

# Commentaries

"Stand In The Place Where You Live." REM

June 2006

## Letter from the Editor

We have been debating for some time among members whether to allow non-lawyer membership to the Blackstone Club. Although we currently have 34 members, our attendance lately has been a little low at the bi-monthly evening social events. After much debate, the consensus among those who have been regularly attending the evening meetings is that "educators" would make a natural and complimentary membership mix, and add the "science," (in the broadest sense) to the **Wheeling Academy of Law and Science's** efforts in presenting The Blackstone Club.

"Philosophical" support for this reasoning, (always necessary for Blackstone Club members) comes from *How the Scots Invented the Modern World*, by

Arthur Herman. It appears that the "founding fathers" of the Scottish Enlightenment were Francis Hutcheson (a professor, and teacher of Adam Smith) and Lord Kames, (a lawyer and professor of law). Kames was a product of the academic heritage that Scottish lawyers enjoyed for centuries before him.

Although historically you could become an English barrister in England without formal academic training (by hands on apprenticeship at the Inns of Court), Scotland's legal education system developed differently. Since the thirteenth century, it had developed academic and scholarly requirements for the bar, including a "full course of study of philosophy and law at a university for at least two years."

*Con'd on P. 3*

## Tullamore Dew Profiles

Patrick S. Cassidy

Born in Steubenville, Ohio; and raised in Weirton, West Virginia, I never pronounced Elby's correctly, so I'm glad I don't have to do so any more. Son of a hard working (and drinking) Irishman who spent many years atop the coke plant furnaces at Weirton Steel, and a loving Italian mother who made sure I ate a lot of pasta and was introduced to the glories of Italian wine, I was fortunate to meet at Wheeling College my wife of 36 years, Mary

Ellen Arthur, who is now an environmental scientist at Wheeling Jesuit University. Mary Ellen and I have had the good fortune of raising four lovely daughters-Amanda, Elizabeth, Julie and Annie, and now are thrilled to have our first grandson, Zachary Patrick.

Having received a degree in philosophy at Wheeling College in 1970, I thought I would be a teacher, or perhaps a writer, until I lost my bearings and decided to

**"Having received a degree in philosophy I thought I would be a teacher, or perhaps a writer, until I lost my bearings and decided to be a lawyer instead."**

## 2006 Blackstone Club Members

Landers P. Bonenberger  
Patrick S. Cassidy  
Timothy F. Cogan  
Thomas M. Cunningham  
Gerald P. Duff  
Kathleen J. Fantazzi  
Sherrilyn D. Farkas VanTassel  
Kevin Flanagan  
Patrick M. Flatley  
Earl Forman, II  
William C. Gallagher  
Robert J. Gaudio  
Randy Dean Gossett  
R. Dean Hartley  
G. Charles Hughes  
Rosemary J. Humway Warmuth  
Ronald W. Kasserman  
J. Perry Manypenny  
Thomas C. McCarthy, Jr.  
Shari McPhail  
Thomas M. Myers  
Frank A. O'Brien, Jr.  
James Michael O'Brien  
Martin Sheehan  
Laura E. Spadaro  
Frederick P. Stamp Jr.  
John P. Stimmel  
Daniel P. Taylor  
Bradley H. Thompson  
Theresa Toriseva  
Jonathan E. Turak  
Wray V. Voegelin  
William E. Watson  
Mary J. Williams

## Cassidy - con'd from p. 1

Degreed in 1973, I spent a short stint in Weirton with Bogard & Robertson (the latter now of Spilman Thomas fame) where I committed my first malpractice; and joined Frank O'Brien in 1974 when he was nearing retirement age and I thought he would soon be turning over all his clients to me. 32 years later, he's still nearing retirement age.

