NOTES

LIMITATIONS ON IMPEACHMENT BY CONTRADICTION: THE COLLATERAL FACTS RULE AND F.R.E. 403

I. Introduction

There are several ways in which the testimony of a witness may be impeached. Of these, contradiction of a fact testified to by a witness with the testimony of another, credible, witness is often effective. The subject of the fact to be contradicted is limited, however, by rules of evidence in effect in each jurisdiction.

In Iowa, the collateral facts rule acts to limit contradiction by extrinsic evidence to issues that are material to the case.[1] In contrast to this, the adoption of the Federal Rules of Evidence has led the federal courts to rely less on the collateral facts rule to limit contradiction by extrinsic evidence.[2] Instead, the federal courts have increasingly relied on Federal Rule of Evidence 403, which grants each judge the discretion to exclude evidence that tends to confuse the jury, prejudice the opposing party, or waste the court's time.[3]

Since impeachment of a witness challenges the credibility of that witness, and since the credibility of witnesses is always relevant, any court rule that acts to limit impeachment by contradiction in effect excludes relevant information.[4] The exclusion of relevant information represents a drastic remedy and poses a dilemma for attorneys on both sides of impeachment controversies.[5] Since the definition of "collateral facts" is ever changing,[6] and since the standards for exclusion of impeachment testimony have only recently evolved under the Federal Rules of Evidence,[7] it is imperative that litigating attorneys remain informed of the current standards and their

---

1. *See* 3A J. Wigmore, Evidence §§ 1001-02 (Chadbourn rev. ed. 1970); *see, e.g.*, State v. Hilleshiem, 305 N.W.2d 710, 713-14 (Iowa 1981).
2. *See infra* notes 158-59 and accompanying text.
3. Fed. R. Evid. 403.
4. *See* C. McCormick, Evidence § 29 (2d ed. 1972).
5. *See infra* notes 80-84 and accompanying text.
6. *See* State v. Odem, 322 N.W.2d 43, 46 (Iowa 1982) (Iowa Supreme Court expanded the range of extrinsic evidence admissible for impeachment purposes).
7. *See infra* notes 156-59 and accompanying text.

applications.

The purpose of this note, then, is fourfold. First, the standards used by the Iowa courts in defining collateral facts and applying limitations to impeachment by contradiction will be identified. Second, the standards used by the federal courts in limiting impeachment by contradiction will be identified. Next, the factual variables of greatest importance in the cases decided under the two sets of standards will be compared. Finally, it will be demonstrated that the federal court standards represent a more consistent, yet flexible, mechanism for the control of impeachment by contradiction. For that reason, it will be urged that Iowa abandon the collateral facts rule in favor of the standards inherent in Federal Rule of Evidence 403.

II. The Collateral Facts Rule in Iowa

Impeachment is the usual technique used to call into question the credibility of a witness.[8] In Iowa a witness's credibility may be attacked in any of five ways.[9] The impeachment may consist of proof of bias, evidence of inconsistent statements, proof of bad character for truth and veracity, a demonstration of a defect in the witness's capacity to observe, remember, or recount events, or the contradiction of a fact testified to by the witness.[10]

Impeachment by contradiction, the last method mentioned above, effectively discredits the witness by persuading the jury that the witness is in error on at least one particular point.[11] Since the jury knows that a witness who testifies inaccurately on one point is likely to testify inaccurately on other points as well, it is unnecessary to contradict all facts testified to by a witness in order to effectively discredit all of his testimony.[12] The contradicting evidence, however, must be more credible than the testimony of the contradicted witness in order for the impeachment to be successful.[13] Since the reason for the misstatement of a contradicted witness is unknown to the jury—it might be a mental defect, a lack of veracity, a bias, a lack of opportunity to know, or even a lack of capacity to know—the strength of contradictory evidence is that it opens a wide range of defective qualities to the inferences of the jury.[14]

The credibility of a witness is always a relevant issue in every case, and although, generally, all relevant evidence is admissible, the use of extrinsic evidence to contradict the testimony of a witness is limited by impeachment

---

8. State v. Peterson, 219 N.W.2d 665, 671 (Iowa 1974).

9. *Id.*

10. *Id.*; *See generally* Note, *Impeachment of Witnesses in Iowa: The Quest for Credibility*, 63 Iowa L. Rev. 433, 433-61 (1977) (outlining the different methods of impeachment).

11. 3A J. Wigmore, Evidence § 1000 (Chadbourn rev. ed. 1970).

12. *Id.*

13. *Id.*

14. *Id.*

rules to issues of material fact.[15] Some of these limitations are based upon logical concerns while others are based upon practical concerns.[16]

The logical basis for limiting impeachment by contradiction may be explained in terms of the attitudes of the jurors considering the impeachment evidence. While a proved contradiction of a material fact bearing on a key issue in a case may cause jurors to wholly discredit the impeached witness's testimony, a proved contradiction of a fact removed in time, or bearing on an unrelated issue, may allow jurors to excuse the impeached witness's error.[17] The more removed the contradicted fact is from the issues being considered by the jury, the greater the likelihood the jury will attribute the contradiction to understandable error such as a failure of the witness to note a minor detail, an inability to remember accurately an event that occurred far in the past, etc.[18] As a result, impeachment on issues not material to a particular case does not as successfully call to question a witness's veracity as does impeachment on material issues.[19] Since the credibility of a witness is relevant, objections to impeachment based on immaterial issues may tend to focus jurors' attention on the small amount of probative value that should be afforded the impeached witness's testimony.[20] Any attempt to exclude such impeachment evidence altogether, however, must be justified on some grounds other than logic.[21]

The other reason commonly mentioned for exclusion of impeachment evidence directed to issues not material in a case is auxiliary probative policy.[22] Though relevant to the credibility of a witness, evidence of a factual contradiction on a marginal issue may be excluded by the purely practical prohibitions against confusion of issues, unfair surprise, or undue prejudice.[23] These factors are often mentioned as providing the rational basis for the collateral facts rule, which states that "a witness may not be impeached by producing extrinsic evidence of 'collateral' facts to 'contradict' the first witness's assertions about those facts."[24]

Though the concerns with confusion, surprise, and prejudice supply the underpinnings for the collateral facts rule, courts seldom articulate these concerns in ruling on the exclusion of extrinsic evidence of a collateral fact

