



## Letter from the Editor

We at the Commentaries still welcome member submissions for possible inclusion in the Newsletter, and would urge all of you who have a hankering "to be published" to submit your proposed article to Barb Knutsen for review by the editorial staff.

Because our business is dedicated to offering programming that promotes excellence in the professions of law, science and education, WALS has started a new service to provide "customized" educational programs to businesses and other groups that wish particular programs or training not usually offered at other educational facilities in the area. For more

information, see the WALS webpage at [www.firststatecapitol.com](http://www.firststatecapitol.com).

We are hoping that members might wish to serve as instructors should offerings in your line of expertise be requested, and hope to pay chosen participants a reasonable fee for services rendered, given the nature and extent of the program requested by the customer, and designed by WALS.

If you are interested in being considered as a potential instructor in any such programming, please let Barb Knutsen know at your earliest convenience.

Yours Truly,  
O' C of D.

## Tullamore Dew Profiles

### Earl Forman

Barb said the beatings would continue until morale improved... with morale sufficiently improved, I provide the following for all, up until now, who suffered from insomnia, but now have a cure by reading the life of Earl L. Forman, II.

I began life in Baltimore, MD on the coldest, snowiest day since the blizzard of 1888. Then, to add insult to injury, my family proved that one family cannot-and-will make the same mistake twice by naming

me the 2nd. I was educated in the Baltimore public schools, graduating from Baltimore City College, which despite

its name, is a public high school that was founded in 1839.

I continued my undergraduate

and law school

education at the University of Baltimore, receiving my JD from the University of Baltimore in a year that can only be expressed in roman numerals due to its age - however, it is not true that my degree was written in sanscrit on clay tablets - it was written in hieroglyphs.



Earl Forman

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## Commentaries

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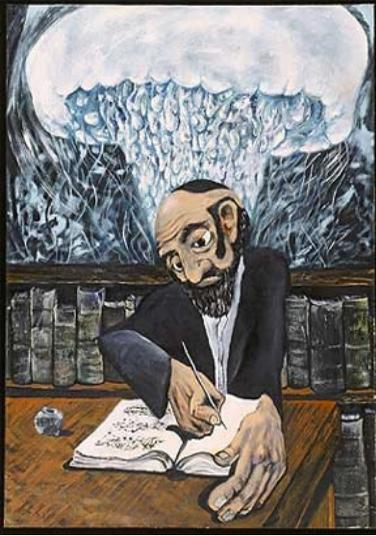
For more information,  
contact Barb Knutsen,  
Executive Director

304.232.2576

[barbaraknutsen@  
firststatecapitol.com](mailto:barbaraknutsen@firststatecapitol.com)

# Ask Bartleby

In the absence of a query this issue, I leave you with a passage from a book recommended by Bartleby to the editor more than twenty years ago:



“The minor virtues are the only ones that matter. Politeness is more reliable than the moist virtues of compassion, charity, and sincerity, just as fair play is more important than the abstraction of justice. The major virtues tend to disintegrate under pressures of convenient rationalization. But good form is good form, and it stands immutable in the storm of circumstance.”

From *Shibumi*, by Trevanian.

## Forman

*Continued from page 1*

(Just wanted to set the record straight on that.)

I eventually moved to the area and worked a number of years prior to early retirement with State Farm & Casualty handling litigation and represented files for most of West Virginia.

After taking early retirement, I was privileged to begin practicing in

OH with Cassidy, Myers, Cogan & Voegelin, L.C. 

**“It is not true that my degree was written in sanscrit on clay tables.”**

## Member Notes

- Please consider renewing your membership - renewals going out in the next few weeks.
- Remember, as a dues-paying Blackstone Club member, you may bring a different non-member lawyer or non-member educator to any meeting as your guest, to introduce him or her to the club.

# The State of Justice

*In honor, this month, of the late Charles H. Haden II, Chief Justice of the United States District Court for the Southern District of West Virginia*

The June, 2007 issue of the *Blackstone Club Commentaries* summarized the lead mountain top removal cases, particularly the case of *Bragg v. Robertson, et al.* 72 F.Supp.2d 642(1999), where then Chief Judge Charles Haden, citing state and federal regulations, relied on the “buffer zone rule,” enacted pursuant to the Surface Mining Reclamation Act, to require state and federal authorities (before permitting mountain-top removal that would bury streams by the resulting necessary valley-fills) to find that a “valley-fill” within 100 feet of an intermittent or perennial stream shall not adversely affect the normal flow or gradient of the stream, adversely affect fish migration or related environmental values or materially damage the water quantity or quality of the stream.

