**Lawyering from the Inside Out**

*by Alicia Henderson, Jennie Cole-Mossman, Katherine Hazen and Melanie Fessinger*

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<th>Jennie Cole-Mossman</th>
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LAWYERING FROM THE INSIDE OUT

Alicia Henderson, former Chief Deputy Juvenile County Attorney, on her introduction to reflective practice:

What happens to lawyers through the years after being bombarded with the most horrific scenarios, especially those involving defenseless children? What happens to lawyers who are powerless to prevent tragedies that the justice system inflicts while it tries to help children and families? What happens to lawyers who strive for high-quality work, but are ground down by impossible caseloads?

Sarcastic, stressed, jaded, and burned out is how many of us live our lives as attorneys. Most of us don’t turn to drinking or other addictive behaviors as a coping mechanism, which is actually rather surprising, given how stressful our work lives can be. But many of us are really struggling with the demands of our jobs and are looking for something that can really help.

I was all ears when Jennie Cole-Mossman came to me in the spring of 2016 and asked whether I was interested in having the lawyers in the juvenile division in the Lancaster County Attorney’s Office participate in a process that might help relieve some of this stress. She described Reflective Practice and it sounded promising, but I wanted to actually experience it before I asked whether we could participate in it or not. So, I asked her to try it out on me.

She told me to bring a case to discuss. We would go to lunch together and she would “Reflective Practice” me. So, I brought her a doozie of a case. I had spent more than three years on this case, only to be incredibly disappointed by the outcome for the children involved and for the law that was created in the process. And just recently, the case came back into the system and the children had to be removed from their family of origin once again. It took at least 30 minutes of our time together just to get through the procedural background of the case, without even covering the facts and the law involved. When I finished my recitation, Jennie asked me one very poignant question, and I burst into tears as I answered it.

Here I was, a lawyer with almost 30 years of experience, crying in a restaurant about a case of mine. Reflective Practice isn’t therapy, so we didn’t go into whatever you would go into if it were. Instead, Reflective Practice led me through the case in a completely different way than I had gone through it in the past. That one session gave me a different perspective both on the case and my role in it. My approach changed so substantially that the children’s mother went from yelling at me and saying that I should not be prosecuting her case, to apologizing to me two weeks later and saying that she truly believed I had her and her children’s best interest in mind. That one Reflective Practice session also helped reduce some of the stress that I was having about the case. The case was still difficult, and would remain so, but my attitude about it had changed.

What is Reflective Practice?

Reflective practice is a new way of thinking about the human parts of practicing law and the impact of practicing law on the attorneys themselves. It is a framework for looking at our work by examining our thoughts, feelings, biases, and past experiences. It is a relationship-based practice that relies on using people’s own experiences to help them become more resilient in the face of work stress. It engages an attorney to look critically at their work using the fullness of their experiences, thoughts, and feelings. “Reflective practice allows for self-introspection. We move at such a very quick and steady pace that we sometimes do not slow down to reflect on our cases, our decisions, and our client. Reflective practice sessions offer a very safe space to conduct the introspection and share that with others without any fear.” – Dammy Oluyole, Attorney, Douglas County.

Reflective practice is an umbrella term for reflective consultation and reflective supervision. Reflective supervision is done by an internal supervisor by blending reflective practice with traditional supervision needs. Reflective consultation is done by someone outside the organization. “The goals of reflective practice are to provide the professional with a self-improvement algorithm, and to increase the capacity of the professional to exercise judgment in the professional context” (Casey, 2014, p. 321).

Certain types of legal work lend themselves to increased stress. Criminal and Juvenile Court work may expose attorneys to information that is sensitive and sometimes traumatic in nature. It may present dilemmas about humanity and fairness, which includes the inherent limitations within the rules of evidence. When exposed to traumatic and emotionally difficult information repeatedly, attorneys risk developing vicarious trauma or secondary traumatic stress (Levin & Greisberg, 2003). This is defined as the cumulative effects of working with traumatized people or perpetrators as part of your everyday work (Osofsky, 2008). Lawyers who must engage empathically with people in these situations are at risk for developing vicarious trauma. “Working in child welfare requires one to deal with a lot of other people’s emotions. Through reflective consultation I can explore my own emotions and experiences and see how they could impact my decision making.” – Tom Incontro, Attorney, Douglas County.

The Nebraska Resource Project for Vulnerable Young Children launched the Nebraska Center for Reflective Practice (NCRP) just this last year. Five Nebraska Trainers began a train-the-trainer process with the Erikson Institute of Chicago that they will complete at the end of 2018. Two of these trainers, Jennie Cole-Mossman and Jamie Bahm, will be housed at the NCRP. The NCRP intends to bring reflective practice to different helping professionals. The Nebraska Trainers are currently providing reflective consultation to Child Parent Psychotherapists, therapists, attorneys, Judge Elizabeth Crnkovich, child welfare caseworkers in Lancaster and Douglas County, and early childhood professionals throughout the state.

