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DEERING'S CALIFORNIA CODE ANNOTATED  
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\*\*\* THIS SECTION IS CURRENT THROUGH THE 2011 SUPPLEMENT \*\*\*  
(ALL 2010 LEGISLATION)  
SPECIAL NOTICE: CHAPTERS ENACTED BETWEEN OCTOBER 20, 2009, AND  
NOVEMBER 2, 2010, ARE SUBJECT TO REPEAL BY PROPOSITION 22.

EVIDENCE CODE  
Division 6. Witnesses  
Chapter 6. Credibility of Witnesses  
Article 1. Credibility Generally

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

*Cal Evid Code § 780 (2010)*

**§ 780. General rule as to credibility**

Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

- (a) His demeanor while testifying and the manner in which he testifies.
- (b) The character of his testimony.
- (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.
- (d) The extent of his opportunity to perceive any matter about which he testifies.
- (e) His character for honesty or veracity or their opposites.
- (f) The existence or nonexistence of a bias, interest, or other motive.
- (g) A statement previously made by him that is consistent with his testimony at the hearing.
- (h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
- (i) The existence or nonexistence of any fact testified to by him.

- (j) His attitude toward the action in which he testifies or toward the giving of testimony.
- (k) His admission of untruthfulness.

**HISTORY:**

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

**NOTES:****Historical Derivation:**

- (a) Former CCP § 1847, as enacted Stats 1872.
- (b) Former CCP § 1870, as enacted Stats 1872.
- (c) Former CCP § 2049, as enacted Stats 1872.
- (d) Former CCP § 2051, as enacted Stats 1872, amended Stats 1949 ch 333 p 616.
- (e) Former CCP §§ 2052, 2053, as enacted Stats 1872.

**Law Revision Commission Comments:****1965**

Section 780 is a restatement of the existing California law as declared in several sections of the Code of Civil Procedure, all of which are superseded by this section and other sections in Article 2 (commencing with Section 785) of this chapter. See, *e.g.*, Code Civ. Proc. §§ 1847, 2049, 2051, 2052, 2053.

Section 780 is a general catalog of those matters that have any tendency in reason to affect the credibility of a witness. So far as the admissibility of evidence relating to credibility is concerned, Section 780 is technically unnecessary because Section 351 declares that "all relevant evidence is admissible." However, this section makes it clear that matters that may not be "evidence" in a technical sense can affect the credibility of a witness, and it provides a convenient list of the most common factors that bear on the question of credibility. See *Davis v. Judson* (1910) 159 Cal. 121, 113 Pac. 147, 1910 Cal. LEXIS 241; *La Jolla Casa de Manana v. Hopkins* (1950) 98 Cal. App.2d 339, 219 P.2d 871, 1950 Cal. App. LEXIS 1853. See generally Witkin, California Evidence §§ 480-485 (1958). Limitations on the admissibility of evidence offered to attack or support the credibility of a witness are stated in Article 2 (commencing with Section 785).

There is no specific limitation in the Evidence Code on the use of impeaching evidence on the ground that it is "collateral". The so-called "collateral matter" limitation on attacking the credibility of a witness excludes evidence relevant to credibility unless such evidence is independently relevant to the issue being tried. It is based on the sensible notion that trials should be confined to settling those disputes between the parties upon which their rights in the litigation depend. Under existing law, this "collateral matter" doctrine has been treated as an inflexible rule excluding evidence relevant to the credibility of the witness. See, *e.g.*, *People v. Wells* (1949) 33 Cal.2d 330, 202 P.2d 53, 1949 Cal. LEXIS 199, and cases cited therein.

The effect of Section 780 (together with Section 351) is to eliminate this inflexible rule of exclusion. This is not to

say that all evidence of a collateral nature offered to attack the credibility of a witness would be admissible. Under Section 352, the court has substantial discretion to exclude collateral evidence. The effect of Section 780, therefore, is to change the present somewhat inflexible rule of exclusion to a rule of discretion to be exercised by the trial judge.

There is no limitation in the Evidence Code on the use of opinion evidence to prove the character of a witness for honesty, veracity, or the lack thereof. Hence, under Sections 780 and 1100, such evidence is admissible. This represents a change in the present law. See *People v. Methvin*, 53 Cal. 68 (1878). However, the opinion evidence that may be offered by those persons intimately familiar with the witness is likely to be of more probative value than the generally admissible evidence of reputation. See 7 Wigmore, Evidence § 1986 (3d ed. 1940).

**Cross References:**

"Action": *Ev C § 105*.

"Hearing": *Ev C § 145*.

"Proof": *Ev C § 190*.

"Relevant evidence" as including evidence relating to credibility of witness: *Ev C § 210*.

"Statement": *Ev C § 225*.

"Statute": *Ev C § 230*.

Jurors as judges of credibility: *Ev C § 312*.

Judicial discretion to exclude evidence: *Ev C § 352*.

Right to introduce evidence relevant to credibility as not affected by statutory provisions as to preliminary determinations on admissibility of evidence: *Ev C § 406*.

Competency of witnesses: *Ev C §§ 700 et seq.*

Expert witnesses, credibility of: *Ev C §§ 721, 722*.

Witnesses protected from undue harassment or embarrassment: *Ev C § 765*.

Inconsistent statements: *Ev C §§ 768-770, 1235*.

Attacking and supporting credibility: *Ev C §§ 785 et seq.*

Character evidence as affecting credibility: *Ev C §§ 786 et seq.*

Consistent statements: *Ev C §§ 791, 1236*.

Hearsay declarant, credibility of: *Ev C § 1202*.

Prohibition of instructions to jury regarding sexual conduct of witness: *Pen C § 1127d*.

**Collateral References:**

*Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 551 "Trial".*

*Cal. Employment Law (Matthew Bender(R)), § 62.05.*

*Cal. Employment Law (Matthew Bender(R)), § 80.40.*

*Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 334 "Landlord And Tenant: Claims For Damages".*

Cal. Legal Forms, (Matthew Bender(R)) § 34B.230.

*Cotchett, California Courtroom Evidence, § 16.45 (Matthew Bender).*

1 Witkin Cal. Evidence (4th ed) Circumstantial Evidence §§ 49, 62, 85.

1 Witkin Cal. Evidence (4th ed) Opinion Evidence § 23.

3 Witkin Cal. Evidence (4th ed) Presentation at Trial §§ 88-340.

1 Witkin Summary (10th ed) Contracts § 522.

Judicial Council of California Civil Jury Instructions, *CACI Nos. 107, 5004* (Matthew Bender).

Cal Jur 3d (Rev) Criminal Law § 617.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), *CALCRIM No. 105*, Witnesses.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), *CALCRIM No. 226*, Witnesses.

Jefferson's California Evidence Benchbook, 3rd Edition (CEB, 2003) §§ 28.1 et seq.

Rutter Cal Prac Guide, Civil Trials and Evidence §§ 8:2992 et seq.

Cal. Ins. Law & Practice (Matthew Bender(R)), ch 12, Claims Processing and Investigation § 12.10.

Matthew Bender (R) Practice Guide: Cal. Trial and Post Trial Civil Procedure §§ 11.59, 11.61[1], 11.61[2], 11.66, 11.67[1], 11.68[2].

### **Forms:**

Suggested forms are set out below, following notes of decisions.

### **Law Review Articles:**

Psychological factors governing credibility of witnesses. 2 Bev Hills BJ, No. 10 p. 10.

Curative admissibility in California: A sword for the vigilant. 19 Cal Trial Lawyers Forum No. 5 p 203.

The art of cross-examination. 17 CEB Civ Lit Rep 78.

Prior inconsistent statements. *26 Hast LJ 361.*

California rape evidence reform. *26 Hast LJ 1551.*

Practice Tips: The Admissibility of Arbitration Depositions at Trial. *26 Los Angeles Lawyer 13* (June, 2003).

