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MARC WHITEHEAD & ASSOCIATES
ATTORNEYS AT LAW, LLP
A NATIONAL DISABILITY CLAIMS LAW FIRM

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Issue: 05

THE NEWSLETTER
YOU'VE BEEN WAITING FOR...

\$uccessful Barrister



"MARKETING, MANAGEMENT & LIFE SKILLS THAT PROBABLY WON'T GET YOU DISBARRED"

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WELCOME to Another Extraordinary issue of the \$uccessful Barrister!

This monthly newsletter is stuffed full with advice and guidance for lawyers seeking to improve their practices and their lives while making tons of money and still staying brilliant. In this issue, I share some thoughts on marketing yourself, ethics in media and how to stay focused while growing your practice. If you know anyone you think would enjoy this newsletter, please email me their contact information at marc@marcwhitehead.com and I will be happy to add them to my mailing list. *Enjoy!*

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Getting the Business;

CREATING YOUR MARKETING PLAN



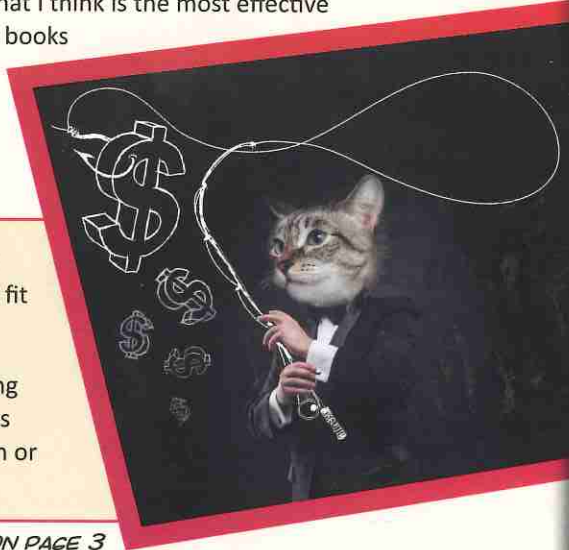
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Getting the business is arguably the most important function in terms of being a profitable

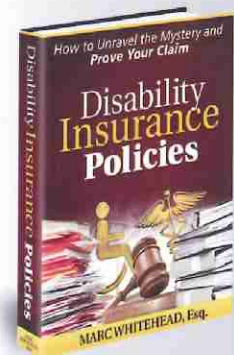
law firm and in this article, I'll discuss what I think is the most effective way of going about that. Most business books refer to this as "Marketing & Sales". An easier way to think about this is to refer to it as "Lead Generation" and "Lead Conversion".

- **Lead Generation** simply means identifying prospective clients that fit within your target client profile.
- **Lead Conversion** refers to getting the prospective client to hire you as opposed to hiring your competition or simply not hiring a lawyer at all.

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FEATURE BOOK

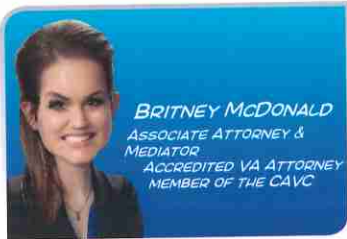


Call Us For a Free Copy of
Marc's Latest Book!

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Guarding Against Ethical Lapses in...

SOCIAL NETWORKING



BRITNEY McDONALD
ASSOCIATE ATTORNEY &
MEDIATOR
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In this new age of technology where anyone who is connected to social media can be carefully monitored and investigated, we, as attorneys, are faced with new and unique challenges in our practices. Suddenly we are faced with the possibility of our clients' personal information falling into the hands of

the defendants, unknowingly producing legal advertising, making false or misleading representations, or even inadvertently exposing confidential information.

Many attorneys may not realize that just their law firms' websites, their individual social media profiles are by their nature websites, and they too may constitute advertisements. Be aware of your state's rules on lawyer advertising, as they may apply to more content than you realize. In regard to making false or misleading representations, some social media activities may give rise to unanticipated ethical lapses.