In addition to providing reflective practice, the Nebraska Trainers will be able to train professionals to provide reflective supervision or consultation using a model developed...
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by Linda Gilkerson at the Erikson Institute. The model is called Facilitating Attuned Interactions (the “FAN”). The Nebraska Trainers have provided the training to three lawyers (Kelli Hauptman, Alicia Henderson, and Tana Fye) and Judge Lawrence Gendler. These were the first legal professionals to be trained in this model of reflective practice in the country.

While originally intended to help legal professionals deal with secondary traumatic stress, the training has sparked a look at reflective practice and the use of the FAN in the courtroom. Lawyers are learning new ways of using reflective practice not only to deal with the stress of their work, but also to help with client counseling. The FAN provides a framework to help understand interactions between both lawyer and the client, and the client and the court. Good relationships between clients, attorneys, and the court can increase the perceptions of fairness and engagement in the court process.

Through this training process, the NCRP has provided reflective consultation to a variety of legal professionals, including Douglas County private attorneys, Lancaster County Attorney’s Office Juvenile Division, Legal Aid of Nebraska in Lincoln and the students of the new Children’s Justice Clinic at the University of Nebraska Law College. “Reflective consultation has helped me to be able to recognize my biases towards continuing to approach my practice in the way I always have. In other words, it has enabled me to recognize that I function from a level of comfort and habit that is almost unconscious. It has also enabled me to recognize that I need to separate my self from my emotional responses to stressful situations and to be able to begin to see

when those situations are arising and note my response.” – Janine Ucchino, Attorney, Douglas County.

Does Reflective Practice Work?

The FAN has been evaluated in different contexts. It has shown great promise in other helping professions at reducing stress, increasing feelings of competence, and increasing reflective capacity (Gilkerson & Kopel, 2005). Evaluation of this model with legal professionals has not yet occurred, but the importance of reflective practice of some sort has been highlighted by legal scholars (Casey, 2014). The NCRP is conducting some program evaluations looking at the impact of reflective practice on several outcomes. Due to the small size of the sample and the relative newness of the practice, it is too early to say definitively just how reflective practice makes a difference.

We do notice that attorneys working in child welfare report higher levels of vicarious trauma than mental health practitioners and early childhood educators. Additionally, professionals report using reflective practice as a coping mechanism for work related stress more often throughout their participation in our groups. We expect to see changes in burnout, reflective ability, vicarious trauma, cognitive abilities (such as problem solving), and use of coping mechanisms over time.

Anecdotally, we know that lawyers are reporting gains. Bruce Prenda, the current Chief Deputy of the Juvenile Division in the Lancaster County Attorney’s Office, has five of the attorneys in that division participating in Reflective Consultation has helped me to be able to recognize my biases towards continuing to approach my practice in the way I always have. In other words, it has enabled me to recognize that I function from a level of comfort and habit that is almost unconscious. It has also enabled me to recognize that I need to separate my self from my emotional responses to stressful situations and to be able to begin to see

when those situations are arising and note my response.” – Janine Ucchino, Attorney, Douglas County.

ARBITRATION AND MEDIATION SERVICES

The Honorable William M. "Bill" Connolly, retired after twenty-two years on the bench with the Nebraska Supreme Court, is now Of Counsel with the firm of Erickson | Sederstrom practicing in Arbitration and Mediation.

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Practice. Prenda reports that since the NCRP has started providing Reflective Practice, he has noticed a positive increase in communication between the members of the division and himself. He has also noticed that attorneys seem to be better at handling personnel transitions.

Reflective Practice provides a structured environment of trust and respect where professionals’ issues can be acknowledged, discussed, and explored. The Reflective Practice environment can facilitate deeper understanding and new ways of handling cases and the people within those cases. The Reflective Practice environment can provide new ways to handle the stress that accompanies the work that lawyers do. We hope that Reflective Practice will be a positive tool that helps lawyers become both better at their jobs and healthier in their lives.

For more information on the Nebraska Center for Reflective Practice, please go to www.nebraskababies.com/ncrp.

References


“Experts in a professional field must have the capacity to exercise judgment—they do so quickly, seamlessly, and repeatedly. Experts draw upon experience to distinguish relevant information from irrelevant, and to assess the risks of different courses of action. In most professional contexts, more than one course of action will successfully resolve the plan, and the expert will choose a particular course of action by using professional judgment.”¹ But what do you do when your client won’t listen to your professional advice? Or can’t listen? Or won’t stop crying? Or is just so angry at the spouse/the Department of Health and Human Services/the County Attorney that they just yell at you?

Attorneys regularly deal with clients who are under an immense amount of stress and in the midst of difficult situations. Reflective practice is widely understood in the mental health community as well by first responders as a way to improve performance, reduce burnout, address vicarious trauma stress, and to simply think more clearly about problems faced. It is gaining acceptance in the medical field to help doctors and patients deal with complex problems and to work more cooperatively.² And for these reasons, reflective practice has begun to be used and accepted in the legal field and in child welfare as a way to deal with the secondary trauma faced by caseworkers, home interventionists, and attorneys.³

In 2017 and 2018, I had the opportunity to engage in reflective practice training and mentoring through The Nebraska Center on Reflective Practice in preparation for leading a reflective practice group for practicing attorneys in Kearney, Nebraska.⁴ Through the course of this training, what occurred to me early on was that these techniques are not so different from what I’m already doing in many meetings with clients. But reflective practice provided a framework for understanding why some of my client interactions went extremely well with the client able to think through problems in their case and possible solutions, and other interactions went very poorly with my client yelling, crying, storming out, or just not able to work through options in their case with me. And reflective practice provided a framework for me to understand where my client is, emotionally and cognitively, and to meet them there.

