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of the strong case presented against defendant by other evidence. While this may be the present New York rule, it can be observed that Judge Desmond, with two other Judges, has maintained that misconduct alone can be enough for reversal.[27] Quoting an 1899 case to the effect that warnings unheeded led to reversals where dangerous appeals continued to be made to juries,[28] Judge Desmond asks, in regard to the *Marks* case, "[W]hat possible remedy is there but a reversal? . . . 'How long will you abuse the patience of this court?' "[29] Perhaps the judicial climate is changing, and this is a "word to the wise."

IMPEACHMENT OF WITNESS WHO IS DRUG ADDICT

The question and extent of admissibility of expert evidence to show the effect of drug addiction upon the credibility and competency of a witness is a subject on which there is conflicting authority in American jurisdictions. "The view adhered to by the majority of American jurisdictions is that testimony as to narcotic addiction, or expert testimony as to the effects of such drugs, is not considered admissible to impeach the credibility of a witness, unless followed by testimony tending to show that he was under the influence while testifying, or when the events to which he testified occurred."[30] The minority view holds such evidence generally admissible for impeachment purposes.

Although there are numerous cases dealing with this problem,[31] there is a surprising lack of articulation of the underlying reasons for either exclusion or admission.[32]

The New York Court of Appeals,[33] in passing on the question for the first time, indicated an adherence to what is termed the majority American view.

In *People v. Williams,* the defendant was convicted of feloniously selling a narcotic drug to a person who became the State's chief witness against him. At the trial, defense counsel arduously sought to attack the credibility of this witness through his history of prior drug addiction. The witness had been addicted to the use of heroin for about five years prior to the day of the sale in question. He had had no drugs on that day, nor during the four months period prior to the trial. Defense counsel attempted to introduce expert medical testimony regarding the effects of addiction upon the truthfulness of addicts. Objections to the introduction of such testimony were sustained by the Trial Judge, ruling that the witness' credibility was a matter for the jury.

27. Where prosecutor's prejudicial statements on summation warranted reversal even though the evidence was sufficient to sustain a verdict of guilt, see People v. Swanson, 278 App. Div. 846, 104 N.Y.S.2d 400 (2d Dep't 1951).

28. *Supra* note 13 at 79. The case was People v. Fielding, *supra* note 26 at 547.

29. *Supra* note 13 at 79. See People v. Lovello, 1 N.Y.2d 436, 154 N.Y.S.2d 8 (1956), in which an illegal delay in arraignment, plus ". . . serious and prejudicial error . . . made by the prosecutor in his summation" warranted a reversal. Judge Desmond wrote the opinion for a unanimous court.

30. Annot., 52 A.L.R.2d 848 (1955).

31. See cases collected in note 30 *supra;* Annot., 15 A.L.R. 912 (1921).

32. See *Note,* 33 So. CALIF. L. REV. 333 (1943).

33. 6 N.Y.2d 18, 187 N.Y.S.2d 750 (1959).

On appeal, contending such exclusion to be prejudicial error, it was found that defense counsel's offers of proof *via* medical testimony were vague and ambiguous. Therefore, the question of whether expert testimony on the effects of narcotic addiction upon the perceptive powers of an addict was admissable was not properly presented on appeal.[34]

The appeal was thus limited to the dual question of whether there was error in the exclusion of medical testimony that addicts are unworthy of belief, and therefore, the exclusion of testimony that the witness, was unworthy of belief.

In affirming the Trial Court's exclusion of the latter testimony, the Court deemed the question of the witness' credibility to be a matter solely for the jury.

As to the question of whether testimony that narcotic addicts are unworthy of belief is admissible for impeachment purposes, the Court indicated its adherence to the majority American view, holding such testimony to be properly excludable.

The reasons given for such exclusion were that such testimony is not a consensus of scientific opinion, and its allowance would obscure the real issues before the jury, and overdevelop a collateral matter.[35] Where the sole witness is a narcotic addict, cases of the type present here stand or fall on his testimony. If medical evidence were offered, the impact upon the jury would be very great, and the unwarranted inference, that since he is an addict he is untruthful, could easily be drawn. Such an inference must be supported by more than a single opinion.[36] There could also be a danger of a battle of experts on the collateral issue of credibility.

