Five Tips on How to Nail the Big Job Interview

Alexander T. MacDonald

So you landed the big interview. Things are looking good. Your prospective employer has seen your credentials, reviewed your writing sample, and chosen you out of a stack of applicants. You’re clearly a good fit for the job. Now, all you have to do is show up, avoid drooling on the interviewer’s desk, and prove you’ve got a pulse, right? Wrong.

There may have been a time when job interviews were perfunctory; merely a check to see whether the candidate had horns. But that time—if it ever existed—is gone. In today’s brutally competitive legal job market, employers have their pick among armies of qualified job applicants. Candidates, therefore, must set themselves apart. That means nailing the job interview. But how do you do that? These five tips will help.

1. Do your homework.

Going into an interview, you never know what will pique the interviewers’ interest. Be ready to talk about anything. This means doing some research. Start by learning everything you can about the employer. First, check out its website, then move to news articles and social media. If you know someone who works there, get the inside scoop. If you know who your interviewers will be, research them too. Find out where they went to school, where they’ve worked before, and whether any of their projects have been in the news. Even if you don’t learn anything worth mentioning in the interview, you’ll get a better picture of the interviewers themselves. And that will give you an idea about what they’re looking for in a candidate. Remember, your goal is to vacuum up as much information as possible. You never know what small piece of trivia will prove useful. You also need to research yourself. Run your name through Google; your interviewers almost certainly will. You need to know what they’re going to see. If anything needs explaining, prepare to explain it.

Go back over your résumé—carefully. You could get a question about anything you’ve listed, so prepare to talk about each item in detail, whether it’s your time on law review or your volunteer work with disabled homeless kittens.

2. Be positive.

Employers hire people they want to work with, and they want to work with positive people. That’s the image you need to project—energetic, friendly, and relentlessly positive.

The interview is not the time for balance, nuance, or shades of gray. You have a limited time to leave an impression, so make sure it’s a good one. Be positive, be confident, and be ready to talk about your strengths and achievements. Employers want to hire people who will be a positive addition to their team. Make sure you come across as someone who will be a positive addition to their team.

How to Evaluate Small-Firm Job Offers

Joshua J. Coe

Congratulations—you made it through seven years of education, two and a half months of zero life studying for a Bar exam and nearly four months of waiting for Bar results. Your name was on the “pass” list and now it’s time to get that first law job.

The great news is you are a lawyer, and you should never lose sight of this huge accomplishment. However, it’s no secret that recent law grads are struggling in the difficult job market.

Entrants to law school in 2010, the year law school enrollment peaked before its recent decline, is called the “lost lawyer generation” because such a high percentage have still never obtained legal jobs. Nevertheless, according to the Robert Half Legal Salary Guide, hiring in the legal market is picking up and law job salaries are on the rise.

Still, the “big firm” jobs are few and far between and many of you are probably looking to joining a “small” firm (defined as 1-to-10 attorneys).
impression with the interviewers, and you don't want that impression to be tainted by doubt, regret, or negativity. This rule holds true no matter what the interviewers ask you. They might actually try to lure you into giving a negative answer (“What was your least favorite class in law school?”). Don’t take the bait. Instead, answer the question, but find a way to turn a negative into a positive (e.g., “I was disappointed in Constitutional Law. I’m really into Commerce Clause jurisprudence, but we only spent two weeks on it!”).

The interview exists for one purpose and one purpose only—prove to the interviewers that you’re worth hiring.

In this way, the interview is like a product sales pitch, except that the product you’re selling is you. That’s true of any job interview, but it’s especially true of law-job interviews.

No matter where you’re interviewing, part of your job as a lawyer will be advocating for a client. If you struggle to advocate for yourself, the interviewers may see you as a weak candidate. That means you’ve got to make a case for yourself. At every opportunity, highlight your strongest traits. Tell the interviewers why you’re perfect for the position. Don’t hold back: if you don’t sell yourself, no one will.

A word of caution: you can take this advice too far. There’s a fine line between confidence and arrogance. Giving a good interview means knowing where that line is and walking right up to it.

Of all the things to get right on interview day, this one is the easiest.

That also makes it the least excusable to get wrong. The rules are simple:

Guys: dark suit, white shirt, conservative tie, and polished shoes.

Gals: business suit, work-appropriate blouses, and shoes with moderately sized heels.

Your guiding principles (at least for your wardrobe) should be neutral and professional. The one thing you don’t want the interviewers focusing on is your clothes.

5. Ask the right questions.
Most people think about the interview exclusively from their own perspective. So when it comes time to ask questions, they make the mistake of asking me-centered questions:

What are the hours?
What is the salary?
How are the benefits?
Is there a dress code?
Does the employer allow telecommuting?
That’s wrong.

The interview isn’t about you—it’s about the interviewers. You want to convince them that you’re going to contribute something to their organization. Frame your questions around their needs, not your own. Instead of asking about job perks, ask about the organization’s needs. What does the organization look for in a candidate? What skills does it value? What’s driving its hiring decision? What kind of candidate is typically successful in the organization?

