

CHARACTER EVIDENCE IN SELF-DEFENSE CASES

2025 SPECIAL TOPIC FOR PROSECUTORS

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Roadmap

- I. Overview of Self-Defense
- II. Character & Reputation
- III. Character of the Defendant
- IV. Character of the Victim
- V. Defendant's State of Mind

Evidence Rule 404(a)

Character evidence generally.-- Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

- (1) Character of **accused**.--Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;
- (2) Character of **victim**.--Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, . . .
or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first **aggressor**;



Evidence Rule 405



- (a) Reputation or opinion.--In all cases in which character evidence is admissible, proof may be made by testimony as to **reputation** or by testimony in the form of an **opinion**.
- On cross-examination, inquiry is allowable into relevant specific instances of conduct.
 - Expert testimony on character or a trait of character is not admissible as circumstantial evidence of behavior.
- (b) Specific instances of conduct.--In cases in which character or a trait of character of a person is **an essential element** of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

I. OVERVIEW OF SELF-DEFENSE

CHARACTER EVIDENCE IN SELF-DEFENSE CASES



SELF-DEFENSE: BURDEN OF PRODUCTION



- It is **unconstitutional** to place upon the defendant the burden of disproving an essential element of a criminal offense.
- A defendant may however be required to produce enough evidence to place a matter in issue.
- Absent evidence of provocation or self-defense, the jury may infer malice from the intentional use of a deadly weapon.

SELF-DEFENSE: THE COMMON LAW TEST

The law of perfect self-defense excuses a killing altogether if, at the time of the killing, these four elements existed:

1. it appeared to defendant and he **believed it to be necessary** to kill in order to save himself from death or great bodily harm;
2. defendant's belief was reasonable;
3. defendant was not **the aggressor** in bringing on the affray; and
4. defendant did not use excessive force.



SELF-DEFENSE: THE STATUTORY TEST – G.S. 14-51.2



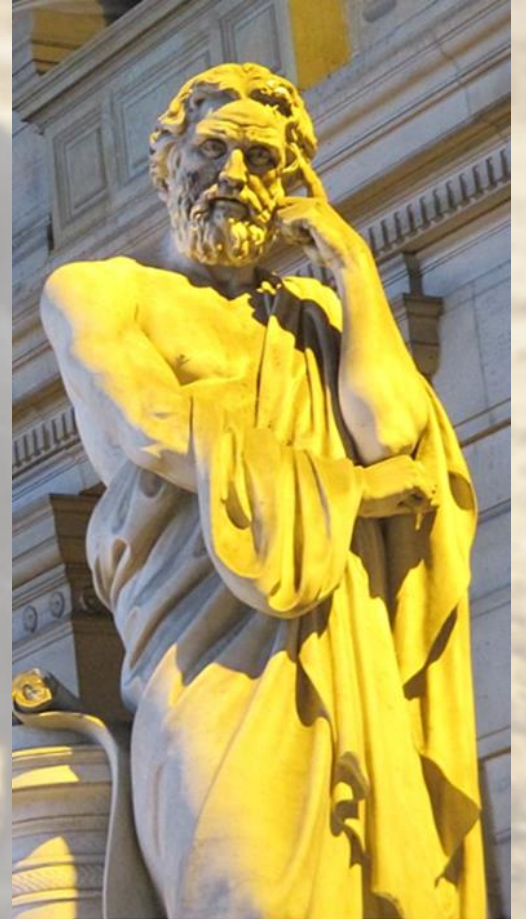
The lawful occupant of a home, motor vehicle, or workplace is **presumed** to have held a reasonable fear of imminent death or serious bodily harm when using deadly force if both of the following apply:

- (1) The person against whom defensive force was used was unlawfully and forcefully entering a home, motor vehicle, or workplace.
- (2) The person who used defensive force knew or had reason to believe an unlawful and forcible entry was occurring or had occurred.

