

At a defendant's trial for mail fraud, the defendant calls his wife to testify that she committed the fraud herself without the defendant's knowledge. On cross-examination, the prosecutor asks the wife, "Isn't it true that you have fled your home several times in fear of your husband?"

Is the prosecutor's question proper?

- A. No, because it is leading a witness not shown to be hostile.
- B. No, because its probative value is outweighed by the danger of unfair prejudice to the defendant.
- C. Yes, because by calling his wife, the defendant has waived his privilege to prevent her from testifying against him.
- D. Yes, because it explores the wife's possible motive for testifying falsely.

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 a witness** by presenting evidence of the witness's **self-interest or bias** that may motivate the witness to **testify falsely**—eg, family or employment relationships, benefits received in exchange for testimony, fear, general dislike. Since bias bears on a witness's credibility, it can be raised on **cross-examination** or introduced **extrinsically** through other sources.* Therefore, the prosecutor's question is proper because it explores the wife's fear of the defendant as a possible motive for testifying falsely.

*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. However, many states' rules of evidence do (eg, Alaska, Texas).

(Choice A) **Leading questions** are permitted on cross-examination, regardless of whether the witness has been shown to be hostile. However, the witness must be hostile to ask leading questions on *direct* examination unless (1) the witness is a child or an adult with difficulty communicating or (2) the question is necessary to develop the witness's testimony (eg, name, occupation).

(Choice B) *Relevant evidence* can be excluded when its probative value is *substantially* outweighed by the danger of unfair prejudice. Here, the prosecutor's question poses *some* danger of unfair prejudice (depicting the defendant as a batterer) but not enough to substantially outweigh its probative value (assessing the wife's bias).

(Choice C) The spousal-immunity privilege allows a person to refuse to testify against his/her spouse in a criminal case about events that occurred before or during the marriage. The testifying spouse (here, the wife) has the *sole* right to assert or waive the privilege.

Educational objective:

A witness can be impeached with evidence of self-interest or bias that may show the witness's motivation to testify falsely.

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