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Admissibility of Prior Crimes Evidence to Impeach a Witness in Florida

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ADMISSIBILITY OF PRIOR CRIMES EVIDENCE TO IMPEACH A WITNESS IN FLORIDA

In the recent case of *Hendrick v. Strazzulla*,[1] the Supreme Court of Florida was faced with the necessity of construing a statute which has been on the books in its present form for over sixty years. The *Hendrick* case was an action for damages arising out of a collision between two trucks. On trial, during cross-examination, the defendant was asked if he had ever been convicted of a crime. He replied, "No." Plaintiff's counsel then sought to impeach him by introducing in evidence a transcript of his criminal court of record conviction of reckless driving. The trial judge rejected the evidence on the ground that the conviction was not of a crime involving moral turpitude. The Second District Court of Appeal affirmed.[2] The Florida Supreme Court held, in a four to three decision,[3] that evidence of "any crime," regardless of the existence of moral turpitude, may be used to impeach the credibility of a witness. Justice Thornal, writing for the majority, concluded:

> "While it might seem logical that the statute should limit the discrediting crimes to those which reflect moral turpitude, the fact remains that the Legislature has not made any such provision. Under the statute 'a crime is a crime' and no distinction is made between crimes as to the effect of the statute. An exception, of course, is perjury, the conviction of which is a complete disqualification."

The statute in question[4] reads as follows:

> "No person shall be disqualified to testify as a witness in any court of this state by reason of conviction of any crime except perjury, but his testimony shall be received in evidence under the rules, as any other testimony; provided, however, evidence of such conviction may be given to affect the credibility of the said witness, and that such conviction may be proved by questioning the proposed witness, or, if he deny it, by producing a record of his conviction. Testimony of the general reputation of the said witness may likewise be given in evidence to affect his credibility."

1. 135 So. 2d 1 (Fla. 1961).
2. Hendrick v. Strazzulla, 125 So. 2d 589 (2d D.C.A. Fla. 1960).
3. It may be worthy of note that Justice Hobson, who has since retired from the bench, was a member of the majority
4. FLA. STAT. §90.08 (1961).

In light of the clear wording of the above statute and the express statutory inclusion of "all misdemeanors"[5] within the term "crimes," it would appear that had the Supreme Court held in the *Hendrick* case that the discrediting crimes are limited to those which reflect moral turpitude, it would have accomplished an amendment of present statutory law. As will be discussed later in this note, such an amendment may well be desirable. But this, of course, is a matter for the legislature, not the courts.

DEFINITIONS OF THE RULE

At common law, conviction of an infamous crime rendered a person incompetent as a witness. This doctrine was established in the sixteenth century and persisted well into the nineteenth century.[6] The doctrine rested upon the theory that one who had engaged in such reprehensible conduct was a person without honor and thus wholly unworthy of belief in a court of justice.[7]

By statutes which are virtually universal throughout the common law world, this incompetency has been removed.[8] It is generally recognized, however, that one who has been convicted of crime is not entitled to the same credit as one without a criminal record. Proof of the prior conviction of certain classes of crimes is therefore commonly allowed for the purpose of impeachment, but authorities disagree upon the class of crimes of which conviction may be proved.

Much of the disagreement stems from the diversity of statutory provisions within different states. Some statutes restrict impeaching crimes to crimes of an infamous nature.[9] Others limit the impeaching crimes to felonies and crimes involving moral turpitude.[10] Still other statutes, among them Florida's,[11] allow evidence of the conviction of any crime to be given to impeach the credibility of a witness.[12] In federal courts in criminal cases it is generally held that a witness may be impeached by evidence of previous criminal convictions only when the conviction is of a felony or a misdemeanor in the nature of *crimen falsi*.[13] As commonly defined, this term includes only crimes

5. FLA. STAT. §775.05 (1961).

6. 2 WIGMORE, EVIDENCE §519 (3d ed. 1940).

7. See generally Stone, *The Rule of Exclusion of Similar Fact Evidence: England*, 46 HARV. L. REV. 954 (1933).

8. MCCORMICK, EVIDENCE §43 (1954). There is no federal statute regarding crimes admissible to impeach.

9. *E.g.*, ILL. REV. STAT. ch. 38, §587 (1951).

10. *E.g.*, ME. REV. STAT. ch. 113, §127 (1943), as amended by ME. LAWS, ch. 265 (1957).

11. FLA. STAT. §90.08 (1961).

12. *E.g.*, MO. REV. STAT. §491.050 (1949).

