

# BRAIN-WISE LAWYERING FOR THE CLINICAL LAW STUDENT

DANIELLE R. COVER\*

*Clinicians consistently deal with the impact of students' stereotypes and biases about clients on the quality of the lawyer-client relationship. From a neuropsychological perspective, stereotypes and biases are mental models – ingrained patterns of thinking on which people rely when they need to understand or explain the world around them. As neuropsychology can offer explanations of why clinical law students resort to stereotypes and biases in representation relationships, so too can it offer suggestions for identifying and combatting them. This article explores the fundamentals of neuropsychology and provides a framework for considering how clinical pedagogy can be informed by using neuropsychology education and techniques to address students' stereotypes and biases.*

## I. INTRODUCTION

The clinical lawyering environment can be an exciting place for law students. Clinics offer students a place to integrate their classroom learning with their developing sense of professional identity, an experience unmatched in other law school environments. Providing direct service legal representation to clients across a broad spectrum of substantive areas is often the first time that students can work as the primary attorney on real-life legal problems.<sup>1</sup> Despite the tremendous benefits of the clinical model, however, the clinic can be a source of great fear: new law, live clients in all their flawed humanity, and different academic expectations all come together to create an unsettling degree of anxiety. Fear and its erstwhile emotional companion shame, limit students' ability to connect with clients. They also underpin and often reinforce student stereotypes and biases about their clients.

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\* Associate Professor and Director of the Civil Legal Services Clinic, University of Wyoming College of Law. I would like to thank the following people: Carwina Weng, Suzan Pritchett, Deb Kleinman, Brooke Hamilton, Christine Cerniglia, Jennifer Dean, and the 2019 AALS Conference on Clinical Legal Education Works-in-Progress participants. I would also like to thank Morris Massey of Brown, Drew, & Massey for his generous summer research grants.

<sup>1</sup> There are many different clinic models and substantive law areas ranging from legislative advocacy to patent and intellectual property. This paper most directly addresses one-on-one live-client clinics that focus their resources on marginalized populations. The idea of stereotypes, biases, fear and shame as factors influencing the representation relationship, however, is transferable across clinical models.

Clinical pedagogy is constantly evolving as educators integrate new ideas about pedagogical techniques and client-centered lawyering choices into existing programs.<sup>2</sup> This evolution reflects how clinicians constantly strive to improve the tools students add to their skill sets to support the generation and maintenance of empathy in clinical lawyering environments. Clinical professors take on the job not only of teaching law students how to practice law but also how to connect with clients in authentic, meaningful ways that allow for the most effective representation relationships possible. As we learn more about brain science, we can recognize the value and power of weaving concepts across disciplines into the unfolding flow of the lawyer-client relationship.<sup>3</sup> This involves working with students to build awareness of their own emotional states during lawyering activities, to identify and challenge their judgments and assumptions about client choices and behaviors, and to move from being driven by fear and anxiety to being able to create meaningful and empathetic connections with their clients. By explaining the neuroscience and providing students with op-

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<sup>2</sup> One need only look at the differences between the multiple editions of *Lawyers as Counselors* published as early as 1991 and as recently as 2019. DAVID A. BINDER, PAUL BERGMAN, PAUL R. TREMBLAY & IAN S. WEINSTEIN, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (4th ed. 2019). We are barely at the tip of the iceberg for understanding both how to develop and maintain effective lawyer-client relationships. “Everything is in flux as today’s discoveries amend and expand yesterday’s.” BONNIE BADENOCH, *BEING A BRAIN-WISE THERAPIST: A PRACTICAL GUIDE TO INTERPERSONAL NEUROBIOLOGY* xxvi (2008). For an example of evolving brain science, see *id.* at 79 (discussing infant brain development relative to distinguishing the mother’s voice from another person’s). See generally Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLIN L. REV. 369 (2005) (discussing the pros, cons, and expansions of the Binder-Bergman model of client-centered lawyering).

<sup>3</sup> “[M]ental health, defined as individual well-being and fulfilling relationships, emerges from brains that are becoming more integrated.” BADENOCH, *supra* note 2, at xxii. See also LOUIS COZOLINO, *THE NEUROSCIENCE OF HUMAN RELATIONSHIPS: ATTACHMENT AND THE DEVELOPING SOCIAL BRAIN* 3 (2d ed. 2014); Daniel J. Siegel, *Mindfulness Training and Neural Integration: Differentiation of Distinct Streams of Awareness and the Cultivation of Well-Being, Social Cognitive, & Effective Neuroscience*, 2 SOCIAL COGNITIVE AND AFFECTIVE NEUROSCIENCE 259 (2007). Combining the different perspectives can be challenging because of the disparities in opinion about what is important to focus on and the personalities of practitioners in the different fields. At the same time, ‘consilience,’ a term coined by Edward O. Wilson, describes interlacing principles across disciplines to gain a deeper understanding of the world as it is. Consilience, as a concept and a practice, may help students in recognizing commonalities across different fields of study and how to use those commonalities for the benefit of their lawyering. See EDWARD O. WILSON, *CONSILIENCE: THE UNITY OF KNOWLEDGE* (1998). For example, Susan L. Brooks has written extensively about merging lawyering practice and social work. See, e.g., Susan L. Brooks, *Using Social Work Constructs in the Practice of Law*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* (Marjorie A. Silver, ed., 2008). In fact, the entirety of *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* text is dedicated to exploring consilience between lawyering and other, more brain-focused disciplines. *Id.*

portunities to practice using their awareness of what is happening in their brains when they experience fear responses, we provide them with a scientific tool for understanding, and consequently improving, difficulties in the lawyer-client relationship.<sup>4</sup>

Representing a client is more than completing a collection of lawyering tasks from a top-down<sup>5</sup> or hierarchical perspective; there is a dynamic relationship between client and student that defines the space both work in and that influences the tenor of every meeting and interaction.<sup>6</sup> Over the course of the semester in clinic, if the student learns to make a note of their emotional experiences, the student changes the dynamic in the relationship<sup>7</sup> and perhaps rids herself of what Albert Einstein called the "optical delusion" of separateness so that they can widen their empathic experiences and capacity.<sup>8</sup> Through learning to hear and see their clients without judgment and absent the lens of fear, feelings of separateness and otherness, and the impacts of biases and stereotypes on the representation relationship may dissipate.

