6.12. Impeachment—By Benefit to a Witness

(1) A witness who is promised, received, or expects to receive a benefit may accordingly be examined with respect to what effect, if any, the benefit has on the witness's credibility.

(2) When a prosecutor is aware that a witness has mischaracterized or falsely denied a promised benefit, the prosecutor is obligated by further examination of the witness or otherwise to inform the court and the jury of the truth.

Note

It is well established in a criminal proceeding that the prosecution must disclose an agreement between the prosecution and a witness that grants the witness a benefit to induce the witness to testify (*People v Novoa*, 70 NY2d 490, 492-93 [1987]; CPL 245.20 [1] [k] [iv]; *see Giglio v United States*, 405 US 150, 150-151 [1972] [the Government violated due process when it "failed to disclose an alleged promise made to its key witness that he would not be prosecuted if he testified for the Government"]; *Brady v Maryland*, 373 US 83, 87 [1963].)

In turn, as set forth in **subdivision (1)**, it is equally well established in a criminal or civil proceeding that a witness may be examined and subject to impeachment when the witness has received or stands to receive a benefit for the witness's testimony. (*See People v Thomasula*, 78 NY2d 1051, 1053 [1991] ["(T)here can be no question that a criminal defendant is entitled to have the jury informed that a prosecution witness has been offered a 'favorable deal' in exchange for his testimony"]; *Zimmer v Third Ave. R.R. Co.*, 36 App Div 273, 274 [2d Dept 1899] ["Plainly the size of the fee a witness is to receive for his testimony may . . . bias his judgment, and the parties and the jury are entitled to know just what compensation an expert witness has received or is to receive"].)

With respect to a criminal proceeding, the Court of Appeals has explained:

> "It goes without saying that the existence of a promise of leniency or other consideration made to a self-confessed criminal can weigh heavily in the assessment of his credibility as a witness. The

> deprivation or serious circumscription of a . . . right to cross-examine on that issue therefore can be prejudicial error." (*People v Arce*, 42 NY2d 179, 188-189 [1977]; *see People v Roth*, 30 NY2d 99, 101 [1972] [the witness's "credibility was a critical issue in the case. She testified she had been charged with selling . . . a dangerous drug . . . and that she received an unconditional discharge. The defense was entitled to know exactly what were the circumstances of that discharge as affecting the motivation and credibility of her testimony for the prosecution"]; *People v Torres*, 51 AD2d 225, 227 [1st Dept 1976] ["In light of the lenient plea afforded (the witness) . . . reasonable latitude should have been afforded defense counsel in making inquiry into the circumstances affecting or leading to the plea. Such inquiry is relevant to show the witness' interest in testifying favorably for the People"]; *People v Bryant*, 77 AD2d 603, 603 [2d Dept 1980] ["(D)efendant was entitled to attempt to show through cross-examination that the informant's motive to lie was increased because of the sentence she faced before she agreed to become an informant and to plead guilty and receive a sentence of probation"].)

It is not a ground for curtailing an examination that the examination may reveal to the jury the sentence of imprisonment that the defendant on trial faces—"the prosecutor, and not the defendant, must bear the burden that the jury would know that defendant faced the same sentence." (*People v Tyler*, 54 AD2d 723, 723 [2d Dept 1976].)

Subdivision (2) states a long established dictate of the Court of Appeals. (*Novoa*, 70 NY2d at 496-497 [1987] ["A prosecutor may not sit by silently while her witness testifies falsely that she did not receive any promise in return for testimony . . . . If a witness mischaracterizes or falsely denies a promise, the prosecutor must 'by immediate statement of his own or by further appropriate examination . . . forthrightly (expose) the lie, so that the court and jury (will know) that the witness had reason to expect lenient treatment for "continued . . . co-operation" . . . (I)f (a lie) is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.' (*People v Savvides*, 1 NY2d 554, 556-557 [1956])"]; *People v Mangi*, 10 NY2d 86, 88 [1961] ["(I)t was not fair or frank for (the witness) to have led the jury to believe that he had been promised nothing if he did co-operate, and the Assistant District Attorney who tried the case should have acquainted the jury with what had occurred"].)