

# Forensic aspects of Asperger's Syndrome

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**ABSTRACT** Asperger's Syndrome is a pervasive developmental disorder on the Autistic spectrum. Antisocial behaviour is frequently described as an accompaniment of Asperger's Syndrome although the strength of any association between Asperger's Syndrome and offending remains uncertain. This paper presents five patients with Asperger's Syndrome with a history of offending. For each of them the offending is understandable in the context of the disorder. The specific and general issues raised by these cases in relation to Fitness to Plead and Legal Insanity are considered. Offenders with Asperger's Syndrome have deficits that raise the likelihood that their disorder will render them unfit or be of exculpatory value.

**Keywords:** Asperger's Syndrome, offending, insanity, disability, violence, autism

## INTRODUCTION

Asperger's Syndrome has gained credibility as a diagnosis since Lorna Wing (1981) reworked Asperger's original description (1943). It is generally conceptualised as being a disorder in the autistic spectrum (Attwood, 1998) and is included as a pervasive developmental disorder in both DSM IV (American Psychiatric Association, 2000) and ICD 10 (World Health Organization, 1992). There remains disagreement as to the extent to which it

is separable from high functioning autism (Gillberg, 1998), and exactly how far its rubric should be extended into the ranks of the socially awkward and isolated. There is, however, a widespread consensus about the validity of the core construct.

People with Asperger's Syndrome demonstrate deficits in both social interaction and in verbal and non-verbal communication. They have a narrowly circumscribed and rigid pattern of interests and routine. They are frequently physically clumsy. As children they have little or no interest or capacity for imaginative play (Wing, 1981). People with Asperger's Syndrome are described as egocentric and as lacking a basic capacity to understand and relate to others.

Those afflicted by Asperger's Syndrome may behave in socially deviant and destructive ways with consequent police involvement. There are a number of case reports of violent offending, fire starting and sexual offending by people with Asperger's Syndrome. In Asperger's (1944) original paper, Fritz V was described as 'quickly became aggressive' and 'attacked other children' and Harrow L. not only 'attacked other children, gnashing of teeth and hitting out blindly' but also 'showed social unconcern in sexual play with other boys, allegedly going as far as homosexual acts, coitus attempts.' Kohn *et al.* (1998) described a 16-year-old male who was hospitalised after three episodes of sexual assaults. Simblett and Wilson (1993) described two females and one male with Asperger's Syndrome all noted to have 'severe temper tantrums' and two of whom demonstrated violent behaviour. Everall and LeCouteur (1990) described a 17-year-old boy with a diagnosis of Asperger's Syndrome and a one-year history of fire starting. Wing (1981) noted that four of her 34 cases had 'a history of rather bizarre antisocial acts.'

Given the low prevalence of Asperger's Syndrome, it is not clear how commonly violent and potentially criminal behaviour occurs. Kohn *et al.* (1998) suggested the prevalence of aggression is around 20%, whereas Ghaziuddin *et al.* (1991) estimated that it is as low as 2.7%. Using established diagnostic criteria in a retrospective case study, Scragg and Shah (1994) identified six different cases of Asperger's Syndrome in Broadmoor with three equivocal cases producing a prevalence of 1.5–2.3% among that highly selected population of mentally abnormal offenders. They suggest a possible association with Asperger's Syndrome and violence on the basis of this. Wolff and Cull (1986) suggested that antisocial conduct is associated with schizoid personality (by which they meant something akin to Asperger's Syndrome) and that is of a different kind 'less dependent on adverse environmental conditions than on the children's fantasy life.' In a study of 135 young offenders assessed by the Forensic Psychiatry Department in Stockholm, Siponmaa *et al.* (2001) on retrospective re-diagnosis found 30% of the sample with a possible diagnosis of Pervasive

Developmental Disorder (none of whom were thought to have Autism). This included 4% of the sample with a definite re-diagnosis of Asperger's Syndrome. The authors went on to note that given the small numbers that caution was warranted, before concluding that Asperger's syndrome is over-represented in Forensic Psychiatry. They did find a strong association between Arson and Pervasive Developmental Disorders.

Consistently a direct relationship between the offending and the clinical features of the syndrome has been identified. This is usually placed in the context of deficits in social relatedness or rigidity in thought and behaviour.