Destroying the plaintiff's credibility. How to: make discovery investigation pay off at trial. *35 Orange County Law No. 2 p 18.*

Bringing the "Opening the Door" Theory to a Close: The Tendency to Overlook the Specific Contradiction Doctrine in Evidence Law. *41 Santa Clara LR 807.*

Gender and race in the evidence policy: an essay on teaching race issues in the required evidence course: more lessons from the O.J. Simpson case. *28 Southwestern U LR 355.*

Character evidence: A guided tour of the grotesque structure. *21 UCD LR 123.*

The Hearsay Rule--Determining when evidence is hearsay or nonhearsay and determining its relevance as one or the other. *25 UWLA LR 59.*

California Evidence Code - Federal Rules of Evidence V. Witnesses: Conforming the California Evidence Code to the Federal Rules of Evidence. *39 U.S.F.L. Rev. 455.*

#### **Annotations:**

Impeachment of witness with respect to intoxication. *8 ALR3d 749.*

Use of drugs as affecting competency or credibility of witness. *65 ALR3d 705.*

Propriety and prejudicial effect of impeaching witness by reference to religious belief or lack of it. *76 ALR3d 539.*

Propriety of consideration of credibility of witness in determining probable cause at state preliminary hearing. *84 ALR3d 811.*

Right to cross-examine witness as to his place of residence. *85 ALR3d 541.*

Use of unrelated traffic offense conviction to impeach general credibility of witness in state civil case. *88 ALR3d 74.*

Propriety and prejudicial effect of informing jury that witness in criminal prosecution has taken polygraph test. *15 ALR4th 824.*

Impeachment of defense witness in criminal case by showing witness' prior silence or failure or refusal to testify. *20 ALR4th 245.*

Admissibility of impeached witness' prior consistent statement--modern state civil cases. *59 ALR4th 1000.*

Attacking or supporting credibility of witness by evidence in form of opinion or reputation, under *Rule 608(a) of Federal Rules of Evidence.* *52 ALR Fed 440.*

Use of prior inconsistent statements for impeachment of testimony of witnesses under *Rule 613, Federal Rules of Evidence.* *152 ALR Fed 375.*

**Hierarchy Notes:**

Evid Code Note

Div. 6, Ch. 6, Art. 1 Note

NOTES OF DECISIONS 1. In General 2. Demeanor 3. Recollection 4. Perception 5. Honesty or Veracity 6. Bias or Interest 7. Inconsistent Statements 8. Evidence Properly Excluded 9. Evidence Properly Admitted 10. Evidence Improperly Excluded or Admitted

**1. In General**

Even though testimony is uncontradicted, the trier of facts may believe and accept a portion of it and disbelieve the remainder. *People v. Anderson* (1966, Cal App 2d Dist) 243 Cal App 2d 243, 52 Cal Rptr 201, 1966 Cal App LEXIS 1670.

If the court, acting as the trier of facts, does not act arbitrarily, it may reject the entire testimony of a witness, even though the testimony is not contradicted. *Los Angeles v. Howard* (1966, Cal App 2d Dist) 244 Cal App 2d 538, 53 Cal Rptr 274, 1966 Cal App LEXIS 1605.

Generally, psychiatric testimony for the purpose of impeachment is inadmissible. *People v. McIntyre* (1967, Cal App 4th Dist) 256 Cal App 2d 894, 64 Cal Rptr 530, 1967 Cal App LEXIS 1934.

Under *Ev C* § 780, there is no specific limitation on the use of impeaching evidence on the ground that it is "collateral," and the admission of such evidence is now discretionary with the trial court. *People v. Eisenberg* (1968, Cal App 2d Dist) 266 Cal App 2d 606, 72 Cal Rptr 390, 1968 Cal App LEXIS 1548.

A trial court has discretionary power to permit impeachment of a witness, albeit on somewhat collateral matters extracted on cross-examination. *People v. Pierce* (1969, Cal App 3d Dist) 269 Cal App 2d 193, 75 Cal Rptr 257, 1969 Cal App LEXIS 1634.

On appeal from a conviction of burglary, the trial court's error in giving an instruction on credibility of witnesses to the effect that a witness is presumed to speak the truth (former CCP § 1847) was not prejudicial, even though such presumption was eliminated in the then applicable section on credibility (*Ev C* § 780), where, prior to giving such instruction, the court clearly instructed the jurors that they were the sole judges of the credibility of any witness, and then stated essentially the matters affecting credibility set forth in *Ev C* § 780, and where, viewing the instructions as a whole, it was not probable that the jury received the impression that they were required to accept the testimony of the prosecution witnesses. *People v. Hardy* (1969, Cal App 1st Dist) 271 Cal App 2d 322, 76 Cal Rptr 557, 1969 Cal App LEXIS 2384.

Disbelief of a witness does not establish that the contrary is true, only that the witness is not credible. *People v. Woodberry* (1970, Cal App 2d Dist) 10 Cal App 3d 695, 89 Cal Rptr 330, 1970 Cal App LEXIS 1881.

To impeach one's own witness, it is no longer necessary, as required under former CCP § 2049, to first establish surprise by the witness' testimony. *People v. Woodberry* (1970, Cal App 2d Dist) 10 Cal App 3d 695, 89 Cal Rptr 330, 1970 Cal App LEXIS 1881.

In a criminal case, impeachment of one of defendant's alibi witnesses by means of a tape recording of a telephone conversation between the witness and the prosecutor, who authorized the recording, did not constitute a violation of defendant's Fourth Amendment rights, or of section 605 of the *Federal Communications Act*. *People v. Dontanville*

(1970, *Cal App 2d Dist*) 10 *Cal App 3d* 783, 89 *Cal Rptr* 172, 1970 *Cal App LEXIS* 1889, superseded by statute as stated in *People v. Levesque* (1995, *Cal App 1st Dist*) 35 *Cal App 4th* 530, 41 *Cal Rptr 2d* 439, 1995 *Cal App LEXIS* 492.

The effect of *Ev C* § 351, making all relevant evidence not otherwise excluded by statute admissible, and *Ev C* § 780, giving the general rule as to credibility, is to eliminate the inflexible rule of exclusion of the impeaching evidence on the ground that it is collateral. *People v. Moses* (1972, *Cal App 2d Dist*) 24 *Cal App 3d* 384, 100 *Cal Rptr* 907, 1972 *Cal App LEXIS* 1146.

*Ev C* § 780, permits the jury to consider certain particular matters in testing the credibility of a witness, but it does not require that any and all questions relative to credibility be allowed on cross-examination; it was intended to continue the rule that the scope of the presentation of matters affecting credibility is in large measure within the discretion of the trial judge, but did not make mandatory the admission of such evidence. *People v. Alfaro* (1976, *Cal App 2d Dist*) 61 *Cal App 3d* 414, 132 *Cal Rptr* 356, 1976 *Cal App LEXIS* 1819.

In a prosecution for murder and other crimes, the trial court did not err in ruling that evidence that witnesses to the killing had been threatened was relevant to their states of mind and demeanors while testifying. Evidence that a witness is afraid to testify is relevant to the credibility of the witness and is therefore admissible (*Ev C* § 780). Testimony that a witness is fearful of retaliation similarly relates to that witness's credibility and is also admissible. It is not necessary to show threats against the witness were made by the defendant personally, or that the witness's fear of retaliation is directly linked to the defendant for the evidence to be admissible. *People v. Gutierrez* (1994, *Cal App 2d Dist*) 23 *Cal App 4th* 1576, 28 *Cal Rptr 2d* 897, 1994 *Cal App LEXIS* 293, review denied (1994, Cal) 1994 *Cal LEXIS* 3920.

