

RECATING WITNESS¹ (NEUTRALIZATION ONLY)

[NOTE: Use this charge only where the party calling a witness is surprised by the inconsistent testimony and it is inadmissible under N.J.R.E. 803a(1) (A). See separate charge.]

Evidence has been presented showing that at a prior time [declarant-witness's name] has said something or has omitted to say something which is inconsistent with the witness's testimony at the trial. More specifically, [Describe prior statement]. You may consider this prior statement only for the limited purpose of deciding whether to believe the portion of the witness's testimony which was omitted or contradicted.² If after hearing the prior statement you decide that the witness's testimony at trial is not credible, then you must disregard that portion of the testimony at trial that is contradicted by the prior statement. In no event may you consider [declarant-witness's] prior statement as proving the truth of the facts it contains.

¹ The Court should determine whether the recanting witness's prior statement is contradictory to the present testimony, whether proponent is surprised, and whether the testimony is harmful to the proponent's case. Its findings, if favorable to the proponent, should not be revealed to the jury. State v. Gallicchio, 44 N.J. 540, 547-48 (1965).

² Gallicchio, 44 N.J. at 548.