

David Boulding on FASD – Fetal Alcohol Spectrum Disorder – 3 Papers
David Boulding is a defence attorney from Port Coquitlam, BC
dmboulding@shaw.ca (604 942 5301...tel 604 942 5302 ...fax)
Adapted for *Fetal Alcohol Spectrum Disorders and the Justice System* CD
By Mary K. Cunningham

1-A LAWYER'S BRIEF ON FETAL ALCOHOL SPECTRUM DISORDERS

Alcohol in the womb is a solvent and acts on the baby's developing brain like paint stripper acts on layers of old paint on furniture: it dissolves brain cells – bubbles them away. Thus, brain functions are missing.

1. **FASD IS PERMANENT BRAIN DAMAGE**
2. **FASD IS A MULTI-SECTOR PROBLEM:**
 - It is a school, police, social, legal, medical, community, family and national problem.
 - It is a delusion if you think one agency can solve this problem.
3. **DO NOT RE-INVENT THE WHEEL:**
 - There is lots of research out there: there are lots of people ahead of you; and once you get connected to the various sources of knowledge there is much positive work you can do.
 - Early assessments are key
 - Seek help: you will be started to realize that 99% of psychologists/psychiatrists know nothing here.
 - FASD is not in DSM-4tr.
 - Few universities fund research in this area
 - Canada has just published the guidelines for diagnosis (see the March/05 edition of *Canadian Medical Association Journal*)
4. **GO PAST JUDGMENT AND UNDERSTAND THE REASONS WHY PREGNANT WOMEN DRINK ALCOHOL:**
 - This is difficult and requires a heartfelt, clear-minded knowledge of family violence; the history of close relationships; poverty; lack of education; addiction; and an understanding of how to cope with daily difficulty.
 - FASD is not restricted to the poor and marginalized Canadians: rich stockbrokers have wives who binge-drink while pregnant; young, educated professional women binge-drink almost as a rite of passage, often not knowing they are pregnant.
 - Jan Lutke has some pregnant advice: *distinguish between non-compliance and non-competence. There is a difference, and it is brain-based.* (refer to www.fasdconnections.com).

5. **THERE IS GOOD NEWS: IT'S CALLED THE "EXTERNAL BRAIN"**

- The "external brain" means appropriate supervision 24/7, and it means designing appropriate structures that create opportunities for the person to be successful: it is our responsibility to set up ways to create success for persons with FASD. All the drugs you can name, all the available therapy, all the time in jail, all the best intentions, all the court orders, will not generate new brain cells. This offender will be the same every time they come into your courtroom: they are not going to change.
- The "external brain", as a legal concept, is our duty of care: it is our duty to accommodate because we are all to be equal before the law.
- Diane Malbin provides two practical suggestions:
 1. Lower your expectations
 2. Change their environment

This is easy to say aloud but difficult to implement for 4 reasons:

1. We all have this little voice inside us that says: *they should not get away with this behavior;*
 2. If we really knew how the brain worked, we would punish differently: we would design our "teaching and corrections industries" differently. Our knowledge of human brains is in the beginning stage; there is much we do not know. Many of our brain-based assumptions in the criminal legal system are clearly wrong.
 3. We all share a social sense that an individual can do well if the individual would just try harder.
 4. Change is not an easy or a comfortable process, especially for rigid systems like the criminal legal system or the educational system.
- Most importantly: **caregivers and others charged with dealing with persons with FASD will experience near total exhaustion very quickly—this includes police, teachers, lawyers, social workers, and judges.** So you must guard against dying inside yourself, the same way a long distance runner guards against fading too soon. There are training tips and they involve physical, mental, emotional, and spiritual fitness—take care of yourself. Like the monotonous warnings on airlines, put on your air mask before helping others. You are useless if dead, or unable to do your appointed task
 - Surf through these two websites:
www.asantecentre.org and www.fasdconnections.ca
and check out the many resources.

2- FETAL ALCOHOL: THE ROLE OF CROWN COUNSEL (March 31/05)

The RESEARCH LITERATURE on the prevalence of fetal alcohol affected persons in our criminal justice system... in any criminal justice system in the world is limited to one research paper written by Drs. Fast, Conry and Looock...all from Vancouver. In their much-quoted study the doctors tell us that 24 % of young offenders in B.C. have fetal alcohol syndrome (FAS). Privately, the doctors estimate the percentages are even higher.

