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Fetal Alcohol Syndrome Disorders (FASD) & the Law

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After thirty years of working with individuals who have diagnosed or undiagnosed FASD, five years of running FASSN, and several years of operating a New York City/Long Island FAS Hotline, I have found that the most common cry for help from a parent is "My son has just been arrested. What should I do?"

Data are limited because so many people have undiagnosed FASD. But it is estimated that the majority of individuals who have FASD have at some point in their lives needed a lawyer. 40,000 babies are born every year with FASD. Most of the 1/100 people who have an alcohol-related disorder are undiagnosed.

The news for lawyers is that some of your clients, who look and act perfectly normal, have a 'hidden disability' that could be caused by even moderate in-utero exposure to alcohol. The damage to the brain—especially the frontal lobe and central nervous system—severely impacts your client's ability to make good judgments. Shockingly, alcohol is such a dangerous teratogen that it is a more serious threat to the unborn child than heroin or crack. The molecules in alcohol are smaller than those in crack or heroin, so they are able to pass through the placenta and cause cellular brain death. The result is that individuals with an FASD are typically impulsive and do not foresee the consequences of their actions. Most are quite naïve and can be easily led by their peers to illegal activities. Sometimes people with an FASD are not even aware that what they are doing is illegal.

Recent case in Queens: A nineteen year old young man was arrested for selling marijuana. His so-called friends suspected his naiveté and gave George money to buy marijuana. George just wanted to be a good friend, so he agreed to purchase the marijuana. But since he has a poor memory and limited math skills, he bought the wrong amount, leaving him with extra money. While driving by, the police saw George standing under a bright street light holding a plastic bag and cash. When they approached 'the suspect', George immediately told the police officers that he bought the marijuana so that he could sell it back to his friends. Of course George was arrested. After six hours of retention, the police allowed this young man to call his panicked par-

ents at about 3 AM. The police officer told his parents that their son insisted that he had done nothing wrong because he did not smoke the marijuana. Understandably, the officer said to the parents, "Does this kid think we're stupid?"

His mother instantly understood what had happened. Individuals with FASD are very concrete thinkers. She had told her son to never smoke marijuana because he would get into trouble. It never occurred to her to tell him that it was illegal to sell it. His mother also knew that her son had just been exploited by more sophisticated teenagers. So, now this young man needed a lawyer. Unfortunately, the closest criminal defense lawyer who has expertise in FASD lives in New Jersey.

But there is good news for lawyers in New York City and Long Island. Any lawyer who has conducted enough interviews to know how to ask curious questions can learn how to do an FASD assessment that can ferret out the possibility that his or her client has FASD. All you are doing is exploring. Experts give a complete diagnosis. (www.FASSN.org lists several physicians in NYC who have the experience to diagnose FASD).

Dr. Julianne Conroy, a neuro/psychologist, has a helpful screening tool called ALARM: Adaptive behaviors, Language, Attention, Reasoning. The 'ALARM' is a form of specific checklist that may have you thinking that the person in front of you has fetal alcohol issues. For example, does your client use landmarks rather than street numbers to explain where he has been? Do you see problems with memory, language, reasoning, attention, and those behaviors we use to get through the day? Does the person appear "Not to get it"? No one expects you to be the next Dr. Conroy, but you have the skills. Use your ability to ask questions and make observations. Give yourself some credit for common sense.

Take notes. Look for unusual behaviors and manner of dress. If it is a freezing December day and your client does not have a coat with him, write that down! (Sensory Threshold). Be aware of cleanliness and type of clothing. This may be a sign of tactile defensiveness. Observe posture, gait and fidgeting- postural defensiveness. For a few minutes, speak in a louder voice than usual and watch for signs of auditory defensiveness. Has he or she participated in stupid crimes that involve high risk of apprehension

because of lack of judgment? Can he handle criticism? People with an FASD frequently will 'shut down', come up with absurd answers, go into a rage, or go into a flight/flee mode when they feel threatened. These individuals lack coping skills.

Then, ask about birth date information. Parents or relatives may be helpful or reluctant to answer the following question: Did the mother drink alcohol when she was pregnant? Other questions may be less threatening. Ask about adoption, foster placements, visits to various professionals. Ask about developmental milestone, ie. tying shoes, riding a bike. After a brief mental health quiz ask: "Has he ever taken Ritalin, Zoloft, or any other common anti-depressant? Inquire about problematic behaviors in school or any expulsions or multiple school placements. Was he ever told that he was lazy, disruptive, or explosive? Has a 'special' person' at school ever tested him? What were his marks in school? Does he have any learning disabilities? Ask caregivers about what kind of friends he has. Note scattered abilities with chronological age vs. adaptive age.

Next, look for certain traits and patterns. Is there a 'victim' quality present? Is there difficulty generalizing from experience? Could this person be easily taken advantage of? Does he not 'get' the notion of consequences? Does he seem eager to please? Does he not 'get' sarcasm or idiomatic expressions? Has this person ever had a driver's license? Use your well-honed skills to see through answers that do not pass the straight-face test.

If you do these interviews over and over and constantly tell judges- the judges will eventually ask for an expert report! If you do not keep asking for expert assessments, these individuals will continue to be undiagnosed and fill up our jails. In addition, lawyers can put on the stand experts who can testify about FASD. Call (718) 279-1173 for the name of a NYC/L.I. expert). Lawyers have successfully presented FASD as an exculpatory or mitigating factor.

For further information about legal issues, contact Kay Kelly at (206) 543-7144 or e-mail her at faslaw@hotmail.com. Ms. Kelly is regarded in the FASD community as one of the foremost FASD legal experts in the United States. She will eagerly get back to you.