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Excuses for Intoxicated Killers

By Mitchell Keiter

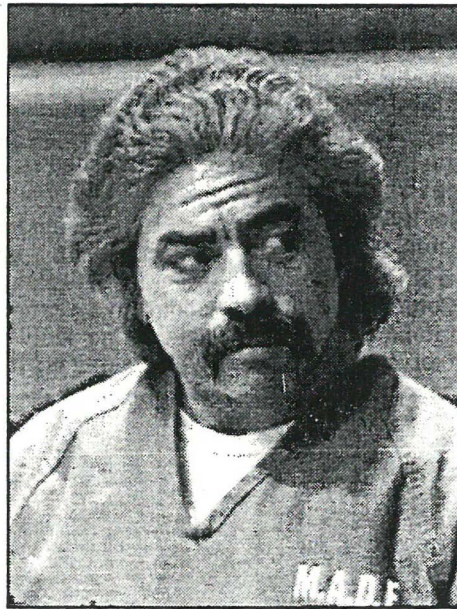
IT COMES as no surprise that Richard Allen Davis allegedly consumed marijuana, alcohol and possibly PCP before he abducted Polly Klaas. After all, most suspects arrested for murder test positive for illegal drugs. In 1989, more killers were intoxicated (by alcohol or drugs) during a homicide than used a firearm to commit it.

But it may surprise people that the very intoxication that California law recognizes as a crime may also serve as an excuse for murder or other serious crimes. California should abolish this intoxication defense. Excusing criminals because of self-induced intoxication is like excusing an orphan for killing his parents.

California is the right place to raise the defense; our policy toward intoxicated killers is the second most lenient nationwide. In 1989, Robert Webber consumed an incapacitating quantity of methamphetamine and fatally shot a stranger five times in the head. The California Court of Appeal reduced Webber's murder conviction to involuntary manslaughter (an effective sentence of 12 to 24 months) because the trial judge had not instructed the jury that intoxication could be a defense for murder.

These statistics do not include drunk-driving homicides, which are punished primarily as a separate crime. California law distinguishes between a driver who "accidentally" kills because alcohol has dulled his ability to brake and an individual who intentionally decapitate a neighbor while hallucinating that his head was a grapefruit.

Because of piecemeal legislative reform, the driver is punished more than twice as severely as the decapitator. Ac-



BY ASSOCIATED PRESS

Richard Allen Davis

tually, intoxication is more likely to be a factor in homicides involving conventional weapons than in auto fatalities.

The intoxication defense is a perfect example of how the law has shifted its focus from victims to criminals. In the 19th century, the law barred intoxication evidence from reducing a murderer's guilt. The rule protected human life by deterring the condition that so frequently led to violence. Today, California law focuses on the subjective intent of the killer. Where there is no intent, there is no murder, the deceased notwithstanding.

Causing this trend is the erosion of the social contract between the individual and the community. California has diluted what then-New Hampshire Su-

preme Court Justice David Souter described as the responsibility of a person "to stay sober if his intoxication will jeopardize the lives and safety of others." Instead, the state protects the individual's right to evade punishment for the unintended (but foreseeable) consequences of his acts. The result is a qualified right to enjoy a drug-induced stupor — and walk away from consequences.

But the primary role of criminal law is to protect the innocent from harm, not to protect the guilty from punishment. Society should not condone the menace of extreme intoxication by shielding those who create it from the consequences of their acts.

"Intoxicated homicides" are not only more preventable than intentional ones, they are more dangerous. Unlike a planned murder — which targets a single, specific victim — all of society is vulnerable to the random sprees of intoxicated killers.

Astonishingly, current California law punishes possessing certain substances more severely than killing under their influence. This policy undermines personal responsibility by blaming the drug more than the criminal. It invites Richard Allen Davis to shift the blame.

In 1969, the California Supreme Court said the intoxication defense serves as a "compromise between the conflicting feelings of sympathy and reprobation for the intoxicated offender." No one who consumes an incapacitating quantity of methamphetamine and then shoots a man in the head five times deserves sympathy. Our sympathy belongs with the victims of such slaughter. With more than 10,000 innocent lives taken each year by intoxicated killers, it is no time for compromise.

Mitchell Keiter is a state prosecutor.

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