



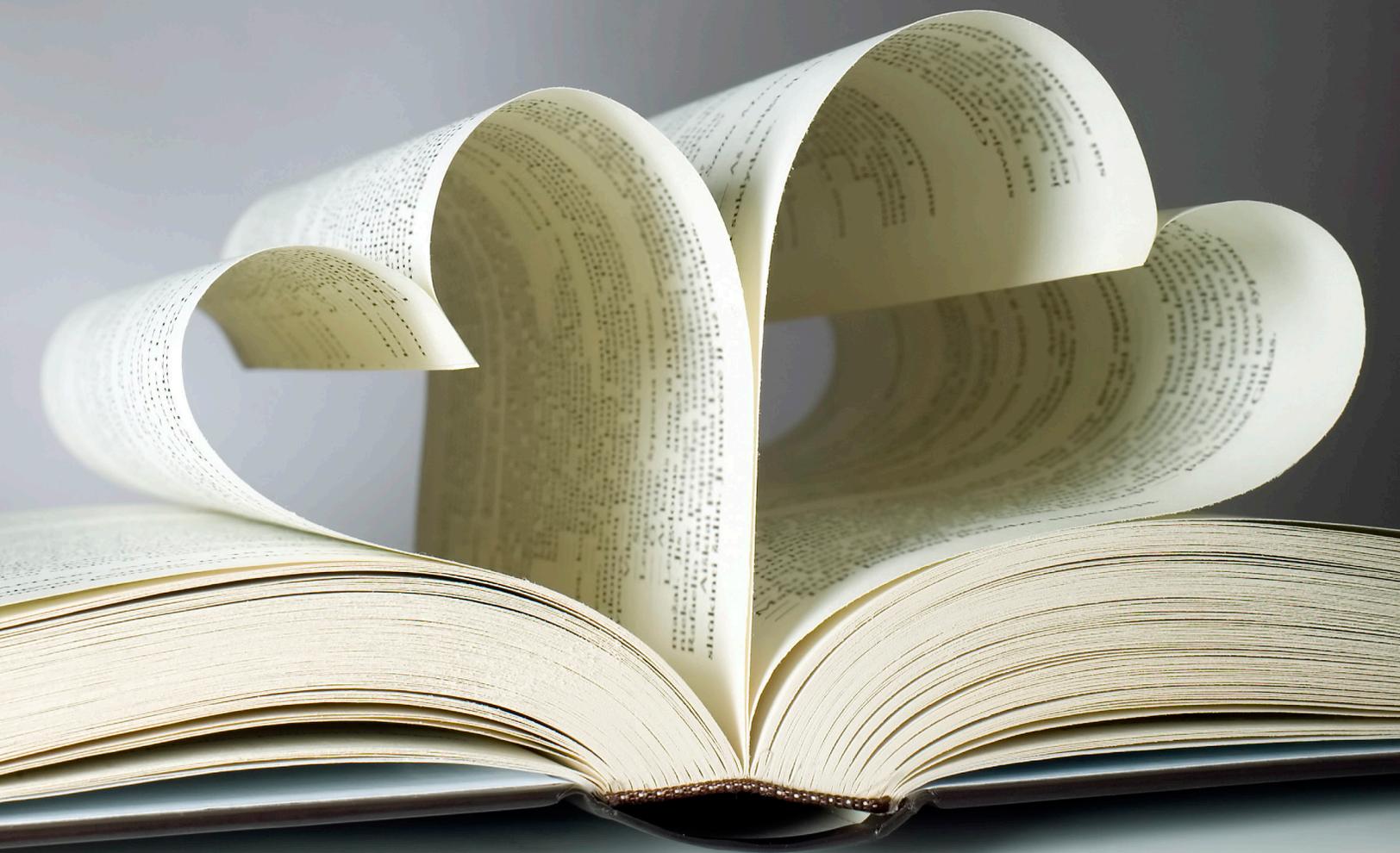
THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

UPCOMING CLE SEMINARS P. 8

**NOMINATIONS SOUGHT FOR
BENCH AND BAR AWARD** P. 17

**2016 LEGAL DIRECTORY
ORDER FORM** P. 31



Get Involved in DSBA Leadership!



The Delaware State Bar Association is looking for a number of talented members to join the 2016-2017 Executive Committee and lead DSBA to continued success.

The following positions on the Executive Committee of the Association must be filled for the year 2016-2017:

Vice President-at-Large; Vice President, New Castle County; Secretary; Assistant Secretary; Treasurer; Assistant Treasurer; Six Members-at-Large

Note: The Vice President, Kent County and the Vice President, Sussex County will be those persons selected by, respectively, the Kent County Bar Association and the Sussex County Bar Association.

The following positions must be filled for terms as noted:

One (1) DSBA Representative to the Delaware Bar Foundation Board for a four-year term

DSBA Delegate to the ABA House of Delegates: Two-year term

The Nominating Committee wants to consider all interested candidates. If you are interested in serving on the Executive Committee or would like to recommend a candidate, please send your name or the candidate's name along with a CV and at least one letter of nomination to Johnna M. Darby, Executive Director, by e-mail at: jdarby@dsba.org or by mail at: Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE 19801 by **February 12, 2016**.

WE NEED YOUR HELP TO FIND STRONG LEADERS FOR THE FUTURE!

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DSBA BAR JOURNAL

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OF THE DELAWARE STATE BAR ASSOCIATION

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PRESIDENT'S CORNER

By Richard A. Forsten, Esquire

Repatriation, Inversion, Bipartsianship, and the Economy, Stupid

It is something of a cliché these days to say that our politics has become more partisan, more poisonous, and (if possible) more nonproductive. “Bipartisan” is in many quarters considered a dirty word. Politics is covered as a form of entertainment and team sport, rather than a serious business where the details of proposed legislation are discussed and debated on the merits. Headlines shout “Party A Wins!” or

As it stands now, U.S. corporations are taxed on their foreign earnings — but only when those earnings are returned to the United States. As a result, it is estimated that there are some \$2.1 trillion dollars in earnings currently held overseas by U.S. corporations, which funds are not being returned to the United States in order to avoid taxation by our government. Perversely, our tax code actually encourages companies to invest their overseas

an estimated \$362 billion into the U.S. economy. Overseas holdings have grown dramatically since then, to \$2.1 trillion. A similar holiday (or, indeed, permanent legislation reducing the tax rate on overseas earnings) could easily result in \$1 trillion or more being pumped into the U.S. economy. The 2009 stimulus bill pumped \$831 billion into the economy at a cost of \$831 billion. A tax holiday would allow potentially much more to

“Politics is covered as a form of entertainment and team sport, rather than a serious business where the details of proposed legislation are discussed and debated on the merits.”

“Party B Loses.” If Democrats are “for” something, then Republicans will be “against” it, and vice versa. The merits seem to matter less now than ever. Perhaps this degeneration helps explain why the “economic recovery” we are in is the slowest since the Great Depression. Regardless of the cause, though, I think we can all agree that our economy can do a lot better and we all want it to be better.

Now, what if there was a relatively easy way to boost the economy? What if there was a way to create a second economic “stimulus,” but in a way that neither increased taxes nor increased the national debt? There is such an option available, but it has been largely ignored — I am referring to “repatriation.”

earnings in plants, jobs, and equipment overseas because as soon as those earnings are returned to the United States, they are taxed; but, left overseas, they are not.

Now, imagine a “tax holiday” where the government would allow these overseas earnings to be returned to the United States either at a greatly-reduced tax rate or no tax rate at all. The result would be a large infusion of capital into the United States from abroad, leading to a stronger economy.

In fact, in 2004, our country did just this. For a brief period of time we allowed U.S. corporations to bring back overseas earnings at a tax rate of only 5.25%, rather than the 35% corporate rate otherwise applicable. Corporations brought back

be pumped into our economy at little or no cost, other than nonpayment of higher taxes on overseas earnings, which earnings have sat overseas for years without return to this country — indeed, in the absence of relief, those earnings may never return.

What’s not to like about such a plan? Democrats voted en masse for the stimulus bill in 2009, but Republicans opposed the cost. Here is the opportunity for a stimulus that only “costs” taxes that have never been, and may very well never be, paid. Our economy needs help and needs help now. Simply waiting for overseas earnings to return, on the hope that a higher corporate tax rate (indeed, one of the highest corporate tax rates in the world) might someday in the future be

applied against those overseas earnings, ignores what has been happening since the 2004 tax holiday, and ignores the incentives created by our current tax code.

Making matters more dire is the threat of “inversion.” Under “inversion,” a U.S. corporation merges with a foreign corporation, with the surviving entity being a foreign corporation rather than a U.S. corporation. Because most foreign jurisdictions do not tax the profits earned outside their border, but the United States does tax such foreign earnings, a U.S. corporation could greatly reduce its U.S. tax liability if it were domiciled elsewhere. In 2014, Pfizer considered merging with AstraZeneca largely for this reason, and other companies, such as Walgreens, also considered such inversions. As the *Economist* has explained: “The incentive is simple. America taxes profits no matter where they are earned, at a rate . . . higher than in any other rich country. When a company becomes foreign through a merger, or ‘inverts’, it no longer owes American tax on its foreign profit.”

