

A defendant was charged with murder, and a witness testified for the prosecution. On cross-examination of the witness, the defendant seeks to elicit an admission that the witness was also charged with the same murder and that the prosecutor told her, "If you testify against the defendant, we will drop the charges against you after the conclusion of the defendant's trial."

Is the evidence about the prosecutor's promise to the witness admissible?

- A. No, because the evidence is hearsay not within any exception.
- B. No, because the law encourages plea-bargaining.
- C. Yes, as an admission by an agent of a party-opponent.
- D. Yes, as proper impeachment of the witness.

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 witness can be **impeached** (ie, discredited) with evidence of **self-interest or bias**—ie, something that may **motivate** the witness to **testify falsely**. Evidence of bias can be introduced intrinsically through the witness's own testimony OR extrinsically from any other source—including another witness's testimony.* Since a prosecutor's promise to drop pending charges may motivate a witness to testify falsely, evidence of the prosecutor's promise is admissible for impeachment purposes.

*The Federal Rules of Evidence do not require that a party lay a foundation by asking the witness about an alleged bias before introducing extrinsic evidence of that bias, but many states' rules of evidence do.

(Choice A) Hearsay is an out-of-court statement offered to prove the *truth* of the matter asserted therein. Since the prosecutor's statement is being offered to show that the witness's testimony is motivated by self-interest—not to prove that the charges would actually be dropped if the witness testified favorably—it is not hearsay.

(Choice B) The law does encourage plea-bargaining—ie, a criminal defendant's agreement to plead guilty or no contest to a crime (not seen here) in exchange for some form of consideration from the prosecutor (eg, probation in lieu of jail time). But this does not provide a basis for excluding evidence.

(Choice C) Statements made by and offered against a party-opponent are not hearsay. This includes statements made by a party's agent on a matter within the scope of the agency relationship. Here, there is no evidence that the witness was the prosecutor's agent, so this is not a basis to admit the testimony.

Educational objective:

Evidence that a witness's testimony was motivated by self-interest or bias is admissible to impeach the witness—ie, to discredit the truthfulness or reliability of the witness's testimony.

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