

What Legal Professionals Need to Know About Fetal Alcohol Spectrum Disorder and the Law

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My intent in this article is to offer you some practical and personal suggestions on Fetal Alcohol Spectrum Disorder (FASD) and the law. I want to emphasize “personal”. These are my suggestions based on what I have learned about FASD as a trial lawyer in family and criminal courts since 1987. I accept that other lawyers might have a different opinion.

To start, please read the “Lawyer’s Brief” in this package.

Some Background: The McNaughten Rules

So what is new about FASD in terms of the criminal justice system? Briefly, it goes back to the McNaughten Rules about insanity defenses in criminal law and the House of Lords in 1854. These legal rules are the basis of all criminal law in all western democracies. The rules state: we are presumed to know the nature and quality of our actions, and if we know that something is wrong, then we are not insane and thus we are guilty and will hang!

The rules were written two years before Sigmund Freud was born in 1856. What did the House of Lords really know about brains, minds, and neuro-psychology?

I suggest the learned law lords knew precious little about brains and were merely reflecting what educated people thought about mind and brains in 1854. Until Freud, most educated folks assumed the human mind was open to inspection, if you looked hard enough. The same assumption is still made today by judges, shop keepers and policymakers in government. They look at behaviour and make predictions on what will happen based on their assumptions about mind and brains. They make decisions based on what they would do. Consider your colleagues on any given day. Do you think they are representative of our prison population? I bet few or none of your colleagues has a criminal record, a problem with addictions, or a track record of acting first without thinking about consequences. The McNaughten Rules were made for people such as you and I. The rules do not work for people with FASD.

Until Freud, everyone worked on the obvious assumption that we are always in control of our thought processes and all our choices are ours. This is a mechanical model of the world, transferred to a mechanical model of the human mind. It reminds me of the Ptolemaic view of the universe, popular for thousands of years, which led the Catholic Church to demand that Galileo apologize for suggesting that the earth revolved around the sun.

Freud, for all his unscientific statements, and the volumes of criticisms against “Freudianism”, did force us to change some of our views. He changed how we think of the mind. He and others like Pierre Janet, Jean Piaget and Noam Chomsky view the human mind and human nature as something less precise, but with a deterministic flavour in its structure. You have heard this before: “there are no easy answers.... it depends!” Brain research is in its infancy. We really do not know how brains work.

Humans, as we know now, have drives. Instinctive forces program us. We have realized that the blank slate concept of the brain is wrong and we are hard wired for language and other brain functions. Thus, if you are missing brain cells, brain functions are reduced. The workings of the brain are best seen in neurotic and psychotic persons where the mechanisms, because they are more extreme, become visible in behaviour. These people are like cars without paint, bodywork or any covering plastic: you can see the inner workings! We now know behaviours can be associated with specific brain cells. Present-day science is rapidly forcing us to change our notions of mind and brain.

In 1854, the word “unconscious” was not commonly used. The House of Lords would not have known what you meant if you uttered the word. Now we know the unconscious is a powerful force in all human minds. I am not a Freudian, and there is much going on in people and their minds that cannot be explained by merely looking at them. Magnetic resonance imaging, CAT scans, and modern brain research has given us more brain information than the mid-nineteenth-century House of Lords could comprehend.

This new view of the human mind and brain then conflicts with the old arguments of Plato and Aristotle about notions of free will, moral agency and other topics that are beyond the scope of this paper. I am not suggesting FASD is a legal excuse for criminal behaviour. My point is that FASD is an explanation we need to consider at all stages of the legal process if we wish to treat people with a brain-based birth defect, a disadvantaged brain, to the standard we hold for ourselves—that is, if you believe in fairness you will treat persons with FASD differently in your jobs and in the courtroom.

* * *

If a person has a brain-based birth defect, I say he has a physical disability. When a person has an invisible disability, we find it hard to accept because they look normal and behave normally much of the time.