Companies respond to the tax code. Indeed, as this column is written, Johnson Controls, Inc. (a U.S. corporation) is in merger talks with Tyco, plc (an Irish corporation). The surviving entity will be an Irish corporation, and Johnson Controls is estimated to save \$150 million annually on its taxes because its foreign profits will be taxed at a greatly reduced rate. From our own perspective here in Delaware, as home to so many U.S.-based corporations, the risk from inversion is especially great as we will lose the corporate franchise fees currently charged Delaware corporations (corporate franchise fees fund roughly 23% of Delaware’s budget).

So, if one adopted a system that did not tax foreign profits, or taxed them at a greatly reduced rate, then it would seem that there would be a large inflow of capital into the United States, and the threat posed by inversion would be greatly (if not entirely) reduced. And, of course, the investment of foreign profits in new plants, equipment, and jobs here in the United States would certainly boost the

economy; but, even if such profits were distributed to shareholders in the form of dividends, those dividends would be subject to tax, and the remaining dividends either invested further or spent on goods and services, again, boosting the economy.

At a minimum, with our economy still mired in slow growth, another tax holiday would appear to be a relatively easy way to bolster the economy without increasing the budget deficit or raising taxes. It should appeal to both major political parties. Large amounts of foreign earnings (estimated at \$2.1 trillion) are currently sitting overseas, invested in other countries, and not benefitting our economy. An earlier tax holiday resulted in a \$362 billion infusion of capital into the United States. With even more cash sitting overseas now, a second holiday should result in an even larger boost to the economy.

Have our politics become so ruinous that neither side can work for the

President’s Corner (continued on page 7)

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EDITOR'S PERSPECTIVE

By Seth L. Thompson, Esquire

[INSERT SPORTS IDIOM HERE]

Like the Philadelphia Eagles, I was sitting at home for the start of the NFL playoffs, my laptop angled to have the Chiefs–Texans wild card round game on the television in view just above the screen. Unlike the Birds' recently released coach Chip Kelly, job duties lingered into the weekend. Following an embarrassing day-after-Christmas loss to Washington that gave jettisoned former Eagle DeSean Jackson and the District the NFC East division title and a trip to the playoffs, Jeffrey Lurie, the Eagles' owner, decided that the coach, hailed as a revolutionary genius upon being lured from the University of Oregon to the City of Brotherly Love, should not even man the sideline for the final week of the season.

The post mortem on the Kelly era across Philly sports talk radio placed much of the blame not on the coaching decisions. Rather, the focus fell on Chip Kelly having effectively taken over player personnel decisions in his third year, then sending established starters like LeSean McCoy and Evan Mathis packing without the talent to replace them, DeSean Jackson, and others. Coach Bill Parcells once said, "They want you to cook the dinner; at least they ought to let you shop for the groceries." Unfortunately, the Peter Principle led to a mess of a meal at Lincoln Financial Field.

Kelly's predecessor in Eagles midnight green, Andy Reid, was strolling the sidelines in the Kansas City–Houston matchup. Reid spent thirteen years as the head coach of the Eagles and, like Kelly, acquired more personnel authority as time went on, till the losses began outnumbering the wins in a given season.

Across the field in the wild card game, Bill O'Brien was calling the shots for the Texans. Between his current gig and serving as Quarterbacks Coach for Tom Brady and the perennial powerhouse Patriots, O'Brien had a two-year hitch as Penn State's head coach, deftly weathering the fallout of the Sandusky scandal that still makes my eyes burn and blood boil. Under O'Brien's tutelage, the team stuck out the seasons, despite the NCAA granting players the ability to transfer to another school immediately, and former walk-on Matt McGloin earned Honorable Mention All Big Ten Honors at quarterback. O'Brien then was given the opportunity to return to the NFL, this time as a Head Coach and in a city with advanced medical practices beneficial to his son's rare medical disorder, lissencephaly.

In the playoff game versus the Chiefs, O'Brien could not work his quarterback alchemy, and Reid's squad emerged victors in a lopsided affair. Nevertheless, like the Chiefs, O'Brien and the Texans appear on the rise. A couple weeks later, Kelly headed back to the West Coast, signing up to coach — and not manage — the San Francisco 49ers and once prodigious quarterback Colin Kaepernick, who may just rediscover his former success as a dual run-throw threat a bit of symbiosis with Kelly's rapid-paced, read option-heavy offense.

I hope Kelly succeeds, just as I hope DeSean Jackson and LeSean McCoy and the others go on to success — at least on days when their opponent is not the Eagles. Even then, I would much prefer the opponent plays well and the birds just play better. While the game is zero-sum, I would much rather see my team win the game than have the other team lose it, in the minds of the players and the fans. By way of examples, I would much rather have Malcolm Butler make a great interception to win the 2015 Super Bowl, than have Scott Norwood miss his field goal wide right in 1991's big game.

Sports are a goldmine for idioms and analogies for work life. "Leave it all out on the field." "Roll with the punches." "I'm in your corner." "Keep your eye on the ball." "Hit it out of the park." Yet, it is easy to forget that the sports are the work life for the players and coaches (which begs the question of whether coaches should use idioms from other sports.) Like other fields of employment, athletes and coaches need to find the right landing spot — which can take precious time in short careers governed by an individual team owning an individual player's rights. Once in the right spot, surrounded by the right coworkers, a coach or player can blossom. During his tenure in Cleveland, Bill Belichick compiled a 36–44 record, with one winning season — not exactly the numbers that would lead one to consider him the greatest NFL coach of all



time. Enter the Patriots and Tom Brady (himself the beneficiary of an opportunity afforded by an injury to Drew Bledsoe), and that discussion takes on legitimacy.

No one succeeds alone, whether in football or in law. Part of each person's job is to make others better. Careers, like a wide receiver's double-move route, can be a meandering path. And, when Lady Luck occasionally opens that sliding door to success, let's not forget to thank the present and former coworkers who shaped the path leading to it. 🏈

Bar Journal Editor **Seth L. Thompson** is a shareholder with Sergovic, Carmean & Weidman, P.A., 142 E. Market Street, Georgetown, Delaware. He may be reached at seth@scdelaw.com.

President's Corner (continued from page 5)

common good? Have our politics become so poisonous that should one party push for a tax holiday, the other party would automatically oppose it? Have we allowed our politics to become a team sport, where each side worries more about "winning," rather than doing what is best for the country?

There is still much more that unites us rather than divides us. We should all be in favor of legislation that will encourage the repatriation of overseas earnings and boost our economy with jobs and investment. After all, as James Carville famously said, "It's the economy, stupid." 🏈

Richard "Shark" Forsten grew up in Delaware and is the current President of the State Bar Association, as well as President of the Appoquinimink School Board, chairman of the Board of the Everett Theatre, and a member of the boards of Goodwill of Delaware and the Delaware Homebuilders Association. He has been writing monthly book reviews for the *Bar Journal* since 1998, and elsewhere in these pages you can find his latest review. He is a partner with the firm of Saul Ewing, LLP, where he practices in the areas of commercial real estate, land use, business transactions, and related litigation, and can be reached at rforsten@saul.com.

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This committee provides peer counseling and support to lawyers overburdened by personal or practice-related problems. It offers help to lawyers who, during difficult times, may need assistance in meeting law practice demands. The members of this committee, individually or as a team, will help with the time and energy needed to keep a law practice operating smoothly and to protect clients. Call a member if you or someone you know needs assistance.

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CALENDAR OF EVENTS

Remember that CLE Videos are shown for CLE credit five days a week at the DSBA in Wilmington! Call (302) 658-5279 to make an appointment.

February 2016

Tuesday, February 9 and Tuesday, February 23, 2016

Lawyers and Wellbeing: Sussex County

4.0 hours CLE credit

Tunnell & Rayson, 30 E. Pine St., Georgetown, DE

Wednesday, February 10, 2016

Silent Trusts: What You Need to Know about the 2015 Notice Act

1.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, February 24, 2016

Fundamentals of Lawyer-Client Relations

6.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

March 2016

Friday, March 4 and Saturday, March 5, 2016

Women and the Law Section Retreat

8.3 hours CLE credit

Atlantic Sands Hotel and Conference Center, Rehoboth Beach, DE

Tuesday, March 22, 2016

Finance for Lawyers 2016

5.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, March 23, 2016

Labor and Employment Law Update 2016

5.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

April 2016

Friday, April 1, 2016

Small Firm and Solo Practitioners Conference

5.0 hours CLE credit

Atlantic Sands Hotel and Conference Center, Rehoboth Beach, DE

Tuesday, April 19, 2016

Short Topics in Real Estate 2016

3.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Tuesday, April 26, 2016

Environmental Law 2016

3.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, April 28, 2016

When the Court Calls

3.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

SECTION & COMMITTEE MEETINGS

February 2016

Tuesday, February 9, 2016 • 11:00 a.m.

