ALTOGETHER AUTISM COURT HOUSE ASD AND THE CRIMINAL JUSTICE SYSTEM ARIE SMITH-VOORKAMP'S BATTLE FOR JUSTICE ASPERGER SYNDROME IN THE CRIMINAL JUSTICE SYSTEM AUTISM AND CRIMINAL OFFENDING KEEPING SAFE FEELING SAFE



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## WELCOME



PAULA GARDNER
National Manager, Altogether Autism

CONTACT US info@altogetherautism. org.nz







Welcome to the summer edition of the Altogether Autism Journal. In this issue, we explore the specific challenges for people on the spectrum when they encounter law enforcement and criminal justice systems.

This edition considers the view of both people on the spectrum who have become entangled with law enforcement agencies, and families and professionals who support them.

Because people on the spectrum can sometimes behave in a way that is not well understood by many front-line law enforcement agencies, there is an increased risk of misunderstanding and inappropriate incarceration.

The key to avoiding these misunderstandings is increased awareness and education. Altogether Autism now offers the PRISM Professional Development Series, which provides up-to-date, evidence-based information and strategies for professionals. PRISM has been developed in consultation with Tanya Breen, Consultant Clinical Psychologist, and with our Consumer Reference Group. The programme is delivered by specialist facilitators. The workshops can be tailor-made to your specific requirements, and can be delivered nationwide.

On 22nd and 23rd July 2015 Altogether Autism will hold its second conference at the Holiday Inn Auckland Airport Hotel, Auckland.

The conference will be a unique opportunity for professionals, parents and people on the autism spectrum to come together to discuss best practice, hear lived experiences and share learnings. Through a range of presentations and workshops, wpeakers will draw on their experience and expertise of the changing environment and latest developments in the field of autism, providing information and strategies to generate successful and positive outcomes for individuals and families living with autism. We are currently inviting submissions for speakers and workshop presenters. If you would like to submit an abstract or register to attend, visit altogetherautism. org.nz for more information

From myself and the rest of the team at Altogether Autism, we hope you enjoy this edition, and the last few weeks of the beautiful New Zealand summer.

REDE

Paula Gardner, National Manager

# BATTLE FOR JUSTICE FOR ARIE SMITH-VOORKAMP

BY LEITH MCMURRAY

On 22 February, 2011, Christchurch was hit by the most violent earthquake yet experienced. The 7.1. in 2010 was of greater magnitude, but this 6.2 travelled faster, first horizontally and then upwards right under the CBD at almost twice the speed of gravity.

This effectively brought down all the old and damaged buildings still tottering after the first earthquake, although the buildings which killed people were actually much newer. Police and Search and Rescue personnel flooded into the city from all over NZ, Australia and even further afield. The Army was mobilised and we had the bizarre sight of tanks in our streets. The CBD was declared a "red zone" and no-one was allowed in without a permit from one of the military gate-keepers.

The first week after the quake was full of news about the loss of workers in two buildings and drastic rescues from others. The effect on our brains and bodies was immediate, not all of it recognised as potentially damaging for us. Aftershocks continued day and night at all different magnitudes. Some of us got used to them and some fled the city in terror. I'd say that most people suffered some kind of "brain fry", including the people who came to help. This is the only way to explain some of the really inexplicable actions that followed in the weeks and months (and years). At the present time (January 2015) we have experienced over 14,000 quakes and aftershocks.

Arie was about 20 years old at the time of the quake. He had spent the larger part of his life in foster care and also in Hillmorton (Sunnyside) Hospital's Adolescent Unit, where he had been diagnosed with Asperger Syndrome and a less than average IQ. As we know, this kind of diagnosis means little for a person on the Autism Spectrum. Arie's great strength and interest was in old fashioned electrical fittings and wiring. He could draw very complex wiring diagrams and talk about these things for hours. He was loved by his foster family and had learned good manners from them.

At the time of the February quake, Arie was flatting with his friend Michael, in Addington, outside the red zone, not far from Lincoln Road and the tattoo parlour which had shared a very old building (probably 100 years old). This building was semi-demolished by the first earthquake and had been fenced off ever since, awaiting proper deconstruction. Arie passed by this building every day. As the front had fallen off, he could see inside and had spotted a couple of old lightbulbs in their packets on a shelf inside. In the past, he had often asked permission to go through buildings being demolished to find anything of value to him, and had never been refused.

After a couple of Friday night beers, Arie thought it would be an excellent scheme to go and get those light bulbs before they were destroyed in the forthcoming demolition. Michael tried to dissuade him, knowing that this was not a good time to be doing that (looting had already begun in the city and people were righteously indignant and trigger happy about it). Alas, Arie was sure this was not looting but saving. He took a torch as it was getting dark, and entered the old building by the back way. While looking around inside, (with his torch), a police car drove by and those in the car thought they had caught a looter "in the act."

They rushed into the building and grabbed Arie, who had panicked and tried to hide. Arie screamed several times that he has Asperger Syndrome but no notice was taken. He was hysterical and three of these people threw him to the floor and sat on him. Arie is a very fragile, small person and it's a wonder he didn't suffocate. He was screaming so much they elbowed him in the temple twice to make him be quiet. The damage to his face could be seen in the photograph which was released to the Press the next day. 10 days later the bruising still hadn't healed. The bruising also made him look quite unnatural and Michael Laws described him as "feral" (Star Sunday Times, 13 March 2011). Actually, Arie is a good looking young man when not disfigured by beatings.

Arie had in his possession two old incandescent lightbulbs still in their cardboard containers, a screwdriver and his torch. Michael and Arie were taken into custody. Michael "had form"; even though he was outside the building begging Arie to come out, he was caught up in the event. They were sent to Paparua Prison and incarcerated for 23 out of every 24 hours until the legalities were sorted. Fortunately they were in the same cell. Arie had never been in any trouble like this before and was put on suicide watch.