By asking interviewer-centered questions, instead of you-centered questions, you’ll show the interviewers that you’re interested in helping them meet their goals—not just on how many hours you’ll work and how big your paycheck will be. Those things are important, and you should ask about them, but only after you’ve received an offer. In the interview, your only goal is to get that offer.

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No matter where you’re interviewing, part of your job as a lawyer will be advocating for a client.
or even hanging your own shingle. This article is dedicated to those newly licensed attorneys evaluating the “small firm” gig. For those that land the “big firm” gig and get tired of your six-figure salary, 19-hour days (seven days a week), and the ever-demanding partner track, please keep reading for future guidance.

In reality, many small firms generally do not have the resources to offer a new associate a full salary and benefits, nor do they want to assume the financial risk. Instead, many firms have started to get creative with first-year hires often expecting them to bring in clients and basing all, or a portion, of their pay on the amount of new work they bring to the firm. In essence, the first-year lawyer at a smaller firm may be expected to enter the firm under a compensation package tied to their performance in bringing new clients and generating business right away. This may seem daunting at first, but being thrown into the proverbial deep end can actually be a great blessing in disguise by forcing you to hone your legal and social skills and giving you opportunities to build your own book of business.

However, the fact remains that evaluating a small law firm job offer can be difficult since the data is sparse and more sporadic as compared to big firms that have their compensation structures discussed ad nauseum on Above The Law and other legal web sites. When evaluating the compensation at smaller firms, here are a few points to consider:

**BE REALISTIC.**

No one knows you better than you. The truth is some of us are great at turning strangers into old friends, and some of us would rather write federal briefs for hours with zero social interaction. Whether you are evaluating going solo or a small firm, you will need to have the ability to obtain new clients. Depending on the compensation package, this may need to happen sooner than later. Consider your monthly expenditures and resources to determine if you can weather the initial few months of zero-to-minimal clients. It will take time to build your reputation and market yourself. With this in mind, try to negotiate an initial period of a higher base salary or a draw against future commissions to build a client base. Also, be willing to recognize a possible practice area you can build within the firm that other attorneys in the firm aren’t doing.

If you think you might struggle at making connections and marketing, you may want to consider working for the government. There are many opportunities with government employment like being a public defender, Assistant Commonwealth Attorney, city attorney or many other government positions. The upside is job security, benefits, zero pressure to bring in new business, excellent legal training opportunities, and generally, fewer hours working once you figure out what you are doing. The downside is government jobs are very competitive to obtain and there is a ceiling to your earnings. Over time your income as a government employee will likely be much less than what you could eventually earn by building your own book of business in private practice.

**GET DETAILS.**

The excitement of landing your first legal job can overshadow the necessary details of your new employment arrangement. Some of these details are as follows: does your employer cover your bar dues, does it pay for CLEs, how much vacation time is there, is there health insurance, what is the amount of legal malpractice coverage, what is its ability to pay the costs associated with litigation cases, what is the expectation of work hours (no matter what you do, be prepared to work at least 60+ hours a week), what is the support staff situation (are you going to have to be the paralegal, receptionist, and IT wizard too), and who pays for employment related travel expenses and cell phones. There is a lot to think about.

Perhaps the biggest thing eager new lawyers forget to do is research the reputation of the firm or attorney they about to hang their license with. If you have connections with veteran attorneys in the same geographical area of the employment prospect, take them out for a cup of java to inquire about the potential employer and pray they will shoot you straight. At the very least, check the bar records to see what, if any, disciplinary actions were taken against the attorneys in the firm.

**GET OUT THERE.**

If you do start your own practice, or accept a job where it is critical to generate new business right away, here are some things you can do to help build your book of business:

- Get out there and meet people. A smile, handshake and an ability to listen to people can open incredible business opportunities. Get involved with local organizations – both legal and non-legal organizations.
- Make sure you get a ‘profile’ page on your firm’s web site that features your picture and practice areas, along with a way to contact you directly.
- Seek co-counsel opportunities, especially if you opt to start a solo practice.

It’s vital to seek the support of more experienced attorneys, and you may need to have the resources of a larger firm. For example, in the personal-injury arena, if you have a case that requires serious investigation and expert witnesses, the up-front, out-of-pocket costs can be quite high. Many solos and small firms don’t have the resources for these cases. But many established firms, including my own firm, invite arrangements with other lawyers—you refer the client, and they bring their firm’s expertise, financial resources, and ability to properly work the case. The outcome usually is a better result for your
The call comes in late one afternoon: you’ve been asked to handle an appeal before the U.S. Court of Appeals for the Fourth Circuit. Exciting news; but also news carrying serious responsibility. This is particularly true for the Fourth Circuit, where many cases are decided without argument. Much of the immense responsibility comes at the briefing stage. By following a few simple guidelines, you should be able to declare your first appeal a success.

