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Issue: What are permissible questions a prosecutor may ask when the prosecutor is not in possession of documentary evidence with which to impeach a witness.

I. INTRODUCTION

In Prosecutor v. Ntakirtimana, 1 ICTR-96-10; 2 ICTR-96-17, the prosecuting general counsel asked the defendant's alibi if he was himself also a member of Interahamwe; the organization which incited in the Rwanda genocides. Our issue involves the permissible questions a prosecutor whom is not in possession of documentary evidence is allowed to ask of a witness.

This memorandum of law will address the issue in the following format:

- The evidentiary aspects of permissible cross-examination;
- The ethical constraints imposed by certain jurisdictions requiring the prosecutor to have less than a good faith belief in the fact put forth on cross-examination;
- Jurisdictions in which the prosecutor is required to have a good faith belief in the fact put forth on cross-examination

The memorandum is broken up in this method in order to better organize the different rules from various jurisdictions. Because of differences in their statutory and case law, some jurisdictions overlap in different areas. For example case law may support reasonable belief, whereas their rules of evidence and/or ethical rules do not. However, all sections tend to shed light on the issue, either by a lesser standard such as relevance or a higher standard such as reasonable belief.

II. COMPARATIVE STUDY ON EVIDENTIARY RELEVANCE

A. United States Federal Rules of Evidence

The United States Federal Rules of Evidence sets a relevancy standard through sections 401 and 608. ¹Specifically, the Federal Rules of Evidence address the issue through relevancy requirements and character testimony. These rules compose a legal framework for the ethical considerations addressed later. This reasoning is based on the idea that if material is not at least relevant, it will not pass any of the ethical thresholds.

Rule 401 deals with relevancy.² This rule defines admissible evidence during criminal trials. The rule states: “relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”³

This rule creates the minimal standard of relevance a prosecutor must meet when presenting evidence to the court. It allows any type of evidence, whether tangible or not, to be presented to the court as long as it is within the scope of the case. Lastly, Rule 608(b) deals with character evidence and the past conduct of a witness⁴. This rule reads as follows:

“Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’s credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. The may however, in the discretion of the court be inquired into on cross-examination of the witness (1) concerning the witness

¹ Fed. R. Evid. 401, 608 (2001)

² Fed. R. Evid. 401, (2001)

³ *Id.*

⁴ Fed. R. Evid. 608 (2001)

character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which the character the witness being cross examined has testified. The giving of testimony, whether by the accused or by any other witness does not operate as a waiver of testimony of the accused's or the witness privilege against self incrimination when examined with respect to matters which relates only to credibility."⁵

According to the rule, the prosecutor is entitled to question a witness during cross-examination about specific past conduct. Such conduct includes the membership in an organization, as was held in U.S. v. Abel.⁶ Cross-examination on a witness's past associations are relevant and therefore admissible to prove untruthfulness and biased.⁷

In U.S. v. Abel, the United States Supreme Court held that the defendant's association in a prison gang was sufficient to prove possible bias.⁸ Specifically, the court held that the "evidence showing [defense witness and defendant's] membership in the prison gang was sufficiently probative of [defense witness's] possible bias towards [defendant]."⁹

⁵ *Id.*

⁶ *See supra* n. 5

⁷ United States v. Abel, 469 U.S. 45 (1984). In this case the prosecutor informed the court of their intention to call one of the cohorts of a bank robbery. In return the defense informed the District Court that it would call another cohort who would testify that he and the prosecutor's witness conspired to implicate the defendant falsely. As a response the prosecutor discredited the defense witness by calling back their witness to testify that all three were apart of a prison gang that was sworn to perjure themselves to protect another member.

⁸ *Id.*

⁹ Abel, 469 U.S. at 49.

This case demonstrates that a witness's prior involvement in a particular organization can be inquired into during cross-examination to prove bias. The court in Abel reasoned that: “[p]roof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence, which might bear on the accuracy and truth of a witness's testimony.”¹⁰

In applying this holding to our case, the court in Ntakirutimana, could properly find that bias may be inquired upon and proven through the witness's membership in Interahamwe. In a jurisdiction where relevance is the minimal threshold for the prosecutor to meet, inquiries about a witness's past affiliations are acceptable. Therefore, as a matter of evidentiary rules and case law rulings the United States requires at least the standard of relevancy to inquire about a witness's past conduct.

