JURY INSTRUCTIONS CONCERNING ADDICT-INFORMANTS

United States v. Kinnard, 465 F.2d 566 (D.C. Cir. 1972)

Payne, being tried for violations of the federal narcotics laws, relied upon a defense of entrapment.[1] The sole government witness to the alleged entrapment was Roscoe, a paid govenment informant who was an addict. After becoming an informant, Roscoe was released from jail, and the criminal charges pending against him were reduced.[2] The trial judge refused to allow the defense to prove Roscoe's status as an addict, or to elicit testimony from a law enforcement agent that addicts are unreliable generally. The trial judge gave a special cautionary instruction on the unreliability of informants, but did not give a special cautionary instruction on the unreliability of informants who are also drug addicts.[3] The District of Columbia Court of Appeals reversed and *held*: If the testimony of an addict who is a paid informant with criminal charges pending against him is substantially uncorroborated, the court must give, on request, a special cautionary instruction on the unreliability of that addict-informant.[4]

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1. The thrust of the defense of entrapment is whether the defendant was induced rather than predisposed to commit the crime. Sherman v. United States, 356 U.S. 369 (1958). *See* Williams, *The Defense of Entrapment and Related Problems In Criminal Prosecution*, 28 FORDHAM L. REV. 399 (1959). Roscoe alone had visited Payne on a number of occasions to arrange the sale of narcotics. Therefore, Roscoe's testimony was critical with regard to Payne's defense of entrapment, since Roscoe was the only prosecution witness who could testify that Payne was not induced to commit the crime. United States v. Kinnard, 465 F.2d 566, 576 (D.C. Cir. 1972).

2. United States v. Kinnard, 465 F.2d 566, 568 (D.C. Cir. 1972).

3. *Id.* at 569.

4. Before this instruction is given, the informant's status as a drug addict must be proved. *Id.* at 569. For the purpose of appeal the court assumed that Roscoe was an addict since defense counsel's inquiry into Roscoe's addiction had been erroneously halted by the trial judge. *Id.* at 575.

Defense counsel did not request a special instruction on the unreliability of addicts and therefore did not precisely comply with Rule 30 of the Federal Rules of Criminal Procedure. Nevertheless, the court of appeals held that the question of the special cautionary instruction was properly before it since the trial court had ruled that the evidence concerning Roscoe's addiction was inadmissible. *Id.* at 569 n.7.

Judge Bazelon believed that a trial court must provide a cautionary instruction as to the reliability of informant-addicts sua sponte, whereas Judge Leventhal thought that such an instruction should be given only if requested by the defense counsel and the addict's testimony is uncorroborated. They agreed, however, in the instant case to

Generally, in determining a witness's credibility, only evidence tending to verify or disprove the accuracy, truthfulness, or sincerity of the witness may be considered.[5] Evidence of bias is one means of attacking the credibility of a witness,[6] and, if bias is proven, the impeached

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reverse Payne's conviction and order a new trial in which evidence concerning the informant's status as an addict would be admissible. There is some support for Judge Bazelon's contention that the trial court must provide the instruction sua sponte. *See* McMillen v. United States, 386 F.2d 29 (1st Cir. 1967), *cert. denied,* 390 U.S. 1031 (1968) (accomplice instruction); United States v. Griffin, 382 F.2d 823 (6th Cir. 1967) (informant instruction); Williamson v. United States, 332 F.2d 123 (5th Cir. 1964) (accomplice instruction). However, the majority rule is to the contrary. *See* note 7 *infra.*

Co-defendant Kinnard's conviction was affirmed because he never met alone with Roscoe, and therefore with respect to Kinnard, Roscoe's testimony was corroborated. Thus, the credibility of Roscoe was not a material factor in the prosecution's case against Kinnard. United States v. Kinnard, 465 F.2d 566, 577 (D.C. Cir. 1972).

5. *See* Roberts v. Emerson Elec. Mfg. Co., 362 S.W.2d 579, 584 (Mo. 1962); Webb v. State, 445 P.2d 531, 532 (Okla. Crim. 1968); Sturdevant v. State, 49 Wis. 2d 142, 147, 181 N.W.2d 523, 526 (1970). *See also* 98 C.J.S. *Witnesses* § 460 (1957).