---

15. *See id.*
16. *Id.* §§ 1001-02.
17. *See id.* § 1001.
18. *See id.*
19. *Id.* "An error upon a distant and distinct matter is logically and psychologically much inferior in value to an error upon a closely connected matter . . . ." *Id.*
20. *See id.*
21. Since extrinsic evidence introduced for the purpose of impeachment on a collateral issue is at least marginally relevant, it should logically be allowed into evidence. *See id.* §§ 1001-02.
22. *Id.* § 1002.
23. 1 J. WIGMORE, EVIDENCE § 42 (rev. ed. 1940).
24. C. MCCORMICK, EVIDENCE § 47 (2d ed. 1972).

offered for impeachment purposes.[25] Instead, courts frequently look to a definition of collateralness in determining whether specific evidence is admissible.[26] The test of collateralness most commonly employed in Iowa is this: could the fact be introduced into evidence for any purpose other than for the contradiction of a witness?[27] This test, rather than defining "collateralness," simply illuminates that which is *not* collateral. Implicitly, we know that facts independently admissible may also be admitted for impeachment purposes.[28]

Generally, two classes of facts have been treated as not being collateral and have, thus, been held admissible to contradict the testimony of a witness.[29] The first class of admissible facts consists of those relevant to a material issue in the case.[30] These facts vary according to the nature and issues of each case.[31] The second class of admissible facts consists of those facts relevant to the testimonial abilities and veracity of a witness.[32] This class includes facts which tend to discredit a witness by exposing bias, lack of knowledge, lack of expertise, inability to recall, or some other testimonial weakness.[33] A court faced with an objection to the subject-matter of a witness's impeachment considers whether the fact to be shown could be introduced for either of these two major reasons.[34] If it could not, the fact is declared collateral and the evidence is excluded.[35]

Though the collateral facts rule has long been recognized by the Iowa courts, early opinions demonstrate the courts' cursory treatment of objections to evidence of collateral facts introduced for the purpose of impeachment.[36] In *State v. Arthur*,[37] the Supreme Court of Iowa considered the case of a burglary suspect who had been arrested along with an alleged accomplice.[38] The accomplice pled guilty and was convicted.[39] On direct examina-

---

25. *See, e.g.*, State v. Odem, 322 N.W.2d at 46 (Iowa 1982).

26. *See, e.g.*, State v. Hilleshiem, 305 N.W.2d at 713 (Iowa 1981).

27. State v. Hilleshiem, 305 N.W.2d at 713 (Iowa 1981); *see* 3A J. WIGMORE, EVIDENCE § 1020 (Chadbourn rev. ed. 1970).

28. *See* 3A J. WIGMORE, EVIDENCE § 1020 (Chadbourn rev. ed. 1970).

29. *See infra* notes 30-33 and accompanying text.

30. 3A J. WIGMORE, EVIDENCE § 1004 (Chadbourn rev. ed. 1970).

31. *Id.*

32. *Id.* § 1005.

33. *Id.*

34. Most courts do this within the context of the test of collateralness used in Iowa. *See supra* note 27 and accompanying text.

35. An alternative to exclusion is the use of limiting instructions. *See infra* notes 195-99 and accompanying text.

36. *See* 3A J. WIGMORE, EVIDENCE § 1003 n.3 (Chadbourn rev. ed. 1970); *see, e.g.*, Starry v. Starry & Lynch, 208 Iowa 228, 225 N.W. 268 (1929); State v. Arthur, 135 Iowa 48, 109 N.W. 1083 (1906); *see also infra* notes 37-49 and accompanying text.

37. 135 Iowa 48, 109 N.W. 1083 (1906).

38. *Id.* at 50, 109 N.W. at 1084.

39. *Id.*

tion the defendant, Arthur, testified that he did not know the accomplice well and had only met him the day before they were both arrested.[40] Over the defendant's objections, the State was allowed to introduce evidence indicating that the two men had been associated for at least two years.[41] In affirming Arthur's conviction, the court held that the impeachment by contradiction was not based on a collateral fact but no analysis of the process leading to that conclusion was offered.[42] No specific test of collateralness appears to have been utilized in this case.

A similar lack of articulation of the collateral facts rule is illustrated in a later opinion by the Iowa Supreme Court.[43] *Starry v. Starry & Lynch*,[44] was an action on a promissory note in which the defendant, on cross-examination, was asked about his earlier statements concerning the liability of a co-signer of the note.[45] Over objections to the scope of the questioning, the defendant denied having made such statements.[46] The plaintiff was then allowed to call rebuttal witnesses who contradicted the defendant's answer.[47] The court held the impeachment to be improper[48] and the trial court's decision was reversed without further explanation of the basis for the decision.[49]

While few generalizations may have been drawn from these early cases, they do illustrate two trends that are more fully articulated in later Iowa cases.[50] First, the court allows a wider scope of issues upon which to base impeachment by contradiction when the fact to be contradicted is elicited on direct examination than when it is in response to a question on cross-examination.[51] In *State v. Arthur*,[52] the impeachment of the defendant was held to be proper even though the fact contradicted was not bearing on any material issue in the case.[53] One explanation is that, since the defendant

---

40. *Id.*
41. *Id.*
42. *Id.* at 50, 109 N.W. at 1085.
43. Starry v. Starry & Lynch, 208 Iowa 228, 225 N.W. 268 (1929).
44. *Id.*
45. *Id.* at 233, 225 N.W. at 271.
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*
50. *See infra* notes 51-63 and accompanying text.
51. *See* C. McCormick, Evidence § 57 (2d ed. 1972). McCormick explains this trend with the term "fighting fire with fire." *Id.* This is a form of waiver, and it means that the party offering evidence cannot object to its contradiction. *Id.* This type of waiver is theoretically inconsistent with the collateral facts rule since it may result in the introduction of evidence that bears on no material issue in the case. *See* 3A J. Wigmore, Evidence § 1007 (Chadbourn rev. ed. 1970).

The distinction between contradiction on collateral matters elicited during cross-examination, rather than direct examination, was noted early in Iowa. *See* In re Workman's Estate, 174 Iowa 222, 236, 156 N.W. 438, 443 (1916).