Although the Fourth Circuit Court of Appeals reversed Judge Haden based on its view that the federal court was without jurisdiction to hear the case, it did not disagree with Judge Haden’s interpretation of the “buffer zone rule,” and the case operated as a warning to the state’s regulators and coal industry that the law might not permit the wholesale destruction of streams in the State of West Virginia, and elsewhere, under the guise of strip or mountain-top mining.

Because of his love and respect for the law, Judge Haden would never accept congratulations for the courage of his decision (even though it often takes great courage to follow the letter and spirit of the law notwithstanding the pressures of political partisanship), but we expect that even so,

Judge Haden would be bitterly disappointed if alive today to see the effort of the Bush Administration ,

Judge Haden would never accept congratulations for the courage of his decision.

announced in August of this year, to repeal the “buffer-zone rule,” which has been part of the nation’s environmental regulatory scheme since 1984.

The repeal of the “buffer-zone rule,” if successful, will allow coal companies to dump waste directly into streams, notwithstanding the fact that they are within 100 feet

(or less) of the stream bed.

According to the Appalachian Center for the Economy and Environment, the Administration’s failure to enforce the “buffer zone rule” has already led to hundreds of miles of stream impacts nationwide between 2001 and 2005, and it estimates that 1,000 miles of streams will be destroyed in the future every decade, if the rule repeal is successful. For more information about the “buffer-zone rule,” see their website at [appalachian-center.org](http://appalachian-center.org).

For more information about Judge Haden’s career and the repercussions of his opinion in *Bragg*, see the excellent article entitled *A Judge in Coal Country*, by Rudy Abramson, which can be accessed through Google. 

# La Cerca - Chapter 5

Leipzig bustled with activity. I walked for hours, passing by some of the buildings that constituted the Karl Marx University, wondering all the while why I had yet to see Schmidt in person.

Schmidt had explained during his time in Wheeling that the university had formerly been named the University of Leipzig, but had been largely destroyed during World War II. Most of the buildings had been reconstructed since the war and were spread out over a several block area not far from the center of town.

What caught my eye was the number of persons of various races emerging from one of the buildings of the University while I was passing by. Blacks, Latinos, and Asians, mingled together with the fewer in number European looking whites who

accompanied them, all seemingly light hearted and happy in a shared learning environment. I thought it odd that the Soviet Union seemed to be doing better at assimilation of the races in higher education than we were in the United States, especially in a country where the century's most brutal war of ethnic cleansing had been waged.

I also noticed a number of students mingling in front of a marble bust in the courtyard, and walked closer so I could read the inscription on the brass-plate. It was a bust of Patrice Lamumba, the plate noting that "Lamumba was murdered in 1960 by the CIA."

I had not considered it so literally before. "Murdered by the CIA." "Murdered by my country." All of a sudden I again felt uncomfortable, and my first impression was to shrug off the

inscription as sheer "propaganda." But the thought was troubling, and I thought back to Schmidt's lectures on capitalism and freedom. I wondered if he too were convinced our government had killed Lamumba. Wondered again if he appreciated the moral lapses of his own country. There was, I was realizing more and more, so many things I did not know about him, about his own country, as I passed by the houses on Wolfe Strassa, each with an orderly display of flowers in the small plot of ground in front of each townhouse.

"Talk about conformity," I thought. Then, hearing classical music being played on a violin from an open window on the top floor of one of the townhouses, I thought again. What is it about East Germany? The buildings were all so grey. The people, although they smiled

politely, also seemed grey. I noticed no lipstick or other make-up on the young women who would pass by, no flashy colors of dress, no short-skirted or high-heeled chic like one might see in Italy, if not our own country.

Yet each house had its small bed of flowers, and the sound of classical music wafting over the streets seemed perfectly natural.

On one of the University bulletin boards an announcement for a production of "Urfaust" at "Zum Theater der Jungen Welt" caught my eye. As my meeting at the zoo was not until the next morning, I impulsively got in line and purchased a ticket.

Watching Goethe's masterpiece that night in the German language focused my thoughts and excitement on what I was going to learn

*Continued on page 6*

the next morning about Schmidt's discovery of a significant work of literature. Coincidentally, I realized upon arrival at the opera that the theater was actually part of the zoological complex, with the zoo entrance immediately to the left of the theater's entrance. Having stumbled on to it by accident, it seemed less ominous that I was to return the next morning, even if it were to meet a stranger—"Herr Gallagher."

Having resolved all doubts, I went back to my room at the Merkur, and a sound sleep.