13. *E.g.*, United States v. Katz, 78 F. Supp. 435 (M.D. Penn. 1948), *aff'd*, 173

involving falsehood and fraud.[14] In some state courts[15] and federal courts,[16] the trial judge has been held able, in his discretion, to admit proof of convictions of crimes not of an infamous nature nor involving moral turpitude.

Despite variations among their definitions of the restrictions imposed, statutory provisions in the great majority of American jurisdictions do contain some restrictive categorization of those crimes the prior conviction of which may be proved to impeach the credibility of a witness.[17] Indeed, when the statute is broadly worded in terms of "crime" or "any crime" the courts have usually imposed the limitation that as to misdemeanors, at least, the offense must be one involving moral turpitude.[18]

Similarly, a restrictive approach has been adopted in the Uniform Rules of Evidence.[19] Rule 21 provides:

> "Evidence of the conviction of a witness for a crime not involving dishonesty or false statement shall be inadmissible for the purpose of impairing his credibility. If the witness be the accused in a criminal proceeding, no evidence of his conviction of a crime shall be admissible for the purpose of impairing his credibility unless he has first introduced evidence admissible solely for the purposes of supporting his credibility."

Application in Civil and Criminal Cases

Evidence of prior convictions is equally admissible to impeach witnesses in both civil and criminal cases.[20] In Florida, moreover, evidence of convictions rendered in another state or in the federal courts may be introduced.[21]

F.2d 116 (3d Cir. 1949); United States v. Haynes, 81 F. Supp. 63 (W.D. Penn. 1948), *aff'd*, 173 F.2d 223 (3d Cir. 1949). *But see* Christianson v. United States, 226 F.2d 646 (8th Cir. 1955), *cert. denied*, 350 U.S. 994 (1956) (holding that evidence of conviction of crime for impeachment purposes is limited to conviction of a felony, an infamous crime, or a crime involving moral turpitude).

14. See Black, Law Dictionary (4th ed., 1951). Perhaps a better definition would be "a crime that, by its very nature, tends to cast doubt on the veracity of one who commits it."

15. *E.g.*, Hunter v. State, 193 Md. 596, 69 A.2d 505 (1949).

16. *E.g.*, Pettingill v. Fuller, 107 F.2d 933 (2d Cir. 1939), *cert. denied*, 309 U.S. 669 (1940).

17. 98 C.J.S. *Witnesses* §507 (1957).

18. See McCormick, Evidence §43 (1954) and cases cited.

19. Drafted by the National Conference of Commissioners on Uniform State Laws and by it approved at its annual conference, 1953. Approved by the American Bar Association, 1953. Florida has not adopted these rules.

20. McArthur v. Cook, 99 So. 2d 565 (Fla. 1957).

21. See Cross v. State, 96 Fla. 768, 119 So. 380 (1928); McCormick, Evidence §43 (1954).

In most states when a defendant in a criminal case testifies in his own behalf, he thereby assumes the position of an ordinary witness and may be discredited on cross-examination by inquiries into his previous convictions in the same manner and under the same rules as any other witness.[22] This rule has strong support in Florida case law.[23]

In both criminal and civil cases, the defendant occupies a dual role when he takes the witness stand. As a witness he is subject to cross-examination concerning previous convictions for the purpose of impeaching his credibility. As a criminal or civil defendant, however, he has the right to demand exclusion of evidence of previous criminal convictions when the introduction of such evidence is sought to prove his guilt or liability in the case at hand.[24]

Necessity of a Conviction

A verdict of guilty, or even a plea of guilty, is generally insufficient alone to constitute a conviction, but there must also be a judgment or sentence thereon.[25] In Florida, the rule is strictly defined to require an express adjudication of guilt by the court, irrespective of sentencing.[26] A leading Florida case defining the requisites of a "conviction" is *Weathers v. State*.[27] In a criminal abortion prosecution, Alvah Weathers was convicted as an accessory before the fact. On appeal, Weathers contended that his purported conviction as an accessory was invalid because of the absence of a valid conviction of the principal. Although the trial court had adjudicated the principal guilty, no sentence had been imposed. The Florida Supreme Court affirmed Weathers' conviction, holding that an adjudication of guilt by the court is sufficient to constitute a conviction, irrespective of the imposition of sentence.

Although, within certain limitations, a witness may be interrogated

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22. See Annot., 161 A.L.R. 233, 234 (1946); 13 Ann. Cas. 643 (1909).