ALWAYS MAINTAIN YOUR CREDIBILITY.

Your first appeal is also your first chance to build a professional reputation before the court. Make your credibility priority one. Some steps are obvious—you should always find record citations to support your factual assertions, find legal authorities to support your legal arguments, and correctly characterize those sources when using them. You must tackle adverse authority—or a particularly compelling argument—head-on. You must also be honest in describing the decision under review.

But beyond these basics, consider other steps. Among other things, try avoiding adverbs (especially those like “clearly”). Adverbs have a tendency to oversell. If a judge then finds a flaw in your “clearly” correct argument, he might discount everything else you say. Also, except in a truly remarkable case, stay away from any argument that approaches a personal attack on an opposing party or—worse—a lower court.

KEEP IT SIMPLE—AND SHORT.

Some attorneys seem to treat word counts as challenges to write as many words as possible without going over. You’ll set yourself apart in your first appeal if you show that you can write concisely. Be judicious in selecting which arguments you wish to appeal. Except in a uniquely complicated case (perhaps one involving high stakes and a jury verdict), judges will cast a skeptical eye toward a brief with more than three basic issues. Then, when making those arguments, be equally careful. Avoid needless facts; a complete story is nice, but loading down judges with facts is not. Extraneous dates, for example, can distract the reader and make writing heavy.

When making legal arguments, string cites and exhaustive recitations of the law—especially on well-understood matters such as the standard of review—will earn you no friends at the court.

USE NATURAL LANGUAGE.

When it comes to language and tone, an effective brief will come closer to a well-researched newspaper story than a law review article. Short sentences and simple words should be your tools of choice. In contrast, avoid unnecessary Latin terms, antiquated words (such as “heretofore,” “aforementioned,” and “hereinafter”), and excessive passive voice. Judges don’t appreciate an
abundance of acronyms either; one federal appellate judge even said that overusing acronyms is “a marker, dividing the better lawyers from the rest.” Try to focus less on abstract concepts paired with staid “be” verbs. Rather than keeping it boring, seek out engaging verbs and write about the actors involved in your case—be they courts, the parties, or otherwise. Don’t over-define. If your client is Appellant Chad Smith, and he’s the only Smith involved in the appeal, there’s simply no need for you to insert (“Smith”) after the first use of his name. While you’re at it, call him “Smith” or “Mr. Smith,” not “Appellant.”

MAKE GOOD USE OF IMPORTANT REAL ESTATE IN THE BRIEF.

Whether out of a misguided sense of tradition or something else, some of the best appellate lawyers fail to use valuable parts of their brief effectively. There’s no need, for instance, to open a brief explaining that “Appellant Chad Smith appeals from a decision of the U.S. District Court for ...” and so on. Yes, the Court needs to know what you’re appealing, but that can be done while telling your story in a clearer, more persuasive way (if you’re not sure how to do this, consult appellate briefs written by better appellate lawyers, such as Paul Clement, Ted Olson, or Tom Goldstein).

In much the same way, don’t waste your last opportunity to talk to the Court (i.e., the conclusion). Too many lawyers end by saying the Court should do “x” or “y” for “the foregoing reasons.” Give the Court one last thing to think about. When writing guidepost portions of your brief—such as the summary of the argument and the headings throughout—think about the language and whether it is advancing your appeal. A bare heading that says “Standard of Review,” for example, won’t help you win.

UNDERSTAND THE RELEVANT STANDARDS OF REVIEW.

Speaking of standard of review, keep in mind that the standard decides appeals in a surprising number of cases. If you’re representing the appellant, understand that an abuse-of-discretion standard will present a formidable obstacle to any reversal. So does clear error. A plain-error standard presents an even greater problem for the appellant. At least in the Fourth Circuit, an argument in a civil case that was not raised below can only be reviewed for “fundamental error,” perhaps the most difficult standard to meet.

As an appellant, don’t just consider these standards in drafting your argument—consider them in deciding which arguments you wish to raise in the first place. On the other hand, if you’re the appellee, these standards should constitute key parts of your argument. Refer to them in the question presented and then employ them aggressively throughout the brief. Gird yourself for a real fight if the standard of review is de novo (or better yet, find a reason to convince the court that it’s not de novo review).

NEATNESS COUNTS.

Looks matter, so make sure your brief looks great. After reviewing the Court’s rules, consult a reference, such as Matthew Butterick’s *Typography for Lawyers*, for help in choosing fonts and formats that make for a more attractive brief. Typos and improper citation format cannot be tolerated, so ask someone else to put eyes on your brief before it goes out. If your budget will allow it, use a professional printing service to ensure that the final product reflects the hard work that went into it.

KNOW THE RULES.

This last tip is one of the most important—you must know the rules. Deadlines, page limits, forms, and brief formatting can be daunting to a novice lawyer. Review the Local Rules before ever putting fingers to keyboard. If questions arise, contact the Clerk’s office. They’ll often have great advice. Don’t allow your appeal to falter due to a basic, preventable error(s).