LGBT Section Meeting

TBD

Tuesday, February 9, 2016 • 12:15 p.m.

Small Firms & Solo Practitioners Section Meeting

The Law Offices of Denise D. Nordheimer, Esquire, LLC, 2001 Baynard Boulevard, Wilmington, DE

Wednesday, February 10, 2016 • 12:00 p.m.

ADR Section Meeting

Berger Harris, LLP, 1105 North Market Street, 11th Floor, Wilmington, DE

Thursday, February 11, 2016 • 5:30 p.m.

Young Lawyers Section Happy Hour

TBD

Tuesday, February 16, 2016 • 12:30 p.m.

Labor & Employment Law Section Meeting

Young Conway Stargatt & Taylor LLP, 1000 North King Street, Wilmington, DE

Wednesday, February 17, 2016 • 12:00 p.m.

Environmental Law Section Meeting

Richards, Layton & Finger, P. A., 920 North King Street, Wilmington, DE

Thursday, February 18, 2016 • 12:00 p.m.

Executive Committee Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Thursday, February 18, 2016 • 2:00 p.m.

Litigation Section Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Thursday, February 18, 2016 • 4:00 p.m.

Elder Law Section Meeting

Kleiner & Kleiner LLC, 501 Silverside Road, Suite 46, Wilmington, DE

Monday, February 22, 2016 • 4:00 p.m.

Taxation Section Meeting

DuPont Headquarters, 974 Centre Road, Chestnut Run Plaza, Building 735, Room 1135, Wilmington, DE

Thursday, February 25, 2016 • 4:00 p.m.

Family Law Section Meeting

Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE

March 2016

Tuesday, March 1, 2016 • 3:30 p.m.

Estates & Trusts Section Meeting

Duane Morris LLP, 222 Delaware Avenue, Suite 1600, Wilmington, DE

Thursday, March 3, 2016 • 4:00 p.m.

Real & Personal Property Section Meeting

Tim Rafferty's Office, Artisans Bank, Centerville Road, Wilmington, DE

Monday, March 7, 2016 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Tuesday, March 8, 2016 • 11:00 a.m.

LGBT Section Meeting

TBD

Wednesday, March 9, 2016 • 4:00 p.m.

ADR Section Meeting

Berger Harris, LLP, 1105 North Market Street, 11th Floor, Wilmington, DE

Thursday, March 10, 2016 • 6:00 p.m.

Young Lawyers Section Happy Hour

TBD

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By Kevin F. Brady, Esquire

Competence in Technology Is Not Attainable ... So What Do We Do?

You get a text message on your smartphone (or whatever wearable technology you have) from your insurance company:

WARNING
You are going to have a HEART ATTACK in the NEXT TWO HOURS. You have 45 minutes to get to a hospital. If you don't, your insurance will be CANCELLED!

Or, the message might look like this ...



How did this happen? Easy. Your insurance company was tracking your movement via your smartphone (the default settings on your iPhone allow Apple — or anyone else with the right technology — to plot every place you are with that phone unless the default setting is turned off). Next, the “facial expression” analytical software for the security camera in the lobby of the hotel that you and your companion just walked into, recorded your “biometrics” or “emotion” vital statistics and in essence what you might be planning to do. Finally, that information was combined with your vital signs from your Fitbit or phone (which details your current state of health) and the algorithm predicted a heart attack so an alarm sounded at the insurance company which resulted in the message. Far-fetched? Not really.

There is no doubt that technology is significantly changing our lives and, most importantly for the practice of law, it is changing how we communicate. Not-so-futurists are debating the role of artificial intelligence in data analytics and the decreased demand for lawyer involvement in the discovery process. Indeed, there is an active debate about how much legal work can be done by computers. While you will not see a computer-driven robot representing a client in court in Delaware any time soon, new advances in artificial intelligence lead many to think that computers will replace an

increasing number of lawyer jobs in the very near future. We are experiencing a sea change in the way law is practiced and while there are limits to what technology can bring to the practice of law, today’s “limits” are tomorrow’s “object in the rear view mirror.”

When you think about the technology that lawyers use in their personal and professional lives and how sophisticated the technology is, you realize how staggeringly complex it is today, and it is evolving at breakneck speed. This gap is not going to improve, so the legal profession is faced with a conundrum in terms of achieving competence in technology. Moreover, if lawyers can never become competent under the current rules, what can and should be done to change the trajectory?

In August 2012, the American Bar Association’s House of Delegates voted to amend the comment to Rule 1.1 of the Model Rule of Professional Conduct noting that lawyers “should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology...**” Rule 1.1 Commentary (emphasis added). Unfortunately for the legal profession, that was the end of the advice. There has been no guidance as to how competence in technology should be achieved, maintained, or measured. Technology is not a subject that is taught in law school, it is not tested on the bar examination, and while new lawyers have to take fundamentals courses in technology, there are no mandatory CLE requirements regarding technology in Delaware (at least not yet).

While many lawyers understand the case law and the procedural rules regarding technology as

it is used in discovery, for example, the rules of professional conduct mandate that we understand the technology as well. For those litigators who try to understand the technology, we struggle mightily to appreciate the benefits and risks regarding the evolving technology that is used to manage digital information — smartphones, IT infrastructure, databases, apps, cloud architecture, email, instant messaging, social media communications, and wearable technology — Apple Watch, Google Glass, etc. — to name just a few. Moreover, the enormity of the challenge is compounded when you factor in the need to understand the personal privacy and data security issues associated with those “relevant technologies.”

Technology issues are embedded in almost all litigation, not just large cases. Personal injury lawsuits, family law matters, and employment lawsuits can be won or lost based on how evidence from Facebook, Snapchat, Fitbit, email, voice mail, and text messages is handled. Even relatively mundane discussions regarding keyword searches or format of production (“native versus TIFF”) can challenge the technical capacity of many attorneys. Indeed, a good example of just how little the technology needle has moved nationwide is Federal Rule of Evidence 502, which was specifically enacted as a tool to eliminate the risk of privilege waiver in handling digital information as well as reducing the cost of privilege review. Despite being enacted in 2008, Rule 502 remains largely ignored by the bench and bar today.

Delaware Has Been Out Front, but Have We Done Enough?

While a number of jurisdictions (including Delaware) have amended their rules of professional conduct to track the language (or some variation) included in the amended commentary of Rule 1.1 as adopted by the ABA, other than Delaware, no jurisdiction has taken any steps to address the problems lawyers face understanding the technology involved in the practice of law. In 2013, after discussions with the leadership of the Richard K. Herrmann Technology Inn of Court in Delaware, the Delaware

Supreme Court formed the Commission on Law & Technology consisting of judges, lawyers, and IT professionals and charged it with developing and publishing guidelines and best practices regarding the use of technology and the practice of law. Other jurisdictions have educational programs for lawyers to understand the law surrounding these technologies, but no one is addressing the challenge that the technology presents.

The State of California Standing Committee on Professional Responsibility and Conduct issued a Formal Opinion No. 2015-193 on June 30, 2015, which addressed a number of issues regarding an attorney’s ethical duties in the handling of discovery of digital information. While the California opinion is very helpful in raising awareness of the numerous “legal rules and procedures” regarding eDiscovery, it fails to provide any guidance on the specifics of the technology involved and what steps attorneys should take to acquire the required minimum level of competence in understanding the “benefits and risks” associated with that technology.

What Should We Do?

If a law school professor gives a final exam and an overwhelming majority of the students fail the exam, is the problem with the students or the test? It is the test. Can anyone see a day when lawyers will be able to attain minimal competence in the technology involved in the practice of law? Even assuming that they could, is staying abreast of the changes in technology a viable option? What should the test be for minimal competence in technology? How do we change the questions so we can provide realistic and practical guidance to lawyers that will allow us to handle the challenges that come with the technology? ☹

Kevin F. Brady is Of Counsel at Redgrave LLP in Washington D.C. and can be reached at kbrady@redgravellp.com.

“Tips on Technology” is service of the E-Discovery and Technology Law Section of the Delaware State Bar Association.

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NOMINATIONS SOUGHT FOR LAW DAY AWARDS

The Delaware State Bar Association and the Awards Committee are seeking nominations for the Liberty Bell Award and the Community Service Award to be presented at the 2016 Law Day Luncheon. Below is the form and the criteria for these awards.

Liberty Bell Award – The Liberty Bell Award is given annually to an individual, who is not a judge or lawyer, who has rendered outstanding service to his or her community. The award is designed to promote a better understanding of government, a greater respect for the rule of law or a deeper sense of individual responsibility which contribute to the effective functioning of our governmental institutions.

Community Service Award – The Community Service Award recognizes annually a member of the judiciary or the Delaware Bar who has rendered meaningful service to the community and who has contributed significant time and effort to the greater Delaware community. Nominees should have demonstrated a commitment to leadership and service in activities that enrich and strengthen our community over a substantial period of time.

