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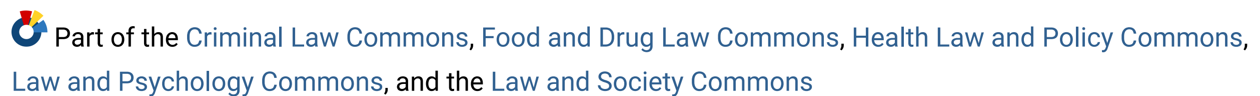
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ALCOHOLISM AND THE LAW

THE NEED FOR DETECTION AND TREATMENT

*Melvin L. Selzer**

THE American public has recently been subjected to a deluge of articles and books on the subject of alcoholism. While these contributions have been filled with valuable information, certain omissions have been noticeable. These omitted facts are of vital significance to any one wanting to gain insight into the broad problem of alcoholism. The first omission is a failure to stress that no one—or almost no one—knows who is alcoholic. This may include the alcoholic himself. It is a point of considerable importance in determining the proper disposition of certain criminal cases.

The second omission is the failure to stress the fact that it is useless to establish voluntary treatment facilities and circulate appealing literature since the alcoholic population usually ignores the facilities or, more likely, figures it is intended to help "some other poor devil." Hence, there is a need for a more realistic approach to the problem of treating the alcoholic. This is as much a legal and legislative problem as it is a medical one.

Failure to appreciate the above often leads to considerable conflict between the psychiatrist and the lawyer—although both may feel that they are acting in the best interests of the individual. In all honesty it must be added that sometimes both parties fail to realize they are dealing with an alcoholic individual.

One source of the difficulty may be the previously noted fact that alcoholics are rarely recognized as such. This may be attributed both to the chronic inebriate's skill at disguising his drinking problem and to the public misconception regarding allegedly typical alcoholic behavior.

A second source may be the confusing and conflicting claims

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surrounding the treatment of alcoholism, particularly the desirability and efficacy of involuntary commitment.

The ability of the alcohol addict to conceal his excessive drinking is well documented. An industrial survey by Henderson and Bacon indicated that alcoholics often hold down responsible jobs.[1] They may present a picture of normalcy and efficiency to everyone coming in contact with them except for the immediate family and a few intimates. They learn to drink quickly and silently with a minimum of activity afterwards so as not to betray themselves by clumsy motions or slurred speech. Driving is usually avoided since this may readily call attention to their inebriety.

In her novel *A Tree Grows in Brooklyn,* Betty Smith captures the essence of the alcoholic's camouflage: "Francie [a young girl] got to know when he [her father] was drinking more than usual. He walked straighter coming home. He walked carefully and slightly sidewise. When he was drunk, he was a quiet man. He didn't brawl, he didn't sing, he didn't grow sentimental. He grew thoughtful. People who didn't know him thought that he was drunk when he was sober because sober, he was full of song and excitement. When he was drunk, strangers looked on him as a quiet, thoughtful man who minded his own business."

The detection of alcoholism has been further complicated because the lay public, due to generations of exposure to a variety of influences ranging from Hollywood films to the sincere efforts of the temperance movement, has come to equate alcoholism with the skid-row derelict. Hence the alcoholic is thought of as a bum, a panhandler who does no work, and an immoral denizen of low dives. This concept may make for interesting movies and grim sermons but is far removed from the truth and has made the problem of coping with alcoholism immeasurably more difficult. In truth the skid-row type of alcoholic comprises less than 10 percent of the total alcoholic population—a population reliably estimated to be in the neighborhood of four and a half millions.[2]

The remaining 90 percent—and this cannot be emphasized enough—are found in all segments of society. Their educational attainment is no different from that of other groups in the general

[1] Henderson and Bacon, "Problem Drinking: The Yale Plan for Business and Industry," 14 QUART. J. STUD. ALC. 247 (1953).

[2] Keller and Efron, "The Prevalence of Alcoholism," 16 QUART. J. STUD. ALC. 619 (1955).

population.[3] The majority are respectable, decent citizens living quietly in our communities and working alongside us, their alcoholism unbeknownst to us. They may be engineers, executives, government officials, housewives, factory hands or nurses. A well known mid-western treatment center for alcoholism once boasted that five of their staff physicians originally entered as alcoholic patients.