SELF-DEFENSE: THE STATUTORY TEST – G.S. 14-51.3

A person is justified in the use of deadly force and does not have a duty to retreat if either of the following applies:

- (1) He or she **reasonably believes** that such force is necessary to prevent imminent death or great bodily harm.
- (2) Under the circumstances permitted pursuant to G.S. 14-51.2.

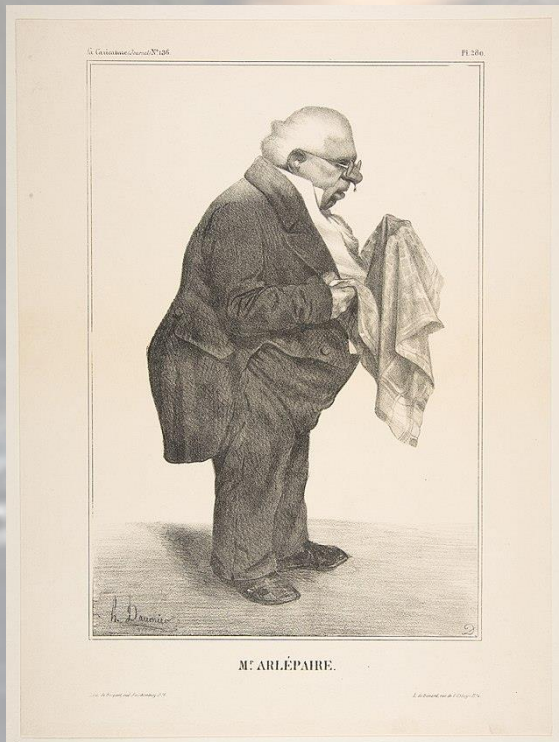


II. CHARACTER & REPUTATION

CHARACTER EVIDENCE IN SELF-DEFENSE CASES



CHARACTER & REPUTATION: DEFINED



- **Character** comprises a person's actual qualities and characteristics, the peculiar qualities impressed by nature or habit that distinguish him from others; what a person *is*.
- **Reputation** is the estimation in which a person is held by others, especially the popular opinion; what others *say* the person is.

CHARACTER & REPUTATION: PROPENSITY

- In general, evidence of a person's character or a trait of his character is **not admissible** for the purpose of proving that he acted in conformity therewith on a particular occasion.
- “Rule 404 governs the content of admissible character evidence and the contexts in which it may be admitted. Rule 404(a) is a general rule of **exclusion**[.]”

State v. Walston, 367 N.C. 721, 725 (2014).



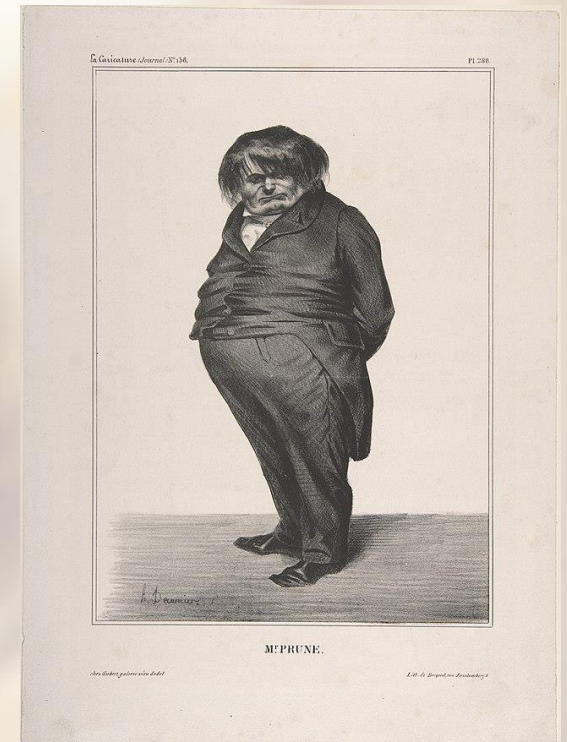
CHARACTER & REPUTATION: EXCEPTIONS

- Because Rule 404(a) generally excludes character evidence, exceptions to the rule are “restrictively construed.”
- Exceptions:
 1. Character of **accused** -- Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;
 2. Character of **victim** -- Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, . . .
or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first **aggressor**;



