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# Commentaries

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Stand in the place where you live. ~ REM

• June 2009

## Letter from the Editor

Welcome to WALS summer of 2009, when the focus will be on Eastern Europe – with tonight’s presentation by Lou Hart on Bulgaria.

Don’t miss this month’s profile of Ben Stout – and speaking of Eastern Europe, check out “La Cerca,” where the action has shifted to Georg Schmidt in Brest, and the “Museum for Confiscated Art;” Sir Peter Quimsley, who has something to say about “historic designations;” and “Antoine,” who as usual, “lectures” us on the virtues of bicycling in Paris.

Last but in no way least, don’t forget to read “Off the WALS,” which reports on the WALS Foundation and on our lawyers who participate in the mock trial program. Barb is determined to meet her goal of having “the first” 10,000 students participate in this program in the next few years. Way to go, Barb!

Your Editor,  
O’C of D

### Commentaries

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

## Tullamore Dew Profiles

### Ben Stout, Ph.D.

Dr. Benjamin Stout is a professor of biology and Chairman of the Biology Department at Wheeling Jesuit University, Wheeling, West Virginia, where he also works with the Coal Impoundment Project of the National Technology Transfer Center.

He spends 75 percent of his time conducting research with the Coal Impoundment Project and associated grants; the remaining 25 percent of his time is dedicated to teaching, he says, “because I love teaching field ecology.”

His discussions with residents in southern West Virginia explaining the results of his study on their contaminated well water and his presentation of that study to a West Virginia Legislative Committee stand as examples



Dr. Ben Stout

*Photo by Antrim Caskey*

of communicating science to a larger community. In addition, serving as an expert witness in state and federal courts, to evaluate the impacts of mountaintop removal on streams and aquatic organisms, Dr. Stout took information largely meant for the scientific community and simplified it accurately and concisely to allow judges and regulators

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*Sir Peter Quimsley, FRIAS*

# Design Champion

City of Wheelaing, Scotland

**W**e are fortunate to have Historic Districts and structures that have been nominated by our State for inclusion in “The Scottish Register of Historic Places.”

While such designations recognize the historic importance of the buildings and districts, protect them in connection with any potentially adverse nationally funded projects, and afford favorable tax incentives for owners of structures so designated, the “national” designations do nothing to require design review or afford protection in connection with the private demolition, alteration, or construction of any buildings in the districts.

Then too, the ravages and demolition of historic structures, or the wholesale replacement of the historic stock by private or public owners in a previously designated district can result in the loss of even these modest

protections – through “de-listing” by the state.

Apart from these nationally authorized designations, there are no locally designated Historic Districts under Wheelaing municipal law that require design review or afford protection in connection with demolition, even though state law allows municipalities to implement such districts.

Thus, despite the enthusiasm for “preservation” by many of its citizens, Wheelaing has no way to legally protect historic structures or districts under local law – unlike our sister city of Edinburgh, which enjoys one the most protective (and effective) preservation-law infrastructures in the world, all mandated and implemented on a local level by the Edinburgh City Council. Not surprisingly, Edinburgh has achieved the highest honor possible in recognition of its preservation efforts – having been named by The United Nations as a

“World Heritage City.”

The failure in Wheelaing to mobilize the force of its own political will to require demolition or design review has left preservation efforts to the energies and limitations of private foundations (my appointment as “Design Champion” notwithstanding).

Not that it is all dismal. Even lacking uniform protection under local law, non-profit foundations and entities, both with and without the assistance of local government, have had some striking successes in renovating or protecting a number of historic treasures, as demonstrated recently in the case of acquisition of the Old Wheelaing Theatre, and the complimentary and beautiful private renovation of an adjoining building.

Nonetheless, without legally enforceable mandates on the local level, preservation successes have been sporadic, and far between.

Not surprisingly, the city’s own Wheelaing Historic Buildings Commission remains an unfulfilled promise, largely because the idea of “city-wide,” or even neighborhood-wide designations have been met historically with political opposition. While that opposition may be a result of a failure to educate a critical mass of the community on the cost-benefit advantages of historic preservation, it naturally springs in part from the age-old distaste for any “regulation” of one’s own property – the belief that “no one, let alone the government, is going to tell me what to do with my [hard-earned] property.”

But even within the Commission, the contours of a more effective system of garnering support and promoting preservation has emerged – what I will euphemistically refer to as private/communal stewardship at the “heritage pod” level.

But first, to what do I refer as a “heritage pod?” I take that to mean a compact area (shell) of one or more historic buildings that contain the potential (seeds) for promoting a larger flowering of community beauty, preservation and urbanity, which can be created without “official designation,” but by its owner[s], exercising organized, private/com-munal stewardship, if only on a small scale.

