

IMPEACHMENT AND USING CHARACTER EVIDENCE PROPERLY

WITNESS'S PRIOR STATEMENT AND BIAS OR INTEREST – TRE 613(a)

(a) Witness's Prior Inconsistent Statement

(1) Foundation Requirement – when examining a witness about the witness's prior inconsistent statement – whether oral or written – a party must first tell the witness:

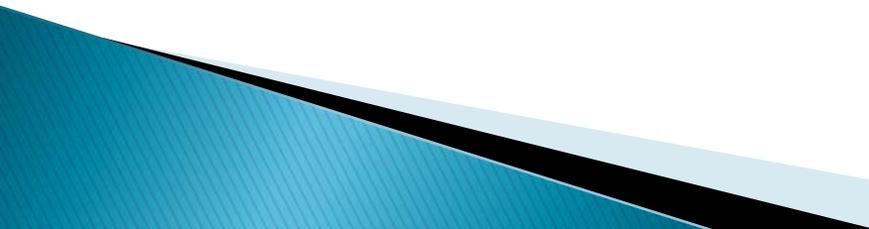
- a. the contents of the statement;
- b. the time and place of the statement; and
- c. the person to whom the witness made the statement

(2) Need Not Show Written Statement – if the witness's prior inconsistent statement is written, a party need not show it to the witness before inquiring about it, but must, upon request, show it to opposing counsel

WITNESS'S PRIOR STATEMENT AND BIAS OR INTEREST – TRE 613(a)

- (3) **Opportunity to Explain or Deny** – A witness must be given the opportunity to explain or deny the prior inconsistent statement

 - (4) **Extrinsic Evidence** – Extrinsic evidence of a witness's prior inconsistent statement is not admissible unless the witness is first examined about the statement and fails to unequivocally admit making the statement.

 - (5) **Opposing Party's Statement** – This subdivision (a) does not apply to an opposing party's statement under Rule 801(e)(2).
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WITNESS'S PRIOR STATEMENT AND BIAS OR INTEREST – TRE 613(b)

(b) Witness's Bias or Interest

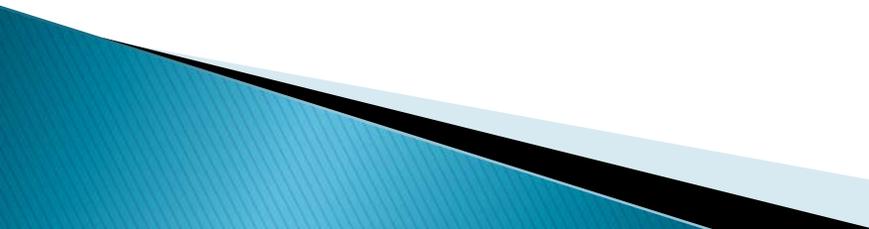
(1) Foundation Requirement – when examining a witness about the witness's bias or interest, a party must first tell the witness the circumstances that tend to show the witness's bias or interest. If examining a witness about a statement—whether oral or written – to prove the witness's bias or interest, a party must first tell the witness:

- a. the contents of the statement;
- b. the time and place of the statement; and
- c. the person to whom the witness made the statement

(2) Need Not Show Written Statement – if a party uses a written statement to prove the witness's bias or interest, a party need not show it to the witness before inquiring about it, but must, upon request, show it to opposing counsel

WITNESS'S PRIOR STATEMENT AND BIAS OR INTEREST – TRE 613(b)

- (3) **Opportunity to Explain or Deny** – A witness must be given the opportunity to explain or deny the circumstances or statements that tend to show the witness's bias or interest. And the witness's proponent may present evidence to rebut the charge of bias or interest.

 - (4) **Extrinsic Evidence** – Extrinsic evidence of a witness's bias or interest is not admissible unless the witness is first examined about the statement and fails to unequivocally admit it.
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PRIOR STATEMENTS AND BIAS OR INTEREST – TRE 613(c)

(c) Witness's Prior Consistent Statement

Unless Rule 801(e)(1)(b) provides otherwise, a witness's prior consistent statement is not admissible if offered solely to enhance the witness's credibility.



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?”

THE FOUR C'S

▶ 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?

(cont.)

THE FOUR C'S

- 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?

THE FOUR C'S

▶ 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?

THE FOUR C'S

- ▶ 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
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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*
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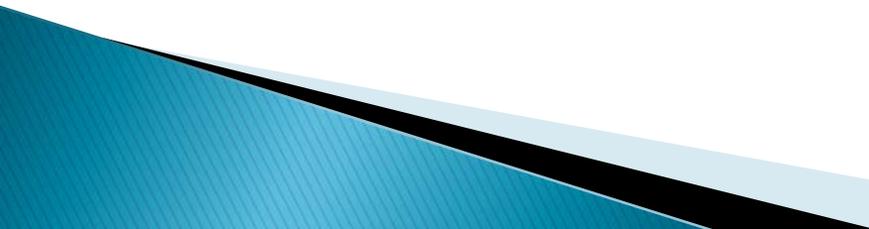
BREAKING IT DOWN

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
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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.

TRE 608(b)

- ▶ 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?
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TRE 608(b)

- ▶ 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?
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