23. *E.g.*, Ivey v. State, 132 Fla. 36, 180 So. 368 (1938); Cross v. State, 96 Fla. 768, 119 So. 380 (1928); Martin v. State, 86 Fla. 616, 98 So. 827 (1924); Lockwood v. State, 107 So. 2d 770 (2d D.C.A. Fla. 1958).

24. See Moseley v. Ewing, 79 So. 2d 776 (Fla. 1955); Stevens v. Duke, 42 So. 2d 361 (Fla. 1949); Martin v. State, 86 Fla. 616, 98 So. 827 (1924); Washington v. State, 86 Fla. 519, 98 So. 603 (1923). For an excellent discussion see Stone, *The Rule of Similar Fact Evidence: America*, 51 Harv. L. Rev. 988 (1938). See also Note, 13 U. Fla. L. Rev. 372 (1960).

25. 98 C.J.S. *Witnesses* §507 (1957).

26. See Weathers v. State, 56 So. 2d 536 (Fla. 1952); Page v. State Bd. of Medical Examiners 141 Fla. 294, 193 So. 82 (1940); Kauz v. State, 98 Fla. 687, 124 So. 177 (1929); *Ex parte* McDaniel, 86 Fla. 145, 97 So. 317 (1923); Bishop v. State, 41 Fla. 522, 26 So. 703 (1899).

27. 56 So. 2d 536 (Fla. 1952).

about previous "convictions" for purposes of impeachment, a witness may not be questioned about former arrests or accusations,[28] nor may evidence of particular acts of misconduct be introduced to impeach his credibility.[29] Admission of evidence of mere arrests or indictments would violate the hearsay rule since such evidence is merely someone's assertion of the witness' guilt.[30]

A conviction of the violation of a municipal ordinance may not be shown for purposes of impeachment.[31] Florida law on this subject was clearly defined in the case of *Roe v. State*.[32] The Court held that evidence of conviction of an offense is inadmissible to impeach the credibility of a witness unless the offense is against "the law of the land." In other words, the conviction must be of an offense against the law of the state, not a mere political subdivision thereof.

Nor is evidence of prior juvenile court adjudications admissible for impeachment purposes. The Florida juvenile court act provides that "an adjudication by a juvenile court that a child is a dependent or delinquent child shall not be deemed a conviction . . . ."[33] Thus, although the juvenile may have committed what society and the law ordinarily consider to be a crime against "the law of the land," consequent proceedings in a juvenile court cannot result technically in a "conviction" that may be shown for impeachment purposes in later actions.

Though a judgment having the effect of suspending or disbarring a lawyer from practice for criminal misconduct is technically not a conviction, it has been held to be provable to impeach.[34] No reported Florida case has been located in which this matter has been considered; however, applying a strict construction to the Florida statute,[35] it would seem that such evidence would not be admissible to impeach in Florida.

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28. Jordon v. State, 107 Fla. 333, 144 So. 669 (1932). For general rule see Annot., 20 A.L.R.2d 1421 (1951); Annot., 161 A.L.R. 233, 243 (1946). *But see* Wallace v. State, 41 Fla. 547, 26 So. 713 (1899), wherein the Florida Supreme Court held that it is a matter of discretion with the trial judge to permit, or to decline to permit, a witness upon cross-examination to be interrogated as to indictments or charges, before conviction, against him of criminal offenses. This case has never been expressly overruled. Indeed, it was favorably cited by the Florida Supreme Court in the case of Padgett v. State, 64 Fla. 389, 59 So. 946 (1912). However, in light of the more recent decisions, it would seem to have been overruled by implication.

29. See Watson v. Campbell, 55 So. 2d 540 (Fla. 1951).

30. See 3 WIGMORE, EVIDENCE §980 (3d ed. 1940).

31. 58 AM. JUR. *Witnesses* §741 (1948); Annot., 103 A.L.R. 350, 365 (1936).

32. 96 Fla. 723, 119 So. 118 (1929).

