



MATTACOLA

Law Matters

LAW ■ LIFE ■ COMMUNITY

A NEWSLETTER THAT BRINGS IT ALL TOGETHER.

6 Slices

This is a true story. Nearly two years ago, when renovations were in full swing on our office building, I stopped in near lunchtime to check on the progress of the day. The contractors were in the middle of gutting everything, a dirty and nasty job. I decided to go and get them some lunch. (By the way, the craftsman who is responsible for our beautiful office is Al Cidzik of Custom Ventures - I highly recommend his work.) I went to a local pizza place for the lunch and upon entering saw that they had six slices of pizza in the display case. I told the man behind the counter that I wanted all six slices. Pretty boring story so far, right?

He paused and said to me "I'll make you a large pizza instead." I explained that I didn't have time to wait for a pizza to be made, that I only had a couple minutes and I'd just like to purchase the six slices he already had made. This is where the story turns a bit bizarre. He told me...

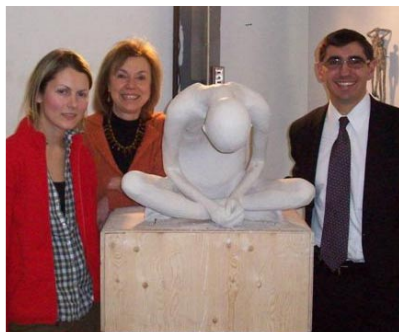
"If I sell you those slices, I won't have any left for anyone else. I'll make you a pizza."

You could have knocked me over with a feather. I had lots of things that came to my mind at this point - none of them very polite. The best I could manage was "Isn't the goal to sell the pizza?" The guy then

says "Yes, but if I sell these to you, I won't have any to give whoever comes in after you." Again, I was mystified. I gave it one more college try. I said "I'm just trying to understand this. You have a customer, here, now, who wants the six slices. Yet, you won't sell them to me because you might not have any left to give a customer who may or may not come in the door wanting to buy a slice? After you sell me those six slices, couldn't you then make another pizza to have slices to sell to these unknown future customers you are worried about?" I got back a blank look. I then thanked the man for his time and proceeded to take my business elsewhere. I may have also shaken my head in disgust and confusion a few times but refrained from telling him where I now wished he would put those six slices.

Now, in fairness, this individual looked like he regularly showered in bong water and perhaps I was expecting too much common sense from him and clearly, the old adage "the customer is always right" never made its way into his business plan. But nonetheless, this experience summoned a memory of something I heard a lawyer in Buffalo tell one of my law school classes many moons ago and which I've never forgotten. He said "Give your client all you have to give them at that particular

cont. on page 2



The Mattacola Law Firm was proud to sponsor the Sculpture Space "Works in Progress" reception on March 24. Here I am with Sydney Waller and artist Kathy Stecko and one of her oil clay works.

THE MATTACOLA LAW FIRM

Career Day at RFA



RFA Juniors Jenna Detz and Alicia Alarie were amongst the many students who expressed an interest in the law - yes, more lawyers.



In This Issue

Legends of the Diamond Dinner	2
Getting It Right Law Day 2008	3
Jack Canfield Comes to Rome	4
Vacca Finacial Joins 217 N. Washington Street	4
Speaking to Young Professionals	5
Employment Law	6
Stuff You Should Check Out	7
Bad Legislation	8