*"Life is Simple,
But Not Easy"*

– Steve Mariboli

For example, an attorney may be unaware that the social media platform has branded him as an "expert" or a "specialist," whereas this is generally prohibited

under RPC 7.4. Inform yourself of this possibility within your own networking sites and safeguard against this type of violation. Social media also creates a potential risk of disclosing privileged information, namely exposing the identity of current or former clients. RPC Rules 1.6, 1.9, and 1.18 imposes the duty to protect this information unless you are expressly given consent by the client to share it.

Attorney Jason Penn presented his paper at the American Association for Justice's 2016 Summer Convention in Los Angeles entitled, "Social Networking: Reap the Benefits, Avoid the Hazards." Penn also understands the pitfalls that come with this new age of online exposure and provides his educated experience to avoid the consequences many lawyers experience and gain a "leg up" on the other side where possible. In his paper and presentation, Penn explores how attorneys must caution themselves and their clients from committing both ethical violations and exposing weaknesses in their cases.



Penn instructs attorneys that they should speak directly with their clients about content of their social networking pages. He warns other attorneys to provide admonitions to their clients: post nothing that discusses injuries, no photos of physical activities, tighten your security settings, be aware of what your friends are posting about you, under no circumstances discuss your case, and review the people who have access to your information. Insurance companies and defense lawyers now search for these social media accounts to looking for evidence that will harm your case.

On the flip-side, online social media research can provide opportunities that attorneys have never had the benefit of before this new age. Suddenly, we can investigate our opposing parties and witnesses to better prepare our cases, but we must do so in a way that steers clear of any potential ethical violations. Penn warns of the potential to violate the ABA Model Rule 4.2, Communication with Person Represented by Counsel.

We must safeguard against communicating about the subject of representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. Remember, you or your agent cannot "friend" a defendant under false pretenses! The same can be true for "friending" an adverse witness; you risk misrepresentation to that party and will find yourself in violation of the Professional Rules of Conduct.

"Everything should be made as simple as possible, but not simpler"

– Albert Einstein

Never forget that your biggest competitor is the latter, ***the prospective client never hiring a lawyer at all.*** Done properly, your marketing plan will be the roadmap you follow to get unlimited customers and dramatically improve the success of your organization.

Getting the Business- Strategies for Lead Generation & Conversion

How will you attract your Target Market? What materials and/or methods will you use that allows your Target Market to hear your solutions? How do you get them to contact you or to receive a contact from you? (This is not about "selling". People don't want to be "sold".) Identify the specific things that are appropriate and attractive to your Target Market and use a Marketing Template to plan out the marketing year.

The following four strategies are at the core of what most successful law firms do to market their practice:

1. **Develop Systems to Maximize Lead Conversion Opportunities**
2. **Direct Response Marketing to the Public**
3. **Referral Marketing to Other Attorneys (and/or Professionals)**
4. **Referral Marketing to Clients (and/or other Individuals)**

A. Strategies for Lead Conversion

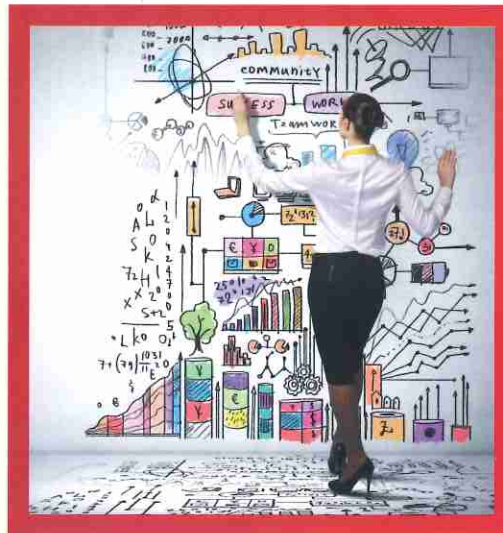
Conversion strategies are the techniques you employ to turn prospective clients into paying clients. The Goal is to obtain the highest return on investment (ROI) on your marketing dollars. Tracking the

source of your leads is critical to evaluating marketing ROI. The highest possible intake conversion rate is critical to ROI.

