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# General vs. Specific Intent: A Time for Terminological Understanding in California

WILLIAM ROTH\*

*Use of the terms "general intent" and "specific intent" are a continuing source of confusion in criminal law. The meanings are amorphous and serve little purpose. Professor Roth would prefer that their use be discontinued. Since this seems unlikely, he attempts to clarify the concepts by approaching the definitional problem from two perspectives: a vertical model differentiating on the degree of culpability, and a horizontal model differentiating present and future intent. The author then critically analyzes application of the intent concept to specific issues. He suggests that the rule wherein intoxication may be a defense to specific intent crimes, but not to general intent crimes, is unsound. The relevancy of evidence of intoxication is not directly affected by labeling a crime one of general or specific intent. This rule has resulted in the fiction that assault is a general intent crime. Professor Roth suggests the label attached to a crime should not determine the admissibility of evidence, and that assault should be recognized as a crime of specific intent which public policy demands not be defensible on the grounds of intoxication.*

## INTRODUCTION

Among the numerous perplexing issues in criminal law, the problem of "intent" continues to puzzle many able judges and practitioners. In an effort to understand this concept, they often

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approach the problem by inquiring whether a given offense is a general or specific intent crime. This categorization is seen as essential in order to resolve two important questions in criminal litigation, viz., whether evidence of intoxication can be used as a defense and whether particular jury instructions are appropriate. In fact, labeling a crime as one involving general or specific intent does not give a rational answer to either of these practical questions; it just seems to do so in a majority of cases. More importantly however, this simplistic labeling approach obscures certain basic concepts of criminal law that ought to be clearly considered.<sup>1</sup>

The purpose of this article is to examine what is meant by the terms general and specific intent and to demonstrate that their continued usage is counterproductive. Part I reviews certain basic principles regarding the concept of intent. Part II will then consider how the words "general" and "specific" variously serve to modify the concept. Part III re-examines the common premise that intoxication is not a defense to general intent crimes, and Part IV will give fresh consideration to a perennial problem: the defense of intoxication in cases of assault.

## I. THE MEANING OF INTENT

The word "intent" is itself subject to various usages. One definition makes it a synonym for "purpose" or "desire."<sup>2</sup> Thus, "the defendant entered the house with the (intent) (purpose) (desire) to steal." Used in this manner, the word closely approximates common understanding.

In many instances, however, the law does not restrict the word to such a narrow construction. Rather, intent "has often been viewed as encompassing much of what would ordinarily be described as knowledge."<sup>3</sup> Thus one can be said to intend a result of his act whether he consciously desires the result or simply knows that it very probably will occur because of his actions.<sup>4</sup> For example, if a discharged airline employee desires to retaliate against the company by blowing up a plane, he can justly be said to "intend to kill" if, at the time he explodes the bomb, he has an

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1. Note, *Intoxication as a Criminal Defense*, 55 COLUM. L. REV. 1210, 1218 (1955) "Categorizing all crimes as either having 'general' or 'specific' intent seems too mechanical and often forecloses evaluation by the court of the important consideration involved, i.e., what elements are involved in the crime and whether the prosecution has satisfactorily established them."

2. BALLENTINE'S LAW DICTIONARY 646 (3d ed. 1969); R. PERKINS, CRIMINAL LAW 746 (2d ed. 1969) (*hereinafter* cited as PERKINS).

3. W. LA FAVE & A. SCOTT, HANDBOOK ON CRIMINAL LAW 197 (1972) (*hereinafter* cited as LA FAVE & SCOTT).

4. *Id.* at 196.

awareness that people are on board who most certainly will perish.<sup>5</sup>

Furthermore, intent frequently is used in a much wider sense to describe whatever type of fault or blameworthiness that may be required for a particular crime.<sup>6</sup> In this sense it is synonymous with the broad concept of *mens rea*—a concept referring “not to a single, definite kind of intent, but rather to a number of different mental states, all of them involving some blameworthy element.”<sup>7</sup> Accordingly, intent has been variously used to describe not only the mental state of knowledge (*e.g.*, that certain goods are stolen), but of recklessness in behavior (*e.g.*, throwing a rock at the side of a house which the actor realizes might break a window), and even negligence.<sup>8</sup>

Because crimes generally consist of several elements (*i.e.*, different things that must be proved), a problem of intent (or blameworthiness) exists as to *each* element.<sup>9</sup> To illustrate, consider a larceny statute providing that “every person who takes and carries away the personal property of another with the intent to permanently deprive the owner is guilty of theft.”<sup>10</sup> The elements that a prosecutor would have to prove are:

1. Taking Control of
2. Personal Property, belonging to
3. Another, and
4. Carrying It Away, with the
5. Intent to Permanently Deprive the Owner.

Initially the intent issue seems clear. The statute itself speaks of intent in the fifth element. But what about the others? Elements one and four are physical acts and elements two and three are attendant circumstances which co-exist with these physical acts. A

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5. *Id.* at 197; see MODEL PENAL CODE § 5.01 (Comment, Tent. Draft No. 10, 1960). “The concept of ‘intent’ has always been an ambiguous one and might be thought to include results which are believed by the actor to be the inevitable consequences of his conduct.”

6. See PERKINS, *supra* note 2, at 744-45.

7. B. WITKIN, I CALIFORNIA CRIMES § 52 (1963) (*hereinafter* cited as WITKIN).

8. Strictly speaking, negligence (even if of a degree called “gross” or “criminal”) is not a mental state. Nevertheless it is a form of “fault”, a factor that crimes generally require in addition to their physical elements. LA FAVE & SCOTT, *supra* note 3, at 192.