The case histories published to date suggest that most problematic behaviours lie at the minor end of the offending spectrum. However more serious offending including homicide (e.g. Scragg and Shah, 1994) can occur. Therefore patients with Asperger's Syndrome will on occasion be before the courts for serious offences. Asperger's Syndrome is a mental disorder with the primary deficit being one of a lack of capacity for relatedness to others. This deficit may be of a degree to raise issues of culpability and fitness to plead. These forensic aspects of Asperger's Syndrome have not been widely considered. Murrie *et al.* (2002) published a series of six cases with offences that ranged from minor sexual offending to attempted murder. They pointed out the relationship between a number of features of Asperger's Syndrome and offending. They also raised the possibility that the deficient empathy of Asperger's Syndrome could provide the basis for an insanity defence. They suggested that for both Insanity and competence a key issue might prove to be the extent to which the subjective reality of those with Asperger's Syndrome differs from other individuals.

What follows are five case histories of patients with Asperger's Syndrome who were assessed by one or both the authors. These cases are used to illustrate the connection that may exist between offending and Asperger's Syndrome and then to provide a basis for a discussion of culpability and fitness to plead.

## CASE HISTORIES

In all cases, the initials have been altered to ensure anonymity. Further the cases were all heard in open court and are therefore a matter of public record.

### Case 1 – Mr BD

Mr BD is a male who was 26 at the time of his assessment. He was facing charges of arson. He set fire to a hedge and subsequently caused considerable damage.

A good history diagnostic of Asperger's Syndrome was obtained from his mother and aunt. He was never able to relate effectively to other children and was fascinated from a young age with moving objects. He was slow to learn in most areas but had an unusual facility for mathematics. He displayed a number of obsessional features and for most of his life had been rigid and prone to keeping regular routines. He had suffered from hydrocephalus as a child. In his adolescence he had taken up studying a street directory and displayed a preoccupation with words and dictionaries. In the course of his adolescent and early adult life at periods he functioned relatively well, being placed in a sheltered workshop. Assessment identified him as being of within the normal range of intelligence. He had been diagnosed as suffering from Asperger's Syndrome when he was 21 years of age.

In relation to the offences, he had taken an interest in flickering flames. The family gave a history of him watching the pilot flame in the gas heater for long periods, apparently fascinated. He was able to recount rote fashion that lighting fires damaged property and put others in danger and further that he had no intention of ever repeating the behaviour. Despite this, the most recent arson had occurred when he again lit a fire in order to watch the fascinating flickering of flames.

He was considered fit to plead to the charge and a psychiatric report recommended follow-up with psychiatric and other community support services. He received a non-custodial disposition.

### Case No. 2 – KD

This man had repeatedly come before the courts for charges of public nuisance and minor assaults. He was also charged with stalking, having harassed and intruded on those with whom he had become fixated. These victims were professionals who had been involved in his care. He would contact them over the phone repeatedly, turn up and write numerous letters. The letters usually began with a request for help and extended self-revelation but degenerated into threats.

He had a history from childhood strongly suggestive of Asperger's Syndrome, with his slow development of motor skills and a complete absence of the development of interpersonal and social skills although he was highly verbal from an early age. He displayed a fascination with words and their meaning. He was totally isolated within the school environment and non-responsive to discipline. He frequently wandered away from school and wandered away from home. He developed early in his life obsessional-like symptoms with checking and rituals. In later adolescence he developed a movement disorder with symptoms of catatonia. He described becoming what he described as 'stuck'. On these occasions he would freeze,

sometimes in odd-looking postures, sometimes standing or sitting. He could be propelled into movement by gentle pulling. However sometimes, if not approached carefully, he would become resistive and lash out. He had a curious preoccupation with thresholds, often becoming trapped within rooms because of an inability to cross thresholds. This was sometimes solved by throwing himself bodily backwards through a window or a door.

On interview his speech had an explosive quality. His movements tend to be jerky and awkward, with a loss of the usual fluidity of motive activity.

In adolescence he was placed first in a juvenile justice facility and subsequently in a secure hospital where he was the victim of considerable abuse, which left him with an abiding fear of hospitals and distrust of mental health professionals.

The charges of public nuisance and minor assaults related to episodes where he had become stuck and members of the public had tried to assist him. The stalking was related to his obsessionality and development of rigid routine. Therefore when introduced to a new professional he would quickly identify with them and would find himself unable to accept the limits or the loss of professionals when these were imposed upon him.

He was convicted of the charges having been found fit to plead. On all occasions he received convictions but without imprisonment.

