with a “winner: and a “loser.” If it appears that your adversary is not engaged in good faith, and is intentionally abusing

“Cannot a murderer or war criminal be very civil? And if so, does civility really count for anything?”

the litigation system in one way or another, or when the stakes are high in civil discourse, like when dealing with life and death issues such as genocide, or the conduct of a morally questionable war, it is hard not to believe at such times that “civility” is overrated, and can be used to gloss over any position, however odious or ridiculous. Should not the ridiculous comment be ridiculed? Do we really have to speak in measured “civil” sentences rather than just say, “You’re full of shit!” As some thoughtful pundits

have thoughtfully asked: cannot a murderer or war criminal be very civil? And if so, does civility really count for anything?

We know there have already been too many contemporary events that have influenced

our citizenry’s respect for the rule of law. Every time we hear about an instance of perceived miscarriage of justice nationally, such as the O.J. trial, the McDonald’s spilled coffee case, or the lawyer’s damaged trousers case— or locally, such as the Governor’s daughter allegedly getting favorable treatment in her educational endeavors, or Justice Maynard being photographed with Don Blankenship in Monte Carlo while a fifty million dollar verdict in which Mr. Blankenship has a personal interest is pending before the court – respect for the “rule of law” is challenged.

We have read that you can even buy at the Supreme Court gift shop in Washington D.C., and at the National Constitution Center in Philadelphia, a game called “Lawsuit!,” created by a lawyer, which has as its objective to get and end up with the

Does “civility” really matter at a time when sometimes it’s hard not be frustrated, not to want to “lash out” or be “uncivil?”

most money. The lawyer who created it says, “The idea behind the game is to give kids a taste of life as a lawyer in a fun way.” <http://blogs.wsj.com/law>.

You know that “disrespect” for the law has become mainstream when a tabloid writer from “US Magazine,” speaking of legal problems of celebrities, gives us her take on the justice system: “We live in a society where there are virtually no repercussions. The repeat offenders who most often populate our gossip know full well they can get arrested one day, walk a red carpet the next, and still have many photographers shouting their names and wanting their pictures.”

One legal pundit has predicted that our civil justice system will not survive to 2050 due to a loss of respect for the system. If that

pundit is correct, does “civility” really matter at a time when sometimes it’s hard not be frustrated, not to want to “lash out” or be “uncivil,” when the “cynicism” noted in the Preamble to the West Virginia Rules of Professional Conduct can sometimes overwhelm us?

While the question of the “value” of civility, in the face of what many would characterize as an already extensive disrespect for the legal system is not an easy one, it is not new.

Professor Garrett G. Fagan, speaking on the history of Rome,

cites the loss of civility as a big factor in the collapse of the Roman Republic – which of course preceded the collapse of the Roman Empire. He discusses the gradual loss of civility and respect for the law that started with supposed good inten-

tions – the bypassing of Senatorial precedent by Tiberius Gracchus in 133 B.C. in his efforts to institute land reform, which ushered in a new threat to Rome’s institutions – domestic violence. Although the Republic transitioned to

[Continued on page 6](#)



“Empire” through the sheer force of military power, we know how that ended – it too, ultimately collapsed.

The theme of the “value” of civility is also found in thoughtful, popular literature as well. Alexander McCall Smith, a former law professor at the University at Edinburgh, has created the fictional character Isabel Dalhousie of the Sunday Philosophy Club, who refers in her fictional Review of Applied Ethics to “manners” as the “basic building block of civil society.” According to Dalhousie, “They were the method of transmitting the message of moral consideration. In [losing them] an entire generation had lost a vital piece of the moral jigsaw, and now we saw the results: a society in which nobody would help, nobody would feel for others, a society in which aggressive language and insensitivity were the norm.” According to Dalhousie, International

Law is nothing more than “manners writ large.”

So how can we reconcile the thoughts that civility means something, that it can strengthen the “rule of law,” even in the face of widespread disrespect, or even when base actors may, at the very least, be “civil” themselves? One way is by remaining “civil” while necessarily speaking the “harsh truth,” and by letting our immediate instincts of fair play guide us away from convenient rationalizations of “abstract” notions of justice.

We are reminded in this regard of the wonderful story of Winston Churchill’s civil, yet truthful exchange with Nancy Astor, who reportedly attempted to insult him by suggesting that “if you were my husband, I would give you poison...”

To which Churchill was said to have replied, “If I were your husband, I surely would take it” – a brilliant mixing of civility and honesty to a person who, some would rationalize, it would be best not to offend.

Then too, illustrative of the “value” of civility to the preservation of the “rule of law,” are the actions of our first President, George Washington, in 1783.

According to traditional history, when Washington was only thirteen year old in 1745, he jotted down notes in his workbook entitled the “Rules of Civility and Decent Behavior,” presumably

as a result of lectures by the Rev. James Marye, rector of St. George’s Church in Fredericksburg Virginia, who taught Washington in the classical high school of the church, and whose courses included, among other things, “deportment.”