52. 135 Iowa 48, 109 N.W. 1083 (1906).
53. *Id.* at 50, 109 N.W. at 1084. *See supra* notes 37-41 and accompanying text.

volunteered the collateral fact on direct-examination and the prosecution knew it to be false, the prosecution was correctly allowed to "fight fire with fire."[54]

The second trend indicated by these early Iowa cases is the tendency of the court to force a party seeking to impeach a witness to be bound by that witness's denial of a collateral fact if that fact is elicited on cross-examination.[55] This trend represents a corollary of the collateral facts rule: a witness undergoing cross-examination should not be subjected to questioning regarding collateral issues posed purely for impeachment purposes.[56] In a case decided thirty years after *Starry v. Starry & Lynch*, the court elaborated on the policy.[57] In *Wheatley v. Heidemann*[58] an osteopath was sued for malpractice.[59] When the plaintiff was asked on cross-examination about the cause of the original injury as stated on his insurance claims, his counsel objected to the question as relating only to collateral issues.[60] The trial court allowed the question to be answered and, further, permitted the defendant to introduce the completed insurance claim forms in order to impeach the plaintiff.[61] In finding the impeachment to be improper, the supreme court noted that the impeachment by contradiction consisted solely of inconsistencies relating "to collateral matters not relevant to material issues."[62] Noting that impeachment by contradiction of a collateral fact tends to distract the jury and prejudice the party impeached, the court stated the following rule: "A witness may not be cross-examined on a subject not referred to in his direct examination and not pertinent to material issues for [the] mere purpose of later contradicting him."[63]

Apparently this rule becomes effective only after a timely objection to either the scope of the cross-examination or the collateral nature of the questioning.[64] If a collateral fact is elicited without objections, it becomes part of the evidence in the case and is usable as proof.[65] This point was

---

54. *See supra* note 51.

55. This would have been the result in *Starry v. Starry & Lynch* if the trial court had not committed reversible error in allowing rebuttal testimony. *See supra* notes 44-49 and accompanying text; *see also* State v. Cokely, 4 Iowa 477, 481 (1857) (party eliciting denial of collateral fact from witness on cross-examination is bound by the denial and is unable to impeach by introduction of extrinsic contradictory evidence).

56. C. McCormick, Evidence § 47 (2d ed. 1972). The answer to a question concerning a collateral issue is "conclusive" and the cross-examiner must "take the answer." *Id.*

57. *See* Wheatley v. Heideman, 251 Iowa 695, 102 N.W.2d 343 (1960).

58. 251 Iowa 695, 102 N.W.2d 343 (1960).

59. *Id.* at 708, 102 N.W.2d at 351-52.

60. *Id.*

61. *Id.* at 709, 102 N.W.2d at 352.

62. *Id.* at 710, 102 N.W.2d at 352.

63. *Id.* at 709, 102 N.W.2d at 352.

64. *See* C. McCormick, Evidence § 54 (2d ed. 1972).

65. *Id.*

raised in *State v. Johnson*,[66] an Iowa case in which the defendant appealed his conviction for armed robbery.[67] At the trial the defendant had testified in his own defense.[68] While the testimony on direct examination focused on the defendant's whereabouts the evening of the robbery, the prosecution, in cross-examination, asked the defendant about his activities the morning before the robbery.[69] The defense failed to object, and the defendant testified that he had been at work the morning before the robbery.[70] The prosecution then called, without objection, rebuttal witnesses who contradicted the testimony of the defendant on this collateral issue.[71] The defendant finally objected to the instruction on impeachment given to the jury.[72] The Supreme Court of Iowa held that, by failing to object at the time the collateral issue was interjected, the defendant waived any objection on the matter.[73] In theory at least, the defendant had passed up several opportunities to object.[74] First, the question about the collateral matter exceeded the proper scope of cross-examination.[75] Second, the question was objectionable for the related reason of raising collateral issues.[76] Finally, the rebuttal testimony was collateral, and therefore objectionable, since it pertained to no issue addressed in the direct examination and was not otherwise admissible.[77] By objecting to the rebuttal testimony, the defendant could have forced the prosecution to be bound by the defendant's answer on cross-examination.[78] Instead, the failure to object resulted in an effective impeachment on a collateral fact.[79]

The raising of a collateral issue on cross-examination poses challenges to attorneys on both sides of a controversy. For the impeaching party, the collateral issue may be the only basis for an impeachment by contradiction. An impeachment attempt on a collateral issue, however, may only be successful if there is no objection to the foundation question on cross-examination or to the introduction of extrinsic contradictory evidence.[80] From the point of view of the proponent of the impeached witness, failure to object to

---

66. 223 N.W.2d 226, 228 (Iowa 1974).
67. *Id.* at 227.
68. *Id.*
69. *Id.* at 228.
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id. See also* State v. Flesher, 286 N.W.2d 218, 221 (Iowa 1979) (immaterial and collateral matters becoming evidence upon failure of defendant to object to its admittance).
74. *See infra* notes 75-77 and accompanying text.
75. State v. Johnson, 223 N.W.2d at 228; *see* IOWA CODE § 781.13 (defining the proper scope of cross-examination).
76. State v. Johnson, 223 N.W.2d at 227 (Iowa 1974).
77. *Id.* at 228.
78. *Id.* at 227.
79. *See id.*
80. *See supra* note 64 and accompanying text.

the introduction of extrinsic contradictory evidence can lead to the discrediting of the witness.[81] Objecting when the collateral issue is first raised may put an end to the impeachment attempt,[82] but an even better tactic might be to delay objecting until the witness has denied the collateral fact.[83] By waiting to object until extrinsic contradictory evidence is offered, the proponent of the impeached witness may force the impeaching party to be bound by the answer of the witness.[84]

State v. Fowler[85] was just such a case. The defendant was charged with second degree murder and assault in connection with the shooting of his estranged wife and her boyfriend.[86] After a prosecution witness, the assaulted boyfriend, had testified on direct examination about the shooting incident, the defense began cross-examination on a collateral issue.[87] The witness was asked if he had ever hit any of the defendant's children, who had lived with the defendant's estranged wife.[88] Rather than object to the question, the prosecution allowed the witness to answer in the negative.[89] Then the prosecution objected to the introduction of extrinsic contradictory evidence.[90] The trial court sustained the objection, and the defense was bound by the negative answer of the witness.[91] The Supreme Court of Iowa affirmed the decision after finding the issue of the witness's relationship to the defendant's children to be collateral.[92] Thus, allowing the witness to answer the impeaching question on a collateral issue proved to be a better tactic than objecting to the scope of cross-examination.

