

Fetal Alcohol Spectrum Disorder and Suggestibility: Tips for Criminal Justice Interviewers

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Abstract

Fetal Alcohol Spectrum Disorder (FASD) is an umbrella term used to describe the adaptive, behavioral, cognitive, physical, and social impairments that can result from prenatal alcohol exposure. Not only do these FASD symptoms increase the likelihood of victimization and entanglement in the criminal justice system, consequences associated with prenatal alcohol exposure may also contribute to a heightened risk of suggestibility. In criminal justice settings, suggestibility may confer a proneness to falsely confessing to criminal activity. The likelihood of false statements and confessions is exacerbated by the use of deceptive suggestions and leading questions, which constitute some of the “best practices” of contemporary interrogations. This article provides tips and interview strategies for criminal justice interviewers to consider when interviewing individuals with suspected or confirmed FASD.

Keywords: Criminal Justice, Fetal Alcohol Spectrum Disorder (FASD), Interviewing, Suggestibility

Introduction

Fetal Alcohol Spectrum Disorder (FASD) is a term used to describe the adaptive, behavioral, cognitive, neuro-developmental, skeletal abnormalities, social, and organ damage that can result from prenatal alcohol exposure (Centers for Disease Control and Prevention, 2014; Hofer & Burd, 2009; Manning & Hoyme, 2007; Petrenko et al., 2014; Rangmar et al., 2015; Wheeler, Stevens, Sheard, & Rovet, 2012). This condition is characterized by significant psychosocial deficits, reduced adaptive functioning capabilities, executive function deficits, poor reading and math abilities, impaired information-processing, cognitive inflexibility, receptive language impairments, attention deficits, social dysmaturity, difficulty linking cause and effect, and gaps in memory leading to inaccurate factual retrieval (Alloway, Gathercole, Kirkwood, & Elliott, 2009; Bhatara, Loudenberg, & Ellis, 2006; Duquette & Stodel 2005; Edwards & Greenspan, 2010; Henry, Sloane, & Black-Pond, 2007; Khoury, Milligan, & Girard, 2015; Mela, & Luther, 2013). These symptoms often result in social isolation, as many of these individuals may lack the functionality to manage daily behaviors without proper supports, services, and interventions (Lange et al., 2013). Individuals with FASD, (even as adults), frequently have the developmental acuity of a child. Relative to the general population, those with FASD are disproportionately likely to be repeatedly victimized and to become suspects of criminal investigations (Fast & Conry, 2009; Popova, Lange, Burd, & Rehm, 2015; Thiel et al., 2011).

Complicating matters, FASD symptoms may result in an increased likelihood of suggestibility during criminal justice-based interviews (Brown, Gudjonsson, & Connor, 2011; Douglas, 2010; Greenspan & Driscoll, 2015; Roach & Bailey, 2009). *Suggestibility* refers to the ability to be easily persuaded to take another's position (Clare & Gudjonsson, 1993). The increased vulnerability to suggestibility for individuals with FASD is detrimental in at least two ways: (1) manipulation by peers into participating in criminal activity; and (2) proneness to falsely confessing to criminal activity of which they are innocent. For example, suggestibility coupled with memory deficits may lead to confabulation. Confabulation is believed to arise from an unconscious and unintentional effort to fill in gaps in memory, rather than the desire to be untruthful or to mislead others (Moscovitch & Melo, 1997; Schnider & Ptak, 1999; Schnider, Von Daniken, & Gutbrod, 1996). Further, FASD symptoms increase the likelihood of suggestibility and confabulation (Baumbach, 2002; Fast & Conry, 2004). These symptoms can lead some criminal justice professionals to misidentify behaviors as deliberate and willful, rather than the result of prenatal alcohol exposure and its sequelae (Brown, Gudjonsson, & Connor, 2011; McLachlan, Roesch, Viljoen, & Douglas, 2014).