Inasmuch as the alcoholic avoids publicizing his drinking problem and is usually careful not to violate the law, he is seldom brought to the lawyer's attention because of his drinking *per se.* However, a minority may get into trouble when their drinking inadvertently leads to behavior that creates a nuisance or worse. These violations can be divided into two broad categories. The first consists of misdemeanors as a result of drunken behavior such as "drunk and disorderly," "simple drunk," and "public nuisance." This arrest group is primarily confined to the skid-row minority referred to previously although by no means exclusively so. They are arrested and jailed with astonishing frequency.[4] A. H. MacCormick, former Commissioner of Corrections for New York City, has pointed out the "futility of dealing with alcoholics in this manner."[5] If anything, punitive jailing serves to perpetuate the alcoholic's drinking pattern.[6]

The second group is of greater interest to the practicing attorney and comprises alcoholics who are arrested for infractions which are not necessarily associated with drinking or alcoholism. Hence the role played by alcohol and the individual's addiction to it may pass unnoticed. This group will be understood better if one realizes that alcoholism is not a disease but a symptom which denotes an underlying psychological disturbance from which relief is sought by drinking. Furthermore, alcohol depresses the higher brain centers, permitting behavior in certain persons that would otherwise be suppressed or at least deferred until better judgment prevailed. It is not surprising then that there are alcoholics who

3 Lemert, "Educational Characteristics of Alcoholics," 12 QUART. J. STUD. ALC. 475 (1951).

4 Utah State Board on Alcoholism. A Study of Arrests for Drunkenness in Salt Lake City. 11 QUART. J. STUD. ALC. 695 (1950).

5 MacCormick, "Penal and Correctional Aspects of the Alcohol Problem," 2 QUART. J. STUD. ALC. 241 (1941).

6 Selzer, "Hostility as a Barrier to Therapy in Alcoholism," 31 PSYCHIAT. QUART. 301 (1957).

act out their psychopathology in an aggressive, sexual, or criminal manner once drink has dissolved their inhibitions. Sober, they may be unable and indeed unwilling to perpetrate the deeds that result in their running afoul of the law. Inebriated they can forget the implications and consequences of their action and the punishment they may later suffer at the hands of society and their own conscience. Since they cannot voluntarily discontinue drinking because of their addiction to alcohol, and their drinking leads to uncontrollable miscreant behavior, the need for treatment of their alcoholism becomes apparent. Anything less would be contributing to a perpetuation of the deviant behavior.

This group may become involved in a variety of offenses. The type of offense may be dictated by such factors as the underlying personality disorder, degree of inebriety, and the presence or absence of organic brain damage. Assaultive behavior, non-support, larceny, and perverse sexual practices are good examples because, although frequently associated with alcoholism, they also occur where alcohol plays no role whatever.

The attorney retained by the alcoholic defendant may be totally unaware of his client's fundamental difficulty. He may get some intimation of an association between alcohol and his client's predicament but understandably minimizes this after reflecting that the man is steadily employed in a responsible capacity, never appears drunk, and is well thought of by his neighbors. If the attorney asks his client about suspected excessive drinking, he will find himself indulgently laughed at or indignantly harangued. The alcoholic will tell him that he may have an occasional drink but his drinking represents no problem; he can take it or leave it! (He omits that he is unable to leave it, has forgotten what life would be like without it and is afraid to find out.)

It is by no means unusual to encounter alcoholics who blandly deny that they drink at all. Others may acknowledge an occasional beer. Twenty years ago Wall made the observation that women alcoholics who averaged over a quart of whiskey a day would reluctantly admit to taking "a rare glass of sherry wine."[7] These evasions may be quite convincing since many alcoholics are themselves persuaded that they have no drinking problem. Naturally this concealment eschews the possibility of discovering

[7] Wall, "A Study of Alcoholism in Women," 93 AM. J. PSYCHIAT. 944 (1937).

the link between the accused's drinking and the alleged offense. The attorney is thus prevented from realizing that his client is ill: an addict unable to stop drinking voluntarily and so unable to repress certain socially unacceptable actions which invariably follow his compulsive drinking.

A case study may emphasize the practical aspects of this frequently encountered but seldom recognized problem.[8]

G.S., a thirty-six-year-old married white male, was arrested in 1955 for exposing himself to two twelve-year-old girls in a local movie house. A routine police check revealed only that G.S. had a record of one previous arrest for "simple assault." The charge had been dropped because of insufficient evidence. G.S. retained counsel and pleaded not guilty. He contended that perhaps he had forgotten to close his trousers after using the lavatory. The girls may have seen his underwear. The girls were young and it was dark in the movie house. The defendant was known as a worthwhile citizen, gainfully employed, a family man and the father of three children. The charge was dismissed. (Up to this point, no one had become aware of the patient's alcohol problem.) He returned to the community and managed to stay out of difficulty for two years. Early in 1957, he was again arrested for exhibiting himself—this time in a parked car near a girls' dormitory. Two days earlier, however, he had been ticketed for drunk driving.

