

# Beyond Auto-Brewery: Why Dysbiosis and the Legalome Matter to Forensic and Legal Psychology

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**Abstract:** International studies have linked the consumption of ultra-processed foods with a variety of non-communicable diseases. Included in this growing body of research is evidence linking ultra-processed foods to mental disorders, aggression, and antisocial behavior. Although the idea that dietary patterns and various nutrients or additives can influence brain and behavior has a long history in criminology, in the absence of plausible mechanisms and convincing intervention trials, the topic was mostly excluded from mainstream discourse. The emergence of research across nutritional neuroscience and nutritional psychology/psychiatry, combined with mechanistic bench science, and human intervention trials, has provided support to epidemiological findings, and legitimacy to the concept of nutritional criminology. Among the emergent research, microbiome sciences have illuminated mechanistic pathways linking various socioeconomic and environmental factors, including the consumption of ultra-processed foods, with aggression and antisocial behavior. Here in this review, we examine this burgeoning research, including that related to ultra-processed food addiction, and explore its relevance across the criminal justice spectrum—from prevention to intervention—and in courtroom considerations of diminished capacity. We use auto-brewery syndrome as an example of intersecting diet and gut microbiome science that has been used to refute *mens rea* in criminal charges. The legalome—microbiome and omics science applied in forensic and legal psychology—appears set to emerge as an important consideration in matters of criminology, law, and justice.

**Keywords:** forensic psychology; criminal justice; microbiome; ultra-processed food addiction; diminished capacity; aggression; auto-brewery syndrome; biological criminology; nutrition



**Citation:** Logan, Alan C., Susan L. Prescott, Erica M. LaFata, Jeffrey J. Nicholson, and Christopher A. Lowry. 2024. Beyond Auto-Brewery: Why Dysbiosis and the Legalome Matter to Forensic and Legal Psychology. *Laws* 13: 46. <https://doi.org/10.3390/laws13040046>

Academic Editors: Raúl Quevedo-Blasco and Amparo Díaz-Román

Received: 2 May 2024

Revised: 23 June 2024

Accepted: 5 July 2024

Published: 11 July 2024



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## 1. Introduction

*“It appears, then, that the digestive tract of the healthy, upright citizen is on a mild scale an unlicensed brewery”*

The Age, 1910 (Anon 1910)

Recent years have witnessed a dramatic growth in the scientific scrutiny of ultra-processed foods, with a vast number of epidemiological studies linking consumption with non-communicable diseases (Lane et al. 2024; Dai et al. 2024). Ultra-processed products typically contain assembled combinations of refined sugar, industrial fat, emulsifiers, flavor enhancers, synthetic ingredients, isolated fiber, and/or extruded meat remnants

(Popkin et al. 2024). These combinations are often engineered to promote rewarding properties and enhanced palatability. Products classified as ultra-processed include ready-to-heat and ready-to-consume pre-packaged meals, carbonated soft drinks, energy drinks, savory packaged snacks, ice cream, sweets (candies), cookies/biscuits, “energy” bars, mass-produced packaged breads and buns, pre-packed cake mixes, sweetened breakfast cereals, margarines and other spreads, pastries, sweetened milk drinks, “fruit” yogurts, imitation “fruit” drinks, “cocoa” drinks, “instant” sauces/soups, poultry and fish “nuggets” and “sticks”, sausages, burgers, hot dogs, reconstituted meat products, and home/restaurant meals assembled with ultra-processed ingredients such as refined starches and hydrogenated oils (Prescott et al. 2024b; Monteiro et al. 2019; Martinez-Steele et al. 2023). Included in the emerging epidemiological research are increasingly robust associations between ultra-processed food consumption (or the high sugar/fat typically found in such foods) and mental disorders, aggression, and antisocial behavior (Lane et al. 2024; Werneck et al. 2024; Zahedi et al. 2014; Mohseni et al. 2021; Abiri et al. 2023; Wu et al. 2020; Gketsios et al. 2023; Khayyat-zadeh et al. 2019; Mrug et al. 2021).

Although the subject of diet (including nutrient deficiencies and/or excess exposure to dietary additives/toxins) has been discussed in the periphery of criminology for many years, advances in nutritional neuroscience and nutritional psychology/psychiatry, including mechanistic and intervention studies, have underscored the relevancy of nutrition to mental health and behavior. As this research has matured, it is becoming clear that nutrition may be more relevant to criminology and carceral institutions, in both prevention and intervention, than previously appreciated (Prescott et al. 2024a). Amid this body of research, the gut microbiota (as influenced by diet and other environmental factors) are emerging as mediators of behavior. That is, volumes of research now demonstrate that the gut microbiota are not only influenced by the host’s behavior, such as dietary choices, the behavior of the host is also influenced by the microbiota. This research is disrupting notions of the biological ‘self’ (Rees et al. 2018; Ironstone 2019), and the assumption of free will that underpins legal decision-making (A. C. Logan et al. 2024).

In this review, we examine this burgeoning research, including that related to ultra-processed food addiction, and explore its relevance across the criminal justice spectrum—from prevention to intervention—and in courtroom considerations of diminished capacity. We introduce the concept of the legalome—microbiome and omics science applied in biological criminology and in matters of forensic and legal psychology (A. C. Logan et al. 2024). Combined with microbiome findings, omics technologies (including genomics, epigenomics, transcriptomics, an/or metabolomics) are illuminating biological contributors to behavioral problems, including aggression, addiction, impulsivity, excessive risk-taking, and diminished concern for future consequences (Hagenbeek et al. 2023; García-Cabrero and Cryan 2024; Y. Chen et al. 2024; J. Wang et al. 2024). As a point of entry into discussions of the legalome, we provide a brief overview of auto-brewery syndrome—a microbiota-driven condition—which has already challenged the legal requirement of intent, or *mens rea*, in criminal cases of driving while intoxicated (DWI) (Akbaba 2020). Our discussion is oriented toward the United States legal system, although the research discussed below has global implications.

## 2. Auto-Brewery Syndrome

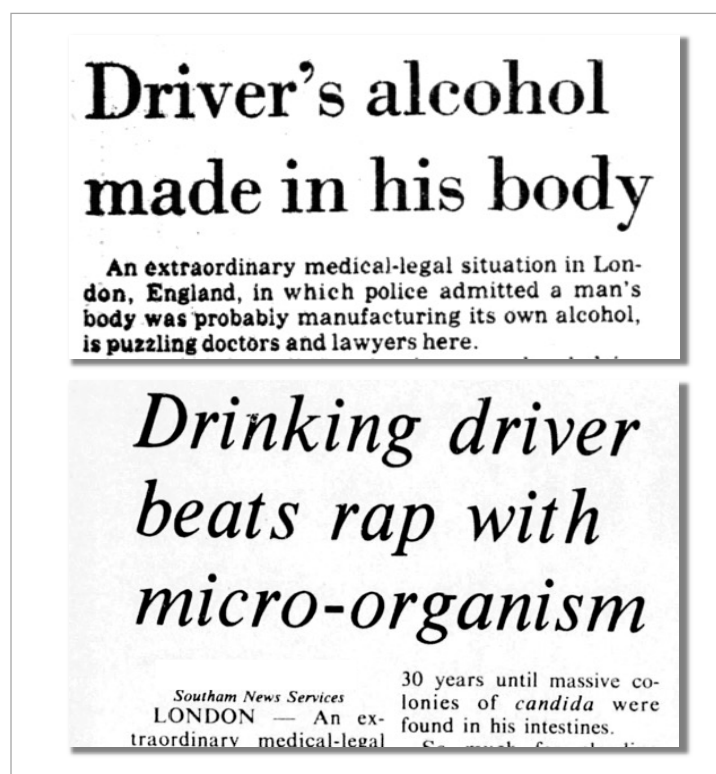
*“Those who might otherwise be wrongly convicted now have an explanation which may someday be better researched and understood by scientists, and may provide a defense”*

Ray Twohig, Esq. 1991 (Twohig 1991)

In December 1990, Albuquerque defense attorney Ray Twohig argued that his client’s conviction on DWI charges should be vacated because the client had an intestinal overgrowth of the alcohol-producing microbe, *Candida albicans*. The prosecutor, Timothy Cornish, was unimpressed: “This thing is baloney. It is laughable,” he told the press (Rosales 1990). The judge, Richard Traub, did not allow the defense to move forward, informing Twohig that “the court does not give credence to the involuntary intoxication defense”

(The Editors 1990). Local media scoffed at the defense—the *Albuquerque Journal* penned an editorial stating that Twohig’s legal theory “wreaks havoc on the credence of the legal profession” (The Editors 1990). Even though he was unsuccessful, and the subject of ridicule, Twohig maintained that the evidence he gathered, if supported by future research, would one day provide a microbe-mediated defense strategy.

Insofar as DWI is concerned, Twohig has been proved correct. In December 2015, the “auto-brewery” syndrome defense was successfully used in New York State, with the dismissal of DWI charges against a 34-year-old woman. The defense attorney had provided ample evidence of elevations in blood alcohol, in the absence of alcohol consumption, when his client was tested under tightly-controlled conditions (Herbeck 2016). Since this landmark dismissal, less-publicized dismissals and/or reductions in charges have been reported in the United States (Nelson 2017; Rudnick Law 2021). In April, 2024, the Belgian courts also dismissed DWI charges against a 40-year-old man with lab-proven auto-brewery syndrome (Reuters 2024). Lesser-known is that in 1978, DWI charges against Russell Kerr, a 57-year-old Member of Parliament in the United Kingdom, were dismissed when his urine sample was found to have high levels of alcohol-producing *Candida* species (Hills 1978) (Figure 1). Later, Scotland Yard indicated that Kerr’s case was likely due to lab contamination (Anon 1978).



**Figure 1.** International wire service headlines describe the 1978 microbe-based DWI dismissal involving Russell Kerr, MP. Scotland Yard later claimed lab contamination.

The idea that disturbances to the normal gastrointestinal microbiota (and the collective microbe-habitat ecosystem, now known as the microbiome) is associated with excess production of alcohol, and other potentially harmful products of microbial action, is over a century old (Adami and Nicholls 1911; Macfadyen 1903). In 1907, Dr. Walter E. Dixon proved that sugar is transformed into alcohol by intestinal fermentation, with minimal amounts of alcohol subsequently delivered to various tissues; Dixon theorized that chronic low-grade alcohol production, via dietary sugar, could account for higher levels of cirrhosis in England vs. Scotland, despite equivalent alcohol consumption in both regions (Anon 1907). In the 1920s, researchers reported that conditions involving disturbances to

gastrointestinal structure and function, with coincident shifts in the microbial ecosystem, could result in significant alcohol production from carbohydrate foods: “Even if normal food is free from alcohol, from other carbohydrate-containing foods there are produced certain amounts of alcohol, this being accomplished by the actions of yeast, which is always present in the stomach and intestines. . . this yeast fermentation and the alcohol produced by it can be carried to such a degree that a state of chronic alcoholic auto-intoxication may possibly result” (Marcovici 1928). During this period, the idea that excess sugar and refined carbohydrate consumption can lead to internal alcohol production, behavioral change, and a cycle of sugar/carbohydrate addiction, was circulated in popular press articles: “The digestive tract of the food drunkard—the starch poisoned—is like a fermenting vat, with its accompanying carbonic acid and alcohol, irritating the whole system, the brain, beclouding the judgement. . . their digestive tracts resemble a beer vat at a brewery or a mash tub at a distillery, especially if they eat freely of sugar. This explains why [they] find it so difficult to give up the habit” (Froude 1924).

Among the yeasts involved in endogenous alcohol production, *Candida* species were early suspects. In 1959, professor Shuji Sasaki of Hokkaido University reported on a case of *Candida*-involved auto-brewery syndrome in Japan; the case involved a 46-year-old agriculture worker Kozo Ohishi, and was widely reported in North American media via Reuters and Time magazine (Anon 1959; Reuters 1959) (Figure 2). Ohishi had figured out on his own that heavy starch and sugar meals were provocateurs of his inebriated state, although it was not until he was provided test meals under controlled supervision, with lab-confirmed evidence of *Candida albicans* overgrowth, that his claims were taken seriously. One sentence buried within Time magazine’s reporting is of relevance to contemporary discussions of ultra-processed foods and socioeconomic realities—“Ohishi tried to avoid starches, but with a wife and four growing children he could not always afford the more expensive meats and vegetables” (Anon 1959). Individuals with so-called auto-brewery syndrome (also called gut fermentation syndrome) can witness significant elevations in blood alcohol after the consumption of sugar and high-carbohydrate foods (like many ultra-processed products); sugar is well established as a growth accelerator for *Candida* species (Weerasekera et al. 2017), and acts as a substrate for microbial fermentation and the subsequent production of alcohol.

Until recently, auto-brewery syndrome was thought to be exclusively a product of the overgrowth of *Candida* and other fungal species (Kaji et al. 1976). Many of the cases of auto-brewery syndrome were reported to be triggered by courses of antibiotics which kill off the bacteria that otherwise keep *Candida* and other yeasts in check. For example, the odds of candidiasis are almost 8 times greater after amoxicillin treatment (Gillies et al. 2015). However, researchers have found that the overgrowth of multiple ethanol-producing bacteria, including *Klebsiella* species, can also cause auto-brewery syndrome (Xue et al. 2023). Over sixty bacterial species and two dozen yeasts are known ethanol producers (Mbaye et al. 2023), which suggests that any significant shift in the gut microbiome (a phenomenon known as dysbiosis), rather than *Candida* overgrowth per se, could increase the risk of auto-brewery syndrome. Moreover, emerging research is demonstrating that the local production of alcohol by gut microbes appears to be a significant contributor to metabolic dysfunction-associated steatotic liver disease (formerly known as nonalcoholic fatty liver disease, which, unlike alcohol consumption-related fatty liver disease, afflicts individuals who drink no/little alcohol). For example, over 60% of patients with metabolic dysfunction-associated steatotic liver disease have high levels of *Klebsiella pneumoniae*, a microbe that can produce alcohol in significant amounts; after an oral glucose tolerance test, these subjects with nonalcoholic liver disease had a blood alcohol level 3.6 times higher than healthy controls (Yuan et al. 2019).

This chronic internal production of alcohol is a likely contributor to intestinal permeability (Kuo et al. 2024), a topic to be discussed later. Whether related to alcohol production or not, it is worth noting that patients with schizophrenia are at much higher risk of metabolic dysfunction-associated steatotic liver disease (even when the patient



is non-obese) (Yi et al. 2024), and that an elevated immune (IgA) reaction to *Klebsiella pneumoniae* is reported to be the single best predictor of residual psychotic symptoms in first-episode and multi-episode schizophrenia (Maes et al. 2021). *Klebsiella pneumoniae* has also been linked to susceptibility to seizure disorders (Lin et al. 2021) and *Klebsiella* as a genus has been associated with risk of depression (Lin et al. 2017). Like *Candida*, diets rich in sugar and simple carbohydrates, and absent naturally-occurring fiber as found in whole, minimally-processed foods, facilitate the growth of *Klebsiella pneumoniae* (Hecht et al. 2024).



**Figure 2.** International headlines used to describe the 1959 case of “Mr. O”, emphasizing the diet-microbe connection to inebriation.

In the past, skeptics of auto-brewery syndrome, including the former director of the Washington State Forensic Laboratory Services Bureau, claimed that the extremely rare cases of forensically-relevant elevated blood alcohol (in the absence of alcohol consumption) were a phenomenon observed in Asian individuals; that is, the cause of auto-brewery in historical Japanese reports was suggested to be the ultra-rare intersection of the common East Asian genetic polymorphism (i.e., aldehyde dehydrogenase—resulting in reduced activity of enzymes involved in the hepatic metabolism of ethanol and minimal liver metabolism), medical-related conditions/iatrogenic causes, and the carbohydrate-heavy Asian diet. Such skeptics scoffed at the idea that any “non-Asian” individual in the United States could “generate sufficient amounts of ethanol in the body by natural processes to yield forensically significant concentrations in peripheral venous blood” (B. K. Logan and Jones 2000). Testifying for the prosecution in a 1993 case wherein auto-brewery was unsuccessfully used as a DWI defense, the Wisconsin State Laboratory of Hygiene toxicologist stated that “It doesn't happen in real life” (Associated Press 1993). Such claims have now been adequately disproven (Cordell et al. 2021), and the issue is no longer whether or not forensically relevant auto-brewery syndrome exists, including in non-Asians; the concern is that it may be much more common than previously appreciated (Malik et al. 2019).

Metabolic dysfunction-associated steatotic liver disease, now known to elevate blood alcohol, has increased dramatically in the last two decades—with a global prevalence increase from 25% in 1990–2006 to 38% in 2016–2019 (Welsh et al. 2013; Wong et al. 2023; Samanta and Sen Sarma 2024). Ultra-processed food consumption has been linked to metabolic dysfunction-associated steatotic liver disease (in a dose–response manner) in multiple studies (Henney et al. 2023; Nseir et al. 2010; Assy et al. 2008). In Spain, according to a randomly-drawn sample from a public healthcare database, the reported prevalence of metabolic dysfunction-associated steatotic liver disease among adult women and men is 22% (Cusacovich et al. 2023), whereas in prison settings it is 34% (Rivera-Esteban et al. 2023). In addition, COVID-19-related changes to the gastrointestinal microbiota, including post-COVID-19 auto-brewery syndrome, are cause for alarm (Yates and Saito 2024). It is worth noting that just two decades ago, small intestinal bacterial overgrowth, one of the reported pathways to auto-brewery syndrome, was thought to be an extremely rare sequelae of intestinal surgery (Vanderhoof et al. 1998). However, increased utilization of lab testing has shown that small intestinal bacterial overgrowth is detected in approximately one-third of patients with functional dyspepsia, irritable bowel syndrome, and individuals with gastrointestinal complaints (Efremova et al. 2023). Small intestinal bacterial overgrowth has been associated with depression, anxiety, neuroticism, and catastrophizing (Kossewska et al. 2022), and treatment has been shown to improve mood, memory, and concentration (Pimentel et al. 2000).

Auto-brewery sits on a continuum of symptomology and physiological markers, whereon one person might have a blood alcohol level over three times the legal limit after a sugar/carbohydrate heavy meal, and another might be just under the legal limit. The behavioral consequences of sub-clinical auto-brewery syndrome are unknown. To date, legal discussions of auto-brewery syndrome have remained almost exclusively focused on DWI. However, elevations in blood alcohol have long been associated with risk-taking, aggression, and loss of inhibition (Field et al. 2010; Paulsen 1961). Beyond impairments in operating vehicles, how might auto-brewery and associated dysbiosis intersect with other biopsychosocial vulnerabilities already known to be connected to risks for antisocial behavior, aggression, and risk-taking? Case reports provide some hints. The first widely publicized US resident with lab-proven auto-brewery syndrome was Charles M. Swaart. In 1977, Swaart’s medical history of significant post-prandial elevations in blood alcohol (without alcohol consumption) was presented in a variety of syndicated media articles. Swaart’s behavioral symptoms included belligerence and aggression. Swaart’s wife Betty put it this way: “I never knew what to expect. Before my eyes, my dignified, loving, and considerate husband would turn sloppy, overbearing, and hostile—sometimes even violent” (C. M. Swaart 1977). After an arrest for disorderly conduct, his Phoenix attorney, Murray Miller (1927–2013), successfully used lab reports to have the charges dismissed (C. M. Swaart 1977).

Recent case reports involving individuals with auto-brewery syndrome report increased aggression (Iati 2019). Links between dysbiosis and aggression are not new. Speaking at the annual meeting of the American Society for the Study of Inebriety, Alcohol and Drug Neurosis, in 1908, physician George H. Benton argued that inebriety can result from dysbiosis, and that it is not uncommon for adults to turn to alcohol and drugs to attempt to “cover up” the psychiatric symptoms of dysbiosis (Anon 1908). It was also noted, historically, that dysbiosis was associated with depression, anxiety (Bested et al. 2013), and in some cases, “the patient loses control, and fits of irritability or violent passion are not infrequent” (Anon 1922). Salient to the discussions that follow, especially on ultra-processed food addiction, auto-brewery syndrome is typically managed by a strategy of select anti-microbial medications and dietary interventions that minimize sugar-rich carbohydrates; failure to adhere to a diet low in carbohydrates and sugar-rich ultra-processed foods can lead to a return of symptoms (Zewude et al. 2024).

Our discussion here transcends *Candida*, the internal brewing of ethanol, and DWI. Alcohol is not the only gut microbially produced chemical or metabolite that makes its way

into the blood stream, and onward to the brain. Gut microbes have a profound influence on the metabolome—that is, the many hundreds of metabolites found in blood and other tissue samples (Lee-Sarwar et al. 2020). Our focus is based on a wider-lens examination of how gut microbes, microbial metabolites, and microbe-mediated inflammatory chemicals, might influence behavior in ways that are currently underappreciated by the criminal justice system, writ large. Auto-brewery syndrome is now the most obvious legally relevant manifestation of the intestinal microbiome as it intersects with diet, antibiotic overprescriptions, and other environmental considerations. However, based on the emergent research to be discussed below, we argue that auto-brewery syndrome is merely a harbinger of the legalome, and the difficult questions that it will present to the courts vis à vis intent, diminished capacity, and free will.

### 3. Dysbiotic Drift

Over the last two decades, it has become clear that dietary patterns leaning toward highly processed foods (or foods high in fat and/or refined carbohydrates that would now likely be categorized as ultra-processed) are associated with disturbances to the gut microbiome (Fernandes et al. 2023; Song et al. 2023; Martínez Leo and Segura Campos 2020). Researchers have examined the ways in which sugar, industrialized fats, and sodium can cause dysbiosis, and a growing body of research is also demonstrating that additives—including emulsifiers, artificial sweeteners, and flavor enhancers common to ultra-processed foods—can cause significant shifts in the mammalian gut microbiome (Whelan et al. 2024; Nahok et al. 2021; Kyaw et al. 2022). Moreover, ultra-processed foods often include isolated fibers retrofitted into the final product, and these industrial fibers have also been associated with intestinal inflammation and undesirable permeability of the intestinal lining (K. Chen et al. 2022; He et al. 2022; Ten Bruggencate et al. 2005; F. Liu et al. 2017), so-called ‘leaky gut’.

Although our focus here is on diet, it is also important to consider other environmental factors that push toward dysbiosis and small intestinal bacterial overgrowth. There is ample evidence that antibiotics, well-known to cause significant alterations to the microbiome, continue to be over-prescribed in medical practices. Remarkably, over 15% of visits to a primary care physician in Canada result in an unnecessary antibiotic prescription (Schwartz et al. 2020), and in the United States approximately one-third of antibiotics prescribed in ambulatory care are unnecessary (Hersh et al. 2021). Even in the absence of a bacterial co-infection, antibiotics have been widely prescribed to patients presenting with COVID-19 (Langford et al. 2021). Multiple studies have linked antibiotic prescriptions with subsequent anxiety, depression, and suicidal ideation/behaviors (Pouranayatihosseinebad et al. 2023; Köhler-Forsberg et al. 2019; Prichett et al. 2024), and this risk might be heightened after broad-spectrum antibiotic use (Prichett et al. 2022).

It is worth noting that antibiotic prescriptions have been reported to be more frequent in communities living with socioeconomic deprivation, and this phenomenon cannot be attributed solely to lifestyle factors such as smoking or the presence of common medical conditions (Adekanmbi et al. 2020). In calendar year 2020, each percentage increase in prevalence of poverty within a US state was associated with 17.4 additional courses of antibiotics per 1000 population (Tarkhashvili 2023). In addition, stomach-acid-suppressing medications, such as proton pump inhibitors and histamine-2 blockers, represent a multi-billion-dollar global industry. These, too, are more frequently used in persons living with low socioeconomic position (van Boxel et al. 2009; Targownik et al. 2007; Haastrup et al. 2016). These medications have been shown to disturb the microbiome, provoke *Candida* growth, and cause small intestinal bacterial overgrowth (Tian et al. 2023); (Mottaghi et al. 2021; Shindo and Fukumura 1995). In the early case reports of auto-brewery syndrome, it was noted that patients typically have very low stomach acid, which might be a predisposing factor (Anon 1972). Like antibiotics, prescriptions for proton pump inhibitors and over-the-counter use of acid-suppressing drugs are often unnecessary (Kurlander et al. 2024),

and use has been connected to higher risk of depression, anxiety, and suicidal ideation (Murthy et al. 2023; Y. -H. Wang et al. 2022; Fong et al. 2022).

These findings related to antibiotics and acid-suppressing drugs sit within a larger frame of dysbiotic forces that press upon individuals and communities living with socioeconomic disadvantage. Among the wide array of environmental and individual/community factors associated with dysbiosis—ranging from airborne particulate matter and food insecurity to neighborhood disorder and sleep disruption—the ‘variables’ are shouldered by persons/communities living with deprivation, discrimination, and poverty (Prescott et al. 2018; Kwak et al. 2024; Pearson et al. 2020). This socioeconomic gradient, aided and abetted by the formulation and marketing tactics of the unhealthy products industries (including ultra-processed ‘foods’ target-marketed to marginalized communities) (Moodie 2017; Fazzino et al. 2024), is known as dysbiotic drift (A. C. Logan 2015). We underscore these associations because in countries where ultra-processed foods dominate, such as the United States, violent criminal behavior and crime victimization does not sit on a level socioeconomic ground. Rather, exposure to violent crime is slanted toward disadvantage and deprivation (Lofstrom and Raphael 2016; De Courson and Nettle 2021) and the mass incarceration in the United States has been described as the criminalization of poverty (Simes 2018; Edelman 2019); interestingly, subjective experiences of relative deprivation increase aggressive behavior (Greitemeyer and Sagioglou 2016) and alter dietary choices in an unhealthy direction (Rahal et al. 2023; Sim et al. 2018; Wijayatunga et al. 2019; Cardel et al. 2016; Bratanova et al. 2016).

Dysbiosis is related to the known biochemical biomarkers of crime, most notably those linked to aggression, risk taking and diminished concern for future consequences. For example, low-grade inflammation (measured through markers such as C-reactive protein and pro-inflammatory cytokines) has been linked to impulsivity, aggression, irritability, anger, and an inability to delay gratification (Gassen et al. 2019; Hagenbeek et al. 2016; Zalcman and Siegel 2006). At least one conduit between dysbiosis and systemic low-grade inflammation is the permeability of the intestinal barrier; optimally, the mucus cover and epithelial cells of the gut lining act as an efficient barrier to undesirable microbial breakdown products (including portions of microbial membranes known as endotoxin) and environmental toxins, while allowing entry for electrolytes and vital nutrients. However, gut dysbiosis can disturb the mucus layer and the integrity of the gut barrier, leading to increased permeability (i.e., ‘leaky gut’) and inappropriate access for endotoxin and other antigens. The result is a systemic immune response, including elevations in the circulating levels of behavior-altering inflammatory cytokines (Ohlsson et al. 2019; Wasiak and Gawlik-Kotelnicka 2023). Other markers of aggression, risk-taking, and lowered mood, such as neurotransmitters, lipoproteins, and hormones, are also influenced by the gut microbiota (Choi et al. 2020; de Vries et al. 2022; Miri et al. 2023; P. Liu et al. 2021). Neuroimaging studies are connecting gut microbe-produced metabolites to functional connectivity in human brain networks (Z. Li et al. 2022).

Remarkably, from a forensics perspective, enhanced metagenomic sequencing and other advances on ‘omics’ sciences are beginning to allow researchers to use oral and gut microbiome data to distinguish between occupation and lifestyle habits of unidentified adults (Dou et al. 2023), the presence of mental disorders (Malan-Muller et al. 2022; Z. Dong et al. 2021; T. S. Dong et al. 2020; X. Zhang et al. 2023), and whether or not an individual might respond to treatment (Madan et al. 2020; Z. Dong et al. 2022; Dedon et al. 2024). In other words, the oral and gut microbiomes are emerging as storybooks capturing lived experiences.

#### 4. Gut Microbes and Behavior

Thus far, we have discussed the many factors that can influence dysbiosis. How might these shifts in gut microbiota influence human behavior? What evidence do we have, beyond the sparsely reported cases of auto-brewery, that microbes are relevant to forensic and legal psychology, especially as mitigating factors or in arguments of diminished



capacity? Similar to the research on ultra-processed products, for answers we can look to the convergence of epidemiology, mechanistic bench science, and intervention studies.

First, volumes of international studies have linked gut microbiota to important factors in forensic psychology, including various mental disorders (Q. Zhang et al. 2021; Z. Dong et al. 2021; Malan-Muller et al. 2022; S. Li et al. 2021), substance use (Ames et al. 2020; Hofford and Kiraly 2024), personality features and temperament (Johnson 2020; Fan et al. 2023; Sumich et al. 2022; Ueda et al. 2023), impulsivity (W. Liu et al. 2024; Carbia et al. 2023), aggressive or violent tendencies (X. Chen et al. 2021; Deng et al. 2022), emotional regulation (Fujihara et al. 2023; Ke et al. 2023), and antisocial vs. prosocial behaviors (Ou et al. 2022; Delgado et al. 2022). Second, a robust body of pre-clinical and bench science is identifying microbial taxa and species involved in mental disorders and aggression, and illuminating the mechanisms by which microbes can influence behavior (Cheng et al. 2023; Gullede et al. 2023; Tcherni-Buzzeo 2023). These pathways include, but are not limited to: (a) direct communication between gut microbes and the brain via the vagus and spinal nerves (Bonaz et al. 2018); (b) loss of integrity of the gastrointestinal barrier (leaky gut—which allows microbial breakdown products and other chemicals into systemic circulation) (C. Wang et al. 2021); (c) impact on humoral signaling molecules (e.g., cytokines, neuropeptides, and hormonal messengers) that otherwise contribute to mood and behavior (Donoso et al. 2023); (d) bile acid metabolism, which yields diverse bile acid metabolites that signal through host receptors (Fogelson et al. 2023; Mohanty et al. 2024); and (e) the manufacture, transformation, and/or absorption of nutrients, including vitamins, omega-3 fatty acids, and polyphenols (Ortega et al. 2022; Kerman et al. 2023; Barone et al. 2022). Third, human intervention studies targeting the microbiome with probiotics and specialized ‘psychobiotic’ diets are demonstrating value in reducing psychological stress (Zhu et al. 2023; Berding et al. 2023), depression and anxiety (Q. Zhang et al. 2023), aggressive thoughts (Steenbergen et al. 2015), behavioral aggression (Matiş et al. 2023), risk taking (Dantas et al. 2022), and impulsivity (Roman et al. 2018; Elhossiny et al. 2023).

Although parasitic infections are often overlooked in forensic and legal psychology, there is increased recognition that the gastrointestinal pathogen *Toxoplasma gondii* is capable of disturbing the behavior of its host (Severance et al. 2016). Multiple human studies have found associations between anti-*T. gondii* antibodies and behavioral problems that include rule breaking, risk taking, impulsivity, aggressiveness, and suicidal ideation (Martinez et al. 2018; Zerekidze et al. 2024). The mechanisms by which *T. gondii* can disturb behavior are not completely understood, although it is becoming evident that *T. gondii* exposure can contribute to dysbiosis (Prandovszky et al. 2018). This *T. gondii*-induced dysbiosis appears to play a causal role in cognitive disturbances (X. Yang et al. 2024). Observed relationships between *T. gondii* exposure and unhealthy dietary patterns (and higher Body Mass Index) allow for the hypothesis that the organism plays a causative role in diet–mental health relationships (Cuffey et al. 2021).

## 5. Fecal Transplant and Causation

While the above-mentioned studies have provided support for the idea that microbes are involved in neurocognition, neurophysiology, and behavior, they do not prove causation. The credibility of the legalome requires evidence of causal relationships between gut microbes and behavior, as is the case in auto-brewery syndrome. The emergence of studies involving fecal transplants (also called fecal transfer or fecal microbiome transfers) provide compelling evidence, substantiating a causal role for microbes in control of behavior. In pre-clinical research, the general methodology in these microbiota transplant studies is to take the fecal matter from ‘donor’ animals that have been exposed to a manipulated variable (examples include regular consumption of an ultra-processed-like diet, chronic unpredictable stressors, and social isolation) and transplant the fecal material into healthy recipient animals. Collectively, these studies show that transplants from donor animals exposed to these ‘lifestyle’ factors and environmental stressors (vs. healthy unexposed donors consuming standard lab chow) leads to cognitive deficits and behavioral changes in the re-

recipient animal, including those that reflect depression and anxiety (Bruce-Keller et al. 2015; Y. Yang et al. 2019; Duan et al. 2021; N. Li et al. 2019; Huang et al. 2021). Studies have also examined reverse effects. For example, in substance dependence models the transplant of fecal microbes from healthy animals reduces dependence and depression-like behavior in recipient animals (D. Li et al. 2023; Q. Wang et al. 2023). On the other hand, the transfer of microbes from alcohol dependent donor animals causes an increase in voluntary alcohol consumption in transplant recipients (Segovia-Rodríguez et al. 2022). Interestingly, the transfer of microbes from either aggressive or less aggressive chickens into a neutral commercial line of recipient chicks leads to increased or decreased aggression in the recipients based on the donor line aggression. Moreover, the changes in aggression among recipient chicks were noted to coincide with alterations in activities of brain serotonergic and catecholaminergic systems (Fu et al. 2023). In other words, the transplanting of microbes is changing both neurophysiology and observable behavior.

Animal donors are not the only source of microbes used in the growing number of fecal transplant studies. Multiple studies are now using human donors living with mental disorders, intense antibiotic exposure, or substance abuse. For example, the transfer of fecal microbiota from human infants who had been exposed to antibiotics (vs. healthy unexposed infants) leads to aggressive-like behavior in recipient lab animals (Uzan-Yulzari et al. 2023). The transplant of fecal microbiota from patients with schizophrenia into recipient animals induces schizophrenia-like behavioral changes, including deficits in sociability and hyperactivity. These behavioral changes are also accompanied by modifications to the transcriptomic profile in the brain (Wei et al. 2024). Comparable research designs involving donor patients with autism, depression, anxiety, cognitive decline, and substance use disorder, have produced similar behavioral changes and accompanying changes to neurophysiology in recipient animals (Xiao et al. 2021; Wolstenholme et al. 2022; Kelly et al. 2016; Vasiliiu 2023; Shen et al. 2020).

To date, there is limited research on human-to-human fecal transplant for the treatment of mental disorders. Although fecal transplant is currently approved by the United States Food and Drug Administration for *Clostridium difficile* infection, ongoing trials are exploring use in multiple diseases and disorders. Several case reports have described benefit in major depressive disorder and bipolar disorder, and randomized controlled studies are ongoing (Chang et al. 2024; Cooke et al. 2021). One case report, published in the *Annals of Internal Medicine*, indicates that fecal transplant leads to remission in auto-brewery syndrome (Vandekerckhove et al. 2020). Fecal transplant is emerging as a promising intervention for metabolic dysfunction-associated steatotic liver disease (Abenavoli et al. 2022) and preliminary results from one randomized controlled intervention shows that fecal transplant might offer benefit in adults with alcohol use disorder, demonstrating post-transplant reductions in alcohol craving and consumption (Bajaj et al. 2021).

## 6. Ultra-Processed Food Addiction

*“There are many persons who probably never have tasted strong drink in their lives who actually are suffering from an intoxication similar to that produced by alcohol, due to injurious eating of sugar and starches”*

Walter H. Eddy, PhD, 1924 (Eddy 1924)

Earlier, we discussed ultra-processed foods and their connection to mental disorders, aggression, and antisocial behavior, and we reviewed emerging evidence that speaks to the plausibility that ultra-processed foods may be a major dysbiotic force within the commercial determinants of health. If these foods represent multiple health-related harms, why are they consumed so widely? In the context of the legalome, a brief discussion of the addictive properties of ultra-processed products seems worthwhile. At the outset, we underscore that ultra-processed food addiction intersects with the same biopsychosocial vulnerabilities described in the dysbiotic drift section, compounded by the marketing of these products to vulnerable populations (Fazzino et al. 2024; Rook 2024).

Ultra-processed foods, as a group, are carefully formulated by food technologists to enhance taste, texture, and palatability. These engineered combinations of industrial fats, refined sugar, sodium, emulsifiers, and flavor enhancers (such as monosodium glutamate and other excitotoxins), are not found in naturally occurring or minimally processed foods and appear to contribute to the highly reinforcing, potentially addictive properties of ultra-processed foods (LaFata and Gearhardt 2022; Whatnall et al. 2022). Preliminary research in animal and human studies has observed core features of addiction—tolerance and withdrawal—in response to attempts to eliminate or significantly reduce ultra-processed food intake (Parnarouskis and Gearhardt 2022). Individuals meeting criteria for ultra-processed food addiction as measured on the widely validated Yale Food Addiction Scale have exhibited similar neural and behavioral responses (e.g., enhanced emotional reactivity, and craving, compulsive patterns of consumption) to images of such ultra-processed food products and/or intake as seen among individuals with substance-use disorders in relation to their substance of choice (Delgado-Rodríguez et al. 2023; Vasiliu 2021). Though not a recognized clinical diagnosis, the global scope of ultra-processed food addiction is significant, and likely growing as these products penetrate expanding markets. In a recent meta-analysis, the overall pooled prevalences of ultra-processed food addiction, assessed by the Yale Food Addiction Scale and its international versions, in non-clinical samples has been estimated at 14% in adults and 12% in children (Gearhardt et al. 2023).

In keeping with the previously discussed research themes on dysbiotic forces and vulnerabilities to crime perpetration/victimization, individuals and communities living with food insecurity may be particularly prone to ultra-processed food addiction—food insecurity has been associated with nearly 4-fold higher odds of endorsing ultra-processed food addiction on the Yale Food Addiction Scale (Leung et al. 2023). In the United States, ultra-processed foods are widely consumed, as reflected in commercial availability—approximately 58% of staples in U.S. leading supermarkets are ultra-processed, which is 41% more than supermarkets in Europe (Amaraggi et al. 2024). However, consumption is highest in association with poverty, food insecurity, and less education (Leung et al. 2022; Baraldi et al. 2018). Ultra-processed food consumption has been associated with the use of addictive substances, such as alcohol, tobacco, and illicit drugs (A. E. Mesas et al. 2023). Akin to addictive substances, ultra-processed food consumption may be driven by attempts to mitigate stress; for example, exposure to violence victimization has been linked to increased consumption of ultra-processed foods (A. E. Mesas et al. 2024; Marques et al. 2021).

While most US adults partake in some level of ultra-processed product consumption and purchase foods from fast-food outlets on a regular basis, the contextual frame of other daily dietary choices matters. That is, a person living with high-income and socioeconomic advantage may eat ultra-processed foods but may be more able to consume a balanced diet due to having increased access to minimally-processed dietary choices rich in fiber, omega-3 fatty acids, and polyphenols, all of which are critical in maintaining a healthy gut microbiome (Prescott and Logan 2017). Therefore, discussions of ultra-processed dietary patterns/meals vis à vis the microbiome and behavior involve considerations of components that promote dysbiosis (e.g., high fat/sugar/sodium, emulsifiers, flavor enhancers, and other additives) and the absence of protective constituents found in minimally-processed foods (e.g., polyphenols, omega-3 fatty acids, fiber naturally found in the food matrix). Shifts in the gut microbiome in adults living with food insecurity have been noted depending on the quality of dietary intake—higher nutrition quality scores are associated with the favorable outcome of a wider range of bacterial taxa (Bixby et al. 2022).

In cases of auto-brewery syndrome, patients often report craving high-sugar and/or high-carbohydrate foods (typically ultra-processed foods). As described by a 62-year-old male with physician and lab-confirmed auto-brewery syndrome: “I started having horrendous cravings for Victoria sponge cake, and I don’t usually have a sweet tooth. There are points where I would have killed for a slice of Victoria sponge and it’s ridiculous – it triggers an appetite reflex in your brain” (Fox 2021). The idea that the gut microbiome, including select microbial taxa and their metabolites, are drivers of food choices and

addictive behavior is no longer outlandish (Alcock et al. 2014; Acuña and Olive 2024; Ren and Lotfipour 2022; Kristie and Hsia 2023). Interestingly, this particular case of auto-brewery syndrome in an otherwise healthy adult is thought to have been initiated by heavy occupational exposure to airborne volatile organic compounds. Thus, it is worth pointing out that in recent years, multiple studies have linked airborne toxins with subsequent gut dysbiosis in animals and humans (Gupta et al. 2022; O’Piela et al. 2022). Airborne pollution has been linked to crime and deviant behavior in many studies (Burkhardt et al. 2020; Cho et al. 2022; Younan et al. 2018), and although the mechanisms remain obscure, there is little debate that the burden of airborne pollution is slanted toward socioeconomic disadvantage (Cheeseman et al. 2022). Viewed through the lens of prevention, the path to dysbiosis and ultra-processed food addiction is complex, and likely involves the many well-known psychosocial factors related to vulnerability to criminal behavior/victimization.

## 7. Quo Vadis, Legalome?

Taken as a whole, the rapidly evolving microbiome research is demonstrating that microbes are not distinct from the biopsychological self. In the context of individual choice and criminal jurisprudence, auto-brewery syndrome is arguably the premier example of the microbial ‘tail wagging the dog’. However, the degree of influence of microbes on aggression, violence, risk taking, lack of concern for future consequences, and criminal intent more broadly, remains an open question. Although the available evidence indicates that dysbiosis can influence the human capacity to choose, there is an urgent need to translate bench and pre-clinical research into knowledge of relevance to the criminal justice system. There is a specific need to examine the role of ultra-processed food addiction and associated withdrawal symptoms more closely in various populations, including patients with metabolic dysfunction-associated steatotic liver disease, small intestinal bacterial overgrowth, and auto-brewery syndrome. Psychological instruments such as the Modified Highly Processed Food Withdrawal Scale (Hu et al. 2024) can be paired with objective metabolomic measurements, including samples drawn from breath and blood. Using alcohol breathalyzers as the model, an expansion of breath testing for hydrogen, methane, hydrogen sulfide, and volatile organic chemicals (the latter known to be uniquely altered in schizophrenia and depression (Jiang et al. 2022; Henning et al. 2023; Lueno et al. 2022)), can aid researchers attempting to pair internal ecology with behavior (Haworth et al. 2022).

Despite media headlines consistently describing auto-brewery syndrome as ‘rare,’ we have no evidence that it is, in fact, rare. On the contrary, insofar as internal alcohol production can reach the minimal thresholds of mood and cognitive changes (which are much lower than defined legal limits for DWI) (Moskowitz et al. 1985; Holloway 1994), the condition might be far from rare. In a 1990 study, researchers showed that over 60% of out-patients with miscellaneous medical complaints ( $n = 546$ ) can produce significant quantities of alcohol after an oral glucose load (Hunnisett et al. 1990); several patients had a post-glucose blood alcohol level that was one quarter of the way to Sweden’s DWI limit of 0.02% and at least one of the patients studied by the group was at the Swedish limit (McCall 1990). At present, there is no epidemiology of auto-brewery syndrome or a knowledge base concerning the extent to which members of select patient populations might have elevated alcohol production in response to oral glucose tests or ultra-processed/high-sugar test meals over extended periods. Individuals with auto-brewery syndrome often discover that they have dysbiosis only *after* a law enforcement sobriety stop and subsequent self-directed (and expensive) efforts to determine cause. After the syndicated publications of Swaart’s story, in 1977 and again in 1983 (Campbell 1983), he was contacted by many people with similar ‘auto-brewery’ stories (C. M. Swaart 1978). While interesting, this is no way to establish an epidemiological portrait.

In the quest to determine a more accurate picture of auto-brewery syndrome (and possible sub-clinical variants, below DWI thresholds), researchers might consider a complaint commonly reported in general practice clinics—‘brain fog’. In one form or another, using language such as ‘feeling scattered’, ‘fuzzy thinking’, ‘like I’m in a cloud’, ‘being in a daze’,



brain fog complaints are common in clinical practice (Lucius 2021). Validated scales to assess brain fog are now available (Debowska et al. 2024), and could be paired with ultra-processed food addiction assessments, along with post-prandial breath alcohol and other metabolomics. There is a need to understand more about brain fog, its origins, microbiome connections, and potential relationships to antisocial behavior, and the ‘irresistible impulse’ of unplanned criminal behavior.

Historically, legal jurisprudence in the United States has been heavily slanted toward a convenient ‘free will’ philosophy and the idea that society needs to see punishment. Prior advances in neuropsychology and genetics have presented inconvenient facts to courts embedded in free will (Jones 2003), which they have mostly ignored vis à vis criminal capacity and punishment (Sapolsky 2023). Of course, there has been tinkering around the edges, such as banning the death penalty in cases of serious intellectual disability (at the time of the offense) and in juveniles less than 18 years of age, yet it is still carried out in cases of serious mental illness and in persons just above Intelligence Quotient “cutoffs” (Miley et al. 2020; Bruenig 2021, p. A-26). We suggest that in contrast to prior challenges to the free will/punishment underpinnings, microbiome sciences might provide a tipping point for systemic change over time. As such, researchers might query how advances in sciences related to the legalome intersect with prevailing attitudes toward science within the legal profession. Although judges in the United States are tasked with being the gatekeepers for the admissibility of scientific testimony, research shows that they are not particularly skilled in this role (Kovera and McAuliff 2000; Nir and Liu 2021). What we know for now is that emerging research is challenging traditional assumptions of free will, including those that are deeply entrenched in legal frameworks oriented toward individual culpability and punishment (R.M. Sapolsky 2023). The available research presents multiple opportunities for transdisciplinary research including the fields of forensic psychology and related behavioral sciences.

## 8. Conclusions

An increasingly robust body of international research has linked the consumption of ultra-processed foods with mental disorders, aggression, and antisocial behavior. These studies, spanning epidemiology, mechanistic science, and intervention studies, are lending support to the concept of nutritional criminology. In the midst of plausible biophysiological explanations for links between diet (and other environmental factors) and potentially criminal behavior, disturbances to the microbiome are emerging as an important mechanistic factor. Based on mounting research, including fecal transplant studies, it has become obvious that gut microbes can make important contributions to mammalian behavior, including aggression and antisocial behavior. Although human research remains limited, there are clear indications that the animal findings can extend to humans. This presents a quandary to matters of culpability and punishment in justice systems that otherwise sit on a fulcrum of free will.

Since the gut ecosystem is a product of diet and other socioeconomically related environmental factors, including the consumption of ultra-processed foods, there is a need to scrutinize the ‘causes of the causes’ more closely. For now, auto-brewery syndrome remains the exemplar of the legal intersection between diet, gut microbiome sciences, and *mens rea*. Just two short decades ago, the idea of auto-brewery syndrome being of relevance to criminal culpability was “chortled” at by prosecution teams and their lab experts. That changed in 2015, with the first known dismissal of DWI charges (and the prosecution’s decision not to appeal) based on lab-confirmed auto-brewery syndrome. The legalome—microbiome and omics science applied in forensic and legal psychology—had arrived. It is our contention auto-brewery syndrome is a mere portend of the microbiome revolution, a condition that has crossed the moat of long-held assumptions surrounding the courts.

**Author Contributions:** Conceptualization and preparing original draft, A.C.L. and S.L.P.; review and editing, J.J.N., C.A.L. and E.M.L. All authors have read and agreed to the published version of the manuscript.

**Funding:** This research received no external funding.

**Institutional Review Board Statement:** Not applicable.

**Informed Consent Statement:** Not applicable.

**Data Availability Statement:** No new data were created or analyzed in this study. Data sharing is not applicable to this article.

**Conflicts of Interest:** The authors declare no conflicts of interest.

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