



New Lawyer Tips

OPTIONAL / EXTRA CONTENT:
The “Comey Memo”

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New lawyer tips – the Comey Memo

- Learn how to do the Comey Memo.
- “Comey Memo” is my nickname for a memo you write to yourself or file that records what happened in an interaction with another person where you might later need to defend yourself.
 - (Such a memo could possibly be addressed to another person if there’s some protocol or reason for that. But that’s not generally necessary. Because the purpose is not communication, it’s making a record for yourself.)
- The “Comey” is James Comey. Don’t worry about whether you like him. Hillary Clinton, Donald Trump, and perhaps millions of people in America have specific reasons to have a serious grievance with James Comey. In fact, it’s been James Comey’s ability to put himself in repeated situations where there’s a likelihood of needing to try to defend himself in the future that makes him a real icon for this kind of thing.
- Before he was FBI director, James Comey was a lawyer. And his memos show off good lawyer skills. Skills you, as a lawyer, should have.

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- ***Bottom line:***
James Comey put on a clinic in how to anticipate needing to defend yourself.

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- **When do you write a Comey Memo?**
 - Maybe a co-worker or supervisor asked you to do something sketchy – or even just implied that you might be appreciated for doing something sketchy.
 - Maybe you were in a car accident and you had a verbal exchange with the other driver.
 - Maybe a customer or client came to you angry with a complaint.
- It's not an everyday thing – but you should remember the technique anytime you've had an uncomfortable interaction where you might later need to defend yourself.

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- You write the Comey Memo because it will help you later if you have to defend yourself – if it comes down to a he-said/she-said duel of what you and someone else say happened.
- Assume that the memo will later be read by adversaries and neutral parties who later need to or want to figure out what happened.
 - So don't lie.
 - And don't embarrass yourself – such as by including invective language about the opposing (or potentially opposing party).
 - Stay credible.
- But don't write it as a communication to anyone else. It's a memo to yourself – so you remember what happened.
- You probably know the Federal Rules of Evidence now. Forget about that for writing a Comey Memo. It's not about creating admissible evidence in court.
 - Actually, it can be, although indirectly. The memo can be a mechanism to refresh your recollection for providing later testimony. But when writing, don't write it to be admissible. Instead, write it to be credible.

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What follows are notes I typed in the vehicle immediately upon exiting Trump Tower on 1/6/17. Although I wrote this less than five minutes after the meeting and have tried to use actual words spoken, including quoting directly in some places, I have not used quotation marks throughout because my purpose was to capture the substance of what was said.

2017-01-07, "My notes from private session with PE on 1/6/17"

- Establishes authenticity and credibility for the document.
- Because the notes were made so soon afterward, they're more reliable.

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He then said something about him being the kind of guy who didn't need to "go there" and laughed (which I understood to be communicating that he didn't need to pay for sex). He said "2013" to himself, as if trying to remember that period of time, but didn't add anything. He said he always assumed that hotel rooms he stayed in when he travels are wired in some way. I replied that I do as well. *Id.*

- **Comey doesn't make up details about something he's not sure of. But he doesn't skip it either – e.g.:** "He then said something about him being the kind of guy ..."
- **Comey includes all the stuff he can remember, not just the self-serving or scandalous things – e.g.:** "I replied that I [assume hotel rooms are wired] as well."
- **Comey doesn't state what Trump was thinking, instead, Comey keeps to what's within his personal knowledge by saying what he understood – e.g.:** "which I understood to be communicating ..."

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I had dinner with President Trump in the Green Room at the White House last night at 6:30 pm. We sat facing each other at a small oval table set for two and placed in the center of the room.

2017-01-28, untitled three-page printed document hand-dated "1/28/17"

- **Comey sets the scene. This helps credibility and will help his later recollection. The memo is to help himself, remember.**

The conversation, which was pleasant at all times, was chaotic, with topics touched, left, then returned to later, making it very difficult to recount in a linear fashion. Normally I can recall the pieces of a conversation and the order of discussion with high confidence. Here, given the nature of it, there is a distinct possibility that, while I have the substance right, the order was slightly different. It really was conversation-as-jigsaw-puzzle in a way, with pieces picked up, then discarded, then returned to. *Id.*

- **This is really nice. It increases the credibility even as it admits shortcomings in exactness.**

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[After the president floated the idea of Comey quitting ...] I added that I was "reliable" in one way but not in the way political people sometimes use the term. I explained that he could count on me to always tell him the truth. I said I don't do sneaky things, I don't leak, I don't do weasel moves. But I was not on anybody's side politically and could not be counted on in that traditional political sense, which I said I thought was in the president's best interest. He asked whether the FBI leaks and I answered [with various observations].

He replied that he needed loyalty and expected loyalty. I did not reply, or even nod or change my facial expression, which he noted because we came back to it later. *Id.*

- I think it's self-explanatory how useful this is.
- Note that this is one form of writing where it is totally okay to write stream-of-consciousness style. It's about getting down accurate recollections, as soon as possible, for your future self.