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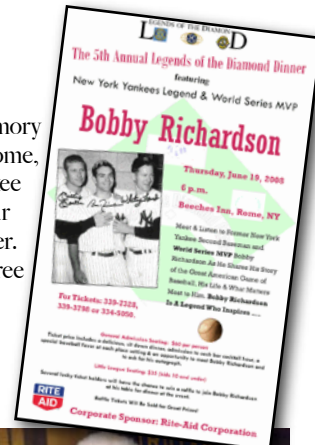
Legends of the Diamond Dinner

with your host **Greg Mattacola**

Sometimes things just coincide perfectly. The tumblers of the universe click together in harmony and presto - a door opens to a delightful experience. That's how I feel about the Legends of the Diamond Dinner. What is that you may ask? Well, if you don't know about it, you should. For the past four years, the Rome Rotary Club, the Lake Delta Kiwanis and the Rome Lions join together (Hear that government leaders? Cooperation, working together, consolidation - please take notes.) and host a baseball legend for an evening. The evening consists of baseball memorabilia being raffled off, a dinner and then a discussion with the speaker with an opportunity to have your questions answered. The player then stays and patiently signs autographs for over 200 people.

This event is special to me for numerous reasons. **One**, I've been with it since the very first year when we had Goose Gossage (Congrats to Goose on the Hall - well deserved!). **Two**, I love the fact that three separate clubs join forces - with all "profits" being split evenly between the three to fund the good works of those clubs. So all the positive things these clubs do for the community - feeding the hungry, Christmas presents for under-privileged children, eyeglasses, etc., are aided by this event. **Three**. I am a baseball fan(atic). And beginning last year, I became the moderator of the discussion. Formerly, it was former Rome Mayor and Syracuse Basketball announcer Carl Eilenberg who is, quite frankly, irreplaceable. Hizzoner moved away and I was brought in off the bench to try and fill a portion of his shoes. So, last year, there I was with Hall of Famer and true American Hero Bob Feller, conducting an intimate interview with him in front of 200 plus. It was daunting, exhilarating and really, really fun. Something I will never forget is when he told me "You know the game." It doesn't get any cooler than that.

But I digress - this is not just a jaunt down memory lane. This year, June 19, at The Beeches in Rome, we welcome Bobby Richardson, former Yankee Second Baseman and a true gentleman for our Fifth Annual Legends of the Diamond Dinner. He was a five time gold glove winner, won three World Series (played in 7) and was the World Series MVP in 1960 (He remains the only World Series MVP selected from a losing team). He also caught that famous line drive from Willey McCovey in 1962 to end the World Series and win it for the Yankees. I've spoken to Mr. Richardson several times on the phone in preparation of his arrival and I will guarantee that he will not fail to entertain. Me on the other hand? I just throw the questions out there and get out of the way - let the legend run with it. And run with it he will. The man played with Mantle, Maris and Yogi. Casey Stengel was his manager. Think he doesn't have stories?



Greg with Bob Feller

Now, I'm not a Yankee fan - that is no secret. Yet, I am looking forward to June 19 like I look forward to Christmas and The Boilermaker. It's going to be fantastic. If you want to have a night of baseball, great stories, be able to meet a legend, have your memorabilia signed, and a great dinner to boot - *all in the name of charity* - please join us on June 19. No one leaves this event disappointed.

cont. from page 1

time. If you are only able to get to court five minutes before the motion is to be argued, give it all of those five minutes. Review the file, talk to the client, and get your argument points in order. Don't waste a minute saying hello to the court staff or talking to a colleague about the game the night before. Give the client everything you've got."

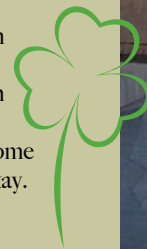
That stuck with me. In this business, there are a lot of balls in the air. Our office is responsible for many clients, many files. Each of those files represents someone's life, someone's problem. And to every one of those people, their file is one of the most important things going on in their respective lives, if not the most important. Every file has its day, its hour, or even its five minutes. And in that time, my goal, my office's goal, is to give it everything we have to give in order to accomplish the objective of that particular file. The client deserves that. In other words, we will give you the last slice on our counter. We can always make more for the next customer. That's what we are here for.

We hope you enjoy this newsletter; we've enjoyed putting it together for you. And remember, as winter fades into a memory and the warm weather months fill up with parties, barbecues, children's sporting events, etc. - do not forget to take a moment and enjoy the ride.

