

**DAVID BOULDING  
LAWYER**

206-2922 Glen Drive  
Coquitlam, British Columbia  
V3B 2P7

Telephone: (604) 945-2043  
Facsimile: (604) 945-2063  
e:mail:boulding@istar.ca

September 17, 2001

**MISTAKES I HAVE MADE WITH  
FAS CLIENTS**

**Fetal Alcohol Syndrome and Fetal Alcohol Effects  
In the Criminal Justice System**

## **MISTAKES THAT I HAVE MADE WITH FAS CLIENTS**

*My remarks are tentative and personal. There are probably more mistakes I have made and perhaps I am unaware of them or I choose to remain unaware.*

### **IT IS EMBARRASSING TO ADMIT**

It is embarrassing to admit my mistakes. I encourage you to tell me what your experience has been with lawyers' mistakes because you can help me learn even more

My intention here is not just to confess, although this paper clearly is a confession by one lawyer who believes that the Canadian legal system has failed FAS clients. I hope to show in this article that there is hope. We can change how lawyers, clients, police, judges, probation officers, prison guards, and family members work with FAS clients.

## **THE LIST OF MY MISTAKES AS A LAWYER**

1. I assumed that both my young offender FAS clients and my adult FAS clients could be helped by using standard terms of Probation Orders in the Provincial Court.
2. I assumed that my FAS clients could tell the Judge what happened in a way that would make sense.
3. I assumed that my FAS clients would be able to demonstrate remorse to the Sentencing Judge.
4. I assumed that after my clients were caught for the third or fourth time for the same offence and in the same set of circumstances that at least they would learn to get caught for either another offence, wear gloves, or not be surprised that they were caught.
5. I assumed that my FAS clients understood the notion of consequences: if you steal from cars and are caught, you will go to jail.
6. I assumed that my FAS clients understood the notion of time – three days in jail is not the same as three months in jail.
7. I failed to tell my FAS clients the same important lawyer/client advice over and over again. Perhaps I should have handed my FAS clients a typed handout setting out what a guilty plea means and the specific short and long term consequences. I assumed that because we had been to Court many times that my clients would know that they should not interrupt the Crown Prosecutor during a “Show Cause Hearing”, correct the Crown Prosecutor’s facts and therefore admit that they were there and that they did it.
8. Although I knew the parents of my clients, I failed to discuss with the parents the apparently “crazy” situation. I knew that the parents had had severe drinking problems for years, but I never asked anyone about the home life and I never asked my client about his/her parents’ drinking. I never directly confronted the parents about maternal drinking during pregnancy.

9. I was always puzzled and failed to understand that there is a good reason why, in the Pre-Sentence Reports of the Probation Officers, my FAS clients seemed to “shoot themselves in the foot”. My FAS clients participated completely and without guile in their Pre-Sentence Reports. I failed to understand that the reason they were so candid, up front, and straight with the Probation Officers was that they did not know how to play the “Pre-Sentence Report” game. My FAS clients were impressionable, suggestible and easily misled and misunderstood. It was easy for the Probation Officers to get them to give the answers that the Crown oriented Probation Officers wanted. My FAS clients did not understand the vocabulary that lawyers, judges and probation officers use everyday. My FAS clients were eager to please. I failed to see that they were speaking against their own interests. A common example was a client’s admitting to either drug or alcohol use but failing to mention frequency or context.
10. I failed to consider that there were some offences, in some situations, where I should have considered a Not Criminally Responsible By Reason of a Mental Disease (NCRMD) application. At least I might have begun to gather some neuro-psychological data years ago.
11. I failed to consider breaches of the Canadian Charter of Rights and Freedoms, although I found that most Crown Prosecutors were helpful in reducing the number of the charges. Often there were 13 or 14 separate counts. I never noticed that my clients had long Criminal Records and almost always pleaded guilty. I did not realize that there was a behavior problem at the brain level. I failed to look past the standard phrase “anti-social disorder.” I failed to see that my clients were not learning by experience and that a Charter breach from Section 15 Equality Before the Law was something I should have considered. These clients were not being treated equally and the system had failed to accommodate their special needs. A brain injury by definition makes you a “special needs” person. FAS clients suffer a lifetime of brain injury inflicted by a mother who drank alcohol during prenatal fetal development.