Arie's foster sister began to try to find support to help release Arie on bail. She knew that Arie was too fragile to be able to cope with prison life. She tried every organisation she could think of, including the ASK Trust in Christchurch. Jan Brooking and I were still on the Board of Trustees then, although we had just begun to organise Aspiehelp. However, neither Jan nor I had any pressing things to do and we set about seeing what we could do to help. We first tried to arrange visiting at the Prison by a Prison Chaplain, and then we received an email from Paula Jessop in Tauranga saying that Aspies around the country were donating money to send Simon Buckingham (The "Aspie lawyer") down from Auckland to negotiate bail for Arie.

I met Simon from the airport and took him to Arie's foster mother, Kate and his sister. He had all the legal forms ready to sign, and after that we went to a friend of mine, a JP, to stamp and sign them. Then we rushed out to Rangiora to the Courthouse, where hearings were being held in those early days. Unfortunately, we were too late, and so rushed

back to Christchurch for Simon to submit the forms to the Christchurch Police. The next morning Kate drove Simon to Rangiora and they were able to bring Arie home. Michael unfortunately had to stay in prison for another 3 months.

Over the next few months various reports on Arie, dating back over his life, were furnished to make the case that he should not have been prosecuted. Three different Judges sent the case back for the Police to reconsider prosecution but (as Jan and I attended the hearings), it became clear that they were acting upon orders "from Wellington".

Minister Collins had made highly prejudicial comments to the Press just after Arie and Michael were arrested and had to retract one comment she made about "hoping he would go to jail for a very long time- with a cell mate", the inference being that she hoped he would be raped in prison. Oh, no, of course she didn't mean that. It appeared that Minister Collins resolved from the beginning that Arie would be her poster boy

for deterring looters. Unfortunately, she chose the wrong person. Publicity was approved from day one and Arie's beaten face appeared in the public media all around the country. What happened to "innocent until proven guilty"? The day after Arie was arrested, a looter was found with two emergency generators he had taken. He never received the attention that Arie did.

The Sunday TV programme made an excellent documentary about this case, ("A tale of two light-bulbs"), including Arie going to meet the elderly owners of the building. They thought he was lovely and invited him to stay for a cuppa. Later it was said that the Police asked them to make a complaint about unlawful

entering etc. They were said to be reluctant to do so but bowed to the wishes of the Police.

I put up a Facebook page which had over 400 members at its peak. I spent hours responding to every comment that was inaccurate and untruthful and also wrote a letter to the Sunday Times in response to Michael Laws' vicious and vituperative attack on Arie. They must have

liked my letter, because I was awarded "Letter of the Week"! The Sunday programme and, I guess, the Facebook page helped to change the tenor of public opinion in support of Arie.

Finally, it was ordered that Arie receive an up-to-date psychiatric assessment. Unfortunately on the day of the appointment, snow fell heavily and the appointment was postponed for another month. Finally, all was done. The report basically said what everyone else had been saying. Jonathan Eaton, QC, working pro bono, attended the hearing where it was confidently expected that the case would be dismissed.

The Police withdrew the case, to a rather brusque response from the Judge "about time too", and the two men were free to go. It was so sudden that they stood still in the dock, uncertain as to what had just happened. We beckoned them and out we all went into the sunshine.



7 July 2011

The Editor,

The Press

Christchurch

Dear Sir

#### Arie Smith-Voorkamp, aka "the face of looting"

This unfortunate label persists to Arie's detriment. His case has already been extensively mis-reported and public opinion skewed against him.

The Police also, despite knowing the facts of the case, persist in seeing him as an evil, conniving career criminal who deserves nothing less than a long term of prison as a "deterrent to others".

This is so far from the truth it is ridiculous but not amusing. This morning Arie has been remanded for the 6th time because the Police refused to consider diversion for him. The original event was back in March, when the town was horrified to hear of people stealing emergency generators etc from inside the red zone. Feelings were understandably running high but Arie was not aware of this or even the concept of "looting" when he went exploring in an earthquake damaged, (September 4th) collapsing, very old, commercial building near his home in Addington.

Arie, as is well documented, has Asperger Syndrome. Some of the traits of Aspergers' manifest in Arie are a somewhat naïve attitude to life, an inability to understand some of the complexities of living amongst non- Asperger people, and a very strong fascination for (in his case), things electrical. In the past, Arie has often sought to go into buildings set for demolition to find anything he deems interesting, and has always been allowed to do so. He had a small collection of old marble switchboards and bits of light switches and other old electrical paraphernalia which he enjoyed adding to. Nothing of any value to the previous owners.

On the night in question, Arie (25) had had a few drinks with his mates and decided to take a look at the old shop. He didn't have to break in, its walls were down anyway. Because it was getting dark, he took a torch and it was this that alerted passing Police to his presence. He was apprehended and severely beaten and jeered at. His friend who was standing outside telling him to come out was also beaten. The "loot" was two incandescent light bulbs in their original and very old packaging. This was not even recorded properly by the Police. Arie would have had screwdrivers because you need those when retrieving such items. There was nobody to seek permission from and the shop was clearly toast. What harm could there be in taking away something which would only be crushed by a bulldozer later?

Arie's friend, to his credit, tried to dissuade him from going in, but his naivete and previous encouragement to help himself contributed to his feeling of not doing anything wrong.

Arie's naivete is demonstrated by the fact that (a) the shop was on the main road, (b) he went in, in the dark with a torch (c) he risked his life in the very dangerous building.

On being apprehended, Arie told Police he has Asperger Syndrome but they beat him anyway, as can be seen in the photograph taken at the time. He was then put in prison instead of being released on bail, a period of just over a week. Arie's friend has previous convictions, but Arie himself has not.

