

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Court Review: The Journal of the American
Judges Association

American Judges Association

2018

Reducing Judicial Stress through Reflective Practice

Jennie Cole-Mossman

Nebraska Resource Project for Vulnerable Young Children

Elizabeth Crnkovich

Douglas County, Nebraska

Lawrence Gendler

Sarpy County, Nebraska

Linda Gilkerson

Erikson Institute

Follow this and additional works at: <https://digitalcommons.unl.edu/ajacourtreview>

Cole-Mossman, Jennie; Crnkovich, Elizabeth; Gendler, Lawrence; and Gilkerson, Linda, "Reducing Judicial Stress through Reflective Practice" (2018). *Court Review: The Journal of the American Judges Association*. 673.

<https://digitalcommons.unl.edu/ajacourtreview/673>

This Article is brought to you for free and open access by the American Judges Association at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Court Review: The Journal of the American Judges Association by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

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.¹ Professionals who work with traumatized people and traumatizing situations experience symptoms of trauma, including re-experiencing, avoidance, numbing, and persistent arousal.² 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.³ Judges are exposed to the details and emotions of traumatic situations, including significant physical or emotional harm caused by individuals or divorce.⁴ 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.⁵ 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.⁶ 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.⁷

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 case-loads.⁸ 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.⁹

Judges are working under "emotional labor."¹⁰ 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.¹¹ Increasing the ability of judges to regulate emotions can help in difficult courtroom situations, increase perceptions of fairness, and decrease inappropriate judicial behavior.¹² 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.¹³ 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.¹⁴ Judges reported being less likely to discuss their stress or vicar-

Footnotes

1. P. Vrkleviski & John Franklin, *Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material*, 14 TRAUMATOLOGY 106 (2008).
2. Peter G. Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 JUV. & FAM. CT. J. 1, 2 (2003).
3. Joy D. Osofsky et al., *How to Maintain Emotional Health When Working with Trauma*, 59 JUV. & FAM. CT. J. 91, 98 (2008).
4. Jared Chamberlain & Monica K. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, 37 J. AM. ACAD. PSYCHIATRY & L. 214, 215 (2009).
5. Celeste F. Bremer, *Reducing Judicial Stress through Mentoring*, 87 JUDICATURE 244, 244 (2004).

6. *Id.* at 245.
7. Jaffee, *supra* note 2, at 2.
8. Osofsky, *supra* note 3, at 98.
9. Jaffee, *supra* note 2, at 4.
10. Sharyn Roach Anleu, David Rottman & Kathy Mack, *The Emotional Dimension of Judging: Issues, Evidence, and Insights*, 52 CT. REV. 60, 60 (2016).
11. *Id.*
12. *Id.* at 61.
13. Sheldon Cohen & Thomas Ashby Wills, *Stress, Social Support, and the Buffering Hypothesis*, 98 PSYCHOL. BULL. 310, 349 (1985).
14. Chamberlin & Miller, *supra* note 4, at 219.

ious traumatization with colleagues from their jurisdiction. This type of sharing was perceived as weak and vulnerable.¹⁵

Reflection is seen as an important part of legal education. Timothy Casey, the Director of the Skills Training for Ethical and Preventative Practice and Career Satisfaction (STEPPS) Program at California Western Law School, developed a model for increasing reflective capacity for law students.¹⁶ He argues, “The concept of reflective practice applies to the legal profession. A conscious and deliberate analysis of lawyering performance can provide the new lawyer with insights into what choices were available, what internal and external factors affected the decision making process, and what societal forces affected the context of the representation.”¹⁷ Casey’s model uses self-reflection to help new lawyers make the best possible decisions by slowing down, considering all the options, and examining how their biases are impacting their decision. When making decisions about cases, judges could adopt a similar, reflective approach. Additionally, reflective practice can be used beyond decision making to address other elements of judicial stress. Reflective practice can address the emotional and interpersonal aspects of judging that are often not directly part of the case.

THE FAN: FACILITATING ATTUNED INTERACTIONS

Building upon the work of the Erikson Institute and their model of Facilitating Attuned Interactions, or the FAN, the Nebraska Center on Reflective Practice has applied this supervisory model to the work of judges to help reduce stress and vicarious trauma. The FAN is a conceptual model and a tool for understanding how people relate to each other, both when interactions are working, as well as when the interactions are strained. The FAN supervisory model originally looked at the dual roles of mentoring and monitoring in supervision. The model strives for attunement and parallel processing between supervisor and supervisee to provide effective and responsive supervisory relationships.¹⁸ It helps people to know why it is that some interactions flow and others are strained.