B. Canada

The Canadian law of criminal evidence has its origin in English common law. Although “altered, varied and modified” since then, the rules of evidence are now embodied in the Criminal Code of Canada.¹¹ Canada, like the United States, also deals with this issue at by addressing relevancy on cross-examination. Like the United States,

¹⁰ *Id.*

¹¹ P.K. McWilliams Q.C. Canadian Criminal Evidence, 2nd ed. Ontario: Canada Law Book Limited, 1984

a prosecutor is required to adhere to the relevancy requirement in all criminal proceedings.

Under Canada's rules of evidence, character can be shown by the witness's antecedents, associations, mode and station of life.¹² For our purpose, the most useful aspect of the rule is the association of a witness. In support of this rule, in Colpitts v. The Queen, the court held it was admissible to cross-examine an accused regarding a long association with known criminals.¹³ The Colpitts court allowed the cross-examination of the defendant's past associations in order to assess his credibility.

This case offers insight on the relation between a witness's associations and their credibility. The Colpitts court demonstrates that they are both entwined and that past association is relevant and therefore admissible. Although the Canadian rules of evidence do not require a standard beyond relevancy, it still creates a requirement that must be met by prosecutors.

According to McWilliams, the test of whether such questions are admissible may not dependant on the amount of belief the prosecutor has, but on its relevancy. The author states:

Questions as to improper conduct by the witness may also be put, even though the conduct in question has nothing to do with the matter at issue in the case; and such questions must be answered. The proper test of whether such questions should be allowed by the judge would seem to be this: Will the answer throw any light on the credibility of the witness? If it will not, then the question ought not to be allowed, if it is otherwise immaterial to the case.¹⁴

¹² *Id.* at (pp. 1063)

¹³ *Id.* (Citing Colpitts v. The Queen, [1966] 1 C.C.C. 146 (S.C.C.) (Defendant was charged with and convicted of capital murder arising from the killing of a prison guard. The Prosecutor was allowed to cross-examine the accused to show he had been associated with others in a long criminal career.)

¹⁴ *Id.* at (pp. 1063)

Accordingly, a prosecutor is entitled to inquire about a witness's past associations in order to shed light on his character. Such cross-examination is allowed as long as the inquiry relates directly to the credibility of the witness. This is similar to the relevancy and character evidence discussed under the United States.

To clarify the issue of relevancy as the evidentiary threshold a prosecutor must meet, we look at R. v. Watson.¹⁵ The court in this case held that “the party against whom a witness is called may examine witnesses as to his general character . . . but is not allowed to prove particular facts . . . if the witness chooses to answer the question, you [prosecutor] must stand or fall by the answer.”¹⁶

Furthermore, in R. v. Tilley, the court held that “the prosecutor’s right of rebuttal is limited to evidence of general reputation. It may not give evidence as to particular acts.”¹⁷ From this case, we know that it is acceptable for the prosecutor to inquire about the general character of a witness. However, the prosecutor must accept the answer the witness gives, whether agreeable or not.

III. Ethical Constraints Requiring Less Than Good Faith Belief.

A. Canada

In 1983 The British Columbia Court of Appeal decided Regina v. Wilson.¹⁸ The Regina court held:

¹⁵ *Id.* at (pp. 1060) (Citing R. v. Watson, (8171). 2 Stark 116 at pp. 152-3, 171 E.R. 591)

¹⁶ *Id.*

¹⁷ *Id.* at (pp. 288) (Citing R. v. Tilley (1953), 106 C.C.C. 42 (Ont. C.A.)

¹⁸ Regina v. Wilson, 5 C.C.C. (3d) 61, 52 (1983)

The applicable rule is rule (2) which states: (2) in such cross examination, it is not improper for counsel to put questions suggesting fraud, misconduct or the commission of any criminal offense (a) (even though he is not able or does not intend to exercise the right of calling affirmative evidence to support or justify the imputation they convey), if he satisfied that the matters suggested are part of the clients case and has no reason to believe that they are only put forward for the purpose of impugning the witness's character.”

The Regina court illustrates that a prosecutor is entitled to cross-examine a witness as to past acts of misconduct even though they do not intend to offer affirmative evidence to support their line of questioning.