Credibility may be attacked by showing that the witness has made prior statements inconsistent with his present testimony. *E.g.,* Smallfield v. Home Ins. Co., 244 F.2d 337, 339 (9th Cir. 1957); Webb v. State, 445 P.2d 531, 532 (Okla. Crim. 1968). *See also* C. McCORMICK, EVIDENCE § 35 (1954) [hereinafter cited as McCORMICK]; 3 J. WIGMORE, EVIDENCE §§ 1017-46 (3d ed. 1940) [hereinafter cited as WIGMORE.]

Specific error may be shown by proving that the facts are not as the witness testified. *See, e.g.,* Smallfield v. Home Ins. Co., 244 F.2d 337, 339 (9th Cir. 1957). *See also* McCORMICK § 47; 3 WIGMORE §§ 1000-07.

The witness's credibility may be attacked by showing that he is of unsound character. *See* McCORMICK §§ 42-44; 3 WIGMORE §§ 910-30.

It may be shown that due to some defect the witness cannot properly observe, remember or recount the matter about which he is testifying. For cases concerning persons under the influence of alcohol, *see, e.g.,* Rheaume v. Patterson, 289 F.2d 611 (2d Cir. 1961) (capacity to observe impaired at time of accident); State v. Browning, 98 Ohio App. 8, 128 N.E.2d 173 (1954) (evidence of possible intoxication at time of robbery admissible); Bituminous Cas. Corp. v. Martin, 478 S.W.2d 206 (Tex. Ct. Civ. App. 1972) (dictum); Indemnity Ins. Co. of N. Amer. v. Marshall, 308 S.W.2d 174 (Tex. Ct. Civ. App. 1957) (dictum). *See also* McCORMICK § 45; 3 WIGMORE § 933.

For cases concerning persons with mental derangements, *see, e.g.,* Garrett v. State, 268 Ala. 299, 105 So. 2d 541 (1958) (fit of derangement at time of event or at least before trial would be admissible); People v. Lambersky, 410 Ill. 451, 102 N.E.2d 326 (1951) (feeble-minded person who has capacity to observe, recollect, and communicate may testify). *See also* 3 WIGMORE § 932. *See generally id.* at § 931.

6. It may be shown that the witness is biased because the defendant previously had repulsed his homosexual advances. Tinker v. United States, 417 F.2d 542 (D.C. Cir. 1969), *cert. denied,* 396 U.S. 864 (1969); Salgado v. United States, 278 F.2d 830 (1st Cir. 1960).

See also United States v. Wolfson, 437 F.2d 862 (2d Cir. 1970) (court must allow full cross-examination of co-indictee who had already pleaded guilty, concerning his

party is entitled to a special cautionary instruction, on request, concerning the unreliability of the uncorroborated testimony of biased witnesses.[7] Bias may manifest itself as the self-interest of a witness who is paid,[8] who has charges pending against him,[9] or who is an in-

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attempt to obtain favorable ruling from the Securities Exchange Commission); Wynn v. United States, 397 F.2d 621 (D.C. Cir. 1967) (defendant may prove bias of prosecution witness arising from altercation over stolen whiskey prior to trial); Villaroman v. United States, 184 F.2d 261 (D.C. Cir. 1950) (defense may show that witness had filed a related civil suit against defendant for the alleged assault); State v. Matejka, 186 Neb. 454, 183 N.W.2d 917 (1971) (fact that policeman witness kicked defendant six times and threw him into a ditch at time of arrest may be shown to prove bias). *See generally* McCORMICK § 40; 3 WIGMORE §§ 948-53.

7. *See* Mathes, *Jury Instructions and Forms for Federal Criminal Cases*, 27 F.R.D. 39, 68 (1960): "All evidence of a witness whose self-interest or attitude is shown to be such as might tend to prompt testimony unfavorable to the accused, should be considered with caution and weighed with great care." *See, e.g.*, Egan v. United States, 287 F. 958 (D.C. Cir. 1923) (accomplice instruction); Freed v. United States, 266 F. 1012 (D.C. Cir. 1920) (accomplice instruction). For cases outlining proper accomplice instructions, *see* Matthews v. United States, 319 F.2d 740 (D.C. Cir. 1963); Babb v. United States, 252 F.2d 702 (5th Cir. 1958). *But see* United States v. Jones, 425 F.2d 1048 (9th Cir. 1970) (accomplice instruction need not be given where testimony is corroborated and no request for instruction is made). *See generally* Donnelly, *Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs*, 60 YALE L.J. 1091 (1951); Note, *The Effect of an Accused's Interest on His Credibility as a Witness*, 74 DICK. L. REV. 691 (1970).

