

# ALCOHOL-RELATED BIRTH DISORDERS AND THE LAW:

How Should Attorneys &  
Judges Respond to Fetal Alcohol  
Spectrum Disorders (FASD)?

February 3, 2012

■ New Orleans, LA



## About the USB Port Flash Drive

We have prepared a USB Port Flash Drive for each person attending this Feb 3, 2012, FASD session at the 2012 American Bar Association ABA Midyear Meeting. Make sure you have received yours.

The contents of the flash drive are organized into four major folders:

1. Continuing Legal Education (CLE) Materials
2. *Journal of Psychiatry & Law*
3. Other Supporting Materials Related to This Meeting
4. Useful Resources Regarding FASD

The Continuing Legal Education (CLE) Materials folder contains session overviews, brief biographical information about the moderators and presenters, a narrative provided by each presenter, and other supporting documents selected by the moderators and presenters. All of these documents are arranged chronologically according to the program agenda.

The *Journal of Psychiatry & Law* recently published two issues dedicated to FASD. The organizers of this conference purchased e-copies of those journal issues for your personal use. Please note that this material is still under copyright. See copyright note in the *Journal of Psychiatry & Law* folder on the USB port flash drive.

The third major folder contains information about the organizers of this meeting and a vignette about two brothers, both of whom probably have brain damage due to prenatal alcohol exposure and the effects of interventions and the environments in which they live.

The fourth major folder has lists of Web site links to useful resource materials on FASD and biomedical research and specific resources relevant to FASD and the justice system.

## About the Video Recording

This session is being recorded on video. The video of the session will be the official proceedings of this Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders (ICCFASD) research to practice outreach meeting. Accordingly, the video will be posted on the ICCFASD Web page of the National Institute on Alcohol Abuse and Alcoholism (NIAAA) Web site (<http://www.niaaa.nih.gov/AboutNIAAA/Interagency/Pages/default.aspx>) and will be available to anyone who wants to view it. Any CLE granting organizations may use this free video as part of its program, but may not charge for the viewing of the video per se. If you have any questions, please contact Sally M. Anderson, Ph.D., coordinator and executive secretary of ICCFASD, at [sanders1@mail.nih.gov](mailto:sanders1@mail.nih.gov).

# Alcohol-Related Birth Disorders and the Law: How Should Attorneys & Judges Respond to Fetal Alcohol Spectrum Disorders (FASD)?

## **Initiative of the**

Justice Issues Work Group

Interagency Coordinating Committee on

Fetal Alcohol Spectrum Disorders (ICCFASD)

## **In Collaboration with**

U.S. Department of Justice, Office of Justice Programs,  
Office of Juvenile Justice and Delinquency Prevention (OJJDP)

Minnesota Organization on Fetal Alcohol Syndrome (MOFAS)

American Bar Association (ABA) Center on Children and the Law

## **February 3, 2012**

Sheraton New Orleans

500 Canal Street

Napoleon Ballroom C1—Third Floor

New Orleans, LA 70130



# Welcome Message from the Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders (ICCFASD)

On behalf of ICCFASD, welcome to a continuing legal education (CLE) session on Alcohol-Related Birth Disorders and the Law: How Should Attorneys & Judges Respond to Fetal Alcohol Spectrum Disorders (FASD). This ICCFASD session at the 2012 American Bar Association Midyear Meeting is an effort to move research to practice to promote the well-being of individuals affected by prenatal alcohol exposure.

ICCFASD (formerly called the Interagency Coordinating Committee on Fetal Alcohol Syndrome) was created in October 1996, following a recommendation in the Institute of Medicine report *Fetal Alcohol Syndrome: Diagnosis, Epidemiology, Prevention, and Treatment*. This publication led to efforts to form a broad based federal initiative to coordinate activities associated with fetal alcohol syndrome and related health conditions. The mission of ICCFASD is to enhance and increase communication, cooperation, collaboration, and partnerships among disciplines and Federal agencies to address health, education, developmental disabilities, alcohol research, and social services and justice issues that are relevant to disorders related to prenatal alcohol exposure. (More information about ICCFASD, its mission, vision, membership, work groups, and past activities is available at <http://www.niaaa.nih.gov/AboutNIAAA/Interagency/Pages/default.aspx>.)

The ICCFASD Justice Issues Work Group—one of four work groups established by ICCFASD to address special issues and to plan and implement directed activities—is led by Karen J. Bachar, the U. S. Department of Justice representative to ICCFASD. Under Ms. Bachar's leadership, the work group has prioritized its goals to emphasize informing legal and justice professionals about the challenges they face when individuals with an FASD are involved with the justice system. To implement this goal

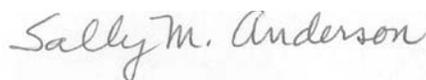
in 2011–2012, the ICCFASD Justice Issues Work Group will host several sessions on FASD at national meetings of legal and justice professionals. In the fall of 2011, the work group presented a multiformatted FASD awareness program at the National Conference of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in National Harbor, MD, October 2011.

The ICCFASD Justice Issues Work Group is now hosting this FASD session at the 2012 American Bar Association Midyear Meeting to increase awareness of FASD in legal and justice communities. We are fortunate to have collaboration on this February 2012 session from OJJDP, U.S. Department of Justice; Minnesota Organization on Fetal Alcohol Syndrome (MOFAS); and the American Bar Association Center on Children and the Law. We have assembled a broad-based panel of biomedical, legal, and justice professionals who have experience with individuals with FASD and their families and know the challenges they face while dealing with the justice system. We appreciate that the American Bar Association has arranged for this program to award CLE credits to the attendees of this session. Together our overall goal is to help attorneys and judges increase their understanding of FASD so that they may better serve clients with FASD and their families.

Thank you for joining us in this important venture.



Kenneth R. Warren, Ph.D.  
Acting Director, National Institute on Alcohol Abuse and Alcoholism (NIAAA),  
National Institutes of Health (NIH)  
Deputy Director, NIAAA, NIH  
Chair, ICCFASD



Sally M. Anderson, Ph.D.  
Coordinator and Executive Secretary  
ICCFASD  
NIAAA, NIH

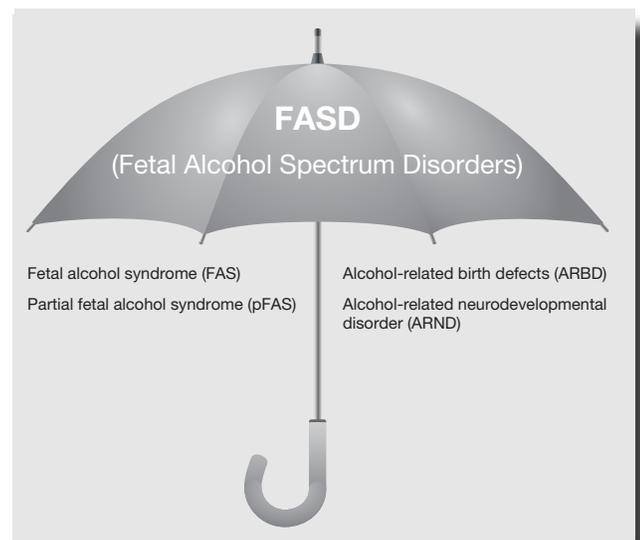
## About FASD and the Justice System

The nondiagnostic umbrella term “fetal alcohol spectrum disorders (FASD)” is now used to characterize the full range of damage from prenatal alcohol exposure, varying from mild to severe and encompassing a broad array of physical defects, cognitive, behavioral, emotional, and adaptive functioning impairments. FASD includes diagnoses such as fetal alcohol syndrome (FAS); partial FAS (pFAS); alcohol-related neurodevelopmental disorder (ARND); and alcohol-related birth defects (ARBD), which are congenital anomalies including malformations and dysplasias of the cardiac, skeletal, renal, ocular, auditory, and other systems. The scope of the disabilities and malformation and severity of impairments vary and depend on such exposure factors as amount of alcohol, frequency of exposure, stage of development when alcohol is present, maternal alcohol metabolism, and probably individual variation in sensitivity. New preliminary data suggest that maternal nutritional status may be a larger factor than previously appreciated.

The negative effects of prenatal alcohol exposure on the developing brain and resulting neurological and/or cognitive, behavioral, emotional, and adaptive functioning disabilities are seen in individuals with FAS, pFAS, and ARND. Significant alcohol exposure early in prenatal development often results in growth retardation and facial anomalies. These physical characteristics have been useful tools for diagnosing FAS and pFAS. Identifying persons who do not have the physical characteristics of FAS but do have neurodevelopmental disorders induced by prenatal alcohol exposure has proven to be much more challenging, with broad implications. Current prevalence estimates for FAS range from 0.5 to 7 cases per 1,000 live births in the United States. About 1 percent of newborns may suffer from FASD, although that may be an underestimate.

As a result of their unique neurodevelopmental disabilities, youth with FASD are at high risk for entering the juvenile justice system. In addition, because standard juvenile justice interventions and sanctions are not designed to accommodate the unique strengths and weaknesses of individuals with FASD-related impairments, recidivism is expected to be higher among this population compared to the general juvenile justice population. In addition, as youth develop, their FASD impairments remain with them, and they will often later appear in an adult criminal court. Many of us have reflected upon the need of FASD awareness in juvenile and criminal courts, but persons

with FASD will appear on all court dockets. Probate court will be visited by families with concerns about adoptions, guardianships, and estates. Marriage dissolution courts may see a marital partner who is suffering from impairments due to an FASD and the parenting of some children may require supervision by the court. A civil docket may need to be concerned with who gets unemployment or not. How well is an injured person with an FASD able to explain how a specific injury relates to his or her ability to work? How well can we expect a person with FASD-associated cognitive impairments to understand and follow through on requirements of release on bond or when he or she is placed on probation? All courts are affected by FASD and all courts need legal and justice professionals who are knowledgeable about FASD.



# Conference Notes

## About this FASD Session

This half-day training event brings together national fetal alcohol spectrum disorders (FASD) medical, law, and justice experts. Exposure to alcohol during pregnancy sometimes causes brain damage resulting in cognitive and behavioral disabilities. FASD exist worldwide, wherever alcohol is consumed. It is estimated that in the United States 1 child in 100 has some level of this disability. Many such individuals are of borderline intelligence, have poor judgment and weak impulse control, lack an understanding of the consequences of their actions, and frequently get in trouble with the law. Effective and ethical representation of these juvenile and adult clients requires recognizing and understanding this disability. Individuals with FASD are found in every ethnic group and in all socioeconomic classes. However, a high percentage of adopted children have FASD, with major implications for both adoptive parents and adoption agencies. FASD is also a factor in decisions to terminate parental rights, and is more common among children in foster care than in the general population. Understanding FASD and where to find resources to help is critical for many legal and justice professionals.

*This complementary continuing legal education program is funded by ICCFASD, OJJDP, MOFAS, and the ABA Center on Children and the Law.*

## About the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice (DOJ)

OJJDP sponsors research and demonstration programs, offers training and technical assistance, and develops and distributes resources. Under the direction of the Office of the Administrator, OJJDP's work is carried out through the following components: a policy office that provides leadership and coordinates national policy on juvenile justice and three program divisions that administer grant programs to strengthen the juvenile justice system and prevent juvenile delinquency and child victimization.

**Office of Policy Development (OPD)** assists the DOJ administrator by providing leadership and direction

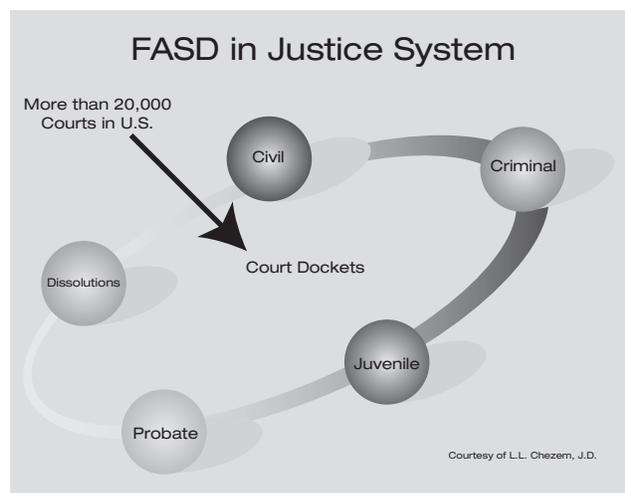
for national juvenile justice policy, research, training, and compliance efforts. OPD advises the administrator on policy and program issues and how OJJDP can best accomplish its mission. OPD also manages OJJDP's planning and information dissemination efforts.

