

**Carlson on Evidence**  
**Critical Issues in Trial Evidence**

Iowa Defense Counsel Association  
IDCA 53rd Annual Meeting and Seminar  
5291 Stoney Creek Court  
Johnston, IA 50131-September 14, 2017

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Attorney, Cobb Judicial Circuit  
Judge, Georgia Court Martial Review  
Panel  
Adjunct Professor of Law, Atlanta's  
John Marshall Law School

by Michael Scott Carlson, Esq.

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Iowa Defense Counsel Association  
IDCA 53rd Annual Meeting and Seminar  
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**Today's Presentation**

*Speaker Introductions*

by Michael Scott Carlson, Esq.

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**Carlson on Evidence**  
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**Evidence Law**

*Fundamental Considerations*

by Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Evidence Law : Fundamental Considerations

- "One who masters the rules of evidence can, and frequently will, master the courtroom. One who does not will find herself **floundering and frustrated by the inability to admit evidence** that can and should be properly admitted and by the **inability to exclude evidence** that can and should be properly excluded." Beckham, et al, *Evidence: A Contemporary Approach*, 2d ed. (West Publishing 2012)

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Evidence Law : Fundamental Considerations

- Evidence law determines:
  1. What information fact-finders will receive; and
  2. How fact-finders will be allowed to consider it
- Evidence rules **steer, control, and determine the nature and quality of justice** that court systems dispense

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Evidence Law : Fundamental Considerations

- "Because evidentiary rules apply in all judicial trials in this country, even lawyers who do not engage in litigation must know at least the fundamentals of this body of law. **Competent attorneys understand that some day in the future their clients may become involved in controversies surrounding even garden variety transactions.** Should one or more of these disputes ripen into litigation, the law of evidence will take center stage. It will influence discovery and have a significant influence on the terms of settlement, because the strength of the case, and thus, its settlement value, depends on what can be proved at trial. And of course the rules of evidence will profoundly affect the course and outcome of the trial. **Therefore, the ability to recognize, develop, and preserve admissible evidence is essential to becoming a competent lawyer.**" Lily, et al, *Principles of Evidence*, 6th Ed. (West 2012)

By Michael Scott Carlson, Esq.

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### Carlson on Evidence

Evidence Law: Fundamental Considerations

- "...Also participating in plaintiffs' representation was Professor Ronald Carlson of Washington University in St. Louis, Missouri....but that organization requested his participation in the litigation due to his **expertise with the Federal Rules of Evidence and his trial experience**...A close review of those records, his role in the litigation, and the **quality and nature of his work product** convinces the Court that the time claimed and expended by Prof. Carlson is reasonable for a case of this type. Defendants' contention that Prof. Carlson represented a luxury on plaintiffs' trial team which defendants should not have to pay for **fails to comprehend the importance and uniqueness of Prof. Carlson's actual contribution** to preparation and trial." *Eckerhart v. Hensley*, No. 75-CV-87-C (W.D. Mo. Jan. 23, 1981)

Dr. Michael Scott Carlson, Esq.

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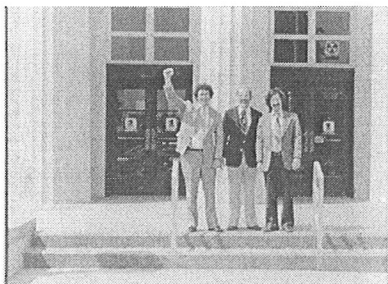
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*Eckerhart v. Hensley*, No. 75-CV-87-C (W.D. Mo. Jan. 23, 1981)



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### Carlson on Evidence

#### Critical Issues in Trial Evidence

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#### Today's Presentation

*Presentation and Materials*

Dr. Michael Scott Carlson, Esq.

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### Carlson on Evidence

Presentation and Materials

- Will use mock hypotheticals as a vehicle to illustrate cases *in context*
- Consider objections
- Rulings and discussion will feature IRE's, Iowa cases, and Eighth Circuit authority
- *Please hold questions until presentation is concluded*

Joy Michael Scott Carlson, Esq.

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### Carlson on Evidence

Presentation and Materials

- Every year a new **"script"** and adjusted **focus** on different rules
- Slides and discussion will sometimes contain **new decisions**
- Sometimes only **advance citations** are available
- **WATCH FOR IA and 8<sup>th</sup> OPINIONS**
- A few slides may repeat—**please follow the action**

Joy Michael Scott Carlson, Esq.

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### Carlson on Evidence

Presentation and Materials

- We should encourage debate over what statutes, rules and cases **"mean"**
- We should never argue over what statutes, rules and cases **"say"**
- **Therefore we focus on:**
  1. Using **actual quotations** from cases and language from the statutes
  2. Leaving the **policy determinations** to legislatures and courts
  3. **"Content heavy"** presentations

Joy Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Presentation and Materials

- Today's Focus: Rules of Witness (Cross) Examination
  - "Generally, there are five methods of attack upon the credibility of a witness...First is by evidence that the witness has made statements inconsistent with the present testimony on a prior occasion...Second is by evidence that the witness is **not impartial**. The third method is by an attack on the **witness' character**...The fourth method involves an attack on the **inability of the witness to properly observe or recount matters** that were the subject of direct examination...The last method is by **proof through other witnesses that the material facts were not as testified to by the witness.**" *State v. Parker*, 747 N.W.2d 196 (Iowa 2008)

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**Carlson on Evidence****Critical Issues in Trial Evidence**

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**Today's Presentation**

*Iowa Authority and Recent Developments*

By Deborah Scott Carlson, Esq.

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**Carlson on Evidence**

Iowa Authority and Recent Developments  
Restyling of Iowa Rules of Evidence

- *State v. Garrison*, 2017 Iowa App. LEXIS 510 (Iowa Ct. App. 2017)
  - "The **nonsubstantive restyling** of chapter 5 of the Iowa Rules of Evidence was effective as of January 1, 2017, 'in all pending actions, unless the trial court orders otherwise.'"

By Michael Scott Carlson, Esq.

