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Naoma Lee Stewart

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## Medicolegal Aspects of Alcoholism

Naoma Lee Stewart\*

**D**RUNKENNESS, AT EARLY COMMON LAW, was considered to be a vice of such magnitude that it aggravated other original legal offenses.<sup>1</sup> Today, drunkenness is included as one of the symptoms of *Alcoholism*, the modern label for a mass disease which has reached epidemic proportions in the United States.<sup>2</sup> In November 1956 the House of Delegates of the American Medical Association, in a realistic effort to combat this public health problem, approved a resolution accepting alcoholism as a *disease* and urging its treatment by physicians in the general hospitals throughout the country.<sup>3</sup>

Since the passage of three centuries has seen the explanation for excessive drinking progress from a *vice* to a *disease*, it is pertinent to have a brief study of the recent findings about alcoholism in order to compare these newer medical concepts with some of the legal principles on drunkenness which have been long and firmly established in the law.

### Prevalence and Definition

The alcoholic population in the United States today is reliably estimated to be in the neighborhood of five million.<sup>4</sup> The *Skid Row* type comprises less than 10 per cent of this figure, while the other 90 per cent are found in all levels of society. Most are decent, respectable citizens living quietly and working alongside us in business and industry,<sup>5</sup> their alcoholism com-

\* A.B., Western Michigan College of Educ. & L. Arts; and a Senior at Cleveland-Marshall Law School.

<sup>1</sup> "Although he who is drunk, is for the time non compos mentis, yet his drunkenness does not extenuate his act or offense, nor turn to his avail, but it is a great offence in itself and therefore aggravates his offence." *Beverley's Case*, 4 Coke Reports 125b, 76 English Repr. 1123 (1603).

<sup>2</sup> "Alcoholism is a mass disease involving millions of addicts." Gordon, *The Epidemiology of Alcoholism*, 1 at 27 in Kruse ed., *Alcoholism as a Medical Factor* (sponsored by the New York Academy of Medicine and New York State Mental Health Commission) (1956).

<sup>3</sup> Block, Marvin A., *Alcoholism*, 163 J. A. M. A. 550 (1957).

<sup>4</sup> Estimated by the Jellinek formula, in 1955 there were 4,712,000 alcoholics in the United States—4,002,000 men and 710,000 women. Keller and Efron, *The Prevalence of Alcoholism*, 16 Quart. J. Study Alc. 619 (1955).

<sup>5</sup> It has been estimated that more than 1,650,000 alcoholics are employed in business and industry. Henderson and Bacon, *Problem Drinking: The Yale Plan for Business and Industry*, 14 Quart. J. Study Alc. 250 (1953).

pletely unknown to us. Their educational attainment is the same as that of other groups.<sup>6</sup> They may be doctors, lawyers, engineers, executives, housewives or factory hands. In addition to the addicts, alcoholism has reached the alarming degree where it directly affects about twenty million people who are the families of these people. Indirectly everyone in this country is affected sociologically, legally or economically.

There has long been a lack of agreement as to the precise definition of alcoholism.<sup>7</sup> It is thought by some to be a disease, by others the symptom of a disease. Some regard it as a downright sin or vice. Others would restrict the "problem" to the extreme malady, alcohol addiction. Then there are those who refuse to make any distinction between alcoholism and drinking; he who consumes one drink is ipso facto an alcoholic. Alcoholism does involve drinking and, almost always, drunkenness; but not all drinking or drunkenness involves alcoholism. There are people who occasionally or often drink to excess and become intoxicated. Nevertheless they are not alcoholics. Of course, the vast majority of *drinkers* are not alcoholics.

Keller and Efron define *alcoholism* as a chronic behavioral disorder manifested by repeated drinking of alcoholic beverages in excess of the dietary and social uses of the community and to an extent that interferes with the drinker's health or his social or economic function.<sup>8</sup> The definers admit the deficiencies of the definition. It does not clarify whether alcoholism is a disease or a symptom of an underlying personality disorder. It does not specify whether physiological or psychological addiction to alcohol is involved, and includes nothing at all about etiology.<sup>9</sup> Avoidance of an etiological statement in the definition of alcohol-

<sup>6</sup> Lemert, *Educational Characteristics of Alcoholics*, 12 *Quart. J. Study Alc.* 475 (1951).

<sup>7</sup> The Committee on Classification and Nomenclature of the North American Association of Alcoholism Programs has proposals for an authoritative dictionary under consideration. A resolution of the 24th International Congress Against Alcoholism (1952) called for the establishment of a "commission on language" to "bring into being a standard vocabulary . . ." A Subcommittee on Alcoholism of the World Health Organization Expert Committee on Mental Health has discussed the problem and adopted a number of definitions. See Mark Keller, *The Language of Alcohol Problems, With a Selected Vocabulary*, Brookside Monograph no. 2 (Toronto: Alcoholism Research Foundation; 1957).

<sup>8</sup> Keller and Efron, *Alcoholism*, *Encyclopedia Americana* (1954).

<sup>9</sup> A medical style definition of alcoholism, which does not omit the etiological, says "Alcoholism; diseased condition due to acute or chronic excessive indulgence in alcoholic liquors." Taber's *Cyclopedic Medical Dictionary* (1953).

ism does not negative the importance of causation, but a definition was sought which did not require individual medical diagnosis, and Keller's was tested on the live population of alcoholics and was found applicable.<sup>10</sup>

### Etiology

The illness or symptom (known as *alcoholism*) which claims almost 5 million American adults among its victims and which causes the hospitalization, treatment, or jailing of many tens of thousands and accounts for the death of thousands each year does not have an established etiology. All authorities on the subject agree that this is a situation which cries for major research efforts. There are, of course, etiological theories. One school of theorists feel that the causative factors are of physiological origin. They attribute alcoholism to a biochemical defect of one kind or another which provokes an uncontrollable craving or hunger for alcohol. Williams,<sup>11</sup> a member of this school of thought, attributes the cause of alcoholism to an idiosyncratic genetotropic lack of nutritive elements. Tintera, Lovell,<sup>12</sup> and Smith<sup>13</sup> blame it on defective function of the endocrine glands.