In this sense, Heritage Pods can be mini-versions of the magnets that Lewis Mumford saw as fundamental to city development:

“In the earliest gathering about a grave or a painted symbol, a great stone or a sacred grove, one has the beginning of a succession of civic institutions that range from a temple to the astronomical observatory, from the theater to the university.”

“Thus, even before the city is a place of fixed residence, it begins as a meeting place to which people periodically return: the magnet comes before the container, and this ability to attract non-residents to it for intercourse and spiritual stimulus no less than trade remains one of the essential criteria of the city.”(*City in His-*

*tory*, Chapter 1, Sec. 3.)

Each heritage pod has the potential to become an individual magnet contributing to the urban fabric; as part of a collection of others, it will form the nucleus for renewal of the urban core.

Accordingly, each pod should include one or more identifiable historical or cultural shell(s), and aspire to become itself a community magnet, a community center, a welcoming location which even though privately owned, becomes itself vital to promoting pedestrian friendly “public space” for the city. [See “Privately Owned Public Space,” by Jerold S. Kayden (John Wiley& Sons, Inc. 2000)].

An example of private/public stewardship at the “heritage pod” level is illustrated by the great strides made by Lady Rebecca Spears in organizing community preservation efforts in a “heritage pod,” which has come to be known as Chapel Hill Row.

Although Lady Spears herself serves as one of the City’s High Commissioners, her success with Chapel Hill Row springs less from her role as High Commissioner, and more from her private/com-munal stewardship as owner

of a historic structure amongst a community of historic structures on Chapel Hill Row – and her sense that effective stewardship extends beyond the shell of her own historic structure, but to the communal preservation and protection of all the historic structures on Chapel Hill Row.

Of course, “community involvement” is an abstraction so long as it remains only at the “community,” impersonal level. While everyone cheers the “concept” of community, not everyone takes a walk outside, looks up and down their own street, talks to their neighbors, gets to know their names, listens to their concerns, and engages them in finding cooperative solutions to communal problems—including the preservation of their community’s historic and cultural treasures.

Given the constraints of time and energy, even the most community oriented “steward” may not be able to personally engage a whole neighborhood, let alone a whole city. But if desired, one could engage his or her next door neighbor, or the neighbors on the right and left, or up the street; and in the case of an important



cluster of historic structures, such as Chapel Hill Row, it is this personal commitment to her own immediate community (the Chapel Hill Row “heritage pod”) that in the case of Lady Rebecca Spears has transformed “personal stewardship” into “communal stewardship.”

So this leads to this month’s first recommendation: Don’t worry so much about getting the whole downtown, or even whole neighborhoods locally designated. Although existing municipal designation laws would permit small scale designations of even a few buildings, don’t even make “designation of buildings” the first priority (that will come later).

First and foremost, promote the designation not of buildings, but of people – people who are

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## Design Champion

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interested in preservation and are willing to serve as representatives of individual heritage pods.

Heritage pod designers should not be limited to “officials.” In fact, the whole concept of using heritage pods to seed the generation of new forms of preservation and urbanity envisions the welcoming of any owner of real estate in the downtown area (who appreciates historic preservation and its necessary corollary – community) – to come forward, “adopt,” and represent a heritage pod of their own (or their neighbor’s) articulation.

Under this scenario, heritage pod representatives would be encouraged by the Commission and serve as liaisons, would be invited and welcomed to Commission meetings, extended the full support of the Commission, and plugged into design, financing, and educational opportunities.


Assistance with efforts for formal historic designation could also be forthcoming, but only if the community decides to go that route.

What could a pod representative be “expected to accomplish” under such

a plan? “Only what he or she can.” If it be to work on the preservation, interpretation, and potential of just one historically significant building, that should be encouraged. Such a singular effort itself would constitute a success in contributing to a local network of persons dedicated to preservation, and willing to work in a cooperative way towards communal goals.

As more representatives and pods are identified and acknowledged, multiple preservation efforts will germinate and grow, and before you know it there will be a re-flowering of preservation efforts in the city’s historic districts unrelated to whether or not they were ever so “designated.”

An old philosopher once suggested that the Renaissance was built on the backs of only ten individuals. Find me just ten heritage pods in the historic city center, and I will show you the start of a renaissance of preservation efforts throughout the city. So much for my first recommendation this month.

My second? “A glass of Highland Park, aged 25 years, with a mere splash of water.” Cheers! 

*[Any resemblance of the city of Wheeling to any existing city in the United States of America is strictly coincidental.]*

## Ben Stout Profile


*Continued from P. 1*

alike to appreciate the importance of benthic invertebrates in headwater streams and their ability to indicate water quality.