For cases holding that a special cautionary instruction must be given on the unreliability of an informant's uncorroborated testimony, *see* United States v. Masino, 275 F.2d 129 (2d Cir. 1960); Fletcher v. United States, 158 F.2d 321 (D.C. Cir. 1946); Crowe v. State, 84 Nev. 358, 441 P.2d 90 (1968). *See also* Lujan v. United States, 348 F.2d 156 (10th Cir.), *cert. denied*, 382 U.S. 889 (1965) (dictum); Jordan v. United States, 345 F.2d 302 (10th Cir. 1965) (dictum); Hardy v. United States, 343 F.2d 233 (D.C. Cir. 1964), *cert. denied*, 380 U.S. 984 (1965) (dictum).

If the informant's testimony is corroborated, it is not error if the special instruction is not given. Lujan v. United States, 348 F.2d 156 (10th Cir.), *cert. denied*, 382 U.S. 889 (1965); Jordan v. United States, 345 F.2d 302 (10th Cir. 1965); Todd v. United States, 345 F.2d 299 (10th Cir. 1965); Hardy v. United States, 343 F.2d 233 (D.C. Cir. 1964), *cert. denied*, 380 U.S. 984 (1965); Orebo v. United States, 293 F.2d 747 (9th Cir. 1961). Likewise, if no request for a special instruction on the unreliability of informants is made, it is not error if the special instruction is not given. Dawkins v. United States, 324 F.2d 521 (9th Cir. 1963). For cases where there was no request for instruction and evidence was corroborated, *see* Sartain v. United States, 303 F.2d 859 (9th Cir. 1962); Young v. United States, 297 F.2d 593 (9th Cir. 1962); Joseph v. United States, 286 F.2d 468 (5th Cir. 1960); Cratty v. United States, 163 F.2d 844 (D.C. Cir. 1947).

See generally Donnelly, *supra;* Note, *Informers in Federal Narcotics Prosecutions*, 2 COLUM. J.L. & SOC. PROB. 47 (1966).

8. *E.g.*, Wheeler v. United States, 351 F.2d 946 (1st Cir. 1965) (court must allow cross-examination of witness to ascertain whether he would claim informers' reward in tax evasion case); Dixon v. State, 40 Ala. App. 465, 115 So. 2d 262 (1957)

formant.[10] Since testimony concerning the veracity of narcotics addicts generally will not be admitted,[11] if an informant is also a drug

(instruction must be given on request regarding pecuniary interest of witness as it might affect his credibility). *See also* McCORMICK § 40; 3 WIGMORE § 969.

9. *E.g.*, Alford v. United States, 282 U.S. 687 (1931) (defense allowed to show witness under arrest for another offense); Spaeth v. United States, 232 F.2d 776 (6th Cir. 1956) (prosecution witness with hope of early parole). For treatment of testimony by accomplices, *see, e.g.*, Marsh v. United States, 402 F.2d 457 (9th Cir. 1968); Matthews v. United States, 319 F.2d 740 (D.C. Cir. 1963); Babb v. United States, 252 F.2d 702 (5th Cir. 1958); Egan v. United States, 287 F. 958 (D.C. Cir. 1923); Freed v. United States, 266 F. 1012 (D.C. Cir. 1920). *Contra,* People v. Weber, 191 App. Div. 271, 181 N.Y.S. 774 (1920) (fact that witness in rape case indicted for raping another woman in car at same time excludable). *See also* McCORMICK § 40; 3 WIGMORE § 967.

10. United States v. Masino, 275 F.2d 129 (2d Cir. 1960); Fletcher v. United States, 158 F.2d 321 (D.C. Cir. 1946); Crowe v. State, 84 Nev. 358, 441 P.2d 90 (1968). *See* Lujan v. United States, 348 F.2d 156 (10th Cir.), *cert. denied,* 382 U.S. 889 (1965); Jordan v. United States, 345 F.2d 302 (10th Cir. 1965); Todd v. United States, 345 F.2d 299 (10th Cir. 1965); Hardy v. United States, 343 F.2d 233 (D.C. Cir. 1964), *cert. denied,* 380 U.S. 984 (1965); Dawkins v. United States, 324 F.2d 521 (9th Cir. 1963); Sartain v. United States, 303 F.2d 859 (9th Cir. 1962); Young v. United States, 297 F.2d 593 (9th Cir. 1962); Orebo v. United States, 293 F.2d 747 (9th Cir. 1961); Joseph v. United States, 286 F.2d 468 (5th Cir. 1960); Cratty v. United States, 163 F.2d 844 (D.C. Cir. 1947). *See generally* Note, *Informers in Federal Narcotics Prosecutions,* 2 COLUM. J.L. & SOC. PROB. 47 (1966).