FAS means fetal alcohol syndrome and a more recent term “FASD” means fetal alcohol spectrum disorder. FASD is the new umbrella term that describes the range of damage to the developing fetal brain caused by exposure to maternal alcohol consumption during pregnancy.

There are other informed opinions in the field (but no reliable statistical data) that say our prison population contains about 50 to 80 % persons with some form of a fetal alcohol birth defect... a birth defect that kills brain cells in the womb. Although science has not yet established a bench mark, I can tell you... people from Corrections Canada, when pressed privately, do not disagree with these higher numbers. The point is: fetal alcohol is a KNOWN problem we cannot ignore.

That we are here today speaking about Fetal Alcohol and legal issues indicates Crown Counsel is tackling this problem head on. You are to be congratulated because the issue you are learning about confronts many of the basic assumptions we lawyers hold near and dear to our legalistic hearts....including notions of intent, responsibility, and our systemic response to offenders.

In 2001 I was told about Fetal Alcohol by a senior probation officer gobbling his soup at 222 Main Street in Greta's café. Bill Ellis, after listening to me whine about my latest hopeless case, said between mouthfuls, “the kid is probably fetal alcohol”. I wish I could be more dramatic: the lights came on...and Garth Leoppky had to endure my steep learning curve.

Later on the urging of Judge Carlie Trueman I wrote a paper called MISTAKES I HAVE MADE WITH FAS CLIENTS....eventually published about 30 times including in the Provincial Court Judge's magazine. It is a list of my mistakes you might find instructive or at least proof positive that Defence Counsel really are dumber than a sack full of hammer handles. When I refer to the paper or read from it at various conferences the audience reactions are always the same: nodding heads to tears. It is attached for your reading.

When I speak or give workshops to police/probation or teachers or social workers, listeners quickly recognize the FAS/FASD persons from their case loads. Everyone wants to know what to do. They all ask the same question: “How is what you tell me going to change my day in a patrol car or behind a desk in this agency?”

I want to briefly (in 10 minutes) speak about three things...a) the materials attached... b)the ethics of being strictly a rights based defence counsel or trying to be more of a social work styled defence counsel, andc) most importantly about probation orders.

THE MATERIALS.....for you to read later (covered only in the presentation)

1. Boulding : a Lawyer's Brief on FASD (included in this CD)
2. Jan Lutke : Non - competence vs. non - compliance www.fasdconnections.ca
3. Diane Malbin : Paradigm shifts and fetal alcohol (more info in this CD)
4. Dr. Caron Byrne's article: Criminalization of FAS
<http://depts.Washington.edu/fadu/legalissues/>
5. Boulding : Mistakes I have Made with FAS Clients (included in this CD)

DEFENCE COUNSEL: Rights based or social worker?

There is an ethical dilemma Defence Counsel face, and I call it the difference between being a rights based legalistic lawyer and choosing to be more in the style of a social worker trying to solve future problems. With FAS/FASD clients I have learned the decision to be strictly a rights based lawyer has painful implications . While Defence may succeed at trial securing an acquittal, or get Crown to agree to a sweetheart deal on sentence, the client's problem goes unrecognized and untreated. Thus effectively you have set up the client for his next fall. And there will be another fall, because the brain damage is permanent. Defence Counsel have good reasons, as you well know, to avoid the black swamp of forensic custody . What to do ?

First talk about it ! While this sounds simple, it is a rare conversation because Defense Counsel are defensive...especially about forensic custody. Thus it falls to responsible Crown Counsel to begin a different conversation.

Please ask Defence Counsel : "Have you considered Fetal Alcohol Issues?"

Hopefully this mild opening will lead to discussing an assessment for the client. While at present, assessments are hard to get (lack of provincial cash and a floodgate fear), there is much that can be done. The Court of Appeal has again had to grapple with this issue lately in R. v. Synnuck (2005BCCA 155). Clearly there is no easy answer as to how to secure an assessment.

But the good news is that Dr. E. Murphy of Forensic Psychiatric Services has been attending various conferences on FAS/FASD as have some of her forensic colleagues. And although the "billing code" approval for MSP to allow doctors to bill for an FAS/FASD assessment is stalled in a BC Medical Association committee, it is expected

to be released soon. The more requests to judges for FAS/FASD assessments will open up the process.

