

THE SEVERAL LANGUAGES OF LAW

- David Boulding -

I BELIEVE that the various people who work in the criminal legal system often speak in a technical way using words that persons not trained in law find confusing and hard to understand. This technical use of language makes it difficult for parents and caregivers of persons with Fetal Alcohol Syndrome (FAS) to communicate with the several parts of the criminal law system. Sometimes the criminal legal system stoops to using Latin words like *actus reus* or *mens rea* or gets weird with its words using complicated sentences like the ones found in probation orders.

These unusual styles of language often mystify listeners without legal experience.

I believe it is possible to translate criminal legal language into plain English by examining the role of each speaker and then isolating the language unique to that speaker: police speak differently about your son than do doctors who are trained to assess children who might have FAS.

As a parent/ caregiver to a person with FAS you can learn to hear the different languages of law. I offer here a few hints that might be helpful to you.

My assumptions are:

1. I assume that all workers in the criminal legal system are honourable folks trying to do the best they can given what they know about FAS.
2. I assume that each person or department of the criminal legal system may conflict with other persons or departments in the criminal legal system because many people know very little about FAS.
3. I am stating here my opinions which are based on 15 years in the criminal legal system. I am assuming others will have different ideas. These comments are suggested as a guide for parents and caregivers of persons with FAS. My words are not legal advice. I urge listeners/readers to meet a defence counsel, a lawyer who specializes in defending persons accused of crimes. It is vital to your child's future that as caregivers you have a positive relationship with your defence lawyer - whether the lawyer be from legal aid or one you have hired privately.

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4. I assume you know lawyers cost money. There are ways to lower the cost: the Canadian Bar Association Lawyer Referral System, legal aid, the pro bono system also from the Canadian Bar and the UBC student lawyers (LSLAP). I believe a criminal defence lawyer is as important to your child's future as is Doctor Asante and Doctor Conry. This may sound trivial to you. It is true for me: I have never regretted paying Bill Gopaul, my mechanic, the thousands of dollars I have paid him in the last 10 years to keep my truck on the road and safe. Thus I assume your child is more important to you than my 1990 Ford 4x4 F 250 truck is to me.

5. My last assumption is what I believe is the strongest assumption:

**IF WE KNEW HOW THE BRAIN REALLY WORKED WE WOULD
PUNISH OFFENDERS DIFFERENTLY.**

This means we must educate ourselves and all members of the criminal legal system about FAS. And this education process will be our life's work.

The several languages of law are spoken by judges, police, probation officers, prison guards, crown counsel, defence counsel, social workers, psychologists, doctors, forensic workers and courthouse librarians. All of these legal workers have different roles and duties. Because they all have a different focus they speak differently about the FAS person as the FAS person navigates the criminal legal system.

And because each person has a different understanding of FAS, these people and their opinions and the words they use conflict with each other, often to the detriment of the person with FAS.

POLICE

They are the receptionists for the criminal legal system... the point of first contact. Police speak of detection: they ask " WHO DUNNIT?"

Police speak as investigators, gathering facts so they can write a report to Crown Counsel saying your child stole the car, left his fingerprints on the mirror and did 3900 dollars in damage ... he had no permission to be in the car owned by Mrs. Smith of 2003 Granville. You have heard Sergeant Friday say: "just the facts ma'am."

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Police have some discretion, often more than anyone else in the system, so it is tempting for parents to speak to police in a parent to parent language. This is a mistake in 99.99% of the cases. Police do not hear "permanent brain damage" as satisfactory language. Police will say "theft is an offence, your son did it and I have the necessary proof, therefore my role in this case is closed". If they do hear the parent speak about FAS police will think that FAS is a type of problem that is in the *not their department* category. Police believe that FAS as an explanation for criminal conduct is something for the doctors in jail to sort out.

CAUTION CAUTION CAUTION CAUTION CAUTION

Most people are convicted on the evidence they give to police often thinking that they can explain their way out of trouble by talking to the nice policeman... this is doubly true in youth court. Parents often make the same mistake. Some parents help the police because they are exhausted and can no longer "handle" the FAS child... these parents may think that a break for them and some time in jail for their son will be in the best interests of their child... so they speak to police in a parent to parent voice using the common language of caring parents. While on the job, police are not parents... they hear "he dunnit" and they stop listening because their job is finished.

This means that parents must learn to say to police:

"MY SON NEEDS A LAWYER NOW. MY SON DOES NOT WAIVE HIS RIGHT TO SILENCE. HE IS ASSERTING HIS RIGHT TO COUNSEL AS GUARANTEED IN THE CHARTER OF RIGHTS AND FREEDOMS."