11. Kelly v. Maryland Cas. Co., 45 F.2d 782 (W.D. Va. 1929), *aff'd,* 45 F.2d 788 (4th Cir. 1930); Fields v. State, 487 P.2d 831 (Alaska 1971); People v. Buono, 191 Cal. App. 2d 203, 12 Cal. Rptr. 604 (1961); People v. Bell, 138 Cal. App. 2d 7, 291 P.2d 150 (1955); People v. Williams, 6 N.Y.2d 18, 159 N.E.2d 549, 187 N.Y.S.2d 750, *cert. denied,* 361 U.S. 920 (1959). It appears that there is no medical consensus that addicts are unworthy of belief. Kelly v. Maryland Cas. Co., 45 F.2d 782 (W.D. Va. 1929), *aff'd,* 45 F.2d 788 (4th Cir. 1930); People v. Buono, 191 Cal. App. 2d 203, 12 Cal. Rptr. 604 (1961). Some courts do not allow evidence that drugs affect the veracity of an addict on the ground that it is a collateral matter. *E.g.*, State v. King, 88 Minn. 175, 92 N.W. 965 (1903).

Contra, State v. Fong Loon, 29 Idaho 248, 158 P. 233 (1916) (court must allow evidence that witness was an opium eater since addicts are notorious liars living in a dream world); People v. Smith, 38 Ill. 2d 237, 231 N.E.2d 185 (1967); People v. Lewis, 25 Ill. 2d 396, 185 N.E.2d 168 (1962) (prosecution witness must bare arms to see if he is an addict since drug addicts are notorious liars); Beasley v. State, 404 P.2d 911 (Nev. 1965) (indicates that principal prosecution witness would have to bare arms); Edwards v. State, 49 Wis. 2d 105, 181 N.W.2d 383 (1970).

See also McCORMICK § 45; 3 WIGMORE § 934; 20 A.L.R.2d 684 (1968); 52 A.L.R.2d 848 (1957); Rossman, *The Testimony of Drug Addicts,* 3 ORE. L. REV. 81 (1924); Note, *Testimonial Reliability of Drug Addicts,* 35 N.Y.U.L. REV. 259 (1960); Comment, 60 COLUM. L. REV. 562 (1960); Comment, 16 S. CAL. L. REV. 333 (1943); Comment, 1966 UTAH L. REV. 742.

It may always be proved that the witness was under the influence of drugs and thereby could not properly observe, remember, or recount the matter he is testifying about. Wilson v. United States, 232 U.S. 563 (1913); People v. Bell, 138 Cal. App. 2d

addict, the cautionary instruction normally deals only with the witness's status as an informant.[12]

In *Kinnard*, Judge Bazelon reasoned that the informant who is also an addict requires special consideration, because the addict is in the

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7, 291 P.2d 150 (1955). *See also* United States v. Kearney, 420 F.2d 170 (D.C. Cir. 1969); People v. Williams, 6 N.Y.2d 18, 159 N.E.2d 549, 187 N.Y.S.2d 750, *cert. denied*, 361 U.S. 920 (1959); State v. Jiron, 26 Utah 2d 311, 489 P.2d 109 (1971); McCORMICK § 45; 3 WIGMORE § 934; Note, *Testimonial Reliability of Drug Addicts*, 35 N.Y.U.L. REV. 259 (1960); Comment, 16 S. CAL. L. REV. 333 (1943); Comment, 1966 UTAH L. REV. 742.

While there is a difference of opinion on the question of whether the status of being an addict renders the addict untrustworthy, other persons with suspect status are not generally deemed untrustworthy. Generally, addiction to alcohol does not involve the veracity trait, and is inadmissible to prove untruthfulness. *See, e.g.*, People v. Stanley, 206 Cal. App. 2d 795, 24 Cal. Rptr. 128 (1962); Bituminous Cas. Corp. v. Martin, 478 S.W.2d 206 (Tex. Ct. Civ. App. 1972) (evidence of general habit of intoxication may not be received); Indemnity Ins. Co. of N. Amer. v. Marshall, 308 S.W.2d 174 (Tex. Ct. Civ. App. 1957). *See also* 3 WIGMORE § 933. *Contra*, State v. Browning, 98 Ohio App. 8, 128 N.E.2d 173 (1954) (evidence on habit of sobriety bears on credibility).

