

## FETAL ALCOHOL AND THE LAW

### Some Practical Steps You Can Take

#### 1. For Parents

In your materials, I have included “A Lawyer’s Brief”. I offer it to you as your first practical step. Use this Brief, photocopy, distribute, and email the Brief to anyone you want to educate about Fetal Alcohol. I wish I had had this Lawyer’s Brief in February 2001 in Courtroom #306 at 222 Main Street in Vancouver, British Columbia before His Honour Judge K.L. Smith.

Five years ago, after some years and years in Criminal Court, I knew nothing about Fetal Alcohol. I have written about all the mistakes I made in a zippy piece called “MISTAKES I HAVE MADE WITH FETAL ALCOHOL CLIENTS” ...it is available at the website of Doctor K. Asante: [www.asantecentre.org](http://www.asantecentre.org).

Go to “hot topics”, scroll and click on “legal”. I mention Doctor Asante because his website is the best in the world and cruising thru the listed articles is the second practical step you can take. Doctor Asante is now 76, and a retired Pediatrician who works full time in his clinic in Maple Ridge British Columbia. After you have carefully toured the website and if you have questions, call Audrey Salahub at 1-604-467-7101. Audrey is an adoptive parent, the Administrator of the clinic and her son (age 24) has “put on her shoulders” more tribulations than Job ever suffered. Audrey can connect you to more fabulous resources.

Two other fine websites are: [www.fasstar.com](http://www.fasstar.com) by Teresa Kellerman of Phoenix, Arizona and [www.fasdconnections.ca](http://www.fasdconnections.ca) by Jan Lutke of Vancouver, British Columbia.

If you google “fadu” you will get the website of Dr. Ann Streissguth of the University of Washington (Seattle). Contact Kay Kelly at 1-206-543-7155 if you have questions on legal issues. For thirty years Kay was a Probation Officer in Hollywood. Now for six years she has been a co-director of the Fetal Alcohol Project. She returns calls! The site has excellent legal materials – all downloadable, so you can give to your Lawyer.

From the Asante Centre, I recommend the VHS/DVD by Doctor Julianne Conry. Dr. Julianne Conry, PhD. is also retired. She taught neuro/educational psychology for thirty-four years at the University of British Columbia in Vancouver. Julianne is one of the authors of the only scientific study in the world that asks how much Fetal Alcohol is there in the jails. Her study says 24%. Privately, she will tell you it is about 40%. Several other quick and dirty studies (not in peer reviewed journals) done by Corrections Canada (our prison people)

say the Fetal Alcohol population is between 50% and 80% of our penitentiary population. The video with Doctor Conry stars Victor Williams, a 28-year-old person with Fetal Alcohol Syndrome (FAS), his caregiver of ten years, his Probation Officer, and the good doctor Conry.

I use this 30-minute videotape of Doctor Conry every time I speak on Fetal Alcohol because it is the quickest way to educate cops and probation folks about Fetal Alcohol. It is an appropriate educational tool for parents, children in school, their teachers and principals, for garage mechanics and brain surgeons and all their families and friends, as well as anyone in government...including Judges.

Let us review the Lawyer's Brief so I know we all know the same stuff...then onto more practical stuff.

### **REVIEW OF LAWYER'S BRIEF**

The five main points are on the test.... and spelling counts!

#### **A. How To Choose A Lawyer**

I assume you know Lawyers cost money. There are ways to lower the cost: Legal Aid, law students, pro bono programs, and some agencies that do special interest law: anti-poverty law, special needs/developmental disabilities law and other similar topics/agencies.

A good criminal law specialist is as important to your child as is Dr. Asante (famous Canadian pediatrician). Spend more time finding a Lawyer than you would purchasing a new car. The best advice is do it now...long before you get the call from jail or when the police stop your son with the goods in his hands.