12. I failed to consider a psychological or neurological assessment at any time because my clients seemed so pleasant. My clients did not seem to have any outward signs of psychological difficulties. They did not have any drug or alcohol problems. I failed to consider that there might be something wrong with their brain.
13. I failed to see that behind my clients' cheery, positive presentation of self lurked another problem. To most judges, police officers, probation people, and other lawyers, my clients did not present themselves as really bad kids. My clients tended to present themselves as first-time offenders who had made some silly one-time "mistake". The problem was they actually had long Criminal Records for those same "mistakes".
14. I failed to ask Social Services for records about the family. I never looked at any early medical records for my clients. I never considered looking at any medical records.
15. I failed to note that my FAS clients were usually the number two or number three person involved in the offense, but that it was always my FAS clients that were caught. I did not recognize that there must be a reason that other people initiated the offences and were rarely arrested while my clients were always caught.
16. I failed to see that there was no real escalation in the offenses. The marijuana-to-heroin jump never happened. The auto theft-to-robbing jewelry stores jump never happened. I failed to see that this lack of escalation indicated the lack of a professional criminal element or what I call "real criminality," characterized by mean, nasty, and cruel behavior. I believe the offenses involved an absolute moment-by-moment "I want, I take" mechanism as opposed to some deeply ingrained refusal to follow rules. My FAS clients did not present as outlaws, but as serial opportunistic criminals – repeaters of first-time offender behavior.

17. I failed to notice that when my clients were telling their story, there were blanks in their memories or parts of the story were just not available. My clients did not remember important facts. My clients did not know the answers to some of my “and then what?” questions. I failed to take detailed written instructions for the offenses because they were so similar and were almost always repetitions of the same facts. Had I asked the clients to write out, in detail, what happened, I might have eventually seen the need for neurological help.
18. I failed to understand the nature of my client’s impulsive activity because they told their stories in an amusing and funny way to both the police officers and me. I failed to look past the client’s rather humorous and engaging presentation of self.
19. I failed to get written instructions and keep a running file on my Fetal Alcohol Syndrome clients’ criminal activity. If I had sat down with them and had them write out their instructions, I might have seen a chance or found some way of getting the message “Don’t do this again” to sink in. Nevertheless, I may still be in denial in terms of not understanding the scope of the brain injury. I failed to see that my clients did not understand while they were doing it, that stealing from cars is wrong.
20. I failed to see that jail had no effect on my clients’ behavior. The main reason they didn’t want to go to jail was that they couldn’t be with their friends. If they did go to jail with friends, the experience did not seem to have any impact. On two occasions, one FAS client escaped with his cousin; my client was caught – his cousin remained at large for months.
21. I failed to talk to other lawyers and other probation officers about the particular set of facts that kept reappearing.
22. I never asked one of my FAS clients’ mothers directly about alcohol consumption, perhaps out of some sort of misinformed political correctness or perhaps because I was too shy. I didn’t want to embarrass the mothers, as many of these women were aboriginal women, who clearly had too many difficulties to begin with. I never asked about alcohol consumption patterns in the home. Quite often, these mothers were in tears when their sons were in jail. I simply did not fully understand the family circumstances.

23. Although I acted for most of the family members, I never sat down and drew out a family tree and tried to figure out who was who and what family member had what particular problem. I never put into place structures that would help my client with follow-through, such as giving the Probation Officer the telephone number of the most dependable relative or putting into place some type of back-up or support system to check on the client in an ongoing way.
24. My FAS clients often did not follow through with basics, like showing up for appointments, being on time, going to the right places, or conducting themselves appropriately. I tried to simplify Probation Orders to make it as easy as possible because I thought my client just could not handle complex orders. My assumption that my clients were not interested or did not care was wrong: they could not structure the pieces of the puzzle together in a logical and meaningful way.
25. I did not understand that this inability to handle complex notions of responsibility and consequences was something I needed to consider. I should have asked myself, "Is he getting a fair trial"?. I failed to ask, "Why all the guilty pleas?" I failed to consider "fitness for trial," because to the outside world, they seemed okay. For example, although one client had only an eighth-grade education, he played basketball, and he seemed to be one of those kids who just did not like school. I failed to look at the whole person in the context of Fetal Alcohol Syndrome and criminal Courts.
26. I failed to sit down and write out all of the various excuses my FAS clients gave for the various offences. Had I taken the time to write down and study the 10 or 15 excuses, I would have recognized the need for professional help. Instead, I kept treating each offense in isolation, not understanding that it was the same crazy offense over and over again, with outlandish rationalizations, or simple-minded explanations.