The Regina court asserts that the advocate is entitled to “use his discretion” to put questions in the course of examination, “which are, based on material he is not in position to prove directly.”¹⁹ The penalty is that if he gets a denial or some answer that does not suit him, the answer stands against him for what it is worth.”²⁰ The Regina court holding would support the general prosecutor's inquiry on Ntakirtimana's witness and his possible association with Interahamwe.²¹ However, the prosecutor must stay with the witness's answer since he is not in possession of material to prove otherwise.

Based on Colpitts, association is relevant to the credibility of the witness. Under Regina and Watson, both courts agree that the prosecutor will be bound by whatever the answer the witness gives. Under Canadian law, this could be applicable for a witness testifying as an alibi. Furthermore, the finding under Regina is similar to that of Watson.

¹⁹ *Id.*

²⁰ *Id.* at 53

²¹ *Id.*

Both courts concurred that the prosecutor is entitled to inquire about such associations, but will be bound by whatever the answer the witness gives. Since the defendant has chosen to offer evidence in the form of an alibi, the prosecutor is entitled to probe as long as he meets the relevancy standard.

B. South Africa

Like the United States and Canada, South Africa also speaks on relevancy. In Cross-examination in South African Law, author Dr. JP Pretorius asserts:

“It goes without saying that in the first place, one may cross-examine on facts in dispute. In addition, questions may be put about facts relevant to those in dispute and in particular, the credibility and reliability of the witness may be probed. However, it must be emphasized that the primary requirement is that there must be a nexus between the questions under cross-examination and the dispute before the court.”²²

As is the case with the two prior countries discussed, South Africa’s relevancy rule allows for the questioning on subjects directly related to the trial at hand. Naturally, the scope of cross-examination is subject to the rule of relevancy.

According to Pretorius, “the court always has the power to exclude pointless and irrelevant questions.”²³ As a result, relevancy is at the discretion of the court, like in other jurisdictions. Similar to the United States Federal Rules of Evidence, the South African value or weight placed to a witness’s account depends on a variety of factors. These factors are the witness’s knowledge,

²² Dr. JP Pretorius (1997). Cross-Examination in South African Law. (pp. 168). Pinetown: Kohler Carton & Print.

²³ *Id.*

perception, observation ability, and memory, lack of bias, character and integrity.²⁴

For our purpose we analyze character evidence on cross-examination. Under South African law there are certain accepted provisions to the collateral rule, which prohibits evidence not directly related to the trial at hand. The most significant exception involves prejudice and bias. As is the case in many other jurisdictions, the witness may be questioned on information that may otherwise be unrelated if it is to prove bias or prejudice. Pretorius asserts:

“A witness may be cross-examined to indicate that he is not entirely unbiased in the matter and that he has a certain relationship to one of the parties. In order to show his prejudice, he may be asked about any fact or statement made by him which indicates his prejudiced. Should the witness deny this, independent evidence may be called to present rebuttal evidence.”²⁵

This quote may hold two important factors, which are different from American and Canadian rules of court.

The author points out that “a witness may be legitimately asked: (1) if he has any specific relationship with one of the parties in the dispute. He may, for example be asked if he is related to one of the parties.”²⁶ In applying this to Ntakirtimana, this should allow for inquiries based on prior association.

Therefore, under the South African rules of evidence questioning a witness as to their relationship in political organization, such as Interahamwe, should be considered relevant and proper. However, there seems to be no

²⁴ *Id.* at (pp. 171).

²⁵ *Id.* at (pp. 181).

²⁶ *Id.*

requirement for a higher standard of reasonable belief, which a prosecutor must meet.

C. The Philippines: The Code of Professional Responsibility for Lawyers

The first relevant canon regulating ethics in the Philippine legal profession is found within the introduction. This part of the code governs legal professional's duties of office. Accordingly, it states that it is a practitioner's duty "to counsel or maintain such actions or proceedings only as he believes to be honestly debatable under the law; to employ . . . such means only as are consistent with truth and honor."²⁷

This portion explicitly addresses a practitioner's duty to litigate based on truth and honor. This section makes no reference to a level of reasonable belief needed to inquire about a witness's past conduct on cross-examination. However, it may be useful in establishing a basis of inquiry. The actual canons, which regulate a practitioner's duty to proceed truthfully is rule 10.01. The rule states, "a lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the court to be misled by an artifice."²⁸

There appears to be no explicit requirement that the prosecutor have reasonable belief regarding inquiries of witnesses. However, a lesser duty may be inferred by their duty to proceed truthfully and not mislead the court. Therefore, a prosecutor in questioning a witness under cross-examination, must possess some level of belief that his

²⁷ Agpalo, Ruben. (1991). The Code of Professional Responsibilities For Lawyers (1st ed.) (10.01, pp. 92) Manila: Rex Books.