A brief bit about estate law, Powers of Attorney, capacity issues and minority/majority law is necessary. Your daughter may be 19 years old and she also may be 10 years old neurologically. You may need a Lawyer to soon deal with issues about housing, pregnancy, medicines, and contract/property issues because she makes puzzling decisions. For example, your FASD daughter may say: "I never want to see you." And then behave/choose badly. Perhaps become a drug mule, get addicted, and get in a fight with her "boyfriend". Then some time later you discover she is in an institution and needs a Lawyer. The Lawyer you use and trust, for good legal reasons, may be unable to act for your daughter. She needs her own Lawyer: Start the process now: get her a Lawyer. These are complicated issues beyond this paper, but these are the issues parents ask me about everyday!

## Some Practical Points

1. Always avoid a Lawyer who says he has a general corporate real estate practice and calls himself a generalist...unless you live in a town with only three Lawyers.
2. Get a CRIMINAL DEFENCE specialist. Ask him how many cases like mine have you done this year? And the result? The cost? Does he charge for first meetings?
3. Start in the yellow pages; ask friends who work in the Courthouse. Go to Court watch the local Lawyers.... takes only a few days to get to know who is on first and who is second rate. Ask a prosecutor for the three best defence Lawyers in his Courthouse. Then ask him which one would he send his sister to? Ask a Judge. Ask a Probation Officer. Ask a cop. It is a truth universally acknowledged that prosecutors and cops know who the best Lawyers are.
4. The key is to find someone you LIKE AND TRUST
5. Ask if he ever had any complaints to the Law Society? Almost all criminal Lawyers have had difficult and unhappy clients (comes with the territory).
6. What happened? How he answers this personal question will give you lots of information on who he is and how he deals with difficult personal issues. Remember: like and trust.
7. Get a problem solver /litigator. Only interview Lawyers who go to Court and argue strenuously for a living. The Lawyer who did your Will or did your real estate transaction, will not be helpful on a criminal charge. Some Lawyers are problem solvers, some waste your money. "Time is money", says Ben Franklin. Remember that 80% of criminal cases are guilty. So solve the problem, do not send his kids to college on your dime.
8. You will need to see about 10 or so Lawyers to get a sense of who is right for you. Do not worry if he knows nothing about Fetal Alcohol. No one learns faster than a Lawyer with a case coming soon.

9. Do not Judge Lawyers by the furniture in the waiting room or his patter in the first meeting or whether he has won any community awards? Has he defended difficult unpopular cases.... these are better indicators. Look for problem solving competence, not outward signs of material success.

## **B. Different Voices and Different Roles of the Players in Law**

“The Several Languages of Law” is an article at [www.asantecentre.org](http://www.asantecentre.org) that will help you. Briefly, there are various dialects spoken in the legal system and newcomers confuse these special coded languages with ordinary English.

Police speak “who dunnit”. They seek facts to prove a case. They are not interested in the difficult story about a FASD son. Never assist the police about any investigation about your child. It never helps the child. Pretend you are a US Senator or a major league ball player. Learn this Mantra: “My son is exercising his constitutional right to silence, he wants a Lawyer now. Do not ask him any questions.”

Prosecutors are the legal voice for your entire community. They do not take your son’s case personally. As a professional, they have policies, procedures, and legal requirements to follow. They are not out to get your son. **Parents MUST treat prosecutors like police officers and let your Lawyer do the talking.**

Probation Officers are Court appointed parents paid to make sure your son follows the Court Order designed to stop offending. Unlike anyone else in the system, they have tremendous discretion; they can jail your son or talk to him. Parents MUST have a good relationship with probation. Even though the Probation Officer is also a cop, she is also a parent sent by the Judge and does want to stop crime. Speak to a Probation Officer as you would a Psychologist or Doctor. They can help, if you educate them about Fetal Alcohol.