Another school stresses psychological factors as the primary cause.<sup>14</sup> Environmental and personality problems encourage recourse to intoxication as a defense against unconscious stresses connected with the responsibilities of personal or business life. For instance, the person who is noticeably shy or repressed, or who appears to struggle with too heavy a load of self-imposed guilt, is felt to be psychologically susceptible to the development of alcoholism. For general purposes this school describes an

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<sup>10</sup> Falkey and Schneyer, Characteristics of Male Alcoholics Admitted to the Medical Ward of a General Hospital, say of their sample of over 300 alcoholics, "We believe that the present sample actually represents patients suffering from alcoholism within the meaning of Keller's use of the term." 18 Quart. J. Study Alc. 68 (1957).

NOTE: D. Bruce Falkey, above-quoted authority, is the director of The Cleveland Center on Alcoholism, the first non-governmental agency of its kind, located at 2069 Adelbert Road, Cleveland 6, Ohio.

<sup>11</sup> Williams, Roger J., The Genetotropic Concept—Nutritional Deficiencies and Alcoholism, 57 Annals N. Y. Acad. of Science 794 (1954).

<sup>12</sup> Tintera, J. W. and Lovell, H. W., Endocrine Treatment of Alcoholism, 4 Geriatrics 274 (1949).

<sup>13</sup> Smith, James J., The Endocrine Basis and Hormonal Therapy of Alcoholism, 50 N. Y. State J. Med. 1704 (1950).

<sup>14</sup> Smith, J. A., Psychiatric Treatment of the Alcoholic, 163 J. A. M. A. 734 (1957).

alcoholic as one who drinks in a very special way—to excess, compulsively, without control, and self-destructively.<sup>15</sup> He is the victim of an uncontrollable drive to compensate for a defect in his physical and/or psychic structure. The process of addictive drinking is so insatiable and uncontrollable that it becomes a chronic disintegrating process. Alcoholics themselves recognize this and accurately and dramatically describe it as “slow suicide.”

From the viewpoint of preventative public health work a combination of the psychological and physiological theories would seem to be the best approach towards solving the problem, at least until further research proves or disproves the etiology of alcoholism.

### Physiology of Alcohol

Once alcohol is consumed it is absorbed directly from the stomach as well as from the small intestine.<sup>16</sup> Alcohol enters the blood stream rapidly because it does not require prior digestion. After drinking 8 oz. (236.56 cc) of whiskey the maximum concentration in the blood occurs in approximately one hour. By contrast, a subsequent slow but steady decrease occurs over a period of 12 hours or longer. The entrance rate of alcohol into the blood stream depends upon the rate and concentration of the alcohol which is drunk and the presence of food in the gastrointestinal tract. Food is a deterrent; milk, fat, and meat all slow the absorption of alcohol. Therefore reaching of the peak level in the blood is delayed when the stomach is full. In most social drinking liquor is consumed at periodic intervals so that absorption occurs during the period following each successive drink. In such a case total absorption will not be complete for forty to seventy minutes after the final drink.

Following the first absorption of alcohol into the blood stream alcohol is carried to all portions of the body and by diffusion is distributed throughout the watery portions of the system. After absorption has been completed the alcohol will be

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<sup>15</sup> “The lack of control must be emphasized. Alcoholics have always been subject to condemnation and stigma. They are generally self-condemnatory and with few exceptions deeply guilty. They resort to numerous rationalizations to explain their alcoholism. The majority on initial contact either deny, or at the very minimum underestimate alcohol as a problem.” Vogel, Sidney, *Psychiatric Treatment of Alcoholism*, 315 *Annals of American Academy* 100 (1958).

<sup>16</sup> Himwich, H. E., *The Physiology of Alcohol*, 163 *J. A. M. A.* 545 (1957).

distributed through the water of the body in proportion to the alcohol concentration of the circulating blood.

As alcohol is distributed throughout the body by way of the blood stream, elimination commences at once through the mechanisms of oxidation and excretion. The bulk of ingested alcohol is oxidized to carbon dioxide and water and the remaining portion of about 5% is excreted unchanged in the breath, urine, and perspiration.<sup>17</sup>

### Physical Effects of Alcohol Ingestion

The most dramatic results of the ingestion of alcohol are exerted on the brain. Thus the more complex faculties of judgment, memory, learning, self criticism, and environmental awareness are the first to be impaired. Alcoholic beverages have tension-reducing effects. Because alcohol works most strongly against the higher functions of the brain, anxiety is diminished. Although alcohol in small concentrations may stimulate tissue metabolism, yet in adequate doses alcohol is always a depressant. With depression of the higher functions their inhibitory effects are lost and the lower parts of the brain are released from higher control. Thus the excitement frequently seen in an intoxicated individual is a release phenomenon due to depression of the highest brain function. Thereby, we conclude that alcohol is a depressant and could be used as a general anesthetic agent if the dosages required for induction of anesthesia were not dangerously close to those dosages which cause respiratory and circulatory collapse.<sup>18</sup>

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<sup>17</sup> "Intoxication represents not only a disorientation of the whole individual in relation to the realities of his external environment, but also a disorganization of the complexly poised interrelationship of organic functions and biochemical states constituting his internal physiological environment—a disturbance of the normal homeostasis. In the prolonged and repeated inebriety of the alcoholic, just as his deviant performances increasingly injure his normal relationships with his external environment, his disrupted internal environment injures tissues and organs of his body. Repeated injury to tissues results in persisting damage—the cirrhotic liver, degenerated nerves, delirium tremens." Greenberg, L. A., *Intoxication and Alcoholism: Physiological Factors*, 315 *Annals Am. Ac. of P. & S. Science* 29 (1958).