**Child Protection Division (CPD)** administers programs related to crimes against children and children's exposure to violence. CPD provides leadership and funding to promote effective policies and procedures to address the problems of missing and exploited children, abused or neglected children, and children exposed to domestic or community violence.

**Demonstration Program Division (DPD)** provides discretionary funds to public and private agencies, organizations, and individuals to develop and support programs and replicate tested approaches to delinquency prevention, treatment, and control in areas such as mentoring, gangs, chronic juvenile offending, and community-based sanctions. DPD also coordinates efforts with tribal governments to expand and improve tribal juvenile justice systems.

**State Relations and Assistance Division (SRAD)** provides funds to help State and local governments achieve the system improvement goals of the Juvenile Justice and Delinquency Prevention Act, implement delinquency prevention programs, and support initiatives to hold juvenile offenders accountable for their actions.

For more information, visit <http://www.ojjdp.gov>.



## About the Minnesota Organization on Fetal Alcohol Syndrome (MOFAS)

Since 1998, MOFAS has been the hub of hope for families affected by FASD, guiding and supporting families through the FASD journey. MOFAS is the leading voice and resource in Minnesota on FASD, standing up for the rights of the FASD community, providing education and training so FASD is better understood and to ensure that all women know that there is no safe level of alcohol during pregnancy.

The mission of MOFAS is to eliminate disability caused by alcohol consumption during pregnancy and to improve the quality of life for those living with FASD. MOFAS has priorities, which include:

**Training and education.** MOFAS is committed to providing comprehensive and customized FASD prevention and informational trainings to a variety of professional audiences to ensure that FASD is better understood.

**Family engagement.** MOFAS guides and supports families, caregivers, and individuals through the FASD journey by helping them find answers and resolve problems, navigate complex systems, and connect with others who are walking the same path.

**Public awareness.** FASD is preventable, and MOFAS works to ensure that all women are aware of our clear, simple 049 message—Zero Alcohol for Nine Months.

**Advocacy.** MOFAS works to change systems that impact the lives of those living with FASD through community engagement and legislative initiatives.

For more information, visit <http://www.mofas.org>.

## About the ABA Center on Children and the Law

The Center on Children and the Law, a program of the Young Lawyers Division, aims to improve children's lives through advances in law, justice, knowledge, practice, and public policy. The Center on Children and the Law staff have long recognized that many children and families involved in the child welfare system are affected by FASD. There are also implications of FASD in the adult and juvenile justice systems. FASD is unfortunately little understood by child and family legal advocates.

In 1978, the American Bar Association's Young Lawyers Division created the ABA Center on Children and the Law. From modest origins as a small legal resource center focusing exclusively on child abuse and neglect issues, the Center has grown into a full-service technical assistance, training, and research program addressing a broad spectrum of law and court-related topics affecting children. These include child abuse and neglect, adoption, adolescent and infant/toddler health, foster and kinship care, juvenile status offenders, custody and support, guardianship, missing and exploited children, and children's exposure to domestic violence.

The Center's work is mostly funded through grants and contracts from a wide variety of governmental and private sources. The largest grant project is the National Child Welfare Resource Center on Legal and Judicial Issues, a program of the Children's Bureau, U.S. Department of Health and Human Services, Administration for Children and Families.

For more information visit [http://www.americanbar.org/groups/child\\_law.html](http://www.americanbar.org/groups/child_law.html).

## ABA Center on Children and the Law Acknowledgement

The following organizations and individuals generously helped to make this session a reality. The ABA Center on Children and the Law gratefully acknowledges their support on behalf of the individuals, families, and members of the judicial system who will benefit from a greater understanding of fetal alcohol spectrum disorders and their consequences.

Outside Co-Sponsors: The Arc; National Organization on Fetal Alcohol Syndrome (NOFAS); Arc of Louisiana; Association of Criminal Defense Lawyers; Federal Public Defender, Louisiana; Louisiana Public Defender Board; Kerry Cuccia, Esquire; Richard Goorley, Esquire

ABA Co-Sponsors: Commission on Youth at Risk; Health Law Section; Criminal Justice Section; Commission on Disability Rights; Standing Committee on Legal Aid and Indigent Defenders; Section of Individual Rights and Responsibilities; Death Representation Project; and Coalition on Racial and Ethnic Justice.

Special thanks to William Edwards and Kathryn Kelly for helping with efforts to make this project a reality.

## About the Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders (ICCFASD)

The Interagency Coordinating Committee on Fetal Alcohol Syndrome (ICCFAS) was created in October 1996 in response to recommendations of an expert committee of the Institute of Medicine (IOM). The committee report noted that the responsibility for addressing the many issues relevant to fetal alcohol syndrome (FAS) transcends the mission and resources of any single agency or program and recommended that the National Institute on Alcohol Abuse and Alcoholism (NIAAA) chair an effort to coordinate Federal activities on FAS and other disorders associated with prenatal alcohol exposure. In 2004, the committee was renamed: Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders (ICCFASD). The ICCFASD is currently chaired by Dr. Kenneth R. Warren, acting director of NIAAA. The challenge facing the ICCFASD is to improve communication, cooperation, and collaboration among disciplines that address health, education, developmental disability, research, justice, and social service issues relevant to FAS and related disorders caused by prenatal alcohol exposure. The committee meets semiannually and frequently initiates, develops, and hosts research to practice meetings and workshops.

Membership in the ICCFASD includes the following agencies: The U.S. Department of Health and Human Services (HHS): Agency for Healthcare Research and Quality (AHRQ); Centers for Disease Control and Prevention (CDC); Health Resources and Services Administration (HRSA)'s Maternal and Child Health Bureau (MCHB); Indian Health Service (IHS); National Institutes of Health (NIH): National Institute on Alcohol Abuse and Alcoholism (NIAAA), and National Institute of Child Health & Human Development (NICHD); Substance Abuse and Mental Health Services Administration (SAMHSA); U.S. Department of Education (ED), Office of Special Education and Rehabilitative Services (OSERS); and U.S. Department of Justice (DOJ), Office of Juvenile Justice and Delinquency Prevention (OJJDP).

For more information, visit <http://www.niaaa.nih.gov/AboutNIAAA/Interagency/Pages/default.aspx>.

## Conference Planning Committee

Karen J. Bachar, M.A., M.P.H.

### **ICCFASD Justice Issues Work Group**

#### **Leader**

Child Protection Division  
Office of Juvenile Justice and  
Delinquency Prevention  
Office of Justice Programs  
U.S. Department of Justice  
Washington, DC

Sally M. Anderson, Ph.D.

### **ICCFASD Justice Issues Work Group**

National Institute on Alcohol Abuse and Alcoholism  
National Institutes of Health  
Rockville, MD

Hon. Susan Carlson, J.D.

### **ICCFASD Justice Issues Work Group**

Minnesota Organization on Fetal Alcohol Syndrome  
Minneapolis, MN

Eileen B. Bisgard, J.D.

### **ICCFASD Justice Issues Work Group**

Guardian ad Litem  
Seventeenth Judicial District Juvenile Court FASD Project  
Adams County, CO

Howard Davidson, J.D.

Director

### **American Bar Association Center on Children and the Law**

Washington, DC

## ICCFASD Justice Issues Work Group

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U.S. Department of Justice  
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Sally M. Anderson, Ph.D.

National Institute on Alcohol Abuse and Alcoholism  
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FAS Clinical Nurse Specialist  
Spectrum Health  
Grand Rapids, MI

## Friday, February 3, 2012

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### Sheraton New Orleans, Napoleon Ballroom C1—Third Floor

7:30 a.m. **Continental Breakfast**

8:30 a.m. **Welcome: Opening Remarks and Introductions**

- Karen J. Bachar, M.A., M.P.H., leader, Justice Issues Work Group, Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders; and Child Protection Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice
- Melodee Hanes, J.D., Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice

8:35 a.m. **What Are Fetal Alcohol Spectrum Disorders: A Primer for the Legal Community**

**Moderator:** Sally M. Anderson, Ph.D., coordinator and executive secretary, Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders

- Kenneth Lyons Jones, M.D., chief, Division of Dysmorphology/Teratology, Department of Pediatrics, University of California—San Diego School of Medicine
- Julie Kable, Ph.D., clinical child psychologist, Department of Pediatrics, Emory University School of Medicine, Atlanta, GA
- Natalie Novick Brown, Ph.D., forensic psychologist, FASD Experts, Seattle, WA

9:20 a.m. **Questions and Answers**

9:35 a.m. **FASD and Juvenile/Criminal Law**

**Moderator:** Judge Susan Carlson, Juvenile Justice Center and Minnesota Organization on Fetal Alcohol Syndrome, Minneapolis, MN

- William J. Edwards, J.D., deputy public defender, Los Angeles County, CA
- Terence M. Brennen, J.D., senior assistant county attorney, Jefferson County, NY
- Judge Anthony P. Wartnik, legal director, FASD Experts, Seattle, WA

10:15 a.m. **Break**

# Agenda

10:30 a.m.

## **FASD and Child/Family Law**

**Moderator:** Eileen B. Bisgard, J.D., 17th Judicial District Juvenile Court FASD Project, Adams County, CO

- Judge Michael Jeffery, Superior Court, 2nd Judicial District, Barrow, AK
- Judge Peggy Walker, Juvenile Court Judge, Douglas County, GA
- Judge Ernestine Gray, Orleans Parish Juvenile Court, New Orleans, LA

11:00 a.m.

## **FASD and Life Issues**

**Moderator:** Karen J. Bachar, M.A., M.P.H., leader, Justice Issues Work Group, Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders; and Child Protection Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice

- Linda Walinski, R.N., M.A., L.P., adoptive parent, FASD advocate
- Amy Gilbrough, J.D., Social Security disability attorney, Seattle, WA
- Maha Jweied, J.D., senior counsel, U.S. Department of Justice Access to Justice Initiative

11:45 a.m.

## **An ABA Initiative Regarding FASD: The Experience of the Canadian Bar Association's Resolution on FASD and How the ABA Can Improve Legal Representation of and Access to Justice for Individuals with FASD**

- Howard Davidson, J.D., director, American Bar Association Center on Children and the Law, Washington, DC
- Rod Snow, J.D., past president, Canadian Bar Association, Whitehorse, Yukon, Canada

12:05 p.m.

## **Questions and Answers**

12:30 p.m.

## **Adjourn**

# Welcome: Opening Remarks and Introductions

## **Karen J. Bachar, M.A., M.P.H.**

### **Session Moderator**

Ms. Bachar is a juvenile justice specialist with the Office of Juvenile Justice and Delinquency Prevention, where since 2010 she has maintained a portfolio that includes a variety of research, programmatic, and policy-relevant topics related to child protection and juvenile delinquency prevention. Ms. Bachar began her public service career in 2005 with the National Institute of Justice, where she helped to determine priorities for research programs related to violence and victimization. Prior to Federal service, Ms. Bachar was the research director for Violence Prevention Studies at the University of Arizona,

where since 1996 she provided technical assistance to all Violence Against Women Act grantees, served on numerous statewide committees related to the violence prevention priorities of the Governor or state attorney general, published several articles, and gave more than 100 local, national, and international presentations on violence, participatory evaluation, restorative justice, and related topics. Ms. Bachar received a master's degree in program evaluation and research methodology and a master's degree in social and behavioral basis of public health from the University of Arizona.

## **Melodee Hanes, J.D.**

### **Meeting Facilitator**

Ms. Hanes, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, is a recent appointee of the administration, serving as the special counselor to the administrator. She is a graduate of Drake University Law School, and was a deputy county attorney for 20 years in Des Moines, IA, and Billings, MT. Ms. Haynes

primarily prosecuted child abuse, sexual assault, and homicide cases. Additionally, she has served as an adjunct professor of law at Drake University, where she taught Child Abuse Law and Forensic Medicine and Law courses. She has lectured extensively as well as published in this area of expertise.