To appropriately interview individuals with suspected or confirmed FASD, leading questions should be avoided due to inherent suggestibility. People with FASD are often predisposed to respond to leading questions with answers that are inaccurate, untrue, or lacking in detail (Fast & Conry, 2009; Thiel et al., 2011). Such inclinations may be driven by an overriding desire to be cooperative, to please those in authoritative positions, resolve confusion about the questions being asked, or because they believe a quick affirmative response will allow them an expeditious release from an uncomfortable situation (Brown, Gudjonsson, & Connor, 2011; LaDue & Dunne, 1995).

The likelihood of false confessions is exacerbated by the "best practices" of contemporary interrogations, which encourage the use of deceptive suggestions and leading

questions (These techniques have been authorized by the United States Supreme Court and are widely promoted in leading law enforcement interview training manuals. Using such methods when interrogating individuals with FASD can lead to impulsive *Miranda* rights waivers, confabulation, and false confessions (Cox, Clairmont, & Cox, 2008; Fast & Conry, 2009; Roach & Bailey, 2009). This may be the outcome of the central nervous system dysfunction of FASD, which can result in the compromised capacity to resist manipulation, pressure, and temptation suggested by others (Brown, Gudjonsson, & Connor, 2011; Roach & Bailey, 2009; Wartnik, Brown, & Herrick, 2015).

This article focuses on interview strategies that criminal justice interviewers can employ that may decrease the likelihood of false or inaccurate statements and confessions by individuals with FASD. Specifically, 13 tips are provided to assist interviewers in obtaining more accurate information while respecting the complex constitutional (e.g., temperament), social (e.g., attachment), emotional (e.g., self-confidence), and cognitive (e.g., language, memory, and, critical thinking) needs of individuals who may have FASD.

TIP 1: Individuals with suspected or confirmed FASD typically function at their highest levels when interviewed in a structured and predictable environment. At the beginning of the interview, it may be helpful to describe the type of questions that will be asked, potential outcomes, and the format of the interview for the interviewee. In the absence of such consistency and structure, professionals should expect frustration, irritability, emotional withdrawal, and even anger or other forms of emotional volatility. Interviewers may be tempted to view this as guilty behavior, but such reactions could be the result of fear due to the uncertainty of the situation.

TIP 2: Keep in mind that individuals with FASD often have the developmental functioning of someone half their chronological age (i.e., dysmaturity). Dysmaturity is distinct from immaturity, in that immaturity is *having the ability* to behave in a manner consistent with chronological age and not doing so, whereas a dysmature person does *not have the ability* to so act. This should be taken into account in the language and tactics used during an interview or interrogation. This is also a critical consideration for obtaining a *Miranda* rights waiver. It is imperative that individuals not only understand their rights, but can also explain them.

TIP 3: Provide the individual with an opportunity to tell their version of the story uninterrupted at the outset of the interview session. Interviewers should rely on open-ended questions and check often for comprehension. Individuals with FASD can mask their lack of understanding with reflexive “yes” or “no” answers along with affirmative body language. Be wary of verbatim repetitions of interviewer language, as mimicking others is a method frequently used to mask a lack of actual comprehension. In instances of repetition, it may be helpful to ask the interviewee to re-state the question in their own words. Interviewers should also remind the interviewee to ask for clarification if they do not understand a question.

TIP 4: Interviewers should only ask one question at a time and use simple, concrete, and specific language. Individuals with FASD have significant difficulty understanding abstract concepts and making inferences from context. Multiple questions in the same sentence (i.e., shotgun questions) should also be avoided.

TIP 5: Interviewers must consider the potential for suggestibility and confabulation in individuals with FASD. When a person with FASD is unable to recall information he or she may sometimes confabulate or weave misinformation into interview responses. In fact, individuals with FASD may be unaware that they are inaccurately reporting past events. This behavior is typically unintentional and is part of the process of filling in memory gaps. Suggestion and confabulation are particularly likely in situations with law enforcement where authorities ask leading questions or pressure interviewees.

