Task Force Report

ALCOHOL AND THE CRIMINAL JUSTICE SYSTEM

June 1969

PENNSYLVANIA CRIME COMMISSION
Office of the Attorney General
Commonwealth of Pennsylvania

Just listen to the law-enforcement people across our land. They will tell you that the real problem with fighting crime today is that all Americans have not been sufficiently aroused to win the war against the criminals. There must be an informed public with the courage to help our dedicated men in the police, courts, and corrections.

Governor Raymond P. Shafer
February 8, 1968

FOREWORD

This report, "Alcohol and the Criminal Justice System", has been prepared by the Pennsylvania Crime Commission in order to present the impact of the use of alcohol on Pennsylvania's criminal justice system.

The Pennsylvania Crime Commission was originally established by an Executive Order of Governor Shafer on March 27, 1967. This Commission consisted of 20 outstanding Pennsylvanians appointed by the Governor. Attorney General William C. Sennett was designated as Chairman.

The Commission was charged with inquiring into the causes of crime and delinquency in Pennsylvania and into the adequacy of law enforcement and the administration of justice; and with making such studies and conducting such hearings as would be appropriate for accomplishing this purpose. In addition, the Commission was empowered to make recommendations for actions which would improve the criminal justice system of Pennsylvania. Finally, the Commission was charged with submitting a report to the Governor regarding its findings. Upon submission of this report, the Commission would be dissolved.

The original Commission recommended that a new, permanent Crime Commission be established. In July 1968, the Legislature created a permanent Pennsylvania Crime Commission as a departmental administrative commission in the Department of Justice. Attorney General Sennett was again appointed as Chairman of this five-member Commission.

The Legislation establishing the new Crime Commission authorized it to

1. Inquire into the causes of crime and delinquency;
2. Develop standards and make recommendations for actions to prevent, reduce, and control crime;
3. Conduct continued research and planning to improve the quality of criminal justice in Pennsylvania;
4. Investigate all activities of organized crime, as well as other serious crimes in Pennsylvania; and
5. Require the attendance and testimony of witnesses and the production of documentary evidence relative to any investigation which the commission might conduct in accordance with the powers given it.

Governor Shafer's Executive Order of July 31, 1968 designates the new Crime Commission as the State's official comprehensive law-enforcement planning agency. The Pennsylvania Crime Commission is responsible for initiating, administering, coordinating, and implementing requests for federal grants under both the Omnibus Crime Control and Safe Streets Act of 1968, and the Juvenile Delinquency Prevention and Control Act of 1968.

The problem of crime in the United States and Pennsylvania is not new. It has existed for decade after decade. But we have taken the position that, to effectively counterattack this menace, we must first know its extent and true nature.

We want to inform the people of the dimensions of crime and the methods of combating and reducing it. An aware public is perhaps the most vital weapon in our common battle.

Crime and violence are nationwide problems that do not recognize race, financial status, or political affiliation. Therefore, this national and state problem must be faced and attacked by all Pennsylvanians, working in concert.

William C. Sennett
Attorney General

COMMONWEALTH OF PENNSYLVANIA

OFFICE OF THE ATTORNEY GENERAL
PENNSYLVANIA CRIME COMMISSION
HARRISBURG, PA. 17120

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The Honorable Raymond P. Shafer
Governor, Commonwealth of Pennsylvania
Harrisburg, Pennsylvania

Dear Governor Shafer:

In accordance with your directive of March 27, 1967, which establishes the Pennsylvania Crime Commission, we respectfully submit the following report as a result of our study of crime and its control in the Commonwealth. During the past 21 months, the Commission has received and studied testimony from 250 leading members of law enforcement, courts, corrections, and academic and technical circles, all of whom are primarily concerned with criminal justice. In addition, the Commission staff has studied literature and statistics and analyzed all available information in its attempt to assist the Task Forces of the Commission and to develop new concepts.

This Task Force Report "Alcohol and the Criminal Justice System" is the third report of the Pennsylvania Crime Commission and will be followed by others on Correction, Courts, Police, Juvenile Delinquency, Narcotics, Organized Crime and Crime in the City.

Respectfully,

William C. Sennett
Attorney General and Chairman

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* *The Original Commission was appointed by Governor Shafer in June of 1967 and served until September of 1968 when the five-member Commission was established by the Legislature.*

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TABLE OF CONTENTS

LIST OF ILLUSTRATIONS

ALCOHOL AND THE CRIMINAL JUSTICE SYSTEM

ALCOHOL AND SOCIETY

The untimely or excessive consumption of alcoholic beverages creates many problems in society. The influence of alcohol in accidents, crime, delinquency, and wasted human lives is well established. However, the problems are not with alcohol itself, for the organic chemical alcohol existed on earth long before the arrival of man.

Nor are the problems merely of usage, for man has consumed fermented beverages from the time he began to record his history. Instead, the problems lie in the abuses associated with consuming alcohol--abuses by many persons in many settings, drinking for many reasons.

In the past, the problems arising from drinking alcohol have long been defined as crimes and assigned to the criminal justice system. We are now aware that the police courts, and correctional institutions have been unable to influence the behavior of those with alcohol problems, and that there are other agencies better suited to treating these problems.

Yet there remain certain abuses of alcohol that require legal treatment. The time has come for a reappraisal and a sorting out of the problems of drinking. The health problems have to be separated from the criminal problems for two reasons: they are overloading the criminal justice system and, most important, they are not being solved by present methods.

YOUTH AND THE USE OF ALCOHOL

Recent surveys have disclosed that "as many as 50 to 85 percent of high school students, depending on the area, say they drink at least occasionally"[1]. The percentages seem surprisingly high. But other research shows that the adult pattern in any community is the best single indicator

of the teenage drinking pattern in the same community.[2] Since, on a nationwide average, about 68 percent of all American adults drink at least occasionally,[3] abstention by all teenagers from drinking is neither a fact nor a realistic expectation.

There are, of course, many interrelated reasons for teenage drinking or teenage abstention.[4] Adult drinking practices are a factor. The attitudes and wishes of parents, other adults, schools, and churches influence drinking patterns. The influence of his peers on a teenager is a strong pressure. The association of alcohol with glamour, sex, success, or prestige is a factor. In the broadest sense, anything that affects the attitude of a teenager can influence his decision on whether or not to drink.

The real issue in teenage drinking is not *how many* youngsters drink, but *how* they drink. The concern must be with controlling the drinking patterns where problems may arise. Complete abstention is an oversimplified and unworkable means of control. Unqualified permission to drink is not a solution, either.

Perhaps the greatest problem incident to teenage drinking centers on the use of the automobile. The teenager often becomes tempted to use alcohol at the same age that he qualifies for a driver's license. The tendency among young people toward excessive use of new freedoms, together with their inexperience and ignorance in the use and effects of cars and alcohol, combine to create a real danger. In an increasingly mobile society there is therefore a strong justification for limiting the access of juveniles to intoxicants by prohibiting their sale to minors.[5]

Prohibition of sales is also justified by the desire to keep juveniles out of bars and taprooms. Time spent in such places distracts the young from involvement in school, home, athletics, and other activities that are important in the development of an adolescent into a mature adult. One method by which Pennsylvania liquor laws control teenage drinking is punishment of the seller.[6]

The other major thrust of laws against juvenile drinking is to declare unlawful the purchase, attempt to purchase, consumption, possession,

or transportation of alcoholic beverages by minors under 21 within the state.[7] The punishment includes fines of from $25 to $100, plus possible imprisonment. This law is designed to punish any minor who drinks, and thereby to deter as much drinking as possible. Despite this intention, many--perhaps most--high school students drink at least occasionally.

A growing concern among many educators and parents is that the young are drinking at increasingly earlier ages. As the age for drinking decreases, so do the attendant maturity and knowledge for coping with the effects of alcohol. The real concern is not merely that the young are drinking, but that they are practicing dangerous drinking habits and developing unhealthy attitudes toward drinking. Drinking in cars, drinking to get drunk, drinking for status, and drinking to rebel are habits as undesirable for youth as for adults.

The problem is to instill a sensible attitude toward alcohol among the young. The present approach of prohibiting all use and punishing users does not appear to be deterring teenagers from drinking. Labeling the practice as criminally wrong causes, in the view of many, disrespect for adult laws and thus prevents the development of a mature attitude toward the use of alcohol.

An alternative approach to the problem of the youthful drinker, presented by the critics of the punitive approach, is the use of education[4] on safety in drinking. Currently many children learn about safe drinking from their parents at home, or within their particular community. Children, especially teenagers, are responsive to meaningful alcohol education since drinking is a very relevant social issue to them.

Instead of having to pay a fine, a minor in violation of liquor laws could be required to attend a course on alcohol and alcoholism, in the way that vehicle-code violators are encouraged to take courses in safe driving. Alternatively, alcohol education could be uniformly given to all young people through a mandatory high school course.