<sup>18</sup> "In a person of average size, 2 or 3 ounces of whiskey present in the body will produce 0.05 per cent of alcohol in the blood. With this amount, the uppermost levels of brain functioning are depressed, diminishing inhibition, restraint, and judgment. At a concentration of 0.10 per cent alcohol in the blood, resulting from 5 to 6 ounces of whiskey, function of the lower motor area of the brain is dulled. The person sways perceptibly; he has difficulty putting on his coat; words stumble over a clumsy tongue. At 0.20 per cent, resulting from about 10 ounces of whiskey, the entire motor area

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### Drinking Behavior of the Alcoholic

Contrary to public opinion an alcoholic addict is not someone who drinks "more than I do." There are many popular theories on how, what, and when an individual must drink in order to qualify as an alcoholic. For example, some think that a man may drink a quart of whiskey a day provided he doesn't drink alone, or that he can consume a dozen or more bottles of beer during an evening if he doesn't touch whiskey, and then conclude that because he doesn't drink alone or does not drink whiskey he is not a real alcoholic.

Neither can alcoholism be diagnosed by the clock. It is not necessary for an individual to start drinking in the morning, before lunch, or before 5 p.m. to qualify; although as the illness progresses the first drink may be taken at a much earlier hour of the day.

Many of these misconceptions are used by the alcoholic to disprove his diagnosis to himself. He resorts to numerous rationalizations to explain his alcoholism. The majority vehemently deny, or at least underestimate alcohol as a problem. Lack of control, and the fact that the alcoholic minimizes his drinking and will not face the extent of his problems, must be considered as symptoms of his illness. In essence, any individual who relies on alcohol to meet the ordinary demands of living and continues to drink excessively after alcohol has caused him marital or occupational difficulty is an alcoholic whether he drinks only in the evening, has never taken a drink when alone, or has not touched anything but beer for five years.

Jellinek portrayed the drinking behavior of a typical alcoholic by describing habits and patterns of drinking from the first to the final stages of alcoholism.<sup>19</sup> Somewhere within this span, the true

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of the brain is profoundly affected. The individual tends to assume a horizontal position; he needs help to walk or undress. At 0.30 per cent, from the presence of a pint of whiskey in the body, sensory perception is so dulled that the drinker has little comprehension of what he sees, hears or feels; he is stuporous. At 0.40 percent, perception is obliterated; the person is in coma, he is anesthetized. At 0.60 or 0.70 per cent, the lowest most primitive levels of the brain controlling breathing and heart-beat cease to function and death ensues." Greenberg, L. A., *Intoxication and Alcoholism: Physiological Factors*, 315 *Annals Am. Ac. of Pol. & Soc. Science* 27 (1958).

<sup>19</sup> Jellinek described the following phases in the drinking history of alcoholics which were signs of the progression from the earliest to the last stages of alcoholism:

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alcoholic inevitably becomes entangled with the law for reasons which run the gamut from disturbing the peace to murder. Because of this inevitable result, a study of the rules of law on intoxication and criminal responsibility is pertinent.

### Law as to Intoxication, Generally

No rule of law is more firmly established than the rule that voluntary drunkenness does not exempt a person from criminal

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1. The individual begins to drink more than the other members of his group.
  2. The individual begins to drink more frequently than the others.
  3. The individual shows more of the behavior ordinarily forbidden such as noisiness, exhibitionism, and carelessness about some proprieties.
  4. The individual begins to experience "blackouts," temporary amnesia during and following drinking episodes. These are not to be confused with passing out or stupor.
  5. The individual rationalizes his drinking too much and with excessive intensity and bizarre explanations.
  6. He often drinks more rapidly, especially at the start of a drinking situation. He gulps his drinks.
  7. He begins surreptitious drinking, sneaking drinks, using alcohol in such a fashion that his fellows will not know about it.
  8. With increasing frequency the taking of the first drink becomes an effective trigger for the achievement of intoxication. He may take drinks at the office, on the train, during midday breaks or in answer to the mildest headache or cough.
  9. He attempts new patterns of alcohol usage. He switches from bourbon to gin to vodka. He tries the beer route or Rhine wine and soda. He drinks only with his wife, or only at home or even occasionally stops all use for specified periods.
  10. He imbibes in the same fashion but changes the social locale. To effect such a change may necessitate moving from the city to the suburbs or vice versa. The same results can be achieved without leaving his own city. He may do his drinking in places and with people who are of a different and lower social status. He may get his alcohol "on the other side of the tracks."
  11. The individual may become a "loner" and do the majority of his imbibing when alone.
  12. Rather than manifesting excessive rationalizations about alcohol and its use, he avoids any and all discussion of the subject. If forced by physician, friend, minister, wife, or employer to consider the matter he may produce ingenious alibis, outrageous explanations, and even baldfaced lies.
  13. He may start utilizing techniques for the ingestion of alcohol beyond any conceivable development in the drinking usages of his group: starting off the day with 7 or 8 ounces of gin or whiskey, spending all week doing nothing but ingesting alcohol; taking it in such forms as mouthwash, canned heat preparations, vanilla extract and so on.
  14. Concomitant with these last 3 or 4 modes of behavior and often starting much earlier the hypothetical alcoholic manifests changes in areas other than those related to drinking. Accidents, job losses, family quarrels, broken friendship, even trouble with the law may take place, not just when he is under the influence of alcohol, but even when he is not.
  15. Characteristics of the final stages of alcoholism are violent and dramatic: binges, a complete rejection of social reality, physical tremors, hallucinations and deliria, horrifying but unidentified fears and hatreds, collapse of all former social status, compulsive hiding and storing of drinks against probable hangovers, surrender of all rationalizations, and finally early death.
- Jellinek, E. M., *Phases in the Drinking History of Alcoholics*, 7 Quart. J. Study Alc. 1 (1946).