Arie's foster family, who have known him since he was 12 years old, love and support him and have clearly been a great influence in his life. He is well mannered and well-spoken and is not a criminal. There was no intent to "loot". Why do the Police continue to make such an issue about Arie? By all means throw the book at the generator stealers. These were deliberate acts of an entirely different order of magnitude, and the refusal to acknowledge that Arie's diagnosis has a bearing on the case is a refusal of Human Rights. Three Judges have sent the Police back to reconsider their opposition to diversion. The message could not have been clearer, but "Head office" in Wellington thinks it knows better.

The Police should be charged with "wasting the Court's time" in my opinion. They surely have more important people to bring to book. Arie has the right to bring a charge of assault and at first demurred from doing so as he did not want to bring the Police into disrepute. By their actions on that evening and by their contempt of a person with a disability the Police have certainly tarnished their image.

Arie is now fully aware that he overstepped a line he had not known about. He wants to get on with his life and seek employment away from Christchurch. A person with Asperger Syndrome does not need hysteria and punishment to "learn a lesson". A quiet and reasonable discussion/explanation works far better than emotion and force. With 1 in every 100 people in New Zealand having Asperger Syndrome or Autistic Spectrum Difference, the Police should make it their business to learn more about this condition so that people can be treated appropriately.

To beat up a slight and gentle person such as Arie is simply thuggery and was completely unnecessary. The Police on that occasion did nothing to enhance the positive image that they generally enjoy in this city. To the credit of subsequent officers, once a lawyer was involved, Arie was treated with respect. However, it seems unlikely that these officers have anything to do with the witch-hunters now pursuing him with cries of vengeance. To Arie's credit, he bears no malice towards the Police as a whole and has been reluctant to press charges of assault.

Thanks to Police stone-walling tactics, Arie has now been remanded for the 6th time and the time allowable for Police to approve an application for diversion has apparently ended (what a coincidence!). If the Police cannot tell the difference between a genuine criminal and an open and truthful, unresisting person such as Arie, it is a sorry state of affairs.

NZ Police need to learn about Autism Spectrum Difference as well as mental illness, in the handling of which their track record is also besmirched. It is to be hoped that this training will be inaugurated as soon as possible, before any more such incidents occur.

Yours faithfully,

Leith McMurray Mentor and Counsellor, www.aspiehelp.com

Follow our Facebook page "Justice for Arie Smith-Voorkamp"

# ASPERGER SYNDROME IN THE CRIMINAL JUSTICE SYSTEM

COMPILED BY JAN BROOKING OF ASPIEHELP
WITH ACKNOWLEDGEMENTS TO JUDGE KIMBERLEY TAYLOR, DR GARY
MESIBOV, DENNIS DEBBAUDT (2009). MODIFIED AND REFORMATTED FOR AN
AS POPULATION BY NOMI KAIM.

#### What is Asperger syndrome?

Asperger syndrome (AS) is a neuro-biological difference which appears in utero. A person with AS has a brain which is 'differently wired' from birth with all the attendant consequences of this.

AS involves difference and difficulties in several areas: social interaction; communication; the presence of repetitive behaviours (stimming); difficulty in adjusting to change, and heightened sensitivity stimuli such as sound, lights, crowds, smells and textures (e.g. in clothing. General intelligence is not affected and often the IQ of individuals with Aspergers syndrome can be exceptionally high. AS appears more frequently in males than females. About one in every eighty persons is affected by AS.

People with AS often get into trouble without realising they have broken the norms and rules of society. They have problems with sensory overload; poor social awareness; are easily confused by figures of speech and have an inability to deal with changes in routine and structure. Poor understanding of non-verbal communication (body language) is a factor which makes more appropriate responses to society very difficult for someone with Asperger syndrome. What appears as anti-scoial behaviour to the 'regular' world is often simply the manifestation of the AS person's social misunderstandings.

People with AS can be inconsistent processors. Emotional lability and/or impulsivity often appears in individuals with AS. They may display changeable emotions and can be anxious one minute and calm the next, or vice versa. They may also understand one question perfectly well and then be perplexed by the next question.

### A person with Asperger syndrome might display these behaviours and characteristics:

 An inability to quickly process and respond to requests, commands and questions.

- Have trouble conceptualising and putting together information in complicated and stressful situations.
- Be a poor listener, seem not to care about what you have to say
- Many have extreme difficulty with eye contact. Not looking at the speaker does not mean they are not listening.
- Be unable to deduce what others are thinking and why they are thinking it.
- Make statements that seem tactless or brutally honest.
- Have difficulty understanding slang terms, innuendo, colloquialisms, figures of speech, or jokes.
- Not notice or have difficulty interpreting communications such as rolling of eyes, raised eyebrows, and other non-verbal signals of frustration or disbelief. (84% of communication relies on non-verbal delivery!)

#### Interview techniques

So what can Corrections staff do to prepare for interactions with people with AS? Try to avoid jumping to conclusions or making attributions based on unusual behaviours. Remember that AS presents as a social impairment. A component of the social impairment is that many of the things individuals with AS do appear impolite or disrespectful. Corrections staff who interact with and question people with AS will enjoy the best opportunity for success by incorporating the following strategies:

- Approach in a quiet, non-threatening manner. Use the person's first name.
- Talk calmly in a moderate voice.
- Do not interpret limited eye contact as deciet, disrespect, or failure to a listen to what is being said to them.
- Avoid metaphorical questions that can cause confusion when taken literally, e.g. 'Are you pulling my leg?', 'Cat got your toungue?', 'What's up your sleeve?', 'You think that's cool?', 'Pigs might fly.'
- Stand or sit calmly and avoid using body language.
   People with AS may misinterpret body language as threatening.
- Understand that you may need to repeat and rephrase questions. Ensure that each question is short, direct, and concise.
- Understand that communication will take longer to establish. Much patience is necessary because impatience will heighten anxiety in a person with

AS. Plan the questioning based on the person's communication ability.