What is Reflective Practice

Before discussing reflective practice further, it’s important to understand exactly what reflective practice is and what it means. Fundamentally, reflective practice involves an examination of feelings, exploration of issues, brainstorming solutions, and integrating these areas together to become more resilient.⁵ Reflective practice builds capacity “to imagine, think, and plan; to generate new awareness; to construct new understandings; and to use this process to transform practice.”⁶ There are many

Tana M. Fye

Tana M. Fye is the principal attorney at Fye Law Office, with offices in Holdrege and Kearney, Nebraska. She practices predominantly in the areas of juvenile law and criminal defense. She graduated from The University of South Dakota School of Law and then clerked for the ten judges of the Second Judicial Circuit of South Dakota after graduation and before starting her own law practice. Tana is trained in reflective practice through The Nebraska Center of Reflective Practice.
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models of reflective practice used in different contexts, but the fundamental elements of the models are largely the same. 7

Reflective practice can either occur through consultation or through supervision. 6 Reflective supervision occurs between leaders and their staff. This can include managing attorneys and associates, as well as between agency managers and their supervisee employees. Reflective consultation can include groups of individuals and a consultant who engage in the reflective process with them. This includes the groups of attorneys throughout the state that meet biweekly or monthly — First Court in Omaha, and caseworkers in Family Drug Court in Lincoln.

Practically what happens during a client meeting which uses reflective practice, is as follows:

1. Ensuring that the attorney of the reflective practice session is self-regulated (i.e., calm, not distracted by other issues or cases, prepared to meet the client wherever he/she is emotionally and cognitively);
2. Setting an agenda that both the attorney and the client want to cover;
3. Listening for strong feelings experienced by the client and helping to contain them;
4. Exploring the problem or issue that needs to be addressed in this meeting;
5. Brainstorming and discussing possible solutions to the problem, while helping the client to feel empowered to decide the best path forward with input from the attorney’s experience; and
6. Integrating the information together and either arriving at a decision, outlining when the client needs to respond to the attorney, or when another meeting needs to occur. 9

If the client becomes dysregulated and responds emotionally later in the process, the attorney will need to circle back and help the client to again contain his/her emotions so that the process can move back to either exploring the problems or brainstorming solutions.

Why Use Reflective Practice

Reflective practice has not been studied in the context of client counseling, but has been studied in other contexts where it has been applied. The benefits have been universal in those contexts studied.

In the context of using reflective practice among managers of staff, the managers reported “a greater understanding of their own ‘triggers’ in interactions [which] allowed them to be less reactive and use more proactive approaches to problem solving. With greater ability to reflect, they were more able to step back and see issues from the staff’s perspective and then to build more on staff strengths.” 10 When used by those interacting directly with families, the workers reported that reflective practice enabled them to better work in spite of their own adverse feelings toward a family, talk about stresses of their roles, process relationships with providers, and deal with feelings of overwhelm, undervalue, and lack of respect. 11

But the benefits of better client counseling are easily understood by practitioners. Clients whose emotions are contained are able to think more rationally about their cases and options. This cases interactions between the attorney and client, as well as interactions with others (the Department of Health and Human Services case managers, visitation workers, a former spouse, etc.). It ensures that the client has a better understanding of their case, which helps to ensure due process for the client. It can also (but as practitioners know, doesn’t always) lead to better case outcomes. And when client meetings run more smoothly, the benefits to attorneys include less angst about cases, less stress in our own lives, and a generally more positive feeling about the work that we do.

Case Studies 12

Case Study: Robert

Robert is a man who is lower functioning and has difficulty with speech, making him difficult to understand. I represent Robert in a criminal case, where he faces the potential for incarceration. He struggles to understand complex concepts, but is not low enough functioning such that competency is in question. Robert feels like people are out to get him, which causes him to be verbally aggressive. He shouts when he feels as if he isn’t being understood or heard.

Step 1, in preparing for my meeting with Robert, I needed to ensure that I was calm, wasn’t holding on to particular emotions or feelings from other cases, and ready to be patient. This is step one from the process outlined earlier.

Step 2 involves setting an agenda, so we started our meeting by doing just that (outlining upcoming court dates, discussing the plea offer, discussing the facts of his case—his version and the version in police reports, discussing pros and cons of the various options, and arriving at a decision about how to proceed). I outlined what I wanted to cover and asked Robert if he wanted to discuss anything else during our meeting. He advised that he did not have any other topics that he wanted to cover.

Knowing what was going to happen in our meeting helped Robert to feel in control which immediately made him less agitated. After advising Robert of the upcoming court dates and of the plea offer, I then let him take over and talk about what had occurred (Step 3). At times he was so upset that he shouted about how “it wasn’t right” what the cops had done to him. Telling the story illustrated Robert’s strong feelings of persecution and feeling misunderstood. I validated his feelings, which
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calmed him further. I contained his emotions by telling him that I understood how hard the situation was for him, and asked if he was ready to explore the options for dealing with his case. He agreed, and we were able to move from Step 3 to Step 4.