I warn counsel to remember how long it took to get a zero tolerance or mandatory arrest policy on spousal assaults....25 years? While it may be a Charter application for an assessment based on section 7 or section 15 alleged breaches that comes first, I believe if Crown and Defence put their heads together, eventually some judge will create a way forward. The problem is the longer we wait, the more offences are committed, the more harm is done to our citizens. An assessment is key to protecting the public in the same way appropriate building codes make urban life safer. A FAS/FASD assessment gives appropriate structure to any response by the criminal legal system to a person with a permanent brain disability.

More good news! A few Defence Counsel have begun to look at their clients differently as they learn about how brains work when damaged by alcohol in the womb. I am suggesting that sometimes this rights based legalistic thinking is inappropriate with clients with fetal alcohol affected brains because perhaps the greatest service Defence Counsel can do for these clients is make some positive contribution towards reducing the number of future offences. A brain-damaged client will not respond to jail time or probation orders like other offenders. Let us try something different: a multi – sector prevention plan. We need to create more external brains.

If you have a case where the accused has a string of similar offences, or a pattern of guilty pleas where he is clearly “not learning”, begin to consider FAS/FASD.

Consider gently asking Defence Counsel:

1. Was he in foster care? Adopted?
2. Did he pass grade 8? 9? 10? How do you know? Have you read the records?
3. Can your client give you a coherent story...no gaps?
4. Any indication of maternal drinking during pregnancy?
5. What is going on with his complete lack of remorse?
6. Does your client understand the gravity of these allegations?
7. What is the reason for the umpteenth guilty plea for the same offence?

I am not suggesting Crown Counsel do Defence Counsel’s job. I am suggesting Crown Counsel can begin a different conversation and may spark Defence Counsel to do the right thing for the brain damaged client as opposed to being solely concerned with securing an acquittal. Vancouver Crown at 222 Main Street have for some years already had these conversations especially when one Crown was tasked with the “Mentally Disordered Offenders”. Although the “Mentally Disordered Offender” Crown position is now spread around the bail teams, Defence Counsel do respond appropriately when the issue is gently raised.

PROBATION ORDERS

Probation orders are the guts of what we do as criminal lawyers. I believe time in jail while protecting the public in a warehouse or cold storage fashion, has little effect on day to day behavior of persons with fetal alcohol issues.

As you know persons with FAS/FASD may “do well” in jail: they thrive on structure and constant supervision. And you also know that these offenders are often physically and sexually assaulted in jail as well as frequently getting into more trouble because they do not understand the social rules of jail.

While I have only a few suggestions here, I know that after you have digested the materials attached you will frame your submissions for probation orders differently

FAMILY CONNECTIONS

A feature that is often overlooked in most cases, but frequently emphasized in cases involving persons with FAS/FASD is the help from the family. A number of cases highlight that the family can assist with probation orders. The Mark Steeves case is one success story. (BC)

I am suggesting, rather than seek: “....and attend at probation once a week” that you consider adding some way to have a parent/caregiver, family, or capable friend also know about the probation, counseling, or other appointments. This will not only help with attendance, it will bring the family onside beginning to create the external brain.

Rather than seek orders “....and no contact with.....” tell the family who the problem contacts are and seek their input. Consider having a printed sheet on the fridge that has the same information. So that the order is repeated daily in the home. Create learning and re – learning structures.

SET UP SUCCESS STRUCTURES

Here is the external brain concept working. When Mark goes to work June Steeves phones the restaurant and says “Mark is on the bus to work”. Later the restaurant phones home to confirm his arrival. And again after work the restaurant phones home saying “Mark is leaving”. This sounds complicated and it is a lot of work for Bob and June Steeves. They would rather do this than visit Mark in jail. And it works as Mark has not re-offended for some years. Bob, a prison guard of 27 years experience, says without the probation order helping them Mark would be in jail. These creative probation orders require Crown to understand how fetal alcohol brains work and have a relationship with parents and caregivers.