- Use simple and direct instructions and allow for delayed responses questions, to directions, and commands (up seconds!) Deal with one issue at a time. Sometimes it may be useful to write something down or draw it for the person with AS. If in doubt write it down. If they are in doubt, let them write it down. The visual skills of a person with AS are sometimes considerably stronger than their auditory skills, and reading it over will give them more time to process what you have said.
- Seek assistance from objective professionals familiar with AS and preferably on the spectrum themselves.

#### **Environmental accommodations**

People with AS may have difficuties in that they are over-stimulated by the sensory environment - sights and sounds and smells and touch. Noises are louder for them. Normal background noise that may seem negligible to the average person can be completely overwhelming to individuals with Asperger syndrome. When this occurs, not only can they not hear what people are saying, but they can sometimes become very anxious and even terrorised by the situation or the noise. Additionally, lights are often brighter for those with AS. For example, when a person with AS is outside on a sunny day, the light may be very harsh, causing the person to become upset. For the person with AS, it would be like someone shining an intensely bright flashlight in their eyes. In many environments, the lighting itself causes distress (e.g. fluorescent).

## Intense sensitivity can involve any of the senses and interrupt functioning on many levels

Adjustments in the environment can be crucial to the successful interviewing, treatment, and rehabilitation of inmates with Asperger syndrome:

- Keep lighting low
- Use Subdued Colours
- Limit distracting images and noises.
- Eliminate the presence of non-essential personnel
- Avoid using perfume, after-shave, and scented soaps
- Avoid touching the person with AS as much as possible
- Take requirent breaks as the person may have a short attention span

#### Other considerations

Meeting with strangers; holding group discussions

about personal feelings; sharing personal information, and contributing comments about others will be difficult conditions for the person with AS to meet. Corrections professionals can find success with the AS population when they create diversion or probation programmes that:

- Use language and terms the person will understand
- Avoid the use of technical terms.
- Involve people the individual knows and trusts.
- Describe beforehand the people the individual will work with and the venues in which they will meet.
   The use of photographs is helpful. Assure the individual that the new people are safe to be with.
- Makeuse of the individual's strong rote memory skills.
- Teach the rules of the programme with visual aids.
- Create a chronological list of the steps of the program. Make sure nothing is left out!
- Develop a poster with bullet points.
- Discover what is important to the person with AS. Rules which may seem illogical to a person with AS need to be explained or acknowledged as illogical but necessary.

#### **Important:**

An individual with Asperger syndrome may be at risk in the general prison population. For short-term custody consider segregation, monitoring, and a professional medical and developmental evaluation.

Incarceration will be fraught with risk for the person and anyone in contact with him or her. The direct manner, often offbeat behaviours, and other characteristics of the person with AS may be read by other inmates as an invitation to exploit and control.

People with AS can be physically quite fragile and pressure on the upper body especially runs the risk of suffocating the person. It is essential that meltdown behaviour is treated in a calm awareness of the physical limitations of the person.

Corrections professionals who work with the incarcerated AS population will benefit greatly from a comprehensive training - or at least a good briefing - and ongoing assistance from a professional who is familiar with AS and preferrably on the spectrum.

Some people have described AS as a culture. The cultural differences of Asperger syndrome come from the way the brain works. There are differences in understanding and perception. Positive outcomes for such inmates are dependent on the resourcefulness, knowledge of AS, patience, and understanding of those working alongside them in the prison.

## JUSTICE AND THE CRIMINAL SYSTEM

BY SIMON BUCKINGHAM BA (HONS), LLB

Whilst a Waikato Law Student, I heard rumours that at another Law School, students are told that if you are looking for justice, do not go into law. Whilst I think that this is a very cynical view, for those of us on the autism spectrum, (AS), I think that this is also very true. Since becoming a Barrister in 2008, I have done a fair degree of work in criminal and employment law, and I see a lot of AS people treated outside the law.

I will not go into chapter and verse, but the Human Rights Act (1993) tells us that we cannot be discriminated against based upon disability. The Lawyers and Conveyancers Act (2006) states that we have to represent our clients to the best of our abilities, second only to our duty to the Court. That means that we have to do the necessary work to defend a client on criminal charges, whether legal aid or private, and whether pro-bono or for lots of money.

I state here for the record that in my opinion, the vast majority of Lawyers are letting us down and failing to represent us properly.

That above statement could get me into some trouble, as we are not allowed to bring the profession into disrepute, but my argument is that in our autism community, it is already in disrepute and for good reason.

Many of us have had our brushes with the law. Over the five or six years I have been in practice, I have seen two main types of offending from AS people. The first is through misunderstanding. For example, when a client lost their driving licence for three months, he took it literally, and after three months started driving. No-one told him he had to re-apply. The second is through breaking the law due to the neurodiversity issue. Here I am reminded of the young person self-medicating on cannabis. To get out of the clutches of the Black

Power gang who were putting a hold on him, he grew his own three plants. Black Power reported him to the Police, and he got almost three years imprisonment. When it came to sentencing, I tried telling the Judge about ADHD and Asperger's. I was cut short with the comment that His Honour had a family member who had ADHD so he knew all about it.

Most criminal and employment charges we face could be reduced or even dropped if the prosecutors had a better understanding of neurodiversity. Being AS may not be an excuse to break the law, but as a mitigating factor, it can reduce our sentence. Indeed, it can be the reason why we are innocent. Let me explain.

A crime needs two parts. We have the Actus Reus. This is the actual committing a crime. The action itself. The act of punching someone on the nose for example. Then we have the Mens Rea. The intention to commit a crime. We know it from US TV as criminal intent. So did I punch him on the nose because I do not like him, thus committing a crime, or because he was about to stab me, meaning that it was in self defence?