Evidence of a witness's status as a homosexual is irrelevant to show untruthfulness. Salgado v. United States, 278 F.2d 830 (1st Cir. 1960); United States v. Provo, 215 F.2d 531 (2d Cir. 1954). *See* Tinker v. United States, 417 F.2d 542 (D.C. Cir.), *cert. denied*, 396 U.S. 864 (1969); United States v. Nuccio, 373 F.2d 168 (2d Cir. 1967), *cert. denied*, 392 U.S. 930 (1968). *See also* People v. Lewis, 25 Ill. 2d 442, 185 N.E.2d 254 (1962) (where prosecutrix's testimony is clear, uncontradicted, and corroborated, defense can not establish that she is a nymphomaniac); Garrett v. State, 268 Ala. 299, 105 So. 2d 541 (1958) (cannot impeach witness by showing general mental derangement); People v. Lambersky, 410 Ill. 451, 102 N.E.2d 326 (1951) (feeble-minded condition of witness goes to the issue of his credibility).

McCormick rejects the harsher treatment afforded narcotic addicts in certain jurisdictions, and suggests that evidence of drug addiction to prove veracity should always be excluded since there is no medical consensus to warrant judicial notice that the mere status of drug addiction affects credibility. McCORMICK § 45, at 98. For judicial discussion on the lack of medical consensus, *see* Weaver v. United States, 111 F.2d 603, 606 (8th Cir. 1940) (court may not instruct jury that it might consider witness's morphine addiction on the issue of his credibility since there is no medical consensus that the use of morphine affects credibility); Kelly v. Maryland Cas. Co., 45 F.2d 782 (W.D. Va. 1929), *aff'd*, 45 F.2d 788 (4th Cir. 1930); People v. Williams, 6 N.Y.2d 18, 159 N.E.2d 549, 187 N.Y.S.2d 750, *cert. denied*, 361 U.S. 920 (1959). *See generally* THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE (1967) [hereinafter cited as TASK FORCE REPORT]; Frankel, *Narcotic Addiction, Criminal Responsibility and Civil Commitment*, 1966 UTAH L. REV. 581.

12. *See* Godfrey v. United States, 353 F.2d 456, 458 n.1 (D.C. Cir. 1963); Fletcher v. United States, 158 F.2d 321 (D.C. Cir. 1946) (the fact of addiction merely gives added reason to give the informant instruction); Crowe v. State, 84 Nev. 358, 441 P.2d 90 (1968). *See also* Matthews v. United States, 319 F.2d 740 (D.C. Cir. 1963) (accomplice-addict).

perpetual status of violating the law, leaving him subject to arrest. That threat of arrest is a special form of harassment to the addict, because it forces him to undergo withdrawal.[13] At this point, a bribe of heroin or a promise of release, enabling him to return to his habit, is irresistible in exchange for information.[14] Further, offers of leniency from the severe penalties for narcotics violations to addicts under indictment effectively induces information and cooperation.[15] The addict is valuable to the police and will maintain his favorable status with them only if he produces tips leading to prosecutions. If, however, he fails to produce convictions, the addict will lose his favored status and will again be subject to police harassment. Not only will the addict be desperate to produce results for the police, but he will also avoid "fingering" powerful figures in the drug trade who could harm him.[16] Judge Bazelon reasoned that these conflicting pressures will likely lead the addict to lie and implicate innocent persons.

Two cases decided in the District of Columbia Circuit have a direct bearing on *Kinnard*. In *Fletcher v. United States*,[17] the defendant was convicted primarily upon the uncorroborated testimony of a paid informant who was also an addict. The court held that it was reversible error for the trial court to have refused a requested instruction on the unreliability of an informant.[18] The court stated that if an informant is an

13. United States v. Kinnard, 465 F.2d 566, 571 (D.C. Cir. 1972). As authority for this position, Judge Bazelon cites A. LINDESMITH, THE ADDICT AND THE LAW 46 (1965) [hereinafter cited as LINDESMITH]; TASK FORCE REPORT at 10. Mr. Lindesmith holds a Ph.D. in sociology, is a professor of sociology, a member of the National Association for the Prevention of Addiction to Narcotics, a member of the Independent Citizens Council on Crime and Delinquency, and was a delegate to the 1962 White House Conference on Drug Abuse. The *Task Force Report* was a joint undertaking of federal, state, local, and private agencies and groups, consultants, advisers, and the staff of the Commission.