BEST RESULTS ARE NOT CONFINED TO COURTROOMS

Probation orders to be effective for persons with fetal alcohol issues will require a multi-sector approach, involving family, social services, employers, police/probation, schools,

and defence counsel. Mr. Justice Vickers made the point eloquently in the Victor Williams case. (BC) Judge Cunliffe Barnett has been saying the same for years. Crown cannot go alone and expect success. I am urging Crown to make phone calls to various agencies before seeking probation orders. Think: "I am creating an external brain".

You may find it helpful in small towns to distribute the FAS/FASD person's picture to the local constables, with an explanation on the back describing his disability, his previous behavior, and phone numbers of family or caregivers...as you would for your Uncle Fritz who has Alzheimer's. I have yet to meet a family or person with FAS/FASD who did not want the police to know about his brain disability. You may include family in the drafting of orders so that when the probation order is on the fridge, the family/caregiver know what it means, in plain English, and they are involved in the success.

LAST WORDS

Canada is the world leader in thinking and doing about Fetal Alcohol issues. Dr. Julianne Conry (from North Vancouver) and her colleagues under the Health Canada umbrella have published the Canadian diagnostic guidelines this March. Dr. Sterling Clarren, the University of Washington expert, has moved to Vancouver, and bought a house here. The Alberta and Saskatchewan governments have web published the world's best school curriculum for fetal alcohol students...it is free. Maple Ridge is home to the Asante centre, a diagnostic facility, the first of its kind in the world. I urge you to cruise through their excellent website at : www.asantecentre.org.

The Asante centre website has links to other fine websites. Audrey Salahub is the Asante centre administrator who will answer any questions you may have. Jan Lutke of Surrey (see her attached materials) will also provide assistance if you ask. Professor Allan Manson of Queen's Law school has available electronically an excellent 80 page L.LM course paper by two of his Master's students on FASD and the law as of January 2004. (Ask me for copies.) The American expert Dr. Ann Streissguth of the University of Washington (Seattle) not only has another excellent website which is listed as <http://depts.Washington.edu/fadu/legalissues/>, she also has a project director Kay Kelly who will also answer any questions.... especially about the new research. Kay is at : faslaw@u.washington.edu.

Now it is your turn. David Boulding, Lawyer
dmboulding@shaw.ca March 31 /05

ABORIGINAL JUSTICE WORKERS AND FETAL ALCOHOL SPECTRUM DISORDER PRESENTATION

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

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

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

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

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

1. 19% of women who gave birth in California reported drinking in the first or third trimester.
2. Women with the lowest incomes reported the lowest rates of drinking.
3. Women with incomes 400% over the federal poverty levels were twice as likely to drink as the poorest women during the first trimester and over five times as likely to drink in the last trimester.
4. Women with a college education reported the highest rates of drinking. These women were between 2 and 5 times more likely to drink than women who had not been to college.

5. WHITE NON-LATINA WOMEN REPORTED THE HIGHEST RATE OF DRINKING DURING PREGNANCY COMPARED WITH OTHER RACIAL/ETHNIC GROUPS.
6. Women in the San Francisco Bay Area...urban middle class neighbourhoods reported the highest rates of drinking during pregnancy

I hope you find these facts enlightening.

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

If you will now turn to the handout THE LAWYER’S BRIEF attached to this paper we can quickly get the basics of Fetal Alcohol Spectrum Disorder and move on to something exciting: Interviews and Probation Orders. (Please find in this document)

The Brief sets out five items you need to know:

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

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

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

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

Number five is the focus today. The good news is called “EXTERNAL BRAIN” and today I aim to make some suggestions how you can construct an EXTERNAL BRAIN.

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

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

(please review Lawyer's Brief) (first entry in this document)

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

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

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

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

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

The RCMP has another website with helpful material:

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

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

Third, most interviewing is listening and looking. You will get more valuable info from listening with an open heart and open eyes than thru your ears.

Ten Questions you may try.....

NUMBER ONE

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

NUMBER TWO

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

NUMBER THREE

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

- Grade six – age____
- Grade seven - age____
- Grade eight – age____

Thus develop a grid of age and academic performance.

Has “a special person” at school ever tested them? What were their marks in school?
Ask yourself was he a “social pass?”
Ask about developmental milestones, i.e. tying shoes, ride a bike, type of friendships, are the answers reasonable?
Note scattered abilities with chronological age vs. adaptive age. Use a chart.