²⁸ *Id.*

line of questioning is based on truthfulness and will not be misleading. This is not as explicit as a requirement that the prosecutor possess reasonable belief, but it at least puts forth a lesser level of reliability.

More explicitly, rule 10.02 asserts, “[a] lawyer shall not knowingly . . . assert as a fact that which has not been proved.”²⁹ This rule as well may help our analysis.

According to the rule, the prosecutor would not be entitled to assert a fact that has not been proven. The most relevant rules regarding witnesses on cross-examination pertain to rule 12.07. It states, “[a] lawyer shall not abuse, browbeat or harass a witness nor needlessly inconvenience him.”³⁰ In the comments offered afterwards, the committee address two subjects, a) improper conduct of a lawyer toward a witness and b) rights of witnesses which must be respected during trial.³¹

The first comments hold that:

“A lawyer shall not abuse, browbeat or harass or needlessly inconvenience a witness, Thus it is a misbehavior in court for a lawyer to frighten or shout at a witness, to terrorize them or tear them down arrogantly, cross-examine them with incessant questions beyond what is fair and necessary or maligning or abusing them with such other similar acts where disrespect instead of respect is the tone of the action.”³²

The comments address a lawyer’s duty while cross-examining a witness.

However, it unfortunately does not raise a higher standard of belief needed to ask certain questions. What it does offer is insight on an attorney’s proper treatment of a witness. Specifically, the line of questioning would have to be within “what

²⁹ *Id.* at (pp. 95)

³⁰ Pineda, E. (1999). Legal and Judicial Ethics. (pp. 164) Quezon City: Central Books Inc.

³¹ *Id.* at (pp. 164-165)

³² *Id.* at (pp. 165)

is fair and necessary”³³ This may indicate that the level needed for questioning is one of relevance, since no stricter standard is apparent.

The second comment reads as follows:

“Sec 3. *Rights and obligations of a witness.* A witness must answer questions, although his answer may tend to establish a claim against him. However, it is the right of a witness: (1) To be protected from questions, and from harsh or insulting demeanor . . . (3) Not to be examined except as to matter pertinent to the issue . . . (5) Not to give an answer which will tend to degrade his reputation, unless it be the very fact at issue or to a fact from which the fact in issue would be presumed. Not a witness must answer to a fact of his previous conviction for an offense. (rule 132, section 3, RRC).³⁴

Based on these comments we know that a witness’s rights include being questioned about irrelevant or improper questions and that they may be questioned insofar as to their reputation if it is a fact at issue.

Relying on the above rules of professional responsibility, it seems that the Philippine Code of Professional Conduct does not explicitly establish a standard of reasonable belief during cross-examination. However, there may be a lesser standard. Since an attorney has not only a duty towards candor towards the tribunal and must cross-examine a witness based on fair and necessary questions, there does seem to be a lower standard.

Furthermore, a witness may be questioned on his reputation, which traditionally encompasses past acts. Therefore, questioning an alibi on their past conduct could be acceptable as long as it is fair and necessary. This standard of fair and necessary could be established by proving that the fact presumed is at the heart of the issue of the witness’s credibility.

³³ *Id.* (pp. 164)

³⁴ *Id.* at (pp. 165)

In our case certainly a witness past relationship in an organization with the defendant, could be found as a facts at issue during cross-examination. The theory that such a witness may be biased is relevant to their role as an alibi. However, it would be up to the judge hearing the trial to determine whether the line of inquiry is not relevant.

IV. Ethical constraints that are imposed by certain domestic jurisdictions requiring the prosecutor to have a good faith belief in the fact put forth.