Our difficulty with invisible disabilities is in accepting that the 20 year old who looks like your son maybe be different from your son because we cannot see the FASD disability of the 20 year old in your courtroom.

These clients are not going to change. Their disability is permanent. Their brain cells will not magically reappear if you order them to jail or set strict probation terms. Thus, if you understand primary and secondary behaviours, you can begin to do things differently rather than keep trying harder to no avail.

And the first interview is the place to start.

Meeting the Client

This first meeting usually occurs in cells, minutes before a bail hearing. Rarely will you meet and greet in your office. My assumption here is that you have been advised that the client has an FASD diagnosis, or that FASD is suspected either by a family member, caregiver or referring agency.

The first decision you must make requires you to accept that this person has a brain-based birth defect. Thus, the brain functions of the client are less than yours.

STOP

Let the gravity of the STOP statement sink in. It does not matter if you are police, probation, corrections or defence counsel, you need, as FASD expert Diane Malbin suggests, to:

1. match the task you set to the brain before you;
2. examine your assumptions;
3. lower your expectations; and
4. change their environment.

These precepts means that your standard practices STOP at the cell door or your office door.

Speaking quickly, and using legalisms, sarcasm, puns, abbreviations, or other sophisticated language styles will not work with a person with a brain-based birth defect. This is not surprising. However, as you grasp the subtle and pervasive aspects of FASD, you will want to make some specific changes in your interviews.

You may need to seek an adjournment, at least for time to communicate for more than the 5 minutes per client that Vancouver Police allow duty counsel in the morning before show-cause hearings.

Remember: **speak plainly.**

As Judge Michael Jeffries of Alaska has said: “just because the person nods and says he agrees in your court room, does not means he understands what was said or what happened.”

Often, the FASD person in jail will speak above his learning and try to portray himself as a knowing consumer of police services, as an experienced criminal. Thus, he will nod, speak the lingo, and encourage you to carry on as if he is up to speed on his own case.

This grandiosity may mask a brain defect. Malbin suggests that the greater the grandiosity, the greater the shame. I address the issue of shame later in this paper. Now we need to discuss two key concepts: primary and secondary behaviours.

Primary behaviours are presenting behaviours. These primary behaviours may include:

- impulsivity
- distractibility
- suggestibility
- dysmaturity
- being socially or developmentally younger than chronological age
- slower brain processing rate/pace
- memory problems
- inconsistent performance
- clear strengths in some areas (e.g., art, music interpersonal skills, computers)
- difficulty generalizing, forming links and making associations
- difficulty abstracting and predicting outcomes
- over- and under-sensitivity to stimuli

The actions that result from these primary behaviours frequently result in what we call “crimes”.

Secondary behaviours are often invisible, like the feeling of being stupid, the experience of depression, and the internalized criticism that the FASD person can never “make the grade”. Malbin says: “secondary behaviours are those behaviours that are believed to develop over time where there is a chronic poor fit between a person and his environment”.

Malbin lists the following as secondary behaviours:

- fatigue
- frustration
- anxiety and fearfulness
- rigidity
- resistance
- argumentativeness
- feeling overwhelmed
- feeling shut down
- having feelings of failure
- self-aggrandizement
- attempts to look good
- being isolated
- having few friends
- being picked on by others
- having school problems
- expulsion
- truancy
- criminal record
- feeling suicidal

Much of these psychological and psychiatric problems we call secondary behaviours come from years of dreadful experiences of failure. Dr. Anne Streissguth has detailed the research in her books, for instance:

Fetal Alcohol Syndrome: A Guide for Families and Communities

And

The Challenge of Fetal Alcohol Syndrome: Overcoming Secondary Disabilities (editor, with Jonathan Kanter)

Interviewing: The Raithby Method

I mention the Raithby method, as I call it, because it works for me. David Raithby is a famous family counselor from Nanaimo. After greeting the client, he sits beside the client quietly for a few minutes, with no talking, no movement. He breathes with long, slow breaths. The client usually does the same. Mr. Raithby usually moves and speaks slowly, depending on the facts and the person being interviewed. He may or may not extend his hands to hold the person's hands. Raithby cautions that being sensitive to the other person's physical boundaries is crucial. Using as few words as possible, he asks, "What brings you to this office?" The wording I uses is: "I understand there is this charge..." or "In a few minutes the judge will..."