Iowa courts exercise their discretion in the use of the collateral facts rule based on several relevant factors. In addition to the already mentioned factors of origin of the collateral fact—in direct examination or cross-examination—and the timeliness of objections to the collateral fact, the possible biases of an impeached witness may influence a court to apply the collateral facts rule more liberally.[93] Since any evidence that tends to show the bias of a witness is independently admissible and, hence, not collateral, any contradiction based on a denial of bias is not within the scope of the collateral

---

81. *See* State v. Johnson, 223 N.W.2d at 228.
82. *See* Wheatley v. Heideman, 251 Iowa at 709, 102 N.W.2d at 352.
83. *See, e.g.*, State v. Fowler, 248 N.W.2d 511, 520 (Iowa 1976).
84. *See supra* notes 64-66 and accompanying text.
85. 248 N.W.2d 511 (Iowa 1976), *cert. denied*, 439 U.S. 1072 (1979).
86. *Id.* at 513.
87. *Id.* at 520.
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.*
93. This liberalization of the collateral facts rule in the impeachment of a possibly biased witness is theoretically sound, since the probative value of the impeaching evidence increases as the importance of the credibility of a particular witness increases in relation to the other issues in a case. *See supra* notes 13-14 and accompanying text.

facts rule.[94] Even where bias is not demonstrated by the extrinsic contradictory evidence, however, the Iowa courts appear to expand the scope of permissible impeachment issues if bias is otherwise evident.[95] The case *State v. Hill*[96] illustrates this phenomenon.

The defendant in *Hill* had been charged with delivery of a controlled substance following the sale of LSD to undercover agents.[97] The defendant relied on the testimony of a witness who was present during the illegal sale and who disputed the testimony of the agents on several points.[98] On cross-examination, the witness was asked about subsequent meetings and conversations with the undercover agents.[99] An objection to the scope of questioning was overruled, but only after the witness had denied the existence of the meetings and conversations.[100] Rather than continue with the line of questioning, the prosecution cross-examined the witness further on the circumstances of the illegal sale.[101] While the judge had anticipated the laying of a foundation for impeachment by a showing of bias,[102] the prosecution in fact impeached the witness by contradiction of the collateral facts elicited on cross-examination.[103] When the extrinsic contradictory evidence was introduced, the defense objected to its hearsay nature but was again overruled.[104] In considering the propriety of the scope of the prosecution's cross-examination of the defense witness and of the introduction of extrinsic contradictory evidence, the Iowa Supreme Court based the affirmation of the decision on the theory that the evidence might have been separately admissible as showing bias or interest.[105] Though the prosecution had not premised admissibility of the otherwise collateral evidence on a showing of bias, the presence of factors indicating a possible bias caused the court to relax its scrutiny of the collateral evidence.[106]

Another factor indicating possible bias, which may cause the courts to enlarge the allowable scope of extrinsic contradictory evidence, is the relationship of the impeached witness to a party in the case.[107] In *State v. Hilleshiem*[108] the defendant was charged with second degree murder following

---

94. *See supra* notes 29-35 and accompanying text.
95. *See* State v. Hill, 243 N.W.2d 567, 571 (Iowa 1976).
96. 243 N.W.2d 567 (Iowa 1976).
97. *Id.* at 568.
98. *Id.*
99. *Id.* at 568-69.
100. *Id.*
101. *Id.* at 569.
102. *Id.*
103. *Id.* at 570.
104. *Id.* at 569.
105. *Id.* at 571.
106. The possible bias was apparently the witness's desire to make a profit from future drug transactions. *Id.*
107. *See* State v. Hilleshiem, 305 N.W.2d 710, 713-14 (Iowa 1981).
108. 305 N.W.2d 710 (Iowa 1981).

the death of the two-year-old daughter of the woman with whom he lived.[109] While the court noted that the relationship of the defendant to the daughter was a material issue in the case,[110] it was also apparent that the relationship of the defendant to the mother suggested a possible bias of the mother.[111] The evidentiary issue arose when the mother was called as a witness by the state.[112] After testifying that she had been at work when she received a telephone call from the defendant, who had just taken the daughter to a hospital with severe injuries, the witness was asked about her first words to the defendant.[113] After the mother testified that she had asked, "What happened to Jenny?," the prosecution was allowed to call a rebuttal witness who had overheard the conversation.[114] The rebuttal witness claimed that the mother's first words to the defendant were, "What did you do to her?"[115] On appeal, the defendant claimed that this contradiction constituted impeachment on a collateral matter.[116] Relying on *State v. Hill*,[117] the court found that the subject matter of the impeachment was proper since it reflected on the relationship of the defendant to the daughter and was therefore independently admissible.[118] Once again, the court relied on a mechanical definition of the term "collateral" and failed to note that relevance of the subject of the impeachment could have been grounded on a showing of bias.[119] Since the nature of the relationship of the witness to the defendant could be viewed as likely to bias the witness, and the testimony of the witness seemed to reflect that bias, an expanded scope of issues proper for impeachment seems to be the inevitable result. While the court's ruling on the admissibility of the extrinsic contradictory evidence confirms this view,[120] the reasoning of the court does not.

Another situation where bias of a witness greatly expands the range of permissible topics for impeachment by contradiction is where the witness is a party to the action.[121] In such a case the bias may even be described as motive to fabricate, and fabrication may be considered probative circum-

---

109. *Id.* at 713.

110. *Id.*

111. The fact that the defendant lived with the mother of the decedent indicated possible bias. *See id.* at 711.

112. *See id.* at 713.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. 243 N.W.2d 567, 571 (Iowa 1976).

118. State v. Hilleshiem, 305 N.W.2d at 713-14.

119. The court did note, however, that an objection for undue prejudice may have been proper, but since the objection was not preserved the issue was not addressed. *Id.* at 713.

120. *See id.*

121. Any evidence indicating bias is independently admissible and therefore a proper basis for impeachment by contradiction. *See supra* notes 29-33 and accompanying text.

stantial evidence.[122] Besides providing an expanded range of independently admissible evidence upon which to base impeachment by contradiction, testimony of a party to an action opens the door to expanded judicial discretion in determining the scope of cross-examination.[123]

The Iowa Supreme Court recently recognized a different category of evidence that may be used to contradict the testimony of a witness.[124] In *State v. Odem*[125] the defendant was charged with two counts of first degree murder following the shooting deaths of two acquaintances.[126] The defendant's defense was an alibi; he maintained that at the time of the killings he had been at a certain bar in a nearby town.[127] The defendant further testified, on cross-examination, that the last ammunition he had purchased had been from a certain convenience store.[128] These two facts constituted the basis for the impeachment of the defendant through the use of extrinsic contradictory evidence.[129]

In the first instance, the defendant described in detail his actions the night of the shootings.[130] The timing of the defendant's actions was critical since the approximate times of the shootings had been established.[131] On cross-examination the defendant testified that, following the performance of a "go-go dancer" at a bar, he had followed the dancer out of the bar and had watched her cross a highway to a motel parking lot.[132] Over defendant's objections, the prosecution was allowed to introduce testimony of the go-go dancer that indicated that she had, in fact, not crossed the highway upon exiting from the bar.[133]

In the second instance, the purchase of rifle ammunition was relevant because of the brand of shell casings left at the scene of the murders.[134] After the defendant had testified concerning his last purchase of ammunition, the prosecution was allowed, over objection, to call the manager of the convenience store as a rebuttal witness.[135] The manager stated that records of ammunition sales were kept at the store, and that these records did not indicate that any ammunition was sold to the defendant during the month

---

122. *See* State v. Schrier, 300 N.W.2d 305, 309 (Iowa 1981).

