

Rules of evidence

[Law](#), [Justice](#)



Why are America's rules of evidence more restrictive than those established by other countries? America's rules of evidence are more restrictive because unlike some countries we have Constitutional protections that safeguard Individual rights. An example of this would be the Supreme court's determination that a state rule requiring that a defendant wanting to testify in a criminal case must do so before the admission of any other defense testimony is a violation of the Fifth and Fourteenth Amendment due process clause.

The due process clause protects citizens of the United States from unfair and disorderly legal proceedings, coupled with the right to be informed of the nature and charges in accusation against them among other privileges. With this in mind it can be easily concluded as to the necessity of the restrictive nature of the rules of evidence. Although America adopted the English system of evidentiary rules, many changes have been made since that time.

Although the adoption of the Federal Rules of Evidence and the uniform Rules of Evidence has not embraced the simplicity that the drafters of the constitution may have envisioned, they do bring about more uniformity and consistency to the legal system. The Federal Rules of evidence regulate evidentiary matters in all proceedings in the federal courts and they bring about a significant measure of uniformity in the federal system.

Unfortunately there is far less uniformity among the states. Only thirty-six jurisdictions have adopted evidence codes that model the Federal Rules of Evidence. Out of the fifty states only forty-two have adopted these rules completely or in part. Of the remaining eight states, my home state of

Georgia is in this line up. About a week ago I had the opportunity to learn of this first hand.

My attorney and I were preparing a witness list to give to the District Attorney in a criminal case we have. He asked me to research the statute cited on the States witness list and tell him what it says about using a defendant as a witness. To my surprise this is what I learned. Pursuant to O. C. G. A. 17-16-1 (2010) the definition of a " witness statement" In a criminal proceeding is as follows: (2) " Statement of a witness" means:

A) A written or recorded statement, or copies thereof, made by the witness that is signed or otherwise adopted or approved by the witness; (B) A substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or (C) A summary of the substance of a statement made by a witness contained in a memorandum, report, or other type of written document but does not include notes or summaries made by counsel.

Paragraph three of this statute is the statement that demonstrates Georgia is not homogeneous with the Federal Rules of Evidence; and it also excluded our defendant as a witness in her own defense. I find to be ironic that the Constitution is the supreme law of the land yet individual states are allowed to have laws that are contrary. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every state shall be bound

thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. With the understanding that states can nullify federal laws that they determine to be " unconstitutional", as was the case in Oklahoma regarding the Affordable Care Act; it is quite perplexing that Georgia along with seven other states find it unconstitutional to deny a defendant the right to testify in their own defense.