Difficult emotions cause the brain to lose capacity to maintain neural integration across the networks devoted to emotion, behavior, sensation and conscious awareness.<sup>9</sup> It is literally impossible for students' brains to fully process what is happening to and around them without the participation of the entire brain.<sup>10</sup> And without complete processing, the connection we strive for between the student and the client cannot happen. Sadly, without connection, empathy is harder to achieve. In addition, lawyers young and old can fail to identify important components of case facts and client motivation when they allow pre-existing, sometimes conscious but often unconscious, judgments about clients and client choices to influence how they approach the lawyering relationship.

Brain science is constantly growing and evolving.<sup>11</sup> To date, scientists know only a small fraction of what the brain can do and how it

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<sup>4</sup> BADENOCH, *supra* note 2, at 75. Badendoch also explains that "being able to have conversations about the brain gives us an additional narrative strand that helps modulate and contain the sometimes-overwhelming experiences of terror and rage revisited." *Id.* at 201.

<sup>5</sup> DANIEL J. SIEGEL, *THE MINDFUL BRAIN: REFLECTION AND ATTUNEMENT IN THE CULTIVATION OF WELL-BEING* 134 (2007).

<sup>6</sup> Ann Shalleck & Jane H. Aiken, *Supervision: A Conceptual Framework*, in SUSAN BRYANT, ELLIOT S. MILSTEIN & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 177 (2014).

<sup>7</sup> SIEGEL, *supra* note 5, at 148.

<sup>8</sup> *Id.* at 163; ALICE CALAPRICE, *THE NEW QUOTABLE EINSTEIN* 206 (2005).

<sup>9</sup> COZOLINO, *supra* note 3, at 24.

<sup>10</sup> *Id.*

<sup>11</sup> SIEGEL, *supra* note 5, at 29.

functions. Notwithstanding our limitations in understanding the brain, the brain is the primary social organ of the body,<sup>12</sup> and is responsible for all aspects of social interaction in which humans engage. The brain is the organ and the mind is the intangible manifestation of both what the brain is doing from moment to moment and the energy and information that are flowing through it.<sup>13</sup> As such, it is incumbent upon clinical educators to stay humble about what they know and do not know about how the brain and mind work.

Effective lawyering relationships are based in part on the ability of the lawyer to be fully present in interactions with clients, and to step into the shoes of that client. Simply put, both are impossible when the lawyer approaches the relationship from a place of fear and shame. The dynamic of the lawyer-client relationship and any perceived power differentials between lawyers and clients may make perspective taking difficult.<sup>14</sup> An increased understanding of interpersonal neuropsychology provides a tool for using reflection as a way to increase student capacity to be present with clients.<sup>15</sup> Neuropsychology interwoven with clinical pedagogy can introduce students to a way of conceptualizing, holding on to, and understanding people's subjective experience of their internal world<sup>16</sup> by helping them develop an intentionally aware relationship with their own fear and shame responses.<sup>17</sup> For students to respond well and accurately to cli-

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<sup>12</sup> *Id.* at 48.

<sup>13</sup> *Id.* at 49.

<sup>14</sup> JENNIFER K. ROBBENOLT & JEAN R. STERNLIGHT, *PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION, AND DECISION MAKING* 26 (2012).

<sup>15</sup> Siegel's research on mindfulness was inspired by his studies of attachment theory in parenting. SIEGEL, *supra* note 5, at xix. There is a parallel between parenting and lawyering. This is not to suggest that an effective lawyer is paternalistic in any sense, rather that, as attorneys facilitate their clients' movements through the legal system, the strength of the lawyer-client relationship can be improved with intentional, practiced self-awareness. One might also suggest that the relationship of the clinician to the clinical student has similar aspects. See also Marjorie A. Silver, *Emotional Competence & the Lawyer's Journey*, in *AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 3, at 9 (describing how lack of emotional self-awareness, e.g., mindfulness of emotional state, can exacerbate depression as well as negatively impact the ability to practice core lawyering skills such as empathetic connection with clients and engagement with opposing counsel).

<sup>16</sup> BADENOCH, *supra* note 2, at xxiv.

<sup>17</sup> SIEGEL, *supra* note 5, at 104 (referring to this experience as "mindsight"). Kahneman, within his System 1, System 2 framework, explains that people perform less well in System 2 (or not at all) if attention is directed inappropriately or if System 2 is hijacked by System 1. DANIEL KAHNEMAN, *THINKING, FAST AND SLOW* 20 (2011); Silver, *Emotional Competence*, *supra* note 16, at 6. Goleman refers to the differing pathways of information routing experience through the human brain as the high road (cool and rational) and the low road (emotional). Fortunately or unfortunately, the low road reads and reacts to situations several times faster than the high road. DANIEL GOLEMAN, *SOCIAL INTELLIGENCE: THE NEW SCIENCE OF HUMAN RELATIONSHIPS* 16-17 (2006).

ents, they must have an understanding not only of the client's internal state but of their own. They must become settled in their understanding of what is happening in the relationship between the limbic region and the prefrontal cortex. Fortunately, because brains can be trained, clinicians can use knowledge about brain science to support students in developing new pathways for responding to their own fears, shame, and worries. Knowing that fear responses happen and knowing why they happen, and consequently what can be done to ameliorate those fear responses, are different skill sets, skill sets this paper hopes to augment for clinicians.