Parents need to understand that rarely (often never) does it assist your son to help police with their investigations. Your wish for a lawyer does not mean you are assisting in criminal conduct, nor does it mean you must behave in a boorish obnoxious way.

Be clear! Your son's interests and the police's interests are not the same.... Jail will not help a person with FAS. Give your son the same legal rights and the same access to legal services that a successful West Vancouver business man takes for granted: get a lawyer.

Curb your natural desire to explain your love for your son and provide examples of his good behaviour... transform that energy into a simple phone call to a professional who is skilled at dealing with police questions.

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CROWN COUNSEL, CROWN ATTORNEYS and CROWN PROSECUTORS

They are public servants who behave according to the highest standard of public behaviour. They are not your lawyer: they are lawyers to and for the province of British Columbia.

They do not win or lose cases.

They stand up in court and do the right thing as might be defined by an impartial fair witness from your community. This fairness obligation is a legal requirement that each Crown takes seriously.

Although Crowns speak about fairness, they also speak about the victim's pain and loss and will list in great detail the hurts suffered by a victim and will often ignore the hurt suffered by the accused FAS person.

Crowns speak in two styles - in court voice - designed to persuade a judge to see the case from the Crown's eyes ---and in an out of court voice--- a voice of a normal person you might meet on the street.

DO NOT CONFUSE THE OUT OF COURT CROWN WHO IS PLEASANT PERSON WITH THE TOUGH LAWYER YOU HEAR IN COURT.

They have these different voices, different languages, for different reasons. Crowns often have to do fact gathering. So as a fact collector interviewing you as a parent the Crown will present as a compassionate listener. Understand when a Crown prosecutor speaks to you out of court he is like a policeman. Gathering facts to secure a conviction so the caution about police applies to Crown attorneys also. Let your defence counsel lawyer do the talking to Crown for the same reasons you must not talk to police.

When in court, Crown counsels speak about criminal rules and evidence as proof. Often parents will speak to a Crown out of court and give facts to the Crown that prove the guilt of the FAS person. Again and again parents are surprised that the Crown in their words "twisted their words" when the parent was only trying to explain how their son really is. This mistake is made by parents because they do not recognize the language of a prosecutor. I believe prosecutors never lie, while police will often misstate or exaggerate and sometimes lie.

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The consequences for a Crown lying are drastic... boom bang and they are no longer a lawyer. Parents may think the prosecutor is not telling the truth. I believe parents mean the Crown is not telling the whole story as the parent sees the truth. This is a critical point: a Crown must be fair while not obligated to tell all of the side of the story as you the caregiver sees the story.

Our criminal legal system is an adversarial process -- lawyers fight and argue about what really happened -- and a judge decides. This means Crown tells one side - usually the police side -- and your defence counsel tells another side of the story.

Parents who listen to the Crown often hear only the police side of what happened and believe the Crown is being unfair. NO, ABSOLUTELY NOT TRUE!

As a parent you are hearing the language of a lawyer seeking a conviction based on the evidence collected by the Crown from police. In a trial your lawyer, the defence will get his turn: much of the criminal legal system is about waiting.

Criminal cases in British Columbia go to court only if two questions are answered " yes".

1. Is there a reasonable likelihood of conviction?
2. Is it in the public interest to proceed?

From these questions you can see that Crowns speak in a language of proof and then in a language of what is the public good. The first is specific information gathered by the police, the second is a language of philosophy of what is good for all citizens of British Columbia. In these questions there appears no specific place or spot for persons with FAS. The first is a technical question. It is legalistic in language. The second question is about what kind of community do we want to live in. It is in the second question before charges are laid that your defence counsel can sometimes work for your son. Here you have input. Your lawyer can try to persuade the charge approval Crown about not criminalizing the mentally incompetent or discriminating against people with permanent brain damage, or warehousing the mentally compromised.

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At the SENTENCING part of the trial Crowns speak about punishment. Here the Crown will emphasize again the hurt of the victim and will use victim impact statements that are often recited in the inflammatory language of victims, Crown counsel will emphasize the criminal record of your son and likely suggest jail because as Crown they will say "jail will protect the public and protect the reputation of the criminal legal system". When you listen to Crown at the sentencing stage often you will not recognize your son because the Crown is speaking in a language of persuasion trying to convince the judge to put your son in jail. Your lawyer will get his turn: again you must wait.