Raithby stresses he sometimes waits, just waits. He waits and breathes with the person. When he finally does talk, his questions are simple, concrete, and direct. I have used this technique to ask difficult questions in the hallways of busy courthouses. For example, "Mrs. Black, did you drink like you do now when you were pregnant?" I have used this technique when prosecuting sex cases. It takes 3 to 5 minutes to do and it took me years to learn.

After years of doing duty counsel and interviewing in cells at 100 mph, this technique is different. If you can get past the flippant "whatever" or "nothing" facade, you can create a good interview. The trick is to recognize the different brain before you. Expert police and seasoned probation officers already know this technique. Effective interviewers acknowledge the stress of the situation and make the appropriate accommodation.

Suggested Questions

Here are ten groups of questions you might ask if you have the slightest notion your new client may have a brain-based birth defect, a physical disability. These questions, if pursued in a heartfelt and disciplined way, will give you valuable information that may in itself suggest that a proper expert assessment be conducted. If you cannot get a real assessment, you can say to the judge, probation officer, police, Crown or defence: "I am

not a psycho-neurologist, but this information from my interview suggests this person may have some FASD issues. For instance...” Then let the person higher up the food chain make the decision. I have faith in the system; eventually, we do the right thing.

Question 1

After getting birth date information, ask if the person was adopted, and ask about foster placements; also ask about visits to various professionals (e.g., psychologists, doctors, speech therapists, etc.)

Question 2

Ask about maternal drinking. This may be as simple as asking, “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.

Question 3

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

Grade 6 – age___

Grade 7 – age___

Grade 8 – age___

Thereby develop a grid of age and academic performance.

Ask if “a special person” at school has ever tested them. What were their marks in school? Ask yourself ,was this person a “social pass”?

Ask about developmental milestones, i.e. tying shoes, riding a bike, forming of friendships; do the answer make sense to you?

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

Question 4

Tune into his vocabulary, the words he uses in his 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 is a neuro-psychologist who has a helpful tool called ALARM:

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 as well as 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?

You have conducted enough interviews to know how to ask curious questions. The ALARM is a form of specific checklist that may lead to you thinking that the person in front of you might have FASD issues. All you are doing is exploring; experts give a complete diagnosis. But 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%.

Question 5

Note unusual behaviours and manner of dress. If it was -40°F and he was hitching a ride without a coat, write that down! Often, persons with FASD have marked sensory threshold issues. They frequently have high tolerances for pain and cold. Be aware of cleanliness and type of clothing: this may be a sign of tactile defensiveness (the person does not like scratchy clothing or wrist bands and tight collars); dental hygiene: oral defensiveness (lisps or speech defects like cleft palette); posture, gait and fidgeting: postural defensiveness (being hunched over as if expecting a blow, concave chest, no eye contact). Speak in a louder voice for signs of auditory defensiveness (sensitivity to loud noise).

Ask about hospitalizations and/or injuries, as these can be clues of risky behaviours and inability to predict outcomes. Again, observe carefully. Make notes.

Question 6

Ask your subject to write something. Offer a pen and paper; ask him to draw 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, what is missing.

Question 7

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

Question 8

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

Question 9

Ask some other curious questions:

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

Question 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 a foreign place.

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 indicate that 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.

Trials

There are two issues I want to stress about trials: how we ask questions, in both direct and cross-examination, and what we can do to reduce stimuli in the courtroom.

Direct examination and then cross-examination are necessary for the legal system to come to a conclusion about guilt. Questioning under oath, especially vigorous cross-examination, is the bedrock of our civilization, so we need to seek ways to improve the process with FASD witnesses.

