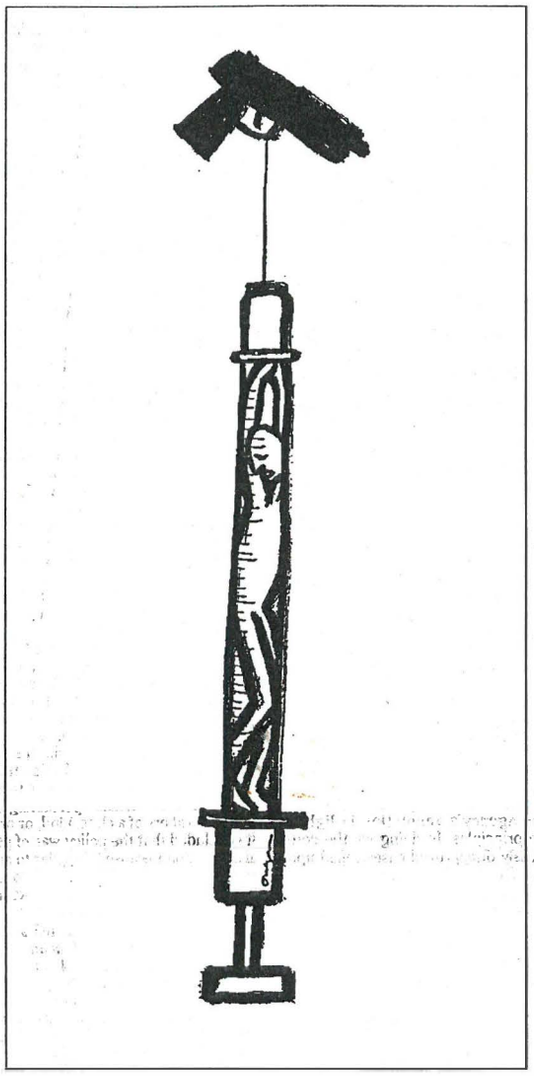
# The Self-Induced Excuse

## Killers Using Intoxicants Should Still Be Accountable For Their Acts

By Mitchell Kelter



Ten years ago last week, Robert Webber fatally shot Dean Zacharis five times in the head. Webber's defense was that he had consumed an excessive amount of methamphetamine and amphetamines. As a result, he believed Zacharis was his father-in-law and was about to kill him. Because the trial court failed to instruct the jury that such intoxication could be a defense to murder or voluntary manslaughter, the California Court of Appeal reduced Webber's conviction to involuntary manslaughter, punishable by only two to four years in prison. *People v. Webber*, 228 Cal.App.3d 1146 (1991).

Should accused killers be allowed to present evidence of their self-induced intoxication to support their claims of "imperfect" self-defense, in which an actual but unreasonable belief in the need to defend oneself reduces what would otherwise be murder to manslaughter? Although some courts continue to admit this evidence, presenting a defendant's intoxication as a defense to murder defies both legislative intent and sound policy.

California traditionally deemed intoxication evidence admissible only to show a defendant lacked premeditation, deliberation or a specific intent to kill, elements of first-degree but not second-degree murder. Underlying this rule was the notion that "cast[ing] off the restraints of reason and conscience" was itself proof of the "malice" element of murder. Such unintended homicides, however, belonged in a lower grade of murder, which was not punishable by death. *People u Blake*, 65 Cal. 275, 277-78 (1884).

This rule was changed by Supreme Court decisions, which held that the Legislature intended intoxication to be a defense to not only express malice (intent to kill), but also implied malice (a conscious disregard for human life). *People u Whitfield*, 7 Cal.4th 437 (1994). The Legislature responded to *Whitfield* by amending Penal Code Section 22 to restore the traditional rule: Intoxication could be a defense to crimes requiring a specific intent (i.e., first-degree murder), but not to second-degree murder, which requires only recklessness.

California thus embraced the position of the Model Penal Code, federal courts and the majority of states. "[T]he element of recklessness itself — defined as conscious disregard of a substantial risk — encompasses the risks created by ... getting [intoxicated]." *People u Register*, 457 N.E.2d 704, 709 (N.Y. 1983).

Permitting intoxication to support a showing of imperfect self-defense not only undermines the legislative policy that intoxication is inadmissible as a defense to murder, it also makes the defense easier to prove than ever. Before, to escape a murder conviction, a defendant needed to show he was so intoxicated that he did not know what he was doing. Through imperfect self-defense, he need show only that he was especially susceptible to unreasonable fear and paranoia, which drugs such as methamphetamine usually produce.

Advocates of the defense contend the belief in the need for self-defense in "imperfect" cases is subjective, and, by definition, unreasonable. (A reasonable belief is a complete defense to murder and manslaughter.) Accordingly, why should it matter if the unreasonable belief is caused (partially or fully) by intoxication, as opposed to some other factor?

The special exclusion of intoxication is justified both on moral and utilitarian grounds. A defendant who voluntarily creates the condition that causes her to act unreasonably is more blameworthy than one whose inability to evaluate circumstances reasonably is due to lack of intelligence or another factor beyond her control. *People u Langworthy*, 331 N.W.2d 171, 179-80 (Mich. 1982). This accords with the general rule that the defenses of self-defense, duress, necessity, provocation and extreme emotional disturbance are not available to defendants who culpably create the conditions that require them to commit an otherwise excusable harm.

Provocation reduces a murder to manslaughter when it is adequate to cause a reasonable person, not an inebriate, to lose self-control. *United States u Frady*, 456 U.S. 152, 170 n.18 (1982); *Bishop u United States*, 107 F.2d 297 (D.C. Cir. 1939). The truly reasonable person, of course, does not kill under provocation or imperfect self-defense. The test is, rather, whether the killing is objectively sympathetic enough to warrant mitigation to manslaughter. Because intoxication increases the likelihood of one's killing in response to provocation or mistake, it cannot support mitigation.

Furthermore, the law can more easily deter stuporousness than stupidity. Holding intoxicated killers accountable for their acts provides double deterrence: It deters individuals from becoming grossly intoxicated and encourages those who use intoxicants to ensure any weapons are inaccessible before they do.

Of course, the law could deter unreasonable mistakes by eliminating the imperfect self-defense doctrine altogether, and considering as murder all unreasonable exercises of deadly force.

Such a rule, however, could deter even those individuals whose use of force would be justified, as it is difficult to determine quickly the extent of danger one faces. If the possibility of murder charges deters some people from validly defending themselves, the result could be more injuries or deaths to innocent victims. No such harms would result from "overdeterring" intoxication.

Such deterrence is desperately needed. Many violent crimes are committed under the influence of alcohol or drugs. Intoxication is a more common factor in shootings and stabbings than in traffic fatalities.

The law cannot prevent every homicide, in light of the myriad motives that underlie them. But, as it has with traffic fatalities, society may save lives by recognizing that the one factor that has so frequently caused needless deaths cannot serve to excuse them.

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