Writing in the Wall Street Journal of December 12, 2007, Thomas Fleming, author of “The Perils of Peace: American’s Struggle for Survival After Yorktown,” (Collins, 2007), argued that the “most important moment in American History” was when George Washshington did





George Washington's
Rules of Civility
& Decent Behavior

IN COMPANY AND CONVERSATION

not seek absolute power at a vulnerable time of our new Republic, on December 19th, 1783, when the newly discharged veterans of the American Revolution under his command had been sent home without being paid as promised and without thanks by a bankrupt Congress who in fact had fled to Annapolis from Philadelphia because a few hundred of the disgruntled veterans had surrounded the Pennsylvania State House, (now Independence Hall) demanding the pay promised them by Congress. One can imagine the popular outcry against the government for “failing to support the troops.”

him he would have the support of the army—the veterans of the revolution, to do his bidding.

On that day of December 19th, 1783, Washington was scheduled to tender his resignation as Commander in Chief to the President of Congress, Thomas Mifflin of Pennsylvania, who had earlier tried to destroy his career, and was soon after to be forced out of the army for war profiteering. Only a small contingent of delegates actually showed up in attendance that day in Annapolis. Congress was on the verge of going out of business, and many believe Washing-

Washington's supporters, and even some of our allies in Europe, were clamoring for George Washington to seize power to keep the country from what they perceived as imminent collapse, telling

ton could have at that moment had himself declared President or some other title of power – could have seized absolute power over Congress and demanded compensation for himself and his soldiers.

Instead, he resigned his commission as Commander in Chief of the armed forces, and retired to Mount Vernon. As quoted by Fleming, Thomas Jefferson, who was there as a delegate from Virginia and perhaps unconsciously prescient of the way the French Revolution (which had not yet occurred) would end, observed that: “The moderation of a single character probably prevented this revolution from being closed as most others have been, by a subversion of that liberty it was intended to establish.”

Here it was. Washington could have taken it all for the demanding. All power. All reward. But Washington had not been taught that winning was everything, that he should take all

he could from the table. That would have been bad form. Whatever Washington's abstract notions of political science, statecraft or justice, he had been taught, had been conditioned to an appropriate course by what he had learned of good form, good deportment – the rules of civility. 

the
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club



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La Cerca - Chapter 7

Gallagher sat on the only chair in his small room in the Hotel Abbey, staring straight ahead, newspaper on his lap, a newly poured glass of whiskey in his hand. It was the only thing that kept him from dwelling on yesterday – the explosion, the chaos, the details of their lives.

It was his third glass of whiskey, so far. He read the label on the bottle.

“Powers.”

It made him think of Schmidt.

“Oh yes, Schmidt. You taught me all about Powers—the Will to Powers!”

He drained his glass, allowing the copy of the “Donegal Times” to slip off his lap onto the floor.

He thought back on how excited Schmidt had been about learning of the manuscript from Tanhauser. “Don’t you see, Andrew, the Will to Power was not his legacy! It was not an ethical doctrine; only an ontological explanation of the nature of all living things!”

“Es ist eine notio der Ontologie! Eine notio der Ontologie,” he would say, as if he were reciting one of his favorite Latin epigrams.

med so remote

now – Schmidt’s excitement over the discovery of the manuscript. But he remembered, almost word for word, the passage from the manuscript that Schmidt had read to him a dozen times in the few months after its discovery – as if Schmidt saw in Gallagher a remnant of the ancient bardic tradition, where oral tradition would have to suffice for the absence of the written word:

“Despite this nature of all things, this ‘Will to Power,’ does not nature itself present man, with all his limitations, as the highest form of life on this planet? And is not man the earth’s delight just because he is the only animal capable of evolving beyond ‘what is’ in order to consider, to reason, ‘what ought to be?’”

“And can mankind not see this sacred ‘ought’ in the very processes of nature itself?”

“That the highest goal of the highest form of life, of all humanity, is that which maximizes life, suffuses humanity with health, strength and power –that which

exalts life itself?”

“And if life is to be exalted, expanded, and made healthier as the very goal of humanity, is not the value of each one of us measured by the value of that which he contributes to this goal, this exaltation of life?”

“And if you recognize this goal as your ethical law, my friend, you will no doubt ask: ‘What then will consist of my greatest immorality?’ And I will say unto you: ‘All that detracts from that goal.’”

“So today, my dear friend, I leave you with my ethical imperative, my most humble truth, which is also a sign of my furthest love; not a will to power, but a challenge to make your life a thing of value, a work of art in the exaltation of life.”

“A thing of value,” thought Gallagher, as he emptied his glass for the third time, and poured another, full to the brim. His eyes welling with tears, he picked up the newspaper at his feet and returned to the front page article he had

been reading.

