

Past Recollection Recorded



UNCLASSIFIED U.S. De

1 Date: 06/30/2015

RELEASE IN PART
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From: H <hrod17@clintonemail.com>
Sent: Thursday, October 8, 2009 10:35 PM
To: 'sbwhoop@
Subject: Are you still awake?

I will call if you are.

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Federal Rule of Evidence 803(5)

Rule 803. Exceptions to the Rule Against Hearsay

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(5) *Recorded Recollection.* A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.



Past Recollection Recorded vs. Refreshing Recollection

In present recollection refreshed, witness looks at memo to refresh memory of events, but the proceeds to testify upon basis of present independent knowledge

In past recollection recorded, the witness' present recollection is still absent or incomplete, but his present testimony is to effect that his recollection was complete at time memo was written and that such recollection was accurately recorded



General Principles

- ▶ Guarantee of Trustworthiness
- ▶ Does the exception require an impaired memory on the part of the witness?
 - Authorities are divided
 - If regard be had only to the accuracy of the evidence, admittedly impairment of the memory of the witness adds nothing to it and should not be required.
 - Nevertheless, the absence of the requirement, it is believed, would encourage the use of statements carefully prepared for purposes of litigation under the supervision of attorneys, investigators, or claim adjusters.

This is happening, I am here and I am looking at her.

And she is so beautiful.

I can see it. This one moment when you know you're not a sad story.

You are alive,

and you stand up and see the lights on the buildings and everything that makes you wonder.

And you're listening to that song and that drive with the people you love most in this world.

**And in this moment I swear,
we are infinite.**

the
perks of being a
wallflower