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### Carlson on Evidence

Iowa Authority and Recent Developments  
Restyling of Federal Rules of Evidence

- "Like other amendments to the Federal Rules of Evidence in 2011, these amendments were 'part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules,' were 'intended to be stylistic only,' and were not intended "to change any result in any ruling on evidence admissibility.'" *Estate of Thompson v. Kawasaki Heavy Indus.*, 933 F. Supp. 2d 1111 (N.D. Iowa 2013)

By Michael Scott Carlson, Esq.

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### Carlson on Evidence

Iowa Authority and Recent Developments  
Federal Evidence Authority and IRE's

- "In interpreting Iowa rule of evidence 803(24) under a given set of facts, we are not bound by federal courts' interpretations of similar federal rules under similar circumstances...However, we give considerable weight to an interpretation of a federal rule of evidence after which Iowa has patterned its rule...Although there is no 1983 committee comment on the adoption of Iowa rule of evidence 803(24), like a majority of the other rules, it appears Iowa patterned its rule after federal rule of evidence 803(24)." *State v. Weaver*, 554 N.W.2d 240 (Iowa 1996)

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**Swenson v. Western Trucking Co.**  
*Our Mock Case*

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

*Swenson v. Western Trucking Co.*

• **Our Mock Case**

- "Head on collision" with injuries to Plaintiff
- Liability and damages **disputed** by Defense
- Plaintiff claims to have been **driving safely at all times and not speeding** when truck struck Plaintiff
- Defendant claims Plaintiff was **speeding, crossed the line, and ran into** Defendant's truck

By Michael Scott Carlson, Esq.

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**Swenson v. Western Trucking Co.**

*Witness Willis*

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

*Referring to Statement*

- Plaintiff calls eyewitness to the wreck, **Wilma Willis, who testifies that that the Defendant's truck swerved** into the Plaintiff's path. On cross-examination, the Defense **inquires about a statement** given by Ms. Willis to a Defense investigator in which she stated that the Plaintiff drifted into the truck's lane. **Witness Willis asks to see the statement. Defense counsel refuses.**

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Referring to Statement

• **Iowa R. Evid. 5.613**

- *a. Showing or disclosing the statement during examination.* When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. **But the party must, on request, show it or disclose its contents to an adverse party's attorney.**

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**Carlson on Evidence**

Referring to Statement

• **Iowa R. Evid. 5.801**

- *d. Statements that are not hearsay.* A statement that meets the following conditions is **not hearsay**:
- (1) *A declarant-witness's prior statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
- (A) **is inconsistent with the declarant's testimony** and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

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**Carlson on Evidence**

Referring to Statement

- "No longer, when a lawyer asks a witness whether he made a certain statement, written or not, is the lawyer required (as he was at common law...to show the statement or disclose its contents to the witness, though he must upon request show it to opposing counsel." *U.S. v. Marks*, 816 F.2d 1207 (7th Cir. 1987)
- "...wholly consistent with the requirements of Fed. R. Evid. 613(b)...**'the traditional insistence that the attention of the witness be directed to the statement on cross examination is relaxed... no specification of any particular time or sequence...'"** *U.S. v. Hudson*, 970 F.2d 948 (1st Cir. 1992)

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**Carlson on Evidence**

Referring to Statement

- "The acceptable procedure for impeachment by use of a prior inconsistent statement generally is to ask the witness if the prior statement was made, give its substance, identify the time and place of the statement, and identify the person to whom it was made..." *State v. Berry*, 549 N.W.2d 316 (Iowa Ct. App. 1996)
- "She was not alerted to the nature of the prior statement or time and place of its making. Nor was she given an opportunity to admit or deny making the statement. Therefore, the trial court properly excluded the testimony concerning the prior inconsistent statement." *State v. Oshinbanjo*, 361 N.W.2d 318 (Iowa Ct. App. 1984)

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Referring to Statement

- "Lynch, however, cites no precedent holding that the foundation requirement may be so relaxed that counsel need not inform the witness of either the time, place, or circumstances of the alleged inconsistent statement; and the district court's refusal to allow recall of certain witnesses was based on considerations of judicial efficiency that we cannot second-guess, given the extensive discussions in the record of the logistical difficulties of dealing with inmate witnesses." *U.S. v. Lynch*, 800 F.2d 765 (8th Cir. 1986)

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Referring to Statement

- "Even though the district court possesses a substantial measure of discretion under Fed. R. Evid. 613(b), it would resurrect the now-discredited procedure laid down in *Queen Caroline's Case*...if we excluded James Hudson's statement on the ground of an inadequate evidentiary foundation when the district court acted without any evaluation of the availability of the witness sought to be impeached or, alternatively, without any expressed consideration of whatever delay or inconvenience might have been caused by defense counsel's failure to confront James Hudson, on cross-examination, with his allegedly inconsistent statement." *U.S. v. Hudson*, 970 F.2d 948 (1st Cir. 1992)

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### Carlson on Evidence

Referring to Statement

- "As originally proposed, Federal Rule of Evidence 801(d)(1)(A) provided that all prior inconsistent statements were substantive evidence and that there was no requirement that the inconsistent statements be made under oath in order to be admitted...Congress narrowed the provision, however, to include only statements given under oath subject to penalties of perjury...We have adopted an approach in our rules of evidence similar to the federal rule as modified by Congress." *State v. Russell*, 893 N.W.2d 307 (Iowa 2017)

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**Swenson v. Western Trucking Co.**

*Witness Willis*

By Michael Scott Carlson, Esq.

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### Carlson on Evidence

Concluding Impeachment

- Cross-examination of witness Wilson continues. The inconsistency is confirmed, and Defense counsel points out that the statement was given **10 days after the crash**. Defense counsel then poses the following: "**Do you have one of those memories that gets better with time?** Or did you remember this accident better a week later than in court today? **Let me remind you, you are under oath!**" Plaintiff objects. Defense responds that the right of confrontation is imbedded in the Constitution.

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### Carlson on Evidence

Concluding Impeachment

• Iowa R. Evid. 5.611

- *a. Control by the court; purposes.* The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
- (1) Make those procedures effective for determining the truth.
  - (2) Avoid wasting time.
  - (3) Protect witnesses from harassment or undue embarrassment.

by Michael Scott Carlson, Esq.