### **Case No. 3 – KA**

KA was 24 years of age when referred following being charged with arson. His mother had been a nursery nurse and was able to give a detailed account of his childhood development. It was a classic history of Asperger's Syndrome with a fascination with moving objects, slow development of motor skills, precocious language skills and an almost complete absence of interpersonal and social skills. At the time of his assessment his overriding preoccupations were with the armaments of Second World War aircraft and listening to a radio station which played music that he had developed an interest in. He never developed any friendships and remained largely dependent on his mother, never working and never leaving the house except in her company. He spent his days reading books, preferably about warplanes, and listening to the radio station.

The problem began when the family moved to another city. The radio station with which he was fascinated was difficult to access from their new residence. He developed a complex system of aerials, which finally enabled him to tune in successfully. After a year of listening, a local religious radio station set up a new broadcast on the frequency close to his favoured station. This interfered with his listening between the hours of 7 and 10 each evening. He wrote a number of letters to

the radio station asking them to stop interfering. He received blessings and Christian tracks in response. Following a further unsuccessful communication, he walked to the radio station carrying a can of petrol, poured the petrol around the station and burnt it down. He had no regrets for his actions and was puzzled what all the fuss was about. He would have successfully avoided detection except that he proudly informed his mother the next morning that he was responsible for the destroyed radio transmitter, a picture of which appeared in the local newspaper.

Again it was recommended that this man was fit to plead. He received a conviction again with a non-custodial order and community follow-up.

#### Case No. 4 – NY

At the time of his assessment Mr NY was 24 years of age. He was referred following an assault on his father.

He had been recently diagnosed with Asperger's Syndrome. This diagnosis had been made following a visit from a foreign expert. There was a childhood history of disinterest in social interaction with other children. He was clumsy and described as having an idiosyncratic way of speaking. He lifelong displayed remarkable rigidity and inflexibility in his thinking and a lack of interest in imaginative play. He was thoroughly preoccupied from a young age with electronics. His mother described him as tolerating change poorly and having a very restricted routine. Because of his interest and aptitude in electronics he had been employed working for a security firm and for a telecommunications firm.

The lack of a previous certain diagnosis and his rigidity had generated a lot of conflict within his family, particularly with his father. He had once previously come to the attention of the courts for a charge of wilful trespass, this charge being dropped.

Another of his interests, fire lighting, precipitated the assault on his father. He had lit the fire in the middle of the back lawn. His father, who was exasperated by his behaviour, had confronted him about this. For his part, Mr NY felt affronted by the confrontation, believing that he had was quite entitled to light fires and being unable to understand why his father was reacting in the way which he did. As a result he interpreted his father's behaviour as unfortunate and unnecessary and responded by assaulting him. During the assault he hit him on the top of the head and punched him several times.

The result of his forensic assessment was that the man was fit to plead and that he did not have an insanity defence. Ultimately the charges were withdrawn.

**Case No. 5 – TE**

Mr TE was 16 at the time of assessment. He was facing charges of minor sexual offending.

He had been diagnosed with Asperger's Syndrome two years previously. He had a history of childhood problems. At kindergarten he was noted to be clumsy, unsettled and non-compliant with instructions. He never displayed any capacity to acknowledge rules imposed upon him at primary or secondary school. He was noted to have a poor level of social interaction with other children, first identified at kindergarten. This pattern of poor social relationships persisted and he remained socially isolated at the time of his assessment. He was noted to have exceptionally good memory skills and in 1992 an assessment of his intellectual functioning found it to be in the normal range.

When remanded in the youth facility he generated considerable problems because of his repetitive and obsessive behaviour. He came into conflict with other residents and demonstrated marked problems with anger and aggression. This was similar to the history gathered from his family. From his time at school there had been concerns about his level of aggression.

When interviewed he displayed significant oddities in his language with an inappropriate monotonous tone of voice and disruption of prosody. His presentation was characterised by a naive grandiosity that included improbable accounts of sexual exploits and exaggerated drug and alcohol abuse. It was notable that he was preoccupied with sex and demonstrated a very poor and naive grasp of sexual matters.