33. FLA. STAT. §39.10 (1961).

34. See Lancing v. Michigan Cent. Ry., 113 Mich. 47, 106 N.W. 692 (1906).

35. FLA. STAT. §90.08 (1961).

The fact that probation or a pardon has been granted, or even that an appeal is pending, does not make evidence of the conviction inadmissible.[36] The reasoning behind this is simply that, unless expressly declared otherwise therein, a pardon does not imply a finding of innocence of the person convicted, nor is it proof that the convicted person has reformed. However, when a witness has been impeached by proof of a prior conviction of a crime, he may show the fact that he has served his sentence, or has been paroled or pardoned.[37]

It is generally not permissible to prove a conviction that is so remote in time that it has no bearing on the present character of the witness.[38] However, whether a conviction is too remote depends upon the facts of the particular case, including such factors as the length of imprisonment following conviction; the age of the witness at the time of conviction; and the lapse of time since conviction. The question of remoteness is generally held to be within the discretion of the trial judge.[39] No reported Florida case has been found wherein the question of remoteness of a conviction has been decided or discussed; however, under a strict construction of the Florida statute,[40] and by analogy to the majority opinion in the *Hendrick* case, the remoteness of the prior conviction should not affect its admissibility but merely its weight.

Permissible Scope of Inquiry

How far may the cross-examiner go in his inquiry concerning prior convictions? In most states he may ask about the name of the crime committed, such as murder or embezzlement, the punishment awarded, and the time and place of conviction.[41] In Florida, however, a well-defined sequence of inquiry must be adhered to. The Florida Supreme Court has delineated the correct procedure as follows:[42]

> "[T]he proper procedural approach is simply to ask the witness the straight-forward question as to whether he had ever been

36. See Perry v. State, 146 Fla. 187, 200 So. 525 (1941) (holding that a pardon does not make evidence of the conviction inadmissible); 98 C.J.S. *Witnesses* §508 (1957); McCormick, Evidence §43 (1954).

37. McArthur v. Cook, 99 So. 2d 565 (Fla. 1957); Perry v. State, 146 Fla. 187, 200 So. 525 (1941).

38. 70 C.J. *Witnesses* §1057 (1935) (decisions are collected).

39. 98 C.J.S. *Witnesses* §507 (1957); McCormick, Evidence §43 (1954).

40. Fla. Stat. §90.08 (1961).

41. 98 C.J.S. *Witnesses* §507 (1957); McCormick, Evidence §43 (1954). *E.g.*, State v. McCowan, 203 Ore. 551, 280 P.2d 976 (1955) (holding cross-examination of witness as to number of prior convictions and nature of such crimes committed to be proper).

42. McArthur v. Cook, 99 So. 2d 565, 567 (Fla. 1957). Judicial elaborations of the procedure find their origin in the wording of the statute: "[S]uch conviction

> convicted of a crime. The inquiry must end at this point unless the witness denies that he has been convicted. In the event of such denial the adverse party may then in the presentation of his side of the case produce and file in evidence the record of any such convictions. If the witness admits prior conviction of a crime, the inquiry by his adversary may not be pursued to the point of naming the crime for which he was convicted. If the witness so desires he may of his own volition state the nature of the crime and offer any relevant testimony that would eliminate any adverse implications; for example, the fact that he had in the meantime been fully pardoned or that the crime was a minor one and occurred many years before."

The cross-examiner begins the inquiry simply by asking the witness if he has ever been convicted of any crime, refraining at this stage from identifying any particular crime. If the witness answers affirmatively and admits a prior conviction without identifying the crime or explaining the circumstances, the cross-examiner may not pursue the matter further.[43] But the witness is allowed to explain, if he so desires, the nature of the crime and any relevant facts tending to eliminate adverse implications. This may also be accomplished on redirect examination.[44] If the witness admits previous conviction of a particular crime, or if he explains any extenuating circumstances surrounding such conviction, he may be held to have opened the door to further questioning about the nature of the crime of which he has been convicted.[45]

If the witness denies previous conviction, the cross-examiner may introduce evidence of conviction and thereby necessarily expose the nature of the crime.[46] The usual procedure is to introduce into evidence a certified copy of the record of conviction as outlined in the *McArthur* case. The record is conclusive evidence of the conviction. and any description of the crime, not shown by the record, is improper.[47]

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may be proved by questioning the proposed witness, or, if he deny it, by producing a record of his conviction." FLA. STAT. §90.08 (1961).

43. See Mosely v. Ewing, 79 So. 2d 776 (Fla. 1955); Roe v. State, 96 Fla. 723. 119 So. 118 (1928); Martin v. State, 86 Fla. 616, 98 So. 827 (1924); Washington v. State, 86 Fla. 519, 98 So. 603 (1923).

44. See Noeling v. State, 40 So. 2d 120 (Fla. 1949).

45. 58 AM. JUR. *Witnesses* §451 (1948).