The success of an education approach depends upon the communication of certain principles to the teenagers. Some of the principles that the

experts consider crucial for a mature attitude toward drinking are (1) that it is not essential to drink; (2) that excessive drinking does not indicate adult status, virility, or masculinity; (3) that uncontrolled drinking is an illness; and (4) that safe drinking depends on specific physiological as well as psychosocial factors. It is important that "alcohol education" not be restricted to "alcoholism education".[8]

These concepts become quite useless unless they are effectively communicated to the audience. Since the young already know of the widespread use of alcohol, they would not be responsive to a dogmatic lecture on its evils. Scare techniques are also unlikely to reach the audience. Communication might better be established by involving teenagers in the structuring of a course centered on the issue of their reasons for drinking. Their involvement in the learning process might also give teachers a good understanding of teenage drinking and an understanding of how to control it.

The Commission recommends: *There should be inquiry into new approaches, such as education, to instill mature attitudes in youth toward the use and abuse of alcohol. These new approaches should augment the law-enforcement approach in order to diminish most effectively the problems of drinking by the young.*

ALCOHOL AND THE DRIVING OF CARS

The short-range effects of alcohol consumption can be both beneficial and harmful. To many persons alcohol has value as a sedative, a medicine, a nutritional food, a reducer of tension, or a means of easing social interaction.[9] Such uses of alcohol are considered beneficial when the drinking has been conducted at the right time in a proper setting. The same amount of consumption at another time and place can result in disaster.

For example, moderate consumption at home before bedtime can induce needed sleep, while the same amount of consumption before driving or before a business appointment can cause an accident or an unproductive interview.

The effects of alcohol depend upon many factors: circumstances of use (such as time and place); the drinking experience, personality, and psychology of the user; the dosage per body weight; and the rate of absorption into and excretion from the blood.[10] To be able to avoid the ill effects of drinking, the user must appreciate these factors.

The effect of alcohol on the ability to operate an automobile has been well researched. The conclusion of all experts is that the drinking driver represents a great danger to himself, his passengers, other travelers, and pedestrians. The Injury Control Program of the Public Health Service estimates that alcohol contributes to, or is associated with, 50 percent of all fatal car accidents.[11] A 1966 California study of drinking among victims of fatal accidents found that almost 60 percent of the dead drivers who were responsible for the accidents had been drinking.[12]

Recent pilot studies in Pennsylvania, conducted by the State Police, indicated that significant amounts of alcohol were present in the blood of more than half of those who died in traffic accidents. Since annual traffic deaths in Pennsylvania total about 2,400, it is reasonable to estimate that 1,200 lives are lost each year in accidents in which alcohol is an important factor. (By comparison, there were 443 reported murders in Pennsylvania in 1967.)

The chance of dying in an alcohol-related traffic accident is roughly three times as great as the chance of being murdered. When the amount of personal injury and the cost of property damages are added to this waste of human life, the dimensions of the drinking-driver problem become enormous.

The drinking driver is a poor driver because alcohol impairs his performance and reduces his judgment capacity. The concentration of alcohol in the blood is the indicator most clearly associated with the effects of alcohol on driving abilities.

Impairment of driving performance occurs in most people when the alcohol concentration in the blood reaches 0.05 percent. At the 0.15-percent level, coordination and reflexes are impaired to the extent that the driver is performing at a level estimated at 30 percent below his

normal, sober driving ability.[13] This indicates that a drinking driver becomes most dangerous in those emergency situations when he needs his full driving abilities to avoid an accident.

The concentration of alcohol in the blood or the degree of drunkenness depends on several factors. The amount of alcohol consumed is one factor but not the only one. Body weight is another factor. The speed at which alcohol is absorbed into the bloodstream through the stomach and the small intestine is a third important criterion. The rate of absorption depends upon several factors[14]:

1. As the alcohol concentration (proof) of the beverage increases, so does the rate of absorption. Thus, with two identical quantities of alcohol, a 100-proof drink produces a higher blood-alcohol level than one of 80 proof. Another point of view: the greater the amount of nonalcoholic chemicals in the beverage, the slower is the absorption of alcohol.
2. If one eats while he drinks or drinks on a full stomach, the rate of absorption is slower than if he drinks on an empty stomach.
3. The rate of absorption increases with the speed of drinking.

The worst combination of the preceding factors would be found in a lightweight person drinking a large quantity of straight whiskey in a short time on an empty stomach. Such a drinker would be incapable of driving safely.

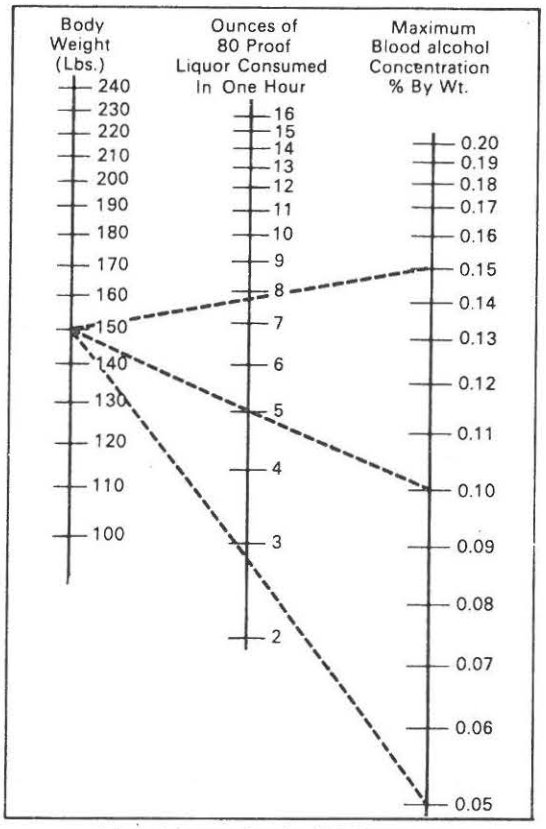
Figure 1 shows how body weight, liquor consumption, and blood-alcohol concentration are related. It can serve as a rough guide in warning the drinker when he is in danger of becoming legally intoxicated and an unsafe driver.

For example, a 150-pound person drinking on an empty stomach will reach a blood-alcohol concentration of 0.10 percent after consuming approximately 5 ounces of 80-proof liquor. He should not drive. If he does drive, has an accident, and has a blood sample taken by the police, he is likely to be convicted of drunken driving with a mandatory one-year revocation of his license. (Pennsylvania law presumes a driver to be intoxicated if his blood alcohol concentration is 0.10 percent or more.)

ESTIMATED AMOUNT OF 80 PROOF LIQUOR NEEDED TO REACH APPROXIMATE GIVEN LEVELS OF ALCOHOL IN THE BLOOD

"EMPTY STOMACH"

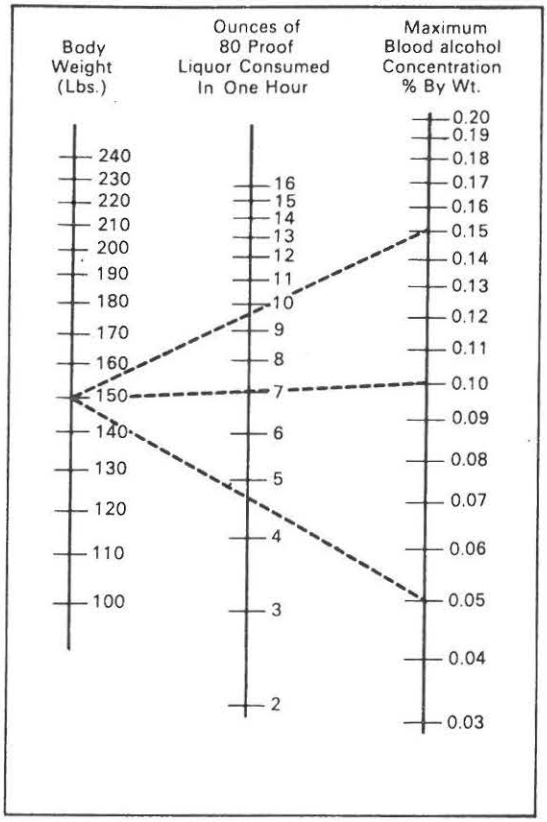
DURING A ONE-HOUR PERIOD* WITH LITTLE OR NO FOOD INTAKE PRIOR TO DRINKING



Adapted from a chart by U.S. Department of Health, Education and Welfare

"FULL STOMACH"

DURING A ONE-HOUR PERIOD* OCCURRING BETWEEN ONE AND TWO HOURS AFTER AN AVERAGE MEAL



Adapted from a chart by Royal Canadian Mounted Police

The examples above show the approximate *average* amount of 80 proof liquor a 150 lb. person would have to consume in a one-hour period to reach 0.10%, the percentage-weight of alcohol in the bloodstream which presumes a driver to be intoxicated.