Your first appeal might be challenging, but—with a little work—you’ll also find it deeply satisfying. A carefully crafted brief is perhaps the best way to get the right result for your client, and it will serve as a great start to what could very well be a long career before the Court.

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Get social. Connect online with the YLC.
Suit Up—The 2016 YLC Bench Bar Dinner is Taking Place in March

Patrick J. Austin

Each year, the Young Lawyers Conference (YLC) hosts a dinner to honor newly elevated women and minority judges from across the Commonwealth. It is a chance for members of the judiciary to meet and mingle with practitioners; hence, the “Bench Bar” dinner. This event affords a rare opportunity for attorneys to interact with judges in a casual, relaxed atmosphere. The dinner is scheduled for March 23, 2016, and will take place at the Jepson Alumni Center at the University of Richmond.

Melissa York, an Associate with Harman Claytor, and Nerissa Rouzer, an Assistant Attorney General with the Office of the Attorney General, were the YLC members tasked with organizing this prestigious event. I spoke with them about the dinner and why you should make plans to attend.

Q: Tell me about the upcoming Bench Bar dinner in March. Do you have a particular theme or prominent speaker attending the event?

A: We are delighted to have the Honorable M. Hannah Lauck as our keynote speaker this year.

Q: How many attorneys and judges, in general, attend the Bench Bar dinner?

A: The event has sold out for the past two years. Last year, approximately 185 people were in attendance. We are thrilled that so many attorneys and judges look forward to this event each year.

Q: Do prospective attendees need to register to attend the event?

A: Attendees must register to attend the event. When we begin publicizing the event, we will include an RSVP deadline. This is important, as we must provide a head count to the venue. We encourage people to register early, as the event has sold out for the past two years.

Q: What challenges have you faced in organizing this event?

A: The challenging aspect of organizing this event has been managing the registration. Catherine Huband and Maureen Stengel with the Virginia State Bar do a fantastic job of keeping us organized, but there are always last-minute registrants, checks delayed in the mail, etc. We want all who are interested to be able to attend, but we are limited by venue capacity for a seated dinner and appropriate presentation space.

Q: Why do you think it is important for young Virginia attorneys to attend the Bench Bar dinner?

A: This is a great opportunity for attorneys to network and socialize, not only with other attorneys, but with judges as well. This event is generally very well attended by the judiciary, with many Supreme Court justices, Court of Appeals judges, circuit court judges, and general district court judges attending. Young attorneys do not have many opportunities to interact with judges in an informal setting, and the Bench Bar Dinner provides this opportunity. The dinner also gives us a wonderful opportunity to celebrate the diversity that exists within our bar.

Q: How many newly appointed judges do you anticipate will be at the event?

A: At this point, we have twenty-two honorees, and we hope that they will all be able to attend. We recognize newly appointed and elevated members of the judiciary, so some of our honorees are already seasoned judges who have been elevated to a different court.

Q: How would you describe the relationship between the Virginia Bar and members of the judiciary today?

A: Based on our experience, there is a very good relationship between the attorney members of the Bar and members of the judiciary. We have always received a very positive response when reaching out to members of the judiciary to speak at the event or to attend.

Q: How has volunteering with the YLC benefitted you or offered opportunities you were not expecting?

A: Volunteering with the YLC has provided many opportunities to network with attorneys and judges. We have met many wonderful attorneys who have volunteered to assist with the Bench Bar Dinner, attended the dinner, or been honored at the celebration.

Q: How can fellow young Virginia attorneys get involved in helping with the Bench Bar dinner?

A: We are always looking for volunteers to assist with publicizing the event in their community and to help with some of the logistics. E-mail us!

Q: Is the event usually held in Richmond, or does the location change each year?

A: This event is held in Richmond every year. In the past, it was held at the Bull and Bear Club. This will be the second year that the event is held at the Jepson Alumni Center at the University of Richmond.

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Take Time to Reflect & Think About the Bigger Picture
Nathan J. Olson

As lawyers, we often get busy with work, family, and friends, and lose sight of goals that we want to accomplish. Young lawyers are unique in that we go through a tremendous amount of transition for the first five-to-seven years out of law school. We make career advancements and changes; we start families and begin providing for those families; we volunteer; travel, socialize, and try to maintain our youthful appearance while fighting time and stress along the way. I believe that it is important for us to take time during the year to take a step back and think about where we are, both personally and professionally, and to make short-term goals and reassess long-term plans.

For the past several years, I made it a point to schedule these periods of reflection about four times a year, generally as the seasons change. For some reason, transitioning into a new season is a natural time for me to reflect. After the holidays, I think about the past year and try to make an overall goal for the upcoming year. Sometimes, the goal is very specific, such as to complete a triathlon or to generate more business than I did last year. Other years, the goal is broader and undefined. For example, last year, one of the partners at my firm asked us to pick one word that we thought would define our 2015. I picked “control,” and so I focused my 2015 goal on that word. I then set smaller goals throughout the year in hopes of staying on track.