In our meeting (and most of my meetings with criminal defense clients) we essentially handled Steps 4 and 5 together. I asked some questions to clarify information that he’d given to me. We discussed the charges in his case, the possible penalties, what information was in the police reports and what likely would be presented at trial, and the options for going forward—trial or accepting the plea offer. I gave him advice based on my experience and answered questions. I told him that the decision was his to make, but made clear that I’d support whatever decision he arrived at. Once all of his questions had been answered, and he seemed as if he understood all of his options and what they meant, we moved to Step 5, brainstorming and discussing possible solutions.

In Step 6, we integrated our meeting. He told me that he wanted to accept the plea offer. I asked if he had any additional questions for me or other things that we needed to cover that we hadn’t already covered. I asked if there was any other information that he wanted me to remember from our meeting. He advised that his questions had all been answered, and that he’d told me everything. We ended the meeting with Robert feeling calm and that he’d been heard, and with a clear path forward in his case.

Case Study: Emily

Emily’s two children have been removed from her home and are in the care, custody, and control of the Department of Health and Human Services. They were removed due to domestic violence between Emily and her boyfriend, as well as a dirty house. Emily loves her children and her boyfriend, and is tearful at nearly every meeting. She is, however, a young mother without job or life skills, and is easily overwhelmed by the expectations on her.

Step 1—To prepare for my meeting with Emily, I again needed to ensure that I was calm and focused on her case, rather than be distracted by outside matters. I also needed to remember to be patient, as the process is new for Emily and she doesn’t know what to expect.

Step 2—We first met after the Pre-Hearing Conference (PHC), approximately one week after her children were removed. It was clear to me from how she responded in the PHC that she was already overwhelmed. To keep from making this worse, and to try to calm her, I limited our agenda for that first meeting. I told her that we were going to discuss the general process of juvenile cases, talk about the things that she could start doing right away to help get her kids returned quickly, and just decide when we wanted to meet again to decide on a course of action. I asked her if this was alright, or if there were other things that she wanted to talk about right away. She told me that she also wanted to talk about whether she and her boyfriend could stay together, so I agreed that we could cover that as well.

Step 3—I asked her how she was holding up with this situation. She started crying and telling me how much she missed her children. I told her that I heard how hard this was for her and how difficult it was. I validated her love for her children and her desire to get them back quickly. Once she had stopped crying, I asked if she was ready to hear about the process and the next steps that she could take.

Step 4—I then outlined, in a very general sketch, the juvenile court process from pre-adjudication through disposition. Because of her fragile emotional state, and to avoid moving her back to a place where her emotions, rather than her thinking controlled, I avoided telling her about the possibility of termination of parental rights at that stage. Knowing that we’d be talking again regularly, I covered this in a later meeting with her. I asked if she understood what the terms meant, and what the next steps were. She asked a few questions to clarify, and I knew that she understood at least generally.

Step 5—We talked about some of the things that she could control and start on right away. During the PHC, Emily had stated that she wanted to start on counseling and had already contacted an agency to set up her first appointment, so I highlighted her effort. I offered Emily some other services that she could get started on right away, and explored with her whether they seemed reasonable. I also told her some of the non-negotiable expectations of the case—that she attend her visits consistently, and that she have the house cleaned up within two weeks so that visits could return to her home. She agreed that she could do these things.

I asked her if we’d covered the things she wanted to talk about, and she reminded me that she wanted to talk about her relationship with her boyfriend. I thanked her for reminding me. We talked about how if her relationship were to continue with the boyfriend, he’d be expected to comply with a case plan, and that he needed to get started on the same types of things that she was expected to do. She stated that she understood and that she was going to talk with him about this, as well as talk to her counselor. I agreed that this was a good plan, and that we could continue to check-in and talk about this topic as the case progressed.

Step 6—I again asked if we’d covered everything that she wanted to talk about on that date, and she agreed that we had. I asked if there was any other information that she wanted me to remember from our meeting to discuss in the future, and she told me that she just wanted me to remember that she loved her kids and would do anything for them. I agreed that this was the case, thanked her for taking the time to meet with me, and told her that I’d be in touch to set up a time to meet with her again. She left the meeting much calmer than we’d started, and even
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smiled at the end. She appeared to feel empowered by knowing what she could do to help get her children back home.

Case Study: Holly

I represent Holly in a parenting plan modification case involving her two middle school daughters. Both of the children want to live with their mother full-time, and only see their father during daytime hours only. The girls’ father has a drinking problem, but hasn’t been convicted of any alcohol-related offenses, and claims that his drinking is normal. There is a history of difficult communication between Holly and her ex-husband, and their relationship is strained. Holly strives to be civil but finds it difficult. Making the situation more difficult to manage, opposing counsel is slow to respond to settlement offers, discovery requests, and e-mails.