What systems / methods will you build to collect these leads? How are you going to be able to collect this contact information and organize it such that you can follow up appropriately?

Things to consider when developing a good Intake System are:

1. **Legal Service Knowledge**
2. **Speed of Lead Contact**
3. **Lead Management**
4. **Contracts & Proposals**
5. **Conversion Strategy**
6. **Lead Qualification**
7. **Maximizing Lead Retention**
8. **Needs Based Selling**
9. **Follow-up Systems**
10. **Client On-Boarding**



B. Direct Response Marketing to the Public

Direct Response marketing to the public is generally what we know as "advertising." The obvious are TV, radio, print advertising and such. But creating and promoting your website is also a form of direct response marketing. I use the term direct response (the goal being to call now!

upon seeing the ad) versus brand marketing (the goal being raising name identity). Usually lawyers should always use direct response marketing. Very few attorneys have the marketing budget to brand themselves like Coke or Crest toothpaste.

C. Referral Marketing to Attorneys

Most attorneys have their own "herd" of clients and contacts. They can't service them all and can be a great source of referrals to you. This is even more so, the more specialized you become, because you are less of a threat to stealing their herd. Imagine the power of creating your own "herd" of referring attorneys that in turn can draw from their herd of contacts. Your lead potential will be increased exponentially.

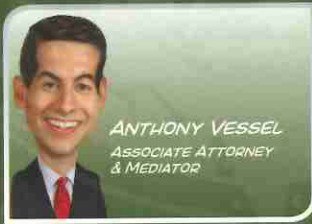
D. Referral Marketing to Clients and Other Individuals

A strong customer referral program could revolutionize your success. For example, if every one of your clients referred one new client, your client base would constantly grow. However, rarely will you get such growth unless you have a formalized referral strategy. For example, you need to determine when you will ask clients for referrals, what (if anything) can you do to incentivize them? Think through the best referral strategy for your organization and document it. By using retention strategies such as a monthly newsletter or customer loyalty program, you can increase revenues and profits by getting clients to refer or come back more frequently over time. Identify and document ways you can better retain clients here.

I have the Law Firm Marketing Plan available in Word format; email me if you would like a copy! The Marketing Plan will help you create your own road map to marketing success. To Your Success! 😊

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The ART OF WAR for Lawyers (Part 1)



The “*Art of War*” by Sun Tzu is one of the most iconic texts ever written on war strategy. This masterpiece is vastly applicable to other similarly strategic situations and professions. In fact, although the original text dates back 2,500 years to ancient China, this perennially relevant text has been read and endorsed by businessmen, lawyers, and military leaders such as: General McArthur and Napoleon, heck, even Bill Belichick reads it. (He’s been quoted saying the chapter on deception was “. . . just a bunch of hot air.”) I’ve been reading this book as well, and though clearly it didn’t provide any guidance on comedic writing, I did pick up some tidbits that could be helpful to your practice of law and law office management.

Sun Tzu said “. . . **to subdue the enemy without fighting is the acme of skill.**”

This excerpt is certainly helpful for lawyers to employ in pursuing litigation. Think about all that goes into gearing up for trial, the trial itself, and the potential for a total loss that can plague the mind of every trial attorney. War isn’t the only way; in fact, it should be the last option in many cases. Fighting battles are costly endeavors. On the ancient battlefield, battles cost generals weapons, horses, siege equipment, and of course, the lives of their men. Similarly, the road to trial, and trial itself, costs the attorney the resources of staff, the client or firm’s monetary resources, and of course the attorney’s personal time and mental energy.