A handwritten signature in cursive that reads "Greg".

Getting Our Irish On!

Greg O'Mattacola and cousin Phil O'Felice rose to the occasion of celebrating with the Friendly Sons of Saint Patrick on St. Patrick's Day. For a couple of Rome Italians, we did okay.



Oh Wait...



Now this is more like it! Feeling a little more at home, myself and John Nash are shown sporting our red and taking a break between courses at The Franklin's St. Joseph's Day Party. The food just kept coming, and coming, and coming... It's tough work but somebody has to do it.

Shameless Kid Plugs

The Mattacola Boys rocked the Ft. Stanwix Elementary Science fair recently. Young Nico presented facts about sharks - note the wee but real shark swimming in the bowl behind him. And no jokes about a lawyer's kid presenting on "sharks". Young Dr. Massimo, the budding cardiologist, researched and presented on the human heart. Mom and Dad were very proud of both.



Getting It Right

Law day 2008

Did you know that mistaken identifications are the leading factor in wrongful convictions? Mistaken eyewitness identifications contribute to over 75% of the wrongful convictions turned over in the United States via DNA evidence.

I have been the Chairman of the Oneida County Bar Association's Law Day event for four years. Law Day, a nationally observed day, was established by President Dwight D. Eisenhower in 1958 as an opportunity for the nation to reflect on its legal heritage and the rights and duties that serve as foundations for this country. This year on the 50th Anniversary of Law Day, it could not have been more appropriate to have The Innocence Project as our guest for the day. The Innocence Project was founded in 1992 by Barry Scheck (remember the OJ trial?) and Peter Neufeld at Cardozo Law School in NYC. They review those serving long term sentences or facing the death penalty and using DNA testing of the trial evidence, they have obtained 216 exonerations. That's 216 people who served serious time for crimes they didn't commit. And it's probably only the tip of the iceberg.

On our Law Day celebration, we had over one hundred students from 14 different area high schools attend a morning program that centered around a panel which included Madeline deLone, the Director of the Innocence Project and Roy Brown, a man from Syracuse, NY who was freed in 2007 after serving 15 years for a murder he did not commit. After hearing Roy speak about his ordeal, one high school student, in tears, called him "a true inspiration". It truly was remarkable to hear Roy's story. Our Law Day then held a luncheon for the students, area lawyers, Judges, and members of the public. 250 people heard Roy and Madeline talk about the Innocence Project and Roy's story. The luncheon even included an improptu acoustic guitar performance by Roy singing a song he composed about his saga. It was an enlightening day and as I said in my closing remarks to the crowd "This isn't a prosecutor v. defense issue or Democrat v. Republican, it's about getting it right." Let us all hope that more inroads are made so that we can get it right more often. For more on The Innocence Project, check out www.innocenceproject.org.



Myself, Roy Brown and Oneida County Bar Association President Larry Golden.



Roy Brown letting it rip for a room full of lawyers.



Addressing the Law Day Luncheon.

Your Lawyer Knows Jack

On April 8, 2008, the Rome Area Chamber of Commerce hosted Jack Canfield for an entire day of success training. Jack is co-creator of the Chicken Soup For The Soul books and also author of The Success Principles, all best sellers. First, he conducted a four hour training for 350 business people on how to take their businesses and business careers to the next level. Then, during the evening, he addressed a crowd of 1500 on the power of positive thinking and the law of attraction. All of this took place at The Turning Stone Event Center in Verona, NY. The event was a monstrous success.