responsibility for his acts.<sup>20</sup> Proof of voluntary drunkenness is admissible and may constitute a defense when the accused is charged with an offense in which some specific intent is an essential element.<sup>21</sup> As the offense cannot be committed without such an intent, if the fact of drunkenness negatives its existence, as where it appears that the accused was so drunk that he could not have entertained such an intent, it necessarily constitutes a complete defense.<sup>22</sup>

By the weight of authority, proof of drunkenness is admissible to negate the existence of a specific intent to kill, to rob,<sup>23</sup> to commit larceny or robbery,<sup>24</sup> for conspiracy,<sup>25</sup> perjury,<sup>26</sup> brib-

<sup>20</sup> "Such a principle is absolutely essential to the protection of life and property. In the forum of conscience, there is no doubt considerable difference between a murder deliberately planned and executed by a person of unclouded intellect, and the reckless taking of life by one infuriated by intoxication; but human laws are based upon considerations of policy, and look rather to the maintenance of personal security and social order than to an accurate discrimination as to the moral qualities of individual conduct. But there is, in truth, no injustice in holding a person responsible for his acts committed in a state of voluntary intoxication. It is a duty which everyone owes to his fellow men and to society, to say nothing of more solemn obligations, to preserve, so far as it lies in his own power, the inestimable gift of reason. If it is perverted or destroyed by fixed disease, though brought on by his own vices, the law holds him not accountable. But if, by voluntary act, he temporarily casts off the restraints of reason and conscience, no wrong is done him if he is considered answerable for any injury which, in that state, he may do to others or to society." Denio, J., in *People v. Rogers*, 18 N. Y. 9, 72 Am. Dec. 484 (1858).

<sup>21</sup> *Chrisman v. State*, 54 Ark. 283, 15 S. W. 889 (1891);  
*State v. Phillips*, 80 W. Va. 748, 93 S. E. 828 (1917);  
*Booker v. State*, 156 Ind. 435, 60 N. E. 156 (1901);

<sup>22</sup> On the same principle, proof of voluntary drunkenness may be shown to negate the existence of knowledge of particular facts when such knowledge is an essential element of the offense charged, as in prosecutions for passing counterfeit money or uttering a forged instrument in which it is necessary to allege and prove that the accused knew that the money was counterfeit or the instrument forged. *Pigman v. State*, 14 Ohio 555, 45 Am. Dec. 558 (1846).

<sup>23</sup> *Englehardt v. State*, 88 Ala. 100, 7 So. 154 (1890);  
*Chowning v. State*, 91 Ark. 503, 121 S. W. 735 (1909);  
*State v. Pasnau*, 118 Iowa 501, 92 N. W. 682 (1902);  
*Cline v. State*, 43 Ohio St. 332, 1 N. E. 22 (1885);  
*State v. Gear*, 28 Minn. 426, 10 N. W. 472 (1881).

<sup>24</sup> *Edwards v. State*, 178 Miss. 696, 174 So. 57 (1937);  
*State v. Phillips*, 80 W. Va. 748, 92 S. E. 828 (1917).

<sup>25</sup> "Where the essence of a crime depends upon the intent with which an act was done or where an essential ingredient of the crime consists in the doing of an unlawful act with a deliberate and premeditated purpose, the mental condition of the accused, whether the condition is occasioned by voluntary intoxication or otherwise, is an important element to be considered."  
*Booher v. State*, 156 Ind. 435, 60 N. E. 156 (1901).

<sup>26</sup> *Lytle v. State*, 31 Ohio St. 196, 128 N. E. 836 (1877).

ery<sup>27</sup> or forgery.<sup>28</sup> Conversely, where a crime requires only a general intent, the courts have held voluntary intoxication inadmissible as a defense.<sup>29</sup> Since murder at common law did not require a specific intent to kill, voluntary drunkenness, however excessive, is not a defense.<sup>30</sup> In many states, including Ohio, murder is divided by statute into degrees, and an actual intent to kill, or some deliberation and premeditation is necessary in order to constitute murder in the first degree.<sup>31</sup> In these jurisdictions drunkenness may be shown in order to negate such a state of mind, and so to show that a homicide was not murder in the first degree.<sup>32</sup>

Another exception to the general rule is the defense of involuntary drunkenness. Despite the uniform agreement of legal writers as to the validity of this defense, cases affirmatively demonstrating an example of involuntary intoxication are practically non-existent.<sup>33</sup> All references illustrate what is not involuntary drunkenness. Becoming intoxicated by liquor which a defendant

<sup>27</sup> *White v. State*, 103 Ala. 72, 16 So. 63 (1894).

<sup>28</sup> *People v. Blake*, 65 Cal. 275, 4 Pac. 1 (1884).

<sup>29</sup> *Procter v. United States*, 177 F. 2d 656 (D. C. Cir. 1949);  
*Englehardt v. State*, 88 Ala. 100, 7 So. 154 (1890) assault and battery;  
*Abbott v. Commonwealth*, 234 Ky. 423, 28 S. W. 2d 486 (1930) rape;  
*Rogers v. State*, 265 S. W. 2d 559 (Tenn. 1954) second degree murder conviction; defendant drove car at 70 MPH while intoxicated resulting in death of others.

<sup>30</sup> Two states, Missouri and Vermont, refuse by common law to take intoxication into account at all whether defendant had specific state of mind requisite to constitute the crime charged.

*State v. Shipman*, 354 Mo. 265, 189 S. W. 2d 273 (1945);

*State v. Corner*, 296 Mo. 1, 247 S. W. 179 (1922);

*State v. Stacey*, 104 Vt. 379, 160 Atl. 257 (1932).

<sup>31</sup> "Acute alcoholism or mental incapacity produced by voluntary intoxication existing temporarily at the time of the homicide is generally no excuse or justification for the crime. Proof of such intoxication, however, is competent and proper for the jury to consider as bearing upon the question of intent and premeditation, in determining whether the accused is guilty of murder in the first degree or some lesser degree of homicide or to show that no crime was committed."

*Rucker v. State*, 119 Ohio St. 189, 162 N. E. 802 (1928).