Myrna L. Rubenstein Professional Support Recognition Award – This Award recognizes long and dedicated service to the Bench and Bar of the State of Delaware, to the Bar Association, and to the Members thereof, which has contributed in a significant way to them and to the high ideals of the legal profession.

The **DEADLINE** for receiving nominations for the Liberty Bell Award, Community Service Award, and Myrna L. Rubenstein Professional Support Recognition Award is February 12, 2016.

DELAWARE STATE BAR ASSOCIATION LAW DAY AWARDS NOMINATION FORM

Name of Candidate: _____

Title/Occupation of Candidate: _____

Award: _____

Date: _____

Nominator: _____

Phone: _____ Fax: _____ E-Mail: _____

Firm: _____

Address: _____

Brief statement of reasons that candidate is deserving of Award (see above Award criteria):

Send Responses by February 12, 2016 to:
Johnna Darby, Executive Director, DSBA
E-Mail: Johnna Darby at jdarby@dsba.org • Fax: (302) 658-5212



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By Charles Slanina, Esquire

What Were They Thinking?

A Survey of Recent Questionable Conduct

In 2015, lawyers and judges continued to make news for reasons they are likely to regret. Reading these reports leaves the reader wondering, “What were they thinking?”

According to a 2016 article by Russ Todd in *The Recorder*, a Southern California attorney was recently sanctioned for making a sexist remark to a female attorney during a deposition. The alleged deposition misconduct occurred during a wrongful-death case following a jailhouse suicide. According to the court, attorney Peter Bertling, representing the defendants, engaged in a pattern of discovery misconduct including witness coaching, failure to produce relevant documents, and a delay in turning over a medical expert’s notes until after his opponent’s brief was due. However, it was his comment to opposing counsel that resulted in a sanction being imposed.

During a contentious expert witness deposition, Attorney Bertling told opposing counsel that it was not “becoming of a woman” to raise her voice. U.S. Magistrate Judge Paul Grewal sanctioned Bertling and ordered him to donate \$250 to the Women Lawyers Association of Los Angeles Foundation. His clients were also ordered to pay the plaintiffs’ costs for the deposition. “A sexist remark is not just a professional discourtesy, although that in itself is regrettable and all too common,”

Magistrate Grewal wrote. “The bigger issue is that comments like Bertling’s reflect and reinforce the male-dominated attitude of our profession.”

In his response to the motion for sanctions, Bertling wrote, “In retrospect, the proper term for me to have used in this context would have been ‘attorney.’ I apologize to [opposing counsel] if I offended her by referring to her as a ‘woman’ instead of as an ‘attorney.’” In addition, Bertling added that his remarks were made in the context of opposing counsel yelling at his client and creating a hostile environment at the deposition. Magistrate Grewal found that Bertling had “offered only a half-hearted politician’s apology” in his response and cited the lack of a true apology as additional evidence of an un-

acceptably disrespectful attitude toward plaintiffs’ counsel.

Another California attorney went from representing himself as a plaintiff in a civil case to being a respondent in a disciplinary complaint against him. According to a December 2015 *Law.com* posting by ALM Staff, attorney Douglas Crawford filed suit on behalf of himself and his mother against J.P. Morgan Chase. Before a deposition began, he told the bank’s lawyer, “I will pepper-spray you if you get out of hand.” Apparently doubling down on the threat, he also pulled out a stun gun. As part of the sanction against him, the court dismissed his civil suit stating, “Here the practice of law became more than stressful. It was dangerous.” The California Bar has now moved to disbar Crawford.

Moving to the other coast, a Miami defense attorney was stopped by a security guard at Disney World and questioned about a bulge in his pants. Attorney Andrew Gerson falsely claimed that it was part of his anatomy. However, a search discovered a loaded .38 calibre revolver. Gerson fled, but was later arrested for carrying a concealed deadly weapon. No word yet on whether there will be any Florida disciplinary consequences, but Mr. Gerson is reportedly banned for life from the Magic Kingdom.

A January 5, 2016, online article by Deborah Weiss in the *ABA*



“Judges are people too and are not immune from conduct that provokes wonder.”

Journal online reports that Pennsylvania attorney Donald Russo was sanctioned for “litigious necromancy.” U.S. District Judge Matthew Brann ruled that the age bias suit filed by Russo has “blatant timeliness defects,” and contained allegations that were “unrepresentative of the truth.” The court pointed out that the plaintiff was below the age of 40 when the alleged discrimination began and failed to identify any younger workers who were treated differently. Judge Brann concluded that the case was meritless and had only been kept alive by “a sort of litigious necromancy conjured up by Mr. Russo’s specious filings” with random doctrines asserted in a “see what sticks” approach.

Back to California. U.S. District Court Judge William Orrick dismissed a class action law suit against Apple which alleged fraud. Specifically, the suit targets Apple’s practice of warranty replacement of iPhones with reconditioned phones. In partially dismissing the suit, the court found plaintiffs’ counsel to be “manifestly incompetent.” The basis for the finding was that none of the purported plaintiffs were actually disgruntled iPhone purchasers. The three named plaintiffs were instead current or former employees of the plaintiffs’ attorney. Each had received a cash gift in order to purchase the phones. Each purchased a service plan. Each claimed to be dissatisfied with the phones upon purchase. Finally, each returned the phone to the Apple store with audio recorders when they demanded replacement of the phones with new phones.

However, it was primarily plaintiffs’ counsel’s lack of class action litigation experience which the court cited as the basis for partially rejecting the suit—even after plaintiffs’ counsel attempted to address the court’s concerns by associating with another firm with class action experience. *Ars Technica*, Joe Mullin, January 7, 2016.

Delaware has not treated attorneys using paid, sham class members as gently. A non-Delaware attorney was disbarred

in Delaware for similar practices. *Matter of Shulman*. 970 A.2d 507 (Del. 2009).

This item could also have been covered in an “attorney attire” column. Attorney Robert Ingram recently appeared before the Georgia Court of Appeals to argue an appeal of a hotly contested attorney disqualification ruling. According to an article in the January 22, 2016, “Daily Report” by Katheryn Tucker, Mr. Ingram came to the argument with a prop. As he began, Mr. Ingram donned a pair of Mickey Mouse ears, explaining, “I spent last week at Disney World with my grandchildren. We saw all kinds of fantasy.” But, he went on to say that it did not compare to the “fantasy” arguments of his opponent. No word on whether he got a laugh — or a win.

There was at least one example of why it may be better to leave your electronics back at the office. Chicago lawyer, Vincent Schmeltz III, found himself making a \$5,000 donation to the Chicago Bar Foundation and performing 50 hours of *pro bono* services at the direction of the court after the federal trial court found that he was tweeting photos of the courtroom and the trial evidence. Doing so is a violation of the court’s no-photo policy according to an online *ABA Journal* article posted December 15, 2015.

Judges are people too and are not immune from conduct that provokes wonder. A Texas judge was found not guilty

of ethics violations for her Facebook postings. Judge Michelle Slaughter directed jurors not to discuss the criminal case before her on social media. However, she posted updates of the trial’s progress with details of the evidence presented along with a link to the newspaper article on the case. In her successful defense before the state judicial conduct commission, she argued that she was keeping the public educated on the judicial process.

A Florida judge was removed from office after appealing a recommended 120 day suspension and \$50,000 fine. Brevard County Judge John Murphy was seen on national television challenging a public defender appearing before him to a fist fight. Calling the 2014 incident a “national spectacle,” the Florida Supreme Court found removal to be the appropriate sanction, according to the *Orlando Sentinel*.

Are there lessons to be learned from these cases? Maybe it is not always a good thing for attorneys (or judges) to be thought-provoking if the thought is “What were they thinking?”

“Ethically Speaking” is intended to stimulate awareness of ethical issues. It is not intended as legal advice nor does it necessarily represent the opinion of the Delaware State Bar Association.

“Ethically Speaking” is available online. The columns from the past two years are available on www.dsba.org.

Charles Slanina is a partner in the firm of Finger & Slanina, LLC. His practice areas include disciplinary defense and consultations on professional responsibility issues. Additional information about the author is available at www.delawgroup.com.



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Nominations Sought for Bench & Bar Award

The Delaware State Bar Association and the Awards Committee are seeking nominations for The First State Distinguished Service Award to be presented at the 2016 Bench & Bar Conference. The award is described below:

First State Distinguished Service Award – This award is given annually at the Bench & Bar Conference to a member of the Delaware Bar who, by exemplary leadership and service dedicated to the cause of good citizenship in civic and humanitarian service over a period of many years has maintained the integrity and honored recognition of the legal profession in community affairs and who, as an outstanding Delawarean, unceasingly advances the ideals of citizen participation and community accomplishment, thus reflecting high honor on both country and profession.