NUMBER FOUR

Tune into his 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 is a NEURO/PSYCHOLOGIST who has a helpful tool called ALARM.....A....L.....A....R....M

- Adaptive behaviours.....A
- Language..... L
- Attention..... A
- Reasoning..... R
- Memory..... M (CD Users will find additional information on ALARM)

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

For example: Do you see problems with memory, language, reasoning, attention, and those behaviours we use to get thru the day. No one expects you to be the next Dr. Conroy. 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...your exploration notes may be enough for a Judge to order a proper assessment. If that order for an assessment is made YOU HAVE DONE YOUR JOB 100%

NUMBER FIVE

Note unusual behaviours 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 behaviours and inability to predict outcomes. Again look carefully. Make notes.

NUMBER SIX

Ask your subject to write something. Give a pen and paper; ask 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 and what is missing.

NUMBER SEVEN

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

NUMBER EIGHT

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

NUMBER NINE

Ask some curious questions:

- a) Is there a “victim” quality present?
- b) Could easily be taken advantage of?
- c) Is there a sense that this person likes repetition, structure, and stable environments? Uncomfortable with noise and activity around him, and multi-stimuli environments.
- d) Does he not “get” the notion of consequences?

- e) Is there a difficulty generalizing from experience?
- f) Is this person extremely literal minded? Or does not “get” sarcasm or idiomatic expressions?
- g) Has this person ever had a driver’s license?
- h) Do you sense this person does not understand some of your questions?
- i) Does this person appear “eager to please?”

NUMBER TEN

What questions are you not asking because it does not seem necessary?

You will be surprised what you assume, so check your assumptions. Stand back and do the interview as if the person was from Australia, or you were a carpenter building a house from excavation to roofing.

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

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

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

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

2. PROBATION ORDERS

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

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

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

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

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

An “External Brain” is family, friends, and community members who will step in and assist with decisions and actions for the individual with FASD to stay crime free. The alcohol-affected individual is missing brain cells, literally resulting in brain dysfunction. They have compromised or reduced brain function in some areas. For example, they may have impulse control problems, they may be easily lead, not able to take what they learned on Tuesday and apply it in a similar but not same situation on Thursday. Jail does a lot, but it does not repair or create new brain cells. I believe a community can create probation orders that focus on successes, not weaknesses and probation orders can intervene in a positive way if we understand that the person on probation has a neurological deficit (a brain-based birth defect) that can be assisted by help from the community. Obviously we need to expect failures, and we need, as Diane Malbin says:

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

AND HERE IS HOW WE CAN FASHION A COMMUNITY RESPONSE.

1. Make Probation Orders “Fridge Proof”

This means use language familiar in the home. Judges in criminal courts do not speak English, and you know it.

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

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

Example: “Do not hang out with Bob Smith; you CAN hang out with Joe White or Sam Black”. Or “You cannot go to 7-11; you CAN go to Quick Stop.”

As Judge Jeffreys (BC) says, “Do not assume because the fellow heard the order read out in court and nodded, that he understands”.

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

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

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

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

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

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

ONLY ONE SHORT STORY.....

I have given a 4 hour and then 8 hour version of this talk to probation officers in South Dakota in the last two years. This year one wonderful woman with about 18 years of experience as a probation Officer said at the training: “..... Based on what I learned last year I have changed the terms of (and she named a fellow that every one in the room knew) X’s order. The entire order is : YOU MUST BE HOME BY 7 O’CLOCK EVERY NIGHT”

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

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

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

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

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

BASIC PROBLEM:

Fetal Alcohol Spectrum Disorder is not an excuse for crime; it is an explanation for behaviours. The unacceptable criminal behaviour may be rooted in a brain-based birth defect; the fix is in the “External Brain”.

For help in finding concrete language that is “fridge proof” and other valuable help for persons with Fetal Alcohol problems please read the books by Barbara Coloroso, *The Bully, The Bullied and The Bystander* ISBN: 0-00-200648-0 and *Kids Are Worth It* ISBN: 0-14-029367-1

THESE BOOKS SHOULD BE ON YOUR OFFICE BOOKSHELF

LAST WORDS

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

THANK YOU

David Boulding dmboulding@shaw.ca
Lawyer, Port Coquitlam, BC

Home of Terry Fox, so I believe the impossible can be done.