Building from earlier work by Carwina Weng, Sue Bryant, and Jean Koh Peters, specifically, Weng's 2005 article, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*<sup>18</sup> and Bryant and Koh's seminal work on the five habits of cultural competency,<sup>19</sup> this paper argues that stereotypes and biases not only impede a student's ability to develop cultural competency<sup>20</sup> and effective, client-focused lawyering but also that they are one of many responses to fear and shame. This paper then explores how clinicians can work with students to address their stereotypes and biases in service of building strong attorney-client relationships. Using the study of interpersonal neuropsychology, the paper offers ways to support students in recognizing both their own emotional experiences as they work with the clients and how those experiences may influence the ways in which they interact in the attorney-client dynamic. It is a merger of mindfulness,<sup>21</sup> brain science, and pedagogy, with the goal of activating empathy and dampening negative judgments.<sup>22</sup> As mindfulness can support the student in developing empathy, neuropsychology provides insights into pedagogical approaches in service of the same.<sup>23</sup>

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<sup>18</sup> Weng, *supra* note 2, at 11.

<sup>19</sup> Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001).

<sup>20</sup> There are some who argue that one can never be culturally competent, but rather only culturally responsive. Cultural responsiveness derives from the premise that with openness and curiosity one can learn to serve better. See ZARETTA HAMMOND, CULTURALLY RESPONSIVE TEACHING & THE BRAIN: PROMOTING AUTHENTIC ENGAGEMENT & RIGOR AMONG CULTURALLY AND LINGUISTICALLY DIVERSE STUDENTS (2015). The distinction does not make a difference for the purposes of this paper.

<sup>21</sup> Mindfulness is rooted in the mystic nature of many faith systems and can take a variety of forms based on different theoretical approaches. SIEGEL, *supra* note 5, at 9. For the purposes of this paper, I use the term to mean a practiced self-awareness of emotional experiences and the corresponding practices used to combat the negative impacts of those experiences on the student-client relationship and used for the purposes of fostering empathy and increasing connection.

<sup>22</sup> SIEGEL, *supra* note 5, at 157; COZOLINO, *supra* note 3, at 32 (describing how learning modifies the neural networks, and practicing makes those networks stronger over time.)

<sup>23</sup> Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention*, in AF-

Part II provides a background primer on neuropsychology and the operation of the brain. Part III shifts to terrain more familiar to clinicians: the five habits for building cross-cultural competence, specifically Habit Five – the Camel’s Back – which emphasizes the need for students to recognize the impact of their own biases and stereotypes on the lawyering process. Part IV examines the related emotions of fear and shame, both of which hinder student learning and the forging of productive lawyer-client relationships in the clinical environment, and engages in this discussion in the context of brain science. Part IV addresses fear and shame as these difficult emotions are both sometimes generators of stereotypes and biases and the result of realizing that negative patterns of thinking about clients identified as “different.” Any exploration of ways to meet Habit Five necessarily includes an exploration of these emotional states. Part V outlines the implications of neuropsychology and brain science fundamentals for Habit Five, and offers tools centered in teaching and reflection for the benefit of clinicians.

## II. A QUICK PRIMER ON NEUROPSYCHOLOGY FOR THE NON-NEUROPSYCHOLOGIST

The brain is a complex, non-linear system that has evolved to self-organize. It is emergent, iterative, and recursive. And, the brain is always changing, always influencing itself, and always defining itself. Small changes in one area of the brain can lead to large changes in other areas which then cause changes in other areas of the system. The changes occur because of what a person experiences.<sup>24</sup> The brain has many “compartments” or areas that control every aspect of the bodily and mental experience. Interpersonal neuropsychology is the field of study exploring individuals within the context of the relationships into which they are born and develop, and ultimately, through which they live out their existence. In short, neuropsychology examines how the brain self-organizes through the impact of human relationships.<sup>25</sup>

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FECTIVE ASSISTANCE OF COUNSEL, *supra* note 3 at 448.

<sup>24</sup> COZOLINO, *supra* note 3, at xvii. Cozolino goes on to explain that interpersonal neurobiology starts from the premise that the brain is a “social organ built through experience.” *Id.*

<sup>25</sup> At its essence, then, neuropsychology assumes that the way human brains work is not simply biological but also experiential. Cozolino also posits that interpersonal neuropsychology is integrally tied to answering the question of how human relationships change the architecture and functioning of the brain. *Id.* at 12.

*A. Understanding the Impact of Right Brain Connections  
on Human Interactions*

From a neuropsychological perspective, there is a significant distinction between human interactions that originate in the left brain and those that connect from the right brain. In the clinical context, this translates to whether the student focuses on legal interventions (left brain) or moves toward empathetic links with a client (right brain). The left brain is responsible for semantic and conscious processing, not human connection.<sup>26</sup> Staying focused only on legal interventions decreases connection from a neural pathway standpoint because focusing only on legal answers eschews the human piece of the interaction. Right brain-to-right brain connection, on the other hand, is where empathy lives. The right brain supports social and emotional awareness and experience.<sup>27</sup> Right brain-to-right brain connection creates stronger relationships by keeping us aware of emotion and the quality of the attorney-client relationship.

For purposes of this Article, it is important to understand how the right hemisphere of the brain and, more specifically, the right prefrontal cortex and the amygdala affect human (specifically student-client) relationships.<sup>28</sup> The prefrontal cortex, located in the prefrontal region of the brain is the place where organization, reasoning, judgment, decision-making, and relational abilities,<sup>29</sup> as well as self-control and deliberate thought occur.<sup>30</sup> The limbic system works together with the prefrontal cortex and is comprised of, among other things, the amygdala. The amygdala is the place to which our brains go when we need to survive. The amygdala's primary job is to make meaning for the brain on the most visceral level. For early humans, for instance, the amygdala might process questions like, "Am I safe or will be eaten?" Evolving humans had to be both fast and right in their assessment of situations.<sup>31</sup> The speed with which the brain moves from

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<sup>26</sup> BADENOCH, *supra* note 2, at 154.