Contrary to the assertion of defendant in a capital murder prosecution, *Ev C* § 780 does not grant litigants an unbridled right to prove the nonexistence of any fact a witness has testified to. Rather, it provides that the court or the jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, and it specifies in several subdivisions categories of evidence that might be relevant for this purpose including, in subdivision (i), the existence or nonexistence of any fact testified to by the witness. In the present case, even assuming that the trial court erred in not allowing a redacted version of a witness' tape-recorded interview to be played for the jury, reversal of a judgment or decision by reason of the erroneous exclusion of evidence is proper only when there has been a miscarriage of justice (*Ev C* § 354), which was not the case here. It was not reasonably probable that upon hearing evidence of the nonexistent fact defendant sought to establish (i.e., that a detective was exaggerating when he said the defense working copy transcription contained 400 errors), the jury would have reached a result more favorable to defendant. *People v. Earp* (1999) 20 *Cal 4th* 826, 85 *Cal Rptr 2d* 857, 978 *P2d* 15, 1999 *Cal LEXIS* 3901, rehearing denied *Supreme Court Minute 09-01-1999* (1999) 1999 *Cal. LEXIS* 6109, cert den (2000) 529 *U.S.* 1005, 120 *S. Ct.* 1272, 146 *L. Ed. 2d* 221, 2000 *U.S. LEXIS* 1779, 68 *U.S.L.W.* 3565.

County public defender office's database was exempt from disclosure under the "catch-all" exemption of *Gov C* § 6255 because the database contained information from individual client files and various public sources on recurring issues such as police performance in order to assist the individual attorneys in defending their clients by impeaching the officers testimony at trial pursuant to *Ev C* § 780, because the disclosure of that information would undermine the public defender's ability to perform its function, and because the interest of the public defender in non-disclosure outweighed the public interest in disclosure. *Coronado Police Officers Assn. v. Carroll* (2003, *Cal App 4th Dist*) 106 *Cal App 4th* 1001, 131 *Cal Rptr 2d* 553, 2003 *Cal App LEXIS* 331, review denied (2003) 2003 *Cal. LEXIS* 3554.

In an attempted murder trial, the trial court abused its discretion in excluding evidence of drug dealing by the victim, who was later murdered because of his drug activities. The evidence was relevant to the credibility of the victim's statements, but there was no prejudice because the jury heard substantial other evidence challenging the victim's credibility. *People v. Harris* (2005) 37 *Cal 4th* 310, 33 *Cal Rptr 3d* 509, 118 *P3d* 545, 2005 *Cal LEXIS* 9546, rehearing denied *People v. Harris (Maurice)* (2005) 2005 *Cal. LEXIS* 11766, cert den *Harris v. California* (2006) 547 *US* 1065, 126 *S Ct* 1655, 164 *L Ed 2d* 411, 2006 *US LEXIS* 2824.

## 2. Demeanor

The general rule that the uncontradicted testimony of a witness to a particular fact may not be disregarded, but should be accepted by the court as proof of the fact, has its exceptions: The most positive testimony of a witness may be contradicted by inherent improbabilities as to its accuracy contained in the witness' own statement of the transaction; there may be circumstances in evidence in connection with the matter which satisfy the court of its falsity; or the manner of the witness in testifying may impress the court with a doubt as to the accuracy of his statement and influence it to disregard his positive testimony as to a particular fact. *Snell v. Telehala* (1969, Cal App 1st Dist) 274 Cal App 2d 61, 78 Cal Rptr 780, 1969 Cal App LEXIS 2023.

On appeal from a robbery conviction, defendant could not rely for reversal on a claim that known perjured testimony was used against him, where such claim was based on the fact that his codefendant, on direct examination, implicated defendant, but on cross-examination completely reversed himself and exculpated defendant, and where the trial court sitting without a jury heard both versions and not only found the first version to be true but indicated a belief that the second version was the result of intimidation by defendant during a short intervening recess. *People v. Adams* (1969, Cal App 2d Dist) 1 Cal App 3d 29, 81 Cal Rptr 378, 1969 Cal App LEXIS 1247, cert den (1970) 398 US 941, 90 S Ct 1856, 26 L Ed 2d 276, 1970 US LEXIS 1707.

Evidence of prior inconsistent statements by a witness who surprised the prosecution was not admissible for a substantive purpose where the witness had answered some questions put by the prosecution on direct examination at both the first and second trials and, at each, thereafter refused to answer any more questions either on direct or cross-examination, thereby depriving defendant of any effective means of testing the earlier statement and denying the jury any effective way of judging his credibility. *People v. Woodberry* (1970, Cal App 2d Dist) 10 Cal App 3d 695, 89 Cal Rptr 330, 1970 Cal App LEXIS 1881.

Pursuant to state law, marital dissolution trials proceeded under the same general rules of procedure governing other civil trials, and a local superior court rule and trial scheduling order requiring that parties present their case by means of written declarations were thus inconsistent with the hearsay rule to the extent that they rendered written declarations admissible as a basis for decision in a contested marital dissolution trial because testimony in the form of a declaration constitutes hearsay, and is subject to statutory provisions governing the introduction of such evidence. Because various statutes afforded litigants a day in court, including the opportunity to present all relevant, competent evidence on material issues, ordinarily through the oral testimony of witnesses testifying in the presence of the trier of fact, the trial court erred in sanctioning a husband by excluding the bulk of his evidence simply because he failed, prior to trial, to file a declaration establishing the admissibility of his trial evidence, and the sanction was disproportionate and inconsistent with the policy favoring determination of cases on their merits. *Elkins v. Superior Court* (2007) 41 Cal 4th 1337, 63 Cal Rptr 3d 483, 163 P3d 160, 2007 Cal LEXIS 8214.

## 3. Recollection

In a murder prosecution, the trial court properly permitted a former codefendant witness' extrajudicial statement which incriminated defendant to be used for impeachment purposes (*Ev C* §§ 780, 1235), and such admission was not a violation of defendant's right to confrontation under *United States Constitution Sixth Amendment*, where the charge against the witness had been dismissed on grounds of insufficient admissible evidence so that he might be a witness for the People (*Pen C* § 1099), where a formal order granting immunity was made pursuant to *Pen C* § 1324, where the witness' testimony at the trial completely exculpated defendant, where the witness, when shown a copy of his statement, refused to answer the prosecutor's question as to whether that gave him a different recollection, and where the court properly instructed the jury as to the purpose for which the evidence was received. *People v. Woodberry* (1968, Cal App 2d Dist) 265 Cal App 2d 351, 71 Cal Rptr 165, 1968 Cal App LEXIS 1627.

When a witness testifies that he does not remember making previous statements, it is competent to prove them for

the purpose of impeachment. *People v. Pickens* (1969, Cal App 1st Dist) 269 Cal App 2d 844, 75 Cal Rptr 352, 1969 Cal App LEXIS 1707.

In a homicide prosecution, the reading of a prosecution witness' grand jury testimony to the trial jury violated defendant's Sixth Amendment right of confrontation, where the witness was unable or unwilling to recall his prior testimony, and the defense therefore had no opportunity to cross-examine him concerning such testimony. *People v. Newton* (1970, Cal App 1st Dist) 8 Cal App 3d 359, 87 Cal Rptr 394, 1970 Cal App LEXIS 2046.

In a homicide prosecution, the reading of a prosecution witness' grand jury testimony could not be justified as impeachment, where the witness had not testified against the prosecution at all, but had indicated that he remembered neither what happened on the date of the crime nor testifying to the grand jury; under such circumstances there is nothing to counteract and the prior statement of the witness thus emerges as substantive evidence of the facts asserted in it. *People v. Newton* (1970, Cal App 1st Dist) 8 Cal App 3d 359, 87 Cal Rptr 394, 1970 Cal App LEXIS 2046.

Affidavits filed in opposition to a motion for summary judgment, and relating to the interpretation of a written easement agreement, were not insufficient on the ground that the affiants admitted they could not recall the exact words spoken during negotiations leading up to the agreement, where the matters stated in the affidavits were unquestionably within their personal knowledge. Their inability to recall the exact words of the discussion went only to the weight, not the admissibility, of their evidence. *Buehler v. Oregon-Washington Plywood Corp.* (1976) 17 Cal 3d 520, 131 Cal Rptr 394, 551 P2d 1226, 1976 Cal LEXIS 302.