# 8:35 a.m. What are Fetal Alcohol Spectrum Disorders: A Primer for the Legal Community

## Overview:

Alcohol's ability to cause birth defects was recognized more than three decades ago by U.S. researchers, and it is now considered the leading known environmental teratogen (an agent capable of causing physical birth defects). The nondiagnostic umbrella term "fetal alcohol spectrum disorders" (FASD) is now used to characterize the full range of prenatal alcohol damage varying from mild to severe and encompassing a broad array of physical defects and cognitive, behavioral, and emotional disabilities. The diagnostic categories that are currently considered to be in the FASD spectrum are fetal alcohol syndrome (FAS), partial (pFAS), alcohol-related neurodevelopmental disorder (ARND), and alcohol-related birth defects (ARBD).

In this introductory section of our continuing legal education session, three nationally recognized experts on the biomedical and mental health aspects of FASD will review what is known about the damaging effects of prenatal alcohol exposure on the brains of developing children and resulting cognitive, behavioral, and emotional impairments. The goal of this introduction is to provide the meeting attendees with sufficient medical information to understand the disabilities of persons with FASD and put those disabilities in the context of legal and justice issues.

## **Sally M. Anderson, Ph.D.**

### **Session Moderator**

Since fall of 2004, Dr. Anderson, who is the coordinator and executive secretary for the Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders (ICCFASD), has been a special assistant in the Office of the Director of the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health, which sponsors the ICCFASD. She leads the activities of that Federal committee that was formed to increase communication, cooperation, and collaboration among Federal agencies with a special interest in FASD. Dr. Anderson joined the NIAAA staff

in the fall of 2002, served as deputy director of the Division of Basic Research in fiscal year (FY) 2003 and as the interim acting director of the newly created Division of Neuroscience and Behavior in FY2004. For three decades, prior to joining NIAAA, she was a biomedical research scientist whose main focus was examining the relationship between variation in brain chemistry that occurred naturally as well as from trauma and toxic insults and subsequent behavioral effects. Dr. Anderson's current focus is on bringing results of research to practitioners.

## Presenter Bios:

### **Kenneth Lyons Jones, M.D.**

Dr. Jones is the chief of the Division of Dysmorphology/Teratology at the Department of Pediatrics at University of California–San Diego (UCSD) School of Medicine. He has been involved in research, teaching, and clinical work for several decades. Dr. Jones' research has focused on the clinical delineation of birth defects, mechanisms of normal and abnormal morphogenesis, and the recognition of new human teratogens. He has authored over 200 research articles in peer-reviewed scientific journals as well as several books, and is the author of *Smith's Recognizable Patterns of Human Malformation*. He is

considered to be the father of FAS since he was one of two doctors at the University of Washington who first identified FAS in the United States in 1973. As chief of the UCSD Medical Center's Division of Dysmorphology/Teratology, Dr. Jones is in clinical service throughout the year, and trains fellows in dysmorphology. Teaching goes on virtually every day as he sees patients in clinics and serves as a consultant on hospital inpatient services throughout San Diego County and for numerous biomedical research projects on FASD in the United States and internationally.

## Fetal Alcohol Syndrome/Fetal Alcohol Spectrum Disorders: Diagnosis and Historical Perspective

### Talking Points:

- A. Although fetal alcohol syndrome (FAS) was defined in 1973, it has been known for many centuries that prenatal exposure to alcohol causes serious damage to the developing fetus.
- B. FAS is a specific pattern of abnormalities that includes abnormalities of growth; intellectual performance; facial abnormalities including short palpebral fissures, a smooth philtrum, and a thin upper lip; and abnormalities of joint development.
- C. The brain is the developing structure that is most severely affected by alcohol and most of the features we see are secondary to the effect of alcohol on brain development.
- D. It is now known that prenatal exposure to alcohol results in a wide spectrum of defects. At the most severe end of the spectrum is FAS. At the more mild end of the spectrum are structurally normal individuals with neurobehavioral problems. This spectrum of defects is referred to as fetal alcohol spectrum disorders (FASD).

### Notes:

## Julie Kable, Ph.D.

Dr. Kable is a clinical child psychologist working for the Department of Pediatrics, Emory University School of Medicine in Atlanta, GA. She is a pediatric psychologist with more than 17 years of experience working with children with a history of prenatal alcohol exposure and other neurodevelopmental disabilities. Dr. Kable is the vice president of the Fetal Alcohol Spectrum Disorders Study Group, a professional organization dedicated to scientific inquiry into the etiology, identification, and treatment of individuals with FASD. Her work has involved both research and the clinical care of children

with FASD. Dr. Kable is the assistant director of the Fetal Alcohol Syndrome and Drug Exposure Clinic at the Marcus Autism Center, and has been instrumental in the development of innovative interventions for children with FASD that focus on improving self-regulation, early math skills, and adaptive living skills. In addition to her intervention research, she has participated in several prospective longitudinal studies on the impact of various teratogens on development throughout the lifespan. Dr. Kable has also served on expert panels related to the identification and care of individuals with FASD.

## Neurodevelopmental Consequences of Prenatal Alcohol Exposure (PAE) Throughout the Lifespan

### Talking Points:

### Notes:

#### A. Domains of Impact

1. Neurodevelopmental Outcomes
2. Neurobehavioral or Behavioral Regulation (BR)
3. Adaptive Behavior Impairments

#### B. Interventions and "The Burden of Care"

1. Understanding the Scope of Treatment Needs
2. Universal Protective Factors
3. Reactivity to Intervention Services
4. "Burden of Care"

## Natalie Novick Brown, Ph.D.

Dr. Brown, is a forensic psychologist and a FASD expert, is a licensed psychologist in Washington State, Florida, South Carolina, and Louisiana. She obtained her doctorate in clinical psychology from the University of Washington—Seattle, which included an 18-month internship in forensic evaluation. After completing a postdoctoral fellowship in FASD with Dr. Ann Streissguth, a pioneer researcher in the field, Dr. Brown focused much of her clinical practice on children and adults with FASD. She is certified to conduct evaluations and provide treatment by Washington State's Division of Developmental Disabilities and is a State-certified sex offender treatment provider, which required a year

of specialized postdoctoral training. Dr. Brown is the founding program director of FASD Experts (<http://www.fasdexperts.co>), a group of multidisciplinary professionals who conduct forensic FASD evaluations throughout the United States. She is a faculty member in the Department of Medicine at the University of Washington, where she consults with the Fetal Alcohol and Drug Unit on secondary disabilities and conducts research on suggestibility and FASD. Dr. Brown has published numerous articles and book chapters on FASD and conducted trainings for criminal justice and mental health professionals nationally and internationally.

## Alcohol-Related Birth Disorders and the Law

### Talking Points:

- A. Relevance of FASD in the Criminal Justice System
  
- B. Prevalence in Forensic Context
  
- C. Review of the Screening Process
  
- D. Multidisciplinary Assessment Process
  
- E. Some Recent Case Outcomes in FASD Cases

### Notes:

***See pages 34-36 for ancillary materials***

# 9:35 a.m. FASD and Juvenile/Criminal Law

## Overview:

FASD is characterized by brain damage from prenatal alcohol exposure that makes affected individuals particularly susceptible to getting into trouble with the law, but the disorder is vastly misunderstood and/or not recognized by professionals in the system. The brain damage may consist of a constellation of neurocognitive deficits in memory, attention, language, motor skills, social skills, academic achievement, and cognition.

This population presents challenges throughout the judicial process—from questioning through arrest and during hearings, sentencing, and detention/confinement. The disability may impact the individual's competency and/or culpability and may require different measures to reduce the chances of recidivism and future criminal behavior. This session will explore the issues that professionals in the criminal/juvenile justice system face in responding effectively to individuals with FASD.

## **Susan Shepard Carlson, J.D.**

### **Session Moderator**

Ms. Carlson, a judicial officer with the Hennepin County District Court in Minneapolis, MN, served as Minnesota's First Lady from 1991 to 1999. Since 1995, she has been a semiretired Hennepin County District Court judicial officer in juvenile court. Her experience in juvenile court led to Minnesota's efforts in combating the harmful effects of prenatal alcohol exposure.

Ms. Carlson launched an initiative in 1997 to promote education about and prevention of FASD and cochaired

the Minnesota Governor's Taskforce on FAS, resulting in almost \$7 million annual funding for FASD prevention and intervention services. She gives speeches and does trainings on FASD and its social implications, and is the author of *Tools for Success*, an FASD training guide for juvenile justice professionals. Ms. Carlson founded and is the president of the Minnesota Organization on Fetal Alcohol Syndrome (MOFAS).

## Presenter Bios:

### **William J. Edwards, J.D.**

Mr. Edwards, deputy public defender, Los Angeles County Public Defender's Office, is currently assigned to the mental health court. Mr. Edwards has authored numerous publications on the subject of people with intellectual disabilities and developmental disabilities in the criminal justice system. One of his publications was cited by the U.S. Supreme Court in *Atkins v. Virginia*, 536 U.S. 304

(2002). From 2006 to 2010, he served two terms with the President's Committee for People with Intellectual Disabilities. He also served two terms with the American Bar Association Commission on Mental and Physical Disabilities Law and currently serves on the National Advisory Board for the National Organization on Fetal Alcohol Syndrome (NOFAS).

### Talking Points:

A. If there is any evidence that the mother uses drugs (prescribed or street drugs), then the attorney representing the child must ask for a competent evaluation by experts trained in the area of FAS to determine if the child had been exposed to alcohol in the uterus.

B. Growing up without benefit of being diagnosed with FAS and without obvious disability, youth receive multiple diagnoses and exhibit behavior problems and disrupted school history.

C. States need to include FAS in the definition of developmental disability, so that more juveniles get the services they need.

D. One of the important areas of assessment in diagnosing FAS is looking at the client's adaptive behavior.

### Notes:

## Terence M. Brennen, J.D.

Mr. Brennen is senior assistant county attorney, Jefferson County, NY, and has been prosecuting all juvenile delinquency cases in that county since 2008. He also advises and represents Jefferson County Departments of Probation and the Department of Social Services in cases of child placement and extension of placement. He earned a B.S. from the University of Baltimore (1999) and a juris doctorate degree from the University of Florida, Levin College of Law (2003), and is admitted to practice in New York State courts and U.S. District Court for the Northern District of New York. Prior to working as

a prosecutor, he served as a law guardian and then in the Jefferson County Public Defender's Office for 2 years. He currently sits on the Advisory Committee of the Child Advocacy Center of Northern New York, and is a member of the Juvenile Justice Committee, American Bar Association Criminal Justice Section. After handling numerous cases involving children with FASD and other neurological impairments, he has been focusing his efforts on applying the current science to community delinquency prevention and making appropriate services available to families dealing with these issues.

### Talking Points:

- A. Juvenile prosecutions should balance community protection with providing the services needed to improve the juvenile's behavior.
  
- B. To understand the juvenile's behavior, various phases of prosecution can help spot FASD red flags and determine an informed approach to helping the juvenile, his or her family, and the community through appropriate disposition of cases.
  
- C. Victims and witnesses with an FASD need access to the court whenever possible.
  
- D. A coordinated approach by community agencies is more likely to keep the juvenile from a restrictive placement.

### Notes:

## Judge Anthony P. Wartnik, J.D.

Judge Wartnik, the legal director of FASD Experts, has served as a trial judge for 34 years. He spent almost 25 years on the Superior Court in Seattle, retiring in 2005 as the senior judge. He served as dean emeritus of The Washington Judicial College and chaired the Judicial College Board of Trustees and the Washington Supreme

Court's Education Committee. Judge Wartnik also chaired a taskforce to establish protocols for determining the competency of youth with organic brain damage and the Governor's Advisory Panel on Fetal Alcohol Syndrome/Fetal Alcohol Effect.

### Talking Points:

### Notes:

- A. Prosecutors need to recognize the red flags suggesting the presence of FASD in their victim and other witnesses and the issues that this condition in prosecution witnesses presents for them and for the trier of fact.
  
- B. In the same respect, defense counsel need to be knowledgeable about the red flags that suggest that the client may have FASD and the issues that will have to be considered and raised with the court by way of appropriate motion.
  
- C. Defense counsel also need to look for signs that other witnesses may have FASD and evaluate the problems and issues that may impact the presentation of a defense due to the presence of this condition.
  
- D. Judges need to understand FASD and the problems presented for the court, and must be prepared to anticipate the type of issues and motions that they are likely going to be asked to deal with.