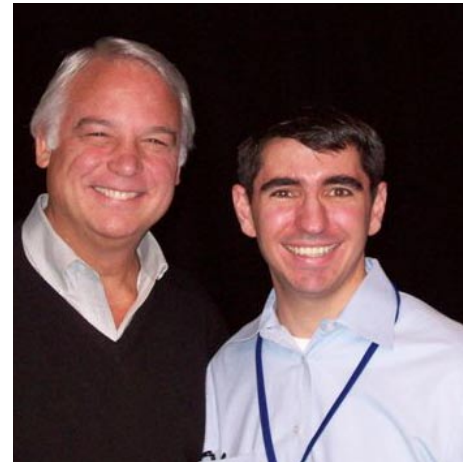
It was a major effort to bring Jack here. The budget - huge. The time invested to market, advertise and plan it - huger yet. The stress of possibly being the first Chairman to bankrupt the Chamber - off the charts! Yet, we envisioned a great event and a great event it was. The feedback was overwhelmingly positive from those that attended and the "ripple" from this day is still happening and will continue. People's lives were changed, sounds dramatic I know, but it truly has been the case. "Mastermind Groups" have sprung up around The Mohawk Valley with people meeting to share their goals and to challenge and help each other to meet them. "Vision Boards" are popping up all over as well. My two sons have both embarked on creating their own

vision boards. One wants to be an "expert black belt" in Karate and to have a library in his home when he grows up. The other wants to play for the Phillies and own a basset hound farm. And they have photos on their boards symbolizing those goals. I say, go for it boys. And their goals should serve as a lesson for all of us - somewhere between childhood and adulthood - we forget how to dream big. We get caught up in paying the mortgage and allowing one day to carry us to the next. I say, set big goals, seemingly unreachable goals and then strive to meet them. Why not? What's the worst that will happen - you fall a little short? I'd rather just miss reaching a difficult goal, knowing I put everything I had into it, then not ever try at all. So to Jack - who reminded us all to dream big and "act as if" - thanks much. We could all use that reminder on a regular basis. Oh, and I didn't bankrupt the Chamber. We did just fine.



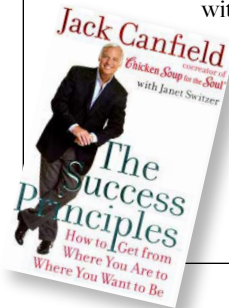
Stealing a quiet moment to jot down some remarks to address the masses.

▶ **Jack Canfield** - brought to you by the Rome Chamber of Commerce. 350 business seminar attendees and 1500 at night, he was fantastic.



▶ You can now tell people "My lawyer knows Jack."

▶ **Jack Canfield, myself and most of the Professional Development Committee.**



Vacca Financial Joins 217 N. Washington St.



Mark Vacca and his company Vacca Consolidated Financial Services recently joined our building. After a lengthy renovation project that included a nail through a foot (*not my foot*) and a piece of pipe falling through a conference room ceiling (*my ceiling*), Mark is now happily doing business upstairs and it is a pleasure to have him. You can see him here by his "ginourmous" flat screen which he says is just to monitor the stock market. No surprises, the arrows in this picture are red and pointing south - which Mark swears he has no control over. I will say that the TV came in very handy during NCAA tournament time.

Welcome aboard Mark!

Speaking to Young Professionals

On April 2nd, I had the pleasure of addressing the Genesis Young Professionals Group on the employment law subject of "employment-at-will" and sexual harassment. The talk took place at the Fort Schuyler Club and it was an enjoyable evening. With a roaring fire and the historical beauty of the Fort Schuyler Club all around us, we delved into these two topics and I was able to clear up many of the common misconceptions. I even staged a fake firing of my marketing guru Michelle McCarrick Truett for being a Yankee fan - to exhibit the fickle nature of the employment-at-will doctrine.



Attention Business Owners and HR Professionals!

HOW IS YOUR COMPANY'S HANDBOOK? IS IT UP TO DATE? DO YOU EVEN HAVE ONE?