The Mens Rea is important. If I am given a nice potted plant that turns out literally to be a pot plant, and I did not have any idea, I have committed no crime. Obviously we have to show that I did not know, as otherwise every hardened drug cultivator would say "Cannabis? I thought it was hemp to make nice bags from. I had no idea! Honest Judge!" However, if I can reasonably show that I had no intention of committing a crime, then I am usually innocent.

This is where we go wrong as Lawyers. If you are a Criminal Lawyer or a Police Officer reading this, the first thing I would do is shake your hand for expanding your horizons. The next thing I would do is ask you to consider asking everyone you have before you if they have any sort of disability or diagnosis. If they have a neurodiversity diagnosis, seek further advice. Call Altogether Autism and see what they can do. After all, this is at least a possible mitigating factor.

So as an Aspie or Autistic person, how do I deal with the legal process? Here are some simple tips that may help.

#### **Police**

When you are stopped by the Police, try to comply with what they ask of you if it is reasonable. Sometimes it is better to agree to an unjustified search for example than argue. However, if you feel uncomfortable or scared, tell them that you are on the Autism Spectrum,

and want a support person please. If they do not allow you one, then they are in the wrong. However, don't tell them, as that can raise tensions. Just try to be compliant, and then speak to a support person or Lawyer afterwards. Better to lay a complaint afterwards than be arrested for being difficult. If they do arrest you, demand to speak to a Lawyer, as it is your legal right, and tell the Lawyer that you are Autistic. Make it clear so that the Lawyer can make sure that you get the support you need. Not to do so is discrimination under the Human Rights Act and therefore illegal.

#### **Courts**

When you first see a Lawyer, tell them that you are on the Autism Spectrum. Discuss whether you did what they say you did, and if it was AS related, tell your Lawyer. As I said, these can be mitigating factors, so it is important that they are aware of this. If your Lawyer will not take this into account, insist on a second opinion. If not, you can ask to speak with the Senior Duty Solicitor, or if a private Lawyer, you can seek advice from the Law Society. Advise your Lawyer that they can get information from Altogether Autism if they need further information, but that AS is a possible defence, or at least a possible mitigating factor. At the very worst, when in Court, tell the Judge that you are

Autistic, and your Lawyer will not listen. The Judge is likely to stand the matter down for an hour or so for you to get appropriate advice and support.

#### **Prison**

This is probably the worst area for AS people. Many of the professionals in the prison system do not properly acknowledge the issues, though I have met some amazing prison Psychiatrists who are supportive. If you are unfortunate enough to be sent to prison, tell the prison Doctor that you have a diagnosis, and insist on getting the support you need. If you get nowhere, you need to write to your Lawyer to seek further help.

#### In conclusion

We do get a bad deal in the legal system. We are often treated unfairly and not heard properly. Whilst things are changing, this is not happening nearly quickly enough. As such, we have to accept the realities of the situation, however unpalatable, and do our best with what we have.

The golden rule is to be polite, answer questions as best we can, and make our diagnosis clear to whoever we are speaking to. If in doubt though, seek support from someone you trust, and who knows how AS neurodiversity affects you.



Simon Buckingham is the principal barrister at Buckingham Law in Auckland and a member of the Altogether Autism Professional Experts Group. Simon prides himself on being New Zealand's first diagnosed and identifying lawyer with Asperger syndrome.

Simon's main areas in law are Employment Law and Criminal Law, but more importantly, Simon advocates for people who identify as disabled.

Simon's approach is to try and resolve situations and problems in a friendly and informal manner. Simon says "legal avenues should be a last result resort, and the first step should be negotiation and mediation if necessary."

www.buckinghamlaw.co.nz

# AUTISM AND CRIMINAL OFFENDING

BY TANYA BREEN - CONSULTANT CLINICAL PSYCHOLOGIST, PRIVATE PRACTICE, HAMILTON & CLINICAL CONSULTANT, ALTOGETHER AUTISM

When, in 2004, I wrote "Contact with the Justice System" (Section 5.3 of the New Zealand Autism Spectrum Disorder Guideline), there had been little academic or legal research into autism and criminal justice.

The guideline section was brief, and the main points that we were able to make in the NZ ASD Guideline were:

- No strong evidence existed associating autism with criminal behaviour
- It was possible that autism-related behavioural traits and characteristics were associated with risk of committing offences
- Contact with the police, courts and criminal justice system was anxiety provoking, and people with autism needed support
- The guideline also included advice aimed to prevent the need for contact with police, courts and criminal justice, and to support people when contact happens, and opinion on training and other needs of police, courts and criminal justice staff regarding autism.

Since then there has been a welcome increase in research into autism and criminal justice. Nevertheless, this important area remains under-researched. In this short article, I summarise the literature in three areas: the prevalence of criminal offending by people with autism; factors related to autism which should be taken into account when a person with autism is suspected of engaging in a criminal act; and the support that people with autism may need when appearing in criminal courts as complainants, witnesses or defendants.

#### **Prevalence**

If we based our opinions on how dangerous or criminal people with autism are on the popular media, we'd be seriously mistaken. People with autism make headlines, whether it's for something good (i.e., like winning an international talent quest), or something really bad (like spree murder). In fact, autism is often speculated when atrocious crimes occur. How many times have you read about some person who shot up a school/movie theatre/shopping mall having autistic tendencies, often without any diagnosis ever having been made? All too often, I believe. The problem is this leads to a misperception that people on the spectrum are dangerous, and more likely to commit a criminal act than neurotypicals. So, what does the academic research to date say about the prevalence of offending by people with autism?

- Most people with autism probably do not commit crimes.
- There is no empirical evidence to support a claim that there is a link between autism and violence, but, due to the low number of studies, there is no evidence to dismiss this claim.
- The few community studies that exist suggest that people with autism are no more likely than neurotypicals to commit offences, or possibly less likely.
- Case studies and reviews of patients in secure mental health/forensic settings suggest that some of them have autism, but there are so few of these studies that no definite conclusions can be drawn.
- Some of these studies suggest that there may be more people with autism in secure settings than would be expected if autism was not a factor.
- Risk of criminal offending may increase when people with autism have co-morbid mental health conditions, such as psychosis.
- There are lots of methodological problems with this research. Having the skills to actually identify people with autism is one of the main problems, combined with the inability of many police and criminal justice databases to record autism as a factor.