9. MODEL PENAL CODE § 2.02 (Comment, Tent. Draft No. 4, 1955).

10. The quoted “statute” is hypothetical, but it does incorporate the essence of common law larceny—albeit omitting the element of trespass. See PERKINS, *supra* note 2, at 234, 266.

question arises regarding whether any intent (or mental state) is required as to elements one through four. Guilt would seem to require that a person must also know he has possession of property (element one)<sup>11</sup> and that it belongs to another (element three).<sup>12</sup> The point here is that with any given offense it is important to independently consider whether *each* element requires some sort of "intent," and, if so, what sort.<sup>13</sup> Some crimes require no intent (or fault) in reference to certain elements.<sup>14</sup> In others the degree of fault may vary with the different elements.<sup>15</sup> Unfortunately, statutes often do not make explicit what states of mind are required nor do they delineate with precision the elements that necessitate a particular mental state.<sup>16</sup> These problems ought to be confronted and resolved during the time of legislative drafting.<sup>17</sup>

## II. USE OF THE WORDS "GENERAL" AND "SPECIFIC"

When the words "general" or "specific" are used to modify "intent," it is presumably done to convey a more particularized meaning. Yet courts rarely define what they mean when they use such terms. It appears that an assumption is made that attorneys already know the meanings. But if criminal courtroom experience is a valid criterion, any such assumption is erroneous.<sup>18</sup> This is not to suggest that understanding is easily acquired. There exist several possible definitions for the terms<sup>19</sup> and, while two definitions of specific intent predominate,<sup>20</sup> confusion remains because of a continuing unawareness that the terms are definable in different ways.<sup>21</sup>

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11. LA FAVE & SCOTT, *supra* note 3, at 196; Perkins, *supra* note 2, at 900.

12. LA FAVE & SCOTT, *supra* note 3, at 642.

13. MODEL PENAL CODE, *supra* note 9.

14. LA FAVE & SCOTT, *supra* note 3, at 194.

15. *Id.* at 194-95.

16. *Id.*

17. See Remington & Helstad, *The Mental Element in Crime—A Legislative Problem*, 1952 WIS. L. REV. 644, 646 (*hereinafter* cited as Remington and Helstad).

18. Between 1968 and 1975, the author was actively engaged in the trial of criminal cases. Three and a half years were spent as a deputy public defender and four years as a deputy district attorney (both for the County of Los Angeles). During that time he knew that he did not understand the terms and did not meet anyone who seemed to possess any modicum of true understanding.

19. Professors La Fave and Scott list four variations. LA FAVE & SCOTT, *supra* note 3, at 201-02. Their list is not, however, exhaustive of the possibilities. They do not include the definition discussed in the text at notes 22-24, *infra*, or the one considered in note 23, *infra*. Furthermore, "specific intent" could be used to refer to a "well-defined intent" (such as the intent in larceny to permanently deprive the owner of his property)—as distinguished from the unclarified intent implicitly required in crimes such as rape. G. FLETCHER, *RETHINKING CRIMINAL LAW* 850 (1978).

20. See text at notes 22-23, *infra*; see also Remington & Helstad, *supra* note 17, at 664.

21. The problem of multiple definitions pervades many areas of the law. See

The first major usage is the one apparently employed by most attorneys. This approach considers that the word "specific," when added to the word "intent," modifies the latter (as used in the broad sense of *mens rea*) and narrows its meaning to "purpose" or "conscious desire."<sup>22</sup> Conversely, the use of the word "general" serves to designate the remaining types of fault that a crime might require, such as knowledge,<sup>23</sup> recklessness, or negligence.<sup>24</sup>

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Hancock, *Fallacy of the Transplanted Category*, 37 CAN. B. REV. 535, 574 (1954) "We habitually assume (albeit erroneously) that when language is being used properly to communicate ideas the same word applied to the same subject matter ought always to have the same meaning." The crux of the confusion surrounding the terms general intent and specific intent is that their meanings can differ depending on the *reason* the terms are used. For example, if one wishes to designate the mental state of purpose, the term "specific intent" does not (verbally at least) sound like an unreasonable choice. See text at notes 22-24, *infra*. If one wishes to permit the mitigating effect of intoxication to extend only to the mental states of purpose and knowledge, the term "specific intent" can conveniently be used to designate just those two mental states. See note 23, *infra*. Or, if one wishes to describe a mental state that refers to the future, "specific intent" can serve that objective as well. See text accompanying notes 29-33, *infra*. However, "specific intent" should mean only one thing at one time. Yet often a writer will use it in one sense but the reader will understand it to mean something else. Therefore, any coherent use of the term (or of "general intent") must be preceded by an agreement on its meaning in the particular context. Of course, if it is necessary to define a term each time it is used, it is questionable whether the term ought to be used at all.

Historically, the specific/general intent distinction evolved as a judicial response to the intoxicated offender. Hall, *Intoxication and Criminal Responsibility*, 57 HARV. L. REV. 1045, 1061 (1947). Professor Fletcher has suggested that much of the ensuing confusion is due to courts using the terms "as though they had a meaning beyond their function as devices for seeking a compromise verdict. The difficulty with taking the term 'specific intent' seriously is that the same term is employed in a variety of contexts that have nothing to do with intoxication as an excuse." G. FLETCHER, *RETHINKING CRIMINAL LAW* 850 (1978). Fletcher thus views the specific/general intent distinction as a functional means to "permit evidence of intoxication to reduce the crime to a lower degree, but not to admit evidence of self-induced intoxication if it would result in a total acquittal." *Id.* at 848. See also Hall, *Theory and Reform of Criminal Law*, 29 HASTINGS L.J. 893, 901-03 (1978).

22. MODEL PENAL CODE, *supra* note 9. This distinction is particularly important in the law of criminal attempt. Thus it is often said that a person "cannot be guilty of an attempt to commit murder unless he has a specific intent to kill." *Merritt v. Commonwealth*, 164 Va. 653, 661, 180 S.E. 395, 399 (1935). *But cf.* G. WILLIAMS, *CRIMINAL LAW—THE GENERAL PART* 49 (2d ed. 1961). "The adjective 'specific' seems to be somewhat pointless, for the intent is no more specific than any other intent required in criminal law. The most that can be said is that the intent is specifically referred to in the indictment." Hall, *Intoxication and Criminal Responsibility*, 57 HARV. L. REV. 1045, 1064 (1944). "While there are degrees of concentration or intensity in the response designed 'intentional conduct,' the paramount fact is that neither common experience nor psychology knows any such actual phenomenon as 'general intent' that is distinguishable from 'specific intent.'"

23. Some writers, however, use specific intent as meaning both purpose and

Because this definitional distinction is based on a difference between degrees of fault (*i.e.*, purpose, as opposed to all others), it is helpful to think of a vertical scale. The word "vertical," as employed here, suggests an ascending scale of mental culpability wherein specific intent occupies the top position.