#### 4. Perception

A trial court has discretionary power to limit the scope of questions designed to test the memory of a witness; and in a criminal prosecution, the trial court did not abuse its discretion in sustaining an objection to a question by defendant that attempted to impeach the memory of the victim. *People v. Mason* (1968, Cal App 2d Dist) 259 Cal App 2d 30, 66 Cal Rptr 601, 1968 Cal App LEXIS 1942.

In a personal injury action by a pedestrian against the driver of an automobile and others, the trial court did not err in admitting testimony concerning plaintiff's drinking habits, where plaintiff admitted consumption of one and a half glasses of beer immediately preceding the accident, where, at the time of the accident, he was on his way to another bar but claimed he was going to see the bartender about playing golf although he testified that prior to this time he had never played golf with that bartender, and where the complained of testimony was offered to impeach plaintiff who had testified on cross examination that he did not habitually use intoxicating beverages every night. *Kovacs v. Sturgeon* (1969, Cal App 4th Dist) 274 Cal App 2d 478, 79 Cal Rptr 426, 1969 Cal App LEXIS 2073.

Testimony as to narcotic addiction, or expert testimony as to the effects of the use of such drugs, is not admissible to impeach the credibility of a witness unless followed by testimony tending to show that he was under the influence of narcotics while testifying, or at the time of the events to which he testified, or that his mental faculties were actually impaired by the habit. *People v. Ortega* (1969, Cal App 2d Dist) 2 Cal App 3d 884, 83 Cal Rptr 260, 1969 Cal App LEXIS 1474

At the preliminary examination on a murder charge, the magistrate's limitation of cross-examination of a prosecution witness as to her narcotics addiction was proper, where the court indicated that it would not permit further inquiry about narcotic addiction directed to the character of the witness but would permit inquiry directed to her ability to perceive by reason of narcotic addiction, where, following such rulings, the court allowed numerous questions to be addressed to the witness about her use of narcotics, where counsel elicited sufficient information that could have led only to the inescapable conclusion that the witness was involved in the use of hard narcotics, and where no offer of proof was made nor were any witnesses produced to indicate that the witness was under the influence at any critical time or that her mental faculties were actually impaired by reason of narcotic usage. *People v. Smith* (1970, Cal App 2d Dist) 4 Cal App 3d 403, 84 Cal Rptr 412, 1970 Cal App LEXIS 1541.

Testimony as to narcotics addiction, or expert testimony as to the effects of the use of such drugs, is not admissible to impeach the credibility of a witness unless followed by testimony tending to show that he was under the influence while testifying, or when the events to which he testified occurred, or that his mental faculties were actually impaired by the habit. *People v. Smith* (1970, Cal App 2d Dist) 4 Cal App 3d 403, 84 Cal Rptr 412, 1970 Cal App LEXIS 1541.

Expert witness testimony regarding psychological factors that may impair the accuracy of a typical eyewitness identification, including the emotions of excitement or fear, with supporting references to experimental studies of such phenomena, falls well within the broad statutory description of "any matter that has any tendency in reason" to bear on the credibility of a witness (*Ev C* § 780, permitting a witness to be impeached by discrediting his capacity to perceive, recollect, or communicate). *People v. McDonald* (1984) 37 Cal 3d 351, 208 Cal Rptr 236, 690 P2d 709, 1984 Cal LEXIS 129, 46 ALR4th 1011, overruled in part *People v. Mendoza* (2000) 23 Cal 4th 896, 98 Cal Rptr 2d 431, 4 P3d 265, 2000 Cal LEXIS 5821.

### 5. Honesty or Veracity

A trier of fact may disregard all of the testimony of a party, whether contradicted or uncontradicted, if it determines that he testified falsely as to some matters covered by his testimony. Alternatively, the trier of fact may accept that portion of the testimony which it believes to be true, particularly where it is corroborated by other independent evidence. *Halagan v. Ohanesian* (1967, Cal App 5th Dist) 257 Cal App 2d 14, 64 Cal Rptr 792, 1967 Cal App LEXIS 1749.

In a prosecution of four defendants jointly charged with malicious assault with a deadly weapon by a life prisoner, testimony of the correctional officer at the prison as to conditions generally existing in prisons and their effect on the veracity of prisoners was relevant and admissible to show circumstances affecting the bias of the convict assault victim, called as a prosecution witness, in favor of defendants, where the witness did not give his opinion on the guilt or innocence of defendants, and testified, not that the assault victim was lying, but that the conditions under which he lived might compel him to lie. *People v. Chacon* (1968) 69 Cal 2d 765, 73 Cal Rptr 10, 447 P2d 106, 1968 Cal LEXIS 275, 34 ALR3d 454.

The nonexistence of a fact testified to is relevant insofar as it is an indication of the witness' general truthfulness and credibility on the witness stand, and for this reason juries are instructed that a witness wilfully false in one part of his testimony is not to be trusted in others. However, such inference is weakened where the fact testified to is collateral, and there is a strong reason, not affecting the rest of his testimony, for the witness to lie about it. *People v. Lavergne* (1971) 4 Cal 3d 735, 94 Cal Rptr 405, 484 P2d 77, 1971 Cal LEXIS 356.

A jury may consider, as a matter tending, in reason, to show the untruthfulness of a witness' testimony, the nonexistence of a fact testified to by him, even though the subject matter is collateral and the purpose is to show that he is a person prone to mendacity and, therefore, likely to be lying as to matters directly in issue. *People v. Moses* (1972, Cal App 2d Dist) 24 Cal App 3d 384, 100 Cal Rptr 907, 1972 Cal App LEXIS 1146.

Just as a prior false accusation of rape is relevant on the issue of a rape victim's credibility, a prior false accusation of sexual molestation is equally relevant on the issue of the molest victim's credibility. The instance of conduct being placed before the jury as bearing on credibility is the making of the false statement, not the sexual conduct which is the content of the statement. Even though the content of the statement has to do with sexual conduct, the sexual conduct is not the fact from which the jury is asked to draw an inference about the witness's credibility. The evidence is admissible under *Ev C* §§ 780 (matter having tendency to prove or disprove truthfulness of testimony), 1103 (evidence of crime victim's character), and 787 (which excluded specific instances of conduct to attack credibility, but which was abrogated by the "Truth-in-Evidence" (relevant evidence shall not be excluded) provisions of Proposition 8 (*Cal Const Art I* § 28)). *People v. Franklin* (1994, Cal App 6th Dist) 25 Cal App 4th 328, 30 Cal Rptr 2d 376, 1994 Cal App LEXIS 509, review denied (1994, Cal) 1994 Cal LEXIS 4594.

Evidence that a witness is afraid to testify is relevant to the credibility of that witness and is therefore admissible. (*Ev C § 780*). Testimony that a witness is fearful of retaliation similarly relates to that witness's credibility and is also admissible. It is not necessary to show that threats against the witness were made by the defendant personally, or that the witness's fear of retaliation is directly linked to the defendant for the evidence to be admissible. *People v. Olguin* (1994, Cal App 4th Dist) 31 Cal App 4th 1355, 37 Cal Rptr 2d 596, 1994 Cal App LEXIS 1325, rehearing denied (1995, Cal App 4th Dist) 1995 Cal App LEXIS 72, review denied (1995, Cal) 1995 Cal LEXIS 2967.

Defendant's self-incrimination rights were not violated when the prosecutor was allowed to question him at a suppression hearing regarding his prior statements in order to impeach his credibility, as his responses to the questions were only admissible at the suppression hearing and were not used to prove his guilt in the State's case-in-chief. *People v. Boyette* (2002) 29 Cal 4th 381, 127 Cal Rptr 2d 544, 58 P3d 391, 2002 Cal LEXIS 8101, rehearing denied (2003) 2003 Cal. LEXIS 884.