At the end of the first quarter, I think about whether I am meeting my short-term goals. If so, I try to focus on what I did right and make it a point to keep doing so. If not, I ask myself where I fell short, and, more importantly, I try to seek advice from others. This not only gives me helpful hints as to what wasn’t successful but also makes me feel more accountable to follow through. Midway through the year, I make decisions about whether I am on track or whether, given unforeseen circumstances, I need to modify my overall goal(s). I’ve found that it is better to scale back your original goal and still follow through than it is to keep an unrealistic goal and use the excuse of impossibility as a reason to give up. In the last quarter, I really try to push myself to follow through.

I encourage you to try this method, especially if 2015 left you unsatisfied. For instance, if your goal is career advancement, try to set a specific goal such as obtaining senior associate or partner status, getting a promotion, or simply getting a substantial raise.

In the first quarter, you should gather information: take your boss out to lunch, talk with senior associates at your firm and mentors or other professionals in your field. Try to get a sense of what specific steps you can take or what criteria you might need to meet to reach your goal. After that, make small goals for yourself in the next quarter that are in line with these criteria.

At the beginning of the summer, evaluate your progress and whether you are on track or whether you need to reassess. For instance, if your goal is partnership and your boss tells you that you are still several years out, or you get the feeling that it is not in the cards, you can either change your goal to a substantial raise/bonus or you can focus on changing firms to one that more appreciates your talents.

In the third quarter, seek out the same folks you spoke with at the beginning of year to get feedback and tips. Continue to follow their advice. As autumn rolls in, focus on self-promotion, and as the year comes to a close, highlight your success to those in charge.

I found that bosses oftentimes look most closely at your last three-to-four months of work when evaluating your progress. You need to be proactive and remind them of that awesome win you had at trial in February, the settlement you negotiated in March, and/or that fantastic legal brief you wrote in April. Be your own best advocate.

If you want to define your year by a word or theme instead, your focus should be on making and reaching several short-term goals that are in-line with your theme. Try to make two or three smaller goals each quarter. Then, as the seasons change, set new goals or expand on goals you’ve already met. Involve others in some of these goals to keep you motivated and accountable.

I hope this article has given you a blueprint to stay on track or at least provided you some food for thought as we progress through a new year. Whether you take my advice or not, or whether you even need it, I wish all of our young lawyers a happy new year and many successes in 2016.
Some lawyers are content to practice by day and relax by night. Not R.N. (Rick) Shapiro. He is a partner at a busy, thriving law firm in Virginia Beach, a prolific inventor holding 18 U.S. patents, a husband, a father, and most recently, a published author.

Rick authored a fiction thriller titled *Taming the Telomeres*. Telomeres are the protective tip of the human chromosome and are involved in cell division, and the aging of all our cells. What prompted Rick to sit down and engage in the arduous task of writing a full-length fiction novel dealing with biology, national security, and the law? Let’s find out...

**Q:** What inspired you to begin writing a novel?

**A:** It was on my bucket list to write a fiction thriller. I co-authored a treatise on railroad injury law. I then wrote a non-fiction book entitled *Faceplant*. Nevertheless, I had no idea how much harder it was to write a fiction thriller because every aspect and every character has to be created from whole cloth. However, I really enjoyed the creative process, and I know a thing or two about that from inventing, designing, and developing consumer products.

**Q:** What have you invented?

**A:** My design company Pancake Wheel LLC has focused exclusively in one area of patent art relating to folding wheels and folding wheel axles, and I now hold 18 United States patents. All of my inventions fold and collapse flat; I’ve licensed a folding-handle design to Radio Flyer wagons, and I just recently co-developed a state-of-the-art folding baby stroller for a European brand called “Nikimotion” that is being introduced in Europe during 2016.

**Q:** Back to your novel, what influences led to the storyline behind Taming the Telomeres?

**A:** I worked on Capitol Hill before law school, and I clerked for a federal judge after completing law school, so I sprinkled Washington D.C. and Capitol Hill in the storyline. One of the main characters is an attorney named Andy Michaels. He works at a boutique law firm in Georgetown. Having clerked for a judge, I wanted to explore the human side of judges and included what happens behind the scenes for a D.C. Superior Court judge as well as for a judge on the top-secret Foreign Intelligence Surveillance Act Court. These judges face some ethical and moral dilemmas in the book as well.

**Q:** How has the book been received by critics and readers?

**A:** The large majority of the reviews on Amazon are between four and five stars, and that’s after more than 50,000 downloads, so I couldn’t be happier with the response from readers.

**Q:** How did you effectively balance practicing law full-time and writing the book?

**A:** You have to be very good at compartmentalizing your time. I would typically write in the evenings at home and then on weekends, but for many months I toyed with the overall outline and storyboard of the book before I started writing. Everyone has a different schedule, but being organized is super important.