46. McArthur v. Cook, 99 So. 2d 565 (Fla. 1957); Mead v. State, 86 So. 2d 773 (Fla. 1956); Watts v. State, 160 Fla. 268, 34 So. 2d 429 (1948). *But see* Smith v. State, 129 Fla. 611, 177 So. 222 (1937). Here the defendant, testifying in his own behalf, was asked, "Isn't it a fact that you were convicted of a felony?" The Florida Supreme Court held that the question was not improper.

47. Lockwood v. State, 107 So. 2d 770 (2d D.C.A. Fla. 1958).

If the witness denies previous conviction or denies more than a certain number of convictions when in fact there has been a greater number, it is proper to question the witness as to specific convictions, stating the time, place, and nature of the crime. In *Cross v. State*[48] the defendant, testifying in his own behalf, was asked if he had been convicted. He was then asked how many times he had been convicted. He replied, "Three." The prosecutor then asked him if he had not in fact been convicted five times and named the particular crimes. These questions were admitted over objection of the defense attorney. The defendant was convicted. On appeal, the Florida Supreme Court held:[49]

> "It was only when the accused denied having been previously convicted as many as five times that the county solicitor, for the permissible purpose of refreshing the witness' memory, was permitted to specifically interrogate him with respect to five previous convictions, as to which the prosecutor in his questions necessarily stated the nature of the offenses . . . ."

That the witness may be questioned as to the number of previous convictions, as was done in the *Cross* case, has substantial support in Florida case law.[50]

Evaluation of the Rule in Florida

The premise of the impeachment rule is that a person's general character, and thus his truthfulness, can be more accurately determined when measured in the light of his past criminal record. The rule's purpose, in other words, is to place the triers of fact in a better position to ascertain the truth by evaluating the character, and indirectly the credibility, of the witness whom they are asked to believe.

As discussed above, most jurisdictions restrict the operation of the rule, and thereby seek to avoid unnecessary smearing of the witness' reputation, by variously limiting the definition of the crimes to which the rule may be applied. The definitions seek to limit admissibility to the more serious crimes, *e.g.*, "felonies," or to those that may be thought to have some particularly apt relation to the witness' character and his disposition to tell the truth under oath, *e.g.*, "crimes involving moral turpitude." The witness is thereby saved, to some extent, from the chagrin and reputation damage attendant upon the revelation of offenses unlikely to have much relation to his character and credibility.

The more common restrictions do not achieve an entirely perfect compromise between the opposed aims of efficiently getting at the

48. 96 Fla. 768, 119 So. 380 (1928).
49. *Id.* at 777, 119 So. at 383.
50. *E.g.*, Collins v. State, 155 Fla. 141, 19 So. 2d 718 (1944); *supra* note 47.

truth and avoiding unnecessary abuse of the witness. There are other considerations in the background of the problem, however, and these also must play some role in determining legislative and judicial solutions. Among such considerations are the impracticality of comprehensive legislative listings of all specific offenses falling within the rule, the possible desire to allow the trial judge some discretion, and, especially, the need for efficiency in daily application in the trial court. Impatience with the semantic inexactitude of "moral turpitude" is perhaps dampened, to some extent, by an attempt to bring all such factors into account.

Some question exists whether Florida's approach to the problem represents the best possible solution. In permitting the impeachment of a witness by the introduction of evidence of conviction of "any crime," present Florida law presumably reflects a legislative conclusion that it is not feasible to draw distinctions between those crimes that are related to credibility and those that are not. As a consequence, however, evidence is admitted of crimes, such as traffic violations, that have no reasonable relation to credibility whatever.

In application, the Florida approach may produce anomalous results. If John Doe is apprehended while driving through Cross City at seventy miles per hour he may be convicted of exceeding the speed limit by forty-five miles per hour. Because this is a breach of a municipal ordinance, however, evidence of the conviction is inadmissible for impeachment purposes. But if John had been arrested by a highway patrolman before entering the city, and had been convicted of violating the state speed limit by five miles per hour, evidence of the conviction may later be introduced against him as a witness. The conclusion to be drawn here is not that convictions of ordinance violations should be admissible to impeach. Rather, the example illustrates the lack of discrimination inherent in the term "any crime."