Evidence that a witness was afraid of defendant was admissible, in a murder case, as relevant to the witness' credibility, and the prosecutor's comments on that evidence during closing argument did not constitute misconduct. *People v. Sapp* (2003) 31 Cal 4th 240, 2 Cal Rptr 3d 554, 73 P3d 433, 2003 Cal LEXIS 5370, cert den *Sapp v. California* (2004) 541 U.S. 1011, 124 S. Ct. 2067, 158 L. Ed. 2d 622, 2004 U.S. LEXIS 3095, 72 U.S.L.W. 3672.

Trial court erred in granting summary adjudication to an agency, and denying a city housing authority employee's petition for administrative mandamus under *CCP § 1094.5*, in connection with the employee's action seeking relief from the agency decision that terminated employment; although there was substantial evidence to support the trial court's finding, made pursuant to *Ev C § 780*, that the employee knew a co-worker had been terminated from employment when the employee gave the co-worker confidential information, that determination was flawed because, in making its own evaluation of the complaint against the employee based on the record, the agency engaged in a "collective acquisition and exchange of the facts" within the meaning of *Gov C § 54950* of the Brown Act, and thus the agency violated *Gov C § 54957* by conducting a closed hearing on the charges against the employee without giving the employee notice of the right to be heard in person in an open session, and the fact that the agency gave the employee notice of a subsequent meeting did not cure this error. *Morrison v. Housing Authority of the City of Los Angeles Bd. of Comrs.* (2003, Cal App 2d Dist) 107 Cal App 4th 860, 132 Cal Rptr 2d 453, 2003 Cal App LEXIS 499.

At defendant's murder trial, the fact that a proposed defense witness was also a member of defendant's gang was admissible under *Ev C § 780(f)* to show a possible bias in favor of defendant. *People v. Robinson* (2004, Cal App 2d Dist) 116 Cal App 4th 1302, 11 Cal Rptr 3d 182, 2004 Cal App LEXIS 364, rehearing denied (2004) 2004 Cal. App. LEXIS 663, review gr, depublished (2004) 14 Cal. Rptr. 3d 210, 91 P.3d 162, 2004 Cal. LEXIS 4833, 2004 Cal. Daily Op. Service 5018, 2004 D.A.R. 6864, transferred (2006, Cal) 49 Cal Rptr 3d 209, 142 P3d 1184, 2006 Cal LEXIS 11851.

In a murder trial, counsel was not rendered ineffective by failing to object to testimony regarding defendant's violent and deadly traits because, in context, that testimony explained the witness's statement that she wanted to make sure that defendant knew she was not the person who turned him in. The evidence that the witness was afraid to testify was admissible as relevant to her credibility under *Ev C § 780* and thus was not prohibited character evidence under *Ev C § 1101*. *People v. Dickey* (2005) 35 Cal 4th 884, 28 Cal Rptr 3d 647, 111 P3d 921, 2005 Cal LEXIS 5609, rehearing denied (2005) 2005 Cal. LEXIS 7614, cert den *Dickey v. California* (2006) 126 S. Ct. 1347, 164 L. Ed. 2d 60, 2006 U.S. LEXIS 1247, 74 U.S.L.W. 3471.

Fact of the prosecution's deal (which required that its witness refrain from undergoing psychiatric evaluation before testifying against an accused) itself would have been admissible to impeach the witness by calling into question his capacity as a witness and by illustrating the full extent of the agreement that provided a motive for the witness to testify. *Silva v. Brown* (2005, 9th Cir Cal) 416 F3d 980, 2005 US App LEXIS 15252.

Witnesses were properly allowed to testify regarding their fear of testifying against a murder defendant. The

testimony was relevant to their credibility and to explaining their hesitancy in responding to questions. *People v. Guerra* (2006) 37 Cal 4th 1067, 40 Cal Rptr 3d 118, 129 P3d 321, 2006 Cal LEXIS 2872, rehearing denied *People v. Guerra* (Jose F.) (2006) 2006 Cal. LEXIS 6325, 2006 D.A.R. 6385, cert den *Guerra v. California* (2007) 127 S. Ct. 1149, 166 L. Ed. 2d 998, 2007 U.S. LEXIS 1210, 75 U.S.L.W. 3384.

In a capital murder case, trial court did not err in allowing the prosecutor to impeach a defense witness with the fact that at the time of his testimony he was serving a 10-year federal prison sentence; prosecutor offered the information about the defense witness's prison sentence to prove not the fact of the underlying conviction under *Ev C* § 788, but rather that the witness had nothing to lose by lying. *People v. Watson* (2008, Cal) 43 Cal 4th 652, 76 Cal Rptr 3d 208, 182 P 3d 543, 2008 Cal LEXIS 5119, rehearing denied *People v. Watson* (Paul Gregory) (2008, Cal.) 2008 Cal. LEXIS 7540, cert den *Watson v. California* (2008, U.S.) 129 S. Ct. 185, 172 L. Ed. 2d 131, 2008 U.S. LEXIS 7392.

In a child molestation case, counsel's assistance was rendered deficient by a failure to investigate information that, if verified, would have cast doubt on the victim's credibility, including a specific example of the victim threatening to make a false accusation. The victim's credibility was the central issue in the case. *In re E.S.* (2009, 1st Dist) 2009 Cal App LEXIS 311.

Where a trial court has impliedly determined that any relevance of evidence of a prior molestation complaint had for impeachment is premised on the falseness of the prior complaint, it is not unreasonable to exclude such evidence. The same reasoning applies whether the evidence is sought to be admitted under *Ev C* § 352, or *Ev C* §§ 780 and 782. *People v. Waldie* (2009, 4th Dist) 173 Cal App 4th 358, 92 Cal Rptr 3d 688, 2009 Cal App LEXIS 644, review denied *People v. Waldie* (Wayne Clair) (2009, Cal.) 2009 Cal. LEXIS 8088, cert den *Waldie v. California* (2010, U.S.) 130 S. Ct. 1150, 175 L. Ed. 2d 981, 2010 U.S. LEXIS 758.

## 6. Bias or Interest

In an action for damages for injuries received in an automobile accident, evidence that a plaintiff is being wholly or partially compensated for medical expenses may be relevant on the issue of motive in seeking medical help and credibility as a witness and would be admissible under *Ev C* § 780; however *Ev C* § 352 gives the trial court a broad discretion to exclude otherwise admissible evidence if its probative value is outweighed by substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. *Garfield v. Russell* (1967, Cal App 2d Dist) 251 Cal App 2d 275, 59 Cal Rptr 379, 1967 Cal App LEXIS 1970.

In a prosecution of four defendants jointly charged with malicious assault with a deadly weapon by a life prisoner, prosecution impeachment of the convict assault victim called as a witness by it by the use of a prior inconsistent statement was proper where a correctional counsellor at a state prison testified that in his previous statements the victim had described the event differently and indicated fear of defendants; and the correctional officer's testimony as to the victim's fear of defendants was also admissible to show bias of the witness in favor of defendants. *People v. Chacon* (1968) 69 Cal 2d 765, 73 Cal Rptr 10, 447 P2d 106, 1968 Cal LEXIS 275, 34 ALR3d 454.

It is proper cross-examination of a witness to show bias, prejudice, interest, hostility or friendship toward a party which would bear on the question of the credibility of his testimony. *People v. De Leon* (1968, Cal App 2d Dist) 260 Cal App 2d 143, 67 Cal Rptr 45, 1968 Cal App LEXIS 1836, cert den *Olvera v. California* (1968) 393 US 969, 89 S Ct 407, 21 L Ed 2d 380, 1968 US LEXIS 245, overruled *People v. De Santiago* (1969) 71 Cal 2d 18, 76 Cal Rptr 809, 453 P2d 353, 1969 Cal LEXIS 230

In an action for wrongfully withholding property from a levy of garnishment in which the question was whether defendant garnishee possessed or controlled at the time of the levy funds belonging to plaintiff's former wife against whom he later obtained judgment, no part of which had he recovered, the trial court did not err in admitting evidence tending to show that defendant, plaintiff's former wife, and others, "conspired" to deprive plaintiff of satisfaction of his judgment against his former wife, where the evidence was highly relevant to attack the credibility of certain witnesses

by showing bias, and where there was no indication that the prejudicial impact of the evidence involved outweighed its probative value. *Boyle v. Hawkins* (1969) 71 Cal 2d 229, 78 Cal Rptr 161, 455 P2d 97, 1969 Cal LEXIS 248.

