

EVIDENCE

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CHARACTER - HABIT - IMPEACHMENT OUTLINE

Character Evidence

General rule, character evidence may **NOT** be introduced:

1. To prove the defendant acted in conformity with a specified character trait.
2. To show that someone has a propensity to act in a certain way.

Character is an issue in a criminal case **ONLY**:

1. After the defendant first offers character evidence (by general reputation only), or
2. By testifying, the defendant places his or her character for truthfulness in issue.

The evidence that may be offered is limited to **relevant** character traits -- relevant to the crime charged, i.e., teatotaler for DUI, peaceful person for violent crimes.

Prosecution may **impeach character witnesses through specific instances of bad character** (misconduct which is at odds with the general reputation testimony -- "I realize you said he was a teatotaler, but did you know that he was so drunk at the company picnic, that he fell asleep in his own vomit?") The prosecution may also **rebut the defendant's good character evidence by offering evidence again through general reputation witnesses of the defendant's bad character.**

Character evidence is **never admissible in a civil case except** in cases of malicious prosecution, libel and slander since reputation is relevant to the cause of action.

While one is not permitted to introduce specific instances of conduct to prove character, **specific instances of conduct may be used** to prove **motive, opportunity, intent, common plan, scheme, design, identity or absence of mistake or accident** (mimic rule, signature crimes, serial killers, "brides in the bathtub," etc.).

Habit

Habit is defined as a regular and systematic routine and is proved by showing specific instances of conduct.

Impeachment

The *scope of cross examination* under the F.R.E. is ***bias, credibility*** and matters covered on *direct testimony*: BCD. You may impeach any witness by showing that his general reputation for truthfulness is bad, by his prior criminal convictions and his prior bad acts that bear on truthfulness under the F.R.E.

Bias

As of right one can inquire into matters pertaining to bias. This includes family relationships, compensation of a witness, pending criminal charges and anything which would provide the witness with a motive to lie or allow the jury to find that the witness is under an influence to prevaricate.

Credibility/Prior Convictions

The Court has ***no discretion to exclude a conviction for a crime involving a false statement or dishonest act that is less than 10 years old.*** This includes felonies and misdemeanors.

All ***other felonies are subject to a 403 analysis unless*** it is a prior conviction of the criminal defendant and then it is ***excluded*** if it is more prejudicial than probative (as opposed to the substantially more prejudicial than probative analysis required to exclude convictions of all other witnesses under 403).

To be admissible, ***all crimes over 10 years old*** (as measured from the date of the last incarceration or conviction whichever is later) require:

- A. Prior notice of the intention to use the crime for impeachment.
- B. A ruling, supported by specific facts and circumstances, that the probative value of the conviction substantially outweighs its prejudicial effect.

Accused

Conviction can be excluded if the prejudicial effect is greater than the probative value.

Others

Only if the prejudice is ***substantially greater*** than the probative value can the conviction be excluded.

Direct -- Matters Covered on Direct Testimony

Cross examination concerning matters covered on direct testimony not only includes matters testified to on direct but any sensory deficiencies applicable to that witness.