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LSD—ITS EFFECT ON CRIMINAL RESPONSIBILITY

Hallucinogens are drugs which, when consumed, manifest their presence through the creation of mental impressions. One of these drugs, and perhaps the best known, is LSD.¹ The practice of using hallucinogens has yet to produce serious legal consequences; but, with the increasing use of LSD, a problem concerning the legal responsibility of a person who commits a crime while under the influence of such a drug arises. The possibility of such an occurrence is not remote. In 1965 seventy-five LSD patients were admitted to Bellevue Hospital in New York; two of these patients had attempted to commit murder.² In 1966 a man was charged with homicide after he killed his mother while apparently under the influence of LSD.³ As cases such as these increase in number, the criminal defense attorney will be required to familiarize himself with the consequences of LSD consumption.

This comment will examine the nature and effect of the LSD reaction. Three approaches to the problem of criminal responsibility will be considered by extrapolating analogies from the situations in which intoxication, insanity and narcotics are allowed as defenses, and it will be shown that the drug should have an effect on the user's criminal accountability. These categories are of prime importance in that the LSD reaction has specific attributes of each area. As the respective situations can affect one's culpability, so the LSD-induced state should give rise to the same consequences. Therefore, after the affects of the drug are explored, analogy will be drawn in each instance, to the LSD reaction and to the resulting criminal responsibility.

Drugs in the nature of LSD have been known and used in primitive societies for hundreds, perhaps thousands, of years.⁴ It was not until 1938, however, that a research chemist found and isolated the properties of an hallucinogenic chemical.⁵ It was found that the use of the drug altered normal behavior for a period of approximately twelve hours. Sensations were described as being very dramatic, impressions such as being suspended in space and looking down on one's own body were reported, and transformations of sounds into optical illusions were common experiences.⁶

¹ LSD is a specific chemical, d-lysergic acid diethylamide.

² Cotnam, *Accidents Caused by Drug Abuse*, INT'L NARCOTIC ENFORCEMENT OFFICERS ASS'N SEVENTH ANNUAL CONFERENCE REPORT 54 (1966).

³ *Id.*

⁴ Primitive Indians of Central America as well as Northern European Vikings used hallucinogens in religious ceremonies and to prepare for battle. The Indians of Central America are known to be using these drugs today.

⁵ Dr. A. Hoffmann discovered the strange properties of an hallucinogen while trying to find a synthetic central nervous system stimulant.

⁶ Fisher, *The Realities of Hallucinogenic Drugs: A Compendium*, 4 CRIMINOLOGICA 1, 4 (1966).

The term, LSD, has been loosely applied to other hallucinogens. However, LSD is a specific chemical, a derivative of lysergic acid, and one of the most effective hallucinogenic compounds.⁷ All of the drugs in the nature of LSD are related in their chemical structures,⁸ and all produce distinctive changes in perception, referred to as hallucinations.⁹ Although the person under the influence of LSD may be able to distinguish his visions from reality, even when the visions seem quite compelling,¹⁰ there may be instances when the user will not realize he is under this influence.¹¹ Circumstances such as those described above can be exemplified in cases where a person, under the influence of the drug, might walk out of a window not realizing he was several stories above ground level. An unusual case is reported in a recent issue of the *Saturday Evening Post Magazine*.¹² A Los Angeles man who took several doses of LSD actually believed he was an orange, and if anyone touched him he believed he would turn into orange juice. It is reported that the man has become totally psychotic. Cases such as this are not isolated, but this particular one shows the potent effect that the substance can have.

The taking of the drug can produce a variety of intense and unusual psychic effects.¹³ These effects may range from a loss of time and space perception and mild apprehension, to panic, severe elation, and deep depression.¹⁴ Paranoid delusions about other people trying to kill or harm the subject may occur when there is a loss of insight into the drug-induced nature of the reaction.¹⁵ Deep feelings of self-loathing with suicidal tendencies or feelings of mystical revelation may also develop.¹⁶ Some researchers have reported severe paranoid reactions and reactions of explosive anger,¹⁷ and many re-

⁷ *Supra* note 1. Other chemicals producing hallucinations include mescaline and psilocybin.

⁸ Lecture by Dr. T. Marczyński, M.D. Pharmacology course, University of Illinois Medical School, 1966, on file in *DePaul Law Review* offices.