# 10:30 a.m. FASD and Child/Family Law

## Overview:

FASD can have a double impact in cases involving children and families. Rates of FASD appear to be much higher for children involved in child welfare than in the general population. At the same time, parents may also have FASD. Understanding their disabilities may make it possible to develop effective treatment plans in cases where reunification otherwise seems impossible. This presentation will address these issues as well as child custody, visitation issues, and expectations of parents who are in recovery while parenting children with difficult behaviors resulting from prenatal exposure.

## **Eileen B. Bisgard, J.D.**

### **Session Moderator**

Ms. Bisgard is project director for the FASD project of the 17th Judicial District Juvenile Court in Adams County, CO, where children in the child welfare and delinquency courts receive FASD screening, diagnosis, and intervention. She received her B.S. with highest distinction from Colorado State University in 1966 and her J.D. from the University of Denver in 1977. She represented the best interests of children as a guardian ad litem in Colorado courts for over 25 years and taught the Child Advocacy Clinical Program at the University of Denver School of Law. After Ms.

Bisgard and her husband adopted children with FASD, she began to realize the impact that this disorder had on many children whom she and her students represented. From that point on, she became an advocate and trainer in the field of FASD. She chairs Colorado's FASD Commission, serves on the Justice Work Group of the Interagency Coordinating Committee on FASD, and was a founder of NOFAS Colorado. Ms. Bisgard provides training in FASD throughout Colorado and at national conferences, and has been qualified as an expert witness in FASD.

## Presenter Bios:

### **Judge Michael Jeffery, J.D.**

After graduating from Yale Law School, Judge Jeffery, Superior Court, 2nd Judicial District, Barrow, AK, worked a year with legal services in Boston, MA, almost died in a car crash, spent almost 5 years in India, and then moved to Barrow to start a legal services office in this farthest north part of the Nation. He was sworn in as the community's first Superior Court Judge with the Alaska Court System in December 1982, and still holds this position. His duties include the criminal and civil cases of a general jurisdiction State court judge, including child welfare and juvenile delinquency matters. Beginning

in 1990, Judge Jeffery began to realize the deep significance of FASD to the justice system. After many conferences and self-education efforts, he continued trying to adapt. He has served on statewide FASD and children's law committees, including representing the Court on the Alaska FASD Partnership. He has presented in Alaska, California, and Vancouver, BC, on aspects of FASD, and he has been published on this topic. Judge Jeffery is married and has three adult children. He is active in the community through Rotary, his faith community, choir, and as a drummer in an Eskimo dance group.

### Talking Points:

A. Working in an Environment With Limited Services

### Notes:

B. Changing How the Judge "Does Business"

***See pages 39-40 for ancillary materials***

## Judge Peggy Walker, J.D., M.Ed.

Judge Walker has served as a fulltime juvenile court judge of Douglas County, GA, since 1998. She has a bachelor of arts degree from Georgia State College and University and a master's degree in education from Georgia State University. She graduated with honors from Georgia State University's College of Law, where she earned her juris doctorate degree and served as managing editor of the law review. She has served as adjunct professor at Georgia State, teaching juvenile law. She completed a Harris Mid-Career Fellowship with ZERO TO THREE and became a senior fellow at Emory University, editing a judicial manual for family preservation. Judge Walker also has served on the Board of Trustees for the National Council of Juvenile and Family Court Judges for the past 6 years, and now serves as secretary in preparation for presidency of this organization in 2014. She also is chair of the Georgia Commission on Family

Violence, and is now appointed to the Child Fatality Review Panel for the State of Georgia. Her areas of expertise are promoting resilience in children, recognizing and serving drug-endangered children, and serving children exposed to domestic violence.

Under her leadership, the Juvenile Court of Douglas County has two problem-solving courts: a Family Drug Treatment Program and a ZERO TO THREE Court Teams project. These problem-solving courts serve at-risk children under the age of 5 to achieve timely permanency and positive outcomes. Other community activities include service projects with the Rotary Club of Douglas County and Habitat for Humanity. She was recently honored with a 2011 Community Leadership Award from S.H.A.R.E. HOUSE in recognition of her leadership in the field of domestic violence.

### Talking Points:

A. Prevalence of Substance Abuse Issues in Child Welfare

B. Services Available for Children

C. What the Judge Can Do

D. Considering the "Burden of Care"

### Notes:

***See pages 41-42 for ancillary materials***

## Judge Ernestine Gray, J.D.

Judge Gray was first elected to the Orleans Parish Juvenile Court, Section "A," on November 6, 1984, to fill an unexpired term. She was reelected in July 1986, October 1994, and again in November 2002. A native of South Carolina, Judge Gray received her early education in the public schools of Orangeburg, SC. She graduated from Wilkinson High School in 1964, attended Spelman College in Atlanta, GA, and the Louisiana State University School of Law, where she received her juris doctorate degree in 1976. Judge Gray was admitted to the Louisiana Bar on October 2, 1976. Before Judge Gray's election to the bench, she was engaged in the private practice of law. She also worked with the Baton Rouge Legal Aid Society, where she handled hundreds of family law cases. In November 1977, she was hired by Louisiana Attorney General William J. Guste, Jr., to work in the Antitrust Unit. In December 1979, she became

a trial attorney with the Equal Employment Opportunity Commission, a position which she held until she resigned to become a candidate for judge. Active in civic and community affairs, Judge Gray is a member of numerous professional and civic organizations, and has served on many boards and committees, many of which seek to improve the lives of children and families. She is the past president of the National Court Appointed Special Advocates, National Council of Juvenile and Family Court Judges, and the YWCA Board of Directors, and is currently secretary of the Louisiana Council of Juvenile and Family Court Judges. Judge Gray has received national recognition for her work, and is in great demand as a presenter and speaker on the local, State, and national levels. Judge Gray is married to attorney James A. Gray II. They have two children, Senator Cheryl Gray Evans and James A. Gray III, and two grandchildren.

### Talking Points:

A. Parents Who are Affected Themselves

B. FASD Issues in Custody and Family Law

C. Coordinating Dependency and Delinquency Cases

### Notes:

# 11:00 a.m. FASD and Life Issues

## Overview:

The majority of children with fetal alcohol spectrum disorders (FASD) end up in the foster care system or are adopted due to the high needs of their birth parents and of children who have been exposed to alcohol during the mother's pregnancy. Many of these children have alcohol-induced brain damage that goes unidentified or misdiagnosed. Families who foster or adopt children with FASD provide stable, structured environments for these children and are key to providing them with the support they need to lead productive lives. Two key issues families may need to focus on when raising children with FASD relate to enhancing stability for the children as they grow older and keeping them from getting in trouble with the law. This panel focuses on the experiences of a family who adopted five siblings with FASD. It shares what is involved in establishing eligibility for Social Security disability benefits and highlights the importance of having informed legal representation for children with FASD who get into trouble with the law, thereby ensuring that their special needs related to legal representation are met. Given that American Indians have some of the highest rates of FASD in the Nation, this presentation will also include a discussion of alternative sentencing practices that American Indian communities and Tribal courts employ.

## **Karen J. Bachar, M.A., M.P.H.**

### **Session Moderator**

Ms. Bachar is a juvenile justice specialist with the Office of Juvenile Justice and Delinquency Prevention, where since 2010 she has maintained a portfolio that includes a variety of research, programmatic, and policy-relevant topics related to child protection and juvenile delinquency prevention. Ms. Bachar began her public service career in 2005 with the National Institute of Justice, where she helped to determine priorities for research programs related to violence and victimization. Prior to Federal service, Ms. Bachar was the research director for Violence Prevention Studies at the University of Arizona, where since

1996 she provided technical assistance to all Violence Against Women Act grantees, served on numerous statewide committees related to the violence prevention priorities of the Governor or State Attorney General, published several articles, and gave more than 100 local, national, and international presentations on violence, participatory evaluation, restorative justice, and related topics. Ms. Bachar received a master's degree in program evaluation and research methodology and a master's degree in social and behavioral basis of public health from the University of Arizona.

## Presenter Bios:

### **Linda Walinski, R.N., M.A., L.P.**

Linda Walinski, an FASD advocate, is the adoptive parent of a sibling group of five children. Four are diagnosed with FASD/ARND. She's been involved with two older brothers of her children who've been in and out of juvenile detention, prison, and jail for most of their lives. She is a licensed psychologist and a registered nurse. She has a private practice in East Central Minnesota serving many children, adolescents, and their families who live with FASD. Ms. Walinski is on the Board of

Directors for the Minnesota Association for Children's Mental Health. She is on the Governing Board for the Minnesota Department of Human Services Child and Adolescent Behavioral Health Services. She is a presenter for the Minnesota Organization on Fetal Alcohol Syndrome in the parent training series teaching about disruptive/explosive behaviors. She testifies before the Minnesota legislature on various topics related to FASD and laws being considered.

## Living with FASD: Family Impact

### Talking Points:

A. Family impact: Understanding the everyday impact of brain damage on the life of a person and family is essential to being helpful in interventions with problems.

B. Problems increasing risk of corrections involvement: Identifying the factors that lead to the likelihood of corrections involvement will reduce the risk.

C. Solutions to reduce risk of corrections involvement: Factors that meet the needs of the brain-damaged person and family will prevent corrections involvement and keep children in their families where they have the best chance of health and happiness.

### Notes:

***See pages 43-44 for ancillary materials***

## Amy Gilbrough J.D.

Ms. Gilbrough, a Social Security disability attorney, is a partner at Douglas Drachler McKee & Gilbrough in her hometown of Seattle, WA, where she focuses on Social Security disability issues, representing individuals in administrative and Federal court appeals. She is a member of the Washington State Bar Association and the

King County Bar Association and a sustaining member of the National Organization for Social Security Claims Representatives. Ms. Gilbrough regularly presents on new issues in Social Security practice at the Circuit 9 Conference, a yearly conference limited to Social Security attorneys who have been practicing more than 5 years.

### FASD and Eligibility for Benefits

#### Talking Points:

A. Diagnosis is not sufficient: How to establish eligibility for disability benefits under the Social Security Act.

#### Notes:

B. The four steps of the social security administrative process: What applicants can expect.

*See pages 45-46 for ancillary materials*

## Maha Jweied, J.D., LL.M.

Ms. Jweied is senior counsel with the U.S. Department of Justice's Access to Justice Initiative, where she coordinates the international component of the initiative's mission of exchanging information with foreign ministries of justice and judicial systems on respective efforts to improve access to justice. She also works on a range of issues, including juvenile justice, strengthening defender services in Indian Country, and improving access to counsel for unaccompanied immigrant children. Prior to joining the Department, she was a senior attorney-advisor at the U.S. Commission on Civil Rights, where she worked on such topics as school desegregation and voting rights. Previously, Ms. Jweied was a litigation associate at the

law firm of Arent Fox, where she served as cocounsel on a juvenile death penalty case. She also spent time at Mizan Law Group for Human Rights, a human rights nongovernmental organization located in Amman, Jordan, where she handled refugee and child custody matters. Ms. Jweied served as a law clerk to Judge Mohamed Shahabuddeen of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in The Hague, Netherlands. She received her juris doctorate degree from Columbia Law School and a masters of law (LL.M.) in public international law from the London School of Economics. Ms. Jweied is a member of the New York State and District of Columbia bars.

## The Right to Counsel and FASD: Overview of National and Tribal Issues

### Talking Points:

- A. Youth with FASD who engage in delinquent behavior are susceptible to waiving their rights in criminal proceedings. One of these important rights is the right to counsel. This makes safeguards like requiring youth to consult with an attorney before waiver all the more necessary.
- B. While it is true that some studies find that juveniles face worse outcomes when represented by counsel, it is likely that this phenomenon is a consequence of the usual problems that plague the juvenile defense world, such as assigning defenders without relevant experience to juvenile clients. Thus, identifying and implementing best practices in juvenile defense is paramount.
- C. But do we need a paradigm shift? Delinquent youth with FASD can benefit from alternative criminal justice models to help them understand and reform their behavior. Much can be learned from the traditional justice practices that many Indian Tribes have revived.