G.S. was ordered to undergo psychiatric evaluation because of the sexual nature of his offense. The drunk driving episode furnished the psychiatrist with the necessary clue to elicit further information establishing the patient's severe and chronic alcoholism. In the first interview the patient was sufficiently reassured to acknowledge that "perhaps" he had exhibited himself—and that he did so only when inebriated. When this was followed by revelation of the patient's alcoholic pattern—including his inability to abstain from excessive drinking for twelve years—commitment was recommended. G.S.'s attorney strove to avoid commitment and suggested that his client be treated by a private psychiatrist or enter a hospital on a voluntary basis. He was invited to discuss the matter with the psychiatrist and was sufficiently impressed with the data to favor commitment to a state hospital as the best course for the ultimate well-being of his client.

[8] The case histories are from the files of the Out-Patient Clinic, Ypsilanti State Hospital, Ypsilanti, Michigan.

Here the arrest for drunk driving was instrumental in uncovering the patient's alcoholism. G.S.'s wife and children could have provided the information if an inquiry had been made. G.S. himself was unable or unwilling to shed any light on the problem because he simply was unable to acknowledge that his drinking represented a problem. In fact, he had often told himself that one of these days he was going to stop drinking—not only to prove to himself that he could, but because he was dimly aware that his drinking was responsible for releasing certain impulses that might be troublesome. Like any addict, however, he was unable to stop.

A careful psychiatric interview, certain physical findings, and interviews with the family and friends often disclose both the individual's alcoholism and the fact that he commits his transgressions only when drinking. The family doctor can often confirm the diagnosis from his contact with the alcoholic during the painful withdrawal periods or from contact with the alcoholic's harassed family. Numerous details enable the clinically trained observer to make a diagnosis of alcoholism. In an enlightened court, this should make treatment rather than punishment paramount.

Two additional cases will be described to emphasize both the causal relationship between intractable alcoholism and certain criminal offenses, as well as the difficulty in recognizing the contributory alcoholism.

H.S., a 28-year-old prostitute, was originally brought to the attention of local law enforcement officials by the County Health Officer. The police repeatedly jailed H.S., but it resulted in no appreciable change in her behavior. She continued her promiscuous conduct, cohabiting with derelict men and occasionally plying her trade. The probate judge finally ordered her seen by a psychiatrist.

The psychiatric interview revealed a rather pathetic looking, unkempt young woman of limited intelligence. Orphaned at an early age, she had drifted from household to household as a domestic. She married at 16, in order to escape her cheerless existence, bore a son and lived contentedly for two years after which time her husband was killed in an industrial accident. Two subsequent marriages were ill-fated in that the men were brutal, often drunk, and always unreliable. The patient drifted downward during the ensuing years and the court finally was forced to take her son away from her.

Early in the psychiatric interview the patient denied that she drank at all. It soon became evident, however, that she was afraid

of being committed, although this possibility had not been brought up. Questioning revealed that two of the men she had lived with in recent months had been committed on alcoholic orders. The patient then volunteered the information that these men were "Winos." The psychiatrist casually pointed out that she too had probably imbibed when with them. The patient began to cry and said, "I been trying to get off that stuff." She then confided that she consumed from three to four quarts of wine daily, laced with whiskey when she could afford it. Hence her need to obtain alcohol was the underlying reason for her prostitution and her cohabitation with other alcoholics.

Commitment was recommended and accomplished in short order. There can be little doubt that once this patient's alcoholism is brought under control, she will no longer be a community problem.

A third case involved a charge of "larceny from a building." D.B., a 32-year-old father of two children, was employed as a shipping clerk for a large mail-order house. On his way home from work one evening, he had motor difficulty, parked his car and hitchhiked home. A state trooper gave the car a routine check and discovered a box containing a large number of wrist watches in the rear seat. Investigation revealed that D.B. had literally filched hundreds of dollars worth of material from his place of employment. Two months previously he had stolen a cash payroll of over $1,000.