123. *See* State v. Odem, 322 N.W.2d 43, 47 (Iowa 1982); State v. Arthur, 135 Iowa 48, 50, 109 N.W. 1083, 1084 (1906).

124. *See* State v. Odem, 322 N.W.2d at 46.

125. 322 N.W.2d 43 (Iowa 1982).

126. *Id.* at 44-45.

127. *Id.* at 45.

128. *Id.* at 46.

129. *Id.* at 45.

130. *See id.* at 46.

131. *See id.*

132. *Id.*

133. *Id.*

134. *Id.* at 46-47.

135. *Id.* at 46.

in which he testified he had purchased ammunition.[136] The only brand of ammunition sold at the store differed from the ammunition found at the site of the murders.[137]

Following conviction the defendant appealed, claiming that the trial court erred in allowing impeachment by contradiction on these two collateral matters.[138] The defendant claimed that neither the direction of exit of the dancer from the bar nor the place of purchase of ammunition by the defendant was an independently admissible fact.[139] The reasoning of the court in considering the rebuttal testimony of the convenience store manager concerned the motivation of the defendant to lie.[140] Independent admissibility of the rebuttal testimony could be established by treating the testimony of the defendant as an intentional untruth, indicating consciousness of guilt.[141] The consciousness of guilt implied an admission,[142] so that facts establishing the consciousness of guilt were not collateral and, hence, were admissible as extrinsic evidence for the purpose of impeachment by contradiction.[143] This line of reasoning, though perhaps circuitous, remains consistent with the idea that the possible bias of a criminal defendant testifying in his own behalf causes the scope of potential topics for impeachment by contradiction to greatly expand.[144]

In considering the rebuttal testimony of the go-go dancer, the court recognized that the evidence would not be independently admissible as bearing on a material issue or as relevant to the testimonial abilities of the witness.[145] The court, however, found the issue of the dancer's actions upon exiting the bar to be a proper subject for impeachment by contradiction for yet a third reason: "[I]t is permissible to contradict any part of a 'witness's account of the background and circumstances of a material transaction, which as a matter of human experience [the witness] would not have been mistaken about if [the witness's] story were true.' "[146] Thus, while this type of rebuttal testimony would ordinarily be considered collateral, the importance of the defendant's testimony in establishing his alibi heightened the probative value of any extrinsic contradictory evidence.[147] The trial court's determination that the probative value outweighed the prejudice to the de-

---

136. *Id.*
137. *Id.*
138. *Id.* at 45.
139. *Id.* at 46.
140. *Id.* at 46-47.
141. *Id.* at 47.
142. *Id.*
143. *See id.*
144. *See supra* notes 121-23 and accompanying text.
145. State v. Odem, 322 N.W.2d at 46. *See supra* notes 29-33 and accompanying text.
146. State v. Odem, 322 N.W.2d at 46 (quoting C. McCormick, Evidence § 47 (2d ed. 1972)).
147. *See* State v. Odem, 322 N.W.2d at 46.

fendant resulting from the introduction of the impeachment evidence was held not to have constituted an abuse of discretion,[148] and the Iowa Supreme Court affirmed the conviction.[149]

State v. Odem represents an expansion of the scope of extrinsic contradictory evidence that may properly be used for impeachment purposes.[150] The decision marks the acceptance, by the Iowa court, of McCormick's analysis of the collateral facts rule, including a previously unrecognized category of independently provable facts: facts that a person would not be mistaken about if, after witnessing the event, the person told the truth.[151] Though, in effect, an acknowledgement that the collateral facts rule must be utilized in a flexible manner that allows occasional narrowing of the concept of collateralness, the *Odem* decision, nevertheless, relies on an analysis which clouds the true concerns with prejudice and judicial economy by mechanically following the McCormick test of independent admissibility.[152] Since prejudice and probative value comprise the underlying tests of admissibility at the trial court level,[153] the Iowa Supreme Court does not clarify the issue by superimposing an "independently-admissible" test of collateralness.[154]

III. The Collateral Facts Rule in the Federal Courts

Federal courts commonly invoke the collateral facts rule when excluding extrinsic contradictory evidence.[155] While the Wigmore and McCormick test of collateralness—independent admissibility[156] appears frequently, and with approval, in federal court decisions,[157] the trend seems to be away from strict adherence to the test of independent admissibility.[158] Especially since the advent of the Federal Rules of Evidence, the federal courts have begun to supplant the traditional test of collateralness with a discretionary consideration of the relative probative and prejudicial values of extrinsic contra-

---

148. *Id.* at 47.

149. *Id.*

150. *See infra* notes 151-52 and accompanying text.

151. State v. Odem, 322 N.W.2d at 46.

152. *See infra* note 211.

153. State v. Odem, 322 N.W.2d at 47.

154. *See* text accompanying note 232.

155. *See* United States v. Hawkins, 661 F.2d 436, 444 (5th Cir. 1981), *cert. denied*, 102 S. Ct. 2274 (1982) (trial court's refusal to allow the prosecution to impeach a defense witness on a collateral issue upheld); United States v. Matlock, 675 F.2d 981, 987 (8th Cir. 1982) (trial court did not abuse its discretion in excluding testimony of rebuttal witness which contradicted a prosecution witness on a collateral fact).

156. *See supra* notes 29-35 and accompanying text.

157. *See* Ramos v. Liberty Mutual Ins. Co., 615 F.2d 334, 338-41 (5th Cir. 1980) (evidence admissible for purposes other than impeachment is not collateral); United States v. Milham, 590 F.2d 717, 721 (8th Cir. 1979) (fact admissible for reason other than contradiction may also be used for impeachment).