A witness may be impeached by evidence of bias; and it is always proper for a party against whom a witness has given damaging testimony to show out of the mouth of the witness himself, if he can, or by other sources, if necessary, that such witness has an unusual interest in the outcome of the case. *People v. Pierce* (1969, Cal App 3d Dist) 269 Cal App 2d 193, 75 Cal Rptr 257, 1969 Cal App LEXIS 1634.

In a widow's action against a city and two city police officers for the wrongful death of her husband by shooting, it was error to allow defendants to invoke the arrest records of one of plaintiff's witnesses and of the family of another of plaintiff's witnesses for the professed purpose of impeachment by showing the witnesses' bias against the police, where no felony convictions were shown, and where the thread of inferences from such past arrests, to hostility against police in general, to a willingness to distort testimony in the instant case against individual police officers unknown to them was so tenuous that the evidence could not properly be deemed to fall within the contemplation of *Ev C § 780*, allowing the admission of matters tending to show the existence of bias. *Grudt v. Los Angeles* (1970) 2 Cal 3d 575, 86 Cal Rptr 465, 468 P2d 825, 1970 Cal LEXIS 294.

Under the Evidence Code, the question of the admissibility of evidence offered for the purpose of showing a witness' bias is left to the sound discretion of the court. *Grudt v. Los Angeles* (1970) 2 Cal 3d 575, 86 Cal Rptr 465, 468 P2d 825, 1970 Cal LEXIS 294.

In the context of showing a witness' bias, the proper scope for the exercise of discretion by the trial court is in limiting cross-examination to a disclosure of such facts only as may show the existence of hostility, and rejecting any matters which might be pertinent only to a justification of hostility on the part of the witness; it is the existence of the feeling which is material, and not the right or wrong in the transaction which occasions it. *Grudt v. Los Angeles* (1970) 2 Cal 3d 575, 86 Cal Rptr 465, 468 P2d 825, 1970 Cal LEXIS 294.

An inquiry for impeachment purposes is usually confined to the prominent motives for untruthful testimony, namely, interest in the suit which necessarily tends to bias, and other circumstances showing bias which are not too remote. *Grudt v. Los Angeles* (1970) 2 Cal 3d 575, 86 Cal Rptr 465, 468 P2d 825, 1970 Cal LEXIS 294.

In a widow's action against a city and two city police officers for the wrongful death of her husband by shooting, it was proper, under *Ev C § 780*, allowing the admission of matters tending to show the existence of bias, to admit the testimony of a defense witness showing that one of plaintiff's witnesses had previously complained of police harassment and had vowed to "get even" with the police. *Grudt v. Los Angeles* (1970) 2 Cal 3d 575, 86 Cal Rptr 465, 468 P2d 825, 1970 Cal LEXIS 294.

In a homicide prosecution in which the prosecution's only eyewitness testified that she knew nothing about guns and had never had one in her possession, cross-examination leading to further testimony by her that she had talked to a certain person about the crime and had fired a gun at him when he refused to leave her house was proper impeachment by means of contradiction (*Ev C § 780*). *Curry v. Superior Court of San Francisco* (1970) 2 Cal 3d 707, 87 Cal Rptr 361, 470 P2d 345, 1970 Cal LEXIS 301.

Impeachment by showing improper motive depends on the witness' state of mind as to a hope of leniency from the prosecuting authorities; the actual power of the authorities to aid or harm him is not conclusive. *People v. Brown* (1970, Cal App 1st Dist) 13 Cal App 3d 876, 91 Cal Rptr 904, 1970 Cal App LEXIS 1296, cert den (1971) 404 US 835, 92 S Ct 120, 30 L Ed 2d 66, 1971 US LEXIS 1052, overruled *People v. Chi Ko Wong* (1976) 18 Cal 3d 698, 135 Cal Rptr 392, 557 P2d 976, 1976 Cal LEXIS 379

In a prosecution for the sale of restricted dangerous drugs and marijuana, evidence of deceased narcotics officer's prior conduct in improper purchases and identifications in prior narcotics buying went to the officer's credibility in showing bias, interest, or motive, as well as to his reliability as a witness, and would be admissible, even after his death,

under the provisions of *Ev C* §§ 780, and 1202. *People v. Mayfield* (1972, *Cal App 5th Dist*) 23 *Cal App 3d* 236, 100 *Cal Rptr* 104, 1972 *Cal App LEXIS* 1207.

The fact that a person is a homosexual does not per se make his testimony suspect, and evidence proffered for such purpose is inadmissible under *Ev C* § 786, in that it purports to present evidence of traits of a witness's character other than honesty or veracity, but evidence of homosexuality or a homosexual relationship is admissible under *Ev C* § 780 to prove bias, interest or motive of a witness. *People v. Peters* (1972, *Cal App 1st Dist*) 23 *Cal App 3d* 522, 101 *Cal Rptr* 403, 1972 *Cal App LEXIS* 1235, cert den (1972) 409 *US* 1064, 93 *S Ct* 563, 34 *L Ed 2d* 517, 1972 *US LEXIS* 342.

In a prosecution for sale of heroin, a police officer's testimony concerning a defense witness' statements to him about threats on his life, offered pursuant to *Ev C* § 780, to show bias and motive of the witness, was properly admitted under *Ev C* § 1202, which provides for admission of evidence to attack the credibility of a hearsay declarant if such evidence would have been admissible if the declarant had been a witness, and under *Ev C* § 1250, which permits receipt of hearsay to show a declarant's "state of mind" when such evidence is offered to "explain acts or conduct of the declarant." The purpose of *Ev C* § 1202, is to ensure that unavailability of a hearsay declarant does not prevent introduction of relevant evidence, and there was nothing to indicate untrustworthiness of the witness' statements so as to make them inadmissible under *Ev C* § 1252. *People v. Marquez* (1979, *Cal App 2d Dist*) 88 *Cal App 3d* 993, 152 *Cal Rptr* 200, 1979 *Cal App LEXIS* 1354.

*Ev C* § 780, providing that a court or jury may consider any matter that has any tendency in reason to prove or disprove the truthfulness of a witness' testimony, including the existence or nonexistence of a bias, supports the admissibility of evidence of a witness' bias or prejudice against the racial group of which a party happens to be a member. *In re Anthony P.* (1985, *Cal App 2d Dist*) 167 *Cal App 3d* 502, 213 *Cal Rptr* 424, 1985 *Cal App LEXIS* 1958.

Counsel was rendered ineffective by the failure to object to evidence that defense witnesses had been arrested for misdemeanor batteries because the evidence was more prejudicial than probative and thus inadmissible. The court recognized that an arrest for battery might suggest a reason for the batterer to be biased under *Ev C* § 780(f) against the arresting officers or agency but found the evidence to be more prejudicial than probative. *People v. Lopez* (2005, *Cal App 6th Dist*) 129 *Cal App 4th* 1508, 29 *Cal Rptr 3d* 586, 2005 *Cal App LEXIS* 914.

Trial court properly allowed evidence of bias to be admitted against a prosecution witness's former girlfriend on the issue of her credibility where the defense had presented her testimony to discredit the prosecution witness's testimony, and on cross-examination the prosecution sought to establish that she harbored a bias against the prosecution based upon a prosecutor's alleged insensitivity toward her concerns and the circumstance that the district attorney's office had successfully prosecuted her husband, leading to his incarceration for various crimes. Defendant's reference to *Ev C* § 1101 was unavailing because the challenged evidence did not constitute character evidence concerning the witness. *People v. Williams* (2008, *Cal*) 43 *Cal 4th* 584, 75 *Cal Rptr 3d* 691, 181 *P 3d* 1035, 2008 *Cal LEXIS* 4818, rehearing denied *People v. Williams (Dexter Winfred)* (2008, *Cal.*) 2008 *Cal. LEXIS* 6991, cert den *Williams v. California* (2009, *U.S.*) 129 *S. Ct.* 1000, 173 *L. Ed. 2d* 298, 2009 *U.S. LEXIS* 652.