Join me for a nuts and bolts session on ways to make your handbook more effective. It is taking place on June 26 at the Oneida Financial Center at Griffiss Park in Rome. We will have coffee and treats courtesy of Spressos. Bring your handbooks and any questions you may have. Space is limited to the first 20 people so please RSVP to 334-5050. It will run from 8:00 - 9:00 am and it is **FREE!**



Well, not too long after I met Gov. Spitzer, he had a rather harsh fall from grace. Let's hope I don't have the same effect on Gov. Patterson. He was in town to speak at the Mohawk Valley EDGE awards luncheon and I will say this - he is an absolutely engaging speaker. I truly hope he is up to the task of leading this once great state out of dysfunction.



Attending the ribbon cutting for the Grand Opening of Family Video in Rome on 3/14/08



Shop Rome First!

You never know who you might randomly run into when shopping in Rome - One afternoon, while picking up a gift for a friend, there appeared Sinbad on West Dominick Street! He was just leaving Gary's Music, having sought out a place to "jam" on some drums while in town to perform at Turning Stone. Being the shy guy I am and knowing I have a newsletter to publish, I asked for a quick Blackberry photo of which he graciously obliged. All roads lead to Rome, remember that.

LABOR/EMPLOYMENT
PERSONAL INJURY
CIVIL LITIGATION and
WILLS/ESTATE PLANNING.

Ride For Missing Children 2008

The Ride for Missing Children took place on May 16, 2008 and I was proud to be a part of it for the fourth straight year. Despite being a bit undertrained, I managed to make it through the 100 miles and as usual, the day was an inspiring and emotional one. I raised \$937 dollars for the ride which equals 3748 missing children posters that will be distributed because of the generosity of all who donated. Thank you. My brother, Dr. Carl, happened to be in town and was able to witness the amazing sight of 400 riders as we rode into Westmoreland Elementary School.



Law Matters: at Work

NEWS ON EMPLOYMENT LAW

Let's talk "retaliation". It has a sinister sound to it, I know, and not something most people think about when it comes to the workplace. When you think "retaliation", you think of countries plotting military strikes against each other or possibly you think of one son firing a Lincoln Log at his brother's head to pay him back for telling Mom who tracked mud through the kitchen. Yet, it's the employment law context of retaliation which you should worry about as business owners and HR professionals.

First, what is it? In order to make out a retaliation claim, the employee must show that: he or she engaged in protected activity; the employer must be aware that he or she participated in the activity; the employee suffered an adverse employment action based upon the activity, and lastly, there is a causal connection between the protected activity and the adverse action. Take it piece by piece. Protected activity, amongst other things, could be an employee complaining to a supervisor of some form of protected discrimination, i.e., disparate treatment based on race, gender, age, disability or a host of others. The second prong is simple enough - the employer must be aware of it. The third prong, an adverse employment action, could be a termination, a demotion, a reduction in responsibilities or numerous other events. The fourth prong - the causal connection - is usually the hardest for a plaintiff to prove but herein also lies the danger - beware "temporal proximity." If the adverse employment action occurs within a short time of the employee's complaint, that could be enough to establish the fourth prong, or at a minimum, enough to get in front of a jury. And then, when your company's fate is in the hands of random strangers, it's time to be nervous.

The most frightening thing about a retaliation claim is that the original complaint, the "protected activity" in prong one, does not have to end up being valid, for the retaliation claim to succeed. In other words, an employee could make a complaint that his bad performance review was due to age discrimination. That claim could end being hogwash, the real reason being that the bad performance review was simply due to, well, bad performance. Yet, if the employee ends up with another adverse employment action, shortly after the original complaint was made, there may end up being a retaliation claim that could stick.

The moral of the story is that employers need to make sure that their handbook or employment policies have a clear chain of command, a clear reporting procedure for when employees feel they have been the subject of a discriminatory action. These claims need to be taken seriously and they need to be investigated. And just as importantly, all employees with supervisory functions, need to be instructed to tread very carefully with employees who have made these claims and that retaliation will not be tolerated. Simultaneously, any employment decision that could be seen as adverse, needs to be documented thoroughly. The old adage, an ounce of prevention is worth a pound of cure, is very applicable here. This is obviously a thumbnail summary of retaliation dangers so if you have questions as to how your company is handling these situations, feel free to give us a call.