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Some clients, especially those involved in more heated disputes are all too happy to throw everything they’ve got into causing pain for the other side; however, Sun Tzu warns against wars of attrition. Sun Tzu explains “[T]he true object of war is peace.” He reasons further, “Only one who knows the disastrous effects of a long war can realize the supreme importance of rapidly bringing it to a close.” Similarly, long unnecessary bouts of litigation cause depletion of resources and can take a toll on the parties involved, especially the clients, attorneys, and their respective families and staff.

Today, there are many other avenues in dispute resolution that can save you time, save your client money, and you can both strategize and negotiate to affect the result you want. Dispute resolution is also a great tool to preserve parties’ relationships moving forward instead of letting total war (a full blown trial) disrupt what could otherwise be salvaged. The main take away from Sun Tzu’s pearl of wisdom is to look for alternative ways to protect your resources and deploy them only when necessary.

Sun Tzu wrote **“To fight and conquer in all your battles is not supreme excellence; Supreme excellence consists in breaking the enemy’s resistance without fighting.”**

Well, that sure sounds mythic and wise of course, but how is that applicable to a trial, or attorney for that matter? It would be great if you could plant spies in the other side’s office, or capture the other general’s horses (especially all 500 of them under the hood of his Beemer) but this doesn’t exactly apply to us. Still, I invite you to look deeper and more abstractly.

Sun Tzu further says, *“The general who wins a battle makes many calculations in his temple before the battle is fought. The general who loses a battle makes but few calculations beforehand. Thus do many calculations lead to victory, and few calculations to defeat; how much more no calculation at all! It is by attention to this point that I can foresee who is likely to win or lose.”* Clearly, he is saying that it is important to go into these endeavors with careful strategic calculation.

Sun Tzu urges his readers to be a **“victorious strategist”**

In order to be one, Sun Tzu had a **5 part evaluation process** that includes:

- Toa (the spiritual “way” or “path”)
- Heaven
- Earth
- Generals
- Organization

In our legal world:

- **Tao** is the intangible mental or emotional implications involved in the case
- **Heaven** is the parameters of law you’re forced to navigate through
- **Earth** is the tangible facts of the case, the generals are all the parties to the case including: your side, the opponent, the judge, and any other party to the case
- **Organization** is the most literally applied component; how you have organized and managed the case as a whole and your resources.

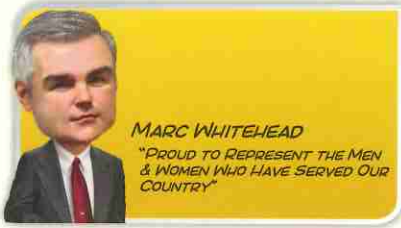
I’ll spare you my sophomoric explanation of eastern philosophy and its application to the U.S. legal system, but please take away that you should leave no stone unturned in preparing your case; strategically consider all of the interdependent factors and how they play off of each other in gearing up for litigation.



Well folks, that’s it for this installment of Eastern war tactics meets Western legal strategy, but stay tuned next time for more on using ancient warfare techniques in the courtroom. I’ll leave you with this piece of advice adapted from Sun-Tzu and my Italian-American background “Keep your friends close, and your chu ko nu (crossbow) closer.” ☺

SMARTER FASTER BETTER

8 Key Ideas for Expanding Productivity



Everyone wants to be Smarter, Faster, and Better at everything they do. But how do you actually do that? Well, according to Charles Duhigg,

author of the book *"Smarter Faster, Better; The Secrets of Being Productive in Life and Business"*, the first thing to realize is that you need to start assessing **HOW** you think about things rather than just **WHAT** you think about. Sounds a bit Zen doesn't it?

Think about it this way, your choices will always keep you productive. The tools, technology or time spent being productive are just that; tools. Sweating night and day chained to your desk isn't going to make you more productive. Making bigger and bigger sacrifices will not make you more productive. What makes you more productive is discerning how to make **the best choices in the best ways**.