To determine the approximate average number of ounces of 80 proof liquor needed in a one-hour period to reach 0.10%, draw a line from BODY WEIGHT to 0.10%. The line will intersect the average number of ounces needed to produce 0.10%. Follow the same procedure to determine the amount of liquor needed to reach other blood-alcohol concentrations, such as 0.05%, 0.15%, etc.

Charts show *rough averages only*. Many factors affect the rate of alcohol absorption into the bloodstream. Amount of food consumed, kind of food and drink consumed, and percentage of fatty tissue in the body, for examples, can vary blood-alcohol concentration values.

*The rate of elimination of alcohol from the bloodstream is approximately 0.015% per hour. Therefore, subtract 0.015% from blood-alcohol concentration indicated on above charts for each hour after the start of drinking.

Figure 1. Estimated Amount of 80 Proof Liquor Needed to Reach Approximate Given Levels of Alcohol in the Blood. (From "Drunk Drivers and Highway Safety" by the Allstate Insurance Company, reproduced with permission.)

The blood-alcohol concentration affects the mind as well as the body, and this fact is the greatest threat of the drinking driver. If he recognizes that his drinking has impaired his physical ability to drive, he can delay the trip until his sobriety returns. However, studies have shown that the opposite usually occurs.[15]

At blood-alcohol concentrations over 0.05 percent, judgment deteriorates, and the driver's confidence in his ability increases. Unfortunately, at this time the drinker believes he can driver better, when the fact is actually that his ability to perform has decreased. The combined effect of alcohol on mind and body makes the drinking driver a clear, present, and ominous danger to public safety.

Recognizing the dimensions of the danger, Pennsylvania, like many other states, has made serious efforts to reduce the problem of drinking and driving. The State Police appoint safety education officers in each troop. Their duty is to answer all inquiries from the public and to participate upon request in any meetings or programs dealing with the issue of drunken driving.

The Bureau of Traffic Safety in the Department of Revenue publishes brochures on the problem and on the new implied-consent law, coordinates programs to train police officers in the use of chemical tests for intoxication, and conducts massive advertising campaigns against driving after drinking. Officials of the Commonwealth hope these efforts will prevent a substantial number of drinkers from driving.

Law-enforcement agencies must, of course, deal with those drinkers who ignore the warnings not to drive. Operating a motor vehicle under the influence of intoxicating liquor, narcotic drug, or habit-forming drug is a misdemeanor in Pennsylvania.[16] So is permitting another person to operate under the influence of intoxicants, and thus it is possible for a sober person to violate the drunken-driving statute. The penalties are a fine of $100 to $500, or imprisonment of up to 3 years, or both.

In addition, the Secretary of Revenue has the authority to suspend the violator's operating license[17] and is required to revoke the

operating privilege until the convicted violator has paid the fines and costs.[18] The Secretary of Revenue has adopted a policy of mandatory revocation of violators' licenses for a minimum period of 6 months. If the drunken-driving violation also involves an accident, the revocation is for one year.

Conviction depends upon proof of intoxication. By statute[19], the defendant is presumed to be unintoxicated if his blood-alcohol concentration is 0.05 percent or less, and to be intoxicated if the blood-alcohol concentration is 0.10 percent or more. Concentrations between 0.05 percent and 0.10 percent give rise to no presumptions, but are considered to be competent evidence. In addition to these presumptions, other evidence such as the testimony of the arresting officer is considered in determining guilt.

During the 1968 session, the Pennsylvania legislature adopted part of Governor Raymond Shafer's program to crack down on the drunken driver. The new approach, called an implied-consent law, is based on the concept that anyone who operates a motor vehicle in Pennsylvania "shall be deemed to have given his consent to a chemical test of his breath, for the purpose of determining the alcoholic content of his blood."

Any person arrested and charged with operating a motor vehicle under the influence of intoxicating liquor, is "requested to submit to a chemical test" of his breath. Refusal to submit to the breath test means that the test will not be given, but it is also legal cause for the Secretary of Revenue to suspend the operator's license without a hearing.

If the person is physically unable to supply enough breath for the breath test, a blood sample can be withdrawn by authorized personnel. Consent for the blood sample is also implied from the operator's decision to use Pennsylvania's highways. The constitutionality of a similar implied-consent law was upheld by the U.S. Supreme Court in 1966.[20]

The Commission believes that the volume of lives lost, persons injured, and property destroyed in alcohol-related accidents is a major public problem demanding thorough governmental attention. The enforcement of the vehicle-code laws by police, prosecutors, and judges can do much to deter drinkers from driving and drivers from drinking.

The stigma of a drunken-driving conviction is probably as great a deterrent as the penalty imposed. However, public attitude is very often an obstacle to the full and uniform application of these laws.[21] Juries tend to be sympathetic to sobered defendants and are unlikely to convict them. Defendants are often willing to plead guilty to a lesser offense such as "reckless driving". While at least 5,458 arrests* for driving under the influence were made in Pennsylvania in 1967, only 933 persons were found guilty in Pennsylvania courts.

Commonwealth officials hope that increased use of chemical tests under the new implied-consent law will provide the reliable scientific evidence necessary for an improved rate of conviction. Deterrence cannot become a real force unless equal application of the law is assured.

However, as reports from Sweden[22] indicate, rigid and efficient enforcement of the laws probably will not reduce the drunken-driver problem to a level less than serious. Methods in addition to fines and suspension of licenses should be considered, especially in view of several studies[23] which have shown that a large proportion of accident-involved drunken drivers have drinking problems and have been previously arrested on similar charges. Convicted drunken drivers could be required to attend education courses on driving and drinking. Programs could be designed to treat the drinking problems of the intoxicated driver.

The Commission believes that no single measure can solve the problem of driving under the influence of alcohol. Mass advertising campaigns and public education programs will help, especially when they are aimed at the teenage drinker. Stringent law enforcement will help, and the recent implied-consent law will also have an effect. Additional treatment and education programs can further contribute to the lessening of a problem which endangers nearly all citizens.

* Arrest data for 1967 were reported to the Federal Bureau of Investigation by police agencies representing only 55 percent of the total population. The actual number of arrests is therefore much greater but unknown.

ALCOHOL AND CRIME

The use and effects of alcohol are interrelated with criminal behavior in many ways. The most frightening example is a drunken psychopath on an aggressive sexual rampage. The most pathetic example is the public drunkard passed out on a sidewalk.

Despite the complexity of relationships between abuse of alcohol and criminality, society's approach to date has been marked by oversimplification: use the criminal law and penal sanctions to solve all these problems. The criminal justice system has assumed broad responsibility, perhaps by default of other agencies. The assistance of other disciplines, such as medicine, must be invoked, especially in the cases in which an alcohol problem has to be solved.

The most common way in which alcohol is implicated in criminality is through the violation of laws governing the use of alcohol. There are laws against simply being intoxicated,[24] being intoxicated in public,[25] and being intoxicated while one is driving.[26] Persons charged with vagrancy[27] or disorderly conduct[28] are often found to have been drinking.[29]

The provisions of the Liquor Code govern the manufacture, transportation, and sale of alcoholic beverages,[30] and criminal laws[31] prohibit the purchase and possession of alcohol by minors. Offenses connected with these restrictions are more of an inconvenience than a harm to the public, except for those of the drunken driver. The purpose of these provisions is to control and moderate the usage of alcohol. Penal sanctions are the legal means to this goal.

Arrests in Pennsylvania during 1967 for offenses growing out of these restrictions totaled more than 108,000, on the basis of partial reports*.[32] Of all arrests in 1967, 46 percent were for offenses involving the abuse of alcohol. Though many of these offenses may seem minor, frequent occurrence places a huge burden upon law-enforcement agencies.

* The data are based on reports made by police agencies representing only 55 percent of the population of Pennsylvania.

The use of alcohol is also implicated in the most serious types of criminality. For example, a study in Philadelphia by Marvin Wolfgang[33] revealed that drinking by the offender or the victim was a factor in 64 percent of homicide cases, and usually both parties had been drinking. The method of killing was also associated with the presence of alcohol: about 70 percent of the stabbings and beatings, 55 percent of the shootings, and 45 percent of the miscellaneous methods involved the presence of alcohol.

On the basis of these results, drinking seems to intensify the personal quarrel that is found in most homicides. Of course, several other factors are important in the motivation of murder. Wolfgang found that 64 percent of the offenders and 47 percent of the victims had prior arrest records, usually for offenses against the person. Still, the effects of alcohol can be an important--even precipitating--factor in murder.

The relationship between alcohol and serious crime is much different from that between alcohol and the crimes of alcohol abuse. In the latter, the crime lies in the particular use of alcohol. In the former, the crime is the behavior which results in part from the effects of alcohol on the offender.