Anyway, I have been pleased to practice with some great colleagues at the bar over the years, (mostly employment law), and have kept up

an interest in philosophy, writing, and our city and state's cultural heritage. To paraphrase Lanny Bonnenberger—"Thanks to the good judgment of the Ogden Newspapers, I don't write a quarterly guest column for the Wheeling News Register." If you want to know more, I suggest lunch (or dinner) with wine at the Italian restaurant of your choice, to be followed up with either Jameson's or Tullamore Dew, preferably on the rocks. Cheers.

### NOTE

*Every issue will contain a profile of one of our members, presented in alphabetical order; so fellow members can learn about each member's interests and accomplishments in and OUT of the profession*

## Commentaries

is the official newsletter of the Blackstone Club, and is published by the Wheeling Academy of Law and Science. For more information, contact Barb Knutsen, Executive Director - 304.232.2576  
[barbaraknutsen@firststatecapitol.com](mailto:barbaraknutsen@firststatecapitol.com)

# Letter from the Editor

When Lord Kames rose to become a senior examiner for the Faculty of Advocates, and curator of the Advocates' Library of Edinburgh (historically a law library only); he turned it into the premiere library con'd from p. 1

in Great Britain and the intellectual center of the Edinburgh enlightenment. Under his direction, books on philosophy, history, geography, and travel, were included with the collection of legal works, all organized and systematized into branches such as anthropology, sociology, ethnography, etc.

According to Herman, "almost all our modern social sciences got their start from the volumes assembled on the shelves at the Advocates' Library in Edinburgh." David Hume wrote his History of England there.

But it was not all work and no play. Herman points out that Kames "liked to mix food and drink, including prodigious quantities of claret, with serious discussions of philosophical and legal issues." Obviously, Kames would have been a good candidate for admission to the Blackstone Club. But given the Celtic tradi-

tion of inclusivity, should we ignore our brothers (or sisters) Hucheson? We think not.

Accordingly, after much soul searching, we have decided to encourage an enlightened and heightened intellectual experience by welcoming to the ranks of The Blackstone Club "Educators" of every kind. If you have some college professors, high school teachers, or other professed educators who you think would like the Blackstone Club, invite them to the next meeting.

On a parallel note, The Wheeling Academy

of Law and Science has decided to start offering CLE type programming for educators as well as lawyers, and we think the partnership will offer many networking rewards, as well as increasing "public understanding" of what we and educators face in our respective professions.

The annual membership fee for educators will be at the "public service" rate of \$150. We hope you all will welcome this change in Blackstone Club membership, and look forward to a rewarding, growing experience.



## Remember...

as a dues-paying Blackstone Club member, you may bring a different non-member lawyer to any meeting as your guest, to introduce him or her to the club.

## ALSO...

bring along someone you know that is an educator to the August 17, 2006 meeting - A New Beginning!



# The State of Justice

## It's time to stop lying: West Virginians deserve the truth

*Reprinted with permission of the West Virginia Trial Lawyers Association.*

By Jeffrey T. Jones

Once again, West Virginia is under attack by the U.S. Chamber of Commerce and the billion-dollar corporations that it represents. The charge? That West Virginia's courts are the worst in the country.

That so-called analysis is based on a survey of corporate attorneys who are employed as in-house counsel by corporations that earn at least \$100

million in annual profits. How many of those attorneys have any first-hand knowledge about West Virginia's judicial system? How many of them have ever stood before a West Virginia judge?

Of the more than 1,400 surveyed, just over 100 answered questions about West Virginia—less than 10 percent. Based on comments by the Chamber's spin doctors and hearsay, those attorneys attacked our courts. These are in-house attorneys who are responding exactly the way the Chamber tells them – and the results are exactly what the

chamber expected them to be.

In the courtroom, we can't argue our cases based on hearsay and spin. We have to deal with facts. So, here they are.

The ads claim that America's legal system costs each American \$886 per year – a total of \$1.6 billion for West Virginia. That figure is based on a report released by Tillinghast-Towers Perrin.

However, this study, which is updated annually, has been widely discredited because the total figure includes insurance industry overhead costs in the costs of lawsuits. These added costs include multi-million dollar salaries for CEO's, rent for office buildings and other administrative expenses.

