

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

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FEDERAL RULES OF EVIDENCE

Rules Recommended for Approval and Transmission

The Advisory Committee on Evidence Rules submitted a proposed amendment to Rule 608(b) with a recommendation that it be approved and transmitted to the Judicial Conference. The amendment was circulated to the bench and bar for comment in August 2001. The scheduled January 2002 public hearing was canceled because no one requested to testify.

The proposed amendment to Rule 608(b) (Specific instances of conduct) clarifies the prohibition on using extrinsic evidence, as was originally intended by the rule, to apply only in cases in which the proponent's sole reason for proffering the evidence is to attack or support the witness's "character for truthfulness," rather than to permit a potentially broader literal reading of the reference to the witness's "credibility" under the existing rule. Notwithstanding the original intent of the drafters of Rule 608(b) and the decision in *United States v. Abel*, 469 U.S. 45 (1984), holding that the Rule 608(b) extrinsic evidence prohibition does not apply when it is offered for a purpose other than proving the witness's character for veracity, a number of cases have construed "credibility" more broadly and prohibited extrinsic evidence proffered to prove non-character forms of impeachment. By expressly limiting the application of the rule to proof of a witness's character for truthfulness as originally intended, the amendment leaves open the admissibility of extrinsic evidence offered for other grounds of impeachment (e.g., prior inconsistent statement, bias, and mental capacity), also as originally intended. The admissibility

of extrinsic evidence offered to impeach a witness on grounds other than character continues to be governed by Rules 402 and 403.

The Committee concurred with the advisory committee's recommendations. An excerpt from the advisory committee report describes the proposed amendments and is set out in Appendix C.

Recommendation: That the Judicial Conference approve the proposed amendments to Evidence Rule 608(b) and transmit these changes to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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