### Notes:

# 11:45 a.m. An American Bar Association (ABA) Initiative on FASD

## Overview:

One of the purposes of this program is to begin the process of educating the U.S. legal profession on issues related to FASD. To further that goal and to help improve the legal and judicial system's response to individuals with FASD, the ABA Commission on Youth at Risk plans to present a policy resolution on this topic to the ABA's House of Delegates in August 2012. One inspiration for this was a resolution on the topic approved by the CBA. Both the CBA policy and a draft of the proposed ABA policy will be discussed.

## Talking Points:

## Notes:

A. The Experience of the Canadian Bar Association's  
(CBA's) Resolution on FASD

B. How Can the ABA Improve Legal Representation of and  
Access to Justice for Individuals With FASD

## Presenter Bios:

### **Howard Davidson, J.D.**

Mr. Davidson is the director of the ABA Center on Children and the Law in Washington, DC, and has been actively involved with the legal aspects of child protection for more than 37 years. He has directed the Center, leading a 20-person staff in work on child welfare law and policy improvement, since its 1978 establishment. Prior to his tenure at the ABA, Mr. Davidson directed a Children's Law Project in the 1970s at Greater Boston Legal Services. He's served as chair of the U.S. Advisory Board on Child Abuse and Neglect, is a founding board member of the National Center for Missing and Exploited

Children, and serves on the boards of ECPAT-USA, a national group focused on law and policy reform related to child trafficking and sexual exploitation, and the National Foster Care Coalition. He is a member of the Maryland Children's Justice Act Committee, and was named by the mayor of Philadelphia to a Community Oversight Board that helps guide improvements in that city's child protection system. He has authored many legal articles and book chapters related to child maltreatment and the law. He has also organized 14 biannual ABA National Conferences on Children and the Law.

### Talking Points:

A. Review the draft ABA resolution on FASD that will be considered during the next annual meeting of the ABA.

### Notes:

B. Discuss the availability of legal resources on FASD-related issues.

***See page 47 for ancillary materials***

## **Rod Snow, J.D., LL.B., LL.M.**

Mr. Snow, past president of the Canadian Bar Association (CBA) in Whitehorse, Yukon Territory, is a native of Nova Scotia. He received his bachelor of laws (LL.B.) from Dalhousie Law School before moving west for his LL.M. He currently practices in the Whitehorse office of Davis LLP as a Corporate/Commercial/Mergers & Acquisitions solicitor, with an emphasis on mining, aboriginal, and environmental law. Mr. Snow made legal history when he became the first president of the CBA from northern Canada in the summer of 2010. He is a frequent speaker and writer on aboriginal and mining

law matters. He has lectured on aboriginal, mining, and environmental law topics to a variety of groups, including the CBA aboriginal section, CLE Society of British Columbia, Rocky Mountain Mineral Law Foundation, Canadian Institute, and the International Bar Association's environmental law committee. In addition to serving as president of the CBA, he served as an executive member and president of the CBA's Yukon branch, a member of the CBA National Board of Directors, and as a member of the CBA Communications Committee.

### Talking Point:

- A. How a resolution on FASD was enacted during his tenure as President of the CBA

### Notes:

# Fetal Alcohol Spectrum Disorders (FASD) and Justice Issues Resources

## Substance Abuse and Mental Health Administration (SAMHSA) Resources

SAMHSA, within the U.S. Department of Health and Human Services (HHS), is the lead Federal agency addressing substance abuse and mental health services. SAMHSA's mission is to build resilience and facilitate recovery for people with or at risk for substance abuse and mental illness. SAMHSA has a large program on fetal alcohol spectrum disorders (FASD). The SAMHSA FASD Center for Excellence was launched in 2001. Congress authorized the Center in Section 519D of the Children's Health Act of 2000, which included six mandates (Section b of 42 USC 290bb-25d or Public Law 106-310). The mandates focus on exploring innovative service delivery strategies; developing comprehensive systems of care for FASD prevention and treatment; training service system staff, families, and individuals with FASD; and preventing alcohol use among women of childbearing age.

1. The SAMHSA FASD Center for Excellence has developed a curriculum for training juvenile justice professionals.

### *Tools for Success Curriculum: Working with Youth and FASD in the Juvenile Justice System*

Designed for training juvenile justice professionals in the recognition and treatment of FASD in juvenile offenders, this curriculum includes seven modules with slides, activities, and camera-ready handouts; two facilitator manuals; and a CD. This training curriculum is based on the 2002 Minnesota Organization on Fetal Alcohol Syndrome (MOFAS) Resource Guide: *Tools for Success: Working with Youth with Fetal Alcohol Syndrome and Effects in the Juvenile Justice System*, which was funded by the National Institute on Alcohol Abuse and Alcoholism and developed by Susan Carlson and colleagues at MOFAS.

<http://store.samhsa.gov/product/SMA07-4291>

2. The SAMHSA FASD Center for Excellence has developed several fact sheets about FASD and the legal and justice systems.

Copies of the following publications can be downloaded from the center's Web site at <http://www.fascenter.samhsa.gov/grabGo/factSheets.cfm> or ordered from the SAMHSA Store.

### *Fetal Alcohol Spectrum Disorders and the Criminal Justice System*

This fact sheet outlines the reasons why some people with FASD get into trouble with the law, the issues that may arise when they do, and the ways the criminal justice system can address their needs.

### *Fetal Alcohol Spectrum Disorders and Juvenile Justice: How Professionals Can Make a Difference*

This fact sheet discusses the challenges faced by youth with FASD during encounters with the juvenile justice system and describes the means by which attorneys can effectively advocate for their clients who have or may have FASD. It also offers suggestions to juvenile justice professionals on how they can help their clients get fair treatment and appropriate services.

### *Fetal Alcohol Spectrum Disorders: When Your Child Faces the Juvenile Justice System*

This fact sheet discusses the challenges and outlines the rights of a child during encounters with the juvenile justice system. It provides parents with tips on how to help their child and ensure the system meets the child's needs.

3. The SAMHSA FASD Center for Excellence maintains a report of FASD-related legislation introduced by the States.

This report covers the following categories: prevention of FASD (public information, awareness, and research); treatment of women or individuals affected by FASD; funding for FASD prevention or treatment; certification, licensing, mandatory training, and reporting requirements for professionals; criminalization of women for alcohol use during pregnancy; and involuntary commitment to treatment of women when there is evidence of alcohol use during pregnancy. The most recent FASD Center Legislative Report can be accessed from the State page

at <http://www.fascenter.samhsa.gov/statesystemsofcare/statesystemsofcare.cfm>.

The SAMHSA FASD Center State pages also include information from the most recent legislative update, as delivered to SAMHSA.

## U.S. Department of Education Publications on Juvenile Justice and Students with Disabilities

In the late 1990s, the Office of Juvenile Justice and Delinquency Prevention at the U.S. Department of Justice and the Office of Special Education and Rehabilitative Services at the U.S. Department of Education collaborated on several projects to design, implement, and evaluate comprehensive educational programs for students with disabilities, including FASD, who are at risk for involvement with juvenile justice systems. Several white papers and reports from this collaboration can be found at the Project Forum Web site of the National Association of State Directors of Special Education. Although the project was finalized November 2011, the Web site (<http://www.projectforum.org/index.cfm>) houses more than 100 documents on various critical policy issues in the field of special education that will remain relevant for years to come. Below are links to publications relevant to juvenile justice.

2005, Eve Muller, *The Juvenile Justice System and Students with Disabilities*

<http://www.projectforum.org/docs/The%20Juvenile%20Justice%20System%20and%20Youths%20with%20Disabilities.pdf>

2006, Eve Muller, *Juvenile Justice and Students with Disabilities: Profiles of Several States Initiatives*

<http://www.nasdse.org/Portals/0/Documents/Download%20Publications/DFR-0650.pdf>

2006, Eve Muller, *Juvenile Justice and Students with Disabilities: State Infrastructure and Initiatives*

<http://www.projectforum.org/docs/JuvenileJusticeandSWD-StateInfrastructureandInitiatives.pdf>

2011, Eve Muller, *Reentry Programs for Students with Disabilities in the Juvenile Justice System: Four State Approaches*

<http://www.projectforum.org/docs/ReentryProgsforSWDintheJuvenileJusticeSystem-FourStateApproaches.pdf>

2005, Terry L. Jackson and Eve Muller, *Foster Care and Children with Disabilities*

[http://www.projectforum.org/docs/foster\\_care.pdf](http://www.projectforum.org/docs/foster_care.pdf)

## National Organization on Fetal Alcohol Syndrome (NOFAS) Resources

NOFAS is the leading voice and resource of the FASD community. Founded in 1990, NOFAS is the only international nonprofit organization committed solely to FASD primary prevention, advocacy, and support. NOFAS seeks to create a global community free of alcohol-exposed pregnancies and a society supportive of individuals already living with FASD. NOFAS effectively increases public awareness and mobilizes grassroots action in diverse communities and represents the interests of persons with FASD and their caregivers as the liaison to researchers and policymakers. By ensuring that FASD is broadly recognized as a developmental disability, NOFAS strives to reduce the stigma and improve the quality of life for affected individuals and families.

1. NOFAS has developed several FASD fact sheets for a variety of audiences. To obtain FASD factsheets and other resources, please visit NOFAS at <http://www.nofas.org/resource/factsheet.aspx>.

The fact sheet *FASD: What the Justice System Should Know* is available at <http://www.nofas.org/MediaFiles/PDFs/factsheets/justice.pdf>.

2. NOFAS maintains a resources directory, with an interactive map that allows users to search for resources by State or by ZIP code. The directory provides contact information for community resources and family support groups, diagnosis of fetal alcohol syndrome, prevention programs, treatment services for individuals affected by FASD, and the State's FASD coordinator.

The NOFAS National & State Resource Directory is available at <http://www.nofas.org/resource/directory.aspx>.

## University of Washington FASD Legal Issues Resource Center

The FASD Legal Issues Resource Center is a joint project of the University of Washington Schools of Law and Medicine. It is a part of the Fetal Alcohol and Drug Unit (FADU), Department of Psychiatry and Behavioral Sciences. It was founded in 2001 by Kathryn Kelly and colleagues at the School of Law and FADU.

The Legal Issues Resource Center works with attorneys, judges, and family members in dealing with the wide range of issues that arise in both criminal cases (Juvenile and Adult Court) and in efforts to obtain services or benefits for individuals with FASD. The Resource Center provides assistance and information both nationally and internationally on services for which those with FASD can be eligible, FASD diagnostic teams and other resources in the individual's local community, the evaluation of the disability as a mitigating factor in a capital or other criminal case, and the fashioning of an appropriate sentence or other disposition for such a defendant. Ms. Kelly has organized and when requested continues to organize continuing legal education (CLE) trainings on FASD/legal issues and FASD/addiction throughout the United States.

The Resource Center has also developed a Legal Issues Web site, which includes, together with other material, summaries of both State and Federal cases where FASD was a factor. In order to provide wider distribution of the materials (case law, articles, and resources), the FASD Legal Issues Web site is now found on the Web site of the ABA Center on Children and the Law. The URL is <http://depts.washington.edu/fadu/resources/fas-and-the-law>.

FASD legal issues include knowing waiver of rights, false confessions, competency to stand trial, diminished capacity, the vulnerability of a victim with FASD, credibility of a victim's court testimony, sexual offending, sentencing, ineffective assistance of counsel, and loss of parental rights. In practice, the greatest impact of FASD is in plea bargaining.

The project director of the Resource Center, Ms. Kelly,

previously worked as both a State and Federal probation officer and as an investigator/mitigation specialist for the Federal Public Defender. She has, over the past 6 years, lectured on FASD/legal issues and FASD/addiction in Canada, the United Kingdom, Northern Ireland, Iceland, Norway, Sweden, Poland, Spain, Portugal, New Zealand, and Australia.

The Resource Center does not provide legal representation, but works with attorneys who do. This project is grant and contract supported and provides services without charge.

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# Contents of USB Port Flash Drive for Attendees

The following material can be found on the FASD USB drive that is provided for all session attendees.