While this predominant usage of specific intent has wide popular appeal, some ambiguity remains. To the extent that the residual term "general intent" is used to signify a degree of fault less than purpose (such as recklessness or negligence), it fails to indicate the precise kind of fault required. Indeed, at least in California, "general intent" has never been accorded a textbook definition,<sup>25</sup> though the supreme court has attempted a description.<sup>26</sup> Moreover, the word "intent" itself strongly suggests some sort of goal directed conduct, while "general intent" denotes the opposite.<sup>27</sup> It was due to this unmanageably fluid use of the word "intent" that the drafters of the Model Penal Code decided to abandon the term altogether in favor of clearer terms such as purpose, knowledge, recklessness, and negligence.<sup>28</sup>

The other major definition given to the terms general and specific intent does not seek to separate various degrees or levels of fault. Rather than approaching intent in a vertical sense, as de-

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knowledge. See Paulsen, *Intoxication as a Defense to Crime*, 1961 U. ILL. L.F.J. 1, 9 (*hereinafter* cited as Paulsen). This usage probably is the most rational, at least insofar as the term serves as a guide to the admissibility of evidence of intoxication. See text accompanying note 50, 51 and 72, *infra*. The line being drawn is between concrete awareness (purpose and knowledge) and the more attenuated mental states of fault (recklessness and negligence). It is the lack of the former, whether due to intoxication or some other cause, which presents the most persuasive case for a defense of intoxication. As phrased by Professor Paulsen, "[i]f a crime (or a degree of crime) requires a showing of [purpose or knowledge] it is because the conduct involved presents a special danger, if done with purpose or knowledge or the actor presents a special cause for alarm." Paulsen, *supra* at 11. Nevertheless, this use of specific intent is still not satisfactory. It refers collectively to different mental states and does not avoid the ambiguity of "general intent" (discussed in the text at notes 25-27, *infra*).

24. In the absence of [certain general defenses to crime], general criminal intent was conclusively presumed from the fact that the actor voluntarily committed an unlawful act or a lawful act without due care. Moreover, a person who voluntarily committed an unlawful act was considered to possess a sufficiently blameworthy state of mind so that he was held liable even for the purely accidental consequence of his unlawful act.

Remington & Helstad, *supra* note 17, at 651 (footnote omitted).

25. Comment, *Rethinking the Specific-General Intent Doctrine in California Criminal Law*, 63 CALIF. L. REV. 1352, 1356 n.21 (1975).

26. *People v. Hood*, 1 Cal. 3d 444, 456-57, 462 P.2d 370, 378, 82 Cal. Rptr. 618, 626 (1969), discussed *infra* in text accompanying note 29.

27. *Cf.* Remington & Helstad, *supra* note 17, at 651 n.22. "Many writers do not use the term 'general intent' but they nevertheless distinguish between a specific mental element which must be proved for a particular crime and the general mental element which is presumed from the defendant's voluntary conduct."

28. MODEL PENAL CODE, *supra* note 9.

scribed above, this second definitional scheme approaches the problem from a horizontal time perspective. This concept distinguishes between intent in reference to the present physical circumstances and intent in reference to some *future* situation.<sup>29</sup> For example, consider the elements of burglary:<sup>30</sup>

1. Entry, into a
2. Building, with the
3. Intent to Commit Theft or a Felony

Under the horizontal approach, burglary would be a specific intent crime because the third element is a state of mind which exists without connection or reference to the present circumstances (consisting of the existence of a building and the physical act of an entry). The state of mind refers, instead, to the future. As phrased by Professors La Fave and Scott, "the most common usage of 'specific intent' is to designate a special mental element which is required above and beyond any mental state required with respect to the *actus reus* of the crime."<sup>31</sup>

However, burglary undoubtedly requires that the defendant also possess a mental state with regard to the first two elements—*i.e.*, knowledge that he was entering a building.<sup>32</sup> If the crime's definition did not include the third element (intent to steal), the crime would then be considered one of general intent because, under the horizontal approach, the required mental state of knowledge would relate solely to elements involving the *actus reus*, that is, the physical conduct of an entry and the attendant circumstance of a building. Accordingly, a general intent crime is said to exist "[w]hen the definition of a crime consists of only the description of a particular act, *without reference to intent to do a further act or achieve a future consequence* . . . . [In such a case] we ask whether the defendant intended to do the proscribed act. This intention is deemed to be a general criminal intent."<sup>33</sup>

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29. Note, *Intoxication as a Criminal Defense*, 55 COLUM. L. REV. 1210, 1212 (1955). The California Supreme Court has described specific intent as meaning an "intent to do some further act or achieve some additional consequence." *People v. Hood*, 1 Cal. 3d 444, 457, 462 P.2d 370, 378, 82 Cal. Rptr. 618, 626 (1969).

30. See LA FAVE & SCOTT, *supra* note 3, at 708-17.

31. *Id.* at 202.

32. *Id.* at 196.

33. *People v. Hood*, 1 Cal. 3d 444, 456-47, 462 P.2d 370, 378, 82 Cal. Rptr. 618, 626 (1969) (emphasis added). Cf. G. FLETCHER, *RETHINKING CRIMINAL LAW* 849 (1978). "The general intent is the intent accompanying the base offense; the specific intent goes beyond the base offense to reach further unrealized objectives."



Crimes labeled specific intent under the horizontal definition will also be deemed specific intent crimes under the vertical approach because the only type of mental state that could be an "intent to do some further act or achieve some additional consequence"<sup>34</sup> would also, of necessity, have to be the mental state of "purpose." However, the scope of these two definitional schemes is not totally co-extensive. There are instances of specific intent under the vertical approach, but only general intent under the horizontal approach.<sup>35</sup> While in most cases the designation of a crime as being one of general intent or specific intent will be the same regardless of the definitional approach used, the fact that an occasional difference does occur obviously tends to create confusion.<sup>36</sup> Needless to say, this confusion is compounded when the same court is not consistent in its usage of the terms.<sup>37</sup>

### III. GENERAL INTENT CRIMES AND INTOXICATION

If there were some purpose to be served by these definitional schemes, then perhaps the effort to understand them would be worthwhile. Unfortunately, trial decisions which supposedly hinge on the definitions—admissible evidence of intoxication and appropriate jury instructions—in reality are not aided by knowl-

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34. 1 Cal. 3d 444, 456-57, 462 P.2d 370, 378, 82 Cal. Rptr. 618, 626 (1969).

