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# Criminal Law -- Criminal Responsibility of Epileptic Driver Who Causes Death When Stricken With Sudden Epileptic "Blackout"

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# NOTES

## *Criminal Law*

### CRIMINAL RESPONSIBILITY OF EPILEPTIC DRIVER WHO CAUSES DEATH WHEN STRICKEN WITH SUDDEN EPILEPTIC "BLACKOUT"

#### *Introduction*

Many persons, both lay and professional, may be surprised to hear that a recent New York case held an epileptic criminally negligent, under a New York penal statute, in driving a car which killed another as a result of having lost control of his automobile when he lost consciousness during an epileptic seizure.<sup>1</sup> It was shown that the driver had prior knowledge that he was subject to such seizures which struck without warning from time to time and rendered him unconscious and unfit to operate an automobile. So too, many may be surprised to hear of the recent medical developments whereby the majority of epileptics can be medically controlled and rendered safe drivers and productive citizens.

The scope of this article is confined to a discussion of the criminal liability of a person who has prior knowledge of his epileptic condition (or at least knowledge of an unexplained physical condition that can and does render him suddenly unconscious), and who, upon assumption of the responsibility of driving an automobile on the public streets and highways, suffers a "blackout" (as it is commonly called), and thereby causes another to be killed. The discussion will be broken down into four sub-topics: first, a brief sketch of the disease, epilepsy; second, the requisites of criminal liability; third, an analysis of the criminal negligence statutes under which blackout drivers may be prosecuted; and fourth, a critique demonstrating that "controlled epileptics" are safe driving risks, illustrated by the results of an adequate drivers' licensing procedure.

#### *What Is Epilepsy?*

Epilepsy, briefly, is a chronic or continuing disease (meaning it

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<sup>1</sup> *People v. Eckert*, 2 N.Y.2d 126, 138 N.E.2d 794 (1956).

can possibly be controlled but never positively cured<sup>2</sup>) characterized by convulsive seizures in which there is a loss of consciousness.<sup>3</sup> The three major types of epilepsy are:

- (1) *Grand mal*, the most severe variety where the person becomes unconscious and suffers extensive convulsions during the attack,
- (2) *Petit mal*, where the attack is in a more mild form which involves a mere temporary loss of consciousness, and
- (3) *Psychomotor epilepsy* or "*psychic*" *equivalents*,<sup>4</sup> where the individual, in place of the usual convulsions or complete unconsciousness, passes into a state of altered consciousness characterized by automatic behavior that deprives him of his mental competency.<sup>5</sup>

It is necessary to make clear from the outset that while generalizations in the field of epilepsy serve the purpose of acquainting the reader with the broad category of epilepsy, it is imperative to recognize that each individual affliction of epilepsy presents its own unique problems. Actually, there is no such thing as a true "epileptic" any more than there is an "average human." Every person is susceptible to epilepsy in the same manner that he is susceptible to any other disease. Society has failed to keep current with the progress that has been made in the control of epilepsy. As a result, too often has a person been branded an

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<sup>2</sup> BECKMAN, PHARMACOLOGY 557 (1952). "We operate very effectively pharmacologically in epilepsy through a considerable array of drugs that lessen and may even completely prevent the recurrence of seizures. Unfortunately, we cannot specifically treat the individual attacks or cure the disease."

<sup>3</sup> Dr. Edward Schwade, Director: The Seizure Unit, Milwaukee, Wis., and Dr. William Lennox, Director: The Seizure Unit, Children's Medical Center, Boston, Mass., have collaborated on a definition of epilepsy:

"Epilepsy is an episodic recurrent limited period of altered consciousness with or without involuntary movements, not the result of bodily disorders such as failure of circulation, low blood sugar, emotional disturbances, or use of soporific drugs or intoxicants." Letter from Dr. Edward D. Schwade, Director: The Seizure Unit, Milwaukee, Wis., to the *Notre Dame Lawyer*, May 2, 1957, on file in Notre Dame Law Library.

<sup>4</sup> Also called "temporal lobe" epilepsy. Background Statement: 2d International Colloquium on Temporal Lobe Epilepsy (March 1957).

<sup>5</sup> SMITH AND FIDDES, FORENSIC MEDICINE 388 (1955); Smith, *Medico-Legal Facets of Epilepsy*, 31 Texas L. Rev. 765 (1953). See Carter and Merritt, *Diagnosis and Treatment of Epilepsy*, 3 AMERICAN PRACTITIONER 547-554 (1952); Gibbs, Kozol and Loscalzo, *A Symposium on Epilepsy*, 2 MEDICAL HORIZONS 1-12 (1951).

"epileptic" and thought to be a mentally deficient creature incapable of making any genuine contribution to society, that should be refused a job and discriminated against in admission to schools. Recent movements have been initiated in medical circles to completely abandon the name "epilepsy" and substitute a more descriptive term, such as "Convulsive Disorder," which would be free of the stigma which society has attached to the word "epilepsy."<sup>6</sup>

Epileptics are a group of individuals who suffer from symptoms that vary in their degree and manifestations, and in their causes.<sup>7</sup> Each case must be judged and dealt with on its own merits. The type of attack that a given epileptic experiences may be relatively constant (i.e., one of the three general types of epilepsy), or he may experience a combination of any one of the three general varieties accompanied by one or more of the multitudinous variations and sub-characteristics of *grand mal*, *petit mal*, and *psichomotor epilepsy*. Thus, in reference to the term "epileptic" it is necessary to distinguish and recognize the wide gap that exists between the person who suffers sporadic *petit mal* attacks as an infant, and whose attacks have not recurred in a succeeding period of years, from the person who suffers from the most chronic *grand mal* type in which the attacks may follow one another to the extent that death may result from sheer exhaustion.<sup>8</sup> Another necessary point of emphasis is that epilepsy is not hereditary. Contrary to the popular misconception, there is only a possible predisposition to the disease like any one of the thousands of other "predispositions" that are transmitted genetically.<sup>9</sup>

The importance of the problems surrounding epilepsy is best illustrated by stating that the estimated number of epileptics in the United States is between 800,000 and 1,500,000.<sup>10</sup> Stated even more forcefully, on the basis that each epileptic in the country came from a different family unit of five persons, over 7,500,000 Americans feel in their immediate families the direct social impact of epilepsy.<sup>11</sup>

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<sup>6</sup> Other groups (the United Epilepsy League and the Layman's League Against Epilepsy) sought to change the name of the disease to "Cerebral Dysrhythmia."