He had come to the attention of the courts on two occasions. On one occasion he had approached a seven-year-old girl and her five-year-old brother, putting his arms around them and saying that he wanted to take them to his place to 'do naughty things'. The intervention of a 13-year-old had prevented escalation to more serious behaviour. Ten months later he had approached a girl in a library making a direct and blunt sexual advance. When she declined he grabbed her, and this including putting his hands around her throat. On the first of these charges he was assessed by a non-forensic psychiatrist who suggested he was not fit to plead. When subsequently assessed by a forensic psychiatrist it was felt that he was fit to plead but the court dealt with him by discharging him without conviction. An order was made that he receive treatment and follow-up through child and adolescent psychiatric services. He subsequently reoffended by assaulting his mother several years later. However at the time of writing with considerable psychotherapy and cognitive behavioural therapies, his preoccupation with violence and sexual themes had markedly diminished and he was generally doing better in the community.

## DISCUSSION

In each of the cases the offending was understandable in terms of the patient's Asperger's Syndrome. Hence in Case 1, the fire starting reflects a typical narrow, all absorbing interest. It led to criminal actions because of his incapacity to appreciate the significance for others of his fire setting. Case 3 is similar, although the fire lighting was instrumental and the product of the lateral concrete logic that people with Asperger's Syndrome often possess. Fascination with fires was prominent in Case 4, although the ultimate charge was assault. The assault was the product of his long-standing conflict with his father generated by the difficulties inherent in parenting someone with this disorder. These difficulties were apparently worsened by the lengthy delay in diagnosis. It occurred also in the context of his father remonstrating with him. His angry response was understandable on the basis of his inherent egocentricity. The sexual offending that occurred in Case 5 can be understood in terms of the patient's age with a burgeoning libido, coupled with a crippling incapacity to transact sexual activity or to establish normal peer relationships. Again there was an inability to consider the social significance of his actions – i.e. that they may be harmful and subject to legal sanctions. Case 2 reflects different but related disability. As a result of his catatonic symptoms the individual drew attention to himself in public and then responded in an angry way to the misguided ministrations of members of the public. The stalking behaviours represented a combination of an obsessive personality, poorly developed socialisation and the familiar difficulty in appreciating the consequences of his actions.

All five cases are male, reflecting the higher incidence of this disorder in men (Attwood, 1998), presumably also their high rate of offending. Two cases had a history of fire starting; three a history of violence, and one a history of minor sexual offences similar to previous case reports (e.g. Kohn *et al.*, 1998; Everall and LeCouteur, 1990; Murrie *et al.*, 2002; Mawson *et al.*, 1985). The occurrence of catatonic symptoms in one patient is consistent with the described association between autistic spectrum disorders and catatonia (Wing and Shah, 2000). All five cases would meet the diagnostic criteria of ICD 10 (World Health Organization, 1992) and DSM IV (American Psychiatric Association, 2000) and the tighter criteria described by Ehler and Gillberg (1993). Only one case has clear evidence of congenital or neonatal illness.

All five cases came to the attention of the authors through the court system. None of the cases received custodial sentences. In fact in several of the cases the offending led to an improvement in the level of support and care that the patients received, particularly from mental health services. However despite their marked disabilities, in none of these cases were the individuals found to be unfit to plead. Although in each case a demonstrable

nexus could be established between the offending and the Asperger's Syndrome, an exculpatory defence on the basis of their mental disorder (i.e. insanity, mental impairment) was not advanced despite the jurisdictions the cases were heard in making such a defence a realistic possibility. In the light of the subsequent outcome this may be seen to represent enlightened pragmatism. However not all offending by patients with Asperger's Syndrome is likely to be dealt with so lightly.

What then can be said about the relationship between fitness to plead and Asperger's Syndrome? The specific criteria for unfitness to plead emerged in the law of England and Wales during the 19th Century in the form of case law. The decision in *R v Pritchard* (1836) established criteria for fitness, which continues to form the basis of the common law, though the procedures and outcomes pertaining to findings of unfitness are now defined by the Criminal Procedure Act 1991. The Canadian Criminal Code 1958, employs similar criteria defining unfitness as being 'unable on account of a mental disorder to: (a) understand the nature or object of the proceedings, (b) understand the possible consequences of the proceedings, or (c) communicate with counsel'. In Australia the common law of England and Wales was gradually modified in a number of local decisions the most influential of which was *R v Presser* (1958). In the last few years a number of Australian states have introduced legislation governing both the criteria and procedures for fitness to stand trial (e.g. Government of Victoria Crimes (Mental Impairment and Unfitness to be Tried) Act 1997). The emphasis in the law of England and Wales and the Australian jurisdictions is on specific abilities such as understanding the nature and course of the trial. In contrast in the US jurisdictions the emphasis has been on what are regarded as the two main components of competency, the cognitive capacity to comprehend relevant legal concepts and procedures, and the volitional element of being able to utilise such information appropriately in the legal environment to advance one's own case (Miller, 1994). The US approach emphasises broad mental capacities of which the competencies in the legal arena are specific instances.