35. An example is the crime of mayhem: "Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem." CAL. PENAL CODE § 203 (West 1970). Because the mental state of "maliciously" can be satisfied if the defendant either desires to cause the particular harm or acts recklessly in reference to the enumerated injuries, PERKINS, *supra* note 2, at 186, California cases hold that mayhem is not a specific intent crime. See *People v. Garcia*, 5 Cal. App. 3d 15, 18-19, 85 Cal. Rptr. 36, 37-38 (1970) (collecting cases). However, for mayhem to support a conviction of felony-murder, the supreme court has held that the defendant must have "specifically intended to commit mayhem." *People v. Sears*, 61 Cal. 2d 737, 744, 401 P.2d 938, 943, 44 Cal. Rptr. 330, 335 (1965). Apparently this means that, in the felony-murder context, the defendant must be shown to have desired the particular injury, such as slitting the lip or nose. *Id.* at 745, 401 P.2d at 943, 44 Cal. Rptr. at 335. This desire to do the defined injury would indeed be called specific intent under the traditional (or "vertical") view, as the mental state relates to the actor's *purpose* to do the *actus reus*. See text at notes 22-24, *supra*. However, it would be considered general intent under the horizontal approach because the defendant merely desired to commit the proscribed act and "without reference to do a further act or achieve a further consequence." *People v. Hood*, 1 Cal. 3d 444, 457, 462, P.2d 370, 378, 83 Cal. Rptr. 618, 626 (1969). See text at notes 29-31, *supra*.

36. A much more frequent conflict in labels occurs if "specific intent" is sometimes also used to embrace both purpose and knowledge. See note 23, *supra*.

37. Compare *People v. Hood*, 1 Cal. 3d 444, 457, 462 P.2d 370, 378, 82 Cal. Rptr. 618, 626 (1969) (defining specific intent as involving an intent "to do some further act or achieve some additional consequence") with *People v. Thomas*, 25 Cal. 2d 880, 898, 156 P.2d 7, 17 (1945), defining specific intent as an intent which is "[p]recisely formulated or restricted; . . . definite, . . . explicit; of an exact or particular nature" (quoting from WEBSTERS NEW INT'L. DICTIONARY (2d ed.).

edge of the labels. In this regard let us examine the soundness of the "rule" that intoxication is not a defense to general intent crimes, but is a defense to specific intent crimes.<sup>38</sup> In the latter situation intoxication is said to negate the required mental state.<sup>39</sup> Thus, with larceny (a specific intent crime under either approach),<sup>40</sup> evidence of intoxication can be introduced with the object of negating the intent to steal.<sup>41</sup> Accordingly, if an intoxicated man takes property belonging to another because he erroneously believes he is the rightful owner, there is not a larceny.<sup>42</sup> The man simply does not have the required intent to steal (*i.e.*, an intent to permanently deprive another of his property). Notice, however, that the fact the man is intoxicated is not in itself a defense. Rather, intoxication is merely evidential on the issue of the man's true state of mind.<sup>43</sup> The evidence clearly is relevant, and, as such, is admitted.<sup>44</sup>

Is evidence of intoxication any less relevant, or any less admissible, merely because the crime is labeled one of "general intent?" Consider the crime of receiving stolen property, a crime sometimes thought to be one of general intent.<sup>45</sup> In its simplest form the elements are:<sup>46</sup>

38. Paulsen, *supra* note 23. Numerous cases to this effect are collected in Note, *Intoxication as a Criminal Defense*, 55 COLUM. L. REV. 1210, 1211-12 (1955).

39. Paulsen, *supra* note 23, at 10.

40. Larceny requires an intent to permanently deprive the owner of his property. PERKINS, *supra* note 2, at 266. Since the actor must desire this deprivation, the mental state is that of purpose, which is the top category on the vertical scale. See text following note 24, *supra*. Moreover, since the deprivation must occur, if at all, in the future, it is specific intent on the horizontal scale. See text accompanying notes 29-31, *supra*.

41. PERKINS, *supra* note 2, at 899-900. CAL. PENAL CODE § 22 (West 1970) provides:

No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act.

42. PERKINS, *supra* note 2, at 265-66.

43. P. JOHNSON, CRIMINAL LAW 332 n.2 (1975).

44. See CAL. EVID. CODE § 351 (West 1966): "Except as otherwise provided by statute, all relevant evidence is admissible."

45. See WITKEN, *supra* note 7, at § 422. "No specific intent is required."

46. PERKINS, *supra* note 2, at 322. Note that proof of an honest intent (such as a desire to return the stolen property to the owner) would eliminate the criminal aspect of the crime. *Id.* at 329-30. However, a lack of rightful intent is not an element which the prosecutor must allege or affirmatively prove. *Id.* These princi-

1. Receipt, of
2. Stolen Property, with
3. Knowledge that the property was stolen, and with
4. Wrongful Intent.<sup>47</sup>

Suppose the property was in fact stolen, but, because of intoxication, the receiver was under the erroneous belief that it was not. There is no doubt that in this situation the defense would be allowed. Intoxication clearly is relevant since it tends to negate the existence of an essential element of the crime—knowledge.<sup>48</sup> Some lawyers would question this, however, asserting that receiving stolen property is a general intent crime and therefore cannot be defended by proof of intoxication. But, as this example demonstrates, there is no necessary correlation between crimes labeled general intent and the proper admission of evidence of intoxication as a means to negate a required element.<sup>49</sup>

The underlying basis for this established exclusionary “rule” is that many crimes do not require either purpose or knowledge for their commission. A good example is battery, where recklessness will suffice to affix criminal responsibility.<sup>50</sup> Furthermore, one

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ples have been affirmed in California. *People v. Osborne*, 77 Cal. App. 3d 472, 475-76, 143 Cal. Rptr. 582, 584-85 (1978).

47. While the crime of receiving stolen property is conveniently thought to consist of these four elements, the aspect of knowledge is not a separate element in the crime. Rather, it is an express articulation of the mental state required in reference to element number two, the attendant circumstance concerning the status of the property.

48. *People v. Harris*, 29 Cal. 678 (1866) (intoxication can negate the required knowledge in a statute prohibiting voting twice); *People v. Foster*, 19 Cal. App. 3d 649, 655-56, 97 Cal. Rptr. 94, 98-99 (1971) (intoxication can negate the required knowledge that the substance possessed was a narcotic).

49. This point occasionally is recognized by the courts.

The People contend that knowledge is not “specific intent.” It is true that knowledge is not identical with intent. [Citations omitted]. It is, nevertheless, a mental state . . . . Although the crimes involving specific intent provide the usual occasion for the instruction required under Penal Code section 22 with respect to voluntary intoxication, [set forth in note 41, *supra*] that statute is not limited to the existence of specific intent but by its language includes the existence of any ‘particular purpose’ or ‘motive’ with which a defendant committed the act in question.