In my previous interactions with Holly, she comes across as somewhat demanding, and expects her case to move more quickly than is realistic. She also has somewhat unrealistic expectations of how her case should be decided. When discussing possible settlement and potential outcomes of trial, Holly raises her voice to express her strong emotions and opinions. Although I like Holly and get along well with her, she can be intimidating.

Step 1—As in the other situations, I prepared for my meeting by ensuring that I was calm and not distracted by other cases. I also refamiliarized myself with the case and the most recent updates (Step 2), to ensure that I would not be intimidated by Holly.

Step 3—When we met, I started out by asking Holly how things had been going since we’d last talked. She outlined the latest of her grievances against her ex-husband, as well as how long the case was taking to resolve. I nodded along, made eye contact, and took notes of this information. Her fast rate of speech and raised volume indicated to me that she was upset and frustrated. I validated her feelings, and once it appeared that she was calmer, asked if she was ready to discuss next steps (containment of emotions). She agreed and we moved on to discuss the status of negotiations.

Step 4—We were able to talk through the parenting plan modification and the status of the negotiations. I reminded her that these cases can take some time to resolve, and that we were not fully in control of the timeline. We talked about how she like to take time to think over counter proposals and for us to discuss them, and that her ex-husband and his attorney needed to do the same. She appeared to understand and try to view the situation from their perspective on the issue of timing.

Step 5—I also engaged in capacity building with Holly by acknowledging that the case was taking a long time to resolve, validated her efforts to be patient and to try to see things from her ex-husband’s perspective, and made sure that she understood that I was here to support her and help her through the process.

Step 6—Once it appeared that we’d discussed all of the issues in the counter-proposal, I outlined our position on it, and asked Holly to clarify if that was her understanding. After making sure that she and I were on the same page, I outlined for her the next steps that would be taken. She indicated that she understood. I asked if there was anything else that we hadn’t covered and that we needed to, as well as if there was any other information that she wanted me to remember for our next discussion. She agreed that we’d covered everything that we’d needed to, and we ended the meeting.

Conclusion

Reflective practice can be a great tool for improving interactions with clients in many types of cases. As you can see from these case studies, it is particularly useful for cases and situations which are very stressful and in which clients are particularly emotional.

If you are interested in learning more about Reflective Practice, The Nebraska Center on Reflective Practice is a great resource. There are also upcoming continuing education sessions through the Center in conjunction with the Nebraska State Bar Association, including one on Reflective Practice in Client Counseling, which will be held in North Platte in August. Watch the NSBA website for more information.

Endnotes

2 Leo C. Aukes et al., The Development of a Scale to Measure Personal Reflection in Medical Practice and Education, 29 Medical Teacher 177 (2007).
4 Many thanks to Kelli Hauptman and Jennie Cole-Mossman at the Nebraska Center on Reflective Practice, as well as Linda Gilkerson and the Erikson Institute for the training on reflective practice utilizing the Facilitating Attuned Interactions (FAN) conceptualization.
6 Angela Tomlin & Sheryl Scott Heller, Measurement Development in Reflective Supervision: History, Methods, and Next Steps, Zero to Three Journal Vol. 37 No. 2 p. 6 (2016) (citing K. Brandt et al., Transforming Clinical Practice Through Reflective Work, Infants and Early Childhood Mental Health: Core Concepts and Clinical Practice. 293-308 (2014)).
7 Casey, supra note 1, at 327.
8 Henderson et al. supra note 3
9 Gilkerson, supra note 4.
11 Id. at 14.
12 Names and details have been changed to protect the identities of clients past and present. And case studies may reflect composites of multiple meetings with the same client or multiple clients.
Reducing Judicial Stress through Reflective Practice
Jennie Cole-Mossman, Elizabeth Crnkovich, Lawrence Gendler & Linda Gilkerson

Stress and vicarious trauma are frequently discussed as a problem for frontline workers who do trauma work. When we say frontline workers, people often think of emergency medical professionals, law enforcement, child welfare caseworkers, therapists, and residential staff for mental health facilities or prisons. Rarely do people think of the often quiet and even-tempered people who wear robes and sit behind a bench for a living: judges. Our public perceptions of the judge are as a person of ultimate neutrality who dispenses justice. But in reality judges also experience not only stress, but also vicarious trauma.

Vicarious trauma refers to distress associated with working directly with traumatized people. Professionals who work with traumatized people and traumatizing situations experience symptoms of trauma, including re-experiencing, avoidance, numbing, and persistent arousal. In 2008, the National Child Traumatic Stress Network's system brief reported that judges feel overwhelmed by the amount of trauma in the courtroom, the vast needs of the children and families who appear before them, system issues, and the overarching task of balancing the best interest of the child with the law. Judges are exposed to the details and emotions of traumatic situations, including significant physical or emotional harm caused by individuals or divorce. In addition to the exposure, they are asked to apply the law, remain neutral, engage the court participants, and make life-altering decisions, all while putting aside any conflicting personal beliefs. Judges are asked to do all of this without any system of impartial feedback, and many without any formal training about the various duties of their role. Judge Bremer calls it a “sudden metamorphosis from Perry Mason to Solomon” and points out that this occurs in relative isolation in her article about reducing judicial stress through mentoring. Judges are also asked to be empathic listeners for families with trauma. Yet it is the empathy in response to the traumatic events that itself can cause vicarious trauma for the judge.