Shame

A slight digression is required here. We need to talk about shame. This may be the core emotional difficulty for persons with FASD. The protective behaviours we call secondary behaviours develop in early grade school, where kids learn it is emotionally and socially safer to behave “badly” rather than to appear stupid. As Malbin asks, how many kids with FASD hold up the Bell curve?

These kids learn it is safer psychologically to be viewed as bad rather than to feel stupid. Over the years, they have been ashamed over and over again, to the point that shame is a fundamental life experience. Consequently, the shame and other preventable secondary (read: defensive) behaviours end up being more destructive than the FASD. These individuals have internalized shame. It is their key life experience.

As a legal professional, you need recognize that shame is a basic human reality and we need to make the appropriate adjustment, if you wish these people to be treated fairly and if you wish to get good answers.

Shame is a core body experience: it is not going away with warm and pleasant suggestions. FASD people will want to please you, to please all questioners. They have been rejected many times, so they want friends because they are isolated in their

disability. They will say what they “think” you need to hear. We label these behaviours as “untrue”, as “lies”, or call them “confabulations”.

However, persons with FASD, during the heat of cross-examination, may not be able to conceptualize the notion of truth as you and I do. Because their immediate goal is to please, they will say what is needed to achieve this goal and, from their perspective, make friends. Because these witnesses are lonely beyond anything you can imagine, often they will also *do* anything for friends—including holding a gun for a friend, falsely confessing to setting a fire if offered a free lunch, or pleading guilty to first-degree murder if they can smoke in the prison facility.

Shame is invisible, like their disability. The shame may show as bluster, as pretending to be tougher than they are. As I mentioned earlier, Malbin advises the deeper the shame, the bigger the grandiosity.

Processing Pace

Returning to the issue of FASD individuals in trials: Your job is to adapt your questioning style to the person and his brain, and not draw upon assumptions based on how *you* would answer. Again, watch your assumptions.

In addition to shame, another issue in questioning is the processing pace of the person with FASD. Diane Malbin summarizes this effectively: they are ten-second kids in a one-second world. Rapid-fire questions may confuse the witness. That may be your intention. If so, and you know the person has a brain-based birth defect, it is my respectful submission you are a bully. As Americans are discovering answers procured by torture are unreliable. I submit being a bully to a witness is contrary to the law in Canada.

When you see fidgety, distracted, agitated, or irritable behaviour, there may be an issue of over- or under-sensitivity to input. They may shut down. If so, stop. Take a short break. Seasoned police investigators do this all the time for good reasons. Mostly, police take time because they want a good case. Everyone knows the screaming interrogations we see in the movies never work.

There are concrete, positive steps you can take to ensure your trial questions and answers are useful. If you are aware that your trial has witnesses with FASD, you might advise the judge and seek to lead with expert witness evidence.

Redefine “Success”

Remember that you need to stretch your definition of success. Once you have internalized this new notion of expanded success, all your submissions will become congruent with the evidence from the people with FASD. The FASD witness may have had 18 birthdays, but as Malbin says, “Think younger, much younger.”

Your definition of success might accept 60% as good enough instead of 90%. This reduced concept of life success is the brainchild of the famous English psychiatrist Donald Winnicott, who suggested that “good enough” was really more than adequate. This a profound message for legal professionals.

If you want to call expert evidence from someone like Dr. Julianne Conry, professor of neuro/educational-psychology for 35 years at UBC—who could explain to the court how best to interview a particular witness or interview a FASD witness in general—and you cannot afford Dr. Conry, there is an excellent video from the Asante Centre starring Dr. Conry, Victor Williams, his caregiver and his probation officer. It is 40 minutes long and the best instructional video on FASD ever made to date. The video has some telling conversations between Dr. Conry, the elderly caregiver and the senior probation officer. As is frequently the case, grey hair equals experience. Showing the video in court may be the best way to save time.

The “Show Me” Mode of Questioning

Getting back to interacting with your FASD witness, you may find drawing a diagram more helpful than relying solely on asking questions. Use the drawing as a springboard to ask the “show me” style of questions, as opposed to the “tell me” style. The drawing can become an aid to memory. Memory issues loom large here and you ignore these memory problems at your peril.

