

AA. WITNESS USING NOTES

The Trial Attorney always insists on inspecting notes used by a witness for the Respondent. The Trial Attorney then questions the witness to determine whether the notes are being used to refresh the witness' present recollection, or whether the witness no longer has an independent recollection of the matters to which s/he is testifying. If the witness claims to have a present recollection, the Trial Attorney can argue that the use of notes diminishes the witness' credibility. If the witness has no independent recollection, the Trial Attorney may argue that the testimony be excluded as hearsay unless all the requirements of [Fed. R. Evid. 803\(5\)](#) are met.

Q [Part 2, Chapter S](#) subsection 4 concerning techniques on direct examination to elicit testimony when witness cannot recall information sought.

RESERVED