#### **Factors To Take Into Account**

Since the NZ ASD Guideline was published, expert opinion (supported by some research) had started to suggest that ASD-related factors should be taken into account when a person on the spectrum is charged

with a crime, and likely to appear in court. These factors may be able to help police decide whether or not to charge, what charges to lay, help lawyers and the court better understand possible motivations (and whether "criminal intent" was present) of the person charged, identify mitigating factors, and inform sentencing options. For example, if a person on the autism spectrum physically assaults another person, there might be different legal outcomes if the person with autism was responding in a state of sensory overload, as opposed to assaulting someone that they just did not like. Similarly, trying to get access to a restricted area related to a special interest might be considered differently to intentional trespass.

Unfortunately due to the context in which the suggestions are made, the language used is rather negative. Nevertheless, the factors include:

- Problems with, or poor, social awareness naivety.
- Difficulty in reading and understanding social cues/signals, and social interactions, including misinterpreting the behaviour of others as threatening.
- Misunderstanding social and interactional conventions or rules.
- Misinterpreting social situations, and an inability to negotiate or to have meaningful negotiations.
- Impairment in social interaction due to an inability to perceive other people's needs, desires, or stress, combined with impaired ability to interpret correctly other people's behaviour.
- Limited emotional knowledge.
- Deficient empathy.
- Impulsivity and a lack of awareness of possible outcomes, hence initiating activity with unforeseen circumstances, and impulsivity due to anxiety leading to panic, leading to a response out of proportion to the situation. The main motive for action could be to shut down the source of frustration.
- Egocentricity.
- Suggestibility.
- Narrow focus, obsessions and preoccupations.
- Repetitive behaviours and ritualistic compulsions.
- Disruption to routines, and resistance to changing behaviour.

- Poor sensitivity and low responsivity.
- Marked hypersensitivity to sensory stimuli, such as an aversion to being touched, or distress caused by noise or light.
- A tendency to focus on details rather than the whole picture (called "weak central coherence"), which can make it hard for the person with ASD to think about and accurately predict consequences of actions.
- Deficits in the ability to recognise that other people have unique thoughts and feelings, and to predict what these might be (called "impaired theory or mind").
- Problems with emotional regulation, which can cause anxiety or panic reactions to be translated into aggressive acts.
- Deficits in moral reasoning.
- The possible impact of other disorders such as intellectual disability, depression, generalised anxiety, depression, or bipolar disorder.

The guidance recommends that a mental health professional with expertise in autism studies the case material, assesses the individual (not only for diagnosis, but also regarding how/if any of the factors above might present in the individual), and prepares a report which sums up all of this information in plain language.

## **Support in Court for People with Autism Who Are Complainants, Defendants and Witnesses**

Increasingly people on the autism spectrum are being recognised as "vulnerable witnesses" when appearing in courts in New Zealand (whether they are complainants, defendants or witnesses). Within our legal system, autism symptoms can be taken into account when courts decide on how a person gives their evidence, where from, and what support they might need to do so. Autism is also relevant when determining whether a person can instruct their lawyer, and follow the court proceedings sufficiently to participate in their own defense. Autism could also be relevant when advising on the management of a defendant during a hearing (when they are present in court), and in-between times (when they are present in the courthouse, but not in the courtroom).

Things that psychologists should consider when advising courts about people with autism and other conditions (such as intellectual disability) are:

- Their age, maturity, intellectual level, and level of adaptive (independent) functioning.
- What they are diagnosed with, and how robust that diagnosis is.
- How much they understand about what they will be expected to do.
- How much trauma they may have experienced, and what might be the impact of attending court on this.
- How they respond to stress, and what support they might need.
- How well and to what level they can follow verbal and written language (including the level of language that should be used by lawyers).
- How they communicate.
- Whether or not they can recognise when they don't understand, and inform others of this.
- How suggestible they might be during questioning.
- How well they can determine past, present and future, and whether they confuse what they know now with what they knew then.
- How well they manage tasks involving theory of mind (the ability to recognise and predict the thoughts and feelings of other people).
- How they might demonstrate emotions in court (especially if there might be any responses that

- are unusual or hard for people not experienced in autism to understand).
- Their attitude to appearing in court as a complainant, defendant or witness.
- What support they might need leading up to the court appearance, during, and afterwards.
- How often and when they might need breaks.
- The impact of being in a formal setting, in front of many strangers.
- Whether any sensory issues might present at court (e.g. difficulty with fluorescent lights, the sound of air conditioning etc).
- How they respond to changes in routine, and how to build attending court into this.
- Whether they have any relevant comorbid conditions, and the impact of these on their behaviour in court.

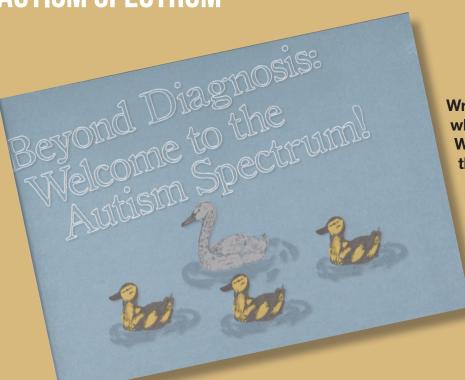
In the end, the best that the psychologist can do is offer educated advice to the court. It is not obligatory for the court to follow some or all of the advice. However in my professional experience, most courts do genuinely try to minimise the stress on people appearing as complainants, defendants and witnesses, especially if they have conditions like autism. They can only do this if they are forewarned, hence good assessment and well-reasoned reports are important.