## Continuing Legal Education (CLE) Materials Folder

### Introductory Material

- Alcohol-Related Birth Disorder and the Law Meeting Agenda
- Meeting Facilitator: Melodee Hanes Biography
- ABA Center on Children and the Law's FASD Legal Issues Web Site
- How the FASD Legal Issues Resource Center Can Help You

### I. What are Fetal Alcohol Spectrum Disorders: A Primer for the Legal Community

- Overview and Moderator: Sally Anderson Biography
- FASD Fact Sheets
- Kenneth Lyons Jones Biography
- Fetal Alcohol Syndrome and Fetal Alcohol Spectrum Disorders: A Brief History
- Julie Kable Biography
- Neurodevelopmental Consequences of Prenatal Alcohol Exposure Throughout the Lifespan
- Natalie Novick Brown Biography
- A Proposed Model Standard for Forensic Assessment of Fetal Alcohol Spectrum Disorders
- Suggestibility and Fetal Alcohol Spectrum Disorders: I'll Tell You Anything You Want to Hear
- FASD and the Law: Bibliography
- FASD Experts Screening Questionnaire
- Fetal Alcohol Spectrum Disorders and the Criminal Justice System

### II. FASD and Juvenile/Adult Criminal Law

- Overview and Moderator: Susan Calson Biography
- William J. Edwards Biography
- Adaptive Behavior and Fetal Alcohol Spectrum Disorders

- Neurocognitive and Neurobehavioral Impairments in Individuals with FASD: Recognition and Assessment
- Terence M. Brennen Biography
- Prosecuting Juveniles with Fetal Alcohol Spectrum Disorders
- Anthony P. Wartnik Biography
- The Invisible Havoc of Prenatal Alcohol Damage
- Case Example #6: Colton Harris-Moore, "The Barefoot Bandit"—Age 20
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### III. FASD and Child/Family Law

- Overview and Moderator: Eileen Bisgard Biography
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- Suggestions for More User-Friendly Court Hearings
- Case Scenarios—Jane, Mary, and Joseph
- Peggy Walker Biography
- Scenario from Dependency Court
- Ernestine Gray Biography
- Identification of Children with FASDs in the Child Welfare System

### IV. FASD and Life Issues

- Overview and Moderator: Karen J. Bachar Biography
- Linda Walinski Biography
- Living with FASD: Family Impact
- Amy Gilbrough Biography
- Eligibility for Social Security Benefits—Fetal Alcohol Spectrum Disorders (FASD)
- Social Security Administration—Childhood Disability Evaluation Form
- Maha Jweied Biography
- Extracts from Expert Working Group Report: International Perspectives on Indigent Defense
- "Waiver of the Right to Counsel" from *Children and the Law: An Interdisciplinary Approach with Cases, Materials, and Comments* (forthcoming Oxford University Press 2012)

**V. An ABA Initiative Regarding FASD: The Experience of the Canadian Bar Association’s Resolution on FASD and How the ABA Can Improve Legal Representation of, and Access to Justice for, Individuals with FASD**

- Howard Davidson Biography
- FASD in the Criminal Justice System—Resolution of the Canadian Bar Association 10-02-A
- Rod Snow Biography
- Draft (for Discussion Purposes Only) American Bar Association Policy Resolution on FASD

***Journal of Psychiatry & Law Folder***

- Copyright Notice
- Winter 2010, Volume 38, No. 4  
Special Issue: Fetal Alcohol Syndrome
- Spring 2011, Volume 39, No. 1  
Special Issue: Fetal Alcohol Spectrum Disorders (Part II)

**Other Supportive Material Folder  
(Related to this FASD Session)**

- About the Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders (ICCFASD)
- About the Office of Juvenile Justice and Delinquency Prevention (OJJDP)
- About the Minnesota Organization on Fetal Alcohol Syndrome (MOFAS)
- About the ABA Center on Children and the Law
- The Case of Two Brothers

**FASD Resources Folder**

- Centers for Disease Control and Prevention
- FASD and Justice Issues Resources
- National Institute of Alcohol Abuse and Alcoholism
- National Organization on Fetal Alcohol Syndrome (NOFAS)
- Substance Abuse and Mental Health Services Administration (SAMHSA)
- U.S. Department of Education Publications on Juvenile Justice and Students with Disabilities
- University of Washington FASD Legal Issues Resource Center

WHAT YOU NEED TO KNOW

## FETAL ALCOHOL SPECTRUM DISORDERS AND THE CRIMINAL JUSTICE SYSTEM

*There was a part of me that was angry, but I also knew that the police department and the justice system were uninformed about how vulnerable and easily swayed people [with an FASD] are.*

—Mother whose son with an FASD was wrongly convicted of a crime



### FETAL ALCOHOL SPECTRUM DISORDERS

FASD is an umbrella term describing the range of effects that can occur in an individual prenatally exposed to alcohol. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. FASD is not a clinical diagnosis. It refers to conditions such as fetal alcohol syndrome (FAS), alcohol-related neurodevelopmental disorder (ARND), and alcohol-related birth defects (ARBD).

### REASONS PEOPLE WITH AN FASD GET IN TROUBLE WITH THE LAW

Studies show that people with an FASD have specific types of brain damage that may cause them to get involved in criminal activity. These individuals show:

- Lack of impulse control and trouble thinking of future consequences of current behavior
- Difficulty planning, connecting cause and effect, empathizing, taking responsibility, delaying gratification, or making good judgments
- Tendency toward explosive episodes
- Vulnerability to peer pressure (e.g., may commit a crime to please their friends).

Persons with an FASD may break the law without intending to do so. For example, they may touch people when it is unwanted and think they are just being friendly. They may take things that do not belong to them because they like them.

People can take advantage of individuals with an FASD. They may talk them into committing crimes. Females with an FASD may be involved with destructive men for food, shelter, attention, or drugs.<sup>3</sup> These relationships put them at risk for arrest.

### NUMBER OF PEOPLE IN THE CRIMINAL JUSTICE SYSTEM WITH AN FASD

It is difficult to know how many people in the criminal justice system have an FASD. Data are limited, and populations vary by State. In addition, few systems screen for FASD or conduct a full diagnostic assessment. Researchers

at the University of Washington estimate that 35 percent of individuals with an FASD have been in jail or prison at some point. They also estimate that more than half the people with an FASD have been in trouble with the law.<sup>1</sup>

The number of people with an FASD in the criminal justice system is assumed to be high. In the United States, approximately 3 million people are in jail or prison. Based on estimates of FASD in the general population, as many as 28,036 inmates could have an FASD.<sup>2</sup>

### ISSUES RELATED TO FASD IN THE CRIMINAL JUSTICE SYSTEM

Laws vary by State and case law is binding only in the State or circuit where the case was decided. Only Supreme Court cases are binding nationally. However, several general issues can arise for attorneys and judges dealing with persons with an FASD:

- **Competency to stand trial**, which is the ability to understand the charges, participate in a trial, and assist in one's own defense. Persons with an FASD may not understand the charges against them. They may find criminal proceedings confusing. They may have problems with time management and come to court late or not at all. Several cases address competency and FASD.<sup>4-6</sup>
- **Validity of expert testimony** regarding diagnosis. Questions arise about the types of exams that are sufficient to determine a diagnosis of an FASD. For example, what if maternal alcohol use during pregnancy is unknown?<sup>7,8</sup>
- **Diminished capacity**. Capacity refers to the ability to understand right and wrong and to understand the



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
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Fetal Alcohol Spectrum Disorders  
Center for Excellence

likely outcome at the time of the act. Some crimes require evidence of intent for the person to be found guilty. Defense lawyers may argue that persons with an FASD cannot form the intent to commit crimes because they cannot foresee the likely outcome.<sup>9</sup>

- **Effect of FASD on sentencing.** Lawyers have appealed the death penalty by arguing that FASD was not introduced as evidence to support a lesser sentence.<sup>10-12</sup>
- **Ability to testify.** Persons with an FASD are highly suggestible and may not be able to give accurate testimony. They are prone to making false confessions.<sup>13</sup>
- **Recidivism.** Offenses do not appear to get worse, such as from auto theft to robbery. However, persons with an FASD tend to repeat crimes of opportunity, such as shoplifting. Their thought process seems to be, "I want. I take."<sup>14</sup>

### WAYS THE CRIMINAL JUSTICE SYSTEM CAN ADDRESS THE NEEDS OF PERSONS WITH AN FASD

Because of their disabilities, persons with an FASD may repeat the same mistakes many times. Thus, support to improve functioning might be more appropriate than rehabilitation. This approach focuses on education, job training, and family support, rather than punishment. Medication may also help. In some cases, adults with an FASD who had multiple jail stints for petty, impulsive acts avoided jail when given appropriate medical treatment.<sup>3</sup>

Understanding how persons with an FASD respond to certain situations can help. Due to sensory issues, they can become overwhelmed by bright lights, causing them to panic and run from the police or resist arrest. Because they are eager to please,

many unknowingly waive their rights by signing forms that they do not understand. In addition, they may consent to being searched or take responsibility for the crimes of others to win favor.

Sentencing is also an issue. Some persons with an FASD respond well to the intense structure and rules of prison. Others are vulnerable to attack, exploitation, and manipulation by other inmates. Some do not understand prison rules and break them. Because corrections officers may not understand FASD, they may punish inmates with an FASD for failing to follow directions. It is critical to offer training on FASD to all corrections staff so they can learn strategies to respond to inmates with an FASD.

Once on probation, persons with an FASD may have trouble meeting probation requirements. They can have problems managing time, recalling appointments, and making plans. Therefore, they may need a greater level of supervision. A relative or support person may need to be assigned to follow up on probation requirements. Highly structured probation that includes supervised living, life skills education, and drug and alcohol treatment can be very effective.<sup>15</sup> In fact, supervision can help prevent crime. Many clients with an FASD can remain crime free with intense supervision.<sup>14</sup>

Other effective alternatives to prison include halfway houses, group home treatment centers, or electronic monitoring at home. In such cases, emphasis must be placed on creating a well-structured environment with predictable rules and consequences. In these settings, persons with an FASD can continue to participate in the community but their behavior will be more closely monitored.<sup>16</sup>

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**Stop and think. If you're pregnant, don't drink.**

**For more information, visit [fasdcenter.samhsa.gov](http://fasdcenter.samhsa.gov) or call 866-STOPFAS.**




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Forensic Assessment of Fetal Alcohol Spectrum Disorders

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<b>FASD EXPERTS SCREENING QUESTIONNAIRE</b>	✓
<b>OFFENSE CONDUCT</b>	
Illogical actions with high detection risk	
“Simple” plan (focus is only on the objective)	
No real exit strategy	
Impulsive and aggressive over-reaction to unforeseen events (“fight or flight”)	
More sophisticated/experienced co-defendants	
<b>ARREST CONDUCT</b>	
Immediately or easily waives rights	
Over-confesses (suggestible)	
Brags about prowess or takes full responsibility if co-defendants	
Emotionally detached from crime (shows little remorse or guilt)	
Behavioral regression (breaks down in tears, infantile behavior)	
<b>INTERVIEW WITH CLIENT</b>	
Short stature (not always)	
Unstable lifestyle	
Immature and naïve	
Eager to please or stubbornly resists the obvious	
Can’t provide coherent, detailed narrative	
Can’t concentrate	
Doesn’t add much	
Doesn’t seem to remember what you tell him/her from appointment to appointment	
<b>PRIOR LEGAL HISTORY</b>	
Easily led by more sophisticated peers	
Multiple low-grade offenses in teen years, often with co-defendants	
Lots of stealing	
Illogical offenses (e.g., stealing something with little value)	
Oblivious to risk	
Impulsive, opportunistic crimes	
Probation violations	
<b>LIFE HISTORY</b>	
Mom abuses alcohol/drugs	
Involvement with child welfare	
Adoption/foster or relative placements/juvenile commitment	
Special Education / learning disabilities in school	
Multiple diagnoses in childhood (especially ADD/ADHD)	
Rule-breaking behaviors (lies, cheats, steals, fights)	
Disrupted education	
Substance abuse	
Unstable adult lifestyle (improves with structure)	

## FASD and Juvenile/Criminal Law

### Judge Anthony P. Wartnik

File Name: Case Example\_6\_CHarris\_Moore\_Wartnik

#### **Case Example #6 - Colton Harris-Moore "The Barefoot Bandit" – Age 20**

Colton was diagnosed with FASD Alcohol Related Neurodevelopmental Disorder (ARND) in September, 2011 following his current arrest in the Bahamas by Dr. Richard Adler of FASD Experts and was sentenced in state court to the bottom of Washington State's "Standard Range" by the same judge who had presided over his earlier juvenile cases, including 2007 when he fled a juvenile lock-up and remained at large until early 2011. The offenses that he was just sentenced on were consolidated from three counties which originally totaled 30 charges, and involved burglary (mostly to obtain food, a roof over his head, and other necessities of life), and thefts including grocery stores, a boat, and a number of airplanes which he ultimately crashed. He still faces sentencing on federal charges.