His testimony was a major factor in policy decisions that directly affect the health and sustainability of watersheds targeted for burial under valley fills and the surrounding communities. He says he is only beginning to tell the story of mountaintop removal mining. His essay, “The Right Thing to Do,” relates his experience testifying in Federal Court against mountaintop removal to growing up in West Virginia and being educated in Appalachia. Stout’s current grant writing effort, with Mary Ellen Cassidy, is focused on achieving additional funding from the EPA CARE Program. With previous grant funds, they have convened more than a dozen meetings with citizens and academicians interested in the future of southern West Virginia. “We have achieved a consensus priority list of environmental problems that can be addressed in southern West Virginia,” Stout said. “The top issue

is getting good quality water into neighborhoods impacted by large scale mining.” If the grant is funded, they will begin to address these problems next fall through research and citizen empowerment.

As co-founder and Trustee of Ohio Valley Trail Partners, Stout has had the opportunity to use his skills to expand the Wheeling Heritage Trail. The organization has received its first grant to pave an additional half mile of trail in South Wheeling, and has submitted three additional applications for nearly \$1 million; it has also developed a 10-year, \$10 million strategy for nearly doubling the Wheeling Heritage Trail.

Stout was awarded the Environmental Stewardship Award in recognition of his ability to translate scientific principles and research findings into coherent, useful knowledge for the general public. His students are introduced to the world of stream ecology and inspired to carry out research to evaluate methods of stream conservation and remediation. 

# La Cerca - Chapter 12

It was the avowed purpose of the Stassi in 1984 “to know everything” about the citizens of East Germany (“the DDR”). Hundreds of thousands of people were enlisted either formally or informally to provide intelligence on their colleagues, neighbors, and sometimes even their own family members.

It was this network that allowed the Stassi to learn about Schmidt’s attempt to smuggle the Nietzsche manuscript out of East Germany. But even before that, it was the same network that had allowed the Stassi to learn of Schmidt’s early history – his Jewish heritage, his birth in Brest, and the fact that he had been raised in the home of his uncle in Weimar.

Although the Stassi played a relatively independent role in the DDR as a member state of the Soviet Union, it maintained close contact with the KGB throughout the period, most importantly, through its collaboration with the KGB in the indoctrination of “revolutionary leaders” at the Karl Marx

University in Leipzig.

When Schmidt was discovered to have been involved in smuggling a manuscript written by a perceived “enemy of socialism” [Nietzsche] from East Germany, it was natural for the Stassi to discuss the “problem of Schmidt and the manuscript” with the KGB.

Although Siberia was the place of choice for “relocation and rehabilitation” of political prisoners in the Soviet Union, the fact that Schmidt had been raised in Weimar, and had been a well-respected professor for many years at the University in Leipzig proved in his favor, and ultimately, his handlers in the Stassi agreed with their counterparts in the KGB that the “appropriate” location for his “rehabilitation,” would be his place of birth – Brest, where he would be assigned to work at the Museum of Confiscated Art, a museum dedicated to preserving items of art that had been confiscated from travelers attempting to smuggle them out of the country.

They thought this an

exquisite solution. The attempted “art” smuggler would hereafter be forced to become a museum curator, charged with watching over a collection of treasures amassed from other intended smugglers – other “Schmidt’s” – over the years.

In 1984, the Museum of Confiscated Art was not in its present location in at the intersection of Masharova (formerly Moscow) Street and Lenin Street, but in the basement of what is now the only Roman Catholic Church in Brest, the Church of the Holy Cross, on Lenin Street.

While most of the items in the museum collection were religious “icons” from Russian Orthodox churches, the museum included many exotic items, not the least of which now was to include the manuscript copy that Schmidt himself had attempted to smuggle out of East Germany.

The decision to send Schmidt and the manuscript to Brest constituted



*The Church of the Holy Cross in Brest*

a compromise between the Stassi and the KGB. As the original Nietzsche archives were located in Weimar in 1984, the perceived justification to remove the manuscript to Brest was because the Stassi were unsure themselves whether or not the manuscript constituted a revolutionary work that would upset the official (and unfavorable) view of Nietzsche promoted at the archives. It was the Soviet practice in those days to preserve all purported literary manuscripts, with a view to deciding later whether or not the State would make them available for study or publication.

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## La Cerca


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The publications of Nietzsche that were made available for scholarship at the Weimar archives in 1984 had already been vetted by the authorities, and in any event were accessible only to serious scholars. Pleased with their perspective, the authorities decided that Schmidt would be the perfect scholar to study the manuscript in isolation and provide them with the answer to the question of whether or not the manuscript would be “of value” to the Soviet State, particularly since he had already demonstrated his willingness to risk his life

and liberty for the sake of its discovery.