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## BEYOND DIAGNOSIS: WELCOME TO THE AUTISM SPECTRUM





Written by adults on the autism spectrum who are members of the ASK Trust, the Welcome Booklet was intially aimed at the newly diagnosed adult.

The 44 page book explains, cautions and empowers.

This book is a great resource for people on the autism spectrum, caregivers, mentors, professionals, educators, cousellors, NGOs, government, media and libraries.

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## **KEEPING AND** FEELING SAFE

BY NICOLINA NEWCOMBE

"Everyone has the right to be safe and to feel safe" says Keeping Safe Feeling Safe Co-Project Manager, and former Police officer Sue Hobbs. That is why the Keeping Safe Feeling Safe (KSFS) project takes a zero tolerance approach to all forms of violence towards people with learning disability.

The KSFS project, which is run by People First New Zealand and funded by Think Differently, aims to help people who have a learning disability keep safe

and feel safe in the community. As part of the project, KSFS is also upskilling the Police and community services about how to respond appropriately when someone who has learning disability makes a complaint.

First People is Persons Disabled Organisation (DPO) that is run by and for people who have a learning disability. People First chooses to use the term 'learning disability' instead of 'intellectual disability' because it is

more respectful and easier to say.

The rate of violence towards people who have a learning disability is undeniably high yet not well studied. Australian research No Longer Silent: A study of women's help-seeking decisions and service responses to sexual assault (2005) by Denise Lievore says that women with intellectual disabilities experience higher rates of sexual assault than the general population, but have much lower rates of reporting, charging and conviction. Researchers estimate that... between 50 to 90 per cent of people with disabilities have experienced sexual assault during their lifetime" (Lievore, 2005, p95). New Zealand studies have echoed this estimated statistic, although KSFS Co-Project Manager Kaeti Rigarlsford says she has anecdotal evidence that the rate may be as high as 97 per cent in the Auckland area.

KSFS is committed to the recommendations put forth in the Disability Action Plan 2014-2018, the Putting People First Report and The Hidden Abuse of Disabled People Residing in the Community paper by Dr Michael Roguski.

"Keeping Safe Feeling Safe will help to change the way that the Police and other people take reports so that people are safe and get their rights in law the same as everyone else in New Zealand" said Co-Project Manager Sue Hobbs.

KSFS is a 30 hour workshop that runs in 10 three hour sessions over 10 weeks. In the workshops participants



apply

tools,

about

and

positive relationships These skills are taught in a fun and safe way through that to be accessible and easy for everyone to Police officers and staff from community such councillors and sexual and domestic violence specialists also attend

the workshop to learn more about working with people who have a learning disability.

At the workshop participants are given a kit to help them stay safe. It has a lot of visual aids to show what it looks like in a situation that is safe, compared to one that could be unsafe. It also has pictures of safe places to go if they feel threatened, like the library or a supermarket, and a place to write down phone numbers for people that they trust.



Every aspect of the work of KSFS is done by consensus with People First Member Advisors, these are people who have a learning disability and have contributed into the design and provided the co-project managers with advice and ongoing direction for the project.

One of the Member Advisors is Sam. He is a disability rights advocate and works at a supermarket in Devonport. Sam has been diagnosed as being on the autism spectrum which he says is "great".

In the KSFS workshop Sam shares his story about surviving abuse. Sam decided to share his story because he wanted to inspire the police to do more to protect people who have a learning disability. He says he was quite shy at first because he did not know how many people would understand what he has been through. "Growing up in Devonport, the idea is that you come from a safe family, and violence is something that happens in South Auckland. [Doing the workshop] was my opportunity to say that violence is in the North Shore as well, and it is not just in pubs, it is also at home."

Tackling the epidemic of abuse towards people with learning disability requires a multifaceted approach. Some people with learning disability find it hard to keep themselves safe. "Keeping safe is instinctive, but I don't have that instinct. It seems that you have to read people's minds and I am not good at that" says Sam. Furthermore "many people with learning disabilities do not report abuse because they do not think they will be taken seriously" says Co-Project Manager Sue Hobbs, from her experience in the Police force.

Sam's advice to people who have experienced any form of violence is to "find refuge in a public place, tell a trusted adult and seek counselling through a DPO. A DPO can tell you about a good councillor that understands disability."

Sam wants people to feel okay about telling their story. "It is important that people know what is going on, but only tell people that you trust" he says. KSFS is also working to develop 'talk about it' centres where people with learning disability can feel safe to tell their story.

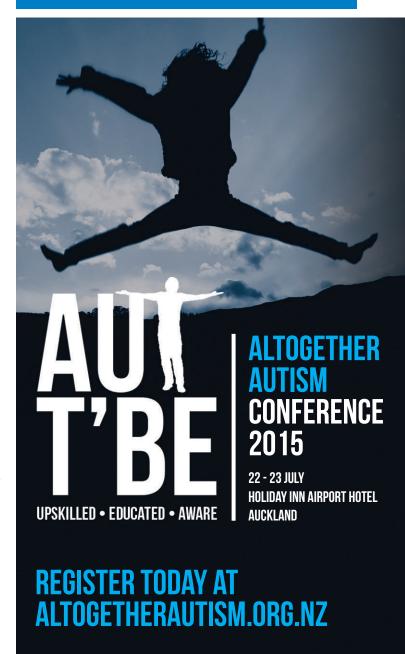
People have responded really positively to Sam's story in the workshop. "There has been a lot of understanding and a lot of support. I was quite shocked that the Police even understood a bit. They made a pledge that they would take back what I had mentioned and try to improve. I thought woah that is different." People have told him that his story is "very touching, very insightful, helpful, and very sad".

KSFS Co-Project Manager Kaeti Rigarlsford says that the most important thing is to "listen, listen, listen, and support the person to take action. This is about people recognising that if there is any murmur, or any evidence of abuse they must take it seriously."