As Charles puts it, "How you see yourself and frame daily decisions; the stories we tell ourselves and the easy goals we ignore; the sense of community we build among teammates; the creative cultures we establish as leaders: These are the things that separate what decisions you make daily, how you see your team, how you attack or ignore simple goals, how you lead; these are the things that separate the merely busy from the genuinely productive."

The book keys in on eight ideas that when connected, help to underline the principle ideal:



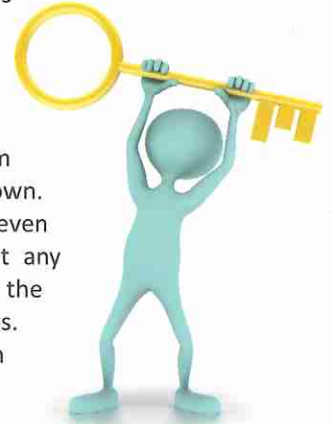
Here is a **BREAKDOWN** of the **8 KEYS**:

1. **MOTIVATION**: GIVE YOURSELF A SENSE OF CONTROL AND TURN CHORES INTO CHOICES

Charles explains that the best way to increase your motivation for anything is to always make the choice that puts you in control. This will help you turn chores into choices. When you attach something you care about to your tasks, you will always find it easier to start and actually complete the task.

2. **TEAMS**: MANAGE THE HOW OF THE TEAM, NOT THE WHO

To help create more productive teams you must create a safe space where team members can speak their minds. Equality is essential. Encourage your teams to speak up and to encourage each other. A team really doesn't take much to tear down. A bully here, a gossip there, or even too little encouragement will defeat any structure. Be sure to stay aware of the underlying dynamics of your teams. The power lies in how your team operates, not who is on the team.



3. **FOCUS**: CREATE MENTAL MODELS THAT PUT YOU IN CHARGE

An interesting way to help enhance your focus is to build a mental model of what you expect to see within any given situation or goal. If you can tell yourself a story regarding your goal and then imagine what will happen, you will sharpen your focus. This will allow you to handle the important items first instead of being overwhelmed with ALL of the information surrounding the situation or goal you are experiencing.

4. **GOAL SETTING**: COMBINE SMART GOALS AND STRETCH GOALS

SMART (Specific, Measurable, Achievable, Realistic, and Timeline) goals are great for short term thinking. If you have a huge goal in mind (Stretch Goal); break up this large, seemingly unattainable goal, into smaller SMART goals. You will find it much easier to reach the end goal. Like the old saying goes, "How do you eat an elephant? One bite at a time."

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Think You Need A Brochure? Well Maybe Not!



When it comes to marketing themselves, many attorneys assume they need a brochure. They may be right or not - let's see. You may be a solo attorney or small firm that wonders if they need a brochure. The elegant answer is "it depends". Well great Sarah, what does it depend on? In deciding if you need a brochure or not I would look at the following issues:

1. Who is your audience, market, or practice areas and if you had a brochure would it help your prospective client to make a positive decision about hiring you? Is it expected in your practice area or market? If the answer is no, then you may not need a brochure. I would not create a brochure just because you think everyone should have one or most of your competitors have one. If most of your competitors do have one then how are they using them? If it looks like that helps "seal the deal" for them then perhaps you do need a brochure for your marketing.
2. Does it make you feel more comfortable having a brochure? If yes, maybe you need a brochure. There is something to be said for you feeling comfortable. If handing over a "leave behind" when you visit a potential referral source in the form of a brochure makes you feel better with marketing or having brochures in strategic places in your office makes you feel comfortable then maybe you should have a brochure. You will be more confident if you have it and thus create more business as a result.
3. Would you do better to put your marketing time, energy and dollars into producing "white papers" on several subjects that have "real meat" in them as well as really pull the interest of your prospective client into the paper and thus be a better vehicle than a brochure?



