

RECORDED RECOLLECTION – Wis. Stat. § 908.03(5) - Fed. R. Evid. 803(5)

ESTABLISH the witness's knowledge of the matter at the time of its occurrence.

Attorney: *Ms. Jones, did you know at the time of the fight which students were in the cafeteria?*

ESTABLISH the witness's failure of memory.

Witness: *At the time, yes.*

ESTABLISH that the witness made or adopted the record while the matter was fresh in his or her memory.

Attorney: *Can you tell us today who they were?*

Witness: *No, there were more than fifty.*

ASK if the record was accurate and complete when it was made.

Attorney: *Did you make any record of who the students were?*

Witness: *Yes, I wrote down their names and student ID Nos. as they left the room.*

VERIFY that the witness's memory cannot be refreshed.

Attorney: *Ms. Jones, was the list accurate and complete when you prepared it?*

Witness: *Yes, the student could not leave the room without showing me his or her ID card.*

REFER opposing counsel to the record.

Attorney: *Would it refresh your recollection to review the list you made?*

Witness: *No, there were so many students in the cafeteria at the time.*

ASK permission to approach the witness.

Attorney: *Counsel, I refer you to what has previously been marked as Exhibit 1.*

Attorney: *Your Honor may I approach the witness?*

ASK the witness to identify and then review the record.

Court: *You may.*

Attorney: *Ms. Jones, do you recognize this document?*

ASK the witness if the record is in the same or substantially the same condition as when it was made.

Witness: *Yes, it is the list of students I prepared.*

Attorney: *Is the list in the same or substantially the same condition as when you made it?*

MOVE the record into evidence.

Witness: *Yes.*

Attorney: *Your Honor, we move Exhibit 1 into evidence.*

July 15, 2015 Wisconsin Department of Justice -Continuing Legal Education Seminar -
Technology in the Courtroom: What is Available and How Can We Use it Effectively? Referred
to by Sandra Esrael, J.D., NARA Annual Licensing Conference, September 21-23, 2015