

Modes of Impeachment

Mode of Impeachment	Trigger	Examples
Perception *(no FRE)	Attack the witness's ability to: <ul style="list-style-type: none"> • perceive events THEN • or remember events NOW. 	<ul style="list-style-type: none"> • Poor lighting • Not wearing glasses • Object/sound was far away • Not paying attention • Memory problem • Under the influence of alcohol/drugs
Bias *(no FRE)	Witness has a bias, motive, OR interest in testifying a certain way. ("bias/interest colors the witness' testimony at trial")	<ul style="list-style-type: none"> • Monetary interest • Relationship w/ a Party <ul style="list-style-type: none"> ➤ Familial ➤ Romantic (past or present) ➤ Work (Still works for, fired by party) ➤ Friends • Business competitor
Prior Convictions *(Rule 609)	Under FRE 609, evidence of a WITNESS' prior felony conviction (w/i 10 yrs) is admissible to attack character for truthfulness. Misdemeanor convictions are admissible ONLY IF the crime if involved dishonesty.	<ul style="list-style-type: none"> • ANY felony conviction • Misdemeanors for Crimes of Dishonesty <ul style="list-style-type: none"> ➤ Fraud, Embezzlement, false statements <p>* Arrests are not admissible under this rule. ** Convictions under 609 remain subject to 403 test *** Criminal defendant as witness is presumed OUT - reverse 403</p>
Specific Acts of Untruthfulness *(Rule 608(b))	Under Rule 608, specific instances of untruthfulness may be inquired into on cross; however, it may not be proved through extrinsic evidence.	<ul style="list-style-type: none"> • Lying on a resume, application, or taxes • Crime of dishonesty w/out conviction • Cheating on test in elementary school <p>*If witness denies specific act you are stuck with their answer. No 10-year limitation</p>
Prior Inconsistent Statement (Rule 613/801(d))	Witness either contradicts a prior statement or claims to "not know" now on the stand when they did know in the prior statement.	<ul style="list-style-type: none"> • Witness says car was blue in deposition but now says in trial that car is red. • Witness says car was blue in deposition, but now says in trial that he cannot remember or does not know the color of the car.