<sup>32</sup> *People v. Baker*, 42 Cal. 2d 550, 268 P. 2d 705 (1954);

*Johnson v. Commonwealth*, 135 Va. 524, 115 S. E. 673 (1903);

*State v. Hogan*, 117 La. 863, 42 So. 352 (1906).

At the other extreme, and equally well established by the cases is the rule that no amount of voluntary intoxication can entirely excuse a homicide and thereby entitle the slayer to an acquittal.

*Kriehl v. Comm.*, 68 Ky. 36 (1869);

*Choate v. State*, 19 Okla. Cr. 169, 197 P. 1060 (1921).

<sup>33</sup> There are numerous dicta to this effect collected in 30 A. L. A. 761. It seems the actual cases are rare.

is urged to drink by another is not "involuntary."<sup>34</sup> Nor is it involuntary where one, of his own accord and without medical advice, takes whiskey for a toothache.<sup>35</sup> It would seem that the only method of fulfilling the legal requirements for involuntary drunkenness would be to have a person bound hand and foot and forced to swallow enough alcohol to become intoxicated.<sup>36</sup> Anything short of fraud, coercion, or force has been considered to be voluntary.<sup>37</sup>

The defense of involuntary drunkenness raises another interesting possibility. Evidently the fact that intoxication generally is no defense to a criminal act is founded on a basic belief that most, if not all drunkenness, is the result of a voluntary act. In the light of the recent diagnosis of alcoholism as a disease, one symptom of which is a compulsive, uncontrollable drive to drink to excess, is it not possible that in many instances such intoxication could be characterized as involuntary? One could reasonably conclude that drunkenness which resulted from a compulsive urge could be involuntary since it was incapable of being controlled, and therefore if involuntary, could be a good defense against criminal responsibility.<sup>38</sup>

Undoubtedly, there are individual cases where it would seem to be a rank injustice to hold an alcoholic as accountable for his acts as the average individual. But on the other hand the rights of the general public to protection cannot be minimized. At the present time, common sense dictates the only possible choice. Until additional scientific research can definitely prove otherwise, the law must assume that drunkenness is the result of a voluntary act. But the courts can not and should not close their eyes to the possibility that time and research may prove that some intoxication is completely involuntary and therefore en-

<sup>34</sup> *Crawford v. State*, 3 Ala. App. 1, 57 So. 393 (1912);  
*State v. Sopher*, 70 Iowa 494, 30 N. W. 917 (1886);  
*Comm. v. Dudash*, 204 Pa. 124, 53 Atl. 756 (1902).

<sup>35</sup> *Johnson v. Comm.*, 135 Va. 524, 115 S. E. 673 (1923).

<sup>36</sup> Hall, *Principles of Criminal Law* 441 (1947).

<sup>37</sup> *Pearson's Case*, 2 Lewin 144, 168 Eng. Rep. 1108 (1835);  
*People v. Robinson*, 2 Park. Cr. R. 235, (N. Y. 1855);  
*Choate v. State*, 19 Okl. Cr. 169, 197 P. 1060 (1921);  
*Burrows v. State*, 38 Ariz. 99, 297 P. 1029 (1931);  
*Perkins v. U. S.*, 228 F. 408 (4th Cir. 1915);  
*People v. Penman*, 271 Ill. 82, 110 N. E. 894 (1915);  
*Borland v. State*, 158 Ark. 37, 249 S. W. 591 (1923).

<sup>38</sup> Hall has suggested that alcoholic addiction should be treated as involuntary intoxication. Hall, *Intoxication and Criminal Responsibility*, 57 Harv. L. R. 1045 (1944).

titled to something besides the legal lip service which has been extended to the defense of involuntary drunkenness in the past.

Settled insanity or delirium tremens resulting from the continued excessive use of alcohol has long been held to be a good defense to criminal responsibility.<sup>39</sup> The treatment of this defense is subject to some criticism. The courts consistently talk in terms of "fixed or settled insanity," but so far have regarded only delirium tremens as *fixed*.<sup>40</sup> Any refusal to recognize alcoholic psychoses other than delirium tremens is a stubborn denial of the facts. Bowan and Jellinek point out that alcoholic psychoses, which include Korsakoff's psychosis and acute alcoholic hallucinosis, never result from one alcoholic bout no matter how great a quantity of alcohol is consumed.<sup>41</sup> If the psychoses develop only after a prolonged and excessive use of alcohol, the courts should make a distinction between *all* alcoholic psychoses (even those of a temporary nature) and any other mental manifestations which are the result of a single drinking episode. Effects of an isolated drinking bout should never exempt a defendant from legal responsibility, but neither should such exemption be restricted only to the more familiar delirium tremens.

In all justice, the failure of the courts to recognize other alcoholic psychoses cannot be criticized with much vehemence when one considers that the bulk of research on alcoholism has been conducted within the last fifteen years. Remembering that the medical profession formally acknowledged alcoholism as a disease only in November of 1956, the legal profession has been remarkably alert in making adjustments to this new medical concept. For example, in 1957 an Oklahoma court held that the un-

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<sup>39</sup> Long-continued overindulgence in liquor may result in an actual disease of the mind. When this occurs it affects criminal responsibility "in the same way as insanity which has been produced by any other cause."

People v. Guillet, 342 Mich. 1, 69 N. W. 2d 140 (1955);

People v. Griggs, 17 Cal. 2d 621, 110 P. 2d 1031 (1941);

Cheadle v. State, 11 Okl. Cr. 566, 149 P. 919 (1915);

Nestlerode v. U. S., 74 App. D. C. 276, 122 F. 2d 56 (1941).

<sup>40</sup> No other cases have been found where any other alcoholically induced illness has been regarded as "fixed and settled" insanity. In *Britts v. State*, 158 Fla. 839, 30 So. 2d 363 (1949) (dictum) the court labelled alcoholic hallucinosis as temporary insanity.