Delaware State Bar Association Nomination Form for First State Distinguished Service Award

Name of Candidate: _____

Title/Occupation of Candidate: _____

Date: _____

Nominator: _____

Phone: _____ Fax: _____ E-Mail _____

Firm: _____

Address: _____

Brief statement of reasons that candidate is deserving of Award (Please attach sheet if necessary):

Nominations should be submitted to **Johnna Darby, Executive Director, e-mail jdarby@dsba.org or fax to (302) 658-5212. The deadline for nominations is March 2, 2016.**

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By Susan Simmons

Lawyers Emeritus

The number of people showing up in courts who cannot afford lawyers has swelled due to the economic changes in the State, often turning civil cases into lopsided battles that raise questions about the fairness of the legal system.

Recently, the DSBA through DVLS has looked into providing a new program to try to fill the gap with volunteer retired attorneys or Lawyers Emeritus, hoping partly to attract lawyers who may be ready to slow down, but are not keen on full-time withdrawal from their jobs. Initially, this is directed to those that may wish to work with non-profit companies that seek a *pro bono* attorney.

This has given birth to an added grouping of attorneys we call Lawyers Emeritus, looking to free themselves of some burdens of full-time practice, like paying for malpractice insurance, while channeling them to legal programs around the State that represent non-profits without charge.

This and future Lawyers Emeritus programs could increase the number of lawyers volunteering for such public interest work, after decades of efforts that have not come close to meeting the demand. Although such work is often described as an ethical obligation or aspirational goal of law practice, many of Delaware's citizens have unmet legal needs because many Delaware lawyers do not know how to provide free or low-cost services.

The growing ranks of people who say they cannot afford lawyers is viewed as a crisis in the courts. Unrepresented people sometimes blunder into errors that could lead to destitution and homelessness. In a *NY Times* article, "Courts Seek More Lawyers to Help the Poor," William Glaberson states: "Nationally, court officials and bar associations have begun to talk about the potential for volunteer work from some 400,000 of the country's 1.1 million lawyers in the Baby Boom generation who are moving toward retirement."

Programs like this could be a breakthrough in efforts to draw more volunteer lawyers. It is an innovative idea to tap into untapped resources.

Bar associations and other groups around the country have worked for decades to increase lawyers' volunteer efforts. Now Delaware is in the process of starting a program that is tentatively titled the "Non-Profit *Pro Bono* Committee" comprised of attorneys emeritus, willing to work through DVLS, to guide non-profits in their need for legal help and to be mentors in the following areas:

- Non-Profit Status
- Insurance-Related Matters
- By-laws and Certificates of Incorporation
- Tax Issues
- Real Estate Matters
- Litigation
- Annual Filings
- Employment-Related Matters
- General Counseling

While this may fall short of the relief of burden in the court-related matters of eviction, foreclosure, debt collection, and other civil cases, it is a start. We are looking for your support to make the number of lawyers volunteering for such public interest work, grow and to move in the right direction. If you are interested in applying to or learning more about the Non-Profit *Pro Bono* Committee, please contact Susan Simmons at ssimmons@dsba.org.



The Honorable Susan C. Del Pesco and Carl Schnee, Esquire

The DSBA has an active Lawyers Emeritus Luncheon Committee, which holds an event twice a year to renew friendships and catch up on Bar activities. A special Luncheon Speaker talks on a relevant topic at each Luncheon. Look for an invitation sent out on the DSBA listserv announcing the next Luncheon. The last Luncheon held in November 2015 honored Carl Schnee, Esquire, with a Tribute bestowed by Governor Markell. ⚖️

Susan Simmons is the Director of Development & Access to Justice Coordination at the Delaware State Bar Association and can be reached at ssimmons@dsba.org.

The First Small Firm and Solo Practitioners Conference

A Retreat for the Practitioner to be held on Friday, April 1, 2016, 9:00 a.m. – 3:30 p.m. at The Atlantic Sands Convention Center, Rehoboth Beach, Delaware

Announcing the first Retreat focused on the small firm and solo practitioner! Sponsored by the Delaware State Bar Association, the Small Firm and Solo Practitioners Section of the Delaware State Bar Association, and the Delaware Lawyers' Assistance Program, this Retreat provides its attendees with 5.0 CLE credit hours (including 3.5 hours of Enhanced Ethics).

A successful practice does not happen by accident. Planning and education is key. For example, looking for new technology to help you meet client needs, improving the efficiency of your practice, and growing your business, while avoiding disciplinary complaints and malpractice claims, takes time and dedication. This Retreat's agenda is packed with strategies to help you do just that. Whether you are just starting out, well into your career, or somewhere in between, this conference is a must to receive information regarding:

- The latest developments in data security and technology.
- Marketing issues.
- Bill collecting and financial management.
- Avoiding disciplinary complaints and malpractice.
- Advice from various members of our Judiciary.
- Vendors and exhibitors showcasing products and services to help solo and small firm lawyers implement success.

The group of top-notch presenters selected will deliver practical advice designed specifically for the small firm and solo practitioner. Use this opportunity to maximize your practice potential and to help your practice grow and prosper.

Being a Small Firm or Solo Practitioner Does Not Mean Doing It Alone

And, the Retreat provides you with a unique opportunity to network and interact with other practitioners who share and understand the challenges and opportunities of small firm and solo practice.

Breakfast is included, and we are pleased to announce that Ginger Ward, Senior Vice President/Portfolio Manager, CW Wealth Management Group, UBS Financial Services, Inc., will sponsor the lunch. During lunch, Ginger will discuss investment planning tips for small firms and solo practitioners.

Register early to ensure your seat. We look forward to seeing you there! 

SECTION NEWS

By Denise D. Nordheimer, Esquire

I wanted to make sure that anyone who might be able to benefit from membership in the **Small Firms and Solos Section** was aware of what has been going on this year. We have had great success in “reinvigorating” the Section and our meetings this year have had excellent attendance, both in person and via telephone. The meetings take place on the second Tuesday of every month, beginning at 12:15 p.m., at my office at 2001 Baynard Boulevard in Wilmington. We always service lunch. I have had a lot of fun with the menus this year (no Section dues are used — it is on me) and I like to think the atmosphere these lunches provide has really added to the “after meeting,” which is the time immediately following the meeting that our members have been spending, eating, trading business, and in general getting to know one another. Our last meeting was only 35 minutes of business but didn't break up until over an hour later. Some folks of course have to dash, but in general, almost everyone has been staying to take advantage of the opportunity to get to know one another, catch up with friends, or let everyone know something about their business. I like to say, “I hope you leave a better lawyer or a better business person, but at least I know you're not leaving hungry!”

If you are thinking about joining the Section, or are a member, but just have not been able to get to a meeting, please consider taking the time to join us at our next meeting. I hope members of the judiciary and the Office of Disciplinary Counsel will consider themselves to have an open invitation to come to any meeting, membership notwithstanding. I can assure you, you will all be welcome and hopefully, pleasantly surprised. 



DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

Balancing Your Personal Relationships in a High-Stress Profession

Joe is a partner in a law firm. Mary is a solo practitioner. Both are successful attorneys. With great diligence and self-discipline both Joe and Mary are attempting to find as much success possible in personal relationships. However, like many attorneys, both Joe and Mary find themselves in the law office often worried about things going on with their families or at home. But, when at home, they find themselves worrying about things that need to be done at the office. One might ask, can a busy, successful legal professional nurture a healthy, happy personal life?

The Challenges

Most professional careers have challenges that can affect the expectations in a personal relationship, such as time away from home, dinner meetings with clients, etc. Clearly the practice of law is no exception. In fact, one might argue that being a lawyer brings special challenges when it comes to the stress and the expectations in nurturing a healthy, happy personal life.

Professional challenges that often spill over into a lawyer's personal relationship include, but are not limited to the following:

Challenge 1: Clients

Lawyers need their clients and generally like them. On the other hand, most clients do not visit lawyers to share happy news. One might say that one of the most prominent stressors for attorneys is their clients.

Clearly, the client who is hurting and confused often looks to the lawyer to magically solve their ailments. Understandably, the client is upset when the lawyer cannot fix their problems, or perhaps they feel that it is taking too long to fix their problem. Even a day in court may bring negative tones because the lawyer, on behalf of his client, needs to deal with opposing counsel and judges who seem to be upset.

So, all day long, the lawyer deals with people being upset. It is like a glorified customer service representative position, which takes its toll.¹

Challenge 2: Perfectionism

Lawyers as a professional group are perfectionists and critical. Equally as apparent, lawyers are professional debaters who are trained to present one-sided arguments and their natural goal is to win!



Challenge 3 : Time

Many lawyers have a problem with time. Lack of time in a relationship is a common topic of discussion among couples. Of course, this problem is not limited to legal professions, but it does arise more often in a lawyer's family than it does in many others.

Challenge 4: Workaholism

Workaholism is rampant in the legal field. Some lawyers commonly eat dinner without their significant other, spouse, or families. Also, lawyers often bring work home and go into the office on weekends. Plus, vacations are often interrupted with client emergencies or court dates. It is apparent that working exceedingly long hours may benefit one's career, but it can — and often does — kill a relationship.