The police noted that D.B. made no effort to cash in on the stolen goods and had spent only a few hundred dollars of the payroll money. He told the police that he stole to prove to the others that he could. He was referred for pre-sentence psychiatric evaluation. Anamnesis revealed he had served with distinction in the Armed Forces during World War II. Following discharge he had begun to drink gradually increasing quantities of whiskey. He began his last job three years before and soon realized that a few employees were engaged in petty pilfering. Basically a timid and inadequate individual he had always desired to prove himself; he began to have fantasies of impressing the gang at work by doing some real plundering as contrasted to their trivial purloining.

One year after D.B. started on this job, another alcohol addict hired in and would arrive at work each morning carrying a pint. At this point, D.B. was consuming up to a fifth of whiskey a day but only in the evenings. He readily joined his new friend in

morning drinking and usually one of them would bring a second pint in during the day. His previous inhibitions dissolved by the whiskey, D.B. suddenly had no difficulty stealing. He never stole when sober; in fact he hated sobriety by then because of the constant fear of detection. Commitment was recommended since it was felt that arrest of the alcoholism would put an end to the stealing.

Having dwelt at some length on alcoholism and criminality, it is necessary to reiterate that the vast majority of alcoholics are law-abiding. The minority dealt with here are prominent because they present a major problem to the courts.

Nor are all persons who drink, lose their inhibitions, and commit a crime, alcoholic. If the individual is not addicted to alcohol (an uncontrollable craving with which he is unable to cope), he is not an alcoholic.

Treatment. Although there is now general agreement that alcoholism is a manifestation of illness, there remains considerable controversy regarding treatment. Before discussing treatment, it would be well to emphasize why alcoholics so urgently require treatment. The problem of a higher crime rate, particularly repetitive offenses, has been alluded to. The toll in broken homes, wrecked marriages and blighted lives need only be mentioned here. The cost to the community runs into many millions of dollars annually.[9]

One neglected consideration, however, has been that alcoholism is malignant. Its malignancy is neither as swift nor as dramatic as cancer but it has the advantage of an earlier start. Recent studies indicate that a high percentage (65%) of alcoholics die during their middle years (35-59 years) from illnesses and injuries resulting from or contributed to by their alcoholism.[10] Stated another way it can be said that many of these unfortunates would live an additional 20 to 25 years if cured of their addiction.

Permitting an alcoholic to remain unmolested in his excessive drinking—whether or not he creates a nuisance or breaks laws—is tantamount to permitting an insidious form of suicide.

Until recently it was thought that involuntary treatment, par-

[9] Wortis and Pfeffer, "The Management of Alcoholism," VETERANS ADMINISTRATION TECH. BULL., TB 10-67, p. 2 (1950).

[10] Jellinek, "'Death from Alcoholism' in the United States in 1940," 3 QUART. J. STUD. ALC. 465 (1942).

ticularly enforced institutionalization, was of little value because patients lacked the necessary motivation to get well and resented the obligatory incarceration. Others felt that rehabilitation obtained this way was of limited value because the patients did not have sufficient insight into their underlying psychological problems.[11] Unfortunately no statistics were furnished to substantiate these assertions. Since most alcoholics either deny their alcoholism or refuse to seek help for their drinking problems, the opposition to involuntary treatment resulted in a huge "no-treatment" program. As late as 1944 there were no public institutions in the United States devoted exclusively to the treatment of alcoholism.[12]

Fortunately, truth as a scientific entity has a way of ultimately manifesting itself despite the barriers humanity sometimes places in its way. Psychiatrists and public officials are gradually acknowledging the futility of efforts to rehabilitate alcoholics without some method of enforcing an initial period of abstinence and therapy. A poll of California psychiatrists showed 63 percent favoring a law to commit alcoholics.[13] This treatment approach has received additional impetus from research at two state mental hospitals. The first of these was at a North Carolina State Hospital that reported between 25 and 37 percent of a group of 100 alcoholics rehabilitated.[14] A later study of 98 patients at the Ypsilanti State Hospital in Michigan showed that 41 percent of the 83 patients who were successfully followed up five years later had been rehabilitated.[15]

Both follow-up studies emphasized that the alcoholics received very little specific treatment other than supportive psychotherapy, reassurance, medical treatment if they were physically ill, an opportunity to keep occupied, and a period of time to discover that sobriety was not a threat to their existence. (A period of sobriety is essential for these individuals to learn that they can handle their anxieties without alcohol—an important fact they may never discover if a bottle can be readily obtained, or if they can desert the

[11] Durfee, "Certain Aspects of Problem Drinking," 30 R.I. MED. J. 651 (1947).