But most of all, the authorities knew that Schmidt would be “safe” in Brest. Although he would be the manuscript’s “official keeper,” he was under strict orders to read and study it only in the confines of the museum, completely cut off from communication with the outside world, and only then under the watchful eyes of an armed guard, and two Russian women who served both as official museum guides, and professional “overseers” of Herr Professor Schmidt’s activities.

There would be no further visiting professorships for Schmidt. No further travel visas. He was allowed only a journal, to record his thoughts on the study of the manuscript.

For companionship, Schmidt had only his overseers—Fredericka Illyich and Tatiana Karasova, and the guard of few words whose job it was to maintain a silent vigil at the museum, and accompany Schmidt daily to and from the nearby university apartment that had been assigned to him. The next day would be the same. Only the officer would change, from time to time. But Frederick Illyich and Tatiana Karasova were constants. Day in and day out; for five years; until 1989; and the fall of the Berlin Wall. 

*To read past newsletters, including previous chapters of La Cerca, visit our website: [www.firststatecapitol.com](http://www.firststatecapitol.com).*



*The Museum of Confiscated Art*

# Ask Antoine

**Q.** Dear Antoine, My request to local authorities about the possibility of a new bicycle lane on the new Interstate exit to Wheeling Hospital was met with an explanation that it “was a good idea, but too late to consider – maybe next time.” What is your city’s experience in accommodating bicycles? ~ *Tim Cogan*

**A.** Monsieur Cogan, Ever since our own Pierre Michaux developed the “Velocipede” – the world’s first mass-produced bicycle – in 1863, we Parisians have built no bridges, repaired no roadways, landscaped no parks without making accommodation for the bicyclist. So we do not understand your public officials’ explanation, except that it is obvious that they hadn’t automatically thought of such an accommodation ahead of time.

But of course we do not share your countrymen’s obsession with the automobile, or their fear of “Becoming More like Europe!” Think of how horrid it would be to live in a city like Amsterdam, where residents use bicycles



more than automobiles, or my own Paris, with its dedicated bike lanes, free municipal bike rentals and racks, extensive bicycle paths and even some roads closed to all but bicycle travel. Mon Dieu! A fate worse than death!

A new book by a kindred spirit, Jeff Mapes, “Pedaling Revolution, How Cyclists Are Changing American Cities,” describes the growing recognition for the necessity of a bicycling infrastructure in your cities, and hopes to instill in all city and state

planners the idea that such an infrastructure is long overdue.

Mapes also thinks like a good Frenchman, suggesting that bicycle ridership and infrastructure planning will grow as more women take to the roads – something about the persuasive power of the opposite sex. Wasn’t it Susan B. Anthony who declared (in the 1890’s) that the bicycle “has done more to emancipate women than anything else in the world?”

But of course we’ve had a few other opinions on the same subject since. Nonetheless, I suggest that you let your significant other make the request next time around.

Au revoir, mes amis, *Antoine-Laurent Lavoisier*



## Off the WALS:

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

### We Couldn’t Do it Without Our Attorneys

*Thanks to all the attorneys who were part of our mock trial program this year. More than 6,500 students (1,200 this year) have participated in the trials so far.*

Lanny Bonenberger  
Earl Bowser  
Phil Bowser  
Pat Casey  
Patrick Cassidy

Leah Chappell  
Sean Cook  
Tim Cogan  
Jim Companion  
Monica Dillon  
Michelle Dougherty  
Kathy Finsly  
Rob Fisher  
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Brad Thompson  
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Jennifer Tully  
Rose Humway Warmuth  
Tony Werner  
Mary Williams  
Heather Wood  
Jenna Wood 

# Upcoming Blackstone Club Meetings & CLEs

## **BLACKSTONE CLUB Tonight - June 26, 2009** *Why Bulgaria?*

Lou Hart will lead a discussion of Bulgaria, while we taste Bulgarian recipes and Bulgarian wine.

Aug. 28, 2009, Oct. 23, 2009 & the WALs Annual Banquet, Dec. 10, 2009



## **Continuing Legal Education** *(Mark your calendars today)*

July 24, 2009 - Ethics, Substance Abuse and Elimination of Bias in the Legal Profession

August 2009 - Morning Session - TBA

September 2009 - Lunch Series 60 min. session - TBA

October 2009 - Ethics, Risk Management & Office Management

November 20, 2009 - WALs and The Cyril H. Wecht Institute of Forensic Science - III

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