158. Dolan, *Rule 403: The Prejudice Rule in Evidence*, 49 S. Cal. L. Rev. 220, 265 (1976).

dictory evidence.[159]

Under Federal Rule of Evidence [FRE] 403, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."[160] The underlying concerns of FRE 403 have long been recognized as the auxiliary probative policy concerns[161] that justify the collateral facts rule.[162] Therefore, many federal courts, even before the Federal Rules of Evidence were put into effect, justified the exclusion of collateral evidence on the basis of prejudice, confusion, or some other concern of FRE 403 rather than on the basis of a test of independent admissibility.[163]

Federal case law indicates that slightly different standards are used for the exclusion of extrinsic contradictory evidence when the fact to be contradicted is elicited on direct examination rather than on cross-examination.[164] In *United States v. Benedetto*,[165] the defendant, a federal meat inspector, was charged with accepting bribes from meat processors.[166] The defendant testified on direct examination that he had never accepted bribes.[167] Other defense testimony consisted of meat processors stating that the defendant had not accepted bribes from them.[168] In rebuttal, the government produced witnesses who testified that the defendant had accepted weekly bribes.[169] When the defense objected that the impeachment was on a collateral issue—the bribes to the rebuttal witnesses not being charged in the indictment—the government countered with the theory that they were merely "fighting fire with fire" and that the defendant had "opened the door" with his testimony.[170] The admission of the extrinsic contradictory evidence was held to be proper under the circumstances.[171] The court explained: "once a witness (especially a defendant-witness) testifies as to any specific facts on *direct* testimony, the trial judge has broad discretion to admit extrinsic evi-

---

159. *See id.* at 262-65; *but cf.* 2 D. LOUISELL & C. MUELLER, FEDERAL EVIDENCE § 129 at 67 (1978) (" '[c]ollateral' terminology is universally accepted and deeply ingrained in the professional vocabulary.").

160. FED. R. EVID. 403.

161. *See supra* notes 15-21 and accompanying text.

162. 2 D. LOUISELL & C. MUELLER, FEDERAL EVIDENCE § 129 at 66 (1978).

163. *See* United States v. Robinson, 503 F.2d 208, 216-17 (7th Cir. 1974), *cert. denied*, 420 U.S. 949 (1975); United States v. Qualls, 500 F.2d 1238, 1240 (8th Cir.), *cert. denied*, 419 U.S. 1051 (1974) ("The trial court is given broad discretion to weigh . . . the possible prejudice which might ensue in opening up collateral matters.").

164. *See* 2 D. LOUISELL & C. MUELLER, FEDERAL EVIDENCE § 129 at 65-66.

165. 571 F.2d 1246 (2d. Cir. 1978).

166. *Id.* at 1247-48.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.* at 1250.

dence tending to contradict a specific statement, even if such statement concerns a collateral matter in the case."[172] Thus, the "open door" doctrine allows otherwise excludable evidence to be admitted in order to counteract the ill-effects of testimony improperly allowed during direct examination.[173] The rebuttal evidence admitted through the "open door" should, nevertheless, be subject to the same FRE 403 scrutiny as is other extrinsic contradictory testimony.[174]

In contrast to the "open door" doctrine is the situation of the impeachable testimony elicited on cross-examination. Generally, the federal courts act more warily toward the introduction of rebuttal evidence in such a case, a position that is in accord with the Iowa courts.[175] When a collateral fact is brought out in cross-examination, courts are likely to consider contradictory rebuttal evidence to be more prejudicial than probative,[176] and such evidence is barred by FRE 403.[177]

Occasionally FRE 403 considerations act to exclude contradictory evidence that would be admissible under the traditional application of the collateral facts rule.[178] In *United States v. Hawkins*,[179] the defendant, along with several others, was charged with conspiracy to import narcotics.[180] The questioning of a government witness by the defendant caused the witness to deny being out of the country on a certain date.[181] Evidence that, in fact, the witness had been freed from jail in South America in order to be able to testify against the defendant tended to show a bias of the witness.[182] The showing of bias, under the traditional collateral facts rule, would be enough to qualify extrinsic contradictory evidence for independent admissibility so that such evidence could be used to impeach the witness.[183] Applying the

---

172. *Id.*

173. 2 D. Louisell & C. Mueller, Federal Evidence § 129 at 66.

174. *See* United States v. Benedetto, 571 F.2d at 1251 (Mansfield, J., concurring); *See also* United States v. Beno, 324 F.2d 582, 588 (2d Cir. 1963) ("[I]t makes little sense to insist that once incompetant evidence is erroneously admitted the error must of necessity be compounded by 'opening the door' so wide that rebutting collateral, highly inflammatory and highly prejudicial evidence may enter the minds of the jurors." *Id.*)

175. *See supra* notes 51-54, 174, and accompanying text.

176. *See* United States v. Pantone, 609 F.2d 675, 681 (3d Cir. 1979). The court in *Pantone* noted that when the fact to be contradicted is elicited in cross-examination, FRE 403 and FRE 607 both require the discretion of the trial judge in weighing prejudice and probative value. *Id.* "[W]e disapprove of the practice of using cross-examination beyond the scope of the direct testimony for the purpose of laying a foundation for the introduction, as rebuttal, of otherwise inadmissible evidence." *Id.*

177. *See* Fed. R. Evid. 403.

178. *See, e.g.*, United States v. Hawkins, 661 F.2d 436 (5th Cir. 1981), *cert. denied*, 102 S. Ct. 2274 (1982); *see also infra* note 187.

179. 661 F.2d 436 (5th Cir. 1981).

180. *Id.* at 444.

181. *Id.*

182. *Id.*

183. *See supra* notes 32-33 and accompanying text.

balancing approach of the Federal Rules, however, the Court of Appeals for the Fifth Circuit upheld the trial court's refusal to allow the impeachment by contradiction.[184] While the trial court had considered the impeaching evidence "irrelevant and collateral to the main issue of the case,"[185] the appeals court justified the exclusion on the basis of the length and complexity of this trial with multiple defendants.[186] Though the extrinsic contradictory evidence in this case may have been independently admissible, certain factors, quite apart from the test of collateralness, acted to exclude the rebuttal evidence.[187]

The recent federal cases of *United States v. Benedetto*[188] and *United States v. Hawkins*[189] serve to illustrate that the application of standards in the courts for the exclusion of extrinsic contradictory evidence may lead to different results than would application of the standards of the collateral facts rule. In *Benedetto* the court allowed the use of classically collateral extrinsic evidence to impeach, by contradiction, the testimony of the defendant.[190] The *Benedetto* decision is contrasted by the Fifth Circuit's *Hawkins* decision where the court excluded evidence intended to be used for impeachment by contradiction, in spite of the independent admissibility of the evidence.[191] In both of these cases the standards used by the courts were inherent in FRE 403.[192] Yet, a different result may have occurred if the independent admissibility test of the collateral facts rule had been applied.[193] This is in spite of the fact that the underlying rationale of the collateral facts rule is also reflected in the policy of FRE 403.[194]

Another difference that becomes apparent when the standards of the Federal Rules of Evidence are used to consider the admissibility of extrinsic contradictory evidence is the opportunity, under the Federal Rules, for solutions short of exclusion of the evidence when the impeaching evidence has some defects.[195] Since the exclusion of relevant evidence is a drastic remedy,

---

184. United States v. Hawkins, 661 F.2d at 444.

185. *Id.*

186. *Id.*

187. *See* FED. R. EVID. 403 advisory committee note ("[C]ertain circumstances call for the exclusion of evidence which is of unquestioned relevance. These circumstances entail risks which range all the way from inducing decision on a purely emotional basis . . . to nothing more harmful than merely wasting time." *Id.*).