The late Dr. Amiram Elwork in his book *Stress Management for Lawyers*² writes:

As a group, lawyers tend to be characterized by their expertise at solving legal problems on the basis of reasoned logical analysis. Unfortunately, they are not quite as good at solving personal emotional difficulties. In fact, lawyers' inclination to emphasize reason makes them less likely to understand passion. Consequently, some lawyers tend to be somewhat unaware of their own and other's emotions and the role these play in stimulating thinking and behavior. (p. 218)

Solutions

Healthy relationships take self-discipline, commitment, thoughtfulness, and work. In order to have a healthy personal relationship, a lawyer, or someone involved with a lawyer, needs to feel safe both emotionally and physically. In other words, for a relationship to feel safe it takes two people and it must be built on honesty, respect, trust and open communication. Relationships are about give and take and should not feel like a chore. Here are some tips to a healthier, happier personal relationship:

- Make sure you share the same expectations — that you both want the same things.
- Respect each other's feelings, wishes, and points-of-view.
- Work together to solve problems or conflicts. Learn to compromise.
- Develop healthy communication skills. Part of communicating is to learn to listen.
- Respect each other's space and privacy. Do not be controlling. Remember, being in a healthy relationship does not mean you have to always do everything together and share everything with your partner. However, keep away from secrets!
- Do not take each other for granted. Remember to be thoughtful. It is the little things that make a difference.
- Make time. Every Friday can be date night even if you have been married for 20 years!

- Stress can kill a relationship, but only if you let it. Manage your stress.
- Do not let it become distress (chronic) and toxic.

Remember too, like any relationship, empathy and compassion are key. Empathy is the ability to share and understand someone else's emotions. Compassion is the ability to see the suffering of others together with the natural desire to help.

Truly one of the best gifts that we can offer to our loved ones — and to any human being — is compassion and empathy.

Finally, make the most of your personal time — be mindful. Remember, Joe and Mary? Both needed to learn to focus on the present to practice mindfulness because their lack of presence not only hurts them, but it problematic to the people in their personal relationships.

To others, you may seem preoccupied and even uninterested — simply because your thoughts are still in work mode. Your lack of eye contact, frequent checking of your phone and e-mail, and general distractibility are a few ways that you demonstrate that you are somewhere else.

Do not use all your stamina (energy) at the office on work, as you will be unable to provide attention to the part of your life that matters most. Some of us merely go through the motions at home. That adds little to the quality of your life and adds enormously to personal and professional frustration. Do not miss out on the best parts of life.

For more information on this subject, or if you need to talk to someone about a problem that is effecting your quality of life or quality of professionalism, call the DE-LAP confidential line: (302) 777-0124 or e-mail cwaldhauser@de-lap.org.

REFERENCES:

1. Cho, Jeena. "How to Stay Married to a Lawyer." Lawyerist.com. April 13, 2015. Accessed January 29, 2016. <https://lawyerist.com/81640/stay-married-lawyer/>.
2. Dr. Amiram Elwork. *Stress Management for Lawyers*. 

Carol P. Waldhauser is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at cwaldhauser@de-lap.org.



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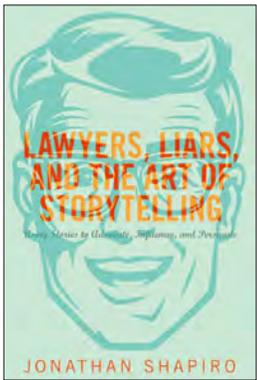


Reviewed by Richard A. Forsten, Esquire

The Greatest Stories Ever Told: *Lawyers, Liars, and the Art of Storytelling*

By Jonathan Shapiro (Amer. Bar Ass'n, 2013)

There are many ways one might characterize a lawyer. A lawyer is a salesman, selling the jury or a judge or opposing counsel on his or her point of view. A lawyer is a champion, fighting for his or her client. A lawyer is a negotiator. A lawyer is a counselor, an advisor, and a planner. A lawyer is, in fact, all of these things, but to attorney and scriptwriter Jonathan Shapiro, a lawyer is first and foremost a storyteller, and an excellent lawyer is an excellent storyteller. To drive home his point, in his book *Lawyers, Liars, and the Art of Storytelling*, Shapiro tells us stories. Lots of them. Some funny. Some sad. Some frightening. But it is all to drive home his point: a good lawyer is an good storyteller, a great lawyer is a great storyteller, and a bad lawyer cannot tell a good story to save his life.



In his introduction, Shapiro tells us that “[i]f this book sometimes reads like an excuse to tell stories rather than as a manual on how to tell them, then I have done my job. Stories are meant to be instructive *and* entertaining. Stories that are instructive, but not entertaining, are called lectures.” And so, by the end of Shapiro’s very entertaining book, you will have read lots of very short stories and anecdotes, but you will not feel as though you have been lectured to and will instead come away with a keen appreciation of just how effective good storytelling can be.

The subtitle of Shapiro’s work is “Using Stories to Advocate, Influence, and Persuade.” His theory of why storytelling is so important is best summed up in the following passage:

Everyone who graduates law school almost immediately realizes how poorly law school prepared them for the actual practice of law.

Law students are taught how and when law developed, by whom, what the law is generally, and where they can find answers about it if they don’t know. In general, they are not taught how to convey information in a cogent, persuasive way to the client who needs the help; to opposing counsel, who has a different client and point of view; or to the decision maker who has to make the final call.

Despite the fact that all law school graduates who practice law will have to write statements of facts for briefs, memos, and client letters, law schools don’t

teach them how to marshal facts and law into coherent stories.

Instead, lawyers are taught to communicate with other lawyers or judges rather than simply learning how to communicate with people.

According to Shapiro, every story involves all three types of argument originally identified by Aristotle in his work *Rhetoric* over 2,000 years ago and often referred to as the “rhetorical triangle”: ethos (establishing credibility), logos (using logic and reason), and pathos (using emotion). Every argument and every story will use all three elements, just as every triangle has three sides. Depending on the argument, different sides may have different lengths. Shapiro analogizes to NBA Coach Phil Jackson’s famous triangle offense. In Chicago, Jackson recognized that Michael Jordan was the most important leg of the Chicago’s Bulls’ offense. Later, in Los Angeles, the triangle was different, and featured Shaquille O’Neal, who coincidentally enough, began referring to himself as “the Big Aristotle.” Every argument, every story will involve all three elements — correctly identifying the Big Aristotle may lead to victory, but going with the wrong leg will certainly lead to failure.

Shapiro discusses all three legs to the rhetorical triangle and tells many stories

“His book is not a lecture at all, but a collection that has the reader laughing out loud at times, thinking profoundly at others, and feeling sad at still others.”

to support each one. His book is not a lecture at all, but a collection that has the reader laughing out loud at times, thinking profoundly at others, and feeling sad at still others.

In discussing pathos, Schapiro turns to Timothy McVeigh and the Oklahoma City bombing:

When Timothy McVeigh was on trial for the Oklahoma City bombing, federal prosecutors had a tragic amount of evidence available to draw from.

There were witnesses who tied him to the truck that carried the bomb, his own writing and statements, his flight from the scene. There were also the lives of the dead and injured, hundreds of them, a heartbreaking mountain of pathos.

But in his opening statement, the prosecutor focused on a small pair of earplugs. After leaving the truck with the bomb inside before it exploded by the child-care center, McVeigh stuck the earplugs into his ears to protect himself from the sound of the blast.

The prosecutor’s burden of proof was to prove McVeigh committed premeditated murder. The earplugs showed the extent of his planning, his deliberation, and his commitment to detail.

But, it also showed his character, the nature of the man, someone concerned with his own hearing and avoiding his own discomfort when the bomb went off and killed 168 people, many of them children. The smallest and most minor of factual details, it conveyed everything you needed to know and feel about Timothy McVeigh.

If you can tell a good story, you can convey information in a more relevant, meaningful way that will have real im-

fact. If you merely write a dry statement of facts — one that simply lists various pieces of information in a chronological fashion without context and devoid of telling the reader what is important and what is not — then your reader will struggle and the battle may be lost before it begins.

Ultimately, Schapiro tells us that “the reason *why* lawyers tell stories never changes. Lawyer tell stories to persuade.” His book is full of many good stories, so much so that by the end of it, Schapiro has persuaded us that to be good lawyers, we need to be good storytellers. 

Richard “Shark” Forsten is a Partner with Saul Ewing LLP, where he practices in the areas of commercial real estate, land use, business transactions, and related litigation. He can be reached at rforsten@saul.com.

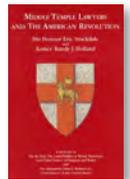
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A PROFILE IN BALANCE

By James G. McGiffin, Jr., Esquire

Brad Goewert

There Is Much Behind that Smile

If I aspire to be the best lawyer I can be, I must first try to be the best person I can be. I am fortunate to know many lawyers who have succeeded in their work, in part, because they are excellent people. This column in The Bar Journal will feature an article on one such lawyer. Each featured lawyer will exemplify the art of balance in life. I have learned much from these people. Perhaps readers will also benefit.