For individuals prone to aggression or violence, alcohol may depress the inhibitions and thus release such impulses. Or alcohol may provide the "courage" to commit a crime. Yet in other individuals the tranquilizing effects of alcohol may prevent criminal behavior. The personal makeup of the offender is a much more basic cause of the crime than the alcohol added.

While prevention of serious crime through prohibition of drinking is a futile effort, recognition and treatment of the alcohol problems of an offender during custody seems essential for the goal of rehabilitation. A relapse by the offender into alcohol abuse after release from custody could well develop into a return to criminal behavior.

Many criminals have fundamental difficulties in conforming to the norms of social behavior. Many also seem to have trouble in controling

their drinking behavior. In a survey of inmates entering California prisons,[34] 29 percent of the new prisoners interviewed claimed that the use of alcohol had been a major problem in their lives. Of the same group, 28 percent said that they had been intoxicated at the time of the crime for which they were convicted.

Studies of juvenile delinquents indicate that excessive drinking is much more prevalent among juveniles in trouble than among others of comparable age.[35] These results suggest that in some individuals, especially juveniles, a drinking problem may be a warning of more serious criminal behavior to come. By the same standard, a minor criminal offense committed under the influence may be a forewarning of either continued or increasing criminality. The causes of alcohol abuse may also underlie criminal behavior. The same facts may explain the commission of the crime and the intoxicated state of the individual at the time of the crime.

Resolution of these questions is important, since the prevention of serious crime in a family or against the public may be involved. Awareness of alcohol problems in an offender is helpful in designing more effective treatment programs. Like diagnosing a disease without noticing a major symptom, ignoring drinking difficulties in an offender makes the necessary cure much harder to find.

While many offenders have alcoholic histories, the converse is also true: many chronic alcoholics have criminal histories. A thorough study[36] in New York State of the arrest records of chronic-drunkenness offenders found that one third of the sample group had had prior arrests for serious crimes, another third had had prior arrests for minor crimes, and only one third had had no arrests other than those for use of alcohol. The suggestion was made that those individuals who had serious arrest records, had embarked on criminal careers, had failed, and had increasingly taken to drinking as a way of escaping their career failures. In these cases, the drinking problem was the outgrowth of criminal intentions.

The chronic alcoholic may have other relationships with crime, especially when his drinking has led to alienation from his family, his community, or his employment. He may gravitate toward skid row and be arrested repeatedly for drunkenness, vagrancy, or disorderly conduct. He may have to steal to support his addiction.

Homeless and often in a drunken stupor, he can easily become the victim of a crime or an accident. The wasted condition of a chronic alcoholic represents a threat to himself, a nuisance for the community, and a burden upon the criminal-justice system.

The use of alcohol brings a tremendous number of people into the criminal justice system. Almost half of all arrests are for alcohol-abuse offenses. Many other crimes, like murder or assault, involve the presence of alcohol. While not all criminals and alcoholics can be equated, many criminals have problems in using alcohol, and many alcoholics have some criminal history.

The relationships between alcohol abuse and criminal behavior abound in complexity, and many fine distinctions are appropriate under the circumstances. However, the huge number of drinkers in trouble with the law necessitates a thorough investigation of the many relationships between alcohol and crime and the incorporation of all new knowledge into our prevention and rehabilitation efforts.

New knowledge and improved treatment of offenders cannot originate from within the legalistic criminal justice system alone; mental health experts, educators, social scientists, physicians, antipoverty groups, and many other disciplines must be consulted and enlisted in the effort.

THE DRUNKARD AS CRIMINAL

> It is a familiar practice in Philadelphia and in other cities across the nation for the police to descend at night on "Skid Row", round up a batch of drunk derelicts, toss them into a bare cell known as the "tank" to sober up overnight, and line them up in the morning before a magistrate or equivalent functionary. Customarily, the magistrate dismisses them all, with or without a lecture, to be brought before him another day. Occasionally, he

> singles out two or three, apparently at random, and commits them, on the perfunctory statement of an officer or with no testimony at all, to jail for a short period as a warning to the rest.[37]

This statement, by Philadelphia Court of Common Pleas Judge Leo Weinrott, depicts a normal process in handling drunkenness offenders in our cities. It is a process coming under increasing scrutiny from many points of view.

What the police, court, and correctional personnel within the criminal justice system witness is a huge volume of offenders burdening their operations and interfering with more important criminal matters. They question why the criminal justice system is shackled with problems like drunkenness, which it is unable to cope with.

Unfortunately, the procedures and problems in handling of public drunkards are not as visible to the public as the presence of public drunkards when they stumble out of taprooms (Figure 2). For those who are aware, the view is of the same offenders being repeatedly arrested, convicted, and sentenced. Public leaders and taxpayers question whether tax dollars might be spent on the problems of public intoxication in a better way than the current wasteful and ineffective "revolving door" procedure.

Finally, there is the point of view of those arrested for drunkenness. They may appear drunk but actually be sober and be dragged through the same arbitrary process as the chronic drunkard. If they are from the suburbs or a small town, their case may be informally disposed of by the policeman who escorts them home.

More commonly they are the urban poor and live in a slum or "skid row" area, with no home or family ties.[38] They may have experienced the process so many times that they seem almost addicted to the treadmill treatment. Most tragically, they may be like one of the 10 persons arrested for intoxication who died in the custody of the Philadelphia police in 1968 because hospitalization was not yet a standard alternative to imprisonment.[39]

Figure 2. Skid Row (Reproduced by permission of the Philadelphia Diagnostic and Rehabilitation Center.)

From all points of view, the processing of public drunkards as criminals is a worthless anachronism. It is costly, ineffective, and inhumane. The only arguments presented in favor of keeping the present process are that it removes the eyesore of the public drunk from public view and that it protects the stumbling drunk from inadvertently injuring himself or others.

But these justifications really serve neither the public interest nor the personal health of the offender, as long as government does not

provide a positive treatment program for those detained. The remainder of this report will assess the present system more thoroughly, and will present proposals for needed change.

LAWS OF THE EXISTING PENNSYLVANIA SYSTEM

The laws by which intoxicated offenders in Pennsylvania are processed comprise a "non-system" of overlapping, piecemeal legislation enacted over a span of 175 years. As the situation stands today, an offender can be convicted under a 1794 law and incarcerated under an 1871 or 1895 provision or, possibly, under a 1953 Act, committed to a hospital in lieu of sentence. The laws represent a diversity of opinions on how to handle drunks, ranging from punishment to medical treatment. They are confusing to magistrates, baffling to laymen, and unexplainable to offenders.

Under the laws, outlawed activity includes (1) being intoxicated at all,[40] (2) being intoxicated on Sunday,[41] and (3) being intoxicated in public.[42] None of the pertinent laws are within the Penal Code, and all three offenses can be disposed of by a magistrate. Conviction for the first offense (a 1794 miscellaneous criminal law) carries a fine of 67 cents or imprisonment of 24 hours if the fine is uncollectable.

The second offense is a variation on the first offense. It bears the added stipulation that, upon failure to pay the fine plus costs, the offender is to be committed and "to be fed upon bread and water only, and to be kept at hard labour." The third offense (an 1856 liquor law) carries a fine of $5 and a levy against property if the fine is not paid. No provision is made for imprisonment.

Except for failure to pay the fine, these laws do not send drunkenness offenders to jail. Still, offenders are imprisoned - through the application of statutes governing penal and correctional institutions and not through the criminal laws.

An 1871 statute authorizes Philadelphia magistrates to commit drunkards to the Philadelphia House of Correction.[43] The term of

commitment expands from 3 to 12 months for the first commitment to 24 months for commitments after the fourth.[44] The managers of the House of Correction have the discretion to establish a separate "hospital department" to house and treat "aged and sick persons, including inebriates".[45]

Commitment in counties other than Philadelphia is accomplished through an 1895 law governing county workhouses. Magistrates are empowered to sentence to the workhouse all persons convicted of drunkenness[46] up to 30 days for the first conviction and up to double the time of the first commitment for the second conviction.[47] An isolated "inebriate asylum" is to be established,[48] to which Courts of Common Pleas may commit "habitual drunkards" for terms of 6 months to 2 years.[49]

Or, if commitment proceedings are initiated by petition of the "guardians of the poor" or of certain relatives of any person "who is in the habit of becoming intoxicated", and if the Common Pleas judge "is satisfied that such person has been frequently intoxicated within six months immediately preceding such application", the judge can commit the offender to the same inebriate asylum for a term of 3 to 9 months.[50]

This overlapping, inconsistent hodge-podge of laws does not exhaust the alternatives for handling drunkards. Under a 1953 act which requires the Department of Health to establish a Division of Alcohol Studies and Rehabilitation, a criminal court of record can commit to a state hospital for alcoholics an alcohol addict convicted of any crime other than murder (including the crime of drunkenness) in lieu of sentence.[51]

Other alternatives for the commitment of inebriates are available under the Mental Health Act of 1966, provided that the alcoholic can be adjudged to have a mental disability "which so lessens the capacity of a person to use his customary self control, judgement, and discretion . . as to make it necessary or advisable for him to be under care".[52] Provisions are made for commitment of persons charged with crime before adjudication, of persons convicted in lieu of sentence, and of persons undergoing imprisonment.[53] This act is administered by the Department of Public Welfare.