## **C. How to View Your Case with Prosecution Eyes**

Prosecutors try cases they think they can win. So what does the prosecutor see in your son’s case that you do not. Ask this question over and over until all the emotion has evaporated. Facts drive cases, not your son’s invisible brain based birth defect. Look at the facts and prepare for a guilty verdict. If a “not guilty” verdict happens, treat it as a gift. It is my experience that persons with Fetal Alcohol issues are nearly always guilty for reasons parents know all too well.

## **D. How to Help Your Lawyer**

Create a FASD biographical binder

Audrey Salahub of the Asante Centre suggests each parent create a three ring binder of information containing:

1. A typed chronology...one or two pages... a brief history of your child, and a recent photograph
2. Catalogue: adoption details, medical issues, the behavioural difficulties, list progress in school
3. List any contacts you may have such as teachers, doctors, employers, police, probation, Lawyers, and any expert or professional who has seen this person
4. Mention if ever arrested, what sentences were imposed, the result, list any psychological tests done, or formal diagnoses made, for example Oppositional Defiant Disorder, Attention Deficit Disorder or other opinions from the DSM IV
5. Assemble all Court papers from all previous cases, including file numbers and previous Lawyers or social workers involved
6. Attach any letters of reprimand from schools, list positive skills.... musical, loves dogs, artistic, or some significant achievement that gives an idea of interests and positive abilities
7. A wise parent will have a few copies of such a binder and keep up dating it so you can be prepared to act fast when bad things happen.
8. Include in the binder articles by Diane Malbin, Deb Evenson, Teresa Kellerman, Kathryn Paige, Ann Streissguth, Julianne Conry, David Boulding and other “explainers”.

## **E. What to Do in Response to a Criminal Complaint**

Start taking the “Complaint” “Behaviour”, the “Actions” the “Crime” seriously. Employ swift consequences now for two reasons. First, because the legal community needs to know you are prepared to make the necessary consequential interventions now and if you do make serious changes in your child’s daily routine, you may be able to convince a Judge jail is not necessary.... or less jail is required. Later, I discuss learning theory and the limits of consequential actions and sometimes you must act just to show the community

you are not a “problem parent”. Sometimes just “solving the problem” is enough for the police/Judge.

Consequences means limits on liberties: curfews, “no go” areas, no contact certain people. Consequences mean swift actions that follow negative behaviour. It also means your need to begin to construct an External Brain. More on the External Brain later.

## **F. How to Create an External Brain**

This is the single most vital task you as a parent can do for your son or daughter

This means gathering people, employers; friends who can help Probation Officers supervise your son. Here you must be candid with all members of the “External Brain” team. Give them the medical information you have if you have a diagnosis. Give them any material you have gleaned from excellent websites such as: [www.fasstar.com](http://www.fasstar.com) and [www.asantecentre.org](http://www.asantecentre.org). Your son has a brain-based birth defect: your team aims to fill in those brain functions the alcohol in the womb dissolved. This means different people might have different functions. Some might be there to make sure appointments are kept. Some might ensure certain “undesirables” have no contact with your son, while others work to keep him at work or on task.

The concept of the External Brain is helpful to Lawyers, Judges and Probation Officers because the External Brain intends to “make up” for the missing brain cells and for the missing brain functions. In legal language, by creating an External Brain, we are making an accommodation, in the same way we provide interpreters in Court for deaf people. We create an External Brain for persons with Fetal Alcohol issues for the same reasons we give persons with their legs amputated electric wheelchairs to drive. We are trying to make them as successful as they can be given the disability. Probation Orders are a fine tool to create success, if we set out to create success.

The External Brain is a team including, but not limited to:

- Judge
- Prosecutor
- Defence Counsel
- Probation Office
- Mental Health Advocates
- Poor Law Advocates
- Job Training Persons
- Teachers
- Coaches
- Church Members
- Employers

- Fellow Employees
- Police
- Sheriffs
- Local business people who operate establishments where the person frequents
- Corrections Staff
- Doctors
- Psychologists
- Any health care provider
- Neighbours
- Friends

And any one who can contribute time and a positive non-judgmental caring energy because this is going to be hard work. The more effort you spend creating this team, and the more willing they are to help, the more likely the Judge might say, "Jail is not necessary in this case!"