In shifting from a “tell me” to a “show me” mode of questioning, I suggest investigating officers try a walkabout at the crime scene with a video camera instead of going into a small room and asking complex questions. “Show me” questions seem to draw on different aspects of the brain and in my experience, as limited as it is, have seemed more successful.

Anxiety

It is important to watch for signs of elevated anxiety. Again, none of this is news...we watch witnesses all the time. However, Malbin again suggests we tune into clues from the person who has FASD that indicate he is asking himself: “Am I doing this right?” Remember that need to please. If you watch carefully, you can spot the clues.

It may be helpful for the judge to tell the FASD witness to look at the picture of the Queen, or the Coat of Arms, or the clock while giving evidence, also telling the witness that the judge and lawyers need to take notes of the answers and are too busy to look him in the face. This may prevent the person with FASD from searching faces for clues as opposed to searching his memory.

Another clue to elevated anxiety is a flat affect. They may give you the shut-down look, or the “go away” facial/body language, or display sullen behaviour.

If you detect any signs of elevated anxiety, STOP. A few minutes for a break may be best. Every judge and lawyer is vigilant to the witness' emotional state, as is every police or probation officer doing an interview. Use your experience and add in what you now know about FASD.

The person may be engaging, funny, and personable with lots of eye contact. These characteristics may be counter-productive to determining what actually happened. Time and experience will be your guide.

The reasons we do all this are the same: no one wants garbage info—the truth is our goal. I suggest you consider a FASD witness as if they are your grandfather with Alzheimer's.

These FASD witness can be overwhelmed. Jan Lutke has some pregnant advice: Do not confuse non-compliance with non-competence. An overwhelmed witness is incompetent, as any sex-crime questioner knows. Adding to Lutke's caution, Malbin suggests that we watch our assumptions, especially about brain function. Here I would ask you to review Dr. Julianne Conry's mnemonic ALARM and the comments I have made on it above.

Memory and External Stimuli

Most cross-examination and most police interviews are testing memory. Persons with FASD have excellent memories...for some things at some times and for some questioners. Questioners need to exercise restraint and understanding of the brain-based birth defect. These witnesses may have memory retrieval problems and the problem is made worse by elevated anxiety. Scholars in England have determined, in line with common sense, that persons with learning disabilities have difficulties in court with multiple-part questions, with questions that contain double and triple negatives. Simple question like "What happened?" may be more productive than complex questions, especially if the questioner uses a "show me" mode rather than a "tell me" or confrontational mode.

To reduce the stimuli in the courtroom think younger. This may mean practice sessions, visits to the courtroom when it is empty, and meeting a judge in chambers or seeing lawyers in their offices. There may be times when the screen that is sometimes used in sex assaults cases may be helpful. Again, being aware of the need to reduce stimuli will need to be assessed on a case-by-case basis.

I do not mean to suggest that witnesses with FASD are brain-dead. I can advise that a client of mine once withstood a withering cross-examination in a drug case, was acquitted, and then turned to me and asked: "When do I go to jail?" As a guide, I would suggest you review your experiences questioning children in sex cases. Make similar adjustments.

The most instructive demonstration I have ever witnessed about FASD was by Dr. Kathy Serrett of Calgary. At a conference for judges and lawyers, she had everyone wear a tight,

restrictive neck band, a funny party hat that did not fit and partially obscured your vision, and then had assistants roam the room with New Year's Eve noisemakers, while she played loud heavy metal music. As all this was happening she gave us a very quick, racing fast, 20- question test composed of ten spelling and ten basic geography questions. I was at a table with five judges. I gave up at question 11. No one at my table finished the test and several judges threw down their pencils in disgust. Then the good doctor said: "Welcome to the world of FASD."