- Jim McGiffin

• • •

Medical malpractice defense attorney Bradley J. Goewert was born into a military family while the family was stationed in Hawaii. He moved around a lot as a child, spending time in Colorado Springs, Los Angeles, St. Louis, Florida (Satellite Beach & Tampa), and Dayton, Ohio.

Brad attended the University of South Florida and graduated from the College of Business Administration. At the time, he thought he wanted to be a systems analyst. Then, during a final interview for a job as a systems analyst, he realized how little fun it would be to sit in front of a computer screen all day. There had to be something else he could do.

In his search for an interesting career, Brad attended a seminar on becoming a stock broker. The presenter was an engineer who had lost his engineering job and became a stock broker because he was “too old to be a doctor or a lawyer.” Brad realized immediately that he was not that old.

His parents had migrated to New Orleans, so Brad chose Loyola University New Orleans for law school. He grew to love New Orleans for its history, its music, and its water sports.

Brad began his professional career with a small trial firm in Tampa, Florida. He second chaired two personal injury cases in his first six months and then soloed by defending a 1983 action in Federal District Court. He moved over to a firm now called Ogden & Sullivan and began doing hospital defense cases — the biggest cases against the best plaintiffs’ lawyers, as he recalls. Brad acknowledges Ogden & Sullivan as a great firm, and suggests he could have made a career there, but for the fact that he fell in love with a woman from Wilmington. Carla McDermott and Brad were friends for years. She was a student at St. Leo College and they met in Tampa. And, although Brad eventually won her heart, Florida did not.

Coincidentally, the firm Marshall Dennehey Warner Coleman & Goggin was trying to recruit Brad for their Tampa office. When Brad indicated he would



Photo by Celeste Jones of Celeste Jones Photography

jump to them, but only if he could work in the Mid-Atlantic region, the deal was made in 2001. Brad first passed the Pennsylvania Bar and then the Delaware Bar, and now works exclusively in Delaware, representing Beebe Healthcare, as well as several physicians, nurses, and other health care providers. The work suits him. He likes the medical science and he admires his clients, who are skilled professionals dedicating their lives to serving others. He appreciates the fact that his cases tend to deal with people who have suffered serious harm. He likes connecting with the people involved in this work — the lawyers, the clients, the experts, the juries. And, he respects the plaintiffs’ lawyers as the best at what they do.

There is much more to Brad Goewert than defense lawyer, but it is not immediately apparent to the casual observer. Brad is a proud family man. He is a nationally ranked athlete. And, he is a marvelous drummer.

Brad's family of origin has always been important to him. He is very close to his parents (now retired to Florida) and his three sisters. His wife, Carla, one of eight children, needed to be close to her family in the Mid-Atlantic region. The family that Brad and Carla created includes four active and talented children, three of whom are technically adults now. Austin (age 23), Chandler (19), Briana (18), and Lance (13) are all students and athletes and they all get along well.

The children are genetically predisposed to athletics. Carla is a tri-athlete who has competed in two Iron Man events and has run the Boston Marathon. And Brad water skies. He is not a casual water skier. He has competed in water ski events, including slalom, jump, and trick, since he was 14 years of age.¹ He was President of the University of South Florida Water Ski Team and water skied while studying law in New Orleans. To this day, he water skies as much as he can and is a member of the Diamond State Water Ski team. He is nationally ranked in his age group (which is an age too old for this nonsense, in your writer's opinion, though Brad did not ask).

Music has figured into Brad's life since he was an 11 year old. His uncle was a drummer and he inspired Brad to pick up that instrument. Brad played a lot of music through college as a student (in orchestras and concert bands). He has also been a working rock musician. He spent a couple of summers in a full-time gig at the Kings Island theme park. He even toyed, briefly, with the idea of working in the music business instead of attending college.

When he began his pursuit of a law degree and career, Brad put music on hold. Somehow a principle partner in the Philadelphia office of Marshall Dennehey heard that Brad was a drummer, and

1. Brad no longer jumps.

Brad was recruited for the firm band.² The band is called Class Action and was a competitor in the 2013 Corporate Battle of the Bands, making the finals and playing a concert at the Rock 'n' Roll Hall of Fame in Cleveland.

Brad now has opportunities to play drums regularly. He plays with several talented musicians at Marshall Dennehey. Brad plays the drum set in two bands and each plays two or three times each year. He also plays with a cover band called Time Peace (a very good band, he says). Readers may have seen and heard him in the pit band of the Rob Young musicals *The Crucible: Plymouth Rocks!* (2015) and *Madam Bovary: Ho Ho Ho!* (2013). Brad also keeps the beat for the occasional Delaware lawyer rock 'n' roll cover collaboration known as The Learned Hands.

When one meets Brad Goewert for the first time, in a social situation, one

2. Really? How many law firms have a "firm band?"

gets the impression that he is a quiet, humble, and generally satisfied fellow. And, he has that disarming smile. Once one gets to know Brad it becomes obvi-

“He likes connecting with the people involved in this work — the lawyers, the clients, the experts, the juries. And, he respects the plaintiffs’ lawyers as the best at what they do.”

ous that this man has a broad range of talents and interests and the energy to pursue them. There is a lot going on behind that smile. 

James G. McGiffin, Jr. is a Senior Staff Attorney with Community Legal Aid Society, Inc. and a former President of the Delaware State Bar Association. He can be reached at jmcgiffin@declasi.org.

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Call for Judge Volunteers

The Delaware High School Mock Trial Committee and Delaware Law Related Education Center invite you to join us as a judge volunteer for the 2016 Delaware High School Mock Trial Competition. The Competition will take place at the New Castle County Courthouse, 500 N. King Street, Wilmington, Delaware on Friday, February 26, and Saturday, February 27, 2016. The time commitment to judge a round is approximately four hours. This time includes an orientation for volunteers prior to your scheduled round, judging the competition round, and student debriefing after the round. To learn more about the Delaware High School Mock Trial Competition and the Delaware Law Related Education Center, please visit www.delrec.org or contact Pat Quann at delrecntr@aol.com or Jason C. Jowers at jjowers@morrisjames.com.

Please complete the form below and fax it to Margie Touchton, Judge Volunteer Coordinator, at 302-571-1750, or download a copy of the form from www.delrec.org, and email it to mtouchton@morrisjames.com. Confirmation of assignments will be sent out by email by early February, along with a confidential bench brief, competition details, and information about obtaining **CLE credit** for your participation.

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DR. MARTIN LUTHER KING, JR.

Breakfast & Statewide Day of Service

Monday, January 18, 2016

Breakfast: 8:00 a.m.

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Keynote Speaker: Fred D. Gray, Esquire

*Veteran Civil Rights Attorney, Represented Rosa Parks
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LOCATION:

Chase Center on the Riverfront
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The Annual Dr. Martin Luther King, Jr. Breakfast and Statewide Day of Service

January 18, 2016 • Chase Center on the Riverfront





1. Fred D. Gray, Esquire, attorney for Dr. Martin Luther King, Jr. and Rosa Parks during the Montgomery Bus Boycott and one of the few living members of Dr. King's inner circle, gave the Keynote Address at the Breakfast. 2. MLK Event Co-Chair Gregory B. Williams, Esquire, gave the Welcome Address. 3. MLK Event Committee Co-Chair Mary I. Akhimien, Esquire, introduced the keynote speaker. 4. DSBA President Richard A. Forsten, Esquire, delivered Introductory Remarks. 5. Singer Nadjah Nicole. 6. The Wilmington Children's Chorus Led by Kimberly and Philip Doucette. 7. Governor Jack Markell. 8. United States Senator Thomas R. Carper. 9. United States Senator Christopher A. Coons. 10. Chief Justice Leo E. Strine, Jr. 11. (L to R) Fred D. Gray, Esquire; Mary I. Akhimien, Esquire; Gregory B. Williams, Esquire; and Richard A. Forsten, Esquire.

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Attorneys and paralegals working with Seniors at the Wills for Seniors Service Project at the Chase Center.



Volunteers at the Food Bank of Delaware in Newark.



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Monday, January 18, 2016

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OF NOTE

Condolences to **Thomas Herlihy III, Esquire**, on the death of his wife, Constance Gay Herlihy, who died on December 28, 2015.

Condolences to the family of **Frederick Stanislaus Kessler, Esquire**, who died on December 23, 2015.

Condolences to **Daniel B. Rath, Esquire**, on the death of his father, Charles J. Rath, who died on December 27, 2015, and on the death of his mother, Dorothy M. Rath, who died on January 24, 2016.

Condolences to **Norman D. Griffiths, Esquire**, on the death of his brother, Dr. Michael C. Griffiths, who died on January 17, 2016.

Condolences to **Basil C. Kollias, Esquire**, on the death of his mother, Polykarpia (Polly) P. Kollias, who died on January 23, 2016.

Condolences to the family of **Elizabeth K. Rodriguez, Esquire**, who died on January 26, 2016. ☪

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Further Details to Follow

NEW YORK STATE OF MIND



Why not take a holiday from the neighborhood and hop the Amtrak to Manhattan? The reasons to make NYC your destination this Valentine's Day weekend are plentiful:

Fashion: The Jacqueline de Ribes exhibit at the Metropolitan Museum of Art. Little time remains to see the over sixty ensembles from the fashion icon's closets that comprise this enchanting display entitled "The Art of Style". (The exhibition ends February 21st.)