Can you use these vehicles as "leave behinds" with potential referral sources? Can you give them to prospective clients or give them away at speaking events? This is often a much better strategy, especially if you have more than one practice area. Additionally, these white papers can be turned into high quality PDF files and thus you can email them or they can be offered on your website to visitors for download.

4. Speaking of cost, what is it going to cost you to create a brochure? Brochures can cost from a few hundred dollars up to several thousand dollars or more to produce? How sure are you that you will have a return on your investment on a scale of 1 to 10?

*"What Gets Measured,
Gets Improved"*

- Peter Drucker

5. Now this next question may be a little forward to you, so forgive me. Are you trying to solve or avoid your legal marketing fears and challenges through creating a brochure? You may be saying to yourself, "at least I am doing something." You see, a brochure needs to be a part of an overall marketing plan that is informed by the right marketing knowledge and a brochure in itself rarely gets you new business. There are plenty of things you can do to market yourself first that will produce more business than what creating a brochure will do for you.
6. If you do create the brochures will they be stuck away in the closet or will they motivate you to get into action on other "fronts" in marketing?

If creating a brochure will motivate you to get into action then maybe you should have brochures! ☺

5. MANAGING OTHERS: PUSH DECISION MAKING TO THE CLOSEST PERSON

Employees and Teams always work better if they believe that their work and opinions are valued. Give them decision making authority and watch how committed they become to the goals of the team. Find the person closest to the problem... at hand and push the decision making to them. When colleagues are committed to success together the end result is much more dynamic.

6. DECISION MAKING: ENVISION MULTIPLE OUTCOMES & EXPECT THE MOST LIKELY

One of the keys to better decision making is to learn to think about probabilities. Contemplate the various outcomes of a problem and then figure out which one is the most likely to happen. This skill becomes easier once you begin to hone your intuition through successes and failures.

7. INNOVATION: COMBINE OLD IDEAS IN NEW AND BETTER WAYS

When you think creatively, you tend to combine new and old ideas into a new setting. Always think of yourself as an "idea broker". Pay attention to your feelings, your gut, and even creative desperation. We all know that some of our best work has been born of a late night or a short deadline. Use these experiences to your advantage when looking for alternatives.

8. ABSORBING DATA: FORCE YOURSELF TO INTERACT WITH NEW DATA

One of the best ways to absorb anything new is to think of a way to use what you have learned. Do something with it. Write it down. Try it out as soon as possible. Run an experiment. Explain it to a colleague. By interacting with new data, you turn that information into knowledge.

If you have time, you should give Charles Duhigg's "Smarter Faster, Better; The Secrets of Being Productive in Life and Business" a read, it will help change the way you tackle your goals and help keep you focused and brilliant! ☺



Be aware that Defendants often embark on a "fishing expedition" for information found on your clients' social media accounts, and you need to know how to guard against it. Penn condenses that Defendants' discovery requests for access to your clients' social media postings is tantamount to a request for everything your client said in writing on the site since your client activated his account. Essentially, this amounts to speculation, a potential violation of privacy interests, and begs the question of relevance to the court.

For attorneys, this new age of online social research opens doors to evaluate members participating in our trials. When it comes to Jury Selection, social networking sites can give you insight into these citizens' clubs, political affiliations, photos, books, movies, selected information and other tips that may aid you in reading

their preferences. The same can be said to gaining an understanding of even your opposing counsel or defendant. Use this information for your benefit, the other side surely will be taking advantage!

Ultimately, it is important to know your boundaries with social networking and inform your clients of these potential hazards. With this new age of instant access to information, know how public information can be used to you and your client's advantage! ☺



Lawyers Need a Laugh – Steven Wright

1. It's a small world, but I wouldn't want to paint it.
2. I almost broke both my arms trying to hold open a revolving door for a woman.