[12] Corwin and Cunningham, "Institutional Facilities for the Treatment of Alcoholism," 5 QUART. J. STUD. ALC. 9 (1944).

[13] Hayman, "Current Attitudes to Alcoholism of Psychiatrists in Southern California," 112 AM. J. PSYCHIAT. 485 (1956).

[14] Cowen, "A Six-Year Follow-up of a Series of Committed Alcoholics," 15 QUART. J. STUD. ALC. 413 (1954).

[15] Selzer and Holloway, "A Follow-up of Alcoholics Committed to a State Hospital," 18 QUART. J. STUD. ALC. 98 (1957).

hospital at will.) It is anticipated that hospitals with more specific programs for the treatment of alcoholism will have better rehabilitation rates.[16] At the present time very few states have this type of program.

One objection to involuntary treatment must be dealt with in greater detail. The objection is that if an alcoholic stops drinking without insight into his emotional problems gained through psychotherapeutic means, he will continue to have other major difficulties of an emotional nature. Seemingly, this is a reasonable conclusion—but it is not significantly true as has been demonstrated by the success of Alcoholics Anonymous. Assuming this may happen, however, it ignores the fact that alcoholism is deadly. Cure or rehabilitation in this context are relative concepts and little is to be gained by insisting on ideal cures of a few while permitting many to die slowly. This sort of argument is a variant of the old saw that "the operation was a great success but the patient died." It is better to risk having a somewhat maladjusted human being after rehabilitation than to bury a dead one.

Summary and Conclusion

The alcoholic usually manages to conceal his (or her) alcoholism from all except the immediate family. This is facilitated by the almost invariable denial (to himself and others) that he has an alcohol problem and by the widely held but mistaken belief that alcoholics behave in an overtly drunken manner all or most of the time.

Most alcoholics are unobtrusive and law-abiding. A small percentage may compulsively commit aggressive, irresponsible or criminal sexual acts when intoxicated. These offenses may run to the tens of thousands annually. The usual picture is one wherein the alcoholic is powerless to refrain from drinking and once intoxicated, he has a compulsion to act out in a manner that results in a serious breach of the law.

16 Andersen, "Report of the Minnesota Interim Commission on Alcoholism," 14 QUART. J. STUD. ALC. 340 (1953); West and Swegan, "An Approach to Alcoholism in the Military Service," 112 AM. J. PSYCHIAT. 1004 (1956).

The defendant's alcoholism often escapes notice, particularly since the offenses committed by the alcoholic are not essentially different from offenses perpetrated by others. Even when the court recognizes that intoxication was a factor, the possibility of an addiction to alcohol may be overlooked. Thus an alcoholic may be placed on probation or given a suspended sentence. Untreated he cannot refrain from drinking—and may repeat the original transgression or some variant of it. Similarly, jail sentences, warnings, and admonitions will not stop the drinking—nor the anti-social behavior if this is associated with his inevitable intoxication. The need for recognition of the illness and its treatment is obvious.

Lawyers, by virtue of their training and the traditions of their calling, rightfully look upon themselves as the guardians of their client's freedom. However, there is a growing body of evidence to indicate that the treatment of alcoholism is best carried out with an initial enforced period of abstinence in a closed facility. This is necessary because most alcoholics feel that they have no alcohol problem and hence require no treatment. They will assure all and sundry of their ability to abstain—and then return to continuous inebriety at the first opportunity.

Alcoholism is malignant in that it may substantially shorten the alcoholic's life span.

In general state laws regarding commitment for uncomplicated alcoholism are inadequate or non-existent. Many states still require evidence of psychosis before committing alcoholics—a rather archaic approach since it implies that only far advanced cases will be considered for treatment. In states where the commitment laws are more inclusive, the courts tend to commit only persons who are called to the court's attention by their overtly obnoxious behavior. Without enforced commitment and treatment, it is safe to say that the bulk of the alcoholic population will remain alcoholic most or all of their shortened lives.[17]

Although treatment of the individual alcoholic has been stressed in the foregoing, it should not be lost sight of that alcoholism is a *mass* disease, involving millions of addicts. This is of epidemiological importance inasmuch as no mass disease has ever been really conquered by treating individual cases. As with all mass

[17] Lemere, "What Happens to Alcoholics," 109 AM. J. PSYCHIAT. 674 (1953).

diseases, prevention—preceded by the discovery of causative factors —is the best approach to a long range solution of the alcohol problem.[18]

[18] 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 the New York State Mental Health Commission) (1956).