In an informal panel in 2007, the National Council of Juvenile and Family Court Judges found that judges had common concerns related to vicarious trauma. These concerns included: the nonjudgmental role that a judge has to take, loneliness, not being able to take cases home to get support, not feeling safe to say they need help or are having problems, difficulty opening up about personal issues, anger, hopelessness, helplessness, depression about cases, and the stress of managing large caseloads. Similarly, in a study of 105 judges, 63 percent reported symptoms of vicarious trauma, including interpersonal problems, emotional distress, physical symptoms, cognitive symptoms and actual mental health diagnoses.

Judges are working under “emotional labor.” They have to manage not only their emotions, but also the emotional content of the cases while balancing the law. These emotional pressures make emotional regulation, the awareness of implicit bias, and provision of procedural fairness important in their work. Increasing the ability of judges to regulate emotions can help in difficult courtroom situations, increase perceptions of fairness, and decrease inappropriate judicial behavior. Judges who have the opportunity and ability to calm themselves are less likely to react to situations. They can be proactive and thoughtful in their interactions with people in their courtroom. They can listen without distraction, giving their full attention to the court proceedings in front of them.

Supportive social relationships are a buffer for stress and vicarious trauma. Healthy relationships can reduce harmful aspects of stress and increase job satisfaction. Even the perception of these supportive relationships can act as a buffer regardless of whether the judge engages in the relationship. However, while other professionals may rely on their co-workers, family, and friends to debrief after stressful work experiences, the role of the judge prohibits almost all such interactions. Loneliness and fear for one’s safety and the safety of their family are factors that can cause additional stress for judges. Judges reported being less likely to discuss their stress or vicarious trauma with others and they were less likely to tell anyone about their difficulties. Judges who have the opportunity and ability to calm themselves are less likely to react to situations.


Footnotes
5. Celeste F Bremer, Reducing Judicial Stress through Mentoring, 87 JUDICATURE 244, 244 (2004).
6. Id. at 245.
8. Osofsky, supra note 3, at 98.
11. Id.
12. Id. at 61.
EMPATHIC INQUIRY

Empathic inquiry acknowledges and validates feelings both in the judge and the participants so they can be regulated and feel understood. This is the core process of feelings. It asks for genuine curiosity about the feeling states of the other person. For example, in the courtroom, a judge may note that a participant’s anxiety is likely causing their seemingly rude behavior. Containment statements such as, “It seems like these recommendations come as a surprise to you. Perhaps you need a moment,” validates the feelings and allows for regulation. In consultation an example would be when the judge talks about what feelings are produced when an attorney isn’t prepared.

COLLABORATIVE EXPLORATION

Collaborative exploration seeks to further define and have a shared understanding of the issue causing the stress or friction. This is the thinking part of the FAN process. This happens after feelings are well regulated. An example is asking, “What do you think is preventing us from moving forward here?” or “What do you think is working even just a little bit? What is not working?” This example could be in the courtroom or in consultation. For example, in consultation, collaborative exploration can investigate what is preventing the judge from trying new strategies learned in problem-solving court training.

CAPACITY BUILDING

Capacity building allows the judge to access any missing information or highlight important insights that may be helpful in making decisions or resolving conflicts. This is the practice of “doing” in the FAN. Here we highlight what is going well. We also give information that is essential to move forward. For example, in the courtroom, “Sometimes these court orders look overwhelming at first. For this 3 month review I would like you to focus on getting into substance abuse treatment, attending your visits, and going to AA meetings.” In consultation, an example of building capacity may be asking, “What would it sound like if you approached your colleague in that way? What would you say first?”

INTEGRATION

Finally, integration helps the judge take away key insights that were gleaned from the process for future use or action. This is the core process that pulls everything together. This is the “ah ha” of the process. Not every consultation session or court hearing reaches integration, but it strives to do so. When an
integrated when two or more people or systems have significant
processing refers to mirrored affects, cognitions, and behaviors that
on the same page and develop parallel processing. Parallel pro-
regulate themselves.
by acknowledging the emotional states and allowing others to
ing some of the tension. The judge can increase communication
FAN can help the judge not only recognize but assist in defus-
clients happen when emotional states are intense. Using the
absence of attunement results in misunderstanding and frustra-
professionals and defendants. They facilitate the judge in
acknowledge the emotional states and allow them to complete that
process. For example, if a supervisee is stuck in the frustration
of a problem, the supervisor should recognize this and validate
those feelings through empathic inquiry. Once the supervisee is
ready, they can move past the feelings and onto collaborative
exploration to identify and understand the stressor. If a super-
visor attempts to identify the stressor before the supervisee is
ready, they are mismatched and, therefore, not attuned. The
absence of attunement results in misunderstanding and frustra-
tion. Often, misunderstandings between legal parties and
clients happen when emotional states are intense. Using the
FAN can help the judge not only recognize but assist in defus-
ing some of the tension. The judge can increase communication
by acknowledging the emotional states and allowing others to
regulate themselves.