Intoxication has obvious relevance to the question of awareness, familiarity, understanding and the ability to recognize and comprehend. Accordingly, it is properly embraced within the concepts of ‘purpose’ and ‘motive’ delineated in Penal Code section 22 . . . .

*People v. Foster*, 19 Cal. App. 3d 649, 655, 97 Cal. Rptr. 94, 98 (1971). While the result reached by the court is sound (*i.e.*, the admissibility of evidence of intoxication to negate knowledge), it is obviously a strained construction to say that knowledge is somehow synonymous with purpose and motive. It would have been better to interpret the word “intent” in the statute more broadly so as to encompass the aspect of knowledge.

50. The *mens rea* for battery is satisfied when the actor desires the infliction of injury or is merely criminally negligent in reference to the injury. *LA FAVE & SCOTT*, *supra* note 3, at 605-06. *A fortiori*, when one is reckless he is also acting with criminal negligence. See MODEL PENAL CODE § 2.02.

The term “recklessness” (and its variations) has historically been mired in defi-

who voluntarily becomes intoxicated is deemed to be acting recklessly.<sup>51</sup> With this type of crime, evidence of intoxication is excluded, not because it is labeled "general intent," but because the evidence is simply irrelevant. The crime itself requires no more than recklessness and the defendant, by his intoxication, satisfies that requirement.

Is there, then, any sound reason to continue instructing juries on general and specific intent? Presumably, doing so should make some difference. However, it is submitted that the only remaining reason to retain this practice is to satisfy appellate dictates that it be done.<sup>52</sup> Since the terms do not clearly delineate for the jury (or anyone else) what blameworthy state of mind must exist in any given situation, it would seem senseless to instruct a jury in these amorphous terms. It would be much better simply to tell the jury that, for guilt, a defendant must have thought about (or have been reckless concerning) certain definite things. If he did, and also performed the requisite acts, he is to be

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nitional uncertainty. See MODEL PENAL CODE § 2.02 (Comment Tent. Draft No. 4, 1955). There are, however, two variables involved: 1) the degree of risk, and 2) the aspect of awareness. LA FAVE & SCOTT, *supra* note 2, at 209. MODEL PENAL CODE § 2.02(2)(c) defines recklessness as involving both 1) a substantial and unjustifiable risk, and 2) an actual awareness of the risk.

51. Paulsen, *supra* note 23, at 11-15. Most people, however, do not become truly "reckless" when they drink, whether that term is construed to include an awareness of risk or merely the creation of a significant risk. "Becoming grossly intoxicated increases the risk that the actor will do some harm, but the risk, in most cases, cannot be called substantial." *Id.* at 13. On the other hand, extreme intoxication can cause severe impairment of the actor's consciousness of risk. If a jurisdiction employed a definition of recklessness similar to that of the Model Penal Code, such a condition could logically constitute a defense in that the required awareness would be negated. See note 50, *supra*.

Nevertheless, most American jurisdictions refuse to permit evidence of intoxication to operate as a defense to crimes for which recklessness suffices. This result often is explained on the ground that the crime is one of "general intent." The real reason, however, inheres in the fact that the actor has manifested significant blameworthiness by voluntarily becoming so drunk that he no longer is conscious of risk. MODEL PENAL CODE § 2.08 (Comment, Tent. Draft No. 9, 1959). Accordingly, the MODEL PENAL CODE provides: "When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial." MODEL PENAL CODE § 2.08(2). All of these issues are lucidly discussed in the Paulson article, *supra* note 23.

52. See *People v. Ford*, 60 Cal. 2d 772, 793, 388 P.2d 892, 906, 36 Cal. Rptr. 620, 634 (1964). "As one of the essential elements of robbery is a specific intent to steal [citations omitted], it follows that it was the trial court's duty in the case at bench to so instruct the jury even without a request therefore by defendant."

found guilty. If he did not so contemplate and act, he is to be acquitted.

#### IV. THE CRIME OF ASSAULT AND INTOXICATION

A strong argument can be made that, definitionally, assault is a specific intent crime. The reasoning would be that since assault is an attempted battery,<sup>53</sup> and attempts as such require a specific intent,<sup>54</sup> assault must therefore be a crime of specific intent.<sup>55</sup> However, most courts of appeal in California have held that assault is not a specific intent crime.<sup>56</sup> The problem has been that if intoxication could negate intent, and if assault were a specific intent crime, then intoxication would be a possible defense. Since much assaultive conduct occurs during (and often because of) intoxication, permitting that same intoxication to exculpate the accused has always seemed unacceptable. However, if assault were deemed to be a general intent crime, the problem seemingly would disappear, given the "rule" that intoxication is not a defense to general intent crimes.

The California Supreme Court directly confronted this dilemma of semantics and social policy in *People v. Hood*.<sup>57</sup> Chief Justice Traynor wrote an incisive opinion on the problem of the drunk offender, yet most readers seemed perplexed by the holding.<sup>58</sup> Bench and bar had anxiously awaited a definitive answer to the question of whether assault was a general or specific intent crime. Much to their dismay, however, *Hood* was not explicit in this regard. If anything, the opinion seemed to suggest that assault could be either a general or a specific intent crime, depending on how one wanted to look at it.<sup>59</sup>

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53. WITKIN, *supra* note 7, at § 255; LA FAVE & SCOTT, *supra* note 3, at 609. CAL. PENAL CODE § 240 (West 1970), provides that "[a]n assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another."

54. WITKIN, *supra* note 7, at § 93; see LA FAVE & SCOTT, *supra* note 3, at 428-29.

55. WITKIN, *supra* note 7, at § 256; G. FLETCHER, *RETHINKING CRIMINAL LAW* 851 (1978). The same would be true of crimes wherein assault constitutes a necessarily included offense, such as assault with a deadly weapon.

56. The cases are collected in *People v. Hood*, 1 Cal. 3d 444, 452-53 n.4, 462 P.2d 370, 379 n.4, 82 Cal. Rptr. 618, 622-23 n.4 (1969).

57. 1 Cal. 3d 444, 462 P.2d 370, 82 Cal. Rptr 618 (1969).

