

IMPEACHMENT BY PRIOR INCONSISTENT STATEMENT

When you evaluate how reliable or believable a witness's testimony is, you may take into account whether that witness made an earlier statement that differs in any significant way from the witness's present testimony at trial. It is for you to say how significant any difference is. The earlier statement is *not* itself evidence of any fact that is mentioned in it, but may be considered by you only for the purpose of determining how much belief or importance you will place on the testimony given here at trial.

Robinson v. Old Colony Street Railway Co., 189 Mass. 594, 596 (1905). "This right to prove statements inconsistent with the testimony cannot be denied by the judge when the testimony bears directly upon a material and not collateral issue in the case." *Assessors of Pittsfield v. W. T. Grant Co.*, 329 Mass. 359, 360 (1952). The scope and timing of such impeachment is within the sound discretion of the judge. *Posner v. Minsky*, 353 Mass. 656, 661 (1968); *Perrott v. Leahy*, 302 Mass. 318, 322 (1939).