<sup>27</sup> COZOLINO, *supra* note 3, at 59.

<sup>28</sup> While the focus in this paper is on what happens in the right hemisphere of the brain, the left hemisphere cannot be ignored entirely. Left-mode processing is implicated in the processes of reflection, practice, and repetition. When students have enough of a grasp on what is happening inside their brains, they can articulate those experiences more clearly without having to struggle with finding the right words or concepts. This is a left-mode skill. In addition, as repetition and practice continue, left-mode learning and right-mode learning integrate themselves into a strong network of self-awareness. BADENOCH, *supra* note 2, at xviii.

<sup>29</sup> *Id.* at 18.

<sup>30</sup> KAHNEMAN, *supra* note 17, at 41.

<sup>31</sup> SIEGEL, *supra* note 5, at 135; Deb Kleinman, Lecture at the University of Wyoming College of Law Civil Legal Services Clinic (Mar. 27, 2019); KAHNEMAN, *supra* note 17, at 36.

its fear-based evaluation (“Is that a lion or a zebra I see?”) to its action response (“That’s a zebra so I can stay still.”) is unbelievably fast, and takes place in the amygdala.<sup>32</sup> We know this more commonly as “fight or flight.”<sup>33</sup> Stress, anxiety, fear, trauma, and pain all originate in limbic region.<sup>34</sup> As the right brain evolved, the amygdala became biased toward negative emotions, and fortunately or not, the power of the amygdala is the power to override other states of consciousness in response to threats.<sup>35</sup> In contrast, a well-functioning, fully developed prefrontal region supports solid decision-making because it can integrate emotional responses with logic.

Integrated limbic and prefrontal regions in the right hemisphere of the brain allow for the movement of information in such a way that permits humans to understand both what is happening in their own bodies and what is happening in other people’s brains.<sup>36</sup> Integration allows for effective regulation of body systems, balancing emotion, attuning to others, modulating fear, responding flexibly, and exhibiting insight.<sup>37</sup> When well-integrated, the right hemisphere limbic and prefrontal regions function in a nonlinear fashion.<sup>38</sup> They process both visual and spatial cues, such as non-verbal communication, a centerpiece of social understanding,<sup>39</sup> to provide us with the information necessary for understanding ourselves and others.<sup>40</sup> At the same time, an integrated right hemisphere connects avoidance and withdrawal emotions with the ability to choose how a body might operate to counteract a threat.<sup>41</sup>

In an integrated system, the regions work together to influence

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<sup>32</sup> Some scientists estimate that the brain processes 11 million bits of information per second. Richard L. Byyny, *Cognitive Bias: Recognizing & Managing Our Unconscious Biases*, THE PHAROS 2, 2 (Winter 2017).

<sup>33</sup> See generally BESSEL A. VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND AND BODY IN THE HEALING OF TRAUMA* (2015).

<sup>34</sup> COZOLINO, *supra* note 3, at 67.

<sup>35</sup> *Id.* at 68.

<sup>36</sup> BADENOCH, *supra* note 2, at 17. This is also the basis for right brain-to-right brain connection between human beings, a topic discussed below.

<sup>37</sup> SIEGEL, *supra* note 5, at 26.

<sup>38</sup> See DANIEL J. SIEGEL & MARY HARTZELL, *PARENTING FROM THE INSIDE OUT: HOW A DEEPER SELF-UNDERSTANDING CAN HELP YOU RAISE CHILDREN WHO THRIVE* (10th ed. 2013).

<sup>39</sup> BADENOCH, *supra* note 2, at 19.

<sup>40</sup> *Id.* All of human social and emotional functioning happens in the right hemisphere. COZOLINO, *supra* note 3, at 41.

<sup>41</sup> BADENOCH, *supra* note 2, at 20 (citing R.J. Davidson, D.C. Jackson & N.H. Kalin, *Emotion, Plasticity, Context, & Regulation: Perspectives from Affective Neuroscience*, 126 PSYCHOL. BULL. 890 (2000); H.L. Urry, J.B. Nitschke, I. Dolski, D.C. Jackson, K.M. Dalton, C.J. Mieller, M.A. Rosenkranz, C.D. Ryff, B.H. Singer & R.J. Davidson, *Making Life Worth Living: Neural Correlates of Well-Being*, 15 PSYCHOL. SCI. 6 (2004)).



motivational, emotional, and relational life, as well as memory.<sup>42</sup> In addition, the regions are genetically designed to form connections through the relational experiences we have with other people.<sup>43</sup> If the prefrontal and limbic regions are not integrated well, limbic-based experiences can run amok.<sup>44</sup> People with healthily integrated<sup>45</sup> brains can tolerate a broad range of emotional stimuli coming from those around them without becoming dysregulated, something Bonnie Badenoch and Dan Siegel refer to as “having a wide window of tolerance.”<sup>46</sup> On the other hand, poor integration can lead to rigidity and chaos.<sup>47</sup> The ability to change, develop and respond to fear that becomes a critical role for the brains of clinical law students.

*B. Neuroplasticity and the Ability of the Brain to Change and Develop and to Address Fear*

Brains are neuroplastic, meaning that they are constantly developing and changing, and the things that cause the amygdala to hijack the brain’s processing capacity can evolve or disappear over time. Research on neural pathways suggests that brains can be trained and re-trained to process information in different ways—ways that can be more effective or meaningful—through a scientific principle called neuroplasticity.<sup>48</sup> Neuroplasticity supports the idea that humans have the capacity to train their minds to reinforce deeper ways of experiencing the world.<sup>49</sup> Neuroplasticity is both experience- and reflection-dependent. Brains are structured and restructured by interactions with

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<sup>42</sup> The neural integration of the limbic region and the prefrontal region are the foundation of an effective psychotherapeutic relationship. BADENOCH, *supra* note 2, at 15.