In a negligence action alleging failure to protect a child from sexual abuse, admission under *Ev C* § 788 of evidence that a witness had been convicted of child molestation was probative of bias under *Ev C* § 780(f) because it was introduced to show that the witness might lie to protect a person accused of the same offense. *Piscitelli v. The Salesian Society* (2008, *2d Dist*) 2008 *Cal App LEXIS* 1335.

Prior conviction evidence is admissible to show bias under *Ev C* § 780(f) without regard to the nature of the underlying crime as it relates to the character traits of honesty and truthfulness under *Ev C* § 786 through *Ev C* § 788. *Piscitelli v. The Salesian Society* (2008, *2d Dist*) 2008 *Cal App LEXIS* 1335.

Trial court did not err during the penalty phase of defendant's first-degree murder trial under *Pen C* § 187(a) in permitting the prosecutor to ask a series of questions about whether a witness was personally opposed to the death

penalty because the witness's personal philosophical opposition to the death penalty was relevant to his credibility under *Ev C § 780(f)*; moreover, the value of giving the jury a full and accurate view of the witness's credibility was not substantially outweighed by the probability of a substantial danger of undue prejudice. *People v. Bennett* (2009, Cal) 45 Cal 4th 577, 88 Cal Rptr 3d 131, 199 P 3d 535, 2009 Cal LEXIS 338, cert den *Bennett v. California* (2009, U.S.) 130 S. Ct. 68, 175 L. Ed. 2d 50, 2009 U.S. LEXIS 5551.

During the penalty phase of defendant's first-degree murder trial under *Pen C § 187(a)*, trial court properly allowed the prosecutor to ask defendant's wife whether she allowed their children to be brought to court where she had testified that she encouraged the contact between defendant and his children and that she wanted to stay married because she thought it would help him, because whether she also intended to help him by encouraging his relationship with his children or allowing them to be brought to court was relevant to her credibility pursuant to *Ev C § 780(f)*; moreover, there was no risk of prejudice because even without the testimony, the jury could have inferred from the children's presence in court that their mother had allowed them to attend. *People v. Bennett* (2009, Cal) 45 Cal 4th 577, 88 Cal Rptr 3d 131, 199 P 3d 535, 2009 Cal LEXIS 338, cert den *Bennett v. California* (2009, U.S.) 130 S. Ct. 68, 175 L. Ed. 2d 50, 2009 U.S. LEXIS 5551.

## 7. Inconsistent Statements

A pleading in a prior action may be offered as an evidentiary admission against the pleader or to impeach. *Muth v. Urricelqui* (1967, Cal App 1st Dist) 251 Cal App 2d 901, 60 Cal Rptr 166, 1967 Cal App LEXIS 2054.

The rule that a witness may be impeached by a statement made by him that is inconsistent with any part of his testimony at the hearing does not permit a party to secure the admission of otherwise inadmissible evidence for the purpose of subsequently impeaching it. *Marocco v. Ford Motor Co.* (1970, Cal App 1st Dist) 7 Cal App 3d 84, 86 Cal Rptr 526, 1970 Cal App LEXIS 2137.

Testimony given and an asserted impeaching statement need not be contrary in terms; to render the impeaching statement admissible, it need only tend to contradict or disprove the testimony or any inference to be deduced from it. *People v. Woodberry* (1970, Cal App 2d Dist) 10 Cal App 3d 695, 89 Cal Rptr 330, 1970 Cal App LEXIS 1881.

The prosecution was within its rights in attempting to secure the jury's disbelief of the testimony of a prosecution witness, where such testimony constituted an alibi that would exonerate defendant, and prior inconsistent statements by the witness to an officer were admissible both to impeach the witness and to establish their truth as substantive evidence. *People v. Woodberry* (1970, Cal App 2d Dist) 10 Cal App 3d 695, 89 Cal Rptr 330, 1970 Cal App LEXIS 1881.

The admissibility of earlier statements made by a witness presently on the stand is not constitutionally limited to impeachment; such statements may be considered for their own truth, if permitted under state rules of evidence such as are embodied in *Ev C § 1235*. *People v. Woodberry* (1970, Cal App 2d Dist) 10 Cal App 3d 695, 89 Cal Rptr 330, 1970 Cal App LEXIS 1881.

Silence can be an inconsistent statement within the meaning of *Ev C § 780*, for purposes of impeachment of witnesses. A failure to assert a fact when it would have been natural to assert it amounts in effect to an assertion of the nonexistence of the fact. There may be explanations indicating that the person had in truth no belief of that tenor, but the conduct is prima facie an inconsistency. However, a witness may not be impeached by showing that he omitted to state a fact or stated it less fully at a prior proceeding, unless his attention was called to the matter at that time and he was then asked to testify concerning the very facts embraced in the questions propounded at the trial. *People v. Lewis* (1986, Cal App 4th Dist) 180 Cal App 3d 816, 225 Cal Rptr 782, 1986 Cal App LEXIS 1552.

Defendant was retried for murder after his first appeal reversed the conviction. Defendant contended that the supreme court's analysis of whether defendant should have been given Miranda warnings affected the detectives'

testimony in the second trial, but the proper remedy was effective cross-examination and impeachment, if defendant believed the detectives had changed their testimony. *People v. Holloway* (2004) 33 Cal 4th 96, 14 Cal Rptr 3d 212, 91 P3d 164, 2004 Cal LEXIS 5504, rehearing denied *People v. Holloway* (2004) 2004 Cal. LEXIS 8369, transferred *People v. Holloway (Duane)* (2004, Cal) 2004 Cal LEXIS 8616, cert den *Holloway v. California* (2005) 543 U.S. 1156, 125 S. Ct. 1302, 161 L. Ed. 2d 122, 2005 U.S. LEXIS 1597, 73 U.S.L.W. 3495.

Statements and gestures that defendant made during a polygraph exam were properly received by the jury where defendant himself referred to the "lie detector test" in what the court termed a classic example of blurted-out testimony. The trial court reasonably concluded that the prosecution could use the polygraph to impeach defendant's testimony that the confession was coerced and that the detective prompted him to use a hand gesture indicating how far his penis had penetrated the child-sexual-assault victim. *People v. Vonner* (2004, Cal App 2d Dist) 121 Cal App 4th 801, 17 Cal Rptr 3d 460, 2004 Cal App LEXIS 1334, dismissed (2005) 34 Cal. Rptr. 3d 191, 119 P.3d 956, 2005 Cal. LEXIS 9983, 2005 D.A.R. 11141.

At trial for injury to a spouse under *Pen C* § 273.5(a), defendant's wife's admission that she made a false report to the police placed her credibility in issue and was improperly excluded; the wife's words remained as her "statement" to which *Ev C* § 1202 applied and the statement was thus admissible under § 1202; the record showed that the trial court excluded the statement because it had been stricken from the preliminary hearing, not under the standard of *Ev C* § 352, there was no basis for excluding the statement because it was untrustworthy; the error required reversal of defendant's conviction of corporal injury to a spouse under *Pen C* § 273.5(a) because it resulted in the jury hearing only half of the critical evidence. *People v. Corella* (2004, Cal App 2d Dist) 122 Cal App 4th 461, 18 Cal Rptr 3d 770, 2004 Cal App LEXIS 1552.