The attunement enables the supervisor and supervisee to get on the
same page and develop parallel processing. Parallel process-
ing refers to mirrored affects, cognitions, and behaviors that
develop when two or more people or systems have significant
relationships. Therefore, when a supervisor is able to regulate
their own emotions and reactions to their supervisee, they are
better able to hear the issues and guide the supervisee to a solu-
tion. The supervisee develops trust that their supervisor will
respond in a calm, intentional way and begin to respond simi-
larly. In systems, parallel processes can move to other levels of
the system, from supervisor to supervisee to client.

For example, in the courtroom, attorneys, caseworkers, and
defendants react to the judge. If the judge is emotional and con-
frontational, there will likely be more conflict and less collabo-
ration. However, if the judge is able to remain calm and open to
hearing the issues and potential solutions, the participants will
be better able to express their concerns. The judge and partici-
pants will develop parallel processes, which can also trickle
down to how attorneys and caseworkers interact with their
clients or parents interact with their children.

THE FAN IN JUDICIAL PRACTICE: A CASE STUDY

The Nebraska Center on Reflective Practice provides train-
ing and consultation in the FAN model in collaboration with
Linda Gilkerson, Ph.D., creator of the FAN. It has used the
FAN in two ways to ease judicial stress: providing reflective
consultation to a juvenile court judge and mentoring a juvenile
court judge to provide reflective consultation. The Honorable
Elizabeth Crnkovich, juvenile court judge in Douglas County,
Nebraska, receives reflective consultation using the FAN from
Jennie Cole-Mossman, co-Director of the NCRP, in an effort to
reduce stress and help her apply the principals to her court-
room practices to increase attuned interactions. The Honorable
Lawrence Gendler has been trained to provide reflective con-
sultation through the NCRP and receives ongoing mentoring
as part of that training. He relies on reflective practice and the
FAN in a small group consultation with judges and during
court proceedings. Both judges entered into reflective practice
training using the FAN because they were exploring ways to
improve their courtroom for families and professionals. They
both acknowledge that the adversarial nature of the courtroom
and nature of child welfare work are stressful. Both judges have
reported that attuned communication, enhanced trust, and
improved self-regulation decreased their judicial stress, consis-
tent with the findings of existing research.

Judge Crnkovich is experimenting with a less adversarial
court process at this time. She has presided over a problem-
solving court in the past, but wanted to adopt a therapeutic
approach in more cases. Her “FIRST Court” is receiving tech-
nical assistance from the Nebraska Resource Project for Vul-
nerable Young Children, where the Nebraska Center on Reflec-
tive Practice is housed. Judge Crnkovich reports, “As a court
and as a system, I have long believed that we cannot do any
less than what we expect our families to do. That means that
we must periodically review our practices and core beliefs to
make changes as needed to be as effective as possible to help
our families.” This most recent review and update included
using the FAN to help the attorneys and caseworkers in this
new court collaborate more effectively and deal with the grow-
ing pains of trying a new way of practicing. For example, after
several reflective consultation sessions with each group, the
attorneys and caseworkers met to discuss how to increase
effective and respectful communications. After some discus-
sion of the process, Judge Crnkovich decided that she could
also benefit from some reflective consultation. Judge
Crnkovich uses this time to gain insights into her practices.
For example, she has slightly changed her comments from “I
think” to “I am wondering about” in an effort to open more

the Women”: An Intervention into an Organizational Conflict Based
21. Id.
22. Jaffe et al., supra note 2.
discussion in the meetings rather than seem like she is making a directive. She has also recognized how her training in law school and communications formally in court may not translate to caseworkers, making them feel cross-examined when this is not the intention.

Judge Gendler was asked to participate in reflective practice training, as well as use reflective practice with a small group of judges. He also uses some different techniques from the FAN core processes in his court room. Using the core process of self-regulation, when he notices strong emotional reactions from participants in court, he takes a recess to help participants have time to deal with these emotions. He uses the core process of collaborative exploration by asking questions that elicit joint understanding of the issues and joint problem solving. He engages parents in juvenile court cases by making sure they feel fully heard in his courtroom to lessen the adversarial nature of the work. This strategy is consistent with the processes of mindful self-regulation and empathic inquiry. He is currently facilitating a group of three newer judges using the FAN as the model for reflective consultation.

Both judges find the traumatic stories and the adversarial nature of the work to be personally and professionally demanding. The FAN has helped them enhance their own self-regulation and be aware of the heightened emotional states around them. During reflective practice mentoring, Judge Gendler revealed, “I am now more mindful of the FAN and give parents (or their children) a chance to go through the various stages which may include re-scheduling the hearing in order to provide them a better opportunity of understanding why professionals are making certain recommendations.” Judge Crnkovich receives twice monthly reflective consultation sessions with Jennie Cole-Mossman. During those sessions the FAN is used to help develop new insights into how she responds to intensely emotional situations, especially in her less traditional collaborative hearings. She says, “I take the reflective practice insights and utilize them in my approach to the team, in my effort to allow others to weigh in and be heard, and not just rule on high as the judge. Try to guide thinking, rather than dictate it.” The parallel process developed with Jennie during reflective consultation or learned through training is spreading into the courtroom. Both judges are able to identify the core processes of the court participants and match with them. Mindful self-regulation allows them to slow themselves down, identify how the participants are responding, and match them. This allows for a more open, collaborative problem-solving environment.