⁹ Hallucination will be defined in this comment as sensory stimulations perceived by the individual without recognizable external cause. MALLOY, *MEDICAL DICTIONARY FOR LAWYERS* 274 (2d ed. 1951).

¹⁰ Barron, Jarvik & Bunnell, *The Hallucinogenic Drugs*, 210 *SCIENTIFIC AMERICAN* 29 (1964).

¹¹ Interview with Dr. Robert Reifman, Board Certified Psychiatrist, in Chicago, Feb. 8, 1967.

¹² Davidson, *The Hidden Evils of LSD*, *SAT. EVE. POST*, Aug. 12, 1967, at 19.

¹³ Cole & Katz, *The Psychotomimetic Drugs*, 187 *A.M.A.J.* 758 (1964).

¹⁴ *Id.* See also Rosenthal, *Persistent Hallucinosis Following Repeated Administration of Hallucinogenic Drugs*, 121 *AM. J. PSYCHIATRY* 238 (1964-1965).

¹⁵ *Id.*

¹⁶ Rosenthal, *supra* note 14.

¹⁷ Rosenthal, *supra* note 14.

actions are very similar to naturally occurring schizophrenia.¹⁸ It should be noted here that reactions reported depend upon the judgment of the researcher, and that medical descriptions, in the general area of mental illness, are not precise terms. Therefore, the researcher becomes a large variable in the classification of the LSD reaction. Most researchers agree, however, that a mental disturbance of some kind develops and that its intensity will vary with the dose and with the subject.¹⁹

Users of LSD appear to feel that this is their best way of escaping from reality; alcohol, marijuana, and opium are close seconds,²⁰ and it should be noted that marijuana can also produce hallucinations. When LSD is taken over a period of time, it will cause the body to build up a tolerance in the same manner as other drugs, thus the taker will require successively stronger doses to obtain an equivalent sensation.²¹

LSD AND INTOXICATION

The symptoms of consumption strongly resemble alcoholic intoxication. The Model Penal Code defines intoxication as "a disturbance of mental or physical capacities resulting from the introduction of substances into the body"²² The definition does not limit intoxication to that caused by alcohol. The Illinois Criminal Code is in accord, and includes intoxicated and drugged conditions in the same section under criminal responsibility.²³ Therefore, the LSD post intake symptomatic manifestation meets the definition of intoxication in that it strongly affects the user's mental capabilities through the introduction of a foreign substance into the body,²⁴ and the user may truly be treated as if intoxicated.

¹⁸ *Id.* Schizophrenia can be defined as a type of psychosis with symptoms of hallucinations and fragmentation of the personality. WEBSTER, THIRD NEW INTERNATIONAL DICTIONARY 2030 (3d ed. 1961).

¹⁹ Terrill, Savage & Jackson, *The Nature of the LSD Experience, LSD Alcoholism and Transcendence, LSD and the New Beginning*, 135 J. NERV. MENT. DIS. 425-39 (1962).

²⁰ Fisher, *supra* note 6, at 5-6.

²¹ Cole & Katz, *supra* note 13, at 759.

²² MODEL PENAL CODE § 2.08 (P.O.D., 1962).

²³ ILL. REV. STAT. ch. 38, § 6-3 (1965). "A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such conduct either: (a) Negatives the existence of a mental state which is an element of the offense; or (b) Is involuntarily produced and deprives him of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." *See also* WIS. STAT. ANN. ch. 939, § 42 (1953).

²⁴ Ditman, Hayman, & Whittlesey, *Nature and Frequency of Claims Following LSD*, 134 J. NERV. MENT. DIS. 346 (1962). Thirty-three percent of the subjects tested reported the LSD experience as similar to being drunk.

By classifying the reaction to LSD as intoxication, the user's criminal responsibility will depend upon the circumstances under which the drug was taken and upon the degree of affectability and subordination of the conscious to the subconscious faculties. These circumstances relate to the voluntary or involuntary use of the intoxicant, to the nature of the crime itself, and to the possible culmination in alcoholic insanity. When LSD is voluntarily taken by a person who knows the effect which the drug will produce, intoxication will usually not relieve him of criminal responsibility. Illinois generally supports the view that one who is intoxicated is criminally responsible for his acts.²⁵ The Illinois courts propounded this view in 1883 when it upheld the conviction of a defendant who, while drunk, had killed a blacksmith with a hammer.²⁶ The court found that a mere loss of reason, brought about through voluntary intoxication, was no defense. This position has been consistently reaffirmed by the courts.²⁷ Based upon this view the user of LSD may, under proper circumstances, be held to the standard of full criminal responsibility for acts committed while voluntarily under the influence of the drug.