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### Carlson on Evidence

Concluding Impeachment

- "Further, the trial court has a duty to protect a witness from questions which go beyond the bounds of proper cross-examination, merely to harass, annoy, or humiliate. Even relevant evidence is not constitutionally required to be admitted if the prejudicial effect outweighs the probative value." *State v. Gettier*, 438 N.W.2d 1 (Iowa 1989)

by Michael Scott Carlson, Esq.

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### Carlson on Evidence

Concluding Impeachment

- "After repeating the same question two more times and receiving the same response, he stated, 'I would like to remind you, Mr. Meligan, that you are under oath . . . .' The judge said, 'You don't have to remind him that he is under oath,'...The judge's comment, however, was an entirely appropriate means of performing his duty to control the mode of interrogation under Federal Rule of Evidence 611(a)." *Walker v. Meligan*, 1992 U.S. App. LEXIS 14545 (9th Cir. 1992)

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**Carlson on Evidence**

Exclusion of Relevant Evidence on Prejudice Grounds

- Defense cross-examination of witness Willis continues. Defense counsel asks her whether she was **on her cellular telephone** at the time of the accident. Plaintiff objects, "Judge this testimony is irrelevant and unduly prejudicial. **We are here to determine the Defendant's negligence, not attack this witness. She is not on trial!**"

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**Carlson on Evidence**

Exclusion of Relevant Evidence on Prejudice Grounds  
 COE 4 pp. 97-119

- **Iowa R. Evid. 5.401**
  - Evidence is relevant if:
    - *a.* It has **any tendency** to make a fact more or less probable than it would be without the evidence; and
    - *b.* The fact is **of consequence** in determining the action.

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### Carlson on Evidence

Exclusion of Relevant Evidence on Prejudice Grounds  
COE 4 pp. 97-119

#### • Iowa R. Evid. 5.402

➤ Relevant evidence is admissible, unless any of the following provide otherwise: the United States Constitution or Iowa Constitution, statute, these rules, or other Iowa Supreme Court rule. Irrelevant evidence is not admissible.

By Michael Scott Carlson, Esq.

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### Carlson on Evidence

Exclusion of Relevant Evidence on Prejudice Grounds

#### • Iowa R. Evid. 5.403

➤ The court may exclude relevant evidence if its probative value is **substantially outweighed** by a danger of one or more of the following: **unfair prejudice**, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

By Michael Scott Carlson, Esq.

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### Carlson on Evidence

Exclusion of Relevant Evidence on Prejudice Grounds

- "Evidence is relevant if it renders the existence of a fact more probable or less probable with it than without it...Relevancy and materiality are matters of trial court discretion...A trial court has discretion to exclude relevant evidence when its probative value is substantially outweighed by confusion of issues or considerations of waste of time." *Carter v. MacMillan Oil Co.*, 355 N.W.2d 52 (Iowa 1984)

By Michael Scott Carlson, Esq.

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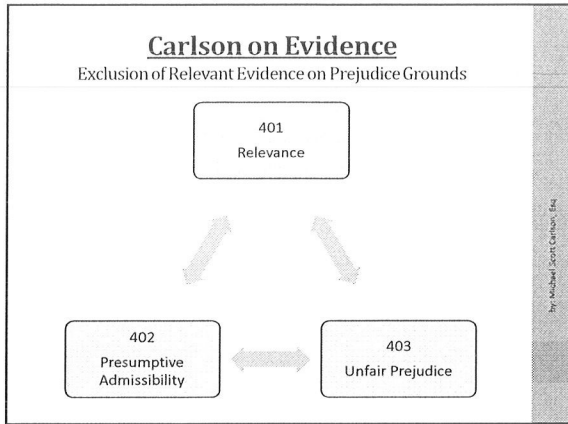
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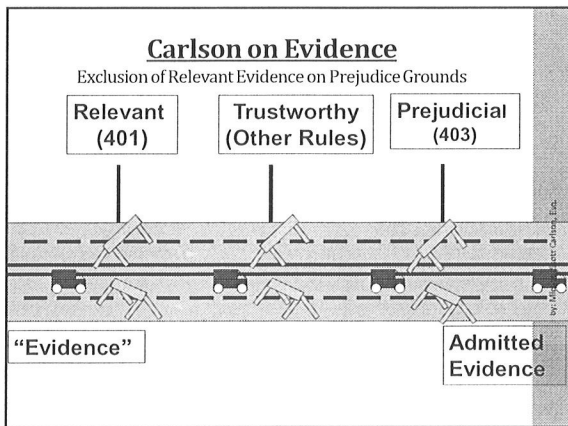
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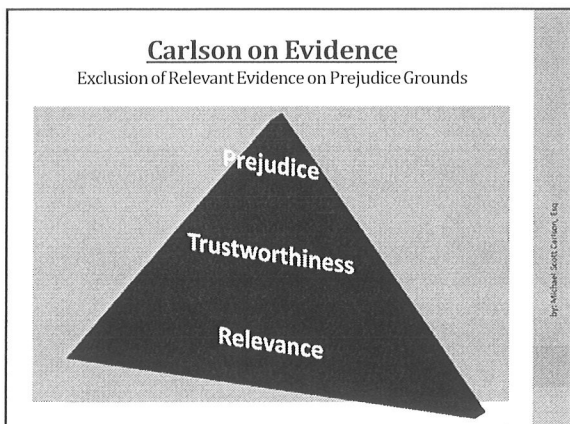
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### Carlson on Evidence

#### Exclusion of Relevant on Prejudice Grounds

- "...To justify exclusion under Rule 403, the prejudice must be unfair'...'Unfair prejudice arises when the evidence prompts the jury to make a decision on an improper basis, often an emotional one.'... The adverse effect of relevant evidence due to its probative value is not unfair prejudice.'" *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150 (Iowa 2004)
- "In the context of a criminal case, unfair prejudice 'speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.'" *State v. Cromer*, 765 N.W.2d 1 (Iowa 2009)

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### Carlson on Evidence

#### Exclusion of Relevant on Prejudice Grounds

- A trial court 'has broad discretion in determining the relevancy and admissibility of evidence.'... **Rule 403 is only a bar to evidence that is unfairly prejudicial**, not merely prejudicial. Unfair prejudice 'speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.'" *Burris v. Gulf Underwriters Ins. Co.*, 787 F.3d 875 (8th Cir. 2015)

Dr. Michael Scott Carlson, Esq.