**Q:** Did you draw on your own career as an attorney to dream up those ethical dilemmas he faces?

**A:** You take a little bit of something here and there, but Andy Michaels faces much bigger issues than I ever have faced, such as the interjection of national security during his representation of victim’s families after a commuter jet crash. I don’t want to spoil anything for potential readers, but the intersection...
of terrorism and national security, biological secrets the government is developing, and how they impact Andy Michaels as a trial attorney is central to the plot because Michaels ends up representing several of his own family members, along with other clients.

Q: I understand you traveled to Miami recently to accept the Gold Award for top thriller in the 2015 Readers Favorite International Book Award Contest for Taming the Telomeres. How did that go?

A: The event was incredible. It included insider lectures and an awards ceremony. I met some very interesting authors, both from the United States and abroad. We exchanged tips and ideas on everything from software for authors to ideas for promoting our novels. In a bit of irony, the silver-medal winner in my category turned out to be a judge from the West Coast who writes under the pen name Garrett Holms.

Q: What advice would you give to an attorney who may secretly hold aspirations to be a published author?

A: As attorneys, we already have something going for us because most of us should be decent at formal writing. The problem is you have to really forget most of what you learned as an attorney and return to a simple and direct writing style. One of my reviewers said that I write for the proletariat, which I took as a huge compliment because I’m trying to write at a very basic level to appeal to the broadest spectrum of readers possible (not like when writing a legal brief). There are many books outlining the most common story structures for successful novels. Any aspiring author, including an attorney, should review at least one of these articles or books before setting off to write the next great novel.

Learn more about Taming the Telomeres at Amazon. To learn more about Rick, visit his author site: rnshapiro.com.

Patrick J. Austin is a 2013 graduate of George Mason University School of Law. He now works in the Office of Information Policy with the U.S. Department of Justice and is Editor-in-Chief of the Docket Call.

Note: In the interest of full disclosure, Patrick practiced law with Rick prior to joining the U.S. Department of Justice.

Anti-Forensics and How Computer Time Lies

Scott A Nerlino

Anti-Forensics is the field of computer use designed to frustrate or negate the process of digital forensics. More and more evidence is being stored in a digital fashion, which makes authentication an issue. Where handwritten signatures can identify original documents, digital files are not as easily identified.

There are a number of ways to forge and manipulate digital files, and I will provide a short overview of these methods.

I will then discuss the easiest type of file manipulation: the manipulation of a file’s timestamp.

KEY TAKEAWAYS

1) Digital Forensics can be manipulated and should not be trusted unless analysis is performed.

2) Timestamps can be very easily manipulated and should not ever be trusted unless externally corroborated.

DIGITAL FORENSICS

Digital forensics, as a profession, is still in its infancy. In the last 20 years, numerous strides have been made in improving the detection of malware, file manipulation, and other digital actions that are rapidly advancing the field. However, the development of the field will take years to reach the same level of maturity and acceptance as chemical forensics. Although the field is young, there are still a number of useful tools available to a digital forensic examiner.

These tools allow examiners to search for a number of potentially relevant digital artifacts in their investigations. Such a search can include the detecting deletion/removal of incriminating files; discovering the manipulation of date and time stamps; locating hidden parts of hard drives; finding inconsistent encryption; finding malware and determining if malware is performing illegal actions; and other means of finding and tracing both a user’s local and network activity. This can be done on hard drives, USB drives, DVD drives and other removable media. It can also determine what software is running in RAM on a powered-up computer.

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ANTI-FORENSICS

As there are with traditional forensics, there are a number of means designed to frustrate digital forensics; this is called anti-forensics. The primary purpose of this field is to remove, obfuscate, or manipulate digital data in order to prevent investigations. Each of these categories can do damage to the evidence chain, and each has a different purpose.

Data removal is the most obvious type of anti-forensics. It occurs when a user deletes the data from the computer. However, deleting a file in Windows or OSX is not the end of the story. In most cases, the operating system has moved the file to several places on hard drive in order to optimize access speeds. The result is that the file may still be on the hard drive, but not linked by the operating system. Tools that search the hard drive independently can be used to locate these files.

File obfuscation can take several forms, but is primarily a means of hiding data. Largely, these techniques can be thought of as digital analogs to what you see in a spy movie.

One method of file obfuscation is making files hidden to the user. Moving files into system directories that are not normally viewed or clicking the hidden file option within a file’s properties window can do this. Think of this as a hidden safe within a room that contains the files.

Another method of file obfuscation is file encryption. Encryption is the process of scrambling the individual bytes that make up a file in such a way that they cannot be read by standard programs. When the file is accessed, the program accessing it knows how to decrypt the bytes and then can read the file as it was originally created. Think of this like a secret message that only the spy can decode.