However, a person under the intoxicating influence of LSD, voluntarily taken, may not be held responsible for his criminal acts if a specific criminal intent is required as an essential element of that crime and his intoxicated condition prohibits the formation of the requisite intent. The user's inability to formulate the specific intent required may therefore preclude his conviction. The Illinois Criminal Code sets forth a defense upon these grounds,²⁸ and many courts have stated that if intoxication was, in fact, so extreme as to prevent mental action and suspend the powers of reason, and if the defendant could not have formulated the necessary intent, he then could not be guilty of a crime. The proposition that alcoholic intoxication can relieve one of responsibility for crimes which require specific intent is not without support.²⁹ Crimes such as burglary which require the person to have specific intent³⁰ cannot be committed while one is incapable of forming that intent, and therefore, the LSD user may find exoneration through this gate. In crimes such as murder, the various statutes and public policy will determine the mitigating factors which will apply. Where murder generally requires a specific intent, a crime should not be found when one commits the crime while intoxicated to such a degree as to prevent the formation of the required

²⁵ ILL. REV. STAT. ch. 38, § 6-3 (1965) and comments.

²⁶ *Upstrong v. People*, 109 Ill. 169 (1883). *Accord*, *People v. Strader*, 23 Ill. 2d 13, 177 N.E.2d 126 (1961).

²⁷ *People v. Ford*, 56 Ill. App. 2d 153, 206 N.E.2d 105 (1965); *People v. Walsh*, 28 Ill. 2d 405, 192 N.E.2d 843 (1963).

²⁸ ILL. REV. STAT. ch. 38, § 6-3 (1965).

²⁹ PERKINS, CRIMINAL LAW 790 (1957).

³⁰ *Id.*

intent.³¹ States which hold murder to be a crime requiring a general intent will not allow a defense due to one's inability to formulate the necessary intent. However, dicta has stated that a defense may lie in this area.³²

It is to be pointed out that intoxication per se, regardless of the degree, will not be sufficient to constitute a defense; its effect on the state of mind is the legally significant factor. If the intoxication prevents the formation of the criminal state of mind, and prevents the formation of the necessary intent, only then is criminal accountability excused. As this will be the result with alcoholic intoxication, even if voluntary,³³ there is no reason why it should not apply to LSD hallucinating intoxication as a person under the influence of LSD may easily be without capacity to form an intent.³⁴

The intoxication referred to previously has been caused through voluntary actions. The law recognizes that intoxication may be involuntarily caused,³⁵ and if so, will support a defense, even as to crimes that require no intent.³⁶ Involuntary consumption of alcohol can occur through mistake or coercion. Since LSD is taken in the familiar form of sugar cubes, much like polio vaccine, the drug can easily be consumed by mistake.³⁷ Furthermore, LSD is used in psychotherapy and under such treatment an adverse reaction may occur.³⁸ As each therapy treatment produces different results in the mind of the patient,³⁹ conditions so induced can be held to be involuntary intoxication. From early common law, involuntary intoxication has been held to be a defense to crimes committed while so intoxicated.⁴⁰ States such as Illinois which have adopted the Model Penal Code definition agree that a valid defense will lie if it can be shown that the intoxication was involuntarily caused and that it deprived the defendant of his mental faculties.⁴¹ Thus, a valid defense arises where the subject is deprived of legal responsibility.⁴²

³¹ *Id.* at 789.

³² *People v. Winters*, 29 Ill. 2d 74, 193 N.E.2d 809 (1963).

³³ ILL. REV. STAT. ch. 38, § 6-3 (1965). See *People v. Evrard*, 55 Ill. App. 2d 270, 204 N.E.2d 777 (1965); *People v. Lion*, 10 Ill. 2d 208, 139 N.E.2d 757 (1957).

³⁴ THE PHARMACOLOGICAL BASIS OF THERAPEUTICS 206 (3d ed. Goodman & Gilman 1965).