Many serious deficiencies and inequalities inhere within this labyrinth of laws. The most serious of them is the fact that there are no assurances under the law that identical drunkards will receive identical treatment. A public drunkard could be fined either 67 cents or $5, or sentenced to a penal institution for up to 2 years, or committed to a civil hospital. Convicted for the first time, the Philadelphia offender can be sentenced to the House of Correction for a term of 3 to 12 months, while his counterpart across the county line is subject to a maximum 30-day sentence in a county workhouse.

The sliding scale of sentences for subsequent convictions is much more severe in Philadelphia than in the rest of the Commonwealth. Discrepancies in sentencing under a single criminal statute are undesirable, but discrepancies in sentencing due to a multitude of overlapping statutes are intolerable.

The overlapping of statutes has other effects. The criteria for commitment vary from statute to statute and even within a particular statute. Institutions are managed by diverse personnel from correction, public health, or public welfare backgrounds, depending upon the statute used for committing the defendant. Some offenders receive treatment as criminals by being imprisoned, while other receive treatment by being committed to state hospitals.

The array of related statutes raises several constitutional issues. The first issue centers on the distinction between the chronic alcoholic suffering from the disease of alcoholism and the drunkard who is not an alcoholic. The most widely accepted definition of an alcoholic is that of the World Health Organization:

> Alcoholics are those excessive drinkers whose dependence upon alcohol has attained such a degree that it shows a noticeable mental disturbance or an interference with their bodily and mental health, their inter-personal relations, and their smooth social and economic functioning; or who show the prodromal signs of such development.[54]

The constitutional issue is whether chronic alcoholics can be fined or imprisoned for the crime of drunkenness.

In 1962, the U.S. Supreme Court faced a similar, though not identical, issue in *Robinson v. California.*[55] A California statute made it a crime "to be addicted to the use of narcotics", while another state statute in the health code recognized addiction as a disease. The Supreme Court held that a law which made a criminal offense of the status or disease of narcotics addiction inflicted cruel and unusual punishment upon the addict in violation of the Eighth and Fourteenth Amendments.

Does the principle of the *Robinson* decision apply to cases involving alcohol addiction? In the 1968 case of *Powell v. Texas,*[56] the U.S. Supreme Court upheld the conviction of a chronic alcoholic for being drunk in public. While the Constitution does not allow the punishment of a person for the mere status or disease of being addicted (to narcotics or alcohol), it permits a state to punish an addict for his behavior or acts, such as being in public while he is intoxicated.

The U.S. Supreme Court felt that the Constitution gave it no power to dictate to the states any doctrine, definition, or test of what is criminal responsibility. The use of criminal sanctions against public behavior (drunkenness) which is a hazard to both the drunkard and the public was deemed reasonable. And incarceration of public drunks was held legally rational because it removed the hazard and sobered up the drunkard.

While it may have been wiser as a matter of legislative policy to treat public drunkards medically, it was constitutionally allowable to incarcerate them. Changes in the handling of public drunkards must come from the state legislature, not from the U.S. Supreme Court.

Prior to the *Powell* decision, a Pennsylvania lower court did apply the *Robinson* principle to "habitual intoxication" cases. In *Commonwealth ex rel. Lee v. Hendrick,*[57] the defendants were chronic alcoholics, and had been fined and imprisoned for public intoxication. The Philadelphia Court of Common Pleas cited substantial support for their conclusion that "from the civil aspect, our laws clearly demonstrate that the Pennsylvania Legislature for more than a century has looked upon habitual drunkenness as an affliction allied with mental illness

itself." The court held that "habitual intoxication is an illness, and as such may not constitutionally be made a criminal offense" and released the defendants from jail.

This decision is limited to the jurisdiction of the County of Philadelphia. While it does not invalidate the drunkenness statutes because they do not outlaw the status of alcoholic addiction, it does provide the alcoholic in Philadelphia with a constitutional defense against being convicted of public intoxication. The laws do remain in full effect against occasional drunkards or nonalcoholics. Currently no drunks in Philadelphia are convicted, probably because of the difficulty of distinguishing between alcoholics and nonalcoholics.

The decision also raises substantial doubts about statutes used to sentence drunkards to criminal institutions. Provisions in the 1871 House of Correction Act, which allows the sentencing of drunkards to the House of Correction, and in the 1895 County Workhouse Act, which allows the sentencing of "habitual drunkards" to inebriate asylums within workhouses, seem open to strong constitutional attack.

These provisions deal directly with drunkards and can be interpreted as focusing upon the status or disease of addiction. Because the institutions are criminal in nature, the sanction used is a criminal one and is governed by the Eighth Amendment. By comparison, commitment under the Mental Health Act and the 1953 Act is civil in nature and thus not subject to constitutional attacks.

There are other constitutional grounds for questioning the use of the House of Correction and County Workhouse Acts for punishing drunkenness offenders. The Court in the *Lee* case said this:

> If necessary . . . we would rule also that the Acts of 1871, relating to the House of Correction, and of 1895 for the establishment of workhouses -- even if the latter applies to Philadelphia -- were not intended to create new crimes, but merely to provide for housing of persons convicted under existing laws. If those statutes did contemplate the creation of crimes, we would hold them invalid to that extent as violating article 3, section 3, of the Pennsylvania Constitution restricting such statutes to one subject and requiring it to

> be clearly expressed in its title. It is apparently on a misconstruction of the two latter statutes that our local magistrates rely in sending men to the "Correction" for thirty days.

Thus, to interpret these statutes as creating new crimes is unconstitutional. Can they be interpreted as creating new sentences for old existing crimes without being unconstitutional? The earlier drunkenness laws included the sanction of a fine, and of imprisonment only upon failure to pay the fine.

Creating the sanction of initial and increased imprisonment is a substantial shift in existing law, and thus a new subject in the statutory law. Since bills can constitutionally contain only one subject, including this new sanction in the same bill that provides for another subject (the housing of convicts) seems unconstitutional. Even if the new sanction were not considered a new subject, it would seem to be an important enough aspect of the House of Correction and County Workhouse Acts to require clear expression in the titles of the Acts.

Since this is not the case, the sentencing provisions seem unconstitutional. If the Acts allow the change and increase of criminal penalties, the legality of the Philadelphia House of Correction Act must be questionable: first, because it is special or local legislation, and second, because the jail terms under it are longer than those of other counties and not in uniformity with the County Workhouse Act.

Finally, if these Acts are interpreted merely to authorize housing for those convicted under the existing drunkenness laws, prison sentences are permitted only when the defendant cannot pay the fine and costs. This means that magistrates have no statutory basis for committing people to jail in addition to making them pay a fine.

Many of these constitutional questions exist because of the piecemeal fashion by which the Pennsylvania laws for processing drunkenness offenders were enacted. While the courts can reasonably attack these laws on a case-by-case basis, proper reform requires both a legislative review of all drunkenness laws and legislative development of a consistent and effective policy on public drunkards.

CHARACTERISTICS OF OFFENDERS

Great numbers, and many types, of people are arrested for drunkenness. In 1967, drunkenness arrests in the United States totaled 1,518,000* and represented 28 percent of all nontraffic arrests.[58] In Pennsylvania, the 61,000† reported drunkenness arrests in 1967 comprised 26 percent of all nontraffic arrests.[59] Within this mass of offenders are sailors on leave, spree drinkers, and homeless skid-row derelicts. The offenders have all types and degrees of alcohol problems.

Yet the criminal justice system encounters only the minority of those who have drinking problems, since, by estimate, 12 percent of all adults are heavy drinkers and about 4 percent are alcoholics.[60] Many potential offenders avoid contact with the criminal law by keeping their intoxication out of the public view or by enlisting the help of family, friends, or civil treatment programs.

What types of drunkards does the criminal justice system encounter most often? The President's Commission on Law Enforcement and the Administration of Justice came to this conclusion:

> There is strong evidence, however, that a large number of those who are arrested have a lengthy history of prior drunkenness arrests, and that a disproportionate number involve poor people who live in slums.[61]

The Philadelphia experience with drunkenness offenders supports this finding. In 1967, 47 percent of all arrests (97,000) were for drunkenness.[62] Furthermore, about 28 percent of all drunkenness arrests were made in the 6th police district, which contains only 1.7 percent of Philadelphia's population and includes the city's "skid row" area.[63]

* Data are based on reports submitted to the Federal Bureau of Investigation by police agencies representing only 74 percent of the U.S. population.