Prosecutor did not deny a capital defendant of due process and a reliable sentence determination by engaging in pervasive and egregious misconduct during the penalty phase cross-examination of a defense expert, defendant's mother, and defendant because: (1) the cross-examination of the defense expert was not conducted to establish evidence in aggravation, but to impeach his opinions; (2) the cross-examination of defendant's mother was not offered as evidence in aggravation, but to impeach the evidence presented in mitigation; and (3) the prosecutor's questions to defendant during cross-examination and comments during argument were based on the inconsistencies between the testimony of defendant and the surviving victim and the reasonable inferences drawn from that evidence. Specifically, evidence showing that despite receiving treatment for his attention deficit disorder in the former California Youth Authority, defendant had committed various disciplinary violations, did not exceed the scope of direct examination and was not more prejudicial than probative under *Ev C* § 352. *People v. Hawthorne* (2009, Cal) 46 Cal 4th 67, 92 Cal Rptr 3d 330, 205 P 3d 245, 2009 Cal LEXIS 3981, rehearing denied *People v. Hawthorne (Carlos Anthony)* (2009, Cal.) 2009 Cal. LEXIS 5828, cert den *Hawthorne v. California* (2009, U.S.) 130 S. Ct. 213, 175 L. Ed. 2d 148, 2009 U.S. LEXIS 7063.

## 8. Evidence Properly Excluded

There was no error under *Ev C* § 780 when the court excluded the nature of a letter that a witness was writing on the day the witness saw a struggle between a capital murder defendant and the victim because the trial court had the discretion under *Ev C* §§ 350, 352 to rule that the nature of the letter would have been of marginal relevance at best. *People v. Thornton* (2007) 41 Cal 4th 391, 61 Cal Rptr 3d 461, 161 P 3d 3, 2007 Cal LEXIS 6759, modified, rehearing denied *People v. Thornton* (2007, Cal) 2007 Cal LEXIS 8783, cert den *Thornton v. California* (2007) 552 U.S. 1043, 128 S. Ct. 650, 169 L. Ed. 2d 516, 2007 U.S. LEXIS 12579.

In personal injury case involving a rollover accident caused by a delaminated tire, allowing evidence under *Ev C* § 352 of the injured driver's simultaneous marriages, infidelity, and out-of-wedlock children was error; to the extent the evidence was relevant under *Ev C* § 210 and *Ev C* § 350, the evidence was more prejudicial than probative. *Winfred D. v. Michelin North America, Inc.* (2008, 2d Dist) 165 Cal App 4th 1011, 81 Cal Rptr 3d 756, 2008 Cal App LEXIS 1207, modified, rehearing denied (2008, Cal. App. 2d Dist.) 2008 Cal. App. LEXIS 1361, review denied *D. (Winfred) v.*

*Michelin North America, Inc. (2008, Cal.) 2008 Cal. LEXIS 12730.*

During the penalty phase of defendant's first-degree murder trial under *Pen C § 187(a)*, trial court properly sustained the prosecutor's objection to the testimony of defendant's mother where defense counsel was trying to demonstrate the character of defendant's mother, which was irrelevant; although *Ev C § 780* permitted credibility evidence that had any tendency in reason to prove or disprove the truthfulness of a witness's testimony, defendant did not explain how his mother's desire to "undo" the murder was relevant to her truthfulness. *People v. Bennett (2009, Cal) 45 Cal 4th 577, 88 Cal Rptr 3d 131, 199 P 3d 535, 2009 Cal LEXIS 338, cert den Bennett v. California (2009, U.S.) 130 S. Ct. 68, 175 L. Ed. 2d 50, 2009 U.S. LEXIS 5551.*

During defendant's trial for lewd and lascivious conduct against a child under the age of 14 years, in violation of *Pen C § 288 (a)*, the trial court did not err in refusing to allow evidence of prior molestation allegations made by the victim against someone else because defendant offered no credible evidence that the victim had previously made false accusations. The trial court ruled that the prejudice of such evidence outweighed its probative value and that the evidence was so slight as to be irrelevant on the issue of the victim's credibility. *People v. Waldie (2009, 4th Dist) 173 Cal App 4th 358, 92 Cal Rptr 3d 688, 2009 Cal App LEXIS 644, review denied People v. Waldie (Wayne Clair) (2009, Cal.) 2009 Cal. LEXIS 8088, cert den Waldie v. California (2010, U.S.) 130 S. Ct. 1150, 175 L. Ed. 2d 981, 2010 U.S. LEXIS 758.*

## **9. Evidence Properly Admitted**

Trial court did not erroneously admit prosecution rebuttal evidence of defendant's bad character where it was relevant to the jury's determination of the weight and credibility of a defense psychiatrist's opinion and where it was direct impeachment of defendant's own testimony because by taking the stand, he put his own credibility in issue and was subject to impeachment in the same manner as any other witness. *People v. Doolin (2009, Cal) 45 Cal 4th 390, 87 Cal Rptr 3d 209, 198 P 3d 11, 2009 Cal LEXIS 2, rehearing denied People v. Doolin (Keith Zon) (2009, Cal.) 2009 Cal. LEXIS 3330, cert den Doolin v. California (2009, U.S.) 130 S. Ct. 168, 175 L. Ed. 2d 107, 2009 U.S. LEXIS 5583.*

Trial court did not err during the penalty phase of defendant's second trial in allowing the prosecutor to cross-examine defendant's former defense attorney about her relationship with defendant or in allowing the prosecutor to call a former courtroom bailiff to impeach the former defense attorney's testimony where the prosecutor's cross-examination of the former defense attorney went towards bias based on a personal rather than a professional relationship, and the former bailiff's testimony was relevant to impeach the former defense attorney's testimony about the way she touched defendant, which in turn was relevant to whether she was biased because of a personal relationship with him. A hearing outside the presence of the jury concerning the former bailiff's testimony was not required under *Ev C § 402* because the former bailiff's testimony was offered in rebuttal to former defense attorney and did not involve evidence of other violent crimes the prosecutor intended to offer in aggravation. *People v. Friend (2009, Cal) 2009 Cal LEXIS 6426.*

## **10. Evidence Improperly Excluded or Admitted**

In a case in which defendant, a convicted sex offender, was involuntarily committed for an indeterminate term to the custody of the California Department of Mental Health after a jury found him to be a sexually violent predator within the meaning of California's Sexually Violent Predators Act, *W & I C § 6600 et seq.*, although the trial court erred in excluding as irrelevant defendant's testimony as to the consequences of reoffense under the Three Strikes law because the severe penalties that would be imposed under that law if defendant were to reoffend, and his fear of those penalties, had a tendency in reason to increase his motivation to function lawfully without supervision or restraint despite the mental impairment, because the evidence was overwhelming and largely uncontested that defendant posed a substantial, serious, and well-founded risk of reoffending upon release, the fact that the trial court erroneously excluded a portion of his testimony relevant only to that point was harmless. Because the case was litigated primarily on the question of whether defendant had a qualifying mental disorder, it was not reasonably probable that had the trial court allowed his

testimony regarding his fear of the Three Strikes law, the jury would have reached a different verdict. *People v. O'Shell* (2009, 4th Dist) 172 Cal App 4th 1296, 92 Cal Rptr 3d 57, 2009 Cal App LEXIS 511, review denied *People v. O'Shell* (David) (2009, Cal.) 2009 Cal. LEXIS 7254.

In a personal injury action against a city and a worker under contract with the city arising from plaintiff's motorcycle collision with a dump truck owned and operated by the worker, the trial court erred in admitting evidence that the worker's motor carrier permit had been suspended because the evidence was not relevant to any of the issues that the parties raised at trial and was also not proper impeachment evidence; however, the error did not result in a miscarriage of justice because the jury had available to it the very information that the worker claimed should have been admitted. *Bowman v. Wyatt* (2010, 2d Dist) 2010 Cal App LEXIS 1026.

### **SUGGESTED FORMS**

Instruction Concerning Intoxication of Witness at Time of Testifying

Instruction Concerning Effect of Willfully False Pretrial Statement by Witness--Criminal Prosecution

Instruction Concerning Application of Standards for In-Court Testimony