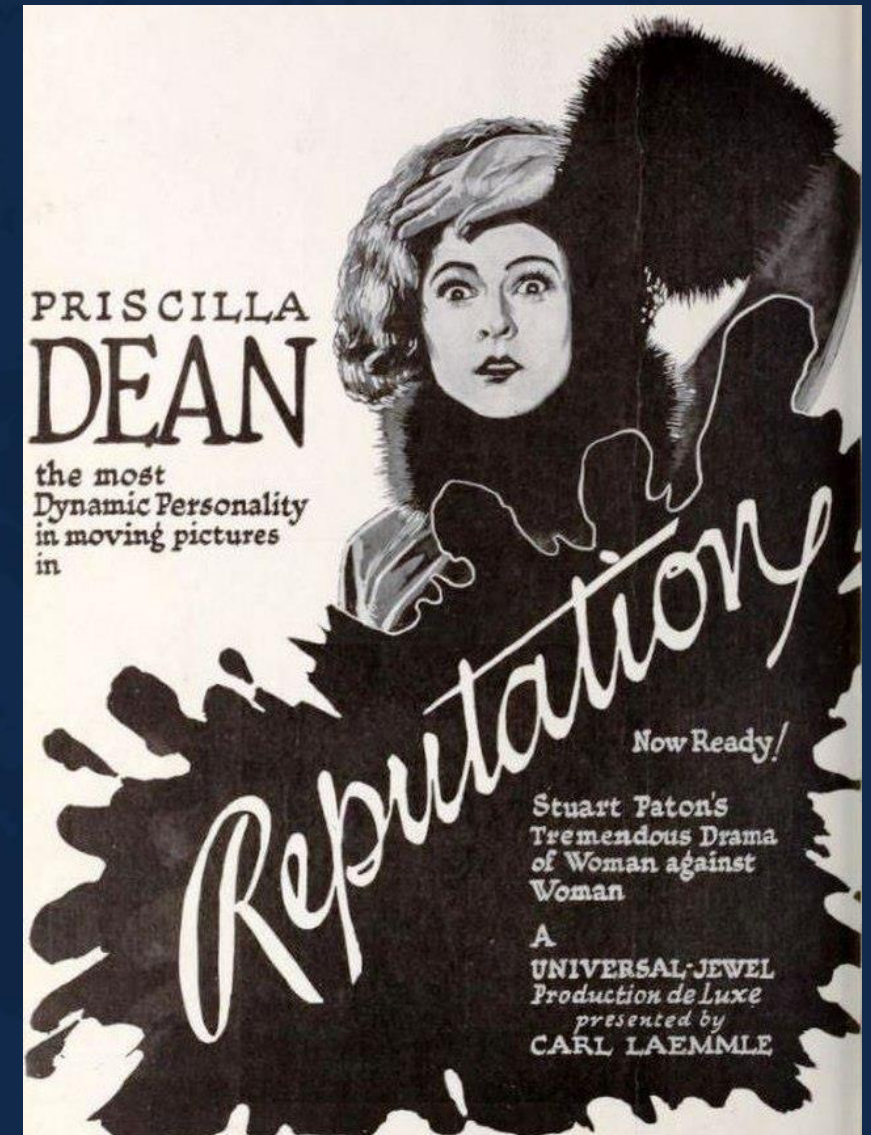
CHARACTER & REPUTATION: METHODS

- In all cases in which character evidence is admissible, proof may be made by testimony as to **reputation** or by testimony in the form of an **opinion**.
- On cross-examination, inquiry is allowable into relevant **specific instances** of conduct.
- When character is an essential element of a charge, claim, or defense, proof may also be made of **specific instances** of his conduct.