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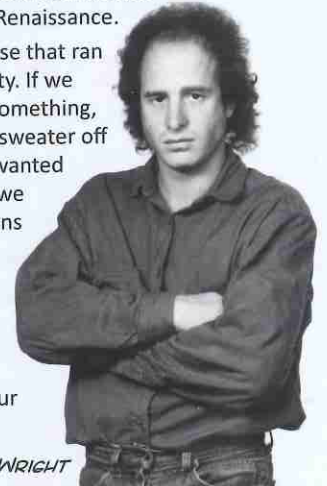
"What do you mean we don't do anything together? I always let you click 'select' during my fantasy drafts."

3. I got a new dog. He's a paranoid retriever. He brings back everything because he's not sure what I threw him.
4. Every morning I get up and make instant coffee and I drink it so I have the energy to make real coffee.

5. Woke up this morning and folded my bed back into a couch. Almost broke both my arms cause it's not that kind of bed.
6. I'm going to get a tattoo over my whole body of me but taller.
7. I went to a tourist information booth and said "tell me about some people who were here last year."
8. I've been getting into astronomy so I installed a skylight. The people who live above me are furious.
9. Why is it a 'penny for your thoughts' but you have to put your two cents in? Somebody's making a penny.
10. I broke a mirror in my house and I'm supposed to get seven years bad luck, but my lawyer thinks he can get me five.
11. When I get real real bored I like to drive downtown and get a great parking spot then sit in my car and count how many people ask me if I'm leaving.
12. I spilled spot remover on my dog and now he's gone.
13. I'm writing a book. I have the page numbers done; now I just have to fill in the rest.
14. When we were driving over the border back into the United States, they asked

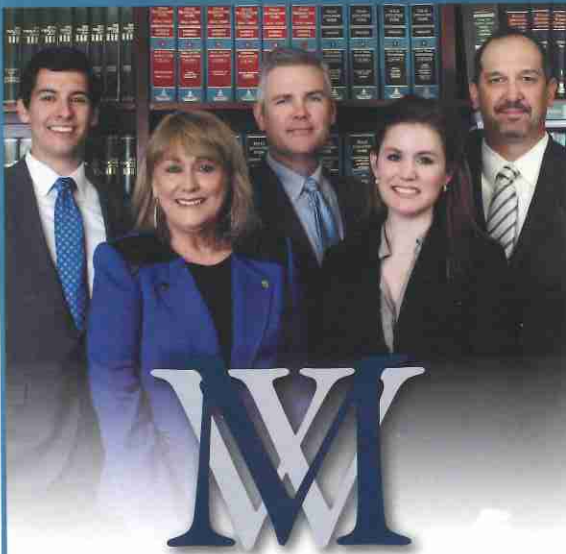
me if I had any firearms. I said what do you need?

15. I've written several children's books ... Not on purpose.
16. I called the wrong number today. I said "Hello, is Joey there?" A woman answered and she said "yes he is." And I said 'can I speak to him please?' She said 'no, he can't talk right now, he's only two months old.' I said "alright, I'll wait."
17. I went to a place to eat. It said "breakfast at any time." So I ordered French Toast during the Renaissance.
18. We lived in a house that ran on static electricity. If we wanted to cook something, we had to take a sweater off real quick. If we wanted to run a blender we had to rub balloons on our heads.
19. I stayed up one night playing poker with Tarot cards. I got a full house and four people died. 😊



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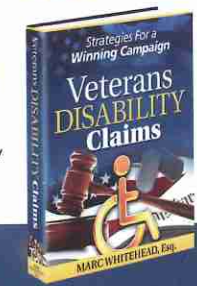
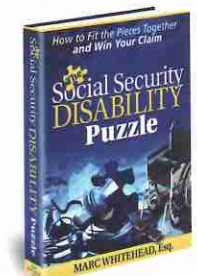
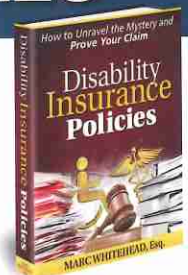
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