<sup>7</sup> One of the most frequent misconceptions concerning the epileptic is that he has an inferior intellect. An epileptic's intellectual capacity varies the same as other persons. Report 36, Group for Advancement of Psychiatry 138 (1957); SMITH AND FIDDES, *FORENSIC MEDICINE* 388 (1955).

<sup>8</sup> GRADWOHL, *LEGAL MEDICINE* 178 (1954).

<sup>9</sup> 2 GRAY, *ATTORNEYS TEXTBOOK OF MEDICINE* § 100.04 (3d ed. 1951).

<sup>10</sup> FABING AND BURROW, *EPILEPSY AND THE LAW* 3 (1956).

<sup>11</sup> *Ibid.*

*The Nature of Criminal liability*

The common law, insofar as it imposes penal liability and defines crimes, has in all states been modified or completely superseded by statute.<sup>12</sup> In a number of states all penal law has been codified<sup>13</sup> although in the absence of legislation the driver of a motor vehicle may still incur criminal responsibility for all degrees of homicides.<sup>14</sup> A crime or criminal offense is defined as "any act or omission prohibited by public law for the protection of the public, and made punishable by the state in a judicial proceeding in its own name."<sup>15</sup> Generally, there is no crime committed unless there is present the so-called *mens rea* or criminal intent. This element is a requisite for the imposition of penal liability. As a result this criminal intent must be found in criminal negligence actions.<sup>16</sup> Yet the term "intent" is sometimes misleading as it may be in many cases contrary to the defendant's real intention.<sup>17</sup> Some light is shed on this matter by saying that a person is deemed in the eyes of the law to intend the consequences of his acts. Actually what is meant is that a person will be held legally responsible for his acts if he possessed the necessary mental competence when he began the criminal act. Thus, the requisites of criminal liability are present when the provisions of a penal statute are violated which are "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties . . ."<sup>18</sup>

*Criminal Negligence Statutes Under Which "Blackout"  
Drivers May Be Prosecuted*

The majority of states have enacted penal statutes whereby "reckless or culpably negligent" drivers may be prosecuted who

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<sup>12</sup> CLARK AND MARSHALL, CRIMES § 14 (5th ed. 1952).

<sup>13</sup> Included are: Georgia, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, New York, Ohio, Oregon, and Texas. CLARK AND MARSHALL, CRIMES § 14 (5th ed. 1952).

<sup>14</sup> Cockrell v. State, 135 Tex. Crim. 218, 117 S.W.2d 1105 (1938); the case involved a general statute.

<sup>15</sup> CLARK AND MARSHALL, CRIMES § 1 (5th ed. 1952). Cf. People v. Bearden, 290 N.Y. 478, 49 N.E.2d 785 (1943); Commonwealth v. Pentz, 247 Mass. 500, 143 N.E. 322 (1924).

<sup>16</sup> CLARK AND MARSHALL, CRIMES § 40 (5th ed. 1952).

<sup>17</sup> This is the situation in almost all of the "blackout" cases, since it is assumed that the driver did not intentionally become incapacitated at the wheel.

<sup>18</sup> Connally v. General Constr. Co., 269 U.S. 385, 391 (1925).

have caused the death of another by their negligence.<sup>19</sup> The requirements for criminal negligence may vary in degree in the individual states, but typical of the various statutes is New York Penal Law § 1053-a:

A person who operates or drives any vehicle of any kind in a reckless or culpably negligent manner, whereby a human being is killed, is guilty of criminal negligence in operation of a vehicle resulting in death.

The punishment for violating § 1053-a is "imprisonment for a term not exceeding five years or by a fine of not more than one thousand dollars, or by both."<sup>20</sup> Other state statutes have used the words "reckless or grossly negligent manner,"<sup>21</sup> or "carelessly and heedlessly, in willful or wanton disregard of the rights or safety of others,"<sup>22</sup> in defining the amount and type of negligence necessary to constitute a violation of the particular penal statute of the state. There is close similarity in terminology and import between the statutes of the various states which provide for criminal negligence on the part of motorists. Some statutes were specifically enacted (N.Y. PENAL LAW § 1053-a) to prosecute the death-dealing culpably negligent motorist who had so successfully avoided being convicted under manslaughter statutes, which provide a much heavier punishment.<sup>23</sup> The New York Court of Appeals in construing § 1053-a said:<sup>24</sup>

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<sup>19</sup> Ark., Cal., Colo., Conn., D.C., Fla., Idaho, Ill., Ind., Kan., La., Md., Mich., Minn., N. H., N. J., N. Y., Ohio, Ore., S. C., Tex., Vt., Wash., Wis., Wyo. See Note, 8 VAND. L. REV. 888 (1955); 30 CHI.-KENT L. REV. 155 (1952).

<sup>20</sup> N. Y. PENAL LAW § 1053-b.

<sup>21</sup> MINN. STAT. ANN. § 169.11 (Supp. 1956), entitled Criminal Negligence: "Any person who by operating or driving a vehicle of any kind in a reckless or grossly negligent manner causes a human being to be killed under circumstances not constituting murder in the first, second degree, or third degree, or manslaughter in the first or second degree, is guilty of criminal negligence in the operation of a vehicle resulting in death."

<sup>22</sup> N. J. REV. STAT. § 2A:113-9 (1956):

"Any person who causes death of another by driving a vehicle carelessly and heedlessly, in willful or wanton disregard of the rights or safety of others, is guilty of a misdemeanor; but no record of a judgment or conviction hereunder shall be admissible in a civil action for damages arising out of the accident in which the death occurred."

<sup>23</sup> N. Y. PENAL LAW § 1051: "Manslaughter in the first degree is punishable by imprisonment for a term not exceeding twenty years." N. Y. PENAL LAW § 1053: "Manslaughter in the second degree is punishable by imprisonment for a term not exceeding fifteen years, or by a fine not exceeding one thousand dollars, or by both."

<sup>24</sup> *People v. Bearden*, 290 N.Y. 478, 49 N.E.2d 785, 787 (1943).