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### Carlson on Evidence

#### Exclusion of Relevant on Prejudice Grounds

- "The jury was presented with evidence that Turner was talking on her cell phone at the time of the accident. Turner reluctantly admitted this point on cross-examination only after being confronted with her cell phone records and even then stated that if she had been using her cell phone, it would have been with a hands-free device. The jury was entitled to consider this equivocal testimony, and Turner's possible distraction at the time of the accident, in reaching its decision." *Turner v. Fransen*, 829 N.W.2d 190 (Iowa Ct. App. 2013)

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**Carlson on Evidence**

Impeachment on Collateral Matters

- During cross-examination of witness Willis, Defense counsel asks her to repeat her direct testimony about having "a light breakfast of coffee and toast" the day of the accident. Reaching for the investigator's statement, Defense counsel continues questioning: "How can you take the stand and say 'light breakfast?' In your statement, you said you had pancakes, bacon, and hash browns at IHOP. You signed it! Remember, we can call the staff from IHOP." Plaintiff objects.

Dr. Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Impeachment on Collateral Matters

- Iowa R. Evid. 5.613
  - *b. Extrinsic evidence of a prior inconsistent statement.* Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under rule 5.801(d)(2).

Dr. Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Impeachment on Collateral Matters

## • Iowa R. Evid. 5.403

- The court may exclude relevant evidence if its probative value is **substantially outweighed** by a danger of one or more of the following: unfair prejudice, **confusing the issues**, **misleading the jury**, **undue delay**, **wasting time**, or needlessly presenting cumulative evidence.

By Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Impeachment on Collateral Matters

- "Generally, the State may impeach a defense witness by introducing out-of-court oral statements inconsistent with the testimony presented by the witness at trial....In doing so, the State may use the impeachment evidence only for the purpose of undermining the witness' credibility, and not as substantive evidence.  
...Furthermore, impeachment evidence is admissible only if it addresses a non-collateral issue...Impeachment evidence is non-collateral if its contents are admissible for any purpose independent of the contradiction." *State v. Belken*, 633 N.W.2d 786 (Iowa 2001)

By Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Impeachment on Collateral Matters

- "Evidence of prior inconsistent statements is admissible under Rule 613(b) of the Federal Rules of Evidence, however, 'our case law adds a restriction not explicitly included in Rule 613 itself: Extrinsic evidence of a collateral matter is not admissible.'" *U.S. v. Cowling*, 648 F.3d 690 (8th Cir. 2011)
- "In addition to these limitations, 'under 613(b) a witness may not be impeached on a collateral matter by use of prior inconsistent statements.'... 'A matter is collateral 'if the facts referred to in the statement could not be shown in evidence for any purpose independent of the contradiction.'" *U.S. v. Bordeaux*, 570 F.3d 1041 (8th Cir. 2009)

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## Carlson on Evidence Critical Issues in Trial Evidence

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**Swenson v. Western Trucking Co.**  
*Witness Willis*

by Michael Scott Carlson, Esq.

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## Carlson on Evidence

Bias Impeachment

- Defense cross-examination of witness Willis continues as she is asked, "You don't like trucks do you? **In fact you unsuccessfully sued over an accident with a truck a few years ago.**" Plaintiff objects. Defense responds that **impeachment for bias** authorizes this line of questioning.

by Michael Scott Carlson, Esq.

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## Carlson on Evidence

Bias Impeachment

- **Iowa R. Evid. 5.402**
  - **Relevant evidence is admissible, unless any of the following provide otherwise: the United States Constitution or Iowa Constitution, statute, these rules, or other Iowa Supreme Court rule. Irrelevant evidence is not admissible.**

by Michael Scott Carlson, Esq.

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### Carlson on Evidence

#### Bias Impeachment

- "Nevertheless, under both rule 411 and the common law, insurance coverage may be revealed to show evidence of bias or prejudice, particularly where used to impeach a witness who is an employee or agent of the insurer." *Strain v. Heinssen*, 434 N.W.2d 640 (Iowa 1989)
- "A defendant should be permitted wide latitude in seeking to show bias of an alleged accomplice who testifies for the prosecution. The pendency of the same charge against an accomplice creates a reason for him to testify favorably for the State to curry favor in order to obtain leniency." *State v. Donelson*, 302 N.W.2d 125 (Iowa 1981)

By: Michael Scott Carlson, Esq.

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### Carlson on Evidence

#### Bias Impeachment

- "Under the Federal Rules of Evidence, impeachment for bias links most directly to Rule 402's broad admissibility of relevant evidence, because '[p]roof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness[s] testimony.' ...Therefore, the government's impeachment of Defendant as to his motive to lie is admissible as relevant evidence, barring its exclusion on other grounds." *U.S. v. Ngombwa*, 99 Fed. R. Evid. Serv. 453 (N.D. Iowa 2016)

By: Michael Scott Carlson, Esq.

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### Carlson on Evidence

#### Bias Impeachment

- "Bias is a term used in the common law of evidence to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' like, dislike, or fear of a party, or by the witness' self-interest." *U.S. v. Abel*, 469 U.S. 45 (1984)

By: Michael Scott Carlson, Esq.

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### Carlson on Evidence

Bias Impeachment

- "But when a criminal defendant is 'prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias' to impeach the credibility of a critical government witness, **constitutional error results.**"

➤ *U.S. v. Drapeau*, 414 F.3d 869 (8th Cir. 2005) (Lay, C.J. concurring)

➤ *State v. Campbell*, 714 N.W.2d 622 (Iowa 2006)

By Michael Scott Carlson, Esq.