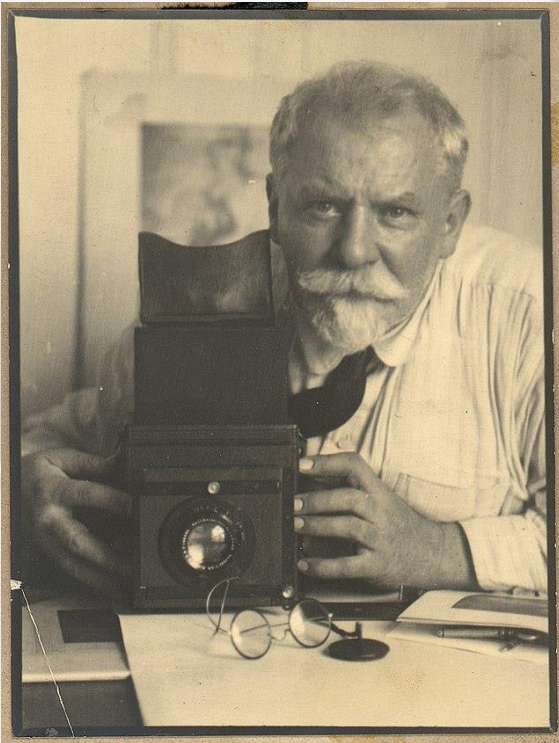


III. CHARACTER OF THE DEFENDANT

CHARACTER EVIDENCE IN SELF-DEFENSE CASES



DEFENDANT'S CHARACTER: DEFENDANT'S EVIDENCE



- A defendant in a criminal case may introduce evidence of his own character as substantive evidence in his favor.
- Rule 404(a)(1) limits the evidence to that relating to a **pertinent** trait of character, that is, a trait relevant to the crime charged.
- In order to have evidence of his good character admitted, the accused must tailor the evidence to a particular trait that is relevant to an issue in the case.

EXAMPLES

- Defendant on trial for murder wishes to introduce evidence regarding his character traits of peacefulness and law-abidingness.
- Defendant on trial for tax evasion wishes to introduce evidence that she has a character trait of being trusting of other people.
- Defendant on trial for drug trafficking wishes to introduce evidence that he has no prior convictions and he has a reputation for honesty.
- Defendant on trial for sexual assault of children wishes to introduce evidence that he has a respectful attitude toward children.



DEFENDANT'S CHARACTER: STATE'S EVIDENCE



- Once a defendant puts his character in evidence, the prosecution may offer evidence of defendant's bad character.
- Rule 405 specifically allows a prosecutor to cross-examine a witness concerning relevant, specific instances of conduct.
- But until a defendant offers evidence of his good character, the State may not introduce evidence of his bad character.

