

A woman sued a man for damages stemming from an automobile collision. At trial, the woman wishes to show by extrinsic evidence that the man's primary witness is also his partner in a small-scale marijuana growing operation.

Should the court admit the evidence?

- A. No, because bias must be shown on cross-examination and not by extrinsic evidence.
- B. No, because the evidence would be more prejudicial than probative.
- C. Yes, as evidence of the witness's character.
- D. Yes, as evidence of the witness's possible bias in favor of the man.

Explanation:

Methods of impeaching witness

Method	Description	Means
Character for truthfulness	Reputation or opinion testimony	Extrinsic evidence
	SIC involving bad act	Intrinsic evidence
	SIC involving criminal conviction of felony or crime of dishonesty	Intrinsic or extrinsic evidence
Self-interest / bias	Motive to lie or partiality to party	
Prior inconsistent statement	Witness's prior statement inconsistent with present testimony	
Specific contradiction	Evidence directly contradicting witness's testimony on material issue	
Sensory abilities	Evidence showing witness's senses were impaired by physical / mental condition or environmental factors	

SIC = Specific instance of conduct.

A party may attack a **witness's credibility** by offering evidence that the witness is **biased** and therefore had a motive to lie while testifying. One method of establishing bias is showing that the witness is **affiliated** with the opposing party outside the context of the litigation. This can be established through either:

intrinsic evidence – by questioning the witness about the affiliation *or*

extrinsic evidence – by introducing the affiliation using **any source** other than the witness's testimony **(Choice A)**.

Here, the woman seeks to introduce extrinsic evidence that the man's primary witness is also his partner in a small-scale marijuana growing operation. Since that affiliation is evidence of the witness's possible bias in favor of the man, the court should admit the evidence.

(Choice B) Relevant evidence may be excluded if its probative value is substantially outweighed by a danger of unfair prejudice—ie, a danger that the jury may decide the case on improper grounds. Here, the evidence poses some danger that the jury may side against

the man because he grows marijuana. But that danger does not outweigh the evidence's probative value since it speaks directly to the witness's bias.

(Choice C) A witness's character for truthfulness becomes relevant when the witness takes the stand to testify, so a party may attack the witness's character—eg, by cross-examining the witness about specific instances of conduct that bear on the witness's truthfulness. But here, the woman seeks to establish the witness's bias, not to attack the witness's general character for truthfulness.

Educational objective:

One method of establishing bias is showing that the witness is affiliated with the opposing party outside the context of the litigation. Such affiliation can be established through intrinsic or extrinsic evidence.

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