

A defendant was prosecuted for sexually abusing his 13-year-old stepdaughter. The stepdaughter testified to the defendant's conduct. On cross-examination, defense counsel asks the stepdaughter, "Isn't it true that shortly before you complained that [the defendant] abused you, he punished you for maliciously ruining his vintage record collection?"

Is defense counsel's question proper?

- A. No, because it falls outside the scope of direct examination.
- B. No, because the incident had nothing to do with the stepdaughter's truthfulness.
- C. Yes, because it relates to a possible motive for the stepdaughter to falsely accuse the defendant.
- D. Yes, because the stepdaughter's misconduct is relevant to her character for veracity.

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 **impeach** (ie, discredit) a **witness** by establishing that **bias** or self-interest **motivated** the witness to **testify falsely**. Here, defense counsel asked the defendant's stepdaughter if her accusation of sexual abuse came shortly after the defendant punished her for ruining his records. That question establishes a possible motive for the stepdaughter to retaliate against the defendant by testifying falsely. Therefore, the question is proper.

(Choice A) **Cross-examination** is generally limited to the scope of direct examination AND any matters impacting the witness's credibility. So though defense counsel's question may fall outside the scope of direct examination, it can still be asked on cross-examination since it relates to the stepdaughter's credibility.

(Choices B & D) The incident—ie, maliciously ruining a record collection—has nothing to do with the stepdaughter's truthful character or veracity. But the defense's question is still proper because the incident is relevant to impeach the *credibility* of the stepdaughter's testimony.

Educational objective:

A party may impeach a witness by establishing that bias or self-interest motivated the witness to testify falsely.

References

Fed. R. Evid. 608 (witness's character for truthfulness).

Fed. R. Evid. 607 (who may impeach witness).

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