2. For Lawyers, cops, and Probation Officers and for the parents who need to educate the legal system.

A. How to Interview a Person who may have Fetal Alcohol Issues?

For Lawyers, cops, and Probation Officers and for the parents who need to educate the legal system.

Here I assume all concerned are competent experienced interviewers and all use checklists in your interviews. A good example of a criminal interview checklist can be found at the websites of the Law Society of British Columbia:

[www.lawsociety.bc.ca\\_support/checklists](http://www.lawsociety.bc.ca_support/checklists)

And

From the Royal Canadian Mounted Police (RCMP):

[www.rcmp-learning.org.copp/encopp.intervie.htm](http://www.rcmp-learning.org.copp/encopp.intervie.htm)

Checklists are an important tool often ignored by experienced Lawyers. In 2000, for seven hours I was in the cockpit of a 330 Airbus flying from Paris to Montreal. I learned checklists work because life is complex and some people sometime forget the details. Sometimes people assume Bob (with FASD)) is like Joe (who is an accomplished drug dealer) and failed to pick up on the details of this invisible brain based birth defect. Jet pilots and persons who interview those charged with criminal offences cannot make mistakes. And then ask what is not on my checklist. Examine your assumptions, check your blind spots.

Ten questions you may find of assistance if you think Fetal Alcohol may be an issue in your interview.

1. After birth date information, ask if adopted, about foster placements, visits to various professionals, i.e. educational, psychologists, doctors, speech therapist, etc.
2. Ask about maternal drinking. This may be as innocent as "Have your parents ever spent the night in jail?" Clearly, 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.
3. 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, ride a bike, type of friendships, are the answers reasonable? Note scattered abilities with chronological age vs. adaptive age. Use a chart.

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

Dr Julianne Conroy the 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

These headings will give you the basics of Fetal Alcohol in a glance.



I do not want to wreck an acronym and I know people from Iowa can take extra information. There are two other headings I must mention here:

### **Sensory Systems and Processing Pace.**

Sensory Systems means when you see fidgety, distracted, agitated and irritated behaviours there may be over and under sensitivity to inputs issues. They may “shutdown”. These persons may not respond as you would in similar circumstances and you see the manifested behavioural response to stress.

Processing pace refers to the slow cognitive and auditory processing pace. Think: this may be a 10 second kid in a one second world. The best demonstration of this notion of processing pace/sensory inputs was by Karen Serret, Ph.D. given at a Conference in 2005 in Edmonton, Alberta for Lawyers and Judges on Fetal Alcohol.

Karen had us wear funny hats, put constricting cloth elastic bands around our necks, then added dollyboobler head bands that obscured our vision by jiggling coloured balls in front of us, gave us New Year’s Eve noise makers to twirl and rattle, she played some loud rock music and had assistants walk around the room making more noise and distracting movements.

Then on a power point screen show the good doctor gave us a furiously fast spelling/ word match/ geography test of 20 questions. I gave up at about question 11. I was sitting at a table with five Judges.... none finished, most had wrong answers, several, like me, threw down their pencils. Doctor Serret began her presentation by saying: “Welcome to the world of FASD.”

I would add “time” to a list of problematic notions to consider with persons with FASD. This may not be your experience, but it is mine. With these clients there is sense of them living in the moment.... as if the past and the future do not exist. I suspect this may be connected to their inability to understand “value” also. Minutes and hours can be interchangeable as dollars and cents...they may know what they are but the intellectual competence that we have is sometimes missing. Lower your expectations. They may not have your skill with abstract thought.

Once, I had a client tell me in the Young Offender holding cells that each night she puts “the bad day over there” before she went to sleep so when she woke up “all the bad is gone “. She was a teenage (14/15 years) sex worker who did not know what condoms were for.