<sup>43</sup> *Id.* Daniel Kahneman provides another framework for considering the quick and more measured functioning of the brain. He calls this framework System 1 and System 2. System 1 operates automatically and quickly with little sense of voluntary control while System 2 works more slowly, addressing high effort mental activities and is often tied to the experiences of choice and concentration. KAHNEMAN, *supra* note 17, at 20.

<sup>44</sup> BADENOCH, *supra* note 2, at 24.

<sup>45</sup> For an extension discussion of integration of the brain and consciousness, *see id.* at 33-41. A well-regulated system is flexible, adaptable, coherent, and stable. *Id.* at 50.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (citing DANIEL J. SIEGEL, *THE DEVELOPING MIND: HOW RELATIONSHIPS AND THE BRAIN INTERACT TO SHAPE WHO WE ARE* (1999)).

<sup>48</sup> *See, e.g.*, SHARON BEGLEY, *TRAIN YOUR MIND, CHANGE YOUR BRAIN: HOW A NEW SCIENCE REVEALS OUR EXTRAORDINARY POTENTIAL TO TRANSFORM OURSELVES* (2007); Siegel, *Mindfulness Training*, *supra* note 3, at 259-63; Daniel J. Siegel, *Awareness, Mirror Neurons, and Neural Plasticity in the Development of Well-Being*, 36 *PSYCHIATRIC ANNALS* 247 (2006); R.M. Post, S.R. Weiss, H. Li, M.A. Smith, L.X. Zhang, G. Xing, E.A. Osuch, & U.D. McCann., *Neural Plasticity & Emotional Memory*, 10 *DEVELOPMENT & PSYCHOPATHOLOGY* 829 (1998); COZOLINO, *supra* note 3, at xviii. Cozolino explains that, “It is the power of being with others that shapes our brains.” *Id.* at xix.

<sup>49</sup> SIEGEL, *supra* note 5, at 148.

our social and natural environments,<sup>50</sup> and yet conscious growth requires both awareness of what is happening and the ability to label and describe what is happening.<sup>51</sup>

An excellent example of neuroplasticity is the ability of the brain and mind to eliminate fear altogether. Most people have had the experience of once having been afraid of something that no longer troubles them. Fear is made up of many things like anxiety and worry, sadness from disappointment, loss, or discouragement. Uncertainty, too, is frightening for many people because it implicates the amorphous and unknown.<sup>52</sup> These feelings create a sense of being out of control or uncomfortably vulnerable.<sup>53</sup> And yet, as the brain matures or eliminate the causes of the anxiety, sometimes the fear goes away.<sup>54</sup> If neuroplasticity refers to the brain's ability to change its responses to fear, neuroception is the process by which the brain identifies the existence of conditions that lead it to experience fear. Understanding the operation of both neuroplasticity and neuroception are helpful for clinicians seeking to equip students to diffuse their fears.

### C. *Some Final Points on Neuropsychology*

Steven W. Porges provides an explanation of what happens to humans as neurological beings when they are trying to determine whether a situation is safe or dangerous<sup>55</sup> that he calls neuroception.<sup>56</sup> According to Porges, neuroception is analogous to perception, except it happens in the brain's neural networks. In other words, the nervous system evaluates the state of threat or safety of a situation and activates the brain through chemical release and inhibition to respond with either safety or fight-flight or freeze.<sup>57</sup> Neuroception begins with the amygdala—the meaning-maker of the brain—to make an initial, entirely unconscious, assessment about safety which subsequently trig-

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<sup>50</sup> COZOLINO, *supra* note 3, at 77-78.

<sup>51</sup> SIEGEL, *supra* note 5, at 149.

<sup>52</sup> Kim Pratt, *Psychology Tools: What is Anger? A Secondary Emotion*, HEALTHY PSYCH (Feb. 3, 2014), <https://healthypsych.com/psychology-tools-what-is-anger-a-secondary-emotion/>.

<sup>53</sup> *Id.*

<sup>54</sup> This phenomenon is called 'fear extinction.' SIEGEL, *supra* note 5, at 43; BADENOCH, *supra* note 2, at 31.

<sup>55</sup> BADENOCH, *supra* note 2, at 50 (citing Stephen Porges, *The Polyvagal Theory: Phylogenetic Substrates of a Social Nervous System*, 42 INT'L J. PSYCHOPHYSIOLOGY 123 (2001) (in how the fight or flight response works)).

<sup>56</sup> BADENOCH, *supra* note 2, at 60. Neuroception is activated by non-verbal cues such as happy and sad faces. As the core of the brain's fear circuitry, neuroception is critical to recognizing fear expressions. In true survival fashion, neuroception becomes active in the face of interpersonal threat which is itself related to the processing of visual information. COZOLINO, *supra* note 3, at 179.

<sup>57</sup> SIEGEL, *supra* note 5, at 129.

gers adaptive responses. When it works well, for instance when the right hemisphere is well integrated, neuroception is the operation of appraisal and response. The limbic and prefrontal regions work together to create positive and negative associations with different aspects of the environment and to guide approach-avoidance behavior.<sup>58</sup> Neuroception also links our experience of the present moment with appraisals from the past.<sup>59</sup>

The study of interpersonal neuropsychology recognizes the somewhat paradoxical nature of human relationships, that is, that as humans we perceive ourselves to be individuals and yet we exist and function in fundamentally social ways. The social nature of human existence belies individualistic inclinations.<sup>60</sup> The brain is a social organ; it needs relationship with other brains to work most effectively. One of the most salient ways brains build connection between each other is through the working of mirror neurons.<sup>61</sup> The brains, bodies, and minds of people in interaction with each other are constantly shaping and reshaping each other. This is a manifestation of the science of neuroplasticity: the constant interactions people have with one another reshape neural patterns and responses. For instance, if someone feels threatened or anxious, they more likely to “catch” other people’s emotions<sup>62</sup> because mirror neurons allow for the formation between the two brains of a functional link, a feedback loop that leaps across the spaces between the participants in the interaction causing one’s emotions to become the other’s and on and on in a cyclical dynamic.<sup>63</sup>