58. At least this was the impression of the author who, at the time of the decision, was a deputy public defender actively engaged in trial work. Some courts, however, thought they understood. Compare *In re C.D.H.*, 7 Cal. 3d 230, 234, 86 Cal. Rptr. 565, 567 (1970) (assault not a specific intent crime, citing *Hood*) with *People v. Marceaux*, 3 Cal. App. 3d 613, 618, 83 Cal. Rptr. 798, 802 (1970) (assault requires proof of an intent to commit battery).

59. It is true that in most cases specific intent has come to mean an intention to do a future act or achieve a particular result, and that assault is appropriately characterized as a specific intent crime under this definition. An assault, however, is equally well characterized as a general intent

Underlying the court's discussion of intent was a search to find an acceptable manner in which to protect society from violent conduct. Prior to 1976, aggravated battery in California could be adequately punished only through crimes defined in terms of assault.<sup>60</sup> Consequently, prosecutors were faced with the necessity of forcing a situation which called for a criminal sanction (reckless conduct resulting in injury) into the crime of assault—a crime that by definition seemed to require purpose and arguably should be inapplicable when the defendant's activity resulted in actual physical injury.<sup>61</sup> When *Hood* did not give a definitive label to the crime of assault, judges and criminal practitioners commenced a spirited guessing game on the question of whether the decision *implicitly* had suggested the "appropriate" label. After all, such knowledge was considered essential by those engaged in the trial of criminal assaults. In fact, *Hood* had indicated it really did not matter which label was applied to the crime of assault.<sup>62</sup>

Thirteen months later a new Chief Justice (Donald Wright) attempted to "clarify" *Hood* in *People v. Rocha*.<sup>63</sup> This was done by declaring assault to be a general intent crime.<sup>64</sup> All the previous uncertainty now seemed resolved; evidence of intoxication was not to be used as a defense to assault crimes<sup>65</sup> and all would

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crime under the definition of general intent as an intent merely to do a violent act.

1 Cal. 3d at 457-58, 462 P.2d at 378, 82 Cal. Rptr. at 626.

60. Until then, battery was punishable only as a misdemeanor (maximum fine \$1,000 and/or up to six months jail). CAL. PENAL CODE § 243 (West 1970). Only if the victim was a peace officer or firefighter engaged in the performance of his duty (and the attacker knew or reasonably should have known that fact) did the crime become a felony. CAL. PENAL CODE §§ 17, 243 (West 1970). Simple assaults were treated similarly, CAL. PENAL CODE § 241 (West 1970), but all assaults with deadly weapons or by force likely to produce great bodily injury were classed as felonies. CAL. PENAL CODE §§ 17, 245(a) (West 1970). In 1975, the punishment for battery was amended to provide for felony treatment when serious bodily injury was inflicted upon any person. CAL. PENAL CODE § 243 (West Supp. 1978).

61. The gravamen of an attempt is conduct short of the substantive harm, and an assault (as an attempted battery) would seem to suggest failure of the intended battery. LA FAVE & SCOTT, *supra* note 3, at 603. While recent cases tend to ignore the doctrine of merger and hold that a defendant may be convicted of an attempt even if the completed crime is proved, *id.*, it is nonetheless clear that one cannot be convicted of both the attempt and the completed crime. *Id.* at 603 n.4.

62. "[W]hatever reality the distinction between specific and general intent may have in other contexts, the difference is chimerical in the case of assault with a deadly weapon or simple assault." *People v. Hood*, 1 Cal. 3d at 458, 462 P.2d at 378, 82 Cal. Rptr. at 626.

63. 3 Cal. 3d 893, 479 P.2d 372, 92 Cal. Rptr. 172 (1971).

64. *Id.* at 899, 479 P.2d at 376-77, 92 Cal. Rptr. at 176-77.

65. *Id.* at 896, 479 P.2d at 374, 92 Cal. Rptr. at 174.

know which jury instructions were appropriate.<sup>66</sup>

There is, however, a problem with the *Rocha* holding—it is fallacious.<sup>67</sup> In California an assault requires that the actor con-

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66. “[T]he trial court properly refused to instruct that the jury should consider the effect of intoxication upon Rocha’s capability to form the requisite intent to commit assault with a deadly weapon.” *Id.* at 896-97, 479 P.2d at 375, 92 Cal. Rptr. at 175.

67. The court initially tried to justify its conclusion by reference to legislative history. When CAL. PENAL CODE § 245 was enacted in 1872, it provided that “every person who, *with intent to do bodily harm*, . . . commits an assault upon the person of another with a deadly weapon” was guilty of felony. CAL. PENAL CODE § 245 (1872) (amended 1873) (emphasis added). The following year the statute was amended by, *inter alia*, omitting the portion referring to intent. 1873 CAL. STAT. ch. 614, § 22. The court’s analysis of this occurrence consisted only of a citation to *People v. Turner*, 65 Cal. 540, 4 P. 553 (1884), and the observation that “the court [in *Turner*] rejected defense counsel’s argument that the 1873 amendment had not changed the essential elements of the crime and stated that it was unnecessary for the indictment to charge or the jury to find that the assault was made with the intent to cause great bodily harm.” *People v. Rocha*, 3 Cal. 3d at 898, 479 P.2d at 376, 92 Cal. Rptr. at 176. The obvious implication was that *Turner* had held that the jury need not consider the aspect of intent in cases of assault with a deadly weapon. But Chief Justice Wright had paraphrased *Turner* out of context. The case had not considered the question of the requisite mental state. Rather, the court in *Turner* was concerned with a procedural matter, saying that “[i]t is sufficient to follow the language of the statute in charging the offense, and by parity of reasoning, it is sufficient for the jury to find *in the language of the charge*.” *People v. Turner*, 65 Cal. at 542, 4 P. at 554 (emphasis added). A much more plausible explanation for the 1873 deletion of the intent language would have been that it simply was surplusage. See text accompanying notes 68-69, *infra*.

