

amendment does not contemplate a “mini-trial” in which the court plumbs the record of the previous proceeding to determine whether the crime was in the nature of *crimen falsi*.

The amendment also substitutes the term “character for truthfulness” for the term “credibility” in the first sentence of the Rule. The limitations of Rule 609 are not applicable if a conviction is admitted for a purpose other than to prove the witness’s character for untruthfulness. *See, e.g., United States v. Lopez*, 979 F.2d 1024 (5th Cir. 1992) (Rule 609 was not applicable where the conviction was offered for purposes of contradiction). The use of the term “credibility” in subdivision (d) is retained, however, as that subdivision is intended to govern the use of a juvenile adjudication for any type of impeachment.

Changes Made After Publication and Comments. The language of the proposed amendment was changed to provide that convictions are automatically admitted only if it readily can be determined that the elements of the crime, as proved or admitted, required an act of dishonesty or false statement by the witness.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 609 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 610. Religious Beliefs or Opinions

Evidence of a witness’s religious beliefs or opinions is not admissible to attack or support the witness’s credibility.

(Pub. L. 93–595, §1, Jan. 2, 1975, 88 Stat. 1936; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

While the rule forecloses inquiry into the religious beliefs or opinions of a witness for the purpose of showing that his character for truthfulness is affected by their nature, an inquiry for the purpose of showing interest or bias because of them is not within the prohibition. Thus disclosure of affiliation with a church which is a party to the litigation would be allowable under the rule. *Cf. Tucker v. Reil*, 51 Ariz. 357, 77 P.2d 203 (1938). To the same effect, though less specifically worded, is California Evidence Code §789. *See* 3 Wigmore §936.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendment is technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2011 AMENDMENT

The language of Rule 610 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

(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; and
- (3) protect witnesses from harassment or undue embarrassment.

(b) SCOPE OF CROSS-EXAMINATION. Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness’s credibility. The court may allow inquiry into additional matters as if on direct examination.

(c) LEADING QUESTIONS. Leading questions should not be used on direct examination except as necessary to develop the witness’s testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

(Pub. L. 93–595, §1, Jan. 2, 1975, 88 Stat. 1936; Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)

NOTES OF ADVISORY COMMITTEE ON PROPOSED RULES

Subdivision (a). Spelling out detailed rules to govern the mode and order of interrogating witnesses presenting evidence is neither desirable nor feasible. The ultimate responsibility for the effective working of the adversary system rests with the judge. The rule sets forth the objectives which he should seek to attain.

Item (1) restates in broad terms the power and obligation of the judge as developed under common law principles. It covers such concerns as whether testimony shall be in the form of a free narrative or responses to specific questions, McCormick §5, the order of calling witnesses and presenting evidence, 6 Wigmore §1867, the use of demonstrative evidence, McCormick §179, and the many other questions arising during the course of a trial which can be solved only by the judge’s common sense and fairness in view of the particular circumstances.

Item (2) is addressed to avoidance of needless consumption of time, a matter of daily concern in the disposition of cases. A companion piece is found in the discretion vested in the judge to exclude evidence as a waste of time in Rule 403(b).

Item (3) calls for a judgement under the particular circumstances whether interrogation tactics entail harassment or undue embarrassment. Pertinent circumstances include the importance of the testimony, the nature of the inquiry, its relevance to credibility, waste of time, and confusion. McCormick §42. In *Alford v. United States*, 282 U.S. 687, 694, 51 S.Ct. 218, 75 L.Ed. 624 (1931), the Court pointed out that, while the trial judge should protect the witness from questions which “go beyond the bounds of proper cross-examination merely to harass, annoy or humiliate,” this protection by no means forecloses efforts to discredit the witness. Reference to the transcript of the prosecutor’s cross-examination in *Berger v. United States*, 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 (1935), serves to lay at rest any doubts as to the need for judicial control in this area.

The inquiry into specific instances of conduct of a witness allowed under Rule 608(b) is, of course, subject to this rule.

Subdivision (b). The tradition in the federal courts and in numerous state courts has been to limit the scope of cross-examination to matters testified to on direct, plus matters bearing upon the credibility of the witness. Various reasons have been advanced to justify the rule of limited cross-examination. (1) A party vouches for his own witness but only to the extent of matters elicited on direct. *Resurrection Gold Mining Co. v. Fortune Gold Mining Co.*, 129 F. 668, 675 (8th Cir. 1904), quoted in Maguire, Weinstein, et al., *Cases on Evidence* 277, n. 38 (5th ed. 1965). But the concept of vouching is discredited, and Rule 607 rejects it. (2) A party cannot ask his own witness leading questions. This is a problem properly solved in terms of what is necessary for a proper development of the testimony rather than by a mechanistic formula similar to the vouching concept.