The aim of protecting the witness from needless exposure of his past is sought to be accomplished in Florida by means of imposing restrictions upon the examination procedure, rather than upon the definition of crimes within the rule. If the witness admits the bare fact of his past conviction at the outset, he is shielded from further questioning. In practical effect, however, this procedure neither aids the jury nor protects the witness. Mere knowledge that the witness has been convicted of a crime — perhaps murder, perhaps a traffic violation — will more probably mislead than assist the jury. At the same time, the reputation of the witness is subjected to doubts and suspicions that may be more damaging than full revelation of his actual record.

It is true that the witness is afforded the right to explain the nature of the crime if he so desires. In practice, however, the right

may provide little protection. The witness may be unaware of the right. Also, the attorney who called the witness may have been unaware of his criminal record and thus may be hesitant to question him further on redirect examination for obvious reasons. Moreover, the witness may have admitted ten previous convictions, nine of which were relatively minor offenses; and yet he may not wish to explain this for fear of opening the door to questions concerning the tenth. The jury learns only, therefore, that the witness has a criminal record including ten convictions.

The Florida procedure may be equally ineffective to provide reliable assistance to the jury. Suppose that witness *X* acknowledges five past convictions but, for one reason or another, fails to explain that the offenses were all traffic violations. Witness *Y*, who has been convicted only once, of perjury, in a federal court, and who has served six years in a federal prison in the company of hardened criminals, acknowledges his one prior conviction. The testimony of witness *X* directly conflicts with that of witness *Y* and the outcome of the case depends upon which witness the jury chooses to believe. The only evidence supplied the jury concerning the credibility of the two witnesses is that *X* has a record of five convictions and *Y* has a record of only one conviction. Would this not tend to mislead rather than to assist the jury?

Conclusion

Two changes in Florida statute section 90.08 are proposed for consideration by the Florida legislature. Namely, the impeaching crimes should be restrictively defined and the examination procedure should be revised to permit the examiner to introduce evidence of conviction of the qualifying crimes at the outset of the interrogation.

As discussed above, many states restrict the impeaching crimes to those "of an infamous nature" or to those "involving moral turpitude." Most federal courts restrict the impeaching crimes to felonies or misdemeanors in the nature of *crimen falsi*. Although there is probably slight difference between these definitions as they are actually applied, perhaps the best solution would be simply to limit impeaching crimes to "felonies." A "felony" is as easily identifiable as "any crime" and lacks the vagueness of "crimes of an infamous nature" and "crimes involving moral turpitude." The term "felonies," moreover, includes the more serious of the crimes in the nature of *crimen falsi*, such as forgery, counterfeiting and subornation of perjury.

Restrictive definition of the impeaching crimes would avoid many of the self-defeating inconsistencies that find their way into the present system of allowing impeachment on the basis of conviction of "any crime." Elimination of misdemeanors from the procedure

would achieve harmony with the present rule barring evidence of ordinance violations. It would also save the witness from unnecessary embarrassment and harassment, without depriving the jury of any truly essential information. In addition, it would accelerate the business of the trial courts. The question asked in *Roe v. State*[61] remains unanswered:

> "[W]hy should the time of the courts be consumed by allowing parties to attack the credibility of witnesses upon grounds which have no reasonable or necessary relation to their integrity or veracity — such, for instance, as attempting to prove that a witness has been convicted for violating a traffic regulation, or a game law, or other statutes dealing with offenses which are merely *malum prohibitum* and not *malum in se*, and which do not necessarily involve moral turpitude[?]"

The examination procedure should also be revised to permit the examiner to disclose initially the fact and nature of admissible convictions. The present requirement that the examination end as soon as the mere fact of conviction is established is illogical. To allow inquiry into prior convictions at all is unsupportable unless the evidence adduced is material and relevant to the credibility of the witness. Specific information about particular convictions that throw light on the witness' character may well be relevant. But to introduce the bare fact of conviction and thereby require the jury to speculate about the nature of the crime is probably both irrelevant and misleading in many cases.

The two statutory changes here suggested would also eliminate the present law's paradoxical effect of permitting the witness who has committed a serious offense to avoid disclosure of that fact, while permitting doubt and suspicion to be cast upon the character of the witness who has committed a relatively minor offense.

In *Hendrick v. Strazzulla* the Florida Supreme Court has served notice that Florida statute section 90.08 will be faithfully interpreted and enforced as presently written. It is therefore timely for the Florida legislature to re-examine this sixty-one year old law and to reconsider whether it truly functions in accordance with its intended purpose.

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51. 96 Fla. 723, 733, 119 So. 118, 122 (1929).