"We are all responsible to change the culture of violence in New Zealand. We need to be responsible for our own behaviour, and if we see something, we need to say something" said Co-Project Manager Kaeti.

More KSFS workshops are being planned in Auckland to start around June. The workshops are free to attend and support people and community professionals are also welcome.

If you would like to register your interest for a workshop, know more about KSFS, or get advice please contact Kaeti Rigarlsford at kaeti@peoplefirst.org.nz and 021754754, or Sue Hobbs at sue@peoplefirst.org.nz and 027 4477 087.



## BOOK REVIEW

BY CATHERINE TREZONA, MA

## THE AUTISM SPECTRUM, SEXUALITY AND THE LAW: WHAT EVERY PARENT AND PROFESSIONAL NEEDS TO KNOW.

Tony Attwood, Isabelle Hénault and Nick Dubin. Jessica Kingsley Publishers, London and Philadelphia (2014).

ISBN 978 1 84905 919 0 eISBN 978 0 85700 679 0

#### This provocative book gives a unique perspective of autism, sexuality and the law, written by a collaboration of authors.

It opens with a painfully honest account by Nick Dubin, diagnosed with Asperger syndrome at age 27, and traces his journey from childhood to adulthood, through isolation and bullying, to academic and professional success. This hard-won success was brought to a sudden and devastating end when Nick was arrested in 2010 in a high-profile case by the FBI for accessing child pornography.

Through the shared authorship, this ground-breaking book examines how an otherwise law-abiding, rule-respecting professional with Asperger syndrome became a criminal, and how ASD impacted his psychosexual development, with advice on essential strategies and education to gain a better understanding of ASD and sexuality.

One of the most powerful aspects of the book is the window offered by Nick's personal account which allows the reader to understand the context of his viewing of child pornography. Nick's lived experience is discussed by Tony Attwood, renowned clinical psychologist with over thirty years experience with ASD. Nick's parents also contribute to this book, with his mother sharing her journey as a parent and writer, and his father writing as both a father and a lawyer. Finally, Isabelle Hénault, a psychologist specializing in relationships and sexual education, contributes her insights on ASD and sexuality. It is the combination of painful honesty and well-researched evidence that makes this book highly relevant and informative for people on the spectrum, parents and professionals.

As a child with undiagnosed Asperger's, Nick was

extremely socially isolated and the victim of school bullying and sexual abuse for many years. His parents were intensely involved and supportive, and Nick's mother Kitty's account in particular describes how their family revolved around loving and caring for Nick.

One of the consequences of Nick's arrest was the resulting disintegration of his independence; on the day of his arrest, he moved backhome after nine years of living on his own. In a few short paragraphs, Kitty describes the impact of this on her marriage, her family and her health.

The unique combination of social isolation, emotional immaturity and sophisticated computer literacy can make some people on the spectrum particularly vulnerable to unwittingly viewing illegal pornography. The absence of information addressing this vulnerability makes this book a very timely publication.

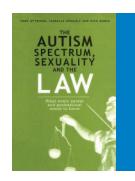
The honesty of Nick and his parents in their first person accounts makes this very compelling reading. Do not be put off by the rather dry title – most of the book is told as a story, backed with credible research, robust referencing and expert opinion.

While this book comes from a US perspective which has a different legal system from that in New Zealand, the shared legal foundation in English common law and judicial precedent ensures that the content is relevant in general terms for our local readership.

Both US and NZ legal systems condemn child pornography and this book does not seek to minimize the abuse children suffer from this criminal industry. However, Nick's role in viewing these images is understood as related to, if not resulting from, his victimization as a child and the failure of numerous American professionals to adequately recognise and address his psychosexual immaturity, a failure that is equally possible here in New Zealand.

The most important message in this book is that failing to teach children about sexuality and legal boundaries leaves them vulnerable to breaking laws with a potential prison sentence – something particularly devastating for people on the spectrum.

The inadequacies of the criminal justice system to deal appropriately with people with ASD are also addressed, with comprehensive recommendations to begin to remedy these shortfalls. The Autism Spectrum, Sexuality and the Law is therefore valuable reading for parents, professionals and people with ASD, to inform strategies to prevent others from the trauma of coming to the attention of the criminal justic system.



This title and many others are available to borrow free of charge from the Parent to Parent library.

The library can be accessed from www.parenttoparent.org.nz.

You can also request a print copy of the library list by phoning 0508 236 236.

## POSITIVE TREND FROM NEW RESEARCH

### How can the justice system be made fairer for people with disabilities?

The New Zealand Law Foundation funded a two year research project (2012-2014) into the legal experiences of people with intellectual disabilities (I.D.). The lived experience of people with I.D. (40), lawyers (15) and judges (13) were explored through interviews and analysed thematically. All three participant groups shared a commitment to improve the responsiveness and accessibility of the legal system. The critical starting point was identified as understanding the person, "taking the time to get to know the person, the impact of their impairment and their positive and negative life experience" (Mirfin-Weitch, Diesfeld, Gates & Henaghan, 2014, p. 69). During an interview on National Radio's Nine to Noon on 25/2/15, lead researcher Brigit Mirfin-Veitch said she was "heartened by the positive practice of the legal professionals who took part in the research". A full transcript of the report is available from the Law Foundation or by contacting Altogether Autism.

Mirfin-Veitch, B., Diesfeld, K., Gates, S. & Henaghan, M. (2014). Developing a more responsive legal system for people with intellectual disability in New Zealand. Dunedin, New Zealand: Donald Beasley Institute. Retrieved from http://www.lawfoundation.org.nz/wp-content/uploads/2014/12/2011\_38\_36-Final-Research-Report-Donald-Beasley-Institute\_11\_12\_14.pdf



Prism Professional Development Series has been developed by Altogether Autism specifically for professionals working with people on the autism spectrum.

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