The court in *Rocha* next acknowledged that *People v. Carmen*, 36 Cal. 2d at 768, 228 P.2d at 281 (1951), had held that reckless conduct alone could not constitute an assault. *People v. Rocha*, 3 Cal. 3d at 898, 479 P.2d at 376, 92 Cal. Rptr. at 176. The opinion then continued, “It does not follow, however, that assault with a deadly weapon should be classified as a specific intent crime.” *Id.* Yet the court gave no explanation why this was so other than to say that “[t]raditionally, simple assault and assault with a deadly weapon have been referred to as ‘general intent’ crimes.” *Id.* at 898-99, 479 P.2d at 376, 92 Cal. Rptr. at 176. Having thus satisfied itself that “general intent” was the appropriate label for assault, the court then undertook the task of delineating what that general intent was:

An assault is an unlawful attempt, coupled with the present ability, to commit a violent injury on the person of another, or in other words, it is an attempt to commit a battery. [Citations omitted]. Accordingly, the intent for an assault with a deadly weapon is the intent to attempt to commit a battery, a battery being ‘any willful and unlawful use of force or violence upon the person of another.’ (Pen. Code, § 242). We conclude that the criminal intent which is required for assault with a deadly weapon . . . is the general intent to willfully commit an act the direct, natural and probable consequences of which if successfully completed would be the injury to another.

*Id.* at 899, 479 P.2d at 376-77, 92 Cal. Rptr. at 176-77 (footnote omitted).

Two things should be noted about the court’s attempted definition. First, it was not terribly helpful to say that the required criminal intent consists of a general intent—especially when the whole purpose of the exposition was to define the meaning of general intent. Second, the words “if successfully completed” suggest that the actor must have in mind the idea of a consequential injury at the time he, for example, swings his fist. One cannot be “successful” at something unless he aspires to do it. In short, the court’s definition of the required general intent for assault really is a definition of specific intent. See text at notes 68-70, *infra*.

template the future and desire that his conduct result in a battery.<sup>68</sup> Indeed, *Rocha* itself explicitly recognized this.<sup>69</sup> Consequently, there is no conceivable way one can force the elements of assault into the category of general intent. By whatever definition one wishes to accord the term "specific intent," it is clear that assault is, analytically, a specific intent crime.<sup>70</sup> The holding in *Rocha*, then, can probably best be understood as a common sense concession to the habits of the profession in steadfastly attaching unwarranted significance to the labels of specific and general intent.<sup>71</sup> If defense lawyers think assault is a general intent crime they will not be too distressed when their evidence of intoxication is excluded.<sup>72</sup>

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68. "[T]he definition of an assault [is] 'an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.' PENAL CODE § 240. One could not very well 'attempt' or try to 'commit' an injury on the person of another if he had no intent to cause any injury to such other person." *People v. Carmen*, 36 Cal. 2d 768, 775, 228 P.2d 281, 286 (1951).

69. "*A battery must be contemplated*, but only an 'injury' as that term is used with respect to a battery need be intended" (e.g., the least touching would be sufficient). *People v. Rocha*, 3 Cal. 3d at 899 n.12, 479 P.2d at 377, 92 Cal. Rptr. at 177 (emphasis added).

70. The desire to cause an injury would be specific intent under the vertical approach (see text accompanying notes 22-24, *supra*) and the fact that an injury would be the desired consequence of the assaultive act would make it specific intent under the horizontal approach (see text accompanying notes 29-31, *supra*). Of course, the crime of assault could be defined or construed to require only recklessness, as it is in England. *R. v. Venna*, [1975] 3 All E.R. 788 (C.A.). In such a case voluntary intoxication could itself suffice for the required *mens rea*. See note 51, *supra*. But in *R. v. Majewski*, [1976] 2 All E.R. 142 (H.L.), the House of Lords struggled laboriously with concepts such as "basic intent," "specific intent," "special intent," "particular intent," and "ulterior intent," only to unanimously conclude that self-induced intoxication could not constitute a defense to the crime of assault. The holding was premised on the familiar rationale that "[i]f man of his own volition takes a substance which causes him to cast off the restraints of reason and conscience, no wrong is done to him by holding him answerable criminally for any injury he may do while in that condition." *Id.* at 150 (per Lord Elwyn-Jones LC). That being the case, it was unnecessary for the law lords to have engaged in their extended dissertation on intent. It would have sufficed simply to say that voluntary intoxication is deemed to constitute recklessness, and, as such, cannot serve to negate the foresight of consequences otherwise required for recklessness. See note 51, *supra*, and 11 HALSBURY'S LAWS OF ENGLAND ¶¶ 14 & 28 (4th ed. 1976) (recklessness postulates foresight of consequence, but intoxication is not a defense to non-specific intent crimes).

71. Professor Fletcher views *Hood* and *Rocha* as the court's effort "to fend off this argument [of an outright acquittal] and to preserve the principle of compromise verdicts in cases of intoxication." G. FLETCHER, *RETHINKING CRIMINAL LAW* 851 (1978).

72. Indeed, it was the need to limit the mitigating effect of intoxication that inspired the concept of general intent. Hall, *Intoxication and Criminal Responsibility* 57 HARV. L. REV. 1045, 1061-62 (1944). Nevertheless, "[t]he court's prestige is



But if assault is analytically a specific intent crime, what about the defense of intoxication? *People v. Hood* had in fact provided the answer. The key sentences from the opinion are the following:

We need not reconsider our position in *Carmen* that an assault cannot be predicated merely on reckless conduct. Even if assault requires an intent to commit a battery on the victim, it does not follow that the crime is one in which evidence of intoxication ought to be considered in determining whether the defendant had that intent.<sup>73</sup>

Notice that the court did not overrule or question its holding in *People v. Carmen*<sup>74</sup> that recklessness was insufficient to support a conviction for assault. Rather, in *Hood*, the court held that *as a matter of policy, defendants should not be allowed to use intoxication as evidence* tending to negate the required intention for assault.<sup>75</sup> To be found guilty of assault the prosecutor still must prove that the defendant had the purpose to commit an injury,<sup>76</sup> and this proof may be inferred from the defendant's conduct.<sup>77</sup> The defendant, of course, may then deny that he had that purpose and introduce relevant circumstantial evidence tending to support his claim. However, the defendant *may not use the fact of intoxication in an evidentiary manner* to support his claim that he lacked the purpose.<sup>78</sup> The reason for this was justified on the following basis:

Alcohol apparently has less effect on the ability to engage in simple goal-directed behavior, although it may impair the efficiency of that behavior. In other words, a drunk man is capable of forming an intent to do some-

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not enhanced by first announcing [in *Hood*] that a distinction between general and specific intent is chimerical and, two years later, resting a decision on that very distinction." Comment, *Rethinking the Specific-General Intent Doctrine in California Criminal Law*, 63 CALIF. L. REV. 1352, 1363 (1975).

