6.13. Impeachment by Bias, Hostility, Interest

The credibility of a witness may be impeached by asking the witness on cross-examination about the witness's bias, hostility, or interest for or against any party to the proceeding and by extrinsic evidence of such bias, hostility, or interest.

Note

This rule is derived from decisions of the Court of Appeals that recognize that a witness's partiality for or against a party in the proceeding may be shown to impeach the witness's credibility. (*See e.g. Coleman v New York City Tr. Auth.*, 37 NY2d 137, 142 [1975] [noting "the relevancy of all facts which bear on the probable partiality" of a witness for impeachment purposes]; *Schultz v Third Ave. R.R. Co.*, 89 NY 242, 248-249 [1882] ["It is always competent to show that a witness produced upon the trial of an action is hostile in his feelings toward the party against whom he is called to testify or that he entertains malice toward that party, and so it has been held in many cases"].) Illustrative examples of partiality recognized by the Court include a witness's bias in favor of the party calling the witness (*see People v Webster*, 139 NY 73, 85 [1893] ["bias is always of importance in determining credibility" and noting that bias may arise from family, business or close social relationships]; *People v Brown*, 26 NY2d 88, 94-95 [1970]); hostility to the party against whom the witness testifies (*see Brink v Stratton*, 176 NY 150, 152 [1903] ["it was competent to prove the hostility of any or all of these witnesses towards the defendants"]; *People v Brooks*, 131 NY 321, 325-326 [1892]); or the witness's interest in the case, personal, financial or other (*see People v Jackson*, 74 NY2d 787, 790 [1989] [witness who cooperated with prosecutor only after receiving a reduced sentence on a pending charge had an "obvious interest"]; *Coleman*, 37 NY2d at 142 ["an interest in a cause being a circumstance available for impeachment"]).

The rule as stated reflects the Court of Appeals holdings that evidence of partiality may be brought out on cross-examination and, as partiality is not a collateral matter, by extrinsic evidence. (*See People v Chin*, 67 NY2d 22, 31 [1986] ["interest or bias is not collateral"]; *Potter v Browne*, 197 NY 288, 293 [1910] ["The well-settled rule invoked by counsel for the plaintiff is that which permits a party to show the hostility of a witness toward him. This may be done by proving the hostile acts or declarations of the witness, either out of his own mouth or from the lips of others"]; *Brink*, 176 NY at 152 [hostility of witnesses may be shown "by their cross-examination or by other testimony"].) Extrinsic evidence of partiality may be admitted without first cross-examining the witness about the matter. (*See e.g. People v Michalow*, 229 NY 325, 331 [1920] ["It is not necessary to first examine the witness as to his hostility"]; *Brink*, 176 NY at 152.)

The Court of Appeals has noted that the trial court has discretion to control the presentation of evidence of partiality. (*See People v Corby*, 6 NY3d 231, 234-237 [2005]; *Brooks*, 131 NY at 325-327.) While such discretion may be exercised to limit the extent of the evidence admitted, the trial court may not completely exclude the offered evidence unless the inference of impartiality is remote or speculative, or the party who seeks to impeach the witness lacks a good faith basis for the question, or the evidence would be cumulative. (*See People v Hudy*, 73 NY2d 40, 57 [1988]; *People v Chin*, 67 NY2d 22, 28-29 [1986]; *People v Thomas*, 46 NY2d 100, 105 [1978]; *People v McDowell*, 9 NY2d 12, 15 [1961].) In essence, the court must weigh the probative value of the evidence against the danger that its admission would unduly prejudice a party, confuse an issue, or be cumulative. (*See* Guide to NY Evid rule 4.07, Exclusion of Relevant Evidence).

In criminal proceedings, both the United States Supreme Court and the Court of Appeals have cautioned that the exercise of discretion to limit or exclude evidence of partiality of witnesses testifying against defendants must be exercised in light of the Sixth Amendment's right of confrontation guaranteed to the defendant. (*Davis v Alaska*, 415 US 308, 318 [1974] ["While counsel was permitted to ask (the witness*)* whether he was biased, counsel was unable to make a record from which to argue why (the witness) might have been biased or otherwise lacked that degree of impartiality expected of a witness at trial"; thus, defendant's right of confrontation was denied]; *Hudy*, 73 NY2d at 57 ["both the constitutional and the evidentiary rules" were breached when the trial court precluded defense counsel from questioning the police officers in the manner proposed; defendant had been prevented from cross-examining them about their questioning of complaining witnesses that may have shown possible fabrication by those witnesses].)