A third method of file obfuscation is called steganography, which is the process of hiding information within another file in an attempt to hide the data in plain sight. Files themselves can contain a substantial amount of information that can be replaced or can be extended to create space for new, unrelated data. Think of this as being like a letter containing a secret message that can be decoded by reading every third letter.

Additional methods of file obfuscation include storing files in memory, in hard drive slack space, in hard drive bad blocks, in alternate data streams, or in hidden partitions.

File manipulation is the process of leaving files in plain sight but modifying their attributes. Files can contain substantial metadata, including the timestamp, which can be edited to make the file appear to be something it is not.

WHAT ARE TIME STAMPS?

Simply put, all timestamps are data stored with the file. It is stored as a series of bytes, just like all other data in the file. There are four main timestamps in modern file systems; these are the modify time, abbreviated M, access time, abbreviated A, change time, abbreviated C, and creation time, abbreviated cr or b. Combined, they are called the MAC time. NTFS file systems, seen in Windows environments, can contain an additional four time stamps which overlap the domains above but are updated in different circumstances.

HOW TIME STAMPS CAN BE MANIPULATED

Due to the different ways in which Windows, Linux, and Mac write timestamps to files, there are issues when transferring files between operating systems. For example, while Linux uses UTC time to store timestamps, Windows will use local time, which factors in daylight savings time.

Other than the possible 12-hour offset described when files are used across multiple operating systems, there are other ways that timestamps can be inaccurate. This can happen when the system is modified and writes an inaccurate timestamp or by using software to directly modify the file’s timestamp.

The first option can be done very simply. Unless there is a group policy prohibiting it, any user can go into the system clock and change the time. Once the system time is changed, you can go ahead and create or modify the file and the altered timestamp value will appear.

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on the file. This is a quick technique to make it appear that a file was not edited since the day of its creation.

The second option is only slightly more complicated. The user can download a program from the Internet to change the timestamp. There are many options out there, and a quick Google search will reveal them. For example, on page one of such a search, I found Bulk-FileChanger (BFC) from NirSoft, Attribute Changer, SetFileDate 2.0, and FS all within the top four links.

Both of these methods may leave artifacts on the original computer; and that there are more advanced techniques which leave no artifacts. Simply put, if you do not have the machine that is the source of the file and verify that it is the source machine, do not trust a file’s timestamp.

As more people are relying on digital systems, people are learning new ways to manipulate digital data. Unfortunately, this means that, as attorneys, we need to be vigilant when we analyze digital files presented to us.

So remember, without some type of independent corroboration, simply don’t trust a digital timestamp.

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Digital assets are now everywhere. They are defined as electronic records in which an individual has a right or an interest. Digital assets include emails, websites, Facebook and other social-media accounts, digital photos, music, online databases, paperless financial accounts, bitcoins, domain names, and even characters and items in online-gaming platforms. Almost everyone has digital assets in this day and age. Unfortunately, the law has been slow and inconsistent in defining how to handle these assets when the owner or creator is no longer able to.

Planning for digital assets can no longer be ignored. Clients need to be educated as companies and legislators come to a consensus regarding the regulation and control of digital assets upon a person’s disability or death. Companies and AOL. The resistance came from their concerns over contract law (violating their TOS agreements) and privacy issues (including federal communications-privacy laws and privacy of the individual users). The tech giants advocated for their own bill, the Privacy Expectations Afterlife & Choices Act (PEAC Act). The PEAC Act was criticized by the bar associations for (1) only dealing with situations of death (not guardianship or agents acting under a power of attorney), (2) requiring a court order in all instances, (3) requiring indemnity of the internet companies, (4) dealing only with digital communications, and (5) requiring affirmative opt-in by users. The PEAC Act was adopted only in Virginia and was significantly modified.

The proposed solution was released on September 28, 2105—the Revised UFADAA (RUFADAA). This revision gives fiduciaries access to information they need unless an account holder opts out of this option. However, it will not give fiduciaries access to actual content without affirmative authorization by the decedent. The revision also prompts companies to create online tools allowing the user to provide directions for the disclosure or nondisclosure of digital assets to a third party. The use of these online tools is similar to designating a beneficiary on a life-insurance policy and would trump instructions

Until the RUFADAA is enacted and modified by each state, it is important for estate-planning attorneys to educate their clients on this ever-changing legislation.
in a person’s estate-planning documents or the company’s basic TOS agreement. The act permits the use of these online tools or allows users to designate fiduciaries in their estate-planning documents.

The simplest solution is for other companies to emulate Google and Facebook, who already have such online tools available for their users. These online tools would actually save companies money in the long run by avoiding involvement in legal suits or requiring examination of individual users’ estate-planning documents.

There are also a number of companies on the rise that will help consumers track and monitor their digital-asset wishes. However, until the RUFADAA is enacted and modified by each state, it is important for estate-planning attorneys to educate their clients on this ever-changing legislation. Clients need to monitor their digital assets, have specific instructions included in their estate planning documents, and opt in to companies offering these new online tools. Digital-asset planning is now an essential element to all good estate plans.