If you want this client to “tell you” about her being sexually assaulted, you will have difficulties if you rely on the same checklist you use for all interviews.

Go through each category in the ALARM Guide 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 a pediatric psychiatrist. And 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.

5. 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.
6. Ask your subject to write something. Give a pen and paper; 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. You are looking for neurological /brain function gaps.
7. 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?
8. Ask about family. Get a sense of their siblings, birth order, ages, and 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.
9. Ask some curious questions:  
  
Is there a “victim” quality present?  
  
Could he be easily taken advantage of?  
  
Is there a sense that this person likes repetition, structure, and stable environments? Uncomfortable with noise and activity around him, and multi-stimuli environments.

Does he not “get” the notion of consequences?

Is there a difficulty generalizing from experience?

Is this person extremely literal minded? Or does not “get” sarcasm or idiomatic expressions?

Has this person ever had a Driver’s License?

Do you sense this person does not understand some of your questions?

Does this person appear “eager to please?”

10. 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.

We who try sex assault cases remember the atrocious interviews done 10 years ago. Dr. John Yuille of UBC has a “stepwise protocol” for investigating sex cases. Every police station in the free world now uses a similar protocol when interviewing children in sex cases. The reasons are clear: bad interviews bad cases. We learned from our horror stories.

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 Defence Counsel, and make sure the Judge knows.

We look for what we see. We look for what we know. Goethe

The treasure you find depends on the map you use. Boulding

## **B. HOW DO I CREATE SUCCESSFUL PROBATION ORDERS**

Going back to the “External Brain”, this means finding language your son understands.... not the language of Lawyers and Judges.... to separate your son from the problem causing behavior, and create structure, so that opportunities for more criminal offences do not happen.

I suggest you make Probation Orders “fridge proof”.... that is, put the same language in Probation Orders you use when you leave notes, attached by fridge magnets, to family members. Do not assume that because a Judge read the Probation Order aloud in Court and your son agreed by nodding, that he has any real understanding of all that it means.

Probation Orders work when they assist in stopping your son from repeating crimes or from attempting or completing new criminal offences. Use your years of experience as a parent to translate what the Court wants into “parental” language you use in the home everyday.

Here, you can set out for your Lawyer, for the Court, and for the Probation Officer, simple sentences that, in your mind, that will achieve these goals.... because you know what works for your son. To the criminal system people, he is just another offender, and they usually know nothing about Fetal Alcohol issues.

Then tell your Lawyer about your ideas for Probation Orders as a part of the process of educating your Lawyer about FASD. You know your son and now look to these Orders as a tool to continue your parenting.

The Probation Order must be able to fit on the back of the Probation Officer’s business card...simple...clear.... concrete language...no legalisms...no idiomatic language...write like it was a traffic sign.

### **C. How to Use the Orders to Build Structures for Success.... Not For Punishment?**

Here, as you know from working with this brain-based birth defect for years, learning is slow and failure is common. I suggest you review Teresa Kellerman’s and Dr. Asante’s websites for ideas. Both sites have excellent links, excellent articles, and much excellent information that you can give your Lawyer that he can then give to the Judge and Probation Officers.

Make sure your Lawyer, the prosecutor, the Judge, and the Probation Officers know that there will be missed appointments, some failures, and some future difficulties. Plan for the future successes by relying on the “External Brain” you have created.

3. Learning Theory and the Criminal Justice System (despite the title, this section contains the most practical stuff)

## **THE BASICS**

Fetal Alcohol is a physical disability in the same way a person with an amputated limb has a physical disability. The alcohol in the womb acts as a solvent and kills individual brain cells. The baby is born missing brain cells, and later in life there are missing brain functions. Our brains operate differently when we are missing some brain functions. The damage is permanent, profound, and the disability is invisible.