From a neuropsychological viewpoint, mirror neurons exist at the intersection of inner and outer experience.<sup>64</sup> Social skills are dependent on mirror neurons: to understand the other we become like the other.<sup>65</sup> Mirror neurons can also provide instantaneous understanding of what is important in any given moment<sup>66</sup> if the parties to the interaction are well attuned to each other. They allow for emotional resonance,<sup>67</sup> something akin to sympathetic vibrations in physics.<sup>68</sup> Fi-

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<sup>58</sup> COZOLINO, *supra* note 3, at 175.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at xiii. Goleman explains that the social brain “represents the only biological system in our bodies that continually attunes us to, and in turn becomes influenced by, the internal state of the people we’re with.” GOLEMAN, *supra* note 18, at 10, 43.

<sup>61</sup> SIEGEL, *supra* note 5, at 166-67.

<sup>62</sup> GOLEMAN, *supra* note 17, at 39.

<sup>63</sup> *Id.*

<sup>64</sup> COZOLINO, *supra* note 3, at 212.

<sup>65</sup> GOLEMAN, *supra* note 17, at 42.

<sup>66</sup> *Id.* at 43.

<sup>67</sup> COZOLINO, *supra* note 3, at 51. Empathy itself, the ability to resonate internally and accurately with another’s state of mind, may have developed as a part of the system of

nally, mirror neurons allow people to sense others' movements and feelings; they allow people to anticipate and prepare to imitate others on a physical and emotional levels.<sup>69</sup> Much like fight or flight, this response is an evolutionary development in the nervous system; imitation has tremendous survival value.<sup>70</sup>

### III. CAMEL'S BACK: THE FIFTH HABIT

Sue Bryant, in her deeply influential work *The Five Habits: Building Cross-Cultural Competence in Lawyers*,<sup>71</sup> introduced the clinical teaching world to the practices she (and collaborator Jean Koh Peters) uses to teach culturally competent lawyering to her students. The Habits have become foundational pieces to many a clinician's pedagogical approach to exploring how difference and similarity impact lawyering relationships and experiences.<sup>72</sup> Habit Five, the Camel's Back,<sup>73</sup> asks students to recognize how their own biases about and stereotyping of clients might harm the attorney-client relationship.<sup>74</sup>

What are biases and stereotypes and where do they come from? As a very basic explanation, biases and stereotypes, and their attendant judgments, are ingrained, sometimes unconscious, patterns of thinking and behaving that are born of repeated experiences. Those experiences may be lived or taught but either way they become the building blocks for memories<sup>75</sup> and subsequently influence behavioral impulses, affective experiences, and perceptions of the world.<sup>76</sup>

In the parlance of neuropsychology, stereotypes and biases are "mental models." Every human being operates within the framework of their mental schemas or mental models. Mental models are implicit

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mirror neurons and resonance behaviors. *Id.*

<sup>68</sup> GOLEMAN, *supra* note 17, at 40.

<sup>69</sup> *Id.* at 9.

<sup>70</sup> SIEGEL, *supra* note 5, at 179.

<sup>71</sup> Bryant, *supra* note 19, at 76-78.

<sup>72</sup> Bryant calls the five habits: Degrees of Separation and Connection; The Three Rings; Parallel Universes; Pitfalls, Redflags, and Remedies; and The Camel's Back. *Id.* The five habits provide a springboard for the development of this article. As Bryant articulates, the habits are structured to provide tools students and clinicians can use to support intentional culturally competent legal representation. The habits and specifically for the purposes of this article, Habit 5: The Camel's Back, offer a framework for helping students to examine their own cultural assumptions about clients and themselves, and how those assumptions may allow biases and negative judgments to seep into the lawyer-client relationship. This article takes that framework and suggests methods that might support work in Habit Five. *Id.*

<sup>73</sup> *Id.* at 77.

<sup>74</sup> *Id.*

<sup>75</sup> BADENOCH, *supra* note 2, at 24.

<sup>76</sup> *Id.*

memories that are known without being thought,<sup>77</sup> and they also shape what Richard Byyny calls each person's "subjective social reality."<sup>78</sup> Mental models are assumptions about people, situations, and experiences that occur mostly outside our awareness of them that allow us to move smoothly through the world.<sup>79</sup> They are also reflective of values and interests,<sup>80</sup> and influence how we communicate.<sup>81</sup> In the words of Dan Siegel, the human brain is an "anticipation machine," taught through experience, built from mental models, and designed to plan for the next step.<sup>82</sup> Models lead to predictions for how life works by guiding ongoing perceptions and actions,<sup>83</sup> yet they often remain below the level of conscious awareness.<sup>84</sup>

Mental models help us get through our daily lives. We all unconsciously and consciously use mental models to choose the best way to get to work or school or wherever we are going each morning, to dress appropriately for the day's activities, to operate a stove or a coffee machine, and so on. Our memories and past experiences help us to build these kinds of models. At the same time, mental models about other people are created at the intersection of memories of people in our past and the experiences we have with people in our lives today.<sup>85</sup> Mental models provide guidelines for interpreting how people may act and respond in varying situations but they can also reflect shallow or un-nuanced understandings of how someone might value different experiences or view the world.<sup>86</sup>

The less-than-positive aspect of mental models is that stereotypes and biases are mental models made real.<sup>87</sup> As humans, we make as-

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<sup>77</sup> COZOLINO, *supra* note 3, at 153.

<sup>78</sup> Byyny, *supra* note 32, at 2.