Judge Gendler has observed that the core processes can increase trust among parties. He reports this is the way he uses the FAN reflective practice model to reduce conflict and miscommunications caused by the emotional nature of many of the proceedings. He reflects, “Almost all who appear before us have experienced unfair treatment in a courtroom, by the system, or know someone who has. With the exception of an adoption hearing or an occasional guardianship, nobody goes to the courthouse expecting to have fun. By giving everyone a fair opportunity to be heard, we are hopefully decreasing the stress level which, in and of itself, creates an environment where folks are more comfortable expressing their concerns and ideas.” These more attuned interactions decrease conflict among the parties and therefore make his work as the judge less stressful.

Judge Crnkovich has participated in reflective practice sessions both individually and in collaborative sessions with attorneys and caseworkers during the formation of her FIRST Court. She feels that stress is reduced with reflective practice because she gains new insights. She is able to find ways to enhance her communication with the professionals and the families in a more cooperative way. She reports that it has “helped guide my approach to things in the areas where I may struggle with the perception or behavior of others.” In parallel process, this new way of perceiving the behavior of others in a less adversarial way creates a more collaborative courtroom for participants. She reports that her frustration is reduced by gaining a different kind of insight through her reflective consultation sessions.

Though other types of reflective practice and the FAN have been used with various groups, applying this model to judges and to their courtroom practice is a new solution to the old problem of reducing stress for both the judge and the participants. The FAN enhances communication for the judges, professionals, and the participants in their courts. Enhanced communication can also help everyone in the court process feel more prepared, which reduces judicial stress. It also builds trust and allows for the expression and processing of difficult emotions. This processing of difficult emotions can ease the secondary trauma of working in family courts. Reflective consultation can also ease some of the feelings of loneliness that produce distress for judges. Using the FAN in reflective consultation allows for new insights. Reflective practice does not in any way change the role of the judiciary (judge) nor does it detract from the court’s neutrality and protection of due process. Instead, reflective practice assists in this weighty judicial responsibility by providing an outlet for stress and renewed insight in what remains a challenging and isolating, but very rewarding profession.

Judge Lawrence Gendler has been a Separate Juvenile Court Judge in Sarpy County, Nebraska since his appointment in 1992. He is Project Chair of the Nebraska Supreme Court’s Through the Eyes of the Child Initiative. He is the recipient of numerous awards including the 2006 Nebraska Supreme Court Distinguished Judge for Service to Community. He is active in many committees, including the Supreme Court Commission on Children in the Courts, and Committee on Problem-Solving Courts, and was the past Judicial Ethics Committee Chair.
Linda Gilkerson, Ph.D., LSW, is a professor at Erikson Institute where she directs the graduate training programs in infancy and infant mental health. Dr. Gilkerson is the developer of the FAN (Facilitating Attuned Interactions), an approach that is used widely in home visitation, early intervention, early childhood mental health consultation programs, and physician training to facilitate parent engagement and reflective practice. Her research and publications focus on relationship-based approaches and reflective supervision in a range of settings.

Judge Elizabeth G. Crnkovich was appointed to the Douglas County, Nebraska Separate Juvenile Court in January of 1994. In addition to her judicial duties, Judge Crnkovich has presided over a Juvenile Delinquency Drug Court and a Family Drug Court, both of which sought to address youth and adult addictions. In 2010, she established a truancy diversion project, which, as part of a collaborative community effort, led to the creation of the Greater Omaha Attendance and Learning Services (GOALS) Center. Over the years, Judge Crnkovich has served on numerous boards and committees relating to issues of juvenile justice and child welfare.

Jennie Cole-Mossman LIMHP, is Co-Director of the Nebraska Resource Project for Vulnerable Young Children. She is a licensed independent mental health practitioner with extensive training and experience in early childhood trauma, child parent Psychotherapy, parent child relationship assessments, and Reflective Practice. She is currently one of only four trainers for child parent psychotherapy in Nebraska. She is also a trainer for the FAN model of Reflective Practice. In her current role, she provides system and case-level consultation on issues related to early childhood trauma and the infusion of early childhood well-being into court systems, provides reflective consultation and training to various groups, and trains on a number of early childhood topics.

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*Court Review*, the quarterly journal of the American Judges Association, invites the submission of unsolicited, original articles, essays, and book reviews. *Court Review* seeks to provide practical, useful information to the working judges of the United States and Canada. In each issue, we hope to provide information that will be of use to judges in their everyday work, whether in highlighting new procedures or methods of trial, court, or case management, providing substantive information regarding an area of law likely to encountered by many judges, or by providing background information (such as psychology or other social science research) that can be used by judges in their work.

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**Pre-commitment**: For previously published authors, we will consider making a tentative publication commitment based upon an article outline. In addition to the outline, a comment about the specific ways in which the submission will be useful to judges and/or advance scholarly discourse on the subject matter would be appreciated. Final acceptance for publication cannot be given until a completed article, essay, or book review has been received and reviewed by the *Court Review* editor or board of editors.

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