

feature article

Lawyering from the Inside Out

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

Alicia Henderson



Alicia Henderson graduated from the University of Nebraska College of Law and then clerked for Chief Justice William Hastings of the Nebraska Supreme Court. She worked in the Lancaster County Attorney's Office until she joined the clinical faculty at UNL's College of Law. She taught in the Criminal Clinic for 15 years and thereafter rejoined the Lancaster County Attorney's Office as the Chief Deputy of the Juvenile Division. She recently retired from that position and is now a practitioner of Reflective Practice through the Nebraska Center of Reflective Practice.

Jennie Cole-Mossman



Jennie Cole-Mossman is a Licensed Independent Mental Health Practitioner and Co-Director of the Nebraska Resource Project for Vulnerable Young Children. She was the Coordinator of the Nebraska Infant and Toddler Court Improvement Project, which was part of the Through the Eyes of the Child Initiative, where she provided technical assistance and training to overcome system barriers for infants and toddlers in the child welfare system. She is a licensed independent mental health practitioner and is currently one of only four trainers for Child Parent Psychotherapy in Nebraska. She is also trained in Reflective Practice.

Katherine Hazen



Katherine Hazen is a 5th year student in the Law-Psychology Program and Social Cognitive Program at the University of Nebraska, Lincoln. She will receive her J.D. in May of 2018 and is pursuing her Ph.D. in social and cognitive psychology. She received her B.S. in psychology with a concentration in criminal justice from Endicott College in 2012. Katherine is a Graduate Research Assistant for the Nebraska Resource Project for Vulnerable Young Children at the UNL Center for Children, Families, and the Law.

Melanie Fessinger



Melanie Fessinger is a graduate research assistant for the Nebraska Resource Project for Vulnerable Young Children. She helps administer evaluations of Reflective Practice, the Lancaster County Family Treatment Drug Court, Ice Breaker Meetings, and the Douglas County FIRST Court. She is also a graduate student in the PhD program in Social/Cognitive Psychology at the University of Nebraska—Lincoln and the Master of Legal Studies Program at the University of Nebraska College of Law. She received her B.A. in psychology from California State University, Northridge.

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

LAWYERING FROM THE INSIDE OUT

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 Uchino, 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



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.

WWW.ESLAW.COM


(402)384-6896

BCONNOLLY@ESLAW.COM

LAWYERING FROM THE INSIDE OUT

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

- Casey, T. (2014). Reflective practice in legal education: The stages of reflection. *Clinical Law Review* 20, 318-354.
- Gilkerson, L. & Kopel, C.C. (2005). Relationship-based systems change: Illinois' model for promoting social-emotional development in Part C early intervention. *Infants & Young Children*, 18(4), 349-365.
- Levin, A. & Greisberg, S. (2003). Vicarious trauma in attorneys. *Pace Law Review*, 245-252.
- Osofsky, J., Putnam, F., & Liederman, C. (2008). How to maintain emotional health when working with trauma. *Juvenile and Family Court Journal*, 59, 91-102.



5th Judicial District Bar Meeting & CLE

Monday, November 20, 2017 • 2:30 pm - 4:30 pm CST

Seward County Justice Center District Court Courtroom

261 S 8th St. #145, Seward, NE 68434

*Nebraska MCLE #147107. 1 CLE hour. (Regular/Live credit)

2:30 pm Tour of the new Seward County Justice Center

3:00 pm Electronic Evidence CLE

Dean Richard Moberly, University of Nebraska College of Law

Technology is everywhere, and the information derived from technology may be relevant in both criminal and civil cases. This evidence discussion focuses on the admissibility of electronic evidence—including text, email, and information posted on the internet (including social media)—under the Federal Rules of Evidence and the Nebraska Rules of Evidence.

4:00 pm 5th Judicial District Bar Meeting
(and Meet and Greet)

4:30 pm Adjourn

Richard Moberly was appointed as the College of Law's 17th Dean on April 1, 2017. Prior to this appointment, he served as the College's Interim Dean in 2016 and as Associate Dean for Faculty from 2011 until 2016. He joined the law faculty in 2004 and has taught Evidence, Employment Law, a capstone course in Litigation, the Law of Secrecy, and in the Civil Clinic. Before joining the law faculty, Professor Moberly practiced as an attorney with McKenna Long & Aldridge LLP in Atlanta, Georgia. He received his B.A. degree in History, *summa cum laude*, from Emory University, and graduated *magna cum laude* from Harvard Law School, where he served as an editor of the *Harvard Law Review*.

REGISTRATION FORM: 5th Judicial District Bar Meeting & CLE - November 20, 2017

FREE - You must register even though the event is free.

Name: _____ Bar # _____

Address: _____ City: _____ State: _____ Zip: _____

Telephone: _____ E-Mail: _____

Return completed form to NSBA, 635 S 14th St. #200, Lincoln, NE 68508, or email to Staci Williams at swilliams@nebar.com.

You will receive an email from the NSBA confirming your registration. **If you do not receive an email confirmation, please call (402) 475-7091.**

If you need any special accommodation for attending this event, please contact the NSBA.