“FOUR DEAD IN ATTACK ON RUC BUILDING AT TOOMEBRIDGE.”

The headline itself was abstract enough. He had read it without emotion, just like he had read thousands of headlines like it before, in Germany and Ireland. Always someone else’s war. Always someone else’s death.

But the article was not just a tally of deaths; it included the “details” of the four lives killed in the explosion.

“Thomson Gray, aged 27, married to the former Kate O’Leary, was the father of three children: one boy, Kevin, 8, and two twin girls, Rouen & Colleen, aged 4.”

“Details, bloody details,” thought Gallagher. “Who knew a bloody RUC man would have an Irish wife, and children?”

Tears continued to flow as he thought about his role in the cessation of their lives. Had he been an accessory before, or after the fact? No, he had not



prepared the explosives. He had not ignited them. He had not even driven the getaway car—only been a helper, a friend, a fellow IRA operative in the getaway car. “Not really murder, then, is it?” He mused, knowing full well the answer. “...All that detracts from that goal.”

“Stephen Cunningham, aged 25, a member of the Antrim Voluntary Football team...,” “... Gordon Hill, aged twenty-two, a member of “Ireland Today,” a charitable foundation that promoted peace and justice in the Northern Ireland.” Hill also was a father. “... McBride, the youngest of them all, assisted Hill at the foundation, and was freshly graduated from the upper school of Antrim and engaged to be married, now dead at 18.”

“This other, his helper and friend, was coming into his own...,” thought Gallagher, as his eyes drifted to the last sentence of the article. “Details.

Details. A thing of value.” He took another swig.

It had been his first assignment for the IRA upon his return from Germany. Now that he had tasted the reality of it, the bitter truth of it, he knew it would be his last, even if it meant having to stay in the Republic, where he had come to hide out, until the expected investigation in Northern Ireland had blown over.

Gallagher wondered, as he clutched his drink, how he was able to suppress all that he had learned, in order to play his part. How he talked himself into it, even though he knew better, even though he knew it was wrong, contrary really, to everything his best friend, Schmidt, had taught him, contrary, he thought, to everything Schmidt would have

chosen. “Loyalty to the cause.” “What was expected of me.” “That’s it,” he thought. “Is that not a sacred ‘ought’ unto itself?” But he knew as soon as he expressed the thought that he was rationalizing. As Schmidt explained it, “Giving one’s life was acceptable, but Taking a life the only absolute prohibition.” And without his mentor, he had participated in allowing lives to be taken, if only as an observer. “Four, to be exact,” he said out loud, even though he was no longer sure if were counting bodies or glasses.

But he was correct that it had, after all, been expected of him. He did not know when he first accepted the invitation from the Karl Marx University to come to Leipzig and engage in “Revolutionary Studies” that he had been targeted by the authorities as a “promising student” only because of his former ties to the IRA. But he knew when he accepted the university’s offer of “free tuition, room and board,” that more would be expected of him than just good grades.

But he could not refuse the offer. He had come from a poor family, would never have been able to afford a university education at home.

It might be the thing that would allow him to raise his whole family out of the spiral of poverty and discrimination that they had long endured.

Nor did he know, when he accepted the university’s offer, that the Karl Marx University had, under the East German Government, become a training school for state sponsored indoctrination into socialist (communist) values and an institution to educate a younger generation of revolutionary activists for the struggle with what the DDR referred to as the “fascist West.”

Nor did he care to know that in this effort the government had worked closely with the Stassi, which from 1980 until well after the fall of the Berlin Wall in 1989 had actively sought out promising students from developing countries by offering them a “free university education,” but attempting in reality to groom members for “special working groups” which directly infiltrated, influenced, and sometimes literally directed otherwise

Continued on page 10

independently founded radical organizations. These included the Basque group (ETA) in Spain, the Irish Republican Army (IRA) in Ireland, Germany's own Red Army Faction, also known as the Baader-Meinhof band, as well as the Palestinian Liberation Front, with the goal always being the same – to promote officially sanctioned but surreptitious “destabilization” of the West by the use of groups that the West considered independent terrorist organizations.

But Gallagher had never been a simple ideologue. He had enjoyed reading the original works of Karl Marx, who he considered a true hero and champion of the working class from which he came, but he had certain distaste, fueled by Schmitt, for how “communism” had played out after Marx.

He was naturally anti-authoritarian, and it had not taken him long to realize that his “host” government had long abandoned the simple humanism of Marx's teachings for totalitarianism and visions of word domination in the name of the “State.”

And yet, even after

he learned of the nature of the University's course of “study,” he had justified his continued stay because it seemed to him that at the very least, it was only the “communists” who claimed to sympathize with the plight of his people, who at least spoke as if they cared about raising the standard of oppressed peoples everywhere.