The Court also indicated that the witness could and had been impeached in the normal manner, as well as having his demeanor subjected to jury scrutiny.

The dissent felt that the offers of proof by defense counsel were not so vague as to prevent the Court from answering the question of whether an expert may testify as to the general effects of drug addiction on mental and perceptive powers, and that the Trial Court's refusal to allow testimony on this subject was error.

As to admissibility regarding credibility of the specific witness, the dissent would adopt the minority view,[37] and allow its admission as "having a legiti-

34. The offer of proof must be clear and unambiguous, to enable the reviewing court to determine what was intended to be adduced by the testimony, and whether an exclusion of such testimony was prejudicial error. If offers are so made, the party is entitled to a construction most favorable to himself. See, in this regard, Daniels v. Paterson, 3 N.Y.2d 47, 163 N.Y.S.2d 655 (1951); 6 Carmody-Wait, *New York Practice* 540.

35. State v. King, 88 Minn. 175, 92 N.W. 965 (1903).

36. In regard to a conflict of scientific opinion, see Bishop, *The Narcotic Drug Problem,* at 23-24 (1920); Maurer and Vogel, *Narcotics and Narcotic Addiction,* at 216, 238 (1955 as cited by the Court).

37. See State v. Fong Loon, 29 Idaho 248, 158 P. 233 (1916); Effinger v. Effinger, 48 Nev. 205, 228 P. 615 (1924); Anderson v. State, 65 Tex. Cr. R. 365, 144 S.W. 281 (1912).

mate tendency to throw light on the accuracy, truthfulness and sincerity of a witness."[38]

However, several cases relied upon in support of this proposition do not deal with the specific point involved in the instant case. *People v. Webster*[39] dealt with the admissibility of evidence of addiction *at the time* of the events to which the witness testified—therefore, competency rather than credibility was in issue. *Wilson v. United States*[40] also dealt with competency, and whether the witness at the time of testifying was so under the influence of drugs as to be incompetent. The fact that the dissent seeks support for its position by relying on scientific authority contrary to the majority position is merely indicative of the danger of unwarranted inferences being greater where scientific authority is in disagreement.

It would appear that the majority position propounded here has strong bases in policy and logic, both because of the factors mentioned above, and the fact that the traditional modes of impeachment would appear to provide adequate weapons for counsel to attack the veracity of a witness, *e.g.* past addiction, moral character, strenuous cross-examination. The fact that the jury is the final arbiter of credibility and demeanor is an additional safeguard of the defendant's rights.

CORROBORATION OF COMPLAINING WITNESS IN SEX CRIMES

A child under twelve years of age is presumed incompetent to be sworn as a witness in a criminal proceeding, which presumption can be overcome in a proper preliminary examination.[41] If the child is the complainant and is not sworn, but testifies, there is a statutory requirement that every material fact essential to constitute the crime must be corroborated.[42] Where the child is the complainant, but is sworn, there is no statutory requirement of corroboration.[43]

In *People v. Oyola*,[44] defendant's ten year old daughter was sworn, and testified to all the particulars of a completed act of intercourse upon her by her father soon after she retired for the night. Although defendant's wife returned home only two hours after the alleged act, and the police arrived only two hours after that, no medical evidence concerning complainant's condition was submitted at the trial. The jury convicted defendant of impairing the morals of a minor and of third degree assault.

In *People v. Porcaro*,[45] a companion case, the ten year old complainant was sworn and testified to having regular and frequent intercourse with her

38. *Supra* note 33, at 30, 187 N.Y.S.2d 760 (1959).
39. 139 N.Y. 73, 34 N.E. 730 (1893).
40. 232 U.S. 563 (1914).
41. People v. Klein, 266 N.Y. 188, 194 N.E. 402 (1935).
42. N.Y. CODE CRIM. PROC. § 392; People v. Dutton, 305 N.Y. 632, 11 N.E.2d 889 (1953).
43. *Supra* note 41.
44. 6 N.Y.2d 259, 189 N.Y.S.2d 203 (1959).
45. 6 N.Y.2d 248, 189 N.Y.S.2d 194 (1959).