The word "reckless" and the phrase "culpably negligent manner", as employed in the penal statute quoted above connote something more than the slight negligence necessary to support a civil action for damages. Both word and phrase import a disregard by the accused of the consequences of his act—an indifference to the rights of others.<sup>25</sup>

To constitute the crime of criminal negligence in the operation of a vehicle resulting in death by "reckless" or "culpably negligent" driving, it must be proved beyond a reasonable doubt that the defendant knew, or should have known, that his manner of driving the vehicle involved a reasonable probability of serious bodily harm or death.<sup>26</sup>

In *People v. Eckert*,<sup>27</sup> the New York Court of Appeals for the first time construed the applicability of its "reckless driving statute" to an epileptic who suffered a blackout. The court held that an epileptic who knew of his incapacitating condition prior to a death-resulting accident was liable for driving a car in a "reckless or culpably negligent manner" in violation of the above

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<sup>25</sup> Uniformly interpreted in: *People v. Grogan*, 260 N.Y. 138, 183 N.E. 273 (1932); *People v. Angelo*, 246 N.Y. 451, 159 N.E. 394 (1927); *People v. Gardner*, 225 App. Div. 683, 8 N.Y.S.2d 917 (1939).

<sup>26</sup> *Nail v. State*, 33 Okla. Crim. 111, 242 Pac. 270, 272 (1925) wherein the court said in the prosecution of an automobile driver for "culpably negligence":

"By no means every instance where one person is injured or killed by a vehicle driven by another do the circumstances constitute a crime. There must be negligence rising to the degree of criminal or culpable negligence. The culpability of a defendant is a question of fact for the jury, and the test is: Do the acts charged as criminal show a degree of carelessness amounting to a culpable disregard of the rights and safety of others, and did said acts cause the death of the deceased? If so, it establishes a case of criminal negligence . . . . The highways of the state are common property of all, and by whatever method or conveyance they are used for travel, persons upon the highways have equal rights. In exercising these rights, each must have regard for the rights of others. The law gives the right to use the highways for travel by automobile, but this right is limited to doing so in a legal and prudent manner, and when a person drives upon the highway in the exercise of such right in a negligent manner, so that his negligence affects others likewise lawfully upon the highway to their injury, he becomes liable to the injured party, and, if the degree of negligence with which the act is done is culpable within the meaning of the law, he becomes liable to the state for criminal negligence." See also *State v. Diamond*, 16 N.J. Super. 26, 83 A.2d 799 (1951); *State v. Bolsinger*, 221 Minn. 159, 21 N.W.2d 480 (1946); *People v. Bearden*, 290 N.Y. 478, 49 N.E.2d 785 (1943); *Commonwealth v. Pentz*, 247 Mass. 500, 143 N.E. 322 (1924).

<sup>27</sup> 2 N.Y.2d 126, 138 N.E.2d 794 (1956).

section of the New York Penal Law.<sup>28</sup>

Defendant Eckert was indicted for driving a car in a culpably negligent manner which resulted in the death of a seventeen year old girl. Defendant contested the sufficiency of the indictment on three grounds, two of which were concerned with the doctor-patient privilege of establishing the prior warning not to drive and evidence that the defendant suffered an epileptic attack at the time of the accident. The third attack was based on the sufficiency of the evidence that his automobile caused the death.

The court ruled<sup>29</sup> that the statements by the defendant's doctor were privileged,<sup>30</sup> but that there was sufficient competent evidence to constitute the elements of the alleged crime without its introduction. Defendant admitted his prior history of epilepsy<sup>31</sup> and from this admission it may be inferred that he suffered a blackout just before the accident ("something happened and from there I can't tell you").<sup>32</sup> This statement with other competent evidence in the record was sufficient evidence to establish guilt if the circumstantial evidence met two tests: (1) "the facts from which the inferences of the accused's guilt are drawn must be satisfactorily established", and (2) "they must not only be inconsistent with innocence, but must exclude to a moral certainty every other reasonable hypothesis but guilt."<sup>33</sup> Thus, the court said it was unable to rule that the legal evidence was insufficient to quash the indictment of the grand jury since the legislature specifically relegated the question of the sufficiency of the evidence to support a conviction in a jury trial to "the judgment of the Grand Jury."<sup>34</sup> But on appeal, the court stated that if no violation of the statute was disclosed it would set aside the grand jury's judgment, since the court was dealing with a case of first impression with which exceptional care must be exhibited. The

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<sup>28</sup> Id. at 797.

<sup>29</sup> Id. at 796.

<sup>30</sup> Because of the exclusion of such evidence in *People v. Decina*, 2 Misc. 2d 133, 138 N.E.2d 799 (1956), decided on the same day as *People v. Eckert*, *supra*, note 27, the indictment was dismissed. In 80 N.J.L.J. 1 (1957) there is cited the introduction of a bill in the N.Y. State Legislature which would eliminate the physician-patient privilege in any prosecution for criminal negligence under N.Y. Penal Law § 1053-a, "as the result of two recent New York decisions," citing *People v. Eckert* and *People v. Decina*.

<sup>31</sup> *People v. Eckert*, 2 N.Y.2d 126, 137 N.E.2d 794, 798 (1956).

<sup>32</sup> Brief for Respondent, p. 16, *People v. Eckert*, 2 N.Y.2d 126, 138 N.E.2d 794 (1956).

<sup>33</sup> *People v. Eckert*, *supra* note 31 at 796.

<sup>34</sup> Brief for Respondent, p. 16, *People v. Eckert*, 2 N.Y.2d 126, 138 N.E.2d 794 (1956).



"exceptional care" to be exhibited in *Eckert* meant examining the record and indictment in light of the strict requirements set forth in N.Y. PEN. LAW § 1053-a, and strictly construing these requisites in view of its penal provisions. The court restated the judicial unanimity of construction given the term "reckless driving" as the operation of an automobile under such circumstances as to show a reckless disregard of the consequences. "Culpable negligence" was defined as a disregard of the consequences which may result from an act and an indifference to the rights of others. The court traced the definite and certain meanings of these terms beginning with *People v. Angelo*<sup>35</sup> and *People v. Grogan*.<sup>36</sup>

Conceding the insufficiency of ordinary negligence to sustain a conviction based on carelessness, lack of skill, or foresight, the court in *Eckert* summed up the requirements necessary to constitute criminal negligence in driving an automobile by saying:

[T]his conduct arises when the actor has knowledge of the highly dangerous nature of his actions or knowledge of such facts as under the circumstances would disclose to a reasonable man the dangerous character of his action, and despite this knowledge he so acts. That he does not view his conduct as dangerous is of no consequence. . . . To be dangerous his conduct must involve a reasonable probability of serious bodily harm or death. This of course, turns upon the particular circumstances of the case. These limitations preclude successful prosecution simply upon a showing that a driver killed another while his car was out of control due to a blackout resulting from one of the numerous diseases or afflictions which may cause such a blackout.<sup>37</sup>

The final consideration in fulfilling the requirements of § 1053-a was whether or not the driver (who in the instant case suffered a sudden epileptic blackout prior to the accident) need be conscious at the time of the fatal accident in order to be prosecuted under its provisions. The court illustrated its answer by saying that an intoxicated driver could be prosecuted under N.Y. PEN. LAW § 1053-a whether he was conscious or unconscious. It said the phrase "operates or drives" applies not only "to the conscious manipulation of the controls of the vehicle," or "to the condition of the driver, but to the condition of the vehicle and to traffic conditions as well."<sup>38</sup> Thus, an epileptic driver who had previous warnings of his susceptibility to blackouts was on notice that by driving an automobile he would subject the lawful

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<sup>35</sup> 246 N.Y. 451, 159 N.E. 394 (1924).

<sup>36</sup> 260 N.Y. 138, 183 N.E. 273 (1932).

<sup>37</sup> *People v. Eckert*, 2 N.Y.2d 126, 138 N.E.2d at 797-98 (1956).

<sup>38</sup> *Id.* at 798.

persons on the public streets and highways to an unreasonable risk and he is thereby held to be criminally negligent if he assumed the responsibility of driving and subsequently killed someone.

A strong dissent by Mr. Justice Desmond in *People v. Decina*<sup>39</sup> (decided the same day as *Eckert*) attacked the majority opinion in both *Decina* and *Eckert* on the grounds that "operates" as used in § 1053-a presupposes volition and consciousness, and that one cannot be "reckless or culpably negligent" unless one is conscious. A resolving of the question involves a matter of statutory construction which the dissent contends is penalization of "conscious operation" only. The dissent stated:

It is significant that until this case (and the *Eckert* case . . .) no attempt was ever made to penalize, either under section 1053-a or as manslaughter, the wrong done by one whose foreseeable blackout while driving had consequences fatal to another person.

. . . [N]either of the two statutes has ever been thought until now to make it a crime to drive a car when one is subject to attacks or seizures such as are incident to certain forms and levels of epilepsy and other diseases and conditions.<sup>40</sup>

What the dissent seems most concerned with is the possible extension of § 1053-a to all other fields of physical incapacity whereby a person may suddenly blackout or lose control of his vehicle. Specifically mentioned were "epilepsy, coronary involvements, circulatory diseases, nephritis, uremic poisoning, diabetes, meniere's syndrome, a tendency to fits of sneezing, locking of the knees, muscular contractions. . . ."<sup>41</sup> Other types of physical incapacities that could be added to this list are prior menstrual tensions<sup>42</sup> (which may cause sudden unconsciousness), a sudden mental derangement, fainting from a number of causes, an excessive dose of a sedative or a drug-like amphetamine which keeps the user awake beyond the limits of his ability to operate properly, and, finally, the intemperate use of alcohol which, undoubtedly, is the greatest cause of fatal traffic accidents.<sup>43</sup>

The writer is of the opinion that the "reckless driving" statutes in the various states should be used (as § 1053-a was used in

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<sup>39</sup> 2 Misc. 2d 133, 138 N.E.2d 799 at 807 (1956).

<sup>40</sup> *Id.* at 799, 808.

<sup>41</sup> *Ibid.*

<sup>42</sup> Stewart, *Premenstrual Tension in Automobile Accidents*, 6 CLEV.-MAR. L. REV. 17 (1957).

<sup>43</sup> Letter from W. G. Lennox, M.D., Associate Prof. of Neurology, Harvard Medical School, The Neurological Institute, Children's Medical Center (Director of the Seizure Unit), Boston, Mass., to the *Notre Dame Lawyer*, April 8, 1957, on file in Notre Dame Law Library.

*Eckert*) as a means of prosecuting any motorist who kills another as a result of a blackout from a known physical impairment which renders his driving culpably unsafe. The fear of the dissent that unwarranted criminal prosecutions will be made in all death-resulting "blackout" cases under § 1053-a is somewhat doubtful. This section was enacted as a means of prosecuting *all* death-dealing motorists who are criminally negligent. But in order to be prosecuted under its provisions the driver must be found to be "reckless" or "culpable," in his driving which leads up to and includes the sudden incapacity. Limited in this manner it can be said that no epileptic, nor any other person suffering from any of the numerous physical impairments that may cause a sudden blackout, will be prosecuted criminally under the various statutes where it is shown that the blackout could not reasonably have been anticipated.

This lack of criminal negligence is shown most clearly by a record evincing a complete absence of previous attacks. Where previous attacks have marred the driver's record, the lack of culpability or recklessness may be shown by medical proof that the driver had a clear record of no attacks for a "substantial" period<sup>44</sup> before the accident and had been advised by a competent physician that it was safe for him to drive. In the area between these two instances of non-criminal liability and the criminal responsibility as found in *Eckert*, it is necessary to leave the matter in the hands of the grand jurors who test the indictment and the twelve men at the trial who are triers of the facts, to determine whether or not the suddenly incapacitated driver was criminally negligent.

The dissent in *People v. Decina* states that "any consideration of driving while intoxicated or while sleepy" is without pertinence "since those are conditions presently known to the driver, not mere future possibilities or probabilities."<sup>45</sup> The writer submits this is a distinction without substance and that both intoxication and falling asleep are analogous to the present discussion.<sup>46</sup> The

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<sup>44</sup> The usual period recommended by sound medical authority is from one to three years. Wisconsin has one of the most effective procedures in the country for issuing licenses. The seizure-free period for epileptics has been set at two years. WIS. STAT. § 85.08 (6) (1955). See FABING AND BURROW, *EPILEPSY AND THE LAW* 35-61 (1956), where the driver's license laws in relation to the epileptic are extensively analysed.

<sup>45</sup> 2 N.Y.2d 133, 138 N.E.2d 799, 809 (1956).

<sup>46</sup> *Wilson v. State*, 70 Okla. Crim. 262, 105 P.2d 789 (1940). In this case the court affirmed a conviction under a manslaughter statute on culpable negligence and said:

criminal liability in *Eckert* was predicated on the *present* knowledge of the epileptic before the accident meaning that if he drove an automobile knowing he was subject to frequent epileptic seizures, such driving would be in reckless disregard of the consequences that would ensue from such a seizure. The court in *Eckert* was not attempting to punish a person who experienced a solitary blackout from unknown causes, but only those motorists who actually knew of their condition and drove notwithstanding such knowledge. The criminal negligence is found in the "devil-may-care" attitude which a person assumes when another's life is at stake.<sup>47</sup> Criminal negligence is readily apparent in the person who drives either when intoxicated or when in danger of falling asleep,<sup>48</sup> but no more apparent than in the person who drives even though he has a present knowledge of an incapacitating affliction that may without warning render him unconscious. Unconsciousness that results from either intoxication or sleepiness is a mere "possibility or probability" until it strikes, the same as in any incapacitating disease. The degree of control that the driver has in inducing the incapacitating condition has been mentioned as another distinction between in-

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"... [O]ne may be guilty of culpable and criminal negligence regardless of the fact as to whether he was drinking or not. An automobile in the hands of a person who handles the same in a reckless or careless manner, and in an utter disregard of the lives of others, is just as guilty under the statute as one who handles it while in an intoxicated condition . . . The great number of high-powered automobiles upon the streets and highways of this state demand a respect for the rights of others, and a greater responsibility for those who drive them. It is too late to cry 'accident' after one has been guilty of culpable and criminal negligence and others have been injured or killed." 105 P.2d at 792.

See *State v. Gooze*, 14 N.J. Super. 277, 81 A.2d 811 (1951), which compared Meniere's Syndrome with epilepsy and falling asleep and considered them in the same light as the "nearest approach" to the same solution.

<sup>47</sup> Kaufman and Kantrowitz, *The Case of the Sleeping Motorist*, 25 N.Y.U.L.Q. REV. 362, 368 (1950), where the writers concluded:

"The motorist should continue to be judged by the reasonable man test as to all of his acts in driving. He should not be liable unless he drives carelessly. But when he goes insane, faints or falls asleep while propelling his automobile along the highway, he ceases to be a driver. The risks of his ceasing to be a driver should be borne by him and not by the hopeless individual who gets hit . . . You must, at your peril, stay sane and conscious as you sit behind the wheel with the ignition on, the brakes off and your foot on the gas pedal."

<sup>48</sup> See excellent annotations: *Automobiles — Illness or Drowsiness*, 28 A.L.R.2d 12 (1953); degree or nature of intoxication for purposes of statute or ordinance making it a criminal offense to operate an automobile while in that condition, 142 A.L.R. 555 (1943).

toxication and the "physical" blackout attacks, but this is merely another factor to be weighed in determining criminal negligence in much the same manner that the failure of a controlled epileptic or diabetic to take their medicine (which lessens the possibility of a blackout) would enter into a finding of criminal negligence.

Because an epileptic was the subject of the criminal negligence prosecution in *People v. Eckert* should not mean that epilepsy is to be the whipping boy for all other blackout sicknesses. Those with such physical infirmities are equally culpable in driving with knowledge that evinces a complete disregard of the consequences of such reckless conduct. These incapacitating physical conditions should be equally subject to the various "reckless driving" statutes in the various states. The first case in which the state criminally prosecuted a motorist after he suffered a blackout and seriously injured another was *Tift v. State*,<sup>49</sup> where the court held the driver guilty of assault and battery when he knew of his vertigo<sup>50</sup> condition and still continued to drive at high speeds.

Throughout the years the courts have been very hesitant in attaching any liability whatsoever, criminally or civilly, to the driver who suffers a sudden blackout because some volitional act of negligence is a prerequisite to liability and, where the driver is unconscious, to find such act is almost impossible. Wherever civil or criminal liability has been found in the various blackout cases it has been predicated on the antecedent negligence of undertaking to drive.<sup>51</sup> In *People v. Freeman*,<sup>52</sup> the lower court's

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<sup>49</sup> 17 Ga. App. 663, 88 S.E. 41 (1916).

<sup>50</sup> "Dizziness or swimming of the head." MALOY, MEDICAL DICTIONARY FOR LAWYERS 566 (2d ed. 1951).

<sup>51</sup> In each of these cases the liability or non-liability turned on the driver's prior knowledge of his incapacitating condition. (1) Civil cases: *Waters v. Pacific Coast Dairy Corp.*, 55 Cal. App. 2d 675, 131 P.2d 588 (1942); *Bushnell v. Bushnell*, 103 Conn. 583, 131 Atl. 432 (1925); *Steele v. Lackey*, 107 Vt. 192, 177 Atl. 309 (1935); *Keller v. Wonn*, 87 S.E.2d 453 (W. Va. 1955); *Wisconsin Natural Gas Co. v. Employers Mut. Liab. Ins. Co.*, 263 Wis. 633, 58 N.W.2d 424 (1953); *Eleason v. Western Cas. and Surety Co.*, 254 Wis. 134, 35 N.W.2d 301 (1949). See Smith, *Medico-Legal Facets of Epilepsy*, 31 TEXAS L. REV. 765, 773 (1953). (2) Criminal cases: *People v. Freeman*, 61 Cal. App. 2d 110, 142 P.2d 435 (1943); *State v. Johnson*, 148 Fla. 510, 4 So. 2d 671 (1941); *State v. Gooze*, 14 N.J. Super. 277, 81 A.2d 811 (1951); *State v. Olsen*, 180 Utah 377, 160 P.2d 427 (1945). See Blashfield's Cyc. of Automobile Law § 16 (perm. ed.):

"While the condition of the mind of the person injuring another is not to be regarded in determining liability within the proper field of the doctrines of negligence, yet those doctrines of necessity pre-

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conviction under California's "negligent homicide" statute was reversed as the defendant driver was found to be unconscious due to epilepsy, throughout the entire drive.

The case drawing the closest parallel to the unique holding of New York in *People v. Eckert*, is *State v. Gooze*<sup>53</sup> which upheld a criminal conviction under § 2A: 113-9 of the New Jersey revised statutes providing for a misdemeanor in causing death of another by driving in a willful and wanton disregard for the safety of others.<sup>54</sup> The New Jersey Superior Court held that the act of driving an automobile by one who had previous knowledge of Meniere's Syndrome<sup>55</sup> which rendered him susceptible to sudden blackouts constituted an act of "wantonness" within the meaning of the above statute. The court reiterated the basic rule that the negligence required to support a criminal charge is "more than ordinary common law negligence and is something more and greater in degree than negligence to impose civil liability." The "reckless disregard of the consequences" requisite of criminal negligence was partially founded on the testimony of a neurologist that defendant had been examined by him a year prior to the accident as a result of a sudden attack of dizziness or unconsciousness suffered by the defendant while at home. After the examination, defendant was warned not to drive alone because of the serious consequences that might ensue. As a result of this testimony the court said:<sup>56</sup>

In driving his automobile alone on a through-state highway with knowledge that he might at any time suddenly, without warning, lose consciousness or suffer a dizzy spell, and having been cautioned not to drive alone, constituted an act of wantonness and a disregard of the rights or safety of others. It was reasonably foreseeable that

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suppose that the person whom it is sought to charge is capable of sense, perception, and judgment.

"One who, stricken by paralysis or seized by an epileptic fit, still continues with his hands on the wheel of an automobile which he is driving, and unconscious, so directs it as to cause its collision with another, cannot be held negligent for the way in which he controls it, and no more can he who exercises a like direction after he has been overtaken by sleep. In such case any negligence of the driver must be predicated upon his conduct in permitting himself to fall asleep."

<sup>52</sup> 61 Cal. App. 2d 110, 142 P.2d 435 (1943).

<sup>53</sup> 14 N.J. Super. 277, 81 A.2d 811 (1951).

<sup>54</sup> N.J. REV. STAT. § 2A:113-9 (Supp. 1956), quoted in full, *supra* note 22.

<sup>55</sup> "A condition in which there is inflammation and congestion of the semi-circular canals of the ear . . . characterized by vertigo (dizziness). . . ." MALOY, MEDICAL DICTIONARY FOR LAWYERS 187 (1951).

<sup>56</sup> *State v. Gooze*, 14 N.J. Super. 277, 81 A.2d 811, 816 (1951).

if he "blacked out" or became dizzy without warning, its probable consequences might well be injury or death to others.

The court also mentioned the uniqueness of the case and pointed out that the criminal character of defendant's conduct was not lessened by the fact that he did not intend to harm another.<sup>57</sup> The fact that the dizziness failed to recur during the year which lapsed between the accident and the time defendant was actually put on notice of the existence of the disease was not a mitigating circumstance. It was noted by the court that neither counsel nor the court was able to produce a single case directly on point.<sup>58</sup> "Probably the nearest approach are the cases that deal with one operating a car while asleep or suffering from epilepsy." The court proceeded to review the unanimous principle that a driver is grossly negligent in falling asleep at the wheel if he had a prior warning of the likelihood of sleep,<sup>59</sup> and stated that the awareness of the defendant of his condition in the instant

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<sup>57</sup> In *People v. Decina*, 2 N.Y.2d 133, 138 N.E.2d 799 at 803 (1956), the court states, in construing the New York "criminal negligence" statute § 1053-a, that:

"[T]he statute does not require that a defendant must deliberately intend to kill a human being, for that would be murder. Nor does the statute require that he knowingly and consciously follow the precise path that leads to death and destruction. It is sufficient, we have said, when his conduct manifests a disregard of the consequences which may ensue from the act, and an indifference to the rights of others."

In *Commonwealth v. Pentz*, 247 Mass. 500, 143 N.E. 322 (1924), the defendant was convicted criminally for operating his automobile in violation of the state "reckless driving" statute and the court stated, 143 N.E. at 325:

"The statute according to its plain words makes the act of operating a motor vehicle in a way 'so that the lives or safety of the public might be endangered' a criminal offense. It is that act which is penalized. The intent with which the act is done is an immaterial factor. . . . The only fact to be determined is whether the defendant did the prohibited act. . . . The moral turpitude or purity of the notice by which it was prompted, and the knowledge or ignorance of its criminal character, are immaterial on the question of guilt."

The court upheld the constitutionality of the statute as "definite" and not against the due process clause of the Fourteenth Amendment.

<sup>58</sup> *State v. Gooze*, 14 N.J. Super. 277, 81 A.2d 811, 816 (1951).

<sup>59</sup> *Ibid.* In *State v. Mundy*, 243 N.C. 149, 90 S.E.2d 312 (1955), a new trial was granted on a conviction for manslaughter where a passenger was killed when the driver fell asleep and the court said, 90 S.E.2d at 315:

"In determining the question of culpable negligence, the focal point of inquiry is whether the operator, because of drowsiness, previous tiring activities, or other premonitory symptoms of sleep, became

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case was sufficient to constitute a statutory offense under N.J. REV. STAT. § 2A: 113-9 (Supp. 1956).<sup>60</sup> since:

. . . [W]e are convinced that the defendant was fully aware of the disease of which he was suffering; that he was specifically warned by Dr. Madonick that he might suffer a recurrence or suddenly "black out" or become unconscious and, therefore, should be careful about driving alone; that in the face of this knowledge of his disease and

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aware of the likelihood of falling asleep, but nevertheless continued to operate the vehicle under circumstances evincing a thoughtless disregard of consequences or a heedless indifference to the rights and safety of others upon the highway, proximately resulting in injury or death."

In *State v. Champ*, 172 Kan. 737, 242 P.2d 1070 (1952), information was held sufficient that charged driver with manslaughter under N.C. GEN. STAT. § 21-420 (1949), when driver fell asleep with prior knowledge of condition. In *State v. Olsen*, 108 Utah 377, 160 P.2d 427 (1945), a criminal conviction for manslaughter was affirmed where the driver fell asleep, wherein the court said 160 P.2d at 428:

"The burden of the foregoing authorities is overwhelmingly that the fact of going to sleep at the wheel of an automobile, without more, at least presents a question for the jury as to whether the driver was negligent. We think this is a sound and salutary rule, for while one cannot be liable for what he does during the unconsciousness of sleep, he is responsible for allowing himself to go to sleep—to get into a condition where the accident could happen without his being aware of it, or able to avoid it."

In the concurring opinion, 160 P.2d at 429, the point of prior negligence was further pointed out:

"When the driver of an automobile falls asleep at the wheel, courts in civil cases have, in addition to the fact of sleep, paid particular attention to the preceding events to determine whether or not the driver was negligent in continuing to operate the automobile."

The court then said that in this criminal prosecution,

"The focal point of inquiry then must be whether or not the driver continued to operate the automobile after such prior warning of the likelihood of sleep so that continuing to drive constituted marked disregard of the safety of others."

In *Johnson v. State*, 148 Fla. 510, 4 So. 2d 671 (1941), the court upheld a conviction of manslaughter where the driver fell asleep after prior knowledge of his condition since

". . . [H]e had just prior to the accident fallen asleep. . . . Therefore he knew he was in no condition to operate a motor vehicle and he knew that by operating such vehicle in such place while he was in such condition he thereby endangered the lives of all people travelling on such highway. When the accused assumed to do this he was guilty of criminal negligence. . . ."

See Annot., 28 A.L.R.2d 12, 62 (1953).

<sup>60</sup> New Jersey Statute quoted in full, *supra* note 22.



the danger of recurrence, he deliberately got behind the wheel of an automobile and operated it upon a very busy highway when a recurring attack occurred, causing him to lose control of his automobile and to crash into other automobiles and to destroy . . . the life of the operator of one of those cars. We think the facts clearly bring the defendant's conduct within the condemnation of the statute in question.<sup>61</sup>

In view of the foregoing cases and the existence of the numerous "reckless driving" statutes throughout the states, indications are that criminal prosecutions of drivers who kill another as a result of a blackout (when they have had prior knowledge of their incapacity) will be a more frequent occurrence in the future. No one should attempt to drive an automobile upon the public streets who is subject to any type of infirmity which may suddenly render him incapable of driving safely. The answer for the epileptic who may be subject to seizure attacks is to completely refrain from driving<sup>62</sup> and immediately put himself under a doctor's care.<sup>63</sup> With the medical advances made in the diagnosis and control of epilepsy during recent years, the odds are excellent that the attacks can be completely controlled and the epileptic rendered a safe driving risk.

*"Controlled" Epileptics Make Safe Driving Risks*

The statement that "once an epileptic always an epileptic"

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<sup>61</sup> State v. Gooze, 14 N.J. Super. 277, 81 A.2d 811, 817 (1951).

<sup>62</sup> Hiernons, *The Epileptic Driver*, 1 BRITISH MEDICAL JOURNAL 206 (1956), states at 207:

"It will be generally agreed that those liable to attacks should never have charge of a vehicle. Epileptics who continue driving should be warned of the very serious risks they are taking, and should also realize they are breaking the law. Even patients who claim that their auras are long enough to allow them to stop in good time should also be advised to give up driving. We know that such warnings cannot be relied upon to occur on every occasion."

Another sound reason for the epileptic to refrain from driving is that a seizure may be induced, which ordinarily would not have occurred, by one of the many emergency situations that are everyday experiences in modern high speed driving. These experiences may range from a child running into the street to a sudden change of direction in a passing car, or to a mechanical failure or blowout, any one of which are capable of causing the psychic effect necessary to bring on a seizure. See 2 GRAY, ATTORNEYS TEXTBOOK OF MEDICINE § 100.11 (3d ed. 1951).

<sup>63</sup> Every epileptic should be encouraged to join or contact one of the lay-professional organizations fighting the disease. Four such organizations are: The American League Against Epilepsy, The Laymen's League Against Epilepsy, The National Epilepsy League, and The United Epilepsy Association.

should be discarded in light of the medical progress that seizures can be completely controlled in 50 percent of the cases and substantially controlled in an additional 30 percent of the cases. This "control" of epilepsy is primarily effectuated through the skillful diagnosis and treatment of the individual epileptic by the use of a wide variety of recently developed anti-seizure (or anti-convulsant) drugs.<sup>64</sup> Letters to the writer from leading neurologists indicate these figures are not exaggerated, but in fact tend to be rather conservative.<sup>65</sup> The modern medical progress in treating epileptic seizures calls for a re-evaluation of our laws and administrative practices that govern the issuance of drivers' licenses to persons with a previous record of seizures. All states, except one,<sup>66</sup> either prohibit the issuance of driver's licenses to epileptics or provide for a limited license by qualification.<sup>67</sup> In sixteen states the name "epileptic" is specifically used in denying a license and in the remaining thirty-two states the denial is based on the administrative discretion to deny licenses to "unsafe drivers." A history of epilepsy must be disclosed in license applications in most states. The effect which such a statute has on former epileptics, or as they are called in the medical profession "controlled" epileptics, is to encourage them either to abstain from medical attention in those states requiring a physician to report the disease, or to perjure themselves if they desire to obtain a license.<sup>68</sup> A number of physicians<sup>69</sup> have voiced their disapproval of such reporting on the grounds it is a violation of the physician-patient privilege and also it induces the epileptic to by-pass medical care. Some states require that an epileptic should not have used medicine for a designated period prior to the issuance of a license, which as Lennox says is as absurd as "say-

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<sup>64</sup> BECKMAN, PHARMACOLOGY 557 (1952): "Drugs and Sources. The principal agents are Phenobarbital, Dilantin, Mesantoin, Tritone, Paradione, Phenurone and Thiantoin. These drugs are all prepared in the laboratory, none being obtained from natural sources. Bromides, in use before any of them, are still occasionally employed when the others fail."

<sup>65</sup> Letters on file at the Notre Dame Law Library.

<sup>66</sup> Fundamentally, only South Dakota has a registration requirement and does not require an examination or qualification of the applicant. S.D. CODE title 44, c. 249 (1953).

<sup>67</sup> See FABING AND BURROW, EPILEPSY AND THE LAW 40 (1956).

<sup>68</sup> Seven states (Cal., Conn., Del., Ind., Nev., N. J., and Ore.) require physicians to report epilepsy to administrative officials.

<sup>69</sup> Hiernons, *The Epileptic Driver*, 1 BRITISH MEDICAL JOURNAL 206 (1956) states categorically, "... I do not believe that the doctor should give information to the motor-licensing authorities of patients suffering from epilepsy ... where epilepsy is a reportable disease."

ing that a person with a visual defect should not wear glasses."<sup>70</sup>

A procedure should be adopted in every state whereby a person with a history of seizures who has since become a safe driving risk, in the opinion of a competent physician, can apply for a driving permit. Wisconsin has adopted such a procedure<sup>71</sup> which has proven very satisfactory<sup>72</sup> and worthy of adoption by other states. Under its provisions, a license is issued upon the recommendation of the attending doctor that the patient is under treatment and free of seizures. The seizure-free period is set at two years. If the preliminary application is denied a "controlled" epileptic may have his application reviewed by an administrative board composed of a licensing official and two physicians qualified in the field of epilepsy. The board review is binding on the licensing official.<sup>73</sup> On such review the applicant is granted a driving permit good for six months which is renewed upon the attending physician's recommendations. One of the considerations in issuing such licenses is the applicant's eligibility for liability insurance. Upon the board's certification, epileptics have had little difficulty in obtaining full liability coverage at only a five percent increase in premiums. Wisconsin has had such success with this licensing procedure that in 1955 their compulsory reporting statute was repealed.<sup>74</sup> Such a procedure for the issuance of drivers' licenses to "controlled" epileptics would increase driving safety since only those epileptics who were recommended by a physician as being "controlled" would be issued licenses. As Fabing and Burrow have stated:

[T]he natural reaction to such a fair procedure would be for the epileptic to seek treatment and, after his seizures had been controlled for a reasonable period of time, to make application for a license, fully disclosing the history of seizures, treatment, and control. Under the fairest of procedures, of course, it must be expected that some who are found to be unsafe drivers will drive surreptitiously, as they now do. Coupling a fair procedure with one's sense of fair play, however, may be expected to achieve a far greater degree of traffic safety than presently exists.<sup>75</sup>

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<sup>70</sup> Letter from W. G. Lennox, Associate Prof. of Neurology, Harvard Medical School, The Neurological Institute, Children's Medical Center (Director of the Seizure Unit), Boston, Mass., to the *Notre Dame Lawyer*, April 8, 1957, on file in the Notre Dame Law Library.

<sup>71</sup> WIS. STAT. § 85.08 (6) (1949).

<sup>72</sup> Of over 360 licenses issued on the basis of being certified or on appeal, only two were withdrawn because of any recurrence of epileptic seizures. FABING AND BURROW, *EPILEPSY AND THE LAW* 53 (1956).

<sup>73</sup> *Ibid.*

<sup>74</sup> Chap. 534, Laws of 1955, repealing WIS. STAT. § 146.23 (1949).

<sup>75</sup> FABING AND BURROW, *EPILEPSY AND THE LAW* 38-39 (1956).

A complete freedom from seizures is not the only factor taken into consideration in evaluating an epileptic as a safe driving risk.<sup>76</sup> Because of these additional factors an overall medical recommendation by a competent physician is a necessity. Even by the use of the electroencephalogram (a delicate machine that records the most minute brain waves), a physical seizure may not be recorded, or conversely a brain wave irregularity may be evident without a physical manifestation. This is true although the electroencephalogram is considered the most important of all ancilliary procedures that can be utilized in the diagnosis of epilepsy.<sup>77</sup> Its diagnostic use is quite flexible and can divulge a variety of facts to the skillful medical practitioner. As Lennox says:

The EEG records different degrees of abnormality, suggests the presence of different types of seizures based on the pattern made by the waves. It is useful in locating the part of the brain principally affected and properly used can aid in the determination of the seriousness of the case, progress of therapy and something about the prognosis. . . . On the other hand as already indicated, it does not necessarily correlate with the physical evidence of seizures. It may be normal in the presence of a person with undoubted epilepsy or abnormal when there is no history of seizures.<sup>78</sup>

In light of the medical progress in controlling epilepsy to the point where the chance of suffering a solitary seizure is negligible, a "controlled" epileptic should be able to lawfully obtain a driver's license. Eighteen states grant license to epileptics on

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<sup>76</sup> As W. G. Lennox enumerated in a recent article, *Epilepsy and the Epileptic*, 162 AMER. MEDICAL J. 118 (1956).

"[T]he interval of time since the last seizure (at least 18 months); the age at onset of seizures and the former type and frequency of these; the constancy and the duration of the warning aura; the time of seizures, whether they occur only at night; the degree of abnormality of the electroencephalogram; the person's veracity and sobriety; the person's adherence to prescribed treatment; and the amount and kind of the expected driving."

<sup>77</sup> Carter and Merritt, *Diagnosis and Treatment of Epilepsy*, 3 AMERICAN PRACTITIONER 549 (1952).

<sup>78</sup> Letter from W. G. Lennox, M.D., Associate Prof. of Neurology, Harvard Medical School, The Neurological Institute, Children's Medical Center (Director of the Seizure Unit), Boston, Mass., to the *Notre Dame Lawyer*, April 8, 1957, on file in Notre Dame Law Library.

"It is now recognized epileptic attacks are the result of extreme activity within a part or of the entire brain. Proof lies in the modern use of the electroencephalograph. This agency was developed to practical usefulness in 1935 and serves to record the passage of electric currents produced by changes of voltage within the brain." 2 GRAY, ATTORNEYS TEXTBOOK OF MEDICINE § 100.02 (3d ed. 1951).

the basis of control of seizures.<sup>79</sup> The non-seizure period upon which individual physicians would recommend a controlled epileptic as a safe driving risk varies from one to five years, with the majority recommendation about 18 months, depending upon the individual case.<sup>80</sup> Of course, a complete seizure-free period for any length of time does not mean that an unexplained blackout will not take place. This is true of any driver on the road as well as a "controlled" epileptic.

### *Conclusion*

Thus, if the requisites of criminal liability are fulfilled under the various state "reckless driving" statutes by the prior knowledge of the motorist of his blackout susceptibility, a prosecution for criminal negligence may be the result.

The consensus in the medical profession is that a "controlled" epileptic is a safe driving risk. It is up to the state legislatures to devise adequate licensing programs whereby the epileptic will be encouraged in obtaining medical treatment with the hope that some day he will qualify as a "safe-driving risk." At the same time, it is necessary to impress upon the motorist-conscious public that any person subject to sudden "blackouts" who persists in driving, in reckless disregard of the rights of others and the laws of the state, will be prosecuted under the various state "reckless driving" statutes if a fatal accident results from a "blackout."

*Ronald Patrick Smith*

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<sup>79</sup> Ariz., Cal., Colo., Ill., Md., Mass., Mo., Mont., Nev., N. H., N. C., N. D., Ore., S. C., Vt., Va., Wash., and Wis.

<sup>80</sup> New York recently inaugurated a pioneer move in accident prevention by conducting a symposium on "the Medical Aspects of Motor Vehicle Accident Prevention." Outstanding administrative officials and medical specialists participated in eight workshop groups. The recommendations of each group are collected and reported in 56 N.Y. STATE J. OF MEDICINE 3853-3882 (1956). See also 45 KY. L. J. 215 (1957), for a symposium on mental responsibility and the law conducted from the standpoint of four specialists.