### Carlson on Evidence

Bias Impeachment

COE 4 pp.329-33

- "There are no special rules of 'proper impeachment' for bias. The credibility of witnesses is always a material issue, so the only question of materiality or relevance when evidence is offered to impeach for bias is whether the evidence tends in reason to demonstrate the existence of some fact, state of mind or condition that a reasonable person would take into account in assessing the credibility of the witness under attack. As we pointed out above, the balance must be weighed in favor of admissibility where impeachment for bias is the object." *Johnson v. Brewer*, 521 F.2d 556 (8th Cir. 1975)

By Michael Scott Carlson, Esq.

### Carlson on Evidence

Bias Impeachment

- "....because bias is never collateral, "it is permissible to [prove bias] by extrinsic evidence...The Montoyas' prior arrests and charges by APD, the same police department that the Montoyas are suing in this case and who employs Sheldon and Lovato, therefore are relevant and admissible to show their bias against APD, and against Sheldon and Lovato, in this case." *Montoya v. Sheldon*, 898 F. Supp. 2d 1259 (D.N.M. 2012)

By Michael Scott Carlson, Esq.



## Carlson on Evidence Critical Issues in Trial Evidence

Iowa Defense Counsel Association  
IDCA 53rd Annual Meeting and Seminar  
5291 Stoney Creek Court  
Johnston, IA 50131-September 14, 2017

**Swenson v. Western Trucking Co.**  
*Witness Swenson*

Dr. Michael Scott Carlson, Esq.

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## Carlson on Evidence

Good Faith Requirement

- Plaintiff is called and testifies about the wreck and the injuries that were sustained. On cross, Defense counsel inquires as to **Plaintiff's criminal record**. Plaintiff responds, "Only a few problems." **At that time, counsel for the Defense pulls out a thick stack of paper and begins flipping thorough it.** Plaintiff objects and requests the Court admonish Defense counsel, as Plaintiff has only **two prior convictions offenses**.

Dr. Michael Scott Carlson, Esq.

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## Carlson on Evidence

Good Faith Requirement

- Iowa R. Evid. 5.611
  - *a. Control by the court; purposes.* The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
    - (1) **Make those procedures effective for determining the truth.**
    - (2) Avoid wasting time.
    - (3) Protect witnesses from harassment or undue embarrassment.

Dr. Michael Scott Carlson, Esq.

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### Carlson on Evidence

#### Good Faith Requirement

- "While it is true that prosecutors must have a good-faith basis for questions asked during the cross-examination of a defendant...Mrs. Deluca abandoned this claim during trial by basing her motion for a mistrial solely on the alleged damage to her counsel's credibility." *U.S. v. Grajales-Montoya*, 117 F.3d 356 (8th Cir. 1997)
- "When a character trait is put into evidence, specific incidences of conduct are admitted on cross-examination. Iowa R. Evid. 5.405(a). The prosecution is only required to show a good faith basis for the incident raised." *Sickels v. State*, 863 N.W.2d 301 (Iowa Ct. App. 2015)

by Michael Scott Carlson, Esq.

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### Carlson on Evidence

#### Good Faith Requirement

- "Even out of context we are dismayed at defense counsel's impertinence, and agree with the trial judge that the conduct was 'uncalled for.' ...Counsel, knowing that such evidence was irrelevant and prejudicial, once already had alluded to the plaintiff's arrest record in front of the jury. After the court sustained the objection to that tactic, counsel resorted to the less candid but equally prejudicial theatrical display at issue. ...left with the distinct impression that the plaintiff was a hardened criminal with a long history of arrests, the jury retired to consider its verdict without an instruction from the court to disregard such evidence in its deliberations." *Sanders-El v. Wenciewicz*, 987 F.2d 483 (8th Cir. 1993)

by Michael Scott Carlson, Esq.

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### Carlson on Evidence

#### Good Faith Requirement

- "...it is settled beyond doubt that in a federal court the judge has the right, and often [the] obligation, to interrupt the presentations of counsel in order to clarify misunderstandings; and district courts 'must manage litigation to avoid needless consumption of time.'" *U.S. v. Cain*, 586 Fed. Appx. 104 (4th Cir. 2014)
- "Though the trial judge must be neutral, he need not be a passive spectator...He has an affirmative obligation under Federal Rule of Evidence 611(a)... he has an overall responsibility to see that the trial is just and not subject to delay. *Cranberg v. Consumers Union of U.S., Inc.*, 756 F.2d 382 (5th Cir. 1985)

by Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Good Faith Requirement

- "A fair assessment of the entire paragraph reveals that, in addressing Rule 611(a)(1), the Advisory Committee is providing examples of 'concerns' addressed by a Rule that 'restates in broad terms the power and obligation of the judge as developed under common law principles. '...But as the note suggests, it is Rule 403 that provides the authority to exclude evidence...Under Rule 611(a)(2), needless consumption of time is avoided through the court's regulation of the mode and order of interrogating witnesses and presenting evidence.'" *U.S. v. Colomb*, 419 F.3d 292 (5th Cir. 2005)

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**Carlson on Evidence****Critical Issues in Trial Evidence**

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**Swenson v. Western Trucking Co.***Witness Swenson*

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**Carlson on Evidence**

## Prior Conviction Impeachment

- Cross-examination of Plaintiff continues. Defense inquires about a **five-year-old vehicular homicide** conviction, for which Plaintiff received a two year, probated sentence. Plaintiff objects that this is **improper impeachment, because the jurisdiction in question classifies that offense as a misdemeanor**, and the offense does not involve dishonesty.

Dr. Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Prior Conviction Impeachment

## • Iowa R. Evid. 5.609

- *a. In general.* The following apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
- (1) For a crime that in the convicting jurisdiction was punishable by death or by imprisonment for more than one year, the evidence:
- (A) Must be admitted, subject to rule 5.403, in a civil case or in a criminal case in which the witness is not a defendant.
- (B) Must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant.
- (2) For any crime regardless of the punishment, the evidence must be admitted if the crime involved dishonesty or false statement.

By Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Prior Conviction Impeachment

## • Iowa R. Evid. 5.609

- *b. Limit on using the evidence after ten years.* This subdivision (b) applies if **more than ten years** have passed since the witness's conviction or release from confinement for it, whichever is later.
- Evidence of the conviction is **admissible only** if:
- (1) Its probative value, supported by specific facts and circumstances, **substantially outweighs** its prejudicial effect; and
- (2) The proponent gives an adverse party **reasonable written notice** of the intent to use it so that the party has a fair opportunity to contest its use.

By Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Prior Conviction Impeachment

- "One side of the equation in this case is the theory, which Congress endorsed, that **felons are less credible.**" *U.S. v. Chaco*, 801 F. Supp. 2d 1217 (D.N.M. 2011)
- "The traditional rationale for admitting prior convictions rests on the assumption prior convictions undermine a witness's credibility because a person who commits a crime is more likely to lie than a law-abiding citizen." *State v. Redmond*, 803 N.W.2d 112 (Iowa 2011)

By Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Prior Conviction Impeachment

- "The salient feature of rule 5.609(a)(1) is the distinction between defendants and witnesses.... Only when the prior conviction's probative value outweighs its prejudicial effect to the accused is the defendant's prior conviction admissible for impeachment purposes. ....The prosecution must carry this burden to admit a prior conviction against the accused.... The rule requires the court to determine both the conviction's 'probative value' and the conviction's 'prejudicial effect,' but it does not define the meaning of either concept. The court must use its discretion to make these findings. An appellate court cannot hypothecate the countless individual circumstances that may influence a conviction's probative value or prejudicial effect, but it can provide guidance to the content of these terms." *State v. Redmond*, 803 N.W.2d 112 (Iowa 2011)

By: Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Prior Conviction Impeachment

- "The court acknowledges that each of the six convictions the government identifies are crimes punishable by imprisonment for a term exceeding one year under the laws of the State of Iowa, and each conviction is less than ten years old. However, because the court is not yet aware of whether Defendant will testify, the court shall reserve ruling on this issue. The parties may raise the issue again at trial if it becomes apparent that Defendant will testify." *U.S. v. Phillips*, 2012 U.S. Dist. LEXIS 23733 (N.D. Iowa Feb. 24, 2012)

By: Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Prior Conviction Impeachment

COE 4 pp.337-51

- "However, in Iowa, where Defendant's prior aggravated misdemeanor convictions occurred, such aggravated misdemeanors are punishable by 'imprisonment not to exceed two years.' Iowa Code § 903.1(2). Therefore Defendant's convictions for neglect and harassment—although aggravated misdemeanors—were 'punishable by . . . imprisonment for more than one year' and are, accordingly, admissible under Rule 609(a) subject to a weighing of the probative value and prejudicial effect of the evidence." *U.S. v. Bailey*, 98 Fed. R. Evid. Serv. 1278 (N.D. Iowa 2015)

By: Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Prior Conviction Impeachment

- "Rule 609 allows a party to offer evidence of a witness' prior conviction for purposes of attacking the witness' character for truthfulness, **if the prior conviction was for a crime punishable by death or imprisonment in excess of one year...** And if the conviction...occurred **more than ten years before trial**, the court must determine whether the probative value of the conviction, supported by specific facts and circumstances, **substantially outweighs** its prejudicial effect, and the party offering the evidence must give his opponent advance written notice." *U.S. v. Jumping Eagle*, 515 F.3d 794 (8th Cir. 2008)

Dr. Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Prior Conviction Impeachment

- "More importantly, however, Fed.R.Evid. 609(b) clearly contemplates that any final ruling on the admissibility of a more than ten-year-old conviction should rest upon 'specific facts and circumstances' developed in the course of the trial which bear on the probative value or prejudicial effect of the conviction in question. Thus, in ordinary circumstances, a defendant who objects to a pretrial ruling on the admissibility of such an aged conviction ought to assert that objection when the prosecutor seeks to introduce the questioned evidence." *U.S. v. Cobb*, 588 F.2d 607 (8th Cir. 1978)

Dr. Michael Scott Carlson, Esq.

**Carlson on Evidence****Critical Issues in Trial Evidence**

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*Witness Swenson*

Dr. Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Prior Conviction Impeachment

- Defense counsel continues cross-examination and now attempts to ask about the underlying details of the vehicular homicide: **"Now you got a plea deal, but didn't you run off a country road and slam into an outhouse or privy killing the occupant inside?"** Plaintiff objects that questions about the underlying offense are **outside of proper impeachment** under Rule 609.

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Prior Conviction Impeachment

- Iowa R. Evid. 5.609
  - *a. In general.* The following apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
    - (1) For a crime that in the convicting jurisdiction was punishable by death or by imprisonment for more than one year, the evidence:
      - (A) Must be admitted, subject to rule 5.403, in a civil case or in a criminal case in which the witness is not a defendant.
      - (B) Must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant.
    - (2) For any crime regardless of the punishment, the evidence must be admitted if the crime involved dishonesty or false statement.

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Prior Conviction Impeachment

- Iowa R. Evid. 5.609
  - *b. Limit on using the evidence after ten years.* This subdivision (b) applies if **more than ten years** have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is **admissible only** if:
    - (1) Its probative value, supported by specific facts and circumstances, **substantially outweighs** its prejudicial effect; and
    - (2) The proponent gives an adverse party **reasonable written notice** of the intent to use it so that the party has a fair opportunity to contest its use.

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Prior Conviction Impeachment

- "Ordinarily, it is improper for the prosecution to examine into the details of the crime for which the accused was convicted. The cross-examination should be confined to a showing of the essential facts of convictions, the nature of the crimes, and the punishment." *U.S. v. Commanche*, 577 F.3d 1261 (10th Cir. 2009)
- "... 'essential facts' of the conviction including the nature or statutory name of each offense, its date, and the sentence imposed is presumptively required by the rule, subject to balancing under rule 403." *State v. Jones*, 2011 Iowa App. LEXIS 8 (Iowa Ct. App. Jan. 20, 2011)

By Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Prior Conviction Impeachment

- "Both Rule 609(a)(1) and (a)(2) contemplate admitting 'evidence' of a witness's convictions for impeachment purposes. The language of both provisions is identical with respect to the generalized description of the 'evidence' of a witness's convictions that is to be admitted. The presumption under Rule 609(a)(2) - as recognized by the district court - is that the 'essential facts' of a witness's convictions, including the statutory name of each offense, the date of conviction, and the sentence imposed, are included within the 'evidence' that is to be admitted for impeachment purposes." *U.S. v. Estrada*, 430 F.3d 606 (2d Cir. 2005)

By Michael Scott Carlson, Esq.