73. *People v. Hood*, 1 Cal. 3d at 457, 462 P.2d at 378, 82 Cal. Rptr. at 626.

74. 36 Cal. 2d 768, 228 P.2d 281 (1951).

75. See *People v. Rocha*, 3 Cal. 3d 893, 897-98, 479 P.2d 372, 375, 92 Cal. Rptr. 172, 175 (1971) (explaining *Hood*).

76. See notes 68 & 69, *supra*.

77. *People v. Hood*, 1 Cal. 3d 444, 458 n.7, 462 P.2d 370, 379 n.7, 82 Cal. Rptr. 618, 627 n.7, (1969).

78. *Id.* "In the crimes of simple assault and assault with a deadly weapon, the jury may infer from defendant's conduct that he entertained the necessary intent to commit an injury. Such an inference does not affect the nature of that intent or determine what significance should be accorded to evidence of intoxication." (Emphasis added). The idea that the holding in *Hood* was merely a policy decision on the admissibility of evidence of intoxication had been suggested in a pre-*Rocha* court of appeal decision. *People v. Spence*, 3 Cal. App. 3d 599, 605, 83 Cal. Rptr. 711, 714 (1970). It seemed the only way to reconcile the continuing validity of the *Carmen* decision. (See note 68, *supra*). Since *Carmen* apparently remains good law (see note 72, *supra*), it is interesting that the court in *Rocha* disapproved *Spence* "to the extent it is inconsistent with this opinion [*Rocha*]." 3 Cal. 3d at 899 n.8, 479 P.2d at 376 n.8, 92 Cal. Rptr. at 176 n.8. Perhaps *Spence* incurred disfavor because it flirted obliquely with the possibility that, given *Carmen*, assault might be a "specific intent" crime after all! 3 Cal. App. 3d at 605-06, 83 Cal. Rptr. at 714.

thing simple, such as strike another, unless he is so drunk that he has reached the stage of unconsciousness. What he is not as capable as a sober man of doing is exercising judgment about the social consequences of his acts or controlling his impulses toward anti-social acts. He is more likely to act rashly and impulsively and to be susceptible to passion and anger. It would therefore be anomalous to allow evidence of intoxication to relieve a man of responsibility for the crimes of assault with a deadly weapon or simple assault which are so frequently committed in just such a manner.<sup>79</sup>

To summarize, it is submitted that *People v. Hood* stands for the following proposition: while assault really is a "specific intent" crime (for whatever meaning one may take that label to have), it consists of behavior which commonly occurs when people are intoxicated; most intoxicated persons (unless unconscious) are able to form the requisite intent to cause injury to another; therefore, one who is intoxicated and performs assaultive behavior should not be allowed to escape criminal responsibility by claiming that he was drunk and did not know what he was doing. As for the rare defendant who in fact lacked the requisite intention due to intoxication, he is told that his right to present such evidence will be sacrificed for the greater good of preventing specious claims by others. Although he still may claim that he lacked the intent necessary to commit an assault (*i.e.*, the desire to commit a battery), the court will prevent him from supporting that claim with evidence of his intoxicated condition.<sup>80</sup> In short, the defendant finds himself in this predicament because of his

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79. *People v. Hood*, 1 Cal. 3d 444, 458, 462 P.2d 379, 82 Cal. Rptr. 618, 627 (1969).

80. This would be true even if the defendant, due to voluntary intoxication, became unconscious. Paulsen, *supra* note 23. *Cf. People v. Baker*, 42 Cal. 2d 550, 575, 268 P.2d 705, 720 (1954) "[A]lthough voluntary intoxication may at times amount to unconsciousness, yet it can only have the effect of negating specific intent . . ." (opinion by Traynor, J.). *Baker* involved a homicide. The court indicated that, to the extent the defendant's unconsciousness was based upon his voluntary intoxication, the intoxication would constitute only a "partial defense." *Id.* However, unconsciousness produced by voluntary intoxication would not constitute any defense to crimes of assault, because in assault cases intoxication is not even a partial defense. The New Jersey Supreme Court has recently reconsidered the problem of the intoxicated offender and concluded that, with minor exception, voluntary intoxication should not be a defense to *any* crime—whether specific or general. *State v. Stasio*, 78 N.J. 467, 472, 396 A.2d 1129, 1134 (1979). The exceptions include premeditation in murder cases, establishing a fixed state of insanity, demonstrating mistake (if relevant), and showing that the defendant was comatose and thus unable to commit the act. *Id.* at 474, 396 A.2d at 1136. California, however, recognizes a distinction between the mental aspect of merely assaultive behavior and that involved in other crimes: "The difference in mental activity between formulating an intent to commit battery and formulating an intent to commit a battery for the purpose of raping or killing may be slight, but it is sufficient to justify drawing a line between them and considering evidence of intoxica-

blameworthy decision to become intoxicated, a decision which precludes his assertion of an otherwise valid defense.<sup>81</sup>

#### CONCLUSION

The terms "general" and "specific intent" remain in widespread use but are the source of continuing confusion and uncertainty in the area of criminal law. They are defined differently at different times, and they tend to hinder clear understanding of the elements of crimes. These terms distort analysis involving the admissibility of evidence, and fail to serve any rational purpose. While much greater clarity would be achieved by using the words proposed by the Model Penal Code, it is doubtful whether the criminal law will ever be totally free from these deeply rooted terms.

Nevertheless, any future use of the terms should not extend beyond that of merely differentiating two vague classes of crime. Certainly the particular label attached to a crime should not, in and of itself, determine questions of admissible evidence. While intoxication often is not relevant in defense of crimes labeled as general intent, there are situations where the exclusion of such evidence would be obvious error. Consequently, continued reliance of the "rule" that intoxication cannot negate a general intent crime is misplaced. However, even though assault is definitionally a specific intent crime, policy reasons dictate that evidence of intoxication should not be admitted as a defense, at least in situations where the crime of assault exists as the only realistic charge available to the prosecutor.

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tion in the one case and disregarding it in the other." *People v. Hood*, 1 Cal. 3d 444, 458, 462 P.2d 370, 374, 82 Cal. Rptr. 618, 627 (1969).

81. See Paulsen, *supra* note 23 at 5: "Through a choice, of the sort normally operative in the law, the inebriate has increased the risk of harm to others by reducing his own capacity for taking dangers into account and for controlling himself. It would be incongruous if an election of that sort would exculpate."