Were not his own people still being oppressed by the British government? For all its talk of liberal democracy, had it not maintained a status quo in Northern Ireland that included officially sanctioned discrimination against people of his faith, a system that perpetuated the exclusion of Catholics from meaningful participation in the economic life of Northern Ireland? Those were “details” too. The details of his life.

But Gallagher had not been long in Leipzig before he had appreciated the limitations of the Soviet state. It too had its disconnect between ideal and reality, between stated objectives and the crass manipulation of its own subjects.

And Schmidt had played a leading role in his education, never shading the truth for ideology, always questioning the clichés of government,

whether others or his own. He had become, for Gallagher, his one true educator, his one true friend, the one person who Gallagher would trust with anything, including his life. Which was why Gallagher had helped Schmidt attempt to smuggle the lost manuscript out of Germany even at considerable risk to himself.

Yet here he was. Back in Ireland. Back in the IRA, expected to engage in all sorts of assignments yet to come. He wished he could make contact with Schmidt. Felt as if he needed to talk to him. To confess to him, but about what? His guilt? His lack of freedom? But he had not heard from Schmidt since his arrest at the train station in East Berlin.

Nor did he even know if Fandanzo had been successful in getting the manuscript out of East Germany, and had not even thought to get from Fandanzo his U.S. contact information in their few brief encounters, or from Schmidt before his arrest. He felt isolated. Alone. With nowhere to turn. And then he thought again of Schmidt's favorite word for freedom, for autonomy. “No!” “No!” “No!” It was all that was left of him, to define himself, at this time,

in this place.

And as he drained his last glass, he stood up to make a toast, almost falling backward on the bed.

“I've been fucking lost, Herr Schmidt! Since you left! Lost! But I'll make you a promise, my dear Schmidt! From this day on, I say ‘No!’ ‘Never again!’ ‘No!’ ‘Slainte!’”

By which, if you're listening, he really meant “Yes!” ☞



Off the WALS:

News of the Wheeling Academy of Law & Science (WALS) Foundation

As we like to say, "If those who believe in the Justice system don't educate the public, those who don't will."

Mock Trials Highlight Prescription Drug Dangers

The WALS Foundation has just finished its fifth year in the Ohio County fourth and eighth grade public schools. We are now seeing eighth graders like Sara, right, who participated in the fourth grade. Sara played the prosecuting attorney in the Cinderella trial in 2004. In the photo below,



Sara examines a crucial piece of evidence, the glass slipper.

Almost all the students remember well the role

they played several years ago.

Our new scripts are written about the dangers of the abuse of prescription drugs, a very timely topic. Statistics show an alarming rise in prescription drug abuse, and the recent death of 28-year-old actor Heath Ledger is a grim example of what can happen when prescription drugs are combined. Our mock trial program is an educational program designed to help students understand the hidden dangers.

We continue to expand our services to other areas in the state. In March and April we will showcase the program in Weirton and return to Ripley and Charleston. We also plan to return to several parochial and private schools in Ohio County and visit several local after-school programs.

THE WALS Foundation has designed this educational program with

a two-fold goal: to educate students about the American justice system and about the dangers of substance abuse. Students are actively involved in the program, playing roles in a drama that starts with making a bad choice about drugs and ends with a trial in which their peers act as jurors and decide their fate. [CS](#)



Bridge Street student Janela Marshall portrays an attorney in a prescription drug abuse trial. Kevin Flanagan is the presiding judge.

Upcoming Blackstone Club Meetings & CLEs

BLACKSTONE CLUB Tonight - February 28, 2008 - Bob Gaudio presents, "Stop Your Whining: A Simple Guide to Choosing the Right Wine for Dinner"



Next Meeting: April 17, 2008

REMINDERS: *If you haven't already done so, it's time to renew your Blackstone club membership for 2008.* Remember - the 60 minute CLE's are free for members!

Also, mark your calendars now for 2008 Blackstone club meetings: 3rd Thursday of April, June, Aug. Oct. and of course, the Blackstone club Christmas party on the 2nd Thurs. of Dec. 2008.

Continuing Legal Education Seminars

(Mark your calendars today)

March 28, 2008 - Wills and Estates, Elder Law & Probate Law

Jeff Rokisky, Esq. Wills & Estates; *Herman D. Lantz, Esq.* Elder Law; *Sharon Bogarad, Esq.* Probate Law - Up to 3.6 Credits

April 25, 2008 - Morning Session - Ethics, Risk Management and Office Management

Ethics - TBA; Risk Management - TBA; Office Management (E-Discovery) *Shari McPhail, Esq.* - E-Discovery; Up to 3.6 credits

Note: Mark your calendars now for Morning with the Judges X on June 13, 2008 with a presentation by U. S. District Court Judge, Northern District - Chief Judge, Irene M. Keeley

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