A May 2005 report from the Economic Policy Institute (EPI), a non-profit, nonpartisan think tank in DC revealed that TTP's reports are one-sided, exaggerating the impact of the tort system and ignoring its benefits, and that evidence

supporting them is shaky or nonexistent.

The Wall Street Journal previewed the new version of the TTP report, and noted that it includes costs that are not part of the legal system: "...critics of past years' studies – and there are many – say the number and the projections that come with it are deeply flawed. For instance, they include payments that don't involve the legal system at all. Say somebody smashes his car into the back of your new SUV and his insurance company sends you a \$5,000 check to fix the damage. That gets counted as a tort cost in Tillinghast's

number. Critics say it's just a transfer payment from somebody who wasn't driving carefully to somebody who has been legitimately wronged. How is that evidence of a system run amok?" (Math Divides Critics As Startling Toll of Torts is Added Up," Wall Street Journal, 3/13/06) After being

*Con'd on P. 5*

***Once again, West Virginia is under attack by the U.S. Chamber of Commerce and the billion-dollar corporations that it represents.***

### **The Charge?**

***That West Virginia's courts are the worst in the country.***

# The State of Justice - continued

criticized for the methodology, TTP was forced to admit in their 2005 edition that “the costs tabulated in this study are not a reflection of litigated claims or of the legal system.” Russ Sutter, primary researcher for the study,

admitted in 2005 that tort-reform advocates use the data

“in a way that’s probably misleading.” (“U.S. Tort Costs: 2004 Update, “Tillinghast-Towers Perrin at 4)

The Chamber claims that our court system is the worst in the nation, yet when you look at an independent analysis of our courts the findings are very different. According to the National Center for State Courts, Maryland had the highest number of civil lawsuits per capita among the 39 states with two-tiered court systems.

Virginia is second and Ohio is tenth. Kentucky was 21<sup>st</sup>. Where is West Virginia?

West Virginia ranks 29<sup>th</sup>. Among all the states and Washington D.C., we have the 36<sup>th</sup> LEAST number of case filings per capita. West Virginia’s number of case filings was below the national median.

That does not point to an out of control system that should be ranked dead last by the Chamber.

Indeed, the data is flawed not just for West Virginia, but for several other states as well. Nine of the 15 states that the Chamber lists as the worst – Alaska, New Mexico, Arkansas, Texas, California, Illinois, Alabama, Mississippi and West Virginia – have civil case filings BELOW the national median. So, it can’t be based on the number of lawsuits. The numbers just don’t add up.

What is it then? Could it be that these states have strong consumer protection and

worker safety laws that hold negligent corporations accountable?

After passage of Proposition 103 in California, that state has some of the strongest insurance regulations in the country. According to the Foundation for Taxpayer and Consumer Rights, California auto insurance premiums, which were second highest in the nation prior to the initiative, dropped to 20<sup>th</sup> after the initiative passed, according to the most recent data reported by the insurance industry. Since its 1988 passage, the average premium has fallen 22 percent in California, while it has increased an average of 30 percent throughout the rest of the country.

The Chamber and the billion-dollar insurance industry are now trying to have Prop 103 repealed. To assist in that effort, they are now attacking California’s court system as one of the worst. California has fewer cases filed per capita

*West Virginians  
deserve the  
truth.*

than West Virginia.

West Virginians deserve the truth. The truth is that the U.S. Chamber doesn’t care about West Virginia consumers, West Virginia workers or West Virginia jobs. The truth is that the chamber’s primary political agenda is to destroy consumer and worker protection laws in order to provide total immunity to billion-dollar corporations that break the law. It’s all about the money and how these corporations can make more money on the backs of West Virginians.

The only thing that matters to Tom Donohue and the U.S. Chamber is protecting corporate profits at any cost no matter what they have to say or do. AND THAT’S THE TRUTH!