After my breakfast of "Radeberger GDR Luxus Klasse," and two bites of pastaten, I was ready for the zoo. Two Marks to get in. A huge statue of Samson reigning in two bulls greets the visitor entering the zoological gardens. I was glad it survived the war. It couldn't have been erected since the war. It was too proud, too

strong. Too German. Herr Gallagher was not easily found. The woman at the ticket booth didn't know him. Two other people I stopped were Leipziggers visiting the zoo. After two more rounds of "Entschuldigan Sie bitte," I finally found a zoo employee who pointed him out to me—and, noticing first the same blue fisherman's cap, I realized he was the same young man who had approached me at the train station in East Berlin.

He was in the process of feeding two bears at the bear compound. Never were there more lazy bears than the bears at the Leipzig Zoo. Neither seemed particularly interested in their breakfast. I empathized with them.

"Herr Gallagher, it is me, Herr Fandanzo."

"Ah, Herr Fandanzo," delivered this time in impeccable English, but with an Irish accent.

"I've heard of Leipzig's talent for training wild

animals, but you have made them boring!" I laughed at my own joke, anticipating a laugh.

Gallagher only shrugged his shoulders.

I felt stupid. My effort to make light conversation failing, I asked him without mentioning the manuscript if he knew why Schmidt wanted to see me, and why he needed to send and receive messages through an intermediary.

Again the shrug of the shoulders, as he looked around to see if anyone was within hearing range.

Gallagher acted as if he knew nothing about the manuscript, or didn't want to express it publicly, if he did. In fact, he appeared to be rather uninterested in talking to me whatsoever, as he continued to throw small scraps of meat, one at a time, in slow motion, to the bears still lounging on the rocky ledges.

Finally I insisted to be taken to meet Schmidt.

For the first time he turned directly toward me and looked me straight in the eyes.

"You are going on this afternoon to Weimar, and will be staying at the Hotel Elephant. Near the hotel, over the hill, is a park along the river Ilm. You will find what you are looking for at the statue of William Shakespeare. It is a pleasant and solitary place. No soldiers. No officials. Tomorrow night, then, eight o'clock. Please be on time."

With that, he turned his back to me and continued his methodical feeding of the bears, looking no more in my direction. ❧

*See prior issues of the newsletter, including chapters of La Cerca, at [www.firststatecapitol.com](http://www.firststatecapitol.com)*

the  
Blackstone  
club





# 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."

## WALS 5th Year for Mock Trial Program

The WALS Foundation will start the Mock Trial project in November, 2007, for the current school year.

It looks to be an extremely busy year for us. All Ohio County Fourth and Eighth grade public schools have been scheduled and we have plans to offer the program at parochial and other private schools and in at least six more counties.

New scripts have been written. This year, the topic is "The Abuse of Prescription Drugs and

Over the Counter Drugs." Statistics show this to be an alarming problem among our youth today.

By participating in this program, students learn not only about the legal system, but about the dangers of abusing drugs; they see firsthand how young people could end up on trial if they make a bad choice.

The students and teachers love the program - the content, the interaction and the opportunity to play a role in the production. 



*"Attorney" Patrick Voegelin presents his case at a mock trial at Triadelphia Middle School;*



*"Judge" Patrick S. Cassidy hears from the accused in a Kanawha County middle school mock trial.*

The Blackstone Club is not an official bar function, and has no ties to any city, state, federal, professional or political entity or organization; it is solely a project of the Wheeling Academy of Law and Science, Inc, a private corporation.

# Upcoming Blackstone Club Meetings & CLEs

**BLACKSTONE CLUB Tonight - October 25, 2007:**

Presentation by John Hull, Ph.D., Bethany College Professor

*“WHAT WE THINK WE KNOW:*

*Probabilities in real life and in the courtroom”*

**Dec. 13, 2007 -- Christmas Party -Black Tie Event**

## Continuing Legal Education Seminars

*(Mark your calendars today)*

**Wednesday, November 7, 2007 NOON SERIES Substance Abuse**

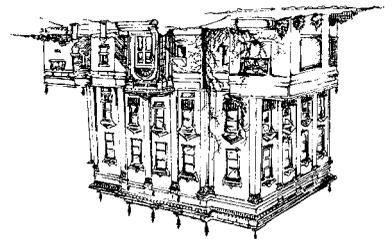
***Kristen Kroflich, MSW* Approved for Up to 1.2 CLE Credits for “Substance Abuse”**

**Friday, November 16, 2007 - 2nd Annual WALs & The Cyril H. Wecht Institute of Forensic Science and Law, *Cyril H. Wecht, M.D., J.D. and Lee Davis, Esq.* Up to 3.6 General CLE Credits**

**Friday, December 14, 2007 Morning With the Judges IX**

***Honorable Joy Flowers Conti and Richard N. Lettieri, Esq.*(e-discovery session )**

**2nd Judge - TBA Up to 3.6 CLE Credits, including some for “Office Management.”**



Wheeling, WV 26003-3582  
1413 Eoff Street  
First State Capitol