<sup>41</sup> Acute alcoholic hallucinosis is an alcoholic psychosis closely resembling delirium tremens. It also occurs only in chronic alcoholics, but it develops after a much shorter period of drinking and consequently at a lower onset stage than delirium tremens. The duration of acute alcoholic hallucinosis is considerably longer than delirium tremens and is characterized by the predominance of auditory hallucinations, frequently consisting of criticism by groups of people. See, Bowan & Jellinek, *Alcoholic Mental Disorders*, 2 Q. J. Stu. Alc. 312, 328-58 (1941).

disputed testimony that defendant was an alcoholic and mentally ill from excessive drinking should be admissible for the court to consider in ruling on a motion to vacate his forfeiture of an appearance bond for failure to appear for trial on a charge of driving while intoxicated.<sup>42</sup> The holding of this case would indicate that the courts are cognizant of the developments in the field of alcoholism and are willing to consider and apply these newly discovered concepts. The legal profession rarely needs to be cautioned to make haste slowly. Even from the preceding brief discussion, it is obvious that with a few exceptions the original rules of law on intoxication and criminal responsibility are basically sound. As further research either proves or disproves some of the theories on alcoholism, the courts, undoubtedly, by case law will make the necessary adjustments to these original rules, whose basic wisdom has been proved by time.

### Driving While Intoxicated

One phase of intoxication and criminal responsibility which demands concentrated study and immediate action is in the field of drunk driving. Regardless of the implications to be drawn from the diagnosis of alcoholism as a disease, the simple need for protection of the public necessitates the application of every possible legal safeguard to prevent intoxicated drivers from operating motor vehicles. From a national viewpoint, 21 out of every 100 drivers involved in fatal accidents in 1957 had been drinking.<sup>43</sup> According to Mr. Vernon Johnson, Traffic Manager of the Cleveland Safety Council, the national statistics are alarming but comparatively moderate as compared to those of Ohio. Dr. Samuel R. Gerber, Cuyahoga County Coroner, reports that in 50% of the fatal accidents in Cuyahoga County in 1957 there was evidence of varying degrees of alcohol ingestion.<sup>44</sup> Obviously, if intoxication plays such an important role in contributing to death on the Ohio highways, some drastic measures must be taken to curtail or at least reduce the incidence of drunk driving.

<sup>42</sup> The appellants produced the testimony of Dr. B. who testified that chronic alcoholism is a disease; that an alcoholic is sick while under the influence of alcohol. He was asked if he based his opinion on the facts that a man has a compulsion to drink and cannot take a drink without afterwards getting drunk, has blackouts, and is mistaken about things that have happened to him. The doctor answered, "Yes, sir, mentally sick."

*Wilder v. State of Oklahoma*, 310 P. 2d 765 (Okla., 1957).

<sup>43</sup> National Safety Council, *Accident Facts* (1957).

<sup>44</sup> Cleveland Safety Council, telephone interview with Mr. Vernon Johnson, Traffic Manager of the Cleveland Safety Council (March 1959).

All states have some form of a statute forbidding driving while intoxicated or under the influence of liquor. In 1953 the Ohio Code was amended to provide that no person who is under the influence of intoxicating liquor, narcotic drugs, or opiates shall operate any vehicle, streetcar, or trackless trolley within the state.<sup>45</sup> Although the statute fails to define the phrase "under the influence of intoxicating liquor" or to fix the degree of influence which the intoxicating liquor must have upon the driver, the Ohio courts have held that this failure does not make the statute unconstitutional.<sup>46</sup>

The statute does raise many questions as to the use of scientific tests and the admissibility of the tests or other forms of evidence to establish the extent of intoxication. For instance, the opinion of a law enforcement officer as to whether a driver was under the influence of intoxicating liquor has been held admissible,<sup>47</sup> as was the admission of a defendant who was in a state of intoxication short of mania that he was the operator of a motor vehicle involved in a collision.<sup>48</sup>

The admissibility of the results of scientific tests such as urinalysis or blood test present a more involved problem. If the defendant voluntarily submits to such a test the courts have consistently held that the results are admissible<sup>49</sup> and it is not even necessary that defendant be advised that the analysis may be used against him.<sup>50</sup> On the other hand, in the event of de-

<sup>45</sup> Ohio Rev. Code, Sec. 4511.19. R. C. Section 4511.99 provides that whoever violates R. C. 4511.19 shall be fined not more than \$500 and imprisoned in the county jail or workhouse not less than three days nor more than six months and no court shall suspend the first three days of any sentence provided for under the statute.

<sup>46</sup> *State v. Titak*, 75 Ohio Abs. 430, 144 N. E. 2d 255 (1955).

<sup>47</sup> "When it appears from the evidence that a law enforcement officer in all probability has had sufficient experience with intoxicated persons to express an opinion as to whether or not a person was under the influence of intoxicating liquor and there was opportunity to observe such person, it is not error for the court to permit such officer to express his opinion to the jury."

*State v. Moore*, 74 Ohio Abs. 116, 139 N. E. 2d 381 (1956).

<sup>48</sup> "In a prosecution for operating a motor vehicle while under the influence of alcohol, an admission by defendant of fact that he was the operator of a motor vehicle involved in a collision, made to arresting officer is competent and material to the cause even though the defendant was in a state of intoxication short of mania, the fact of the intoxication and the fact that the statements were oral merely going to their weight and credibility and not to their competency."

*Middletown v. Dennis*, 67 Ohio Abs. 362, 120 N. E. 2d 903 (1952).

<sup>49</sup> *Columbus v. Thompson*, 55 Ohio Abs. 302, 89 N. E. 2d 604 (1949);  
*Columbus v. Van Meter*, 56 Ohio Abs. 40, 89 N. E. 2d 703 (1949).