188. 571 F.2d 1246 (2d Cir. 1978); *see supra* notes 165-74 and accompanying text.

189. 661 F.2d 436 (5th Cir. 1981); *see supra* notes 179-87 and accompanying text.

190. *See* United States v. Benedetto, 571 F.2d at 1250.

191. *See* United States v. Hawkins, 661 F.2d at 444.

192. *See* FED. R. EVID. 403 ("confusion of the issues" and "unfair prejudice").

193. *See supra* notes 184-87 and accompanying text.

194. *See supra* notes 161-62 and accompanying text.

195. *See* FED. R. EVID. 403 advisory committee note ("[C]onsideration should be given to the probable effectiveness or lack of effectiveness of a limiting instruction."); *see also* FED. R. EVID. 105 advisory committee note (advocating "limited admissibility with an instruction where the risk of prejudice is less serious").

courts have felt free to experiment with "less intrusive alternatives."[196] In addition to curative or cautionary instructions,[197] courts have used judicial comment to ameliorate offensive evidence.[198] It has also been suggested that video taping and selective editing of evidence prior to its submission to the jury may afford a better solution than total exclusion of prejudicial or otherwise offensive evidence.[199]

In contrast, extrinsic contradictory evidence admitted under the independent admissibility test of the collateral facts rule serves a dual purpose since, in order to qualify for admissibility, the evidence must either be relevant to a material issue in the case or be relevant to the discrediting of a witness.[200] Since such impeachment evidence is independently admissible, a limiting instruction is only appropriate if the evidence is *not* offered for the independent purpose.[201] These differences in results, which are attributable to the application of different standards in the Iowa courts and the federal courts, indicate the need for an examination of the comparative merits of the collateral facts rule and FRE 403 as mechanisms for limiting the use of extrinsic contradictory evidence.

IV. Factual Variables Influencing the Application of the Collateral Facts Rule

As section II of this note indicated, the collateral facts rule, as applied in Iowa, reflects the interaction of the test of independent admissibility with certain factual variables: 1) the contradicted testimony being elicited on cross-examination rather than direct examination,[202] 2) the timing of objections to the introduction of extrinsic contradictory evidence,[203] 3) the appearance of potential bias on the part of the impeached witness,[204] and 4) the relative importance of the impeached witness's testimony.[205] While a few Iowa decisions demonstrate the courts' concerns with the underlying logical and auxiliary policy reasons for the use of the collateral facts rule,[206] more commonly the decisions demonstrate "a wooden and unthinking application of the doctrine."[207] Even the liberal policy of admissibility of extrinsic con-

---

196. Dolan, *Rule 403: The Prejudice Rule in Evidence*, 49 S. Cal. L. Rev. 220, 245 (1976).

197. *See* Lubbock Feed Lots, Inc. v. Iowa Beef Processors, Inc., 630 F.2d 250, 262 (5th Cir. 1980) (restricting the use of testimony to the contradiction of a witness).

198. Dolan, *Rule 403: The Prejudice Rule in Evidence*, 49 S. Cal. L. Rev. 220, 245 (1976).

199. *Id.*

200. *See* C. McCormick, Evidence § 47 (2d ed. 1972).

201. *See* Fed. R. Evid. 105.

202. *See supra* notes 51-54 and accompanying text.

203. *See supra* notes 73-79 and accompanying text.

204. *See supra* notes 93-106 and accompanying text.

205. *See supra* note 147 and accompanying text.

206. *See* Wheatley v. Heideman, 251 Iowa at 710, 102 N.W.2d at 352 (concern with distraction of the jury and prejudicial effect of extrinsic contradictory evidence).

207. 2 D. Louisell & C. Mueller, Federal Evidence § 129 at 65-66 (referring to applica-

tradictory evidence demonstrated in *State v. Odem*[208] is based on an expanded test of independent admissibility rather than a balancing of prejudice and probative value.[209] Despite the acknowledgement that admission of impeachment evidence is a matter of discretion with the trial judge,[210] the Iowa courts have yet to consistently recognize the basis for the exercise of that discretion.[211]

The collateral facts rule also suffers from confusion caused by the frequent misuse of the term "collateral."[212] "Collateral" is sometimes used as a synonym for "immaterial" or "irrelevant."[213] Occasionally, the collateral facts rule is even given other names, such as the Foreign Issues Doctrine.[214] All of this detracts from the basic underlying policy of preventing prejudice to the parties and witnesses.

Since the adoption of the Federal Rules of Evidence, the federal courts have begun to recognize the value of using FRE 403 considerations,, rather than the collateral facts rule, to temper the use of extrinsic contradictory evidence.[215] Commentators have expressed their approval of the demise of the collateral facts rule: "Clearly preferable to the conclusory invocation of the term 'collateral' as a reason to exclude evidence offered in contradiction of testimony would be a more direct description of the true underlying reasons for exclusion . . . Rule 403."[216] This criticism has spilled over from the

---

tions of the "open door" doctrine). *See also* State v. Crawford, 202 N.W.2d 99, 103 (Iowa 1972), where the court laments the lack of guidelines for the application of the collateral facts rule:

> No clear rule emerges from our decisions . . . to help find the dim line where evidence which in an important and material way bears directly on the veracity of the witness fades into that evidence which has little bearing on that factor but excites prejudice against the witness and needlessly besmirches and degrades him.

Id. at 103.

208. *See supra* notes 150-54 and accompanying text.

209. *See* State v. Odem, 322 N.W.2d at 46. The expansion of the scope of admissible evidence under the collateral facts rule that is reflected in *Odem* has not, apparently, been matched by a corresponding adoption of McCormick's reasoning in the federal courts. *See* D. LOUISELL & C. MUELLER, FEDERAL § 129 at 59.