We see the missing brain functions when we observe the behaviour of persons with Fetal Alcohol. Dr. Ann Streissguth has detailed these behaviours in her research and every parent or caregiver agrees because they see it everyday. As the criminal legal system is learning about these behaviours as more and more public education about Fetal Alcohol occurs, we are now ready to make some concrete suggestions on Probation Orders.

The research on Fetal Alcohol divides behaviours into primary and secondary behaviours.

Primary behaviours are “presenting “behaviours including, but not limited to:

- Suggestibility
- Impulsivity
- Failing to demonstrate remorse
- Not understanding value, time, worth, and other abstract notions
- Concrete language styles
- Preseveration (“stuck in repetitive loops of behaviour”)
- Missing social cues, not getting sarcasm
- Unable to understand the others point of view
- Living in the moment, not understanding notions of the future
- Failing to understand consequences
- Distractibility
- Dysmaturity
- Slower processing pace
- Memory problems
- Difficulty predicting
- Difficulty abstracting
- Listening but seeming not to hear
- Easily overwhelmed...and easily lead and other behaviours that ends up being described by criminal charges

Secondary behaviours include, and are not limited to:

- Fatigue
- Frustration
- Anxiety
- Feelings of failure
- Depression
- Shame
- Grandiosity
- And various mental health and illness issues

Many of these persons have learned early on in school to be “bad” rather than seem “stupid” to their peers, to teachers, and to themselves. They have learned to protect themselves “psychologically” with behaviours we call negative because the other option is to feel continually as if they do not make the grade. They may be class clowns, troublemakers, discipline problems, or annoying and difficult. They often do not comprehend and rather than risk being vulnerable by asking the same embarrassing questions over and over again, they take the easy road and act out their frustrations...and we see them as difficult. Shame may be the core difficulty. Shame and the associated grandiosity are secondary behaviours that are not going to go away with warm words and pleasant suggestions. This reality must be considered.

Diane Malbin advises: the greater the shame the greater the grandiosity. Grandiosity is a defensive protective response to failure and internalized shame. Shame then breeds defensive behaviours and we interpret the behaviour as difficult.

We fail to see non-comprehension, we fixate on what we interpret as non-compliance.

The behaviours we see and classify as negative are clues to careful observers that there is a problem with the brain. Their brain is not working like our brains. Jan Lukte has some pregnant advice: Separate non-compliance from non-comprehension. When we see troubling behaviour we quickly label it right/wrong, positive /negative, good/bad, criminal/legal. Use Diane Malbin’s suggestion and consider the behaviour as cue to observers that this may be a brain function problem. Understanding that there is a brain function problem is the first step in seeing non-comprehension instead of assuming non-compliance.

It is helpful to see and understand the invisible Fetal Alcohol disability as a physical limit in the same way we would never expect the one legged child to race in the 100 yard dash against the child with two legs. The physical disability of being one-legged alerts us to a fact and we alter our perceptions. Make the same adjustment with Fetal Alcohol.

If you can accept that there is a physical limit to what we expect from these brains, Diane Malbin's three cautions make sense:

1. Identify your personal assumptions;
2. Lower your expectations, and
3. Change their environment.

Malbin suggests you match the task you have set to the brain before you. She says, "Think younger.... MUCH YOUNGER." The person may have had 18 birthdays, but may actually be only 9 years old neuro-cognitively (brain wise).

Malbin discusses learning theory in her thin book called: TRYING DIFFERENTLY RATHER THAN HARDER.

Buy the book. Her second chapter is called "Reframing perceptions from "won't" to "can't". Clearly, she, like all in the field of Fetal Alcohol, sees much in the Lutke distinction between "non-compliance" and "non-comprehension".

The Malbin flow chart goes like this:

- (a) gaps in neurological skills
- (b) Interpretation of willfulness
- (c) punishment
- (d) Defenses
- (e) Rigid defenses

My addition to this chart would be a discussion of shame. These kids learn it is safer socially and psychologically to be "bad" rather than appear to be "stupid" Thus shame is a basic life experience, reinforced every day.