A brief caution about Crown Counsel : they follow the law, but do not push at the boundaries of the law to advance social or humanitarian goals. They are conservative and will be instructed by their client - - your government - - to oppose any new idea that may require a change in government thinking or cause the government to spend money. Expect prosecutors to scoff at the idea that FAS is a special type of situation which requires special rules or procedures. The only lawyers in the system who will help parents change the law about FAS and actively urge judges to expand the law about FAS are defence counsel.

DEFENCE LAWYERS, DEFENCE COUNSEL LEGAL AID LAWYERS

These are the hired guns of the legal system. Defence counsel is your champion in this legal fight, disguised as your son's court case.

Defence counsel speak specifically to your son not you, they take instruction from your son, not you. Defence counsels are also driven by facts and they are most interested in your son's personal facts. Here then is the one person you can talk to without any filters, without any editing, without caution....you can open your heart to defence counsel because she can use those facts you give her when speaking to a judge

Because defence counsel are single minded-they aim to shoot Crown and their Crown facts until the Crown cases dies-often defence counsel will say to parents: "I DON'T NEED TO KNOW THAT NOW. WRITE IT DOWN FOR ME." So take the time required and write down in clear English what you believe your son's lawyer needs to know. When your lawyer says the above, she means she is busy and is thinking about something important or she may mean she does not understand what makes the comment you have important to the case.

That sort of comment should ring bells in you. If it is important to you it must be important to defence counsel--- you may have to re-frame your words to defence counsel so your words can assist in getting a not guilty decision or help convince the judge to give a punishment of fewer MONTHS in jail.

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PROBATION OFFICERS

These overworked people speak of compliance: they demand compliance because they are paid to make sure your son follows the court order. Their language is full of "must" and "should" words. They believe that by following court orders your son will not re-offend and will change his behaviour--- they are strict sorts of people and believe in simple carrot and the stick psychology.....in fifteen years I have not met a probation officer I did not like. As a rule the ones who deal with kids or mentally disordered offenders really do care. And as parents you will hear caring in their words. Remember they are police officers: they can issue breach charges by a phone call when they say comply they mean: "do as I say or go to jail."

Obviously few probation officers use the heavy hand of jail all the time. Next to defence counsel, the probation officer often speaks in a language recognized by parents. Probation officers are court appointed parents and parents will do well to have the best relationship possible with the probation office. "On time each time" and "do it my way" are words probation often use to secure compliance.

Probation officers are most likely the only person in the system open to negotiation with parents. Probation officers will get more flexible as your son follows the orders. In this way you can see that probation officers are much like parents.

PROVINCIAL COURT JUDGES

Provincial court judges are the workhorses of the criminal legal system.

They have seen everything you can imagine, often three times a day.

Judges speak two distinct languages.

1. The language of proof and of rules and of admissible evidence and of beyond a reasonable doubt--- this is the technical legal language of law.
2. The language of punishment: at sentencing where the judge decides the punishment for your son.

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This second language is clearly set out in the criminal code in part XXIII SENTENCING SECTION 716 TO SECTION 751. Codes are available in courthouse libraries.

ACCORDING TO THE CRIMINAL CODE JUDGES MUST DO THE FOLLOWING:

1. Protect the public.
2. Denounce unlawful conduct.
3. Jail people if necessary.
4. Assist in rehabilitation.
5. Provide for the harm done to victims.
6. Promote responsibility in offenders.
7. Acknowledge harm to victims.

REHABILITATION IS THE BIGGEST HOPE OF **EVERY JUDGE**.

Many judges believe that rehabilitation is the best way to protect the public.

In their first language style during the trial, Judges speak of guilty or not guilty. Thus judges speak about complex criminal rules of procedure. It is only in the second part of the trial in the sentencing stage, when judges speak in a language about punishment that as a parent you must listen carefully. This language is almost always plain English because then the judge is speaking directly to you and your son.

During the second part of the trial called "speaking to sentence," where the judge speaks the language of punishment, you can have the most impact as a parent. Here the defence lawyer is allowed to let you, your doctor or any other person speak to the judge. If some one has something to say that can help your son's case here the judge will relax the strict rules of criminal procedure and listen.

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Here the judge will speak to your son and to you in a way much like a conversation before the judge makes a decision on what is the appropriate punishment.

Here your son - as a person in a community -- is the only topic. As a member of a community your son has caused harm and the judge must decide how to protect the community and assist your son in not making the same mistake. I believe at the sentencing is where good lawyers shine and lazy lawyers do a disservice to their clients and the reputation of the criminal legal system.

Judges are professional listeners: they are consumers of evidence. It is at the sentencing stage where you can best speak to the judge and assist the judge in understanding fetal alcohol syndrome.

