



New Lawyer Tips

Trademark & Unfair Competition
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Konomark
Most rights sharable

New lawyer tips

- Take a legal pad and pen to every meeting. (Legal pad = 8.5 x 11 or 8.5 x 14, your choice.)
- When meeting a senior attorney to be assigned work: (1) bring a legal pad and pen to take notes during the meeting, (2) bolster your notes after the meeting, either by adding to your handwritten notes or typing up some notes.
- Figure out how to do things yourself. If you do ask for help from a more senior attorney, do that after you've spent significant effort and time trying to figure it out for yourself. In particular: Consult practice guides, look at the rules, consult forms ("forms" = old documents from other matters), and consult other resources.

New lawyer tips

- **Become a master of the facts. Read the file. Take time with it. Perhaps create a summary or synthesis document for yourself – which may then have value to others.**
 - As a new lawyer, you probably aren't going to be better than your supervising attorney in terms of writing, arguing, understanding the law, strategizing, negotiating, interacting with clients, and generally knowing what to do . . .
 - but you can often get ahead of the partner or senior supervising attorney by learning more about the facts of the case/matter!
 - This allows you to have real, unique value as a member of a team – something you contribute other than just being cheaper per hour or having more available time!
 - When I was a very new associate, I created a document identifying all the people involved in the facts of a matter – their names, job titles, what they did, etc. – and it made me famous! (At least among the three other people working on the case. 😊)

New lawyer tips

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- This is essentially a particular application of the idea of “taking ownership” and “taking initiative” – which everyone knows you're supposed to do, but sometimes it's hard to perceive the opportunities to do that in a way that's not overstepping. (It can be especially hard when you're new to an employer and new to the career!)
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New lawyer tips

- Look for writing opportunities that spring from work you've already done for practice.
 - If you research something novel for litigation or if you create some novel way of structuring a transaction, considering writing it up for a bar journal / bar magazine.
 - Such writing is a traditional way to make rain!
 - Check with your employer first, of course, and make sure whatever you're writing about isn't a client confidence, obv.
 - A partner / supervisor might want to be the first listed author. But that's okay.

New lawyer tips

- Broaden your idea of what a memo is! If the word "memo" causes sudden, painful flashbacks to your first-year legal writing course, then RELAX! A "memo" is just like a "letter" – in that it's a document that carries communication formatted in a particular way. Putting your research or other intellectual product in the form of a memo shouldn't be onerous. What matters is functionality – that the document explains itself as to what it is and that it preserves the value of your work. This is exactly what's so nice about the memo format: It forces you to be clear about the to, from, date, and subject.

New lawyer tips

- If you were asked to research something, figure something out, do some analysis, etc., then you should probably put the product of your thinking in a memo. The most wonderful word to start a memo is “You” – as in “You asked me to analyze the Alpha/Beta trademark assignment agreement, looking in particular for any aspects which might provide grounds for invalidating the trademark. This memo provides that analysis.”

You asked me to find any and all instances since 1950 in which a registered trademark ceased to be valid on account of becoming generic. I searched for such cases using Eastlaw’s ALLFEDS and ALLSTATES databases. In addition, I searched the following blogs, which sometimes report on USPTO administrative actions and unlitigated disputes.

You

asked me to to analyze the value of the trademark claims in the Marker v. Marcker litigation, for which we are entering settlement talks. I provide that analysis in this memo. I set out three scenarios with three different valuations. Each scenario corresponds to a different set of assumptions about how the court might interpret the remedies provision of the state unfair competition statute at Arkassippi Civil Code § 8815.

New lawyer tips

- **When presenting a slideshow, hit the “B” key to blackout the screen. Hit it again to bring the slide back.**
- **Similarly, you can use the “W” to whiteout the screen.**
- **Even so, consider adding blank, blackout slides into your presentation. Doing so gives the audience’s eyes a break and brings the visual attention back to you – which can be especially important if you, yourself, is part of what you are trying to present to the audience (e.g., when the presentation is related to rainmaking, getting known, etc.).**

New lawyer tips

- Consider the room and equipment when deciding on colors for a slide show.
- Whether a black or white slide will appear blank can depend on the monitor or projection system. If your slides are being projected onto a white wall, then an all-black-background slide with white text or a centered image can make the boundaries of the slide disappear, leaving just your text or an image.
- Choices like that affect visual emphasis and overall tone.