TIP 6: Interviewers should refrain from using judgmental or accusatory tones or phrases because this can heighten anxiety and limit information processing in individuals with FASD. Similarly, overly complimentary language may also promote inaccuracy because many individuals with FASD have a desire to please those in authority. Beware of overly eager responses that parrot suggestions by the interrogator or elaborate on the suggestions of the interrogator. Ask for concrete evidence (i.e., a receipt for what they say was purchased) and garner corroborating information from collateral sources whenever possible.

TIP 7: “What” questions may be preferable to “how” or “why” questions. “What happened next?” is more concrete and generally more easily processed than asking how or why questions that require higher-order, abstract processing. “What happened that you went to the church?” or, “What happened before you went to the church?” could be more successful than, “Why did you go to the church?”

TIP 8: If reading is required in the interview, allow adequate reading time for individuals with FASD and offer the option of reading the material aloud. Be sure to verify comprehension, as individuals with FASD often develop strategies to avoid detection of poor reading skills. Be aware that a strong emotional reaction (either withdrawal or volatility) may occur when presented with material to read. Such a reaction may indicate the need for the material to be read aloud by the interviewer, even if the person agreed to read the material him or herself.

TIP 9: Taking breaks are conventionally discouraged to break down the interviewee’s defenses. However, in the case of interviewing someone with FASD, the interviewer may *increase* the likelihood of getting more accurate statements when breaks are granted. Because individuals with FASD generally work harder to focus on social interactions, he or she may only be able to handle a few minutes of an interview at a time. If someone with FASD is pushed too hard, he or she may become withdrawn (i.e., shut down and not speak at all) or become emotionally volatile (i.e., overly emotional crying, screaming, or violent towards others or self). Faulty and factually inaccurate information may result from an inability to cope with anxiety and a breakdown in the ability of the individual to think clearly. The goal should be to obtain knowing, intelligent, and voluntarily accurate statements of memory.

TIP 10: Interviewers should allow physical activity such as pacing about the room, doodling, fidgeting with a stress ball or other small benign item during the interview. Many people with FASD find their brains work better when their bodies are engaged in some form of movement. Observe those with FASD for signs, which may indicate tension is building in the brain. Some

signs may be vocal tics, physical tics (e.g. fidgeting, shaking legs, or tapping feet), inability to maintain eye contact, a glazed look in the eyes, and holding one's head in one's hands.

TIP 11: If individuals with FASD are struggling to give verbal responses – responses that are either verbally inconsistent or difficult to generate – allow them to communicate in a different way. Ask them to show what happened by allowing them to act it out or by drawing pictures. Alternatively, write out the questions and allow the person to write out his or her response. Some people with FASD may have deficits in receptive and expressive language, which can greatly hinder verbal comprehension and appropriate response. Written expression, though unorthodox, may be more productive.

TIP 12: Use 'plain speak' language when advising the subject of his or her *Miranda* rights. This may help the interviewee gain a clearer understanding of the advice. For example, when informing the individual of his or her right to remain silent, the interviewer could remind the individual that he or she does not have to speak with the interviewer. Applying this perspective to all aspects of the *Miranda* advisory may reduce the risk of false confessions and enhance the likelihood that the statement is accurate. That being said, interviewers should be aware that receptive language or processing difficulties could result in confusion when the *Miranda* rights are presented in this way. Please note that *Miranda* should be read and recorded in its entirety.

TIP 13: When possible, interviews should be conducted in a quiet and softly lit environment. Persons present in the room should be limited to the subject and the interviewer(s). Individuals with FASD may have sensory processing disturbances that make crowds, noise, or bright lights difficult to manage. Such conditions can over-stimulate, agitate, and cause hyperactivity and reduce focus, which may result in distorted thinking and inaccurate responses.

FASD and suggestibility may increase the likelihood of false confessions during police investigations. By following the tips outlined above and learning more about FASD, interviewers will be better prepared and more successful when working with this population. Because FASD is dramatically under diagnosed, interviewers should familiarize themselves with the risk factors and red flag indicators of FASD. This could be complemented by asking questions about the interviewee's success in school, their ability to live independently, and any difficulties associated with the ability to maintain employment. In combination, these strategies and tips have the potential to limit the likelihood of any miscarriages of justice.

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