Shame and other preventable secondary defensive behavioural symptoms end up being far more destructive than FASD. FASD witnesses have internalized shame like Lawyers have internalized their own personal experiences. Make the adjustment.

Shame is a core body experience; it is not going away with warm kind words or pleasant suggestion: it is fact you must consider. They want to please. They will say what they “think” you need to hear. We often label these words “untrue” or call them “confabulations”. They may not be able to conceptualize the notion of truth. In concrete terms they want to please...and if saying black is white makes you an apparent friend then they will agree – easily. So often these witnesses are lonely beyond anything Lawyers can imagine and it often seems they will do anything for “friends”.

**Shame is invisible.** Their brain-based birth defect is invisible. This physical disability is invisible in most of the cases since the window of the timing of alcohol exposure that results in classic facial characteristics is considered to be three days in pregnancy...between days 18 – 21. Accordingly a small percentage of people exposed even to significant amounts of alcohol and other drugs have the “face” of FASD. Their language skills may be lower than your expectations, as are their rational thinking processes, their predicting skills are compromised, and their memory may be poor compared to other witnesses.

You and I learn easily because we can predict, remember, abstract, generalize, and perform all kinds of thinking because we have “cantaloupe” brains while FASD person I describe as having “avocado” brains based on the remarkable brain pictures used by the famous American researcher Ann Streissguth PhD of Seattle.

You and I learn with: time outs, extra work, ignoring, shaming, star charts, contracts, grounding, and incarceration.

You and I learn because for us the following three assumptions are correct:

1. That we can remember Monday’s lesson on the playground and generalize, abstract, or form associations that are helpful to Thursday’s lesson in socials class,
2. That we can remember we did not like jail or the grounding. We can remember and predict the same result when presented with similar facts, and
3. That we will generate different behaviours based on our abilities to learn.

But as Malbin says:

What if you have difficulty...linking words with actions and understanding?

What if you cannot form associations linking punishments with past actions?



What if you have difficulty remembering or retrieving information in different settings?

What if you find generalizing, abstracting, and predicting difficult?

Then,

**“THE POINT AGAIN IS NOT THAT LEARNING THEORY BASED TECHNIQUES NEVER WORK. RATHER, IF THE TECHNIQUE SEEMS INEFFECTIVE, IT MAY BE USEFUL TO EXPLORE WHETHER OR NOT THE TECHNIQUE FITS THE PERSON”**

This shift from standard learning theory to matching the task to the brain before you is difficult and I have watched Judges, Lawyers, cops, and Probation Officers struggle with the twin barrels of non-compliance versus non-comprehension.

Malbin continues: when you experience behaviour that troubles you or causes you to wince or perhaps form a negative judgment because you see....

- no apparent remorse
- nodding “yes” but not understanding
- refusing to look at you
- seems bored in Court
- easily distracted, fidgety behaviour
- fails to “get” idiomatic or sarcastic language
- Misses obvious social cues
- perseverates
- maintains a position clearly not true
- or fails to note the most obvious facts...

then...

Diane Malbin suggests you use that behaviour that is frustrating to you as a message:

**USE THE BEHAVIOUR AS A CUE TO YOURSELF** that the brain before you may be dysfunctional and you need to make adjustments and accommodations.

### **THE ANSWERS**

1. External Brain – create one – use it
2. Practise matching the task to the brain before you
3. Educate everyone about FASD

4. Expect failures setbacks and disasters
5. Review the Lawyer's Brief
6. Make the required accommodations to create success
7. Take your local Judge to lunch
8. Take your chief of detectives to lunch
9. Take your county attorney to lunch
10. Never stop educating: FASD is not an excuse for criminal behavior, it is an explanation. The fix is in the External Brain.

David Boulding  
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