**Carlson on Evidence****Critical Issues in Trial Evidence**

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**Swenson v. Western Trucking Co.***Witness Swenson*

By Michael Scott Carlson, Esq.



**Carlson on Evidence**

Impeachment with Acts of Dishonesty/Untruthfulness

- During cross-examination of Plaintiff, Defense counsel asks, "Well that is not the only time that you have been in trouble. **Weren't you arrested for drunk driving last year?**" Plaintiff's counsel objects, "Your honor this is **not a conviction and the matter does not involve untruthfulness.** Improper impeachment."

Dr. Michael Scott Carlson, Esq.

**Carlson on Evidence**

Impeachment with Acts of Dishonesty/Untruthfulness

• **Iowa R. Evid. 5.609**

- *a. In general.* The following apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
- (1) For a crime that in the convicting jurisdiction was punishable by death or by imprisonment for more than one year, the evidence:
    - (A) Must be admitted, subject to rule 5.403, in a civil case or in a criminal case in which the witness is not a defendant.
    - (B) Must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant.
  - (2) For any crime regardless of the punishment, the evidence must be admitted if the crime involved dishonesty or false statement.

Dr. Michael Scott Carlson, Esq.

**Carlson on Evidence**

Impeachment with Acts of Dishonesty/Untruthfulness

• **Iowa R. Evid. 5.608**

- *b. Specific instances of conduct.* Except for a criminal conviction under rule 5.609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. **But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:**
- (1) The witness; or
  - (2) Another witness whose character the witness being cross-examined has testified about. By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Dr. Michael Scott Carlson, Esq.

### **Carlson on Evidence**

Impeachment with Acts of Dishonesty/Untruthfulness

- “Although ordinarily inquiry into specific instances of conduct is not allowed, **Iowa Rule of Evidence 608(b)** permits such inquiry ‘in the discretion of the court’ if probative of the witness’s truthfulness or untruthfulness.” *State v. Martin*, 385 N.W.2d 549 (Iowa 1986)

By Michael Scott Carlson, Esq.

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### **Carlson on Evidence**

Impeachment with Acts of Dishonesty/Untruthfulness

- “Despite barring extrinsic evidence of specific conduct except for certain criminal convictions, **Rule 608(b)** allows for inquiry into specific conduct on cross-examination of a witness ‘if [it is] probative of the character for truthfulness or untruthfulness’ of the witness testifying.” *U.S. v. Ngombwa*, 99 Fed. R. Evid. Serv. 453 (N.D. Iowa 2016)

By Michael Scott Carlson, Esq.

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### **Carlson on Evidence**

#### **Critical Issues in Trial Evidence**

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**Swenson v. Western Trucking Co.**

*Witness Swenson*

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Impeachment with Acts of Dishonesty/Untruthfulness

- Defense counsel inquires of Plaintiff, "Weren't you also **arrested for giving a false name** when you were stopped for attempting to shoplift six months ago?" Plaintiff admits to the incident but denies being convicted. Counsel for Defendant announces, "Judge, I am bringing in the store clerk who received this false identification. The jury deserves all the details." Plaintiff **objects that extrinsic evidence is inadmissible under Rule 608(b).**

Dr. Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Impeachment with Acts of Dishonesty/Untruthfulness

- **Iowa R. Evid. 5.608**  
 ➤ *b. Specific instances of conduct.* Except for a criminal conviction under rule 5.609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. **But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:**  
 (1) The witness; or  
 (2) Another witness whose character the witness being cross-examined has testified about. By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Dr. Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Impeachment with Acts of Dishonesty/Untruthfulness

- "The issue is whether the **use of false names bears directly enough upon the witness' veracity** as to outweigh the general prohibition against cross-examining about particular acts of misconduct other than convictions of a crime. We think it does. If a man lies about his own name, might he not tell other lies?" *State v. Martinez*, 621 N.W.2d 689 (Iowa Ct. App. 2000)

Dr. Michael Scott Carlson, Esq.

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### Carlson on Evidence

Impeachment with Acts of Dishonesty/Untruthfulness

- "In evaluating the sufficiency of this offer of proof for purposes of admission under rule 608(b), it is important to note the narrow scope of that rule. This part of rule 608 permits cross-examination of a witness concerning a specific instance of conduct by the witness; **it does not permit such conduct to be proved by extrinsic evidence.**" *State v. Greene*, 592 N.W.2d 24 (Iowa 1999)

by Michael Scott Carlson, Esq.

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### Carlson on Evidence

Impeachment with Acts of Dishonesty/Untruthfulness

- "Rule 608(b) provides, in relevant part, that 'extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness.' **In inquiring about the witness's conduct, the questioner must take the answer provided by the witness and cannot use 'extrinsic evidence to prove that the specific bad acts occurred.'**" *U.S. v. Grandison*, 781 F.3d 987 (8th Cir. 2015)

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### Carlson on Evidence

#### **Critical Issues in Trial Evidence**

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**Swenson v. Western Trucking Co.**

*Witness Swenson*

by Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Impeachment by Contradiction

- During cross-examination of the Plaintiff, counsel for Defendant states, "Do you remember your lawyer saying in **opening that you are always a careful driver?** How about that big collision on the corner of Brady and Kimberly in Davenport? You were right in the middle of that one, right?" Plaintiff objects as irrelevant and improper reference to a past accident. Defense responds that this is **permissible impeachment by contradiction.**

by Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Impeachment on Collateral Matters

• **Iowa R. Evid. 5.607**

- Any party, including the party that called the witness, **may attack the witness's credibility.**

by Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Impeachment by Contradiction

- "The credibility of a witness can be attacked in a variety of ways...One method is referred to as 'impeachment by contradiction' and is accomplished by proof through other witnesses that the material facts were not as testified to by the witness....**Impeachment by contradiction permits courts to admit extrinsic evidence that specific testimony is false, because contradicted by other evidence.**' ...In the federal courts, impeachment by contradiction is authorized by rule 607, and rule 403 governs its application." *State v. Grider*, 829 N.W.2d 192 (Iowa Ct. App. 2013)

by Michael Scott Carlson, Esq.