On April 28th, The Mattacola Law Firm put its bowling skills to work for the Rome Hospital Foundation. We took on all comers for the good of the Foundation and once again, good times and lots of laughs were involved. Pictured are Greg, Kelly, Donna and our adopted son, Mark Vacca of Vacca Financial Services.

Stuff you should check out



www.acomplaintfreeworld.org -

Better yet, read the book, *A Complaint Free World* by Will Bowen. It's an easy read and hopefully you finish reading it and take the purple bracelet-21 day complaint free challenge. The premise is simple - every time you complain, criticize or gossip, you move the bracelet to the other wrist. The goal is to go 21 days without moving the bracelet and hence instill the "habit" of not complaining. It's a difficult challenge but one worth embarking on. Will Bowen is a minister in Kansas City and he and his Church have shipped out 5 million of these bracelets. Think about that - if only one fifth of those kept with it, what an impact it has made. If you want to take the plunge, e-mail me and your bracelet will be on me. I have some handy and I'll gladly order more.

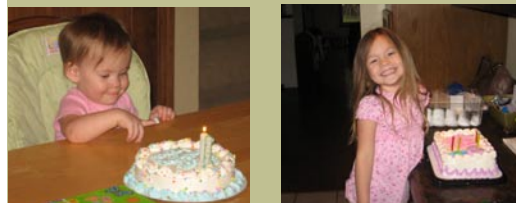
www.pandora.com - If you don't know about this site, you should. Free music at your desktop with stations arranged by the music genotype of artists you already know and like. For instance, if you like The Rolling Stones, you can have a Rolling Stones station that plays music by the Stones and other artists who make music similar to the Stones. It's fantastic and did I mention that it's free?

www.gotomypc.com - This service has been available for probably ten years or so now; I've been using it loyally for five and it is just now starting to get notoriety and acclaim. It allows you to work off your desktop, as if you were sitting at your desk, from any computer, anywhere. I can't tell you the heart attacks this service has avoided. Before, if I woke up in the middle of a night with a sudden panic attack about a file (ask any conscientious lawyer - this isn't uncommon!) I'd literally drive to the office to check the file. Now, since all the contents of all my files are also in electronic format (that is uncommon - we're ahead of the curve on that one), I can simply dial into my computer from gotomypc and see what I need to see. It's a product that works wonderfully and is very reasonably priced.

The Last Lecture - www.thelastlecture.com

So what lecture would you give if you were dying from pancreatic cancer? Carnegie Mellon Professor Randy Pausch delivers an inspiring lecture on Achieving Your Childhood Dreams and reminds us how to live and die well. It's an hour of your life that will be well spent. And if you check out his blog, Professor Pausch is still hanging in there despite the cancer spreading to his chest and lungs - he has lived longer than he was supposed to and he has done it with honor. <http://download.srv.cs.cmu.edu/~pausch/news/index.html>

More Shameless Kid Plugs



The little darlings of Legal Assistant Kelly Tuttle both celebrated birthdays recently - Sophie turned one and Eliza turned four! They will be recruited for some introductory filing and phone answering work very soon.



And on the home front of Legal Assistant Donna Bushaw, young Ashley was recently the Belle of the Camden Senior Ball. Rumor has it that Donna's husband Tyke had armed himself with a four pack of Red Bull and a 12 gauge to ensure his daughter's safety but thankfully, no drastic measures were needed as her date was a gentleman.

You're Mean and I'm Suing You.

A topic I frequently lecture on is that of "employment-at-will". Indeed, this was a focus of my recent talk to the Genesis Young Professionals. See, pg. 5 of this newsletter. The concept of employment-at-will is simple; an employee can be terminated at any time for any reason, or no reason, with or without notice. The exceptions to this are those reasons which are protected by law such as race, gender, age, disability, etc.