A. United States: American Bar Association (ABA) Model Rules of Professional Responsibility.

Unlike the federal Rules of Evidence, the Model Rules of Professional Conduct offer insight into the ethical responsibilities of a prosecutor in a criminal trial. Rule 3.8 regulates prosecutor’s “special responsibilities.”³⁵ The rule states the prosecutor in a criminal case shall “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.”³⁶ In the comments, the ABA addresses this rule and states that the role of a prosecutor of carrying the responsibility of assuring that procedural justice is decide on the basis of “sufficient evidence.”³⁷

This rule is useful as an indicator of a prosecutor’s need to make sure that the proceedings of a criminal trial are supported by sufficient evidence at all times. It

³⁵ Thomas D. Morgan and Ronald D. Rotunda. 2001 Selected Standards on Professional Responsibilities. (R. 3.8, pp.74). Foundation Press. New York.

³⁶ *Id.*

³⁷ *Id.* at (pp. 75)

indicates that a prosecutor should have reasonable knowledge that his actions are supported by evidence. This would be applicable to introducing evidence to the court or questioning a witness on cross-examination. However, it is American case law that more specifically addresses our issue. Until 2001, reasonable belief could be inferred from the ABA's Rules of Professional Responsibility. However, in 2001, the United States Court of Appeals for the First Circuit decided U.S. v. Simonelli.³⁸

The Simonelli court held that since the defense never asserted that the government did not have a good faith basis to ask the questions as to whether such bias exists, it would not be an issue. In reaching this decision the court cites U.S. v. Grajales-Montoya, in which the court asserts: "prosecutors must have a good faith basis for questions asked during cross-examination of a defendant."³⁹ This gives insight on good faith basis a prosecutor must have to cross-examine a defendant and witness.

B. Australia: Lawyers Responsibility and Accountability in Australia.

The Australian rules of professional conduct explicitly require "reasonable ground" for practitioners.⁴⁰ Specifically, the requirement is found in section 17.21 under the header for responsible use of privilege. The rule asserts "a practitioner must when

³⁸ U.S. v. Siminelli, 237 F.3d 19 (1st Circuit, 2001). (Defendant was convicted of filing false federal income tax returns among other tax fraud charges. The issue in the case was rule 608 which holds that specific instances of conduct can be inquired into on cross examination of a witness, if probative of truthfulness or untruthfulness).

³⁹ U.S. v. Grajales-Montoya, 117 F.3d 356, (8th Cir. 1997) (Citing: United States v. Miller, 974 F.2d 953, 960 (8th Cir. 1992).

⁴⁰ Law Council of Australia. (1997) National Profession Blueprint. (R. 17.21, pp. 19) Australia.

exercising the forensic judgments called for throughout a case take care to ensure that decisions by the practitioner or on the practitioner's advice to invoke the coercive powers of a court or to make allegations or suggestions under privilege against any person."⁴¹

Under the rule the practitioner must meet several elements. According to the elements the practitioner's allegations must: (a) be reasonably justified by available material, (b) be appropriate for the robust advancement to the client's case, (c) not be made for the purpose of harassing or embarrassing the person and (d) not be made in order to gain collateral advantage for the client.⁴²

In regards to what is admissible in forming reasonable basis, Rule 17.22 holds that "a practitioner must not draw or settle any court document alleging . . . serious misconduct unless the practitioner believes on reasonable grounds."⁴³ The rule states that reasonable ground must be based on:

“(a) factual material already available to the practitioner that provides a proper basis for the allegation if it is made in a pleading; (b) the evidence in which the allegation is made, if it is made in evidence will be admissible in the case . . . and (c) the client wishes the allegation to be made.”⁴⁴

This rule explicitly requires the element of reasonable belief. This standard of reasonable belief will not only be applicable to allegations based on documentation, but any type of allegation.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at (R. 17.22, pp. 20)

⁴⁴ *Id.*

Furthermore, rule 17.23 asserts: “a practitioner must not open as a fact any allegation which the practitioner does not then believe on reasonable grounds will be capable of support by the evidence which will be available to support the client’s case.”⁴⁵ According to this rule the prosecutor, as the practitioner, must have reasonable grounds to inquire about a witness’s past acts.

Based on the Australian Rules of Evidence we can categorize Australia as a legal system, which requires a level reasonable belief to inquire about a witness’s character and allege such facts. Under the Australian rules of ethics, the prosecutor’s inquiries on cross-examination are required to a) be reasonably justified by material available to them, and b) not open allegations unless reasonable ground is present.⁴⁶

This is essentially the point of Rule 17.24.⁴⁷ It holds that “a practitioner must not cross examine so as to suggest criminality or fraud or other serious misconduct on the part of any person unless”: (A) they believe on reasonable grounds that the material available provide a proper basis and (B) they believe that an affirmative answer by the witness would diminish their credibility.⁴⁸ With this rule Australia is clearly a jurisdiction that requires reasonable belief.