† Data are based on reports submitted to the F.B.I. by police agencies in Pennsylvania representing only 55 percent of the Pennsylvania population.

During 1967, a 10-day study of the men picked up in the 6th police district for public intoxication was conducted to develop alternatives to the arrest of public drunkards.[64] The study was precipitated by the previously mentioned *Lee* case, and its disclosures about the offenders are enlightening:

1. *General Characteristics.* The men had a median age of 50 years. 80 percent lived alone, and 18 percent were homeless. 58 percent were unemployed. One-sixth reported that they had been arrested more than 50 times, usually for intoxication.
2. *Drinking History, Patterns, and Problems.* Because of drinking, 56 percent of the men had lost employment. 36 percent had been hospitalized for drunkenness. Two-thirds were spree drinkers, and more than two-thirds (72 percent) drank to alleviate hangover effects. 37 percent reported having experienced delirium tremens. About half (48 percent) said they were alcoholics and even more (58 percent) wanted help for their drinking problems.
3. *Medical Findings.* Chronic alcoholism was diagnosed to be almost certain in 62 percent, probable in 17 percent, suspected in 14 percent, and not present in only 6 percent of those who were drunk. Hospitalization was found to be an urgent need for 10 percent of the men and was required, though not urgently, for about one-third.

By and large, the drunkenness offender is a chronic alcoholic offender, has no family and little income, and often has severe medical problems (Figure 3). He has been through the "revolving door" many times.

Experts in Philadelphia estimate that only 4,000 to 5,000 men are involved in the 45,000 annual drunkenness arrests. The average offender probably has spent considerable time in jail for intoxication offenses. A Washington, D.C., study found that six chronic offenders had been arrested 1,409 times on drunkenness charges and had spent 125 years in jails.

Still, the Philadelphia study discovered that the majority of the hard-core offenders from skid row would welcome help for their drinking problems. As the President's Commission on Law Enforcement and Administration of Justice concluded, the criminal-justice system is not the solution to these drinking problems.

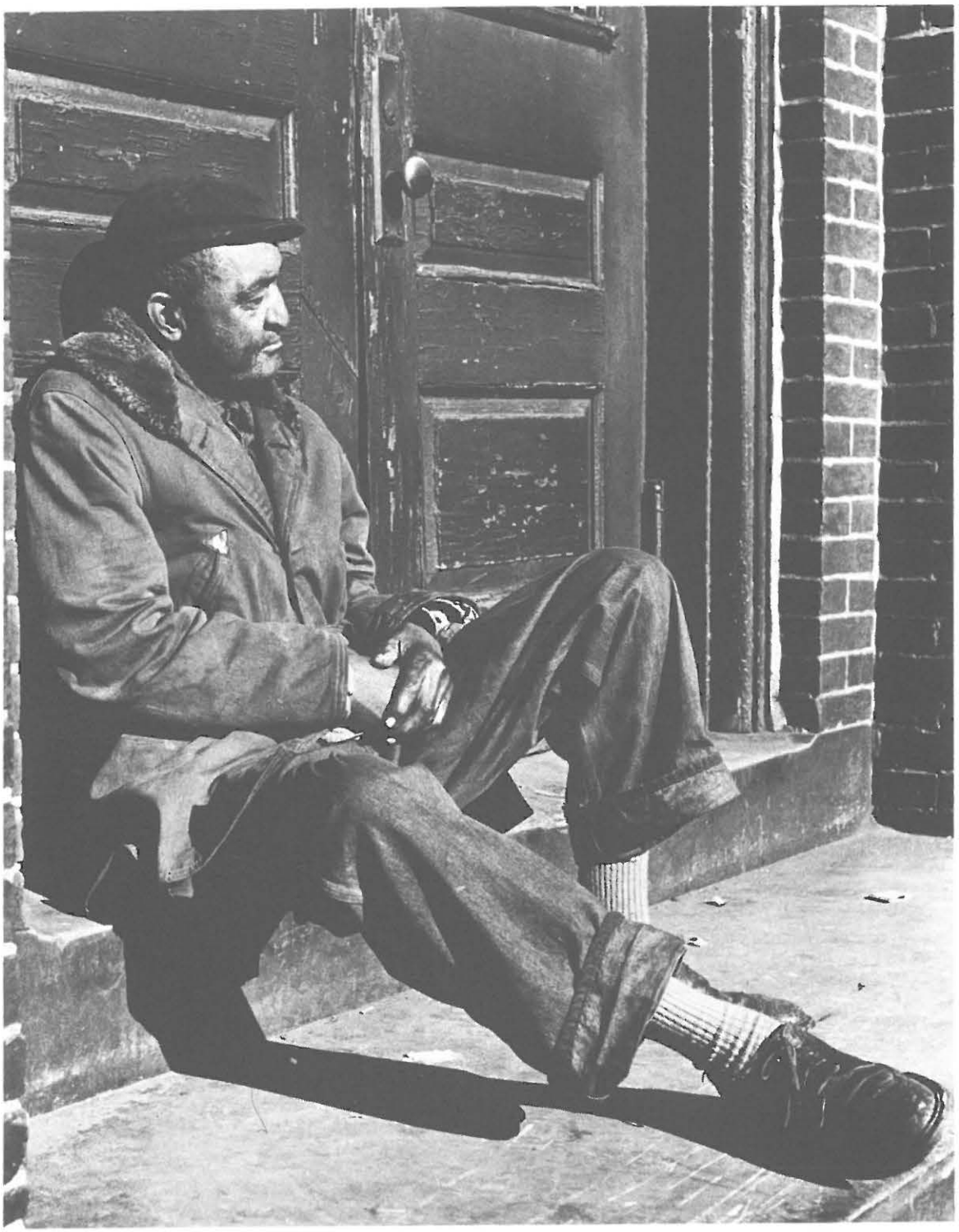


Figure 3. Drunk (Reproduced by permission of the Philadelphia Diagnostic and Rehabilitation Center.)

> The criminal justice system appears ineffective to deter drunkenness or to meet the problems of the chronic alcoholic offender. What the system usually does accomplish is to remove the drunk from public view, detoxify him, and provide him with food, shelter, emergency medical service, and a brief period of forced sobriety. As presently constituted, the system is not in a position to meet his underlying medical and social problems.[65]

INEFFECTIVENESS OF CRIMINAL PROCESS

For what reasons do policemen pick up and arrest drunkards? What are the goals of our intoxication laws? Undoubtedly the goals have changed as public attitudes towards drunkards have changed.

In earlier ages the drunkard was probably considered to be an immoral person and thus deserving of punishment. Thus a 1794 criminal law prohibits being drunk at any place and at any time. Advances in society's understanding of the alcohol addiction that is frequently present in public drunkards have altered public opinion of the drunkenness offender. Society no longer expects a criminal law to deter excessive drinking, especially by chronic alcoholics. Indeed, the consistently huge annual volume of offenders is evidence of the failure of deterrence.

Today, the attitude toward the drunkard is that he needs help, a concern directed toward treatment and not conviction and punishment. The policeman who has daily contact with the offenders keenly understands the problems surrounding the drunkard. Chief Inspector Frank Nolan of the Philadelphia Police Department testified before the Pennsylvania Crime Commission:

> In the light of the recent court decisions what are we to do with the intoxicated man lying on the street -- in the gutter -- in doorways, or the individual who is staggering from side to side walking down the street, or attempting to cross heavily travelled intersections, or the person who we receive a complaint about such as the panhandler, the drunk on the steps of one's residence, or the obnoxious individual who raves and rants at passers-by? How can we, the police, charged with the public safety, ignore such an individual who in his condition might cause injury to himself by falling, or getting struck by a motor vehicle? To

> ignore him would be unfair to the individual with a humanitarian point of view. It would be unfair to the motorist who might become involved, and to our citizenry as a whole.[63]

The police cannot ignore public drunkards who are threats to themselves or nuisances to others. But the policeman's discretion and responsibility is limited to a decision on whether to arrest. If the man has a home or family, the officer may take him home or release him to the family. In such a case the problem is solved without an arrest. Such informal dispositions are regularly made in small towns or residential suburban areas.

But if the drunkard is homeless and poor or appears vagrant, an arrest is the likely outcome. No other alternatives are available or convenient. Criminal dispositions are the practice in anonymous urban areas. Discrimination is inherent in these arrest policies, for the family men are released while the homeless men are detained, although both are equally in violation of the drunkenness laws.

Enforcement of the laws is also biased against those who only appear to be drunk. While scientific tests for intoxication do exist and are used in drunken-driving situations, no objective test is applied to the public drunkard.