Yet, one day soon, it may be possible to sue an employer for bullying?! There is proposed legislation in at least 13 states that would make it illegal for a boss to bully an employee in the course of employment and New York is one of them. This would blow apart the concept of employment-at-will in New York, and potentially expose employers to a panoply of workplace lawsuits.

As an employer, I don't believe in bullying or yelling at your employees. Employees should be treated with respect; nobody likes to be yelled at. Moreover, the old saying that you can catch more flies with honey than with vinegar certainly applies. Employees perform better when they are treated with dignity. However, I am very much against this proposed legislation. It opens the door to every malcontent being able to bring a lawsuit. An employer needs to be able to constructively criticize an employee and offer ideas for improvement without fearing legal reprisal. Employers in New York State have enough hindrances to achieving profitability, they don't deserve another one. Such legislation is ill conceived and should be squashed now. Assembly Bill A10291 was referred to the Labor Committee on March 17, 2008. If you know anyone on the Labor Committee, such as local Assemblyman David R. Townsend, Jr. - feel free to call to voice your opposition. I will be doing the same.

Closing Argument

There has been much talk lately about the Nintendo Wii, the virtual reality game which coordinates your movements with those of your video game counterpart, as a substitute for exercise. People are raving about how you can actually burn calories while playing Wii tennis, boxing, baseball and the like. One report had a fitness trainer talking about how he was going to work some Wii games into the fitness regimens of his clients. And lots of parents featured in these reports have been saying things like, "at last, a video game that gets my child off the couch and actually makes them work up a sweat."

Please allow me to make a suggestion here. Instead of substituting the Wii for exercise - let's substitute real life exercise for the Wii. Unplug it and make it go far away. Adults and children, hear these words - Open up your door and go outside. Mow the lawn. Pull weeds. Chop some wood. Go for a walk. Play tag. Play dodgeball. Play anything. When video games are becoming our exercise, we are going terribly, terribly wrong somewhere. We as a country need more fresh air and exercise! Fresh air and exercise can solve a lot of problems. They keep your body healthy and your brain running smoother. I've got no scientific data to give you on this but it is as certain as death and taxes. Video games on the other hand? Well, they have their entertainment value and can be fine in moderation. But for exercise? Compared to a rousing game of touch football? Or a nice trail run? A bike ride? Come on now. Let's put the Wii away and instead hear the "Wheee!" that accompanies a child swinging high on a playground swing. You can even video it from your iPhone if you really need a technological aspect to it. Then you can e-mail the clip to Nintendo and tell them thanks, but no thanks.

This newsletter is designed to inform you of changes in the law and other legal issues that may be of interest to you. It is intended solely for your information and entertainment purposes and does not constitute legal advice and should not be relied upon without a discussion of your specific situation with Greg Mattacola. To speak to Greg, call (315) 334-5050.

Mohawk Valley events to watch for:

JULY 13 - THE BOILERMAKER

Running, Beer. Gotta love it. Support our friends at the F.X. Matt Brewery in the wake of the fire and help celebrate this great race.

JULY 26 - ROME'S HONOR AMERICA DAYS 5K RUN, PARADE & SYRACUSE SYMPHONY ON FT. STANWIX LAWN

Running, a great parade and wonderful music followed by fireworks - all in the same day!

JULY 30 - DRUMS ALONG THE MOHAWK

30th anniversary at RFA Stadium!

AUGUST 1-3 - ROME ROTARY CANALFEST

Rides, food, music, fireworks: all in the name of Rome Rotary's good works.

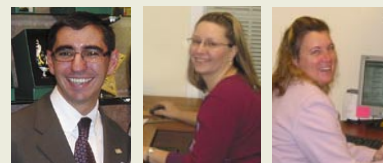


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We would be happy to assist you in your legal matters. Please call Greg, Kelly or Donna anytime.



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