C. Great Britain: Guide to the Professional Conduct of Solicitors

Like most countries Great Britain’s ethical standards require that “[s]olicitors who act in litigation, whilst under a duty to do their best effort their client, must never deceive

⁴⁵ *Id.* at (R. 17.23)

⁴⁶ *Id.*

⁴⁷ *Id.* at (R. 17.24)

⁴⁸ *Id.*

or mislead the court.”⁴⁹ This is similar to previously discussed rules requiring that practitioners of law not offer deceitful evidence in their tribunal. This requirement is merely a backdrop for insurance of proper and fair litigation. As a result of rule 21.03, this duty to be forthright with the tribunal is applicable on any level of the court system.⁵⁰

However, the most influential rule for our purposes is rule 21.08. The rule states, “a solicitor must not make or instruct an advocate to make an allegation which is intended only to insult, degrade or annoy the other side, the witness or any other party.”⁵¹ This duty imposed on practitioners would naturally be applicable during cross-examination. According to the comments following there are two primary purposes for this rule that shed light on our issue.

The first comment asserts, “[p]rinciple 21.08 would also preclude to make an allegation which is merely scandalous.”⁵² This informs us that a prosecutor must be sure that the purpose of his questioning is legitimately intended bring out relevant information, and not merely to disrupt the witness. However, it is the third comment that offers an answer to our issue.

The third comment states, “[a] solicitor should not, in plea in mitigation, make or instruct counsel to make an allegation which is likely to vilify or insult any person, without first being satisfied that there are reasonable grounds for making the

⁴⁹ Nicola Taylor. (1999). The Guide to Professional Conduct of Solicitations. (R. 21.01, pp. 374).

London, Law Society

⁵⁰ *Id.*

⁵¹ *Id.* at (R.21.08, pp. 376).

⁵² *Id.*

statement.”⁵³ Furthermore, according to the Law Society’s Code for Advocacy, part VII,

7.1(h) asserts:

“Advocates when conducting proceedings at court: (h) must not suggest that a witness or other person is guilty of crime, fraud or misconduct or attribute to another person the crime or conduct of which their client is accused unless such allegations go to a matter in issue (including the credibility of the witness) which is material to their client’s case and which appear to them to be supported by reasonable grounds.”⁵⁴

Both the rules address our issue. According to the Advocacy Code and The Guide to Professional Conduct, the practitioner engaged in cross-examination will be required to possess reasonable belief in order to ask a question regarding a witness’s past conduct.

These rules are bolstered by rule 21.19, which states, “a solicitor prosecuting a criminal case must ensure that every material point is made which supports the prosecution, the evidence must be presented dispassionately and with scrupulous fairness.”⁵⁵ Unlike the other rules this rule is explicitly made for prosecutors. However, it still requires that the prosecutor present evidence fairly, which would be found in their duty to have reasonable belief in presenting an allegation as well as evidence.

These rules found in the Guide of Professional Conduct and the Advocacy Code, bind the standard of reasonable belief to questioning regarding a witness’s credibility. As in our case the purpose of the questioning is meant to prove bias on behalf of the witness. As a result, questioning the witness/alibi on prior acts to

⁵³ *Id.*

⁵⁴ *Id.* at (pp.392).

⁵⁵ *Id.* at (R. 21.19, pp. 380)

asses credibility would be proper so long as the prosecutor had reasonable belief that the allegation are true.

V. Summary

In summation, most jurisdictions offer relevance as the threshold which a prosecutor must meet in putting out facts on cross-examination. These jurisdictions include the United States, Canada and South Africa. In most cases this standard is found in those countries' rules of evidence. In the case of the United States and Canada, the evidentiary and ethical factors to be considered do not raise a high standard. However, due to case law both these countries can be held to have a standard of reasonable belief.

As is the case with South Africa, the Philippines also has a lower standard to be met by the prosecutor. This standard is categorized as "fair and necessary." This standard however, is lower then reasonable belief. In both Australia and Great Britain the prosecutor is explicitly required to meet the standards of reasonable belief. This is apparent both in case law and their legislative material.

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APPENDIX A