"The deliberate harassment of addicts for information, through illegal searches, arrests, and general intimidation by police and other officials has been reported." United States v. Kinnard, 465 F.2d 566, 572 (D.C. Cir. 1972). Judge Bazelon cites LINDESMITH at 36-37; J. SKOLNICK, JUSTICE WITHOUT TRIAL 143-55 (1966) [hereinafter cited as SKOLNICK]; TASK FORCE REPORT at 8. Mr. Skolnick, a sociologist and instructor at Yale Law School, obtained his information through observational techniques of police behavior.

14. Judge Bazelon cites T. DUSTER, LEGISLATION OF MORALITY—LAW, DRUGS AND MORAL JUDGMENT 194 (1970); LINDESMITH at 44, 47, 50-51.

15. Judge Bazelon cites LINDESMITH at 48-49; SKOLNICK at 124-26; TASK FORCE REPORT at 8.

16. Judge Bazelon cites SKOLNICK at 132-33.

17. 158 F.2d 321 (D.C. Cir. 1946).

18. *Id.* at 322.

addict, there is all the more reason to give an instruction on informants since "a drug addict is inherently a perjurer where his own interests are concerned."[19] In *Godfrey v. United States*,[20] numerous addicts testified—defense witnesses, an informant, and the defendant. The trial court instructed the jury that, "It is recognized that a drug addict is inherently a perjurer when his own interests are concerned and his testimony should be received with suspicion and acted upon with caution."[21] The court of appeals held that instruction improper "since the latter's 'interests' were not 'concerned' in the sense or degree that the Appellant's interests were involved."[22]

In finding that the instruction should have been given, Judge Bazelon correctly distinguished *Godfrey* on the ground that the instruction in *Godfrey* was improper because it attempted to discredit the testimony of all drug addicts, whereas in the instant case the instruction would have been pointed only at the paid informant with charges pending against him.[23] In *Fletcher*, however, the court made it clear that the status of addiction only provided added reason to give a special instruction on informants, and should not itself be included in the instruction.[24] Since there appears to be no precedent to support *Kinnard*, the soundness of the decision must be judged in light of the rationale articulated by Judge Bazelon. If his assumptions about the manner in which police procure addict-informants and the pressures which bear upon the actions of addict-informants are correct, the special cautionary instruction seems appropriate. If Judge Bazelon is cor-

19. *Id.*

20. 353 F.2d 456 (D.C. Cir. 1966).

21. *Id.* at 458.

22. *Id.*

23. United States v. Kinnard, 465 F.2d 566, 572 (D.C. Cir. 1972).

24. Godfrey v. United States, 353 F.2d 456, 458 n.1 (D.C. Cir. 1966) (emphasis original):

> In Fletcher v. United States . . . Judge Groner said, in relation to a cautionary instruction about the credibility of paid informants testimony:
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> > And when this is added the well recognized fact that a drug addict is inherently a perjurer where his own interests are concerned, it is manifest . . . that it should be received with suspicion and acted upon with caution.
>
> The correctness of this holding is not in issue. What we hold now is simply that it was error for the Trial Judge to couch his "cautionary instruction" to the jury about addicts in the same terms as the appellate rationale for the *need* for an instruction about the testimony of *paid* informants who are addicts. *Fletcher* is thus a narrow holding and its primary thrust is a cautionary instruction on the reliability of paid informants generally, not addicts; the thrust of *Fletcher* is that where the paid informant is also an addict there is "added" reason for a cautionary instruction.

rect, the potential harm to a defendant from unreliable testimony is considerable. On the other hand, if the assumptions are incorrect, the harm to the state is minimal since the instruction does not completely eliminate use of addict-informants.[25] Thus it is submitted that despite a lack of empirical data to support Judge Bazelon's assumptions,[26] the special cautionary instruction should still be given.

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25. Complete elimination of the use of informers would be a severe blow to the police. "95% of all federal narcotics cases are obtained from the work of informers." Williams, *The Defense of Entrapment and Related Problems in Criminal Prosecutions,* 28 FORDHAM L. REV. 399, 403 (1959). "Without a network of informers—usually civilians, sometimes police—narcotics police cannot operate." SKOLNICK at 120.

26. Only one of the authorities cited by Judge Bazelon as a basis for determining the need for the special instruction, the *Task Force Report,* is based to any degree on empirical data. The other authorities are sociologists who based their conclusions on less than overwhelming evidence. *See* note 13 *supra* and accompanying text. Therefore, their analysis should be considered in light of the point of view from which they analyzed the problem of narcotics-informers, which may or may not include considerations or problems of law enforcement and proper criminal procedure.