210. State v. Odem, 322 N.W.2d at 47; State v. Crawford, 202 N.W.2d 99, 104 (Iowa 1972); *See also* Note, *Impeachment of Witnesses in Iowa: The Quest for Credibility*, 63 IOWA L. REV. at 460 ("[T]he determination of what is a collateral fact is generally left to the discretion of the trial judge.").

211. *See* 3A J. WIGMORE, EVIDENCE § 1003 n.3, where the commentator includes the Iowa courts among those that "are content to invoke simply the term 'collateral,' and to decide according to the circumstances of each case." *Id.* § 1003.

212. Dolan, *Rule 403: The Prejudice Rule in Evidence*, 49 S. CAL. L. REV. 220, 265 (1976).

213. *See, e.g.*, 1 WIGMORE, EVIDENCE § 39 (3d ed. 1940); Commonwealth v. Peay, 369 Pa. 72, 85 A.2d 425, 427 (1951).

214. *See* Dellinger v. Elliot Bldg. Co., 187 N.C. 845, ___, 123 S.E. 78, 80 (1924).

215. United States v. Robinson, 530 F.2d 1076, 1081 (D.C. Cir. 1976) (footnote reference to FRE 403); *see also* United States v. Robinson, 503 F.2d 208, 217 (7th Cir. 1974), *cert. denied*, 420 U.S. 949 (1975) (trial court's exclusion of evidence as "collateral" properly based on consideration of relative probative and prejudicial values).

216. 2 D. LOUISELL & C. MUELLER, FEDERAL EVIDENCE § 129 at 60.

federal courts to the states.[217] One commentator, noting that the collateral facts rule "suffers from vagueness, lack of uniformity as to meaning, and a variety of legal uses,"[218] urged that the collateral facts rule be abandoned in favor of the balancing approach of FRE 403.[219]

Use of the collateral facts rule has declined in the courts of other states as these states have repealed the codified forms of the rule[220] or have adopted evidence rules based on FRE 403.[221] Thus far, twenty states, including Iowa, have adopted rules of evidence with wording identical to FRE 403, and another five states have enacted rules with substantially similar wording.[222] The adoption of an evidence rule similar to FRE 403 does not mean that courts will immediately abandon the collateral facts rule.[223] Thus far, Iowa has exemplified this.[224] However, the trend toward a policy of leaving the application of any rule excluding extrinsic contradictory evidence to the control of the trial court is heralded by many.[225]

V. Conclusion

Iowa courts control the use of extrinsic contradictory evidence offered to impeach witnesses by applying the collateral facts rule.[226] Control of such evidence is warranted by logical concerns for the probative value of the evidence[227] and by reason of auxiliary policy such as the need to avoid confusion, prejudice, or a waste of judicial resources.[228] Rather than allow the trial

---

217. *See e.g.*, Cal. Evid. Code § 780 (West 1968) comment:

> There is no specific limitation in the Evidence Code on the use of impeaching evidence on the ground that it is "collateral." The so-called "collateral matter" limitation on attacking the credibility of a witness excludes evidence relevant to credibility unless such evidence is independently relevant to the issue being tried. . . . Under existing law, this "collateral matter" doctrine has been treated as an inflexible rule excluding evidence relevant to the credibility of the witness.

Id.

218. Dolan, *Rule 403: The Prejudice Rule in Evidence*, 49 S. Cal. L. Rev. 220, 265 (1976).

219. *Id.* at 262.

220. *Id.* at 264, n.167; *see, e.g.*, Cal. Civ. Proc. Code § 1868 (repealed 1966).

221. *See* Fed. R. Serv. (Callaghan 1979) (state correlation tables) (The latest update of the correlation tables was in May 1983, two months prior to the adoption of the Federal Rules of Evidence by the Iowa courts.).

222. *See id.; see also supra* note 217.

223. 2 D. Louisell & C. Mueller, Federal Evidence § 129 at 67.

224. No deadline in the use of the collateral facts rule has been noted. *Id.*

225. *See, e.g., id.* (" 'Collateral . . . is a term which tends both to conceal the analytical process, and to hide the reality of the discretionary factor."); 3A J. Wigmore, Evidence § 1004; Dolan, *Rule 403: The Prejudice Rule in Evidence*, 49 S. Cal. L. Rev. 220, 225 (1976) ("collateral facts rule should be jettisoned").

226. *See supra* notes 27-49 and accompanying text.

227. *See supra* note 17 and accompanying text.

228. *See supra* notes 22-24 and accompanying text; *see also* Reeve v. Dennett, 145 Mass. 23, ____, 11 N.E. 938, 943-44 (1887) (Statement of Justice Holmes "[S]o far as the introduction of collateral issues goes, that objection is a purely practical one, —a concession to the shortness

court judges to exercise their discretion in excluding collateral evidence on the basis of these logical and auxiliary policy reasons, however, Iowa adheres to the traditional test of collateralness: independent admissibility.[229] Under this test of collateralness, certain factual variables affect the admissibility of extrinsic contradictory evidence for reasons unrelated to the underlying rationale of the collateral facts rule.[230]

FRE 403 provides the courts with an alternate test for the admissibility of extrinsic contradictory evidence: the balancing of probative and prejudicial values of the proffered evidence.[231] Though the exercise of both the collateral facts rule and the balancing process of FRE 403 both require the broad discretion of the trial court judge, the traditional collateral facts rule tends to "conceal the analytical process, and to hide the reality of the discretionary factor."[232] The explicitness of FRE 403 is a welcome contrast to the collateral facts rule. Iowa courts would be wise to abandon the artificial standards of the collateral facts rule in favor of the explicit directive of FRE 403. Iowa's adoption of Rule 403,[233] a codification of Iowa's common law prejudice rule,[234] should act as a catalyst in spurring the Iowa courts to relinquish their reliance on the collateral facts rule.

Douglas R. Marek

---

of life.").

229. *See supra* notes 25-27 and accompanying text.

230. *See supra* notes 202-05 and accompanying text.

231. 2 D. Louisell & C. Mueller, Federal Evidence § 129 at 66-67.

232. *Id.* at 67.

233. Iowa R. Evid. 403 (effective July 1, 1983).

234. Iowa Code Ann. Rules of Evidence Pamphlet at 40 (West 1983) (committee comment). "Iowa common law with regard to exclusion of relevant evidence on policy grounds is the same as R. 403." *Id.*