Music: Broadway musicals from *Kinky Boots* (this one could also be under "fashion") to *Fiddler on the Roof*.

Food: Restaurants, restaurants, and more restaurants!

The City's main attraction for me is the food (big surprise there). Vincent and I spent some time in The Big Apple early in the new year, and I brought back several dining recommendations for a Valentine's or other weekend getaway.

Lunch on Saturday Casa Mono

The jewel box that is Casa Mono is located at 17th and Irving Place just steps

from Union Square. Chef Anthony Sasso and his staff were awarded a Michelin star for the 7th consecutive year for his tapas inspired by the cuisine on Spain's Costa Brava. On our recent visit, we sat at the chef's counter. I preferred this position to the table seating for two reasons: 1) we could witness the choreography of the open kitchen and 2) the counter offered more room than the open-front tables in which diners store their water glasses. (These tables remind me of the open front school desks in which I used to store my snacks in elementary school.) The sommelier recommended a juicy Montsant (the region adjacent to the famed Priorat) from the extensive wine list based on my affinity for Grenache and Syrah.

Some tapas I recommend:

- Sardinas Fritas – light, crispy sardines accompanied by a citrusy endive salad
- Cod Cheeks Pil Pil – the tenderest of fish cheeks in a spicy sambal sauce garnished with bright nasturtium
- Bone Marrow with Hot Chili Pesto – shanks split longways to reveal the earthy marrow intended for spreading upon arugula toasts
- Razor Clams a la Plancha – sweet, meaty razor clams topped with plenty of garlic

Dinner on Saturday

Option 1

Vaucluse

Located at 63rd between Park & Lexington, Vaucluse is the newest addition to the Altamarea Group. Vaucluse is classic French with a twist – a handmade pasta course, the hallmark of Altamarea restaurants. The brasserie-style menu showcases raw bar items, traditional French dishes from boudin noir to canard à l'orange for two, and daily specials such as cassoulet. The attentive service and comprehensive wine list – including my favorite "cult" wine Domaine de Trévallon – are certain to help Vaucluse become the Mont Ventoux dominating the landscape of the Upper East Side. Unlike Peter Wells in his December 2015 *New York Times* review, I was very pleased with our experience.

My recommendations are:

- Pâté en Croûte – duck and pork terrine with pistachios and cherries served with small crocks of whole grain mustard and cornichons
- Épaulettes – rabbit and reblochon cheese ravioli with black truffle (each filling has its own compartment within each ravioli – a true labor of love)
- Sole Meunière – wild Dover sole with lemon and parsley (a real treat)
- Selle de Chevreuil Grillée – grilled loin of venison with prunes and chanterelles
- Tarte au Citron – Meyer lemon crème, brown sugar breton and citron glace

Dinner on Saturday

Option 2

Aquavit

A highlight of our weekend was our New Year's greeting from Chef Emma Bengtsson of Aquavit. We had not been to this Scandinavian restaurant at 65 E. 55th Street in several years, but decided to visit in light of its two star recognition in the Michelin Guide. Aquavit has been serving diners in its sleek and serene space since the late 1980s, but did not win its first Michelin star until 2013 when Chef Bengtsson, who has been cooking and baking since a child in Sweden, was pastry chef. Two years later, Chef Bengtsson earned the distinction of becoming the second female chef in the country to manage a two star kitchen.

Aquavit offers a chef's tasting and a seasonal tasting, both with wine pair-

ing options, or a three-course prix fixe. These are ideal ways to sample the sometimes esoteric ingredients not even available at markets like Whole Foods. When we celebrated on New Year's Eve, we enjoyed the special seven course menu featuring memorable tastes, such as löjrom — a bleakfish roe from the Baltic Sea (much less salty than salmon or whitefish roe). We also savored a course of lamb tartare served with sweetbreads, black trumpet mushrooms and lingonberries. This dish was a careful balance of earthy, sweet and tart. I am confident that the tastings you will encounter will be as enchanting as ours.

Brunch or Lunch on Sunday Marta

My top new dining destination is Marta in the Martha Washington Hotel. Danny Meyer (Union Square Café and Gramercy Tavern) created a warm and welcoming haven in the NoMad neighborhood. The open kitchen's two wood burning ovens create crispy thin crust pizzas. The wine list boasts over 45 champagnes in addition to other sparkling wines as (spoiler alert if you have not finished watching the Esquire Network's "Uncorked" On Demand) Master Sommelier Jack Mason believes in pairing bubbly with pizza. And it is a perfect pairing!

Marta is open for breakfast, lunch and dinner every day. Based on our lunch selections, I recommend:

- Giardiniera – crunchy and colorful house-pickled vegetables and mixed herbs
- Patate all Carbonara – white pizza with potatoes, guanciale, black pepper, pecorino and egg
- Funghi – another white pizza with fontina, mozzarella, hen of the woods, chanterelles, red onion and thyme
- Apple caramel torta with fior di latte gelato - sprinkled with large salt crystals to enhance its sweetness

Bon voyage et bon apétit! 🍷



Susan E. Poppiti is a mathematics teacher at Padua Academy High School and managing member and cooking instructor for La Cucina di Poppiti, LLC and can be reached at spoppiti@hotmail.com. Other recipes and cooking tips are available on Susan's food blog at www.cucinadipoppi.com.

RESTAURANT REVIEW

Muskrat Night at the Southern Grille in Ellendale, DE

By Jerome M. Capone, Esquire

There are a number of ways for an "out of town" to be accepted as a true Sussex Countian. You could buy a pickup truck, own some guns, have a hunting license, join the Tea Party. Or, you could develop a taste for muskrat.

Last night, members of the Sussex PDO ate muskrat. The muskrat eating season goes from November to March. There aren't many restaurants that serve this marsh dwelling rodent. We are very fortunate to have one here in Sussex County.

The Southern Grille, located on Route 16 in Ellendale, is well known for serving excellent fried food, country style cooking, and magnificent desserts. For the next few months, they will be serving muskrat on Wednesday nights.

The restaurant seats about 50, and it was a full house last night. The owner told me that he expected to serve at least 35 muskrats. Three were consumed at my table (two members of our party abstained). Those of us who ordered it were first timers. Once we told our waitress we wanted some muskrat, we were presented with a series of significant decisions. First, fried or stewed? A look around the restaurant made it clear that the muskrat cognoscenti were choosing the fried version, and we followed their lead. Then, head on or off? We chose off. Next, gravy or no gravy. We chose gravy on the side. Finally, red or white beverage pairing, which in this case meant Mountain Dew or Dr. Pepper since the Southern Grille does not have a liquor license. We went with the red.



the only ones brave enough to try.
Jay J. King, Carolyn McNeice, Esq., Jerome M. Capone, Esq., William E. Moore, Esq., and Daniel Strump.

Our muskrats were served with fried potatoes (excellent) and stewed tomatoes (a bit too sweet for my taste). The rat itself was served whole in every respect except for the head and claws. It was definitely not love at first sight. In fact, its appearance was off-putting. It was leathery and gnarled. The meat is uniformly dark brown in color. I admit to being apprehensive as I tore off the first piece. But, I was pleasantly surprised by the taste and texture. The texture throughout was similar to that of a chicken wing, smooth and just a bit stringy. The taste was pleasing and hearty, and it definitely did not taste like chicken. It was apparent to my taste buds that I was eating a wild animal, but the taste was not gamey.

There were only a few parts of the animal which provided a full mouthful of meat. Once you worked through all those pieces, you have to pick through many small bones, some as fine as fish bones. As a result, I didn't leave the table feeling stuffed, but it nevertheless was a satisfying and interesting meal.

I am willing to accompany anyone who would like to give it a try. Muskrat served on Wednesday night through March. 🍷

Rating: * * *

The Southern Grille, Route 16, Ellendale, DE

A professional headshot of Steven L. Butler, a man with short dark hair and a light beard, smiling. He is wearing a dark suit jacket, a white dress shirt, and a red patterned tie. The background is a blurred office setting with a window showing a cityscape.

Steven assists with plaintiffs' personal injury cases, including automobile accidents and workers' compensation, and also brings experience in Social Security Disability claims.

Morris James LLP
PERSONAL INJURY GROUP

IS PLEASED TO ANNOUNCE
STEVEN L. BUTLER
HAS JOINED THE FIRM

Morris James is pleased to announce the addition of Steven L. Butler, who will join our Personal Injury Litigation practice group. Steven is a magna cum laude graduate of both Widener University Law School (now known as Delaware Law School) and the University of Delaware. He has been named a *Delaware Today*® “Top Lawyer” and *Delaware Super Lawyer*® since 2013 and is admitted to practice law in Delaware, Pennsylvania and the US District Court for the District of Delaware. Steven can be reached at sbutler@morrisjames.com or 302-655-3560.