³⁵ See authorities cited notes 22 and 23 *supra*.

³⁶ *People v. Minzer*, 358 Ill. 345, 193 N.E. 370 (1934); PERKINS, CRIMINAL LAW 787 (1957).

³⁷ The drug may also take the form of a liquid or powder.

³⁸ *Supra* note 13, at 759.

³⁹ *Supra* note 8.

⁴⁰ CLARK & MARSHALL, LAW OF CRIMES 131 (4th ed. 1940).

⁴¹ ILL. REV. STAT. ch. 38, § 6-3 (1965).

⁴² ILL. REV. STAT. ch. 38, § 6-3 (1965).

Since LSD can apparently manifest itself in a manner similar to alcoholic intoxication, a lack of legal capacity should be the logical conclusion where the surrounding circumstances are equivalent to those set forth. The defendant, therefore, may be able to escape some, if not all, of the criminal responsibility attached to his acts when the LSD reaction is equated with intoxication.

LSD AND LEGAL INSANITY

Unlike intoxication, legal insanity is a defense to all crimes.⁴³ A defendant must only show that he was in fact insane at the time he committed the crime.⁴⁴ The LSD reaction can be similar to a naturally occurring psychosis, and in some cases is not unlike schizophrenia. While medical psychosis is sometimes insufficient to satisfy the legal standards of insanity, they may be equivalent.⁴⁵

A controlling standard for the legal sanity test and the test Illinois follows⁴⁶ is a person's ability to appreciate the criminality of his acts. LSD can cause a breakdown in the normal functioning of the mind because hallucinations and a complete break with reality is one result of the use of the drug.⁴⁷ Therefore, the person affected may not realize what he is doing or appreciate the criminality of his act, and legal insanity may be the result.

Although it has been held that insanity caused by alcoholism, not resulting in delirium tremens is no defense to a crime,⁴⁸ Illinois does not seem to differentiate as to the cause of insanity or the duration of it.⁴⁹ Therefore, if toxic psychosis develops through the use of alcohol, the defendant could

⁴³ See generally HALL, *GENERAL PRINCIPLES OF CRIMINAL LAW* 449 (2d ed. 1960); PERKINS, *CRIMINAL LAW* 740 (1957).

⁴⁴ *People v. Carpenter*, 11 Ill. 2d 60, 142 N.E.2d 11 (1957); *People v. Moriarity*, 380 Ill. 148, 43 N.E.2d 977 (1943).

⁴⁵ In many cases medical mental illness may amount to legal insanity. However, this depends solely on the degree of mental illness. If it will result in the loss of criminal responsibility, the terms will be equivalent. See generally Bauer, *Legal Responsibility and Mental Illness*, 57 Nw. U.L. REV. 12 (1962). See also Bassiouni, *The Right of the Mentally Ill to Cure and Treatment: Medical Due Process*, 15 DEPAUL L. REV. 291, 294 (1966): "Mental illness is a disease of the mind and is defined according to medical standards. 'Insanity,' on the other hand, is a legal term inherited from our legal system, and it has no medical connotation."

⁴⁶ ILL. REV. STAT. ch. 38, § 6-2 (1966): (a) "A person is not criminally responsible for conduct, if at the time of such conduct as a result of mental disease or mental defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." See also MODEL PENAL CODE § 401 (P.O.D., 1962).

⁴⁷ PERKINS, *CRIMINAL LAW* 790 (1957).

⁴⁸ See generally Annot., 30 A.L.R. 761 (1924).

⁴⁹ ILL. REV. STAT., *supra* note 23.

possibly be found to be legally insane at the time of the crime and without criminal responsibility.

In the case of delirium tremens, a condition produced through excessive use of alcohol or through a sudden cessation of its long use, the patient completely loses the ability to decide and choose and suffers a loss of perception. Authorities state that delirium tremens may be severe enough to render the patient insane and legally incapable of committing a crime.⁵⁰

Chronic alcoholism can produce legal insanity that will allow a defendant to escape criminal responsibility for his acts.⁵¹ It should be noted that chronic alcoholism of itself will not be treated as insanity,⁵² except when it results in delirium tremens which satisfies the legal standards and tests of insanity. A defendant need only be insane at the time of the criminal act to avail himself of the defense of insanity.⁵³ The law attaches no criteria as to the cause of the insanity, but only to its existence and manifestation. Cases exemplify this in that they do not appear to distinguish between delirium tremens caused by alcoholism of long or short duration, and that caused by the withdrawal from its use. Therefore, it may be said that the degree of insanity is the controlling factor in the determination and not the producing cause.