The FAN relies on five core processes to guide interactions in the supervisory relationship.¹⁹ These five core processes are mindful self-regulation, empathic inquiry, collaborative exploration, capacity building, and integration. The processes are related but not necessarily linear. Understanding and matching happens when we meet the person in the core process they are in at that moment.

MINDFUL SELF REGULATION

Mindful self-regulation assists judges in conscious attunement to their own mental state and the state of those around them to facilitate more peaceful interactions. This core process also includes the use of tested strategies, such as mindfulness, self-talk, and breathing to regulate emotions. Mindfulness can be used to help judges become aware of what is happening in themselves with a goal of regulating emotions to think more clearly.

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 “aha” of the process. Not every consultation session or court hearing reaches integration, but it strives to do so. When an

“FAN relies on five core processes . . . mindful self-regulation, empathic inquiry, collaborative exploration, capacity building, and integration”

15. Osofsky et al., *supra* note 3, at 100.

16. Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLINICAL L. REV. 317, 334 (2014).

17. *Id.* at 319.

18. Linda Gilkerson & Mary Claire Heffron, *Facilitating Attuned Interactions: FAN Framework for Reflective Supervision*, 1.

19. *Id.* at 2.

“attunement enables the supervisor and the supervisee to get on the same page and develop parallel processing”

integration happens, it should be highlighted. For example, in the courtroom, “I heard you say that what you learned in your domestic violence class is really working. That is so important that these classes are taking hold in your life. I am so glad to hear about your hard work.” An example in consultation, “After our discussion it is clearer to me that my agitation with the new attorney isn’t helping

her speak more clearly. I was new once too and thankful for people who weren’t overly harsh with me.”

These core processes can be used during interactions with professionals as well as those appearing in court cases as defendants. The core processes of reflective practice help the judge to balance their personal concerns with their duty to the law, as well as the concerns of those in their courtroom, including professionals and defendants. They facilitate the judge in examining their interactions for attunement through matches and mismatches, which may relieve or cause stress.

Attunement refers to the process of matching supervisor responses to supervisee processing cues. This requires the supervisor to be able to detect which core process is guiding the supervisee’s problem solving 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 supervisor 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 frustration. 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 defusing 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 processing refers to mirrored affects, cognitions, and behaviors that develop when two or more people or systems have significant relationships.²⁰ 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 solution. The supervisee develops trust that their supervisor will respond in a calm, intentional way and begin to respond similarly. In systems, parallel processes can move to other levels of the system, from supervisor to supervisee to client.²¹

For example, in the courtroom, attorneys, caseworkers, and defendants react to the judge. If the judge is emotional and confrontational, there will likely be more conflict and less collabora-

tion. 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 participants 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 training 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 courtroom practices to increase attuned interactions. The Honorable Lawrence Gendler has been trained to provide reflective consultation 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, consistent with the findings of existing research.²²

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 technical assistance from the Nebraska Resource Project for Vulnerable Young Children, where the Nebraska Center on Reflective 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 growing 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 discussion 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

20. Kenwyn K. Smith, Valerie M. Simmons & Terri B. Thames, “Fix the Women”: An Intervention into an Organizational Conflict Based on Parallel Process Thinking, 25 J. APP. BEHAV. SCI. 11, 13 (1989).

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.

**"Try to
guide thinking,
rather than
dictate it"**



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.

Court Review Author Submission Guidelines

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 be 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.

Court Review is received by the 2,000 members of the American Judges Association (AJA), as well as many law libraries. About 40 percent of the members of the AJA are general-jurisdiction, state trial judges. Another 40 percent are limited-jurisdiction judges, including municipal court and other specialized court judges. The remainder include federal trial judges, state and federal appellate judges, and administrative-law judges.

Articles: Articles should be submitted in double-spaced text with footnotes in Microsoft Word format. The suggested article length for *Court Review* is between 18 and 36 pages of double-spaced text (including the footnotes). Footnotes should conform to the current edition of *The Bluebook: A Uniform System of Citation*. Articles should be of a quality consistent with better state-bar-association law journals and/or other law reviews.

Essays: Essays should be submitted in the same format as articles. Suggested length is between 6 and 12 pages of double-spaced text (including any footnotes).

Book Reviews: Book reviews should be submitted in the same format as articles. Suggested length is between 3 and 9 pages of double-spaced text (including any footnotes).

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.

Editing: *Court Review* reserves the right to edit all manuscripts.

Submission: Submissions should be made by email. Please send them to Editors@CourtReview.org. Submissions will be acknowledged by email. Notice of acceptance, rejection, or requests for changes will be sent following review.