<sup>50</sup> *Columbus v. Glenn*, 60 Ohio Abs. 449, 102 N. E. 2d 279 (1950).

fendant's refusal to submit to such tests, the Ohio courts have held that his refusal is subject to testimony and argument; such testimony not being a violation of section 10, Article 1 of the Ohio Constitution pertaining to the privilege against self incrimination.<sup>51</sup>

A 1954 Ohio decision presented the possibilities of additional problems in the enforcement of this statute. Defendant, who was arrested and charged by the Columbus Police Department with violating a city ordinance against operating a motor vehicle while intoxicated, refused to submit to a urinalysis and blood test by the police chemist unless his personal physician was present and conducted the test. The Ohio Supreme Court held that where there was no showing that such physician was unavailable, the refusal is a reasonable one and does not lay the foundation for any inference of an admission of guilt. Under such circumstances it was prejudicial error for the prosecution to offer as evidence the testimony of the police chemist indicating that they were infallible and would disclose the guilt or innocence of one charged with being under the influence of intoxicating liquor.<sup>52</sup>

This reasonable request of the defendant to have tests conducted by his own physician could become a loophole for an accused to delay and thereby lessen his chances of conviction. The Ohio Code provides that a court or magistrate must allow an accused a reasonable time to send for counsel and for that purpose may postpone the examination.<sup>53</sup> Once a defendant was advised to request the service of his own physician in conducting any tests, there could be a lapse in time between the arrest and the taking of the specimen which would have a direct effect on the results of the test. As previously pointed out, alcohol in the blood stream begins to be destroyed by oxidation soon after absorption. If the delay in securing the specimens was very long, the test would not reveal the true alcoholic content. Several states recognize these facts and require that specimens be taken within two hours after arrest to be admissible in evidence.<sup>54</sup>

An immediate solution to this problem could be effected by

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<sup>51</sup> *State v. Gatton*, 60 Ohio App. 192, 20 N. E. 2d 265 (1935);  
*State v. Nutt*, 78 Ohio App. 336, 65 N. E. 2d 675 (1946).

<sup>52</sup> *City of Columbus v. Mullins*, 162 Ohio St. 419, 123 N. E. 2d 422 (1954).

<sup>53</sup> Ohio Rev. Code, Sec. 2935.17. "In Ohio a party charged with a crime has a right to confer privately with his legal adviser at all reasonable times."  
*Snook v. State*, 34 Ohio App. 60, 170 N. E. 444 (1929).

<sup>54</sup> N. Y. Veh. and Tr. L., Art. 5, section 70 (5); Wis. St. Sec. 85.14 (4).

the adoption of the recommendations of the Traffic Committee of the Ohio State Bar Association.<sup>55</sup> Members of this group have suggested that legislation be adopted incorporating the so-called *Implied Consent* law into the granting of drivers' licenses. This means that a person is granted a driver's license with the understanding that he will consent to take a chemical test for intoxication should an officer have reasonable grounds to believe that he was driving while intoxicated. The driver must take the test or lose his license. Since New York first adopted the Implied Consent Law in 1953, three other states have adopted such a law. In 1957 no fewer than 18 states introduced legislation of this type.<sup>56</sup> The passage of an Implied Consent Law would eliminate

<sup>55</sup> Report of the Traffic Committee of the Ohio State Bar Association, 31 Ohio Bar 465 (May 12, 1958).

<sup>56</sup> A proposed draft of the Implied Consent Law, made by the Legal Division of the Traffic Institute, Northwestern University, goes as follows:

1. Any person who drives or operates a motor vehicle in this state shall be deemed to have given his consent to submit to a chemical test of his breath, blood, urine, or saliva for the purpose of determining the alcoholic content of his blood whenever he shall be arrested for any offense involving driving or operating any motor vehicle while under the influence of intoxicating liquor.

2. The test shall be administered at the direction of a police officer having reasonable grounds to believe such person was driving or operating a motor vehicle while under the influence of intoxicating liquor, in accordance with the rules and regulations established by the department of which he is a member.

3. If the person after his arrest refuses to submit to the chemical test when requested to do so, the requesting officer shall cause to be delivered to the Commissioner his sworn report of the refusal, stating that he then had reasonable grounds to believe that the person was driving or operating a motor vehicle while under the influence of intoxicating liquor prior to the arrest. Upon receipt of the report the Commissioner shall suspend without notice the person's license or permit to drive or operate a motor vehicle within this state if such person is a non-resident. Thereafter within (thirty) (sixty) (ninety) days if requested by such person, the Commissioner shall hold a hearing on the issue of reasonableness of the person's refusal to submit to the test and if the Commissioner rules against the person on such issue or such person does not request a hearing within such time, the Commissioner shall revoke such person's license or permit to drive or operate a motor vehicle, or the privilege to drive or operate a motor vehicle within this state if the person is a non-resident, for a period of one year from the date of the alleged offense, or if such a person is a resident without a license or permit to drive or operate a motor vehicle in this state, the Commissioner shall deny to such person the issuance of any such license or permit within one year from the year of the alleged offense.

4. Upon the request of any person submitting to a chemical test under this section, the result of such test shall be made available to him.

5. Only a physician or qualified medical technician acting at the request of a police officer can withdraw blood from any person submitting to a chemical test under this section but this limitation shall not apply to obtaining a specimen of breath, urine, or saliva.

6. Without limiting or affecting any of the preceding provisions of this section, the person submitting to a chemical test hereunder shall be per-

(Continued on next page)



one of the most prolific sources of litigation on drunk driving charges.

Another judicial trend has become evident in cases involving the driving of an automobile while intoxicated. The courts have demonstrated a decided tendency to recognize as facts established by medical science that a certain percentage of alcohol in a person's blood indicates intoxication or influence of alcohol. A scale to measure the degree of intoxication was developed by experts in blood chemistry collaborating with the medical profession and approved by the American Medical Association, American Bar Association, National Safety Council, and the President's Highway Conference.<sup>57</sup> This scale has been adopted in legislation augmenting the judicial trend by creating a presumption of intoxication from the presence of a specified percentage of alcohol in the blood. This scale states that an alcoholic content of under .05% by weight is prima facie evidence that the party is not intoxicated; .06 to .14% is substantial evidence but raises no inference of intoxication, and .15% or higher is prima facie evidence that the party is intoxicated.