*Jones is President of  
the West Virginia Trial  
Lawyers Association.*





# THE WALS FOUNDATION



Charleston, WV students participated enthusiastically in mock trials.

The Wheeling Academy of Law and Science (WALS) Foundation successfully completed its third year of presenting mock trials to students in the fourth and eighth grade classrooms, as well as after-school programs.

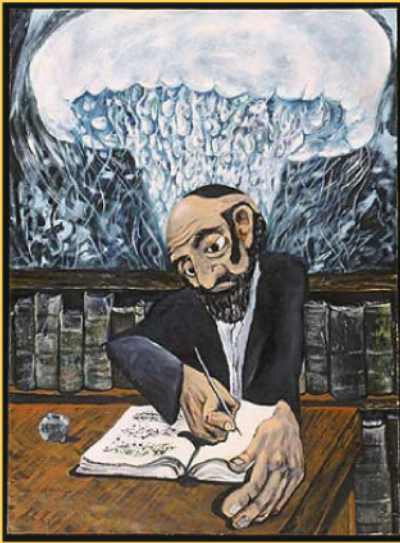
Our grantor, the WV Department of Health and Human Resources, wanted to showcase our project in Charleston. In April 2005, we completed the two day mock trials in four Kanawha County schools (two elementary and two middle). Everyone seemed to love the trials and they want us back next year.

Nearly 1,000 students participated in this educational project that brings the American Justice System to life.

The plan is to expand into other counties next year.

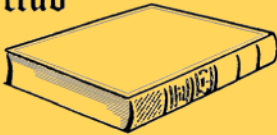
*Thank you, lawyers,  
for your support! -- Barb*

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



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

## the Blackstone club



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.

## Ask Bartleby

Receiving no queries this month, Bartleby shares some words of wisdom from the best of the legal profession.

The legal profession “should be one that places public interest above private gain, that puts the use of legal tools for progress and equality above the defense of the status quo, that treats legal services for the have-nots on a par with those for the haves, that utilizes law as an instrument for helping the powerless and not for protecting the powerful, and above all that makes the law a vehicle for fighting social wrongs and not perpetuating them.”

Joseph L. Rauh

“True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures-- unless as amateurs for our principal amusement. There is little of all that we don which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men’s burdens and by our efforts we make possible the peaceful life of men in a peaceful state.” *John Davis*

“Anyone who believes a better day dawns when lawyers are eliminated bears the burden of explaining who will take their place. Who will protect the poor, the injured, the victims of negligence, the victims of racial discrimination and the victims of racial violence?”

John J. Curtin, Jr.

Yours Truly,

Bartleby, the Scrivener



# Upcoming Blackstone Club Meetings & CLE's

**Tonight:** Theme: *"Summer and Strawberries,"*

Presentation by Shari McPhail:

**"North Dakota: The Unknown State"**

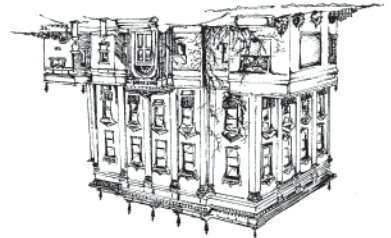
Aug. 17- Gerald Duff Oct. 19 -Tom Myers Dec. 14-Black Tie Event



## Continuing Legal Education Seminars

**UPCOMING!** Wednesday, July 19, 2006 - **GENEX "Earning Power Assessment/Vocational Evaluation"** (60 min. CLE noon series - FREE to Blackstone Club Members)

**"Lingering Legal Issues in The Assassination of John F. Kennedy"** was presented on May 19, 2006 by Dr. Cyril H. Wecht and other nationally recognized experts. The response by attendees was overwhelming. **"A Day (morning) with the Judges VI"** brought in another full house of lawyers. We are grateful to Judge Edmund Sargus and Judge Craig Broadwater for taking their time to help our local attorneys with CLE credits here in Wheeling.



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