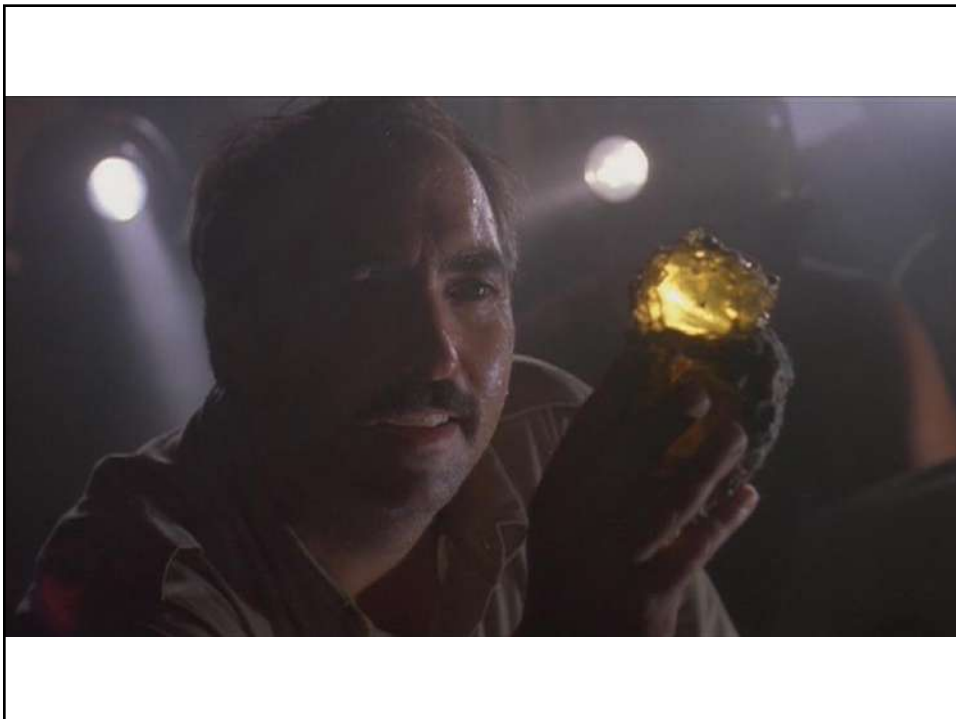


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New lawyer tips

- **Dig.**
 - You may never cease to be surprised at how much remains unearthed in the law and the facts.



Maker's Mark Distillery, Inc. v. Diageo N. Am., Inc.,
679 F.3d 410, 420 (6th Cir. 2012):

“[A] finding of conceptual strength is bolstered by the mark's status as “incontestable,” which entitles it to a presumption of strength[.]”

This does not seem to make any sense at all!

Incontestability means you can't attack the validity of a mark based on distinctiveness (i.e., that it isn't inherently distinctive and it never acquired distinctiveness).

That doesn't have anything to do with strength. And 15 U.S.C. § 1065 says nothing about strength.

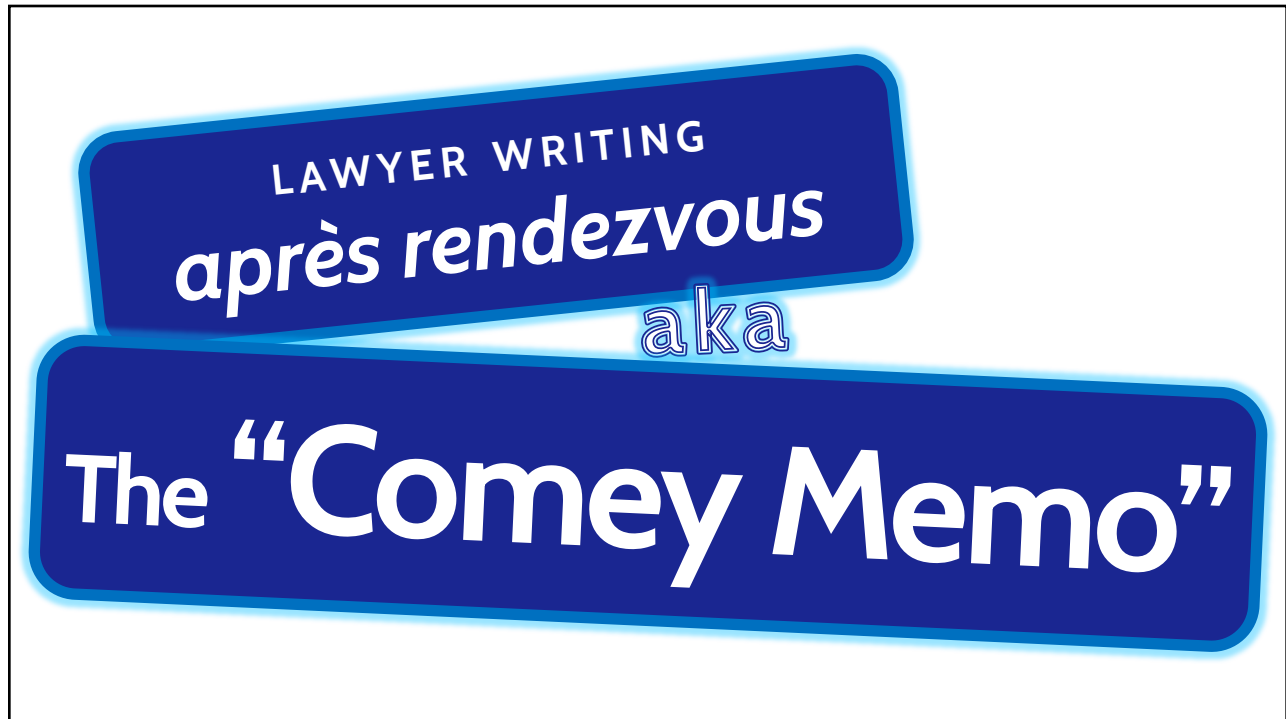
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**SO WHERE DID THIS
COME FROM?**

[Omitted here are the remainder of slides answering the question “So where did this come from?”

Those slides are posted separately.]



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.

New lawyer tips – the Comey Memo

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

New lawyer tips – the Comey Memo

- **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.

New lawyer tips – the Comey Memo

- 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.

New lawyer tips – the Comey Memo

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.

New lawyer tips – the Comey Memo

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 ..."

New lawyer tips – the Comey Memo

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. Keep in mind, it's written 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.**

New lawyer tips – the Comey Memo

[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.

New lawyer tips

- **Take walks as a break from work. And consider hitting the gym in the middle of your office day.**
 - **You're doing an intellectual job, so physical exercise that provides mental relaxation is a good investment, and is a massive quality-of-life booster.**