Colton's first conviction was at age 12 for possession of stolen property. His first burglaries involved breaking into the homes of schoolmate neighbors to steal food, some while "barefoot" because mom spent her SSI money on beer and cigarettes rather than for food. Over the next three years he was convicted of theft, burglary, malicious mischief and assault. While on his 2007 to 2011 run, he left \$100 at an animal shelter in Oregon. As a child growing up on one of the San Juan Islands, which are rural and heavily wooded, Colton frequently fled his mother's wrath to the woods where he spent a lot of his time with the animals which he dearly loved.

Colton's mother was and still is a mean drunk who consumed alcohol excessively with her pregnancy with Colton. She

frequently told him she wished he were dead or that she was going to kill him. She was reported numerous times by neighbors and by Colton for abuse and neglect, starting around age 4, but CPS failed to follow up, ironically due to mom's refusal to cooperate, except to remove him from the family home once for three days at age 10. At sentencing, he showed a great deal of remorse, both in a letter to the judge and in his sentencing allocution, something that is very difficult for people with FASD to express.

Dr. Adler found that Colton does not have Antisocial Personality Disorder but that he suffers from: being abused and from an impoverished and chaotic home setting; was exposed to alcohol prenatally and has Alcohol-Related Neurodevelopmental Disorder (ARND); has lifelong neurocognitive impairments which were never diagnosed or assessed comprehensively, putting him at risk for his pattern of juvenile delinquent behavior; from being taken out of special education classes prematurely at age 6, having been so placed at age 3; being harmed by the violence of his mother and her numerous partners toward her and Colton; and, from depression, possibly suicidal, with waxing and waning PTSD following his first plane crash and leading to further criminal activity.

Dr. Adler concluded that Colton's deficits and problems can be effectively remediated, that the instant circumstances reflect an acute identity crisis of a young adult life, that he has favorable prognosis with appropriate interventions put in place, and that he is low risk of recidivism.

Additional information includes:

1. An island neighbor woman said that Colton is an amazing kid with some problems that should have been taken care of when he was a lot younger but he was somehow overlooked and that, given his circumstances growing up, "I think its amazing that he's done no worse than he has." She was concerned about what prison would do to him.
2. His maternal aunt places blame on officials for failing to take him away from her sister (Colton's mother).
3. One of the investigating Island County detectives said that considering that Colton had provided authorities with a treasure trove of evidence, "He's not some criminal mastermind . . . A criminal mastermind doesn't leave us this (kind of evidence)."
4. At age 3 months Colton had a surgical repair of right-sided inguinal and umbilical hernias.
5. At 21 months of age, the pediatrician report "a lot of acting out behavior and temper tantrums while in the office and seems to challenge his father when father is home."
6. At age 2 years, he used only the most rudimentary language, suggesting developmental delay and speech was still a concern to mother at age 3 years.
7. Colton's father and most of the mother's partners had numerous criminal convictions (upwards of 30 convictions for several of them), many of which involved drug use and or sales.
8. Mother's reliability as a historian was questionable, particularly her drinking during pregnancy and Colton's emotional and mental development.
9. Colton has an older, by 20 years, half-brother who, according to mother, suffers from a head injury.
10. Mother reports that Colton required a lot of attention as a baby with long standing problems with sleep onset up to 2-3 hours each night and that, as an older child, he was impulsive.
11. Colton's I.Q. scores for various domains ranged from 65 to 102 with a total score of 81/84 and a percentile rating of 10/14.
12. On GSS-2 Suggestibility testing, Colton's Immediate Recall was impaired and his tendency to yield to pressure from authority is twice that of normal 11-12 year olds, and greater than a comparison group of adults which results are consistent with neuropsychological impairment.
13. By age 12 to 13 years of age, CPS records reflect an increasingly trouble child with oppositional behavior and even aggressiveness and that mother was refusing to engage in chemical dependency treatment as recommended by DSHS. CPS also reported "constant meltdowns pretty much every day."

**FASD and Child/Family Law****Presenter: Judge Michael Jeffery****File Name: FASD ABA Midyear Meeting 3 scenarios\_MJeffery**

**Jane.** *Jane's case demonstrates the limits of service delivery when a client turns 18 and insists on leaving an available structured placement.* Jane was involved in the child welfare system, and the FASD evaluation arranged by the social worker yielded a diagnosis of the FASD "static encephalopathy-alcohol exposed." Her behaviors were quite difficult for care providers to deal with and she lived in institutional placements for extended periods of time. As she approached her 18<sup>th</sup> birthday, she was placed in a therapeutic foster home. The foster parents were working with her to finish her high school diploma. But she insisted that she leave the custody of the social workers as soon as she turned 18. When all persuasive efforts failed, the state moved to close the case at the 18<sup>th</sup> birthday. Custody remained open only long enough to have a conservatorship established for her.

Tragically, she was sexually assaulted while in Anchorage shortly after her release from custody. She returned to her birth mother in a North Slope village, but had problems in the village and became suicidal. She was immediately transferred to the Fairbanks Memorial Hospital for care. When the hospital released her, she was provided temporary housing, and she received transition to adulthood services in Fairbanks from a specialist at the Office of Children's Services. But she insisted on going to locations frequented by alcohol and drug abusers and spending time there. Only after she was again

physically assaulted did she begin to realize that she needed more assistance than the conservatorship. A temporary guardian is now in place (pending the permanent guardianship hearing) with the ability to find adequate housing and require Jane to take advantage of the placement.

**Mary.** *Mary is someone for whom the structure provided by a loving adoptive family has given her a reasonable chance to live a full life as an adult.* I had handled the termination of parental rights proceeding of Mary's birth parents some twenty years ago. One part of the evidence was videotaped testimony of a child psychologist about the many complicated problems Mary would face as she grew up because of her exposure to alcohol during her mother's pregnancy, and how the birth parents would be unable to cope with them because of their own instability. I granted the termination of parental rights. Mary was very blessed to have a Barrow couple file an adoption petition within a few months. I insisted that the couple watch the videotaped expert testimony before I would grant the adoption. The couple watched the video and proceeded; I granted the adoption. I have noticed that Mary has never been in the Barrow court<sup>1</sup> and has had appropriate employment. She appears to

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<sup>1</sup> She has had traffic tickets and a minor misdemeanor in South Central Alaska.

be doing fine, with the structure that had been provided by the adoptive parents and her employment.

**Joseph.** *This young adult was diagnosed with FASD as a youth and his behaviors prevented an adoptive placement. He was not able to cope with living in a community setting and his social workers placed him in a residential psychiatric facility for treatment that lasted about one year. He now has chosen to live in Anchorage and he has just started residing in an assisted living program that will be available for almost the next three years.* Joseph was one of several children in a highly dysfunctional family that generated a child welfare case resulting in termination of parental rights. He was six years old at the time. Both parents were severely alcoholic. When he was 11, Joseph was diagnosed with the FASD “static encephalopathy-alcohol exposed.” His behaviors prevented a permanent adoptive placement. The social workers had to place him in a residential psychiatric program in the rural hub community of Bethel in Southwest Alaska, which had staff that understood his FASD condition and worked well with their native clients. He completed the program in approximately one year.

As he approached his 18<sup>th</sup> birthday, professionals obtained the services of a court-appointed conservator for him. Joseph wanted to move to Anchorage and, with assistance from the transition to adult life specialist in the Office of Children’s Services, he was accepted to an assisted living program where he can live with some structure until his 21st birthday. With the income he has coming in from Social Security and native corporation dividends, along

with the structure of the assisted living program, he has an ideal situation for beginning his life as an adult. His case is now being transferred to Anchorage, but I had the gratification of seeing these arrangements put in place for him.

## FASD and Child/Family Law

**Presenter: Hon. Peggy Walker**

*File Name: Scenario from Dependency Court - brief\_PWalker*

### Scenario from Dependency Court:

**Respondent Father** begging for food or money. Van with bullet holes, allegedly hit while child was aboard and because of a drug deal gone wrong. Arrested for outstanding warrant. Assessed with alcohol, cocaine history. Homeless.

**Respondent Mother**, age 40, incarcerated at time of removal. Assessed with alcohol, cocaine, marijuana history. Initially denied alcohol use. Prior history of treatment. Estranged from her adult children and her mother. Homeless. Jobless. Seven months pregnant.

**Child:** nineteen months, teeth decayed, severe diaper rash, developmentally delayed. Assessed by Part C and received physical therapy, speech therapy. Had hearing loss and asthma. Hearing loss resolved with medical treatment. Began play therapy.

**Court:** Adjudicated the child deprived, ordered a parental fitness assessment and substance abuse treatment for Respondents, and incorporated a case plan for reunification. Ordered the child assessed by Babies Can't Wait (Part C services).

Court Appointed Special Advocate (**CASA**): requested a dental exam of the child.

**Second child born** five months into case. Mother tested positive for cocaine at birth. Babies Can't Wait initial assessment noted

some minimal concerns to be reevaluated at three months of age. Removed and adjudicated.

The Marcus Institute did an **evaluation** and Respondent Mother admitted to alcohol use during pregnancy with both children.

**Older child** diagnosed with Reactive Airway Disease, Developmental Speech-Language Disorder, and Delay in Development. Referred to a developmental pediatric ophthalmologist and an orthopedic physician. Continued Occupational therapy and speech therapy.

**Younger child** diagnosed with Partial Fetal Alcohol Syndrome, Sensory Integration Disorder, and Failure to Thrive. Received Occupational therapy, speech therapy weekly, saw a feeding specialist twice a month.

**Foster mother:** often had five or more appointments each week for the children.

Respondent mother completed inpatient treatment, secured housing and a job. Pregnant again. Minimal parenting skills or understanding of her children's special needs. Visitation was expanded to unsupervised until an incident of inadequate supervision led to suspension of expanded visits. With birth of third child and other issues, case moved to termination of parental rights.

**Parents admitted that they could not meet the “burden of care”** for the two special needs children. Surrenders were executed.

**Lessons learned:**

Denial of the use of alcohol in pregnancy is common. Alcohol is commonly used with other drugs of choice. The length of addiction of Respondent Mother and her age may be indicators of exposure for both children. The daily use of alcohol by Respondent Father was not considered and was a red flag since they were together. Other red flags were estrangement from family, failed relationships, homelessness, poor employment history, and criminal history for substance abuse and theft. The severity of chronic abuse and neglect of the older child who was so obviously developmentally delayed was an indicator of prenatal exposure. Evaluations by pediatricians and Part C providers missed some key indicators of exposure and some diagnoses while using the experts in the field yielded better results and more thorough recommendations leading to appropriate services. The medical, physical, developmental, social and emotional needs of children with prenatal exposure to alcohol and other drugs are often overwhelming to even the most skilled caregiver. Recovering parents need a strong support system to parent their developmentally disabled children and to sustain their sobriety.

## Living with FASD: Family Impact

**Presenter:** Linda Walinski R.N., M.A., L.P.

*For full text of this presentation please reference the USB drive for this CLE event*

I will discuss three issues critical to moving our society from criminalizing symptoms of brain damage to providing helpful interventions necessary for the well being of individuals, families, and all of us in society affected by FASD. The issues are; understanding family impact, review of problems children with FASD face, and the need for broad based solutions.

### Family Impact

Families are essential to the development of the person and the survival of the species. There may not be a more important societal priority than to support families. Families living with FASD are fragile, vulnerable, stressed, blamed, criticized, misunderstood, rejected, and isolated. In many cases, families are unable to survive. Children are removed from those whom they love and trust and placed in institutions with environments that exacerbate their symptoms. More damage is done.

My husband and I adopted five children 13 ½ years ago. They are from a sibling group of eight. The older brothers already were in prison. Four of the five have been diagnosed with FASD. Their brain damage and symptoms are all different, with some commonalities. We have been connected to many other parents raising children with FASD. We both work with individuals and families with FASD.

