

REFRESHING RECOLLECTION PART II: PAST RECOLLECTION RECORDED



"So you're saying you don't remember anything."

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TOPICS

- Definition
- FRE 612 v. 803(5)
- Foundation



FRE 803(5). Exceptions to the Rule Against Hearsay

The following are not excluded by the rule against hearsay ...

(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 received as an exhibit only if offered by an adverse party.

FRE 612 v. FRE 803(5): Differences

- Memory not refreshed *after* reviewing
- Witness's writing
- Writing, not memory, establishes fact



"DO YOU SWEAR TO SHOW THE TRUTH,
THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?"

HOW: FOUNDATION

- (1) Personal knowledge of the fact,
- (2) No longer has sufficient present recollection even after reviewing,
- (3) Recorded it while fresh,
- (4) Accurately recorded.