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**Carlson on Evidence**

## Impeachment by Contradiction

- "The Eighth Circuit Court of Appeals has observed, 'It is **elementary that a witness may be impeached by contradictory evidence.**'" *McNeal v. SDG Macerich Props., L.P.*, 76 Fed. R. Evid. Serv. 1101 (N.D. Iowa 2008)
- "By painting a picture of himself as an innocent who succumbed to sympathy for Morrissey in the Rockford, Illinois scheme, the **defendant invited cross-examination concerning this previous misconduct.**" *U.S. v. McClintic*, 570 F.2d 685 (8th Cir. 1978)

By Michael Scott Carlson, Esq.

**Carlson on Evidence**

## Impeachment by Contradiction

- "...contradiction offered through the testimony of another witness is customarily excluded unless it is independently relevant or admissible... 'one may **not contradict for the sake of contradiction**' by proffering testimony that relates only to collateral matters." *U.S. v. Scott*, 243 F.3d 1103 (8th Cir. 2001)
- "...a witness may be impeached by contradiction only if 'the statements in issue [have] been volunteered on *direct examination*.'...Extrinsic evidence may not be admitted to impeach testimony invited by questions posed during cross-examination." *State v. Bilyeu*, 801 N.W.2d 628 (Iowa Ct. App. 2011)

By Michael Scott Carlson, Esq.

**Carlson on Evidence****Critical Issues in Trial Evidence**

Iowa Defense Counsel Association  
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**Swenson v. Western Trucking Co.**  
*Witness Palmer*

By Michael Scott Carlson, Esq.

**Carlson on Evidence**

Hypothetical Questions and Experts

- Plaintiff calls an expert witness, engineer Joan Palmer, an authority on accident reconstruction and trucking regulations. Expert Palmer opines that the **collision was avoidable**, had the truck pulled to right, which, Palmer testifies, "Is required in all circumstances." Defense cross-examination inquires whether Palmer would give the same advice if **pulling to the right would take the truck off of a cliff or into a playground full of children**. Plaintiff objects, "Hypotheticals are not allowed during cross-examination."

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Hypothetical Questions and Experts

## • Iowa R. Evid. 5.705

- Unless the court orders otherwise, an expert may state an opinion--and give the reasons for it--**without first testifying to the underlying facts or data**. But the expert may be required to disclose those facts or data on cross-examination.

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Hypothetical Questions and Experts

- "Because the expert gave an opinion on direct that was premised on a one-second perception/reaction time, **the trial court did not err in allowing questions on cross-examination that were also premised on a one-second perception/reaction time**. Whether this typical perception/reaction time was a reasonable assumption under the circumstances of this case was a disputed issue for the jury to resolve." *Graber v. City of Ankeny*, 616 N.W.2d 633 (Iowa 2000)

By Michael Scott Carlson, Esq.

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### **Carlson on Evidence**

Hypothetical Questions and Experts

- “Rule 705 eliminates the requirement of preliminary disclosures at the trial through other witnesses or by the use of hypothetical questions.

The hypothetical question is complex and time-consuming, and it affords an opportunity to argue a case in the middle of the evidence....” *Brunner v. Brown*, 480 N.W.2d 33 (Iowa 1992)

By Michael Scott Carlson, Esq.

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### **Carlson on Evidence**

Hypothetical Questions and Experts

- “Although hypothetical questions are still permitted under the federal rules, the aim of Rule 705 is to replace the need for hypotheticals with reliance on cross-examination to bring out the basis of an expert’s testimony. Use of the adversary process should allow the opposing attorneys to explore an expert’s reasoning more selectively and, hence, more efficiently, while reducing the opportunities for deceptive manipulation of the testimony.” *Clifford v. U.S.*, 532 A.2d 628 (D.C. 1987)

By Michael Scott Carlson, Esq.

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### **Carlson on Evidence**

Hypothetical Questions and Experts

- “The standards by which a hypothetical question is to be judged are well-settled in this Circuit. The form of the question ‘must be left largely to the discretion of the trial court.’ ... The question need not include all facts shown by the evidence or pertinent to the ultimate issue, but it should be in such a form as not to mislead or confuse the jury. ...A hypothetical should include only such facts as are supported by the evidence, and ‘(only) the basic facts need be assumed in the hypothesis,’ but ‘a question which omits any material fact essential to the formation of a rational opinion is . . . incompetent.”” *Iconco v. Jensen Constr. Co.*, 622 F.2d 1291 (8th Cir. 1980)

By Michael Scott Carlson, Esq.

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**Carlson on Evidence**

Hypothetical Questions and Experts

- "Generally, the authorities disagree about whether, on cross-examination, an expert may be asked questions that assume facts which are not in evidence." *State v. Cash*, 3 Neb. Ct. App. 319 (1995)
- "If the adversary desires the opinion of the expert upon the facts as he asserts them to be, **he can obtain it on cross-examination...**" *Taylor v. Reo Motors, Inc.*, 275 F.2d 699, 703 (10th Cir. 1960)

Dr. Michael Scott Carlson, Esq.

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**Carlson on Evidence**Hypothetical Questions and Experts  
COE 4 pp. 471-75

- "When, however, an objection is made on the basis of an absence of material facts, it is **incumbent upon the objecting counsel to state specifically the material facts omitted from the hypothetical question.** This allows the court to rule intelligently upon the objection and gives interrogating counsel an opportunity to amend and correct the defect in the question propounded." *People v. Reynolds*, 575 P.2d 1286 (Colo. 1978)

Dr. Michael Scott Carlson, Esq.

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**Carlson on Evidence****Critical Issues in Trial Evidence**Iowa Defense Counsel Association  
IDCA 53rd Annual Meeting and Seminar  
5291 Stoney Creek Court  
Johnston, IA 50131-September 14, 2017**Concluding Thoughts**

Dr. Michael Scott Carlson, Esq.

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**Thank you for the invitation your attentoion, and  
opportunity for a great homecoming!**

By Michael Scott Carlson, Esq.

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By Michael Scott Carlson, Esq.

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