MUCH LIKE A PARENT, THE JUDGE IS TRYING TO CHANGE BEHAVIOUR WHILE PROTECTING YOUR COMMUNITY.

AT SENTENCING YOU MUST INSIST ON A COMPLETE FETAL ALCOHOL SYNDROME ASSESSMENT BY EXPERTS LIKE DRS. ASANTE AND CONRY.

You may be able to get an assessment ordered by the judge, at the first appearance, if your son's lawyer can convince the judge there is an issue of "fitness to stand trial." This means the lawyer will tell the judge as a lawyer he has concerns his client may not be fit to stand trial without a complete FAS assessment from an expert like Doctors Asante and Conry. If you already have an assessment and diagnosis give the report to the defence counsel the first time you meet your son's lawyer. Note assessments are hard to obtain unless you can pay the \$2500 to \$3000 each costs.

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LEGAL SYSTEM HELPERS

Social workers, forensic staff, most psychologists, Psychiatrists and family doctors can be grouped together as legal system helpers. They advise judges and lawyers with their specific expert knowledge. If they have expert knowledge they are helpful. Obviously as parents you know that these good folks often know nothing about FAS because they are trapped by the book of official mental illnesses called the DSM - 4: which does not list FAS as a "official mental disease."

Here you will hear either:

1. I don't know ANYTHING about FETAL ALCOHOL SYNDROME

Or

2. you will hear words like: ADHD, oppositional defiant disorder, conduct disorder, anti social disorder, learning disability disorder, lack of impulse control, refusal to comply, poor choices, lack of executive decision-making, poor time management, few financial skills and similar piecemeal descriptions of behaviour.

As you know, you will not hear that your son has permanent brain damage caused in the womb by alcohol consumption by the mother.

To find knowledgeable professionals contact the Asante Centre, the FAS Network, or Children's Hospital.

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BEAUTIFUL LIBRARIANS: THE GODDESSES OF LEGAL KNOWLEDGE

The last and most important person in the criminal legal system are the LAW LIBRARIANS located in the Supreme Court building in Vancouver at 800 Smithe street phone: 660 2841 - the public is welcome.

Unlike any one else, librarians speak plain English and can show you between the hours of 9 am and 4 pm where all the law books are hidden that may assist you

They can show you how to use you home computer to find similar cases like yours. They can tell you what judges are learning when they go to judge school and they can show you the criminal codes and all kinds of wonderful materials that can help you communicate with the different and conflicting parts of the criminal legal system.

Lawyers and judges depend on librarians, because no one person can know everything about law except a talented law librarian. They are lifesavers; I speak from experience. There is not a lawyer alive who has not been saved by a law librarian: I know I am one of the saved.

The best thing: they are free.

CONCLUSION

PERHAPS, now you can begin to understand the different languages of law and how you can communicate with the different and conflicting aspects of the criminal law system.

My main suggestion is that you as a parent / caregiver find a criminal lawyer you like and trust and develop a professional relationship with a criminal defence lawyer identical to the one you and your son have with your doctor.

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My next suggestion is going to cause a fuss and I think it is worth talking about today especially with parents / caregivers of persons with FAS here today. Perhaps your son should carry on him a laminated photo identification card like your driver's licence you carry that states:

1. Your son's name, address, and phone number of parent/caregiver.
2. That this pictured person has permanent brain damage --as a result of a birth defect.
3. That the brain damage this pictured person has may be a factor in a list of negative behaviours.
4. This pictured person insists on speaking to a lawyer if arrested or detained by anyone including police.
5. This pictured person does not waive his right to silence.
6. This pictured person is asserting all his charter rights immediately upon arrest or detention by any person including the police.
7. Please call the criminal defence lawyer listed below or arrange for the police to call the Brydges emergency defence counsel on the telephone immediately.

Note: the Brydges lawyer is a lawyer paid by legal aid to answer a telephone 24 hours a day 7 days a week to answer questions free - that means at no cost to the caller - to persons who cannot contact their own defence lawyer when arrested by the police.

This card maybe called a Medical Information Card for Police. The reason a picture is required is to prevent other criminals from using FAS as an excuse to commit crimes and try to get away with it. I suspect this may sound like a futuristic police state kind of response to many here. I am told that in Quebec developmental disability advocates are beginning to use similar cards.

If you have any comments perhaps we can talk now or you can email me later at: dmboulding@shaw.ca Please note at the present moment I am not working as a criminal lawyer: I am resting from three car accidents.

Thank you David Boulding