The broad capacities required by US courts would be difficult to establish in many cases of Asperger's Syndrome. A criminal trial is a complex social event at a number of interacting levels. A trial is a social performance where the roles of participants are strictly governed by rules of procedure. A trial represents a social event of public as well as personal significance. Laws themselves embody social assumptions and power relationships in society. It would be difficult to imagine an event less likely to be comprehended by an individual so self absorbed that even the existence of others can be problematic let alone higher level social interactions. Any such understanding giving rise to appropriate actions in such a complex social situation is even more problematic.

The specific performances required for fitness to plead in England and Wales and Australian courts are a less insurmountable barrier for someone burdened with Asperger's Syndrome. They can usually be taught the basic task performances and even instructing their legal advisors produces few difficulties if the basis of their wishes are not examined too carefully. The problem is not usually with understanding that a guilty plea implies acceptance that you committed the act, but with accepting that you knew, or should have known, it was wrong legally. However 'wrong' is construed, it certainly requires a capacity to appreciate the potentially distressing or damaging effects of your actions on others, or their property. But it is exactly this understanding which may be to some extent impaired.

In four of the cases the individual pleaded to the charges and in the fifth the case was discharged. If these individuals had chosen to enter not guilty pleas then the question of fitness would have needed to be more rigorously considered. The cases occurred in jurisdictions where the capacity to understand the nature of the trial or proceedings is an element of fitness criteria. Although the requirement for a sophisticated appreciation of the social context of a trial is not required, nevertheless the capacity of an individual with Asperger's to understand the socially based intent and significance of a trial will be impaired. Without reassessing each case in light of a not guilty plea it is difficult to say if they would have met criteria for unfitness although the simple nature of the charges in these cases would have assisted in their comprehension of the proceedings. Equally however, if the charges were more serious and therefore the trial more complex, the threshold for fitness would rise to a point where some if not all of these individuals would have been unfit.

In the five cases described all the individuals believed to a greater or lesser extent that their actions were appropriate and justified responses to the situation. All were surprised by the reactions their actions evoked in others and had difficulty understanding why they were now facing criminal charges. This is similar to the naiveté described in their series by Murrie *et al.* (2002). The degree of perplexity varied from irritable uncertainty (Case 2) to total incomprehension (Case 3). In all five cases, the offending was the product of Asperger's Syndrome, a mental disorder when narrowly defined. Further, in each case the offending behaviour was not recognised by the offender as being wrong, in fact their actions were not modified by regard to the impact of their actions on those around them or the easily recognisable consequences. Certainly few patients with Asperger's Syndrome can reflect on their actions as they might impinge on others with any degree of composure. Given that Asperger's Syndrome is characterised by a relative incapacity to either know or understand how others think or feel (Wing, 1981), the question then has to be asked – are people with Asperger's Syndrome deprived of the capacity for social responsibility by the nature of

their disorder? In other words, if social conventions and connectedness are opaque to them how can they authentically appreciate that their actions are morally wrong (as opposed to a concrete understanding that certain behaviour may provoke a predictable and unpleasant response from others). Given the variability within the disorder and the uniqueness of each individual's capacities, it seems likely that some patients with Asperger's Syndrome will have sufficient understanding to be morally responsible for their offending behaviours. Yet if one takes each of the above case histories in turn, cogent arguments for legal insanity can be made, especially for Cases 1–3 and 5 as they all occurred in jurisdictions where moral rather than legal wrongness are part of the criteria for insanity.

How then are we to incorporate these considerations into practice that is ethical and serves the best interests of the patients and the courts? Raising issues of disability and unfitness does not inevitably lead to findings which promote either individual justice or wider community interests, especially where the offending is minor. Courts and solicitors (as well as psychiatrists) are quite capable of exercising pragmatism and discretion towards a goal consistent with the interests of the individuals concerned as evidenced by these five cases. However it behoves us to draw to the courts' attention the obvious: that patients with Asperger's Syndrome suffer from mental disorder and that their offending and subsequent disposition must be placed in this context. The core features of Asperger's Syndrome and how they determine what the individual knows and understands of the world should form a basis for sophisticated assessment of the issues of disability and legal insanity.

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