The Traffic Committee of the Ohio State Bar also recommends that the Bar Association propose and support legislation of this type which would recognize chemical tests for intoxication and set up prima facie presumptions.<sup>58</sup> At least 23 states now have such a statute. In 1955, an Ohio court in *State v. Titak* stated that

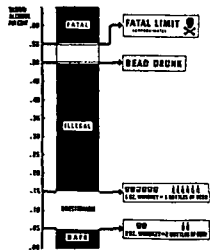
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mitted to have a physician of his own choosing administer a chemical test, if such person so requests, in addition to the one administered at the direction of the police officer.

7. Upon the trial of any action or proceeding arising out of the acts alleged to have been committed by any person while driving or operating a motor vehicle in this state while under the influence of intoxicating liquor, the court may admit evidence of the refusal of such person to submit to a chemical test of his breath, blood, urine, or saliva under the provisions of this section.

31 Ohio Bar 468-70 (May 12, 1958.)

#### <sup>57</sup> Blood Alcohol Levels in Automobile Drivers



Drinking limits for motorists are shown in percentages of alcohol in the blood of a person weighing 150 lb. (68 kg.). Relationship of alcohol levels to the prognosis and to behavior, especially in terms of ability to drive an automobile, is shown.

The figure is reproduced with permission from Hager, R. N., and Hulpieu, H. R.: *Pharmacology of Alcohol*, in *Alcoholism*, edited by G. N. Thompson, Springfield, Ill., Charles C. Thomas, Publisher, 1956, chap. 2, pp. 103-332.

<sup>58</sup> 31 Ohio Bar 468-70 (May 12, 1958).

a general charge which gave these statutory presumptions was not prejudicially erroneous to defendant under any theory that the court had placed itself in the position of the legislature which did not define degrees of intoxication or that the charge failed to state the presumption of innocence of the defendant.<sup>59</sup>

It is apparent that the courts are faced with a serious problem when they try to explain to a jury what constitutes "under the influence of intoxicating liquor." To the average layman this could be interpreted to mean anything from one beer to a fifth of liquor. The guesswork approach which a jury must necessarily take would be eliminated by a legislative act which stipulates that evidence of a certain percent of alcohol in the blood is a *prima facie* presumption of intoxication. The combination of such a statute plus the Implied Consent Law as recommended by the Traffic Committee would provide the law enforcement agencies with a method of prosecuting drunk drivers which is comparatively free of legal loopholes. Obviously the ultimate purpose of a drunk driving statute is to prevent drunk driving. These recommended changes in the present statute would be a step toward accomplishing this purpose, and might prove to be a contributing factor in reducing the alarming number of deaths which result from drunk driving.

### Conclusion

The belated recognition of alcoholism as a disease demands a judicial reappraisal of the legal aspects of drunkenness, one of the symptoms of this mass disease. A brief study discloses the fundamental wisdom of the rules of law on criminal responsibility for intoxication. With a few minor exceptions, such as judicial recognition of alcoholic psychoses other than *delirium tremens*, and the possibilities of there being more actual instances of involuntary drunkenness than the courts have been willing to acknowledge, the basic rules are flexible enough to adjust to the newer medical concepts of alcoholism.

The state of Ohio, with an estimated 274,500 alcoholics, ranks twelfth in the United States in the prevalence of alcoholism.<sup>60</sup> Although 38 states and the District of Columbia provide government financed services covering educational and research work, Ohio is not among this group and is conspicuous in its absence. In an attempt to rectify this situation, the Cleve-

<sup>59</sup> *State v. Titak*, 75 Ohio Abs. 430, 144 N. E. 2d 255 (1955).

<sup>60</sup> Note, *Prevalence of Alcoholism*, 16 Q. J. Stu. Alc. (1955).

land Welfare Federation in February of 1958 endorsed legislation that would provide for extensive research into alcoholism.<sup>61</sup> The Cleveland Center of Alcoholism, under the capable direction of D. Bruce Falkey, is the first non-governmental agency of its kind. With the financial support of individual subscribers and funds from the United Appeal, they are doing a monumental job.<sup>62</sup> Nor can one overestimate the dedicated work of the members of Alcoholics Anonymous whose spiritual guidance and group therapy help to keep alcoholics on a path of sobriety.

It is to be hoped that members of the legal profession will ally themselves with these active groups. Any public health problem which has the effect of increasing or contributing to crime and thereby adding to the congestion of our courts is one which cannot be ignored by the legal profession. Despite the sincere sympathy one might have for the unfortunate victims of this disease, common sense dictates that a realistic legal approach must be taken to protect the general public from the hazards of drunkenness. One of the greatest hazards is that created by drunken driving. Considering Ohio's exceptionally high rate of traffic fatalities connected with intoxication, every possible step must be taken to simplify the effective enforcement of a drunk driving statute. Approval of the recommendations of the Traffic Committee of the Ohio Bar Association would certainly be a step in that direction. Passage of the Implied Consent Law would eliminate the excessive litigation over the issue of consent to scientific tests to determine the degree of intoxication. Amendment of the present statute to include presumptions of intoxication based on the existence of certain percentage of alcohol in the blood stream would give a jury a concrete, understandable scale by which to measure intoxication.

Cleveland Municipal Judge August Pryatel's practice of demanding that drinking drivers attend lectures and movies which demonstrate how excessive drinking can develop into alcoholism is both practical and commendable. Until further research adds to the understanding of this disease, it behooves members of the legal profession to acquire all possible information in this field and to be alert to all possible legal consequences which may be created by alcoholism.

<sup>61</sup> Cleveland Plain Dealer, (February 18, 1958).

<sup>62</sup> Financial Report of Cleveland Center of Alcoholism (1957).