27. I failed to see that often within the aboriginal community, aunts distantly related to my FAS clients understood there was a problem and instinctively took care of my clients for various periods of their lives. It was during those periods of intense supervision that my FAS clients were crime-free. However, as soon as that supervision went away, leaving my clients alone, it was predictable that they would return to familiar criminal behavior.
28. I did not notice that constant supervision by an appropriate parental authority corresponded to a lack of crime. I never understood that there was an impulse control problem, even though almost all of the crimes were related to acquiring household goods or getting immediate pleasures, as opposed to crime requiring any sophisticated planning or violence. There were, of course, some exceptions.
29. I failed to see that my clients were not competent thieves. They did not plan. They were opportunistic and impulsive. For example one client spent ten minutes breaking into a car, while being observed by the police.

### **THE BIGGEST MISTAKE**

The biggest mistake I have made as a lawyer regarding dealing with clients who suffer from Fetal Alcohol Syndrome was my lack of political awareness.

I am now aware that the list of my mistakes is going to cost my clients time – time spent in jail. My clients are paying for my mistakes.

It is my opinion that the Government of British Columbia is complicit in my clients' criminalization. The British Columbia Government is criminalizing the mentally compromised. My clients are as brain- injured as victims of Strokes or Alzheimer's Disease.

The Government refuses to recognize Fetal Alcohol Syndrome as the single biggest cause for jail overcrowding and overloaded probation officers, overworked judges, and overworked prosecutors.

## **THEY ARE LABELLED ANTI-SOCIAL**

I failed to see that if my clients were old, with Alzheimer's Disease, instead of 20 years old, male and with a long Criminal Record, they would be getting many services. Instead they are labeled as "anti-social" and sent to jail.

## **THE FIRST STEP**

This paper argues for systemic change. This paper hopes to persuade you, the reader, that the first step in preparing for Court is securing an Assessment for Fetal Alcohol Syndrome by doctors trained in assessing Fetal Alcohol Syndrome. This is available, at present, only at the Asante Centre in Maple Ridge, British Columbia, which specializes in Fetal Alcohol Syndrome Assessments. Fetal Alcohol Syndrome Assessments are not available anywhere else in British Columbia, although they are readily available in Seattle, Calgary and Edmonton.

## **I AM NOW APPLYING**

As a lawyer, I am now applying to the Provincial Court for an Order pursuant to Section 723(3) of the **Criminal Code of Canada** that the British Columbia Government, specifically the Minister of Health or the Attorney General to pay for the Asante Centre to prepare a Fetal Alcohol Syndrome Assessment.

## **EVERYONE NEEDS TO KNOW**

My client is going to jail. Lawyers, police, corrections officials, probation officers, the family, and, most of all, the clients need to know about Fetal Alcohol Syndrome and how Fetal Alcohol Syndrome has affected my client. The B.C. Government refuses to pay for a Fetal Alcohol Syndrome Assessment. The Legal Services Society also refuses to pay for a Fetal Alcohol Syndrome Assessment. This is wrong. I hope a Judge will order that the Attorney General pay for such a needed procedure. Forensic Psychiatric Services admits that its medical staff have no specialized expertise in the area of Fetal Alcohol Syndrome.

### **THE PROCESS OF MY EDUCATION**

The process of my education has been an accelerated and sad learning curve. Unfortunately, my clients suffered because I had to learn the hard way. My clients did not have a proper Fetal Alcohol Syndrome Assessment because I failed to consider it some six years ago.

Will I see these clients again? I am certain of it. It is my hope that a routine assessment for Fetal Alcohol Syndrome is made for each new client who enters the criminal justice system. An assessment done today will cut down on repeat crime, save money for the judicial system, and save years of heartbreak for the families.

David Boulding