<sup>79</sup> *Id.* at 3. In the neuroscientific language, mental models are patterns of neural firings called semantic pointers that bind together emotional responses. Paul Thagard, *How Fear Leads to Anger*, PSYCH. TODAY (Nov. 9, 2019), <https://www.psychologytoday.com/us/blog/hot-thought/201811/how-fear-leads-anger> (discussing how semantic pointers work to guide the brain in reacting to situations).

<sup>80</sup> ROBBENOLT & STERNLIGHT, *supra* note 14, at 62.

<sup>81</sup> *Id.* at 142.

<sup>82</sup> SIEGEL, *supra* note 5, at 173.

<sup>83</sup> *Id.* at 136.

<sup>84</sup> BADENOCH, *supra* note 2, at 24-25.

<sup>85</sup> COZOLINO, *supra* note 3, at 138.

<sup>86</sup> Weng, *supra* note 2, at 379; see also Ronald Wheeler, *We All Do It: Unconscious Behavior, Bias, & Diversity*, 107 LAW LIBRARY J. 325 (2015) (discussing how people unconsciously analyze information and produce motivation for their behaviors without any real awareness of where the motivation came from).

<sup>87</sup> Mental models can have both positive and negative aspects. Primarily, mental models provide humans interacting in the world with schema that support an understanding of what is happening around them; schema are necessary to move through the world gracefully. Schema that apply to people are commonly called stereotypes; stereotypes can negatively impact student relationships with clients and vice versa. ROBBENOLT & STERNLIGHT,

sumptions and judgments based on biases and stereotypes, but those judgments and assumptions are not necessarily based in fact. Rather they are experiential and emotional manifestations of the mental models. Another unfortunate consequence of the operation of mental models is that people can be overconfident in their intuitive responses to things. After all, intuition is tethered to mental models that quickly provide an answer or explanation of a situation.<sup>88</sup> People who overly rely on their quick responses perceive themselves to be more objective, more fair, and more ethical.<sup>89</sup> Taken together with biases and stereotypes, over confidence in intuitive responses can deeply hinder the lawyering dynamic. And, as the mental model is a manifestation of emotional experience, it is easy to see how profoundly they can impact self-identity.

Often biases and stereotypes, particularly those generated by fear-based mental models, reflect an “us versus them” mentality. From an evolutionary perspective, “us versus them” has some survival value, it literally kept humans safe, and its lessons are deeply ingrained in how the brain assesses threat.<sup>90</sup> Us versus them becomes problematic when that mentality ascribes lesser human value or traits to the person deemed as “them.”<sup>91</sup>

Clients come to clinics with a history of their own choices that may not seem logical to a student. This is one place where a student might resort to using stereotypes and biases in working with clients because judgments and assumptions about clients can be triggered.<sup>92</sup>

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*supra* note 14, at 12-13; SIEGEL, *supra* note 5, at 135. Dan Siegel refers to mental models by another phrase: engrained brain states. His position is consistent with perceptual biases as described by Bonnie Badenoch, that is, engrained brain states impact a person’s ability to be aware of experiences happening in the present moment. *Id.*

<sup>88</sup> KAHNEMAN, *supra* note 17, at 45. Kahneman also explains that people will accept the cost of jumping to conclusions “if they are likely to be correct and the costs of the mistake are acceptable, and if the jump saves time and effort.” *Id.* at 79. *See also* Tim Parker, *Cognitive vs. Emotional Investing Bias: What’s the Difference*, INVESTOPEDIA (July 7, 2019), <https://www.investopedia.com/articles/investing/051613/behavioral-bias-cognitive-vs-emotional-bias-investing.asp>. Weng discusses this phenomenon in terms of “schema:” the ways people organize information such that they can process large amounts of information quickly and automatically. A schema can be both positive and negative. Schemas help us to organize the world around us, yet they can be subject to biases and stereotypes that negatively influence our interactions in that world. Weng, *supra* note 2, at 396.

<sup>89</sup> ROBBENOLT & STERNLIGHT, *supra* note 14, at 70. *See also* George Loewenstein & Jennifer Lerner, *The Role of Affect in Decision-Making*, in HANDBOOK OF AFFECTIVE SCIENCES 619 (Richard J. Davidson, Klaus R. Sherer, & H. Hill Goldsmith eds., 2003).

<sup>90</sup> Brian Resnick, *7 Lessons from Psychology That Explain the Irrational Fear of Outsiders*, VOX (Jan. 30, 2017), <https://www.vox.com/science-and-health/2017/1/28/14425658/fear-of-refugees-explained>. *See also* Byyny, *supra* note 32, at 2 (discussing how the us vs. them mentality, or biases generally, originated in response to fear and were helpful to evolution and survival).

<sup>91</sup> Resnick, *supra* note 90.

<sup>92</sup> BADENOCH, *supra* note 2, at 59. Another interesting perspective would be to ex-

It makes sense from a neurological and psychological perspective: if a student has not had the experience of challenging their mental models about the world and a client's choices very directly offers that challenge, the student's mental model may offer a less than positive explanation.<sup>93</sup> When a primary basis of fear experiences is the need to protect self-identity, client choices that challenge the student's identity<sup>94</sup> or belief systems would of course be terrifying.<sup>95</sup>

Examining clinic interactions from the client perspective, clients also bring their own mental models and biases and stereotypes into the lawyer-client relationship. Whatever fear or shame the client experiences impacts the integration of their limbic and prefrontal regions of the brain and impacts the way a client tells their story and their memory of that story.<sup>96</sup> Much like a well-integrated limbic and prefrontal system affects student ability to hear and connect, a well-

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amine the actor-observer effect – the tendency for an observer to attribute their own behavior to situational factors and the attribute other's behavior to dispositional factors. ROBBENOLT & STERNLIGHT, *supra* note 14, at 19.

<sup>93</sup> There are abundant examples of client choices a student might find illogical. For instance, owning a smart phone while unable to pay rent, staying in an abusive relationship, wishing to regain or maintain custody of children while continuing to use controlled substances, and similar choices that seem to pose a contradiction between the desired outcome and the choices the client is actively making.