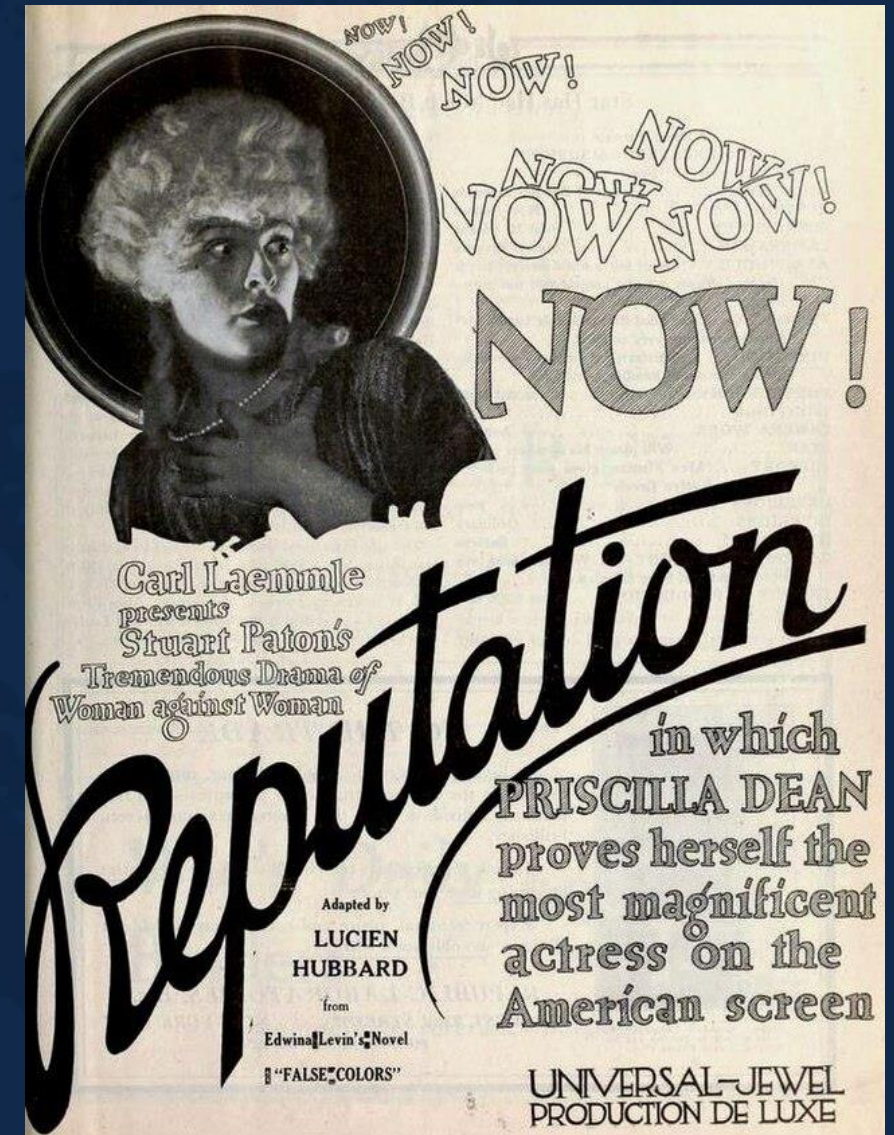
EXAMPLES

- In a murder trial, Defendant's mother testified he was not a violent person. The prosecutor wishes to cross-examine the witness about defendant's prior crimes, including armed robbery and assault.
- Defendant presents evidence about his actions and state of mind on the night of the murder. The prosecutor wishes to present evidence of his prior acts of violence toward a former girlfriend.
- Defendant puts on a witness to testify that the sexual assault victims had a reputation for untruthfulness. Prosecutor wishes to cross-examine the witness about Defendant's prior convictions.



IV. CHARACTER OF THE VICTIM

CHARACTER EVIDENCE IN SELF-DEFENSE CASES



VICTIM'S CHARACTER: DEFENDANT'S EVIDENCE



- To be pertinent, a character trait of the victim must bear a relationship to the crime with which the defendant is charged.
- When an accused argues that he acted in self-defense, the victim's character may be admissible for two reasons:
 1. To show the defendant's fear was **reasonable**, or
 2. To show the victim was the **aggressor**.
- To prove the victim was the aggressor, the defendant may offer evidence of the victim's violent character whether known to the defendant or not at the time of the offense.

EXAMPLES

- Defendant on trial for assault wishes to put on witnesses to testify the victim was a violent person and had a reputation for violence.
- Defendant on trial for assault wishes to introduce specific instances of the victim's violent behavior, unknown to the defendant at the time, to prove the victim was the aggressor.
- Defendant on trial for murder claims he killed the victim in order to prevent a sexual assault. Defendant wishes to introduce evidence of the victim's reputation for homosexuality.



VICTIM'S CHARACTER: STATE'S EVIDENCE



- If the defendant presents evidence of the victim's bad character, the State may offer evidence of the victim's good character in rebuttal.
- If a defendant presents evidence that the victim was the first aggressor, the State may offer evidence of the victim's peacefulness.
- The State may not, however, introduce evidence of the victim's peacefulness until after the defendant has presented evidence that the victim was the first aggressor.