In the 10-day Philadelphia study, "Breathalyzer" tests were given to all drunkenness offenders. Only 69 percent of those who were picked up had blood-alcohol concentrations high enough to raise the legal presumption that they were intoxicated (on the basis of the statutory standards of drunken-driving laws). 12 percent had sufficiently low concentrations as to be presumed legally sober.

Many sober men are arrested, detained, and probably convicted because they walk with an unsteady gait and thus appear drunk. Severe malnutrition, insulin reaction, withdrawal, shock, apoplexy, asphyxia, clinic epilepsy, head injury, physical defects, or mental disturbances can all produce the unsteady walk. The innocent sober man may also be arrested if the police make a dragnet sweep of a "skid row" area.

Once arrested, the inebriate is placed in a cell -- usually known as the "drunk tank" -- of the local lock-up. Tanks may be crowded with other drunks unable to care for themselves, especially on weekends. Sanitation and ventilation are problems. Comfort and care are uncommon. In this environment, the drunk "sleeps it off" while he awaits his hearing in the morning. Because no examination is made and no treatment is available, serious medical ailments (in addition to alcoholism) go unnoticed. If complications arise, death may be the result.[66]

In Philadelphia in 1968, at least 10 public drunkards died after being in custody of the police. Policemen are not doctors and cannot be expected to diagnose and care for or treat those that they arrest. The tragedy is that, even when the policeman knows that a drunkard is in severe danger, he rarely has a medical service to which he can promptly refer the man.

As a result of the *Lee* case mentioned earlier, the Philadelphia procedure for processing public drunkards has changed. Since drunkards remain threats to themselves and nuisances to the public despite any changes in the law, they are still picked up by the police. If responsible adults will assume responsibility, the police release the drunkard in their custody. If no such help is available, the police hold the defendant until he is sober and then release him.

There are no longer any prosecutions for drunkenness. Occasionally, the drunkard will be tried for vagrancy instead of drunkenness. However, indications are that such prosecutions occur only when the defendant requests some help. In these cases a short sentence is given and the offender is often referred for treatment from the House of Correction to a clinic, hospital, or private agency.

The Philadelphia procedures are admittedly temporary measures. Some police time is saved because release from detention is usually earlier than in the past and because transportation of offenders to a court hearing is no longer required. With respect to chronic alcoholics, however, a faster release will probably mean an earlier return.

Substantial reductions in police time seem unlikely until programs of medical treatment can diminish the number of chronic repeaters. Under the *Lee* decision it is illegal to hold alcoholics in police custody. But until medical treatment programs are a reality, this decision will not have its desired effect.

The Philadelphia procedures are an exception to the traditional method of processing drunkenness offenders through the minor courts. Such dispositions are usually marked by a haste that often violates all standards of fair criminal procedure.[67]

In cities, numerous offenders may be brought together at once before a single judge. The hearing is conducted without the presence of a prosecutor and without counsel for the defendant. Even if the defendant has his own hearing, consideration of his individual case is minimal. Little effort is made to explain the charge or the disposition to the defendant. The proof of guilt is very slight; usually the strongest evidence presented is a standardized police report or the hearsay testimony of an officer who was not present when the arrest was made. Scientific medical evidence would be fitting, but it is never collected. The defendant is given no opportunity to defend himself by challenging any evidence presented or by proving his alcoholic status, which could be a valid constitutional defense to the charge.

In most cases, the offender is convicted, given a lecture, and discharged. But, as Judge Weinrott pointed out, one or two offenders will occasionally be singled out at random and sentenced to jail. Often the offender whose face has become too familiar in the courtroom receives the imprisonment. As with arrest, detention, and trial, the disposition of drunkenness offenses hits hardest, through jail sentences, at the chronic alcoholic who needs punishment least and help most.

Maximum efficiency in processing drunkards is the primary aim of the minor courts. For the drunkenness offender, individualized justice under due process of law is an empty ideal. The speed and arbitrariness of judicial processing contributes to the loss of personal respect and

dignity which marks the usual drunkenness offender (the homeless chronic alcoholic). In addition, such handling does little for the dignity of the court atmosphere.

If he is sentenced to jail, the drunkard can expect about the same low-priority handling that he received in police detention and in court. His imprisonment will be in the county jail, which is usually the most deprived segment of the correction system.

Studies estimate that one-half of the entire misdemeanant prison population of the nation consists of drunkenness offenders.[68] The overcrowded and underfinanced condition of county jails and workhouses ensures that the offender will receive neither medical, psychological, nor individual treatment. To expect these institutions to have any beneficial effect upon the chronic drunkenness offender is fantasy.

Much is wrong with the present criminal handling of drunkenness offenders. First, the system does not treat the drunkards fairly. It comes down most heavily on the poor, homeless, and unemployed without offering any treatment in return. The drunkard, not surprisingly, receives low-priority treatment from criminal justice agencies designed to handle criminals.

Second, processing the drunkard as a criminal contradicts the humanitarian interest in his welfare that underlies our drunkenness laws today. To claim that our purpose is to help the public drunkard and then to sentence him to jail is inconsistent and immoral. Removal of a public nuisance in the interest of public safety is justifiable, but removal to prison is not justifiable when it brings neither deterrence nor rehabilitation

Third, the agencies of criminal justice are overburdened with drunkenness offenders. Regardless of how summary and efficient the handling is, the huge traffic of drunkards must hinder police, courts, and jails, and thus detract effort from their more important duties in fighting crime. Their inability to meet the needs and problems of drunkards undermines the morale of those who operate these agencies.

Fourth, the criminal approach to drunkenness creates a sinking fund for tax dollars. Although no cost analysis of the process has been made, it is reasonable to presume that the costs far outweigh the benefits. The benefits include removal of drunkards from public areas, money collected from fines, temporary provision of housing and meals for incarcerated drunkards, and any productive labors performed by offenders while they are in jail.

Against the value of these services must be weighed the costs. There is the cost to the police of apprehending the offenders. As an example, every drunkenness arrest in Philadelphia consumes an estimated one hour of patrol-wagon service. Since two officers man each wagon, and since there are about 45,000 annual arrests, apprehension of drunkards costs the Philadelphia police about 90,000 man-hours.

A second cost arises from the detention of drunkards prior to their court appearance. Court time and expense and the cost of incarceration are additional costs to the criminal-justice system and thus to the public.

An analysis encompassing most of these benefits and costs was applied once to the city budget of Atlanta, Ga.[69] On balance, the net loss to the city was $8.08 per person arrested. The total cost of arresting, trying, and incarcerating a drunkenness offender for 30 days was around $62. While these figures are not transferrable to Pennsylvania cities, their importance is applicable. Year in and year out, a substantial sum of money is being spent to process as criminals a group of public drunkards, composed primarily of chronic repeaters.

Tax dollars spent on public drunkenness would be justifiable if they had some noticeable effect on the problem. However, the testimony of policemen and judges, and the arrest records of offenders, indicate that the same group of men continue to reappear as public drunkards. Recidivism is so high that the current approach must be labeled as an ineffective waste of tax money.

In a sense, the criminal justice approach to drunkenness is worse than doing nothing, because it lulls us mistakenly into believing that something effective is being done. Temporary removal of drunkards from public circulation also removes the problem from public concern. The belief that the action taken is for the benefit of the drunkard is a myth because it has no effect at all on his drinking behavior. Such a myth is most harmful because it has delayed the health and medical authorities in responding to the problem. Arresting the drunkard without arresting his problem merely perpetuates the problem of public drunkenness.

PROPOSALS FOR FUNDAMENTAL CHANGE

A primary interest of the Pennsylvania Crime Commission is to remove from the criminal justice system those functions and duties that it cannot perform. Because a meaningful handling of public drunkards often requires the treatment of chronic alcoholics, the drunkenness problem is a health problem and not a criminal problem.

But removing the problem from the criminal justice system without establishing viable alternatives is irresponsible and not in the interest of either the public or the drunkard. Reform in present procedures and creation of new approaches must be pursued in concert. Such progress requires the co-operation of law-enforcement agencies with medical and social services.

Reform of Pertinent Laws

The first step toward a noncriminal treatment of drunkenness offenders must be to remove the crime of drunkenness from the statutes. Being drunk in public is not a criminal intrusion on other persons, even though it may be offensive to onlookers. The public drunkard basically needs help and protection, either of a short-term nature such as transportation to his home, a place to sober up, or emergency medical care, or on a long-term basis in the recovery of his health or treatment of his drinking difficulties. However, charging him with a crime is hardly the proper method of protecting him or of curing his sickness.

If a drunkard becomes so actively obnoxious as to interfere with the peace and freedom of other citizens, the police are justified in arresting him for disorderly conduct. An arrest should not automatically dictate, however, that the drunkard be taken to trial.