Stay tuned: big changes are coming!

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**Immigrant Outreach Committee Corner**

**Phillip J. Bach and Giovanni Di Maggio**

The Immigrant Outreach Committee of the Virginia State Bar Young Lawyers Conference closed out the 2015 year with an exciting update to a popular CLE and a brand-new volunteer project that left participants yearning to contribute more and feeling like they really made a difference.

On October 29, the Immigrant Outreach Committee teamed up with experienced attorneys from CAIR Coalition and its Virginia Justice Program to offer a dynamic update to the Committee’s regular CLE series addressing the immigration consequences of criminal convictions. CAIR Coalition serves as the primary source of legal assistance for detained immigrants facing deportation in the Washington, DC metropolitan area, including Virginia, and, through its Virginia Justice Program, seeks to minimize the disproportionate immigration impact of criminal convictions for Virginia’s indigent non-citizen population, including by educating, training and consulting with public defenders and court-appointed attorneys in Virginia.

More than 40 Virginia attorneys were in attendance for a seminar that supplied them with the legal training they needed to effectively represent their non-citizen clients in their next, or perhaps first, criminal matter or deportation proceeding in Virginia. The attendees included not only a mix of immigration and criminal-defense attorneys, but also prosecutors and non-immigration practitioners looking to take on pro bono immigration work for the first time, which made for great discussion.

Participants were impressed with the caliber of the presentations, commenting that the senior attorneys from CAIR Coalition were “excellent” and “did a phenomenal job” presenting complex material in a “clear and concise” fashion, including through interactive hypothetical exercises and Q&A. Additionally, all participants were able to take home a comprehensive set of course materials, which were considered “extraordinarily helpful” and useful for immigration and criminal practitioners alike.

Next, as 2015 drew to a close and the season of giving was upon us, a significant number of attorneys and non-attorneys came together to volunteer their time and skills to serve the immigrant community in Northern Virginia. The Immigrant Outreach Committee assisted in providing over 20 attorney volunteers for a Naturalization Workshop on December 19, sponsored by Hogar Immigrant Services, Catholic Charities of the Diocese of Arlington.

Volunteers at the Naturalization Workshop helped dozens of permanent residents begin the process of applying for U.S. citizenship by completing and submitting the application for naturalization. Attorneys, paralegals and other volunteers interviewed applicants, assisted in completing the N-400 forms, and provided final legal review of the documents.

Prior to serving applicants, all volunteers were provided with comprehensive three-hour training on the application process, and no prior experience in immigration law or proficiency in foreign language was required.

Volunteers were engaged and enthusiastic about helping applicants take their first steps toward achieving the dream of becoming American citizens. We spoke with several first-time volunteers and were encouraged by their unanimous praise for the program. “The training and support we received from Hogar staff attorneys was outstanding; they did a stellar job making this workshop accessible to anyone who wanted to serve this community, regardless of prior experience,” one volunteer said.

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Others expressed satisfaction in being able to serve clients who otherwise would have faced significant challenges in navigating this process on their own. “It was a humbling experience, working through these applications with individuals and their families,” said another first-time volunteer. “You can feel their excitement and it’s contagious. Their gratitude for your help is also sincere and heartfelt. At the end of the day, I really felt like I’d made a difference in their lives, and I wouldn’t hesitate to do this again.”

If you did not have a chance to join us for this volunteer project or the earlier CLE, and even if you did, we hope to see you at our next event!

Please also note that in addition to its CLE programming and volunteer opportunities, the Immigrant Outreach Committee maintains a Foreign Language Database (a list of Virginia-licensed attorneys who speak foreign languages) to assist the public in finding attorneys who can speak their language and provide a more effective representation experience.

To add yourself to the Foreign Language Database, or to learn more about the Immigrant Outreach Committee, visit our webpage at http://www.vsb.org/site/conferences/ylc/immigrant-outreach.

For more information, or if you have any questions, please contact Immigrant Outreach Committee co-chairs Giovanni Di Maggio (giodimaggio@gmail.com) and Sasha Prokopets (sasha.prokopets@gmail.com).

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Giovanni Di Maggio is a 2012 graduate of Northeastern University School of Law. He is currently a Judicial Law Clerk at the U.S. District Court for the District of Columbia and Co-Chairs the Immigrant Outreach Committee.

We Are Looking for a Few Good Lawyers …

… who are looking for a great way to earn pro bono hours from absolutely anywhere they have an internet connection.

Coming this fall, the Virginia State Bar Access to Legal Services Committee, in conjunction with the American Bar Association, will launch a website that will answer civil legal questions for free for prescreened low-income Virginians. You will be able to answer questions anonymously, online, and at your convenience while providing important legal assistance to those who are least able to afford a lawyer.

Please contact Karl Doss at doss@vsb.org or 804-775-0522 for more information.

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