USING CHARACTER EVIDENCE PROPERLY

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PRIOR INCONSISTENT STATEMENTS TRE 613(a)

(a) Examining Witness Concerning Prior Inconsistent Statement. In examining a witness concerning a prior inconsistent statement made by the witness, whether written or oral, and before further cross-examination concerning or extrinsic evidence of such statement may be allowed, the witness must be told the contents of such statement and the time and place and the person to whom it was made, and must be afforded an opportunity to explain or deny

such statement. If written, the writing need not be shown to the witness at that time, but on request the same shall be shown to opposing counsel. If the witness unequivocally admits having made such statement, extrinsic evidence of same shall not be admitted. This provision does not apply to admissions of a party opponent as defined in Rule 801(e)(2).

TRE 613(b)

(b) **Examining Witness Concerning Bias or Interest. In impeaching a witness by proof of circumstances or statements showing bias or interest on the part of such witness, and before further cross-examination concerning, or extrinsic evidence of, such bias or interest may be allowed, the circumstances supporting such claims or the details of such statement, including the contents and where, when and to whom made, must be made known to the witness, and the witness must be given an opportunity to explain or to deny such circumstances or statement. If written, the**

writing need not be shown to the witness at that time, but on request the same shall be shown to opposing counsel. If the witness unequivocally admits such bias or interest, extrinsic evidence of same shall not be admitted. A party shall be permitted to present evidence rebutting any evidence impeaching one of said party's witnesses on grounds of bias or interest.

TRE 613(c)

Prior Consistent Statement of Witnesses. A prior statement of a witness which is consistent with the testimony of the witness is inadmissible except as provided in Rule 801(e)(1)(B).

TRE 801(e)(1)(B)

A statement is not hearsay if:

The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is:

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge of recent fabrication or improper influence of motive;

THE FOUR C'S

- C = CONFIRM
  - "Did you just tell us the light was red?"
  - "The light was green, wasn't it?"

- C = CREDIT
  - The Texas Twist
    - Have you ever testified differently?
    - Have you ever said anything different?
  - That hasn't always been your testimony, has it?
  - You remember having your deposition taken?
  - That's where you came to my office?
  - You had your attorney with you?
  - That was on May 5th of last year?
  - Just six months after the accident?

- There was a court reporter there?
- Just like the court reporter we have here?
- That court reporter had you raise your right hand?
- And had you swear to tell the truth, the whole truth and nothing but the truth?
- Just like the oath you took today when you got on the witness stand?
- Then I asked you questions about this accident?
- You answered those questions under oath?
- The court reporter typed up my questions and your answers in a booklet?
- You were told that you could make corrections to that booklet?

- C = CONFRONT
  - Now today you are saying the light was red?
  - Let's see what you said just six months after the accident?
  - May I approach the witness?
  - Page 15, Line 6, counsel.
  - Now this is the deposition you gave?
  - That's your signature on the last page?
  - Now at the deposition you were asked the following question "What color was the light?" Did I read that correctly?
  - And you answered under oath just six months after the accident that "The light was green." Did I read that correctly?

- C = CONTRAST
  - You did not say the light was red?
  - You said the light was green?

CHARACTER

- **CASTING DOUBTS ON A WITNESS' CHARACTER FOR TRUTHFULNESS**
- **CAN BE DONE THROUGH SEVERAL METHODS**
- **FORM OF PROPENSITY EVIDENCE—A WITNESS IS A LIAR AND THEREFORE LIKELY TO ACTING IN CONFORMITY WITH THAT CHARACTER BY LYING ON THE WITNESS STAND**

TRE 608(a) – CHARACTER FOR TRUTHFULNESS

(a) The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) the evidence may refer only to character for truthfulness or untruthfulness; and

(2)evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

BREAKING IT DOWN

1. **Can always call character witnesses to attack a witness' truthfulness and veracity**
2. **Must be in the form of opinion or reputation. Cannot offer specific acts in support.**
3. **Must have a basis**
4. **Once truthfulness is attacked, character witnesses may be called *in support of the witness' truthfulness***

5. **Attack may be by character witnesses against or "otherwise." Otherwise is impeachment or any other suggestion that a witness is lying.**
6. **Available in civil and criminal cases**
7. **May be about any witness**

TRE 608(b)

(b) Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be inquired into on cross-examination of the witness nor proved by extrinsic evidence.

- Do you know John Smith who testified here earlier today?
- How do you know him?
- How long have you known him?
- Through the years do you know other people who know John Smith?
- Who are these people?
- Have you ever been present when these other people have discussed John Smith?
- How many times has this happened?
- How many people have you heard talk about John Smith?

- Have you heard anything about John Smith's reputation for telling the truth?
- What is that reputation?
- Do you have a personal opinion about whether John Smith is truthful?
- What is that opinion?