Prosecutors should exercise their discretion to drop the charges if they decide that the offender needs treatment for his drunkenness more than punishment for his disorderly conduct -- and if treatment programs exist. Relevant considerations would include the severity of the disorderly interference, the offender's criminal record, and his problems with alcohol.

The Commission fully endorses the recommendation of the President's Commission on Law Enforcement and Administration of Justice:

Drunkenness should not in itself be a criminal offense. Disorderly and other criminal conduct accompanied by drunkenness should remain punishable as separate crimes.[70]

Putting this recommendation into effect hinges on two developments: legislative review and reform of all current laws relating to drunkenness, and the creation of adequate civil detoxification procedures. The crimes of being drunk, being drunk on Sunday, and being drunk in public need to be abolished. The statutes by which convicted "vagrants, drunkards, or disorderly street walkers"[71] are sentenced to the Philadelphia House of Correction, and by which "persons convicted of vagrancy, drunkenness, and disorderly conduct",[72] or "habitual drunkards"[73] are committed to county workhouses, must be reviewed and revised.

New legislation permitting police or other officials to take public drunks into custody for their own protection and establishing detoxification programs to receive those so detained are required. While there is little justification for arresting drunkards, there remains the need for protecting them from harm and for preventing them from causing accidents during the period of their incapacity.

Creation of Civil System For Treatment Of Drunkenness

Designing civil systems for the treatment of drunkenness offenders is no easy matter. It involves the participation and cooperation of many groups--law enforcement agencies, public and mental health departments, hospitals, social service agencies, and interested private groups. All existing resources must be utilized.

Basically the planning must be done at the community level, for that is where the plan will be executed and the system administered. On the basis of projects developed in St. Louis,[74] Manhattan,[75] Atlanta,[76] and Philadelphia,[77] the Pennsylvania Crime Commission believes that there are certain general principles and elements essential for any treatment program: input, detoxification, aftercare, and evaluation.

Input

A method for locating and gathering up those who need help is the starting point. If drunkenness is not a crime, the arrest process is no longer valid. Instead, a protective-custody law might be enacted whereby police or other responsible public officials can take into custody anyone who is so intoxicated that he is unable to care for himself. The public drunkard certainly cannot be left sleeping on sidewalks or stumbling across intersections.

Public health personnel, instead of police, might be employed to gather up the incapacitated drunks. For the immediate future, however, policemen could continue to pick up drunkards either when they are on view or in response to a complaint. The training of patrolmen in the recognition and handling of intoxicated persons is an important consideration.

Detoxification

After being picked up, the drunkard would be taken to a detoxification center. Public drunkards are frequently in need of emergency hospitalization for acute intoxication or other medical problems. Therefore

the first task at the detoxification center would be to make a brief medical examination so that needed hospitalization would be quick and effective.

For this reason, the center should be near a hospital. In large cities, several detoxification centers would be required in order to minimize the problems of transportation. The need for immediate service suggests that detoxification centers should be decentralized.

The medical examination would also identify those who are neither drunk nor incapacitated, so that they could immediately be released. An initial check would be made to determine whether the detained person has a family, relatives, or responsible friends who can be reached and asked to pick him up. Finally, if the individual is found to be drunk, homeless, and unable to obtain outside help, he should be detained for detoxification.

After being given a shower, vitamins, and necessary medication, he would be put to bed to recover under the attention of treatment personnel. Once he has sobered up, the legal justification for detaining him is ended, and he is free to leave if he wishes.

But the option should be offered to him of staying in the detoxification center for a period of about a week. This would allow a more complete recovery from his drinking spree and the effects of withdrawal, and permit rehabilitative treatment. For the chronic alcoholic, immediate release would probably mean an immediate return to his prior habits and a repetition of public intoxication.

Despite this dilemma, there is no more justification for involuntarily detaining an alcoholic than for detaining any other person with a disease that does not threaten the community. Once sobered up, the alcoholic is mentally competent to make a rational decision.

The state's justification for involuntary commitment of alcoholics should be restricted to those cases in which the alcoholic is mentally imcompetent or has exhibited a history of dangerous criminal behavior while he is intoxicated.[78]

What would make the drunkard decide to stay in the detoxification center? The main persuasion would be the treatment program offered by the center. A voluntary commitment procedure would keep beneficial pressure on the center to relate and appeal to the chronic alcoholics. It would keep the center active, alert, and responsive.

Treatment provided by the center would depend on having sensitive and capable personnel and adequate programs. Employment of former alcoholics can be a good way of reaching present alcoholics. The treatment program would be preceded by a thorough diagnosis of each individual in order to adapt treatment to individual needs.

Physical therapy, group psychotherapy, recreation, necessary medication, work therapy, alcohol education, and counseling could be provided. The patients could be given the experience of self-government through their participation in operating the center. The services would be wide in range and flexible in operation.

Aftercare

The concept of aftercare and its great importance were outlined by the President's Commission on Law Enforcement and Administration of Justice:

> There is little reason to believe that the chronic offender will change a life pattern of drinking after a few days of sobriety and care at a public health unit. The detoxification unit should therefore be supplemented by a network of coordinated "aftercare" facilities. Such a program might well begin with the mobilization of existing community resources. Alcoholics Anonymous programs, locally based missions, hospitals, mental health agencies, outpatient centers, employment counseling, and other social service programs should be coordinated and used by the staff of the detoxification center for referral purposes. It is well recognized among authorities that homeless alcoholics cannot be treated without supportive residential housing, which can be used as a base from which to reintegrate them into society. Therefore, the network of aftercare facilities should be expanded to include halfway houses, community shelters, and other forms of public housing.[79]

Many agencies interested in the rehabilitation of alcoholics already exist in Pennsylvania. However, the mere existence of agencies and facilities provides only the structure for aftercare.

The success of aftercare depends primarily on referring the chronic alcoholic to the best agency and making sure that he can get there. Before the patient leaves the detoxification center, a thorough evaluation of his medical, economic, social, and family needs should be made.

The proper referral, based on these needs, depends on the characteristics of the referral unit. They must have comprehensive knowledge of all available facilities and services. They must co-ordinate their detoxification center with aftercare services and open good channels of communication. They must make an effort to keep the treatment process continuous so that the patient does not get lost between the detoxification and aftercare stages and withdraw from his new life pattern. And they must be able to operate with flexibility, since the needs of individual alcoholics will rarely be the same.

At the core of the public drunkenness problem is the homeless inebriate lacking employment, family, and personal resources. The readjustment needed to enable such a person to function again in a social setting involves much more than drying out his drinking habits. For aftercare to be successful with these persons, comprehensive help on many fronts, from jobs to housing, is mandatory.

Evaluation

An integral part of developing a modern treatment approach to public drunkenness is the evaluation of the success of the new programs. Evaluation involves analytically assessing the impact of the new approach on the criminal justice system and on the drunkenness offender.

The burden placed on the police, courts, and correctional agencies by having to handle public drunkards must be measured and compared to the burdens under previous practices. The impact on the offender can be evaluated by studying the volume of arrests or of persons detained, the rates of recidivism, and the periods of sobriety, employment, and residential stability.

Such evaluation is essential to prevent the assumption that the mere creation of a new approach has solved the problem of the drunkenness offender. The Pennsylvania Crime Commission believes that arguments for changing our present criminal approach to the drunkenness problem are strong, and encourages the evaluation of new alternative approaches.

CONCLUSION

The plight of the public drunkard is frustrating. Because he is visible and bothersome, the police are called upon to remove him from public areas. But once he enters the criminal justice process, his case descends to the lowest priority, since the criminal justice system is concerned with criminal matters that are far more serious. Usually the back door of the criminal justice system, through which the public drunkard exits, leads to the front door of another taproom, and the cycle is soon repeated.

This process pleases no one. The police, judges, and correctional personnel are overburdened by the large volume of drunkenness cases. They know, from processing chronic repeaters, that the process is not solving the problem of public drunkenness. Many tax dollars are spent in this ineffective holding operation. From a criminal justice process that is basically incapable of -- and often uninterested in -- responding to the needs of the drunkard, the offenders themselves receive little more than a temporary sobering up.

Handling public drunkards through criminal processes amounts to the misguided criminalizing of a social problem. The drunkard is a patient, not a criminal. If he commits a criminal act against another person or against property, the drunkard deserves criminal handling under the applicable laws. But the solution to drunkenness requires effective treatment, for the drunkard and not an adjudication of guilt.

Creating effective and flexible treatment plans requires the coordinated effort of many groups: law makers and law enforcement agencies, health and welfare departments, hospitals, family and social-service agencies, and other interested parties.

Flexibility in approach is necessary if the individual causes of each drinking problem are to be reached. Co-ordination is necessary in order to make effective use of all resources. But the basic need is for strong leadership in the planning and activation of a noncriminal approach emphasizing treatment, that will replace the costly, ineffective, inhumane, and frustrating processes that are now used.

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