<sup>94</sup> Identity is complicated and messy. It is made up of many influences including race, class, gender, religion, family structure and experiences, and profession among other things. NANCY R. HOOYMAN & BETTY J. KRAMER, *LIVING THROUGH LOSS: INTERVENTIONS ACROSS THE LIFE SPAN* 78 (2006).

<sup>95</sup> There is no significant research on the propensity for clinic students, particularly new and unpracticed clinic students, to self-identify or over-identify with their assigned clients. Anecdotally, clinicians know this happens, and as a phenomenon common in the therapeutic relationship, it makes sense that it would occur when students are less trained in recognizing and challenging such tendencies. See N. Zerubavel & M. O'Dougherty Wright, *The Dilemma of the Wounded Healer*, 49 *PSYCHOTHERAPY* 482 (2012); Anonymous, *The Unfolding and Healing Analytic Boundary Violations: Personal, Clinical and Cultural Considerations*, 50 *J. ANALYTICAL PSYCH.* 661 (2005); T. Yedidia, *Immigrant Therapists' Unresolved Identity Problems and Countertransference* 33 *CLINICAL SOCIAL WORK J.* 159 (2005); K.J. Maroda, *Enactment: When the Patient's and Analyst's Pasts Converge*, 15 *PSYCHOANALYTIC PSYCH.* 517 (1998).

<sup>96</sup> BADENOCH, *supra* note 2, at 70. For a brief explanation of ways that brain integration can impact storytelling, see *id.* at 73 (describing how disorganization reveals itself in retelling stories of childhood abuse). In addition, Siegel refers to the act of remembering an act of modification. We have an expectation that memory works well and accurately and that it is static. ROBBENOLT & STERNLIGHT, *supra* note 14, at 38. However, multiple factors influence memory including the energy of the moment of recollection, any trauma experienced at the time the memory was made, time and distance from the event that created the memory, and the like. Clients do not just misremember or fail to remember the small details of events, they often cannot recall accurately significant pieces of the events, their timing, order, and who was there. *Id.* at 30. Time and distance from the event are very important to the discussion. Recollection of details lessens over time and we tend to fill in the gaps with our schema, stereotypes, and other mental models and perceptual biases. *Id.* at 31, 33.

integrated client brain leads to clearer telling of stories.<sup>97</sup> As mirror neurons work dynamically, if the client perceives the student to be angry or judgmental, they are likely to behave defensively themselves.<sup>98</sup> Clients can shut down in relaying information and may metaphorically or literally disappear in the lawyering relationship and process. The vicious cycle perpetuates itself when client behaviors offer justification and reinforcement for the student's initial emotional reaction and confirmation that the biases and judgments are accurate.

Camel's Back, then, requires deep and intense self-reflection. By asking the student to look deeply at past influences on her thinking, Camel's Back reflection guides students in challenging their judgments and assumptions. In addition, when examining experiences of fear, shame, or biases and stereotypes, students are pushed out of their comfort zones. Camel's Back reflection ultimately seeks to engage in neuroplasticity, discussed above, by prompting students to rewrite the neural pathways that created long-held mental models. The reflection process can give the student confidence that she will develop new comfort zones.<sup>99</sup> Finally, Fifth Habit work allows students to respond to the inevitable emotional swings they will face in clinic.<sup>100</sup> Any work a clinician does with a student on recognizing their internal emotional states and learning to self-regulate those states will influence the way that students interact with clients throughout their career.<sup>101</sup> Developing strong empathetic skills while simultaneously challenging biases and stereotypes, judgments and assumptions, will shape how the student relates to clients in all their lawyering activities.

Neuropsychology suggests ways to support students on the Camel's Back journey. Research studies have demonstrated that mindful self-awareness can improve someone's capacity to regulate emotion and reduce negative mindsets.<sup>102</sup> The key to authentic empathy—not just saying the right words, but creating right brain-to-right brain connection—is self-regulation born of self-awareness.<sup>103</sup> On a

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<sup>97</sup> BADENOCH, *supra* note 2, at 60.

<sup>98</sup> Leon F. Seltzer, *Anger – How We Transfer Feelings of Guilt, Hurt, & Fear*, PSYCH. TODAY (June 4, 2013), <https://www.psychologytoday.com/us/blog/evolution-the-self/2013/06/anger-how-we-transfer-feelings-guilt-hurt-and-fear>.

<sup>99</sup> SIEGEL, *supra* note 5, at 42; BADENOCH, *supra* note 2, at 29.

<sup>100</sup> SIEGEL, *supra* note 5, at 42; *see also* BADENOCH, *supra* note 2, at 30.

<sup>101</sup> Majorie Silver calls this degree of self-awareness “emotional competence,” and suggests it is the power to harness emotional experiences constructively that ultimately improves the lawyering relationship. Silver, *supra* note 15, at 13.

<sup>102</sup> SIEGEL, *supra* note 5, at 6. Positive mindsets not only increase connection between lawyer and client, they can expand a person's ability to think and problem solve creatively. ROBENOLT & STERNLIGHT, *supra* note 14, at 50.

<sup>103</sup> As discussed above, brain to brain connections influence not only relationships but biology itself by reforming and reshaping neural pathways. GOLEMAN, *supra* note 18, at 5.



human level, the ability to self-regulate creates facility for turning attention to others and to accurately gauging the information we receive from them.<sup>104</sup> Clinical students benefit from an ability to understand themselves when self-awareness supports stronger work.<sup>105</sup> Also, by acknowledging fear, insecurity, lack of knowledge or understanding in themselves, students may be able to recognize the humanity of the client in experiencing similar emotions.<sup>106</sup>

#### IV. FEAR & SHAME AS NEUROPSYCHOLOGICAL RESPONSES

Any explanation of how fear operates in the brain begs the question, “What is fear, exactly?” In short, