

ABORIGINAL JUSTICE WORKERS AND FETAL ALCOHOL SPECTRUM DISORDER

Thank you for inviting me today. As I speak about this invisible disorder, you may begin to recall individuals you have worked with who seem to fit this pattern or you may recall files from your past or present.

I will begin by stating: “Rich, white stockbrokers, dentists and carpenters have educated wives who drink alcohol WHILE pregnant.” I will repeat this statement again, “Rich, white, stockbrokers, dentists, and carpenters, have educated wives who drink alcohol WHILE pregnant.” I believe (in my experience as a criminal lawyer) this is an ALCOHOL problem and not an Aboriginal problem.

Our society does not want to acknowledge alcohol causes enormous problems. Alcohol is our number one drug of choice and it is socially acceptable. Hypocritically alcohol is seen as safe while marijuana, heroin crack cocaine and meth amphetamines are socially unacceptable. Society blames the “bad” person who drinks making this addictive illness/ issue an individual problem, not a social or community problem, or national problem. 1930’s prohibition is not the answer. Perhaps we could start a fresh debate relying on facts not silliness.

I am not alone when I suggest that this is an alcohol problem and not an aboriginal problem. Dr Ted Rosales, a medical geneticist from St. John’s, Newfoundland reported a study (from a Newfoundland village) of 40 children tested, 30 received the diagnosis of Fetal Alcohol Syndrome, and none were Aboriginal.

Last night a friend from California, Amber Kesterton, from CALFAS (the umbrella fetal alcohol organization) sent me a two page release from the University of California (San Francisco) entitled: ALCOHOL USE DURING PREGNANCY,2003. Here are their findings:

1. 19% of women who gave birth in California reported drinking in the first or third trimester.
2. Women with the lowest incomes reported the lowest rates of drinking.

3. **Women with incomes 400% over the federal poverty levels were twice as likely to drink as the poorest women during the first trimester and over five times as likely to drink in the last trimester.**
4. **Women with a college education reported the highest rates of drinking. These women were between 2 and 5 times more likely to drink than women who had not been to college**
5. **WHITE NON LATINA WOMEN REPORTED THE HIGHEST RATE OF DRINKING DURING PREGNANCY COMPARED WITH OTHER RACIAL/ETHNIC GROUPS.**
6. **Women in the San Francisco Bay Area...urban middle class neighbourhoods reported the highest rates of drinking during pregnancy**

I hope you find these facts enlightening.

In your materials, I have included my two page "LAWYER'S BRIEF", my way of sharing as much as possible of my experience in two pages. It is my attempt to say what is necessary QUICKLY so cranky, impatient Judges can "get it" in a single bite.

If you will now turn to the handout THE LAWYER'S BRIEF attached to this paper, we can quickly get the basics of Fetal Alcohol Spectrum Disorder and move on to something exciting: Interviews and Probation Orders.

The Brief sets out five items you need to know:

Firstly, this is permanent **BRAIN DAMAGE!** People with FASD have a physical disability. It is invisible and under diagnosed.

Secondly, this is a multi-sector **PROBLEM.** All professions have experienced providing some sort of service to clients with FASD, many unknowingly.

Thirdly, do not reinvent the wheel. There are many published articles, much excellent science, and many successful workable programs for these individuals.

Fourthly, get past judgment and understand the reasons why pregnant women drink alcohol.

Fifthly, is the focus today. The good news is called "EXTERNAL BRAIN". Today, I aim to make some suggestions as to how you can construct an EXTERNAL BRAIN.

Once you review the attached "LAWYER'S BRIEF", you will know more about Fetal Alcohol Spectrum Disorder than most medical professionals, professors and educators, law enforcement, lawyers and Judges ...have I omitted anyone? People love to talk about ADD/ADHD, Pervasive Developmental Disorder, Oppositional Defiant Disorder, Bi-Polar, Borderline Personality Disorder, learning disabilities, bad genes, bad parenting and my personal favorite, "bad environment and bad kids".

Do you remember in the early 1980's when doctors, social services, law enforcement, lawyers and Judges were all a buzz with the "Cocaine Baby Epidemic"? Time tells doesn't it? When the scientists revisited the studies, they found all the women were also drinking. It was alcohol! The damage done was by the alcohol as a solvent that dissolved brain cells, not the cocaine!

(Please review Lawyer's Brief)

1. INTERVIEWING when you suspect the person may have Fetal Alcohol issues.

Everyone here is adept, experienced, and qualified at conducting interviews. Like Microsoft updates suggested for our computers, I offer you additions to consider in your questioning practice.

My intention here is to give you some suggestions that may help you identify persons who may have Fetal Alcohol Spectrum Disorder.

First, I suggest you use a checklist. A good place to start is the Law Society of British Columbia, Criminal Interview Checklist:

http://www.lawsociety.bc.ca/practice_support/checklists/table.html#criminal

The RCMP has another website with helpful material:

<http://www.rcmp-learning.org/copp/encopp.intervie.htm>

Second, with your experience ask, “What is not on the checklist?” ... thus, make your own checklist that suits your profession, your specific clients, your style of relating to people in trouble.

Third, most interviews consists of listening and looking. You will get more valuable information from listening with an open heart and open eyes than through your ears.

Ten Questions you may try.....

NUMBER ONE

After birth date information, ask if adopted, about foster placements, visits to various professionals, i.e. educational, psychologists, doctors, speech therapist, etc.

NUMBER TWO

Ask about maternal drinking. This may be as innocent as “Have your parents ever spent the night in jail?” Clearly here, some sensitivity is required. You may have to get collateral information from other relatives about maternal drinking. Do not worry if you get firm negative answers. Be informative and open, not judgmental.

NUMBER THREE

Inquire about developmental delays. Ask about school ages, matching chronological age to grade. For example, ask:

Grade six	age___
Grade seven	age___
Grade eight	age___

Thus develop a grid of age and academic performance.

Has “a special person” at school ever tested them? What were their marks in school? Ask yourself was he a “social pass?”

Ask about developmental milestones, i.e. tying shoes, riding a bike, type of friendships, are the answers reasonable?

Note scattered abilities with chronological age vs. adaptive age. Use a chart.

NUMBER FOUR

Tune into his/her vocabulary, the words he/she uses in his/her answers. Are there any words that are “above” his/her learning? If you suspect he/she may be speaking above his/her learning, ask, “what do you mean by that word?” Note if he/she is using words but unable to define the meaning. Is there a gap between expression and the comprehension of his/her expression? Do you suspect he/she heard this and misunderstands the appropriate context?

Dr. Julianne Conroy is a NEURO/PSYCHOLOGIST who has a helpful tool called **ALARM - A....L.....A....R....M**

Adaptive behaviours.....	A
Language.....	L
Attention.....	A
Reasoning.....	R
Memory.....	M

Go through each category and note what you discover. Here you need to give yourself some credit for common sense and your ability to ask questions and make observations.

For example: Do you see problems with memory, language, reasoning, attention, and those behaviours we use to get through the day. No one expects you to be the next Dr. Conry. You have skills! Use them! You have conducted enough interviews to know how to ask curious questions. The ALARM is a form of specific checklist that may have you thinking that the person in front of you may have fetal alcohol issues. All you are doing is exploring. Experts give a complete diagnosis. And much good can come from skillful exploring...your exploration notes may be enough for a Judge to order a proper assessment. If that Order for an Assessment is made YOU HAVE DONE YOUR JOB 100%

NUMBER FIVE

Note unusual behaviors and manner of dress. If it is 40 below and he is hitching a ride without a coat. Write that down! (Sensory Threshold) Be aware of cleanliness and type of clothing – may be a sign of tactile defensiveness; dental hygiene – oral defensiveness; posture, gait and fidgeting – postural defensiveness. Speak in a louder voice for signs of auditory defensiveness. Hospitalizations and/or injuries, clues of risky behaviors and inability to predict outcomes. Again look carefully. Make notes.

NUMBER SIX

Ask your subject to write something. Give a pen and paper and ask him to draw a family tree of relatives or something related to the interview. A map of the offence, a diagram of the city, you will be amazed at what you learn. Again, proceed heart first. Notice gaps and what is missing.

NUMBER SEVEN

A brief mental health quiz. Ask: “Have you ever taken Ritalin, Prozac, or a common anti-depressant? Have you ever seen a psychiatrist, psychologist, or suicide counselor?” Inquire about problematic behaviors in school, any expulsions. Considered lazy, disruptive, or violent?

NUMBER EIGHT

Ask about family. Get a sense of their siblings, birth order, ages, size, body build. Ask about unusual birth defects, i.e. cleft palettes, dental defects. Get a sense of how he is in his weight to age ratio.

NUMBER NINE

Ask some curious questions:

- (a) Is there a “victim” quality present?
- (b) Could easily be taken advantage of?
- (c) Is there a sense that this person likes repetition, structure, and stable environments? Uncomfortable with noise and activity around him, and multi-stimuli environments.
- (d) Does he not “get” the notion of consequences?
- (e) Is there a difficulty generalizing from experience?
- (f) Is this person extremely literal minded? Or does not “get” sarcasm or idiomatic expressions?
- (g) Has this person ever had a Driver’s License?
- (h) Do you sense this person does not understand some of your questions?
- (i) Does this person appear “eager to please?”

NUMBER TEN

What questions are you not asking because it does not seem necessary? You will be surprised what you assume, so check your assumptions. Stand back and do the interview as if the person was from Australia, or you were a carpenter building a house from excavation to roofing.

Remember the interviews you did ten years ago. Be aware of how much you have learned since those early days. Review your past mistakes! Credit yourself with what you have learned in all those years.

I suggest that the above questions will give you some new information that may suggest the person may have Fetal Alcohol Spectrum Disorder. Armed with this new information, tell the probation officer, tell Crown Counsel, tell defense counsel, and make sure the Judge knows.

Simply put: If enough of you do these interviews over and over and keep telling Judges – the Judges will eventually ask for an expert report!

You must be the squeaky wheel. If you do not keep asking for expert assessments, nothing will change and these folks will go on and on undiagnosed, filling up our jails.

2. PROBATION ORDERS

I believe that it is a waste to jail 90% of offenders. Probation can achieve what is needed to protect the community and develop good citizens.

I see jail as cold storage, as a deep freeze, upon release our clients thaw and we are back where we started. This is my assumption based on my years as a criminal lawyer; you may not share this assumption.

Ask yourself what are your assumptions about jail and how do they play out when you interview?

I believe probation or what I prefer to call Community Response is far more effective than jailing persons with FASD. Here is where we need to talk about the good news called the “EXTERNAL BRAIN.”

The “External Brain” is what the experts say we need to construct for the individual involved with the judicial system and living with Fetal Alcohol Spectrum Disorders.

An “External Brain” is family, friends, and community members who will step in and assist with decisions and actions for the individual with FASD to stay crime free. The alcohol-affected individual is missing brain cells, literally resulting in brain dysfunction. They have compromised or reduced brain function in some areas. For example, they may have impulse control problems, they may be easily lead, not able to take what they learned on Tuesday and apply it in a similar but not same situation on Thursday. Jail does a lot, but it does not repair or create new brain cells.

I believe a community can create Probation Orders that focus on successes, not weaknesses and Probation Orders can intervene in a positive way if we understand that the person on probation has a neurological deficit (a brain based birth defect) that can be assisted by help from the community. Obviously, we need to expect failures, and we need, as Diane Malbin says to:

- (a) lower our expectations, and
- (b) change their environment.

AND HERE IS HOW WE CAN FASHION A COMMUNITY RESPONSE.

1. **Make Probation Orders “Fridge Proof”.**This means use language familiar in the home. Judges in criminal courts do not speak English, and you know it.

Example: What does “keep the peace and be of good behavior”, mean to a brain affected by alcohol? This first rule means before going to Court consult the family and find out what language works, and what language does not. Identify the language used in the home. The parents have years of experience....draw on their experience.

2. Instead of listing “do not, do not, do not”, include positive alternatives.

Example: “Do not hang out with Bob Smith; you CAN hang out with Joe White or Sam Black”.

Or

“You cannot go to 7-11; you CAN go to Quick Stop.”

As Judge Jeffreys says, “Do not assume because the fellow heard the Order read out in Court and nodded, that he understands”.

3. Use as few clauses/terms as possible. Keep it simple.

Ask the family for help. Thus getting them onside, part of the team. Family connections are often overlooked. Here you may also need to contact schools, employers, doctors, neighbours, business owners, coaches and religious leaders.

Here you can “deputize” family friends, and other care providers to provide support to make appointments, with getting to work, with staying away from persons and places of trouble. Build in daily reminders and have as many people as possible know about the Probation Order.

4. This external brain is teamwork. No one, not even you, can do this alone, ask for help. These suggestions here are not designed to make you an expert like Dr. Conry or Dr. Asante.....AND YOU HAVE LOTS OF COMMON SENSE AND A WELL OF COMMUNITY LEARNING.

Now is the time to draw on this community reservoir of knowledge. Do not expect lawyers, or cops, or Judges to solve this Fetal Alcohol situation alone. No one can do EXTERNAL BRAIN alone.

Remember.....THE TREASURE YOU FIND DEPENDS ON THE MAP YOU USE..... if you rely solely on a police map you will get a police solution, if you rely only on lawyers and Judges, you will get a legalistic solution, and if you get a community map....AN EXTERNAL BRAIN.... You will get a community treasure.

ONLY ONE SHORT STORY.....

I have given a four hour and then 8 hour version of this talk to Probation Officers in South Dakota in the last two years. This year one wonderful woman with about 18 years' of experience as a Probation Officer said at the training: "..... Based on what I learned last year, I have changed the terms of (and she named a fellow that every one in the room knew) his Order. The entire Order is : **YOU MUST BE HOME BY 7 O'CLOCK EVERY NIGHT**"

She smiled and said "It works and he has reduced his re – offending by more than 50%." This is an example of Probation Orders that work, and she tells me many, many people in their town of 80,000 know of the single term in his Order and help remind him around 6:30 each night. That is a community response. That is the **EXTERNAL BRAIN**.

In South Dakota, 87 Probation Officers, cops, and correction workers sat in a convention room like this one and with flip charts , we rewrote about 25 of the most popular probation terms used in Pennington County. The beauty was I was mostly silent. These people used what they learned about Fetal Alcohol and applied it to their standard probation terms.....

Someone would offer a re–working of one standard term and three or four would refine it. At the end of the workshop the probation people went home with most of their common Probation Orders rewritten for fetal alcohol clients. You can do the same with what you have learned here today.....all it takes is time.

For your information every probation office has a copy of the standard probation terms used in British Columbia. Ask for a copy....fix it and send it to your local probation office, to Crown Counsel, to your defence lawyers, and to your local Judge. Send along a one page letter explaining what you have done. Attach the two page **LAWYER'S BRIEF**.

If you want to change the world, it starts with one conversation, one letter at a time. Everyone in this room is now equipped to fix all the Probation Orders in B.C.

BASIC PROBLEM:

Fetal Alcohol Spectrum Disorder is not an excuse for crime; it is an explanation for behaviors. The unacceptable criminal behavior may be rooted in a brain-based birth defect; the fix is in the “EXTERNAL BRAIN”.

For help in finding concrete language that is “fridge proof” and other valuable help for persons with Fetal Alcohol problems, please read the books by Barbara Coloroso:

1. The Bully, The Bullied and The Bystander
2. Kids Are Worth It

THESE BOOKS SHOULD BE ON YOUR OFFICE BOOKSHELF

LAST WORDS

You will be rewarded by visiting Dr. Asante’s website at www.asantecentre.org or phoning Audrey at the Asante Centre at (604) 467 -7101. There is a wealth of information on the site and the staff can assist you in wonderful ways. **IF NOTHING ELSE**, all your efforts may make some Judges say “Let us get an Assessment from Dr. Asante!”

THANK YOU

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