The LSD reaction may be equated, for legal purposes, with delirium tremens. In many ways they have the same effect on the human mind, and it would appear that both should render the subject legally insane.⁵⁴ Since the law does not look to the cause of insanity, but rather to the degree of mental disturbance, an argument presented as to the voluntary consumption of LSD does not seem valid. The LSD reaction can be looked upon as a self-induced psychosis of sufficient magnitude to relieve the subject of criminal responsibility. The defense of insanity caused by LSD should find some support in a recent Detroit juvenile case. The defendant, a fifteen year old boy, killed two sisters after he had been sniffing glue. The judge ruled that the boy was temporarily insane and that the insanity was caused by the fumes of the glue.⁵⁵ It should not be too great a step to find that insanity can be caused by the consumption of LSD, even if voluntary, and therefore a valid defense will lie.

⁵⁰ PERKINS, CRIMINAL LAW 795 (1957).

⁵¹ *Id.* See HALL, GENERAL PRINCIPLES OF CRIMINAL LAW 532 (2d ed. 1960).

⁵² *Driver v. Hinnant*, 356 F.2d 761 (4th Cir. 1966).

⁵³ *Supra* note 44.

⁵⁴ Both delirium tremens and the LSD reaction produce hallucinations and loss of reasoning power. However, delirium tremens has more of a physical manifestation than does the LSD reaction.

⁵⁵ 18 JUVENILE CT. JUDGES J. 49 (1967).

LSD AND NARCOTIC ADDICTION

There has been an attempt to classify LSD as a narcotic similar to heroin or morphine. The Food and Drug Administration classifies LSD as an experimental drug only to be dispensed to registered investigators.⁵⁶ Unlike heroin or morphine, LSD is not addictive⁵⁷ and generally is not habit-forming,⁵⁸ although a psychological dependence on the drug may develop.⁵⁹ The reaction of LSD is not similar to that of most narcotics. A narcotic will manifest itself both physically and mentally while acting as a suppressant.⁶⁰ LSD generally manifests itself only mentally and is not a suppressant.⁶¹

No distinction is generally made between a narcotic-induced state and an alcoholic-induced state.⁶² Therefore, if LSD is subsequently classified as a narcotic, the earlier analysis of intoxication and self-induced insanity will apply. Federal cases have recently recognized that narcotics can produce insanity. In *Horton v. United States*,⁶³ the defendant was convicted of violating a narcotics statute. The appellate court held that narcotic addiction could be a form of insanity in itself, and that the insanity was a question of fact to be presented to a jury. The United States Supreme Court decided that addiction in itself is a sickness and that one could not be imprisoned for its use.⁶⁴ More recently a federal court in *Brown v. United States*⁶⁵ held that insanity based upon drug addiction was a question of fact for the jury, and remanded the case for a new trial. The court, in effect, ruled that narcotic-induced insanity could be the basis of a defense. It may then be concluded that, in the absence of any specific statutory provision, if LSD is categorized as a narcotic, the defense of drug-induced insanity will still arise.

⁵⁶ 21 C.F.R. 132 (1966).

⁵⁷ See authorities cited notes 6 and 11 *supra*. Drug addiction is a state of intoxication with characteristics of a compulsion to take the drug, a tendency to increase the dose, a psychological and physical dependence on the drug, and a detrimental effect on society.

⁵⁸ *Id.* Drug habituation results from the repeated consumption of a drug, and its characteristics include a desire to continue using the drug, no tendency to increase the dose, psychic but no physical dependence, and a detrimental effect on the individual.

⁵⁹ *Supra* note 8.

⁶⁰ *Supra* note 29, at 250.

⁶¹ *Supra* note 19, at 426.

⁶² *Supra* notes 22 and 23.

⁶³ 317 F.2d 595 (D.C. Cir. 1963).

⁶⁴ *Robinson v. California*, 370 U.S. 660 (1962).

⁶⁵ 331 F.2d 821 (D.C. Cir. 1964).