Probation Orders and the External Brain: A Sane Response

I could be wrong, but I still believe it was Ben Franklin, the "time is money" guy, who also said: "a definition of insanity is repeating the same action over and over again, and each time continuing to expect a different outcome." Yes, it is true Mr. Franklin is not running the part of the legal system that puts people in jail.

I believe that it is a waste of time and resources 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 all back where we started before the jail time. 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? Do you assume jail is necessary or inevitable in your 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".

An external brain is what the experts say we need to construct for the individual involved with the judicial system and living with FASD. An external brain is family, friends, and community members who will step in and assist with decisions and actions, helping the individual with FASD to stay crime-free. Persons with a brain-based birth defect from alcohol exposure in the womb are missing brain cells, resulting in a physical brain disability just as if they were missing a left leg. They have compromised or reduced brain function in some areas. For example, they may have impulse control problems, be easily led, be unable to take what they learned on Tuesday and apply it in a similar but not same situation on Thursday. Time in jail does not repair or create new brain cells.

I believe a community can create probation orders that focus on successes, not weaknesses. 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 managed through help from the community.

Diane Malbin, an expert in the study of FASD, advises that we:

- match the task to the brain before you;
- assess our personal assumptions;
- lower our expectations; and
- change their environment.

Obviously, we need to expect failures, but we can expect fewer failures if we fashion a community response to help these individuals. Here are suggestions for how to do this:

1. Make probation orders “fridge-proof”. This means use language familiar in the home. Judges in criminal courts do not speak everyday English. For example, the phrase “keep the peace and be of good behaviour” means nothing to a brain affected by alcohol; it is too abstract. This first rule means that before going to court, you should consult the family and find out what language works and what language does not. Identify the language used in the home. The parents/caregivers have years of experience; draw on their experience.

2. List positive alternatives for actions. Instead of listing “do not...do not...do not...”, include positive possibilities. For 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.”

3. Keep it simple. Use as few clauses and terms as possible. Confirm that the individual understands. As Judge Jeffreys from Alaska State Court says, do not assume that because the person heard the order read out in Court and nodded, he understands. Check to make sure.

4. Ask the family and community members for help; get them onside as part of the team. Family connections are often overlooked. You may also need to contact schools, employers, doctors, neighbours, business owners, coaches, and religious leaders. “Deputize” family friends and other care providers to support the person in making appointments, getting to work, staying away from persons and places of trouble. Build in daily reminders and have as many people as possible know about the terms of the probation order.

5. Use teamwork. This external brain is a combined effort. No one, not even you, can do this alone, so make sure you get help. You have a great deal of common sense, and a well of community learning to draw from. Now is the time to use this community reservoir of knowledge.

Do not expect lawyers, or police, or judges to solve this situation alone. No one can create an external brain alone. And 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, but if you have a community map—an external brain—you will find a community treasure.

Conclusion

FASD and the law can be a bottomless well of despair for all participating in the system. But we can shift our thinking, which will lead to changes in practices. I can point to the new Law Society criminal checklists for interviewing clients. The new manual now says consider FASD issues. That is new and a good thing. If now we could convince our friends at Continuing Legal Education to run a CLE course on FASD and the law, things would get even better.

I ask you to remember how long it took to get zero tolerance for spousal assaults. It is going to take longer to make a dent in our systemic legal practices. The McNaughten rules are not fading quickly.

I suggest you read:

“The Criminalization of Fetal Alcohol Syndrome,” Dr. C. Byrne, Professor of Psychiatry, University of British Columbia.

The Challenge of Fetal Alcohol Syndrome. ed. Dr. Anne Streissguth and Jonathan Kanter. Seattle: University of Washington Press, 1997.

Trying Differently Rather than Harder. Diane Malbin (the leading trainer on FASD from Portland, Oregon: www.fascets.org). Portland: Dept. of Human Services, 2002.

If you attend the Vancouver/Victoria FASD conference put on by UBC in May of each year, you will learn more.

Armed with what you know, I trust your professionalism, I trust your dedication, and I trust your interest in making the world better by creating new legal system practices.