**Examples of experiences to be provided and are included on the USB drive.**

### Problems

The current, widespread problems leading to the criminalization of the symptoms of

brain damage can be viewed in a number of ways. *This disability is usually invisible.*

When we see the physical manifestations of brain damage in conditions such as Down's syndrome, we are compassionate and yearn to be kind and helpful. When the brain damage is invisible, we incorrectly assume that the "behavior" (physical action) is a purposeful choice and blame and punish the person. This response by adults whose brains are working is harmful, not helpful.

The next issue is *lack of information*. FASD is commonly not recognized and is unknown, misunderstood, and minimized. One child psychologist said, "It's not a real diagnosis." As a result, incomplete, inaccurate assessments lead to misdiagnosis. Harmful, not helpful interventions are applied by schools, medical, mental health, neighbors, friends, families, caregivers, social services, law enforcement, and corrections. We would never punish a child who's in a wheelchair for not walking like others. Yet, we punish children with symptoms of brain damage for not behaving like others.

Another issue is *the language we use, which influences our attitudes*. A "behavior problem" is perceived differently from a "symptom of brain damage." Saying a child *won't* is different than saying he or she *can't*. Accusing a person of lying is far different from understanding that what is said is confabulation. Confabulation, which happens when a person fills in memory gaps with fabrications that he or she believes to be facts, is a typical symptom of brain damage and deterioration, as occurs in dementia.

## Solutions

Our son Richard was invited to give closing remarks at our FASD Association annual meeting recently. Richard's message can guide us. Here are his words:

"Hi. My name is Richard Walinski. I am 21 years old. I love to hunt, fish, be outside, and spend time with family and friends. I also live with fetal alcohol spectrum disorder every day, not only my own but that of my brothers and sisters. I have seven biological siblings, most of whom are affected by fetal alcohol spectrum disorders. I've been adopted for 13 years by the two most wonderful people in the world and am the first male in my biological family not to be in prison or have had anything to do with the corrections facilities.

Here are some of the supports that have made my life possible:

- First and foremost my family—my parents are the two most wonderful, competent, pleasant, honest, hardworking, loving, understanding, and forgiving people. My grandparents are also the most wonderful, helpful, sweet, caring, loving people. My oldest sister Vicki—I couldn't ask for a better sister. She is my favorite sister, but she can't tell anyone she fought very hard to help us get away from our abusive home so we could be adopted.
- Also I have been blessed with the most understanding and competent teachers. The transitions program and vocational rehab I have been blessed with has given me the opportunity to have hands-on job training skills through them.
- My brilliant psychiatrist who has helped me be more stable and functional with my medications.
- My children's mental health social worker has been beside me every step of the way to becoming a more independent adult.
- My PCAs, who have taught me a lot of living skills, community skills, and have been there for fun, too.
- My doctor who has cared for me for the past 13 years and has gone above and beyond to make sure I was healthy and safe.
- My foster parents who cared for me when I felt unwanted.
- Dr. Chang, who diagnosed me and has helped me learn about how to improve my life living with FASD.
- MOFAS, which has given me the opportunity to share my story with so many people so that I could help people living with or taking care of someone living with fetal alcohol spectrum disorder, as well as teaching me more about my disability so I could rise up and be the best I could be.
- My therapist who has worked with me on accepting my disability so I could be who I am today.
- Last but not least, all of you who have come together to support all of us with disabilities as a community who loves, cares about, and sacrifices time to make a difference. Because of you, all of this is and will be possible; because of you, I am standing here talking to you instead of being in prison; because of you, I am as successful as I am And *because of us*, I believe that we will make a difference.

For full text of this talk, please reference the USB drive given as part of this continuing legal education event.

## **ELIGIBILITY FOR SOCIAL SECURITY BENEFITS FETAL ALCOHOL SPECTRUM DISORDERS (FASD)**

Amy Gilbrough

### **I. INTRODUCTION**

Establishing eligibility for Social Security disability benefits may provide medical and cash benefits offering greater support and stability for children and adults with fetal alcohol spectrum disorders (FASD). These materials provide a brief overview of the benefits available, criteria for disability, and the application process.

The presence of FASD does not automatically create entitlement to Social Security benefits. The evidence must show that the claimant meets the definition of disability as well as other criteria. Adults or children may meet the criteria for disability based on FASD or based on FASD in combination with other physical or mental impairments. There are distinct definitions of disability for children under the age of 18 and for adults. In addition to establishing disability, individuals must meet financial or other criteria for each program. Part II of these materials addresses the different benefit types and disability and financial criteria for each program. Part III discusses the application process, which is the same for each program.

### **II. PROGRAMS AVAILABLE**

- **Benefits for Children (Age 18 and Under): Supplemental Security Income Disability Benefits**
  - **Definition of Disability (Age 18 and Under)**
  - **Establishing That an Impairment Exists**

**Example 1:** If a child has significantly subaverage general intellectual functioning with deficits in adaptive functioning; a valid verbal performance or full scale IQ of 60 through 70; and a physical or other mental impairment imposing additional and significant limitation of function, then the child meets the criteria of mental listing 112.05D, Mental Retardation (20 C.F.R. § Pt. 404, Subpt. P., App. 1, Part B, § 112.05D). Section 112.05 may apply where a child has FASD because many of these children will have the requisite deficits in adaptive functioning and low IQ scores.

**Example 2:** If the child has an autistic disorder characterized by qualitative deficits in the development of reciprocal social interaction; qualitative deficits in the development of verbal and nonverbal communication skills and in imaginative activity; and a markedly restricted repertoire of activities or interests, then the child meets the criteria of listing 112.10A, Autistic Disorder and Other Pervasive Development Disorders (20 C.F.R. § Pt. 404, Subpt. P., App. 1, Part B, § 112.10A). Even if the child has not been diagnosed with an autistic disorder, an adjudicator may find that the child's FASD equals the criteria of this listing (20 C.F.R. § 416.926).

For full text of this talk, please reference the USB drive given as part of this continuing legal education event.

[What follows is a list of other topics covered in Parts A and B. For full text of this talk, please reference the USB drive.]

- **Functional Equivalence**
- **Financial Criteria**
- **Benefits Available**
  
- **Benefits for Disabled Adults: Disability Insurance Benefits, Supplemental Security Income (SSI) Benefits and Disabled Adult Child Benefits**
  
- **Definition of Disability (age 18 and over)**
  
- **Substantial Gainful Activity (SGA)**
  - **Severe Impairment**
  - **Listing of Impairments**
  - **Residual Functional Capacity**
  - **Past Relevant Work**
  - **Other Work**
  
- **Eligibility Criteria**
  - **Disability Insurance Benefits (DIB)**
  - **Supplemental Security Income Disability Benefits**
  - **Disabled Adult Child Benefits (DAC)**

### **III. THE CLAIMS PROCESS**

- **Application**
- **Reconsideration**
- **Hearing**
- **Appeals Council Review**
- **Federal Court Review**

### **IV. CONCLUSION**

As a general matter, the very problems that make an adult with FASD a good candidate for disability will make the Social Security process difficult for such an individual to navigate. For example, problems with executive functioning, coping with stress, and dealing with frustration may lead to a failure to begin or complete this process. Individuals with FASD should consider finding an attorney.

Session: An ABA Initiative Regarding FASD

Presenter: Howard Davidson

File Name: FASD Resolution Draft 1-5-12\_Davidson

## DRAFT for Discussion Purposes Only

### AMERICAN BAR ASSOCIATION COMMISSION ON YOUTH AT RISK

Proposed Resolution for Consideration at the August 2012 Meeting  
of the ABA House of Delegates (1/5/12 **Third Draft**)

RESOLVED, that the American Bar Association urges lawyers and judges, as well as bar associations and law school clinical programs, to support training that includes law school, law enforcement, and legal/judicial education curricula on enhanced awareness of the child and adult disability of Fetal Alcohol Spectrum Disorders (FASD) and its impact on individuals in the child welfare, juvenile justice, and adult criminal justice systems, and that they work with medical, mental health, and FASD disability experts to promote:

- a) Skilled civil, juvenile, and criminal legal representation, and other types of advocacy, for persons with FASD;
- b) Enhancement of legal counsel accessibility to persons with FASD expertise for screening and assessing those who may be suspected of having FASD;
- c) Addressing the over-representation of FASD-affected persons in foster care, juvenile delinquency cases, adult criminal proceedings, and correctional facilities; and
- d) Applying FASD as a factor in the mitigation of juvenile and criminal sentencing, including where the death penalty is an option, and consideration of alternatives to incarceration that reduce recidivism.

FURTHER RESOLVED, that the American Bar Association urges that state and federal laws and policies reflect the serious effects of prenatal alcohol exposure by:

- a) Including persons diagnosed with FASD, or suffering from the effects of prenatal alcohol exposure, within the statutory definition of developmental disabilities, and providing eligibility for disability benefits to those with these conditions so as to better enhance the lives of persons living with FASD, including youth in and transitioning from foster care and juvenile justice systems;
- b) Enhancing (i) identification and diagnosis of, and early intervention and comprehensive services and treatment for, persons with FASD, (ii) support for their families and caregivers, and (iii) targeted victim assistance for adult and child crime victims who have these conditions, especially such youth who may be vulnerable to sexual assault;
- c) Improving, pursuant to the federal Child Abuse Prevention and Treatment Act, the screening and referral process to help ensure that infants and toddlers with these conditions are identified and served at the earliest opportunity; and
- d) Increasing public awareness, especially for women of childbearing age, about the importance of preventing alcohol-related birth disorders, including education for women/mothers with substance abuse problems to prevent additional alcohol-exposed pregnancies.

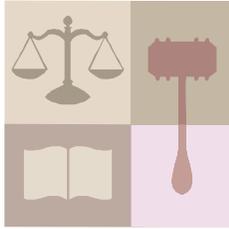




# National Organization on Fetal Alcohol Syndrome

Helping children & families by fighting the leading known cause of mental retardation & birth defects

## FASD: What the Justice System Should Know



**Alcohol abuse and pregnancy are common among women in the criminal justice system.**

- ♦ An estimated 70 to 85 percent of inmates need substance abuse treatment.
- ♦ Approximately one in four women is either pregnant or postpartum when she enters prison.

The Justice System can help to prevent Fetal Alcohol Spectrum Disorders (FASD) among the incarcerated population by offering educational workshops on FASD and addiction counseling for women inmates.

**Behavioral impairments due to FASD make affected individuals more likely to get in trouble with the law**

- ♦ Sixty-one percent of adolescents and 58% of adults with FASD have been in legal trouble.
- ♦ Thirty-five percent of those with FASD over the age of 12 had been incarcerated at some point in their lives.

**Many individuals with FASD will never socially mature beyond the level of 6 year-old child.**

Other factors that may place persons with FASD at risk for involvement with the criminal justice system include:

- ♦ Difficulties in impulse control;
- ♦ Intellectual deficits;
- ♦ Poor judgment skills; and
- ♦ A history of abuse and/or neglect.



**Problems individuals with FASD may encounter when dealing with police include:**

- ♦ Being persuaded by the police (even inadvertently) to admit to crimes which they did not commit;
- ♦ Taking responsibility for crimes committed by others in order to win the favor of more sophisticated companions or to please the police;
- ♦ Consenting to searches of themselves or their possessions in circumstances in which non-disabled sophisticated individuals would not;
- ♦ Panicking during encounters with the police, running away or resisting arrest;
- ♦ Saying that they understand their legal rights when in fact they do not; and
- ♦ Making potentially incriminating statements about how serious any misconduct may have been.

**The Justice System can help FASD-affected individuals by:**

- ♦ Educating judges, lawyers and parole officers about the characteristics and behaviors of persons with FASD;
- ♦ Establishing screening, analysis, and treatment procedures for those with FASD who enter the juvenile justice or adult criminal justice system;
- ♦ Establishing/utilizing alternative sentencing programs for persons with FASD who have committed non-violent offenses; and
- ♦ Offering referral information for the children of incarcerated women who may have been prenatally exposed to alcohol.

Initiative of the  
Justice Issues Work Group  
Interagency Coordinating Committee on  
Fetal Alcohol Spectrum Disorders (ICCFASD)

In Collaboration with

U.S. Department of Justice, Office of Justice Programs, Office of  
Juvenile Justice and Delinquency Prevention (OJJDP)

Minnesota Organization on Fetal Alcohol Syndrome (MOFAS)

American Bar Association (ABA) Center on Children and the Law