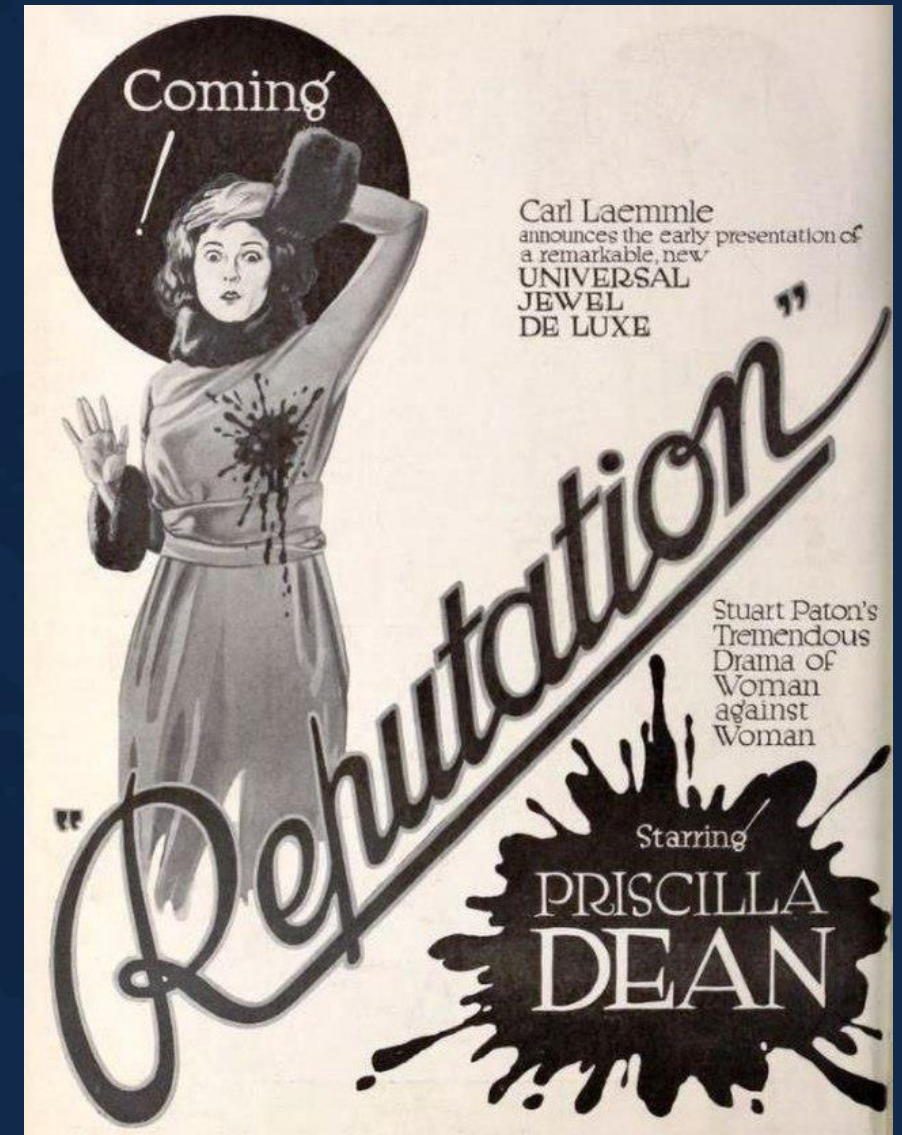
EXAMPLES

- Defendant on trial for murder testifies that the victim forced him at gunpoint to perform oral sex. The prosecutor wishes to introduce evidence of the victim's peaceful character.
- In opening statements, Defendant claimed the evidence would show that the victim was a violent alcoholic. The prosecutor wishes to introduce evidence of the victim's good character.
- On cross-examination, Defendant asks the victim's girlfriend if he was looking for a fight. On redirect, prosecutor wishes to ask her whether the victim had ever been in a fight in her presence.

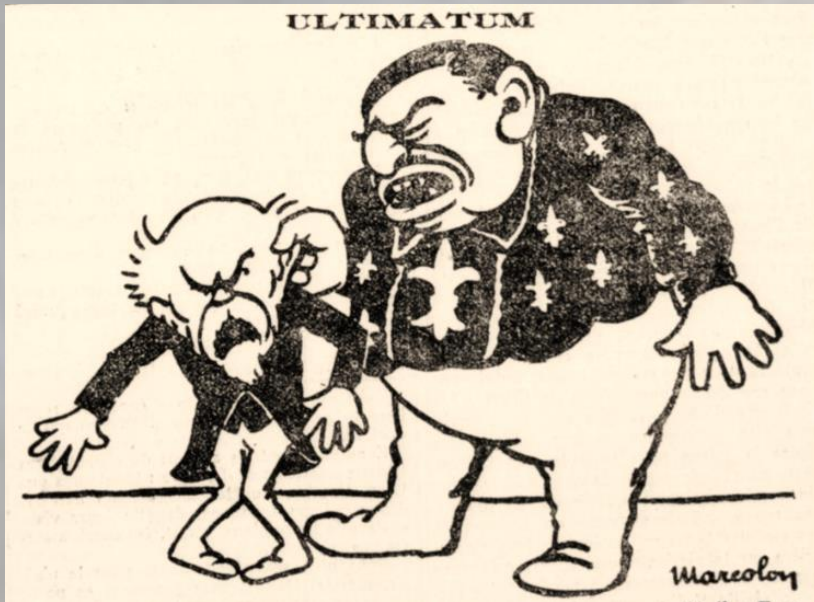


V. DEFENDANT'S STATE OF MIND

CHARACTER EVIDENCE IN SELF-DEFENSE CASES



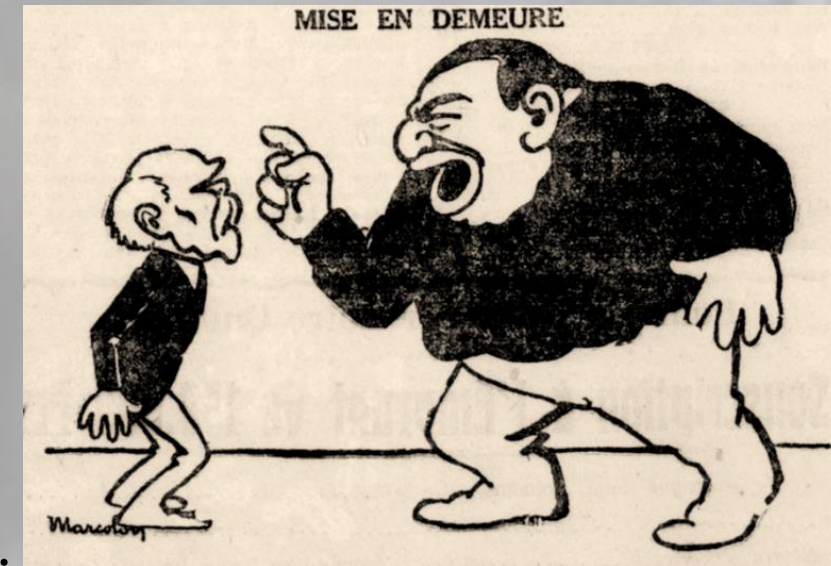
VICTIM'S CHARACTER: DEFENDANT'S EVIDENCE



- Defendant claiming self-defense may offer evidence of the victim's character, including specific instances of conduct, to show Defendant's fear was **reasonable**.
- Rule 404(a)(2) does not govern its admission, because the purpose of such evidence is not to prove conduct by the victim but to show the defendant's **state of mind**.
- Such evidence is relevant only to the extent that the defendant had **knowledge** of the victim's character.

EXAMPLES

- Defendant on trial for murder testified that the victim was a violent person who had been incarcerated. Defendant wishes to introduce evidence of the victim's prior convictions to corroborate the defendant's testimony.
- Defendant on trial for murder of her husband wishes to introduce testimony from the victim's ex-girlfriend that the victim was violent and abusive toward her. Ex-girlfriend testifies on *voir dire* that she told a friend to warn Defendant.



Recapitulation

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- II. Character & Reputation
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- V. Defendant's State of Mind



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