

## The evidentiary power of contemporaneous notes

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If you are communicating with another and feel that what you (or they) say may later be questioned, you should make a contemporaneous note.

A good reminder of this was illustrated in [the evidence of former F.B.I director James B. Comey \(who was fired by President Trump\) before the Senate Intelligence Committee in Washington](#). The relevant section of the transcript is as follows:

**WARNER:** Now, you said, after that briefing [a one-on-one meeting with President-elect Trump], you felt compelled to document that conversation, that you actually started documenting it soon as you got into the car.

Now, you've had extensive experience at the Department of Justice and at the FBI. You've worked

*under Presidents of both parties. What was it about that meeting that led you to determine that you needed to start putting down a written record?*

**COMEY:** *A combination of things, I think - the circumstances, the subject matter and the person I was interacting with.*

*Circumstances first: I was alone with the president of the United States - or the President-elect, soon to be President.*

*The subject matter: I was talking about matters that touch on the FBI's core responsibility and that relate to the President - President-elect personally.*

*And then the nature of the person: I was honestly concerned that he might lie about the nature of our meeting, and so I thought it really important to document.*

*That combination of things, I'd never experienced before, but it led me to believe I've got to write it down, and I've got to write it down in a very detailed way.*

**WARNER:** *I think that's a very important statement you just made. And my understanding is that then, again, unlike your dealings with presidents of either parties in your past experience, in every subsequent meeting or conversation with this President, you created a written record.*

*Did you feel that you needed to create this written record or these memos because they might need to be relied on at some future date?*

**COMEY:** *Sure. I created records after conversations, and I think I did it after each of our nine conversations. If I didn't, I did it for nearly all of them, especially the ones that were substantive.*

*I knew that there might come a day when I would need a record of what had happened, not just to defend myself, but to defend the FBI and -- and our integrity as an institution and the independence of our investigative function.*

## **Key Takeaway**

A decision-maker that needs to make a finding of fact will prefer the credibility of a person whose evidence is supported by contemporaneous record, where everything else is equal.[\[1\]](#)

You should therefore always make a contemporaneous note if you suspect what you said or heard may later be called into question. A quick and easy way of doing this is writing an email to yourself from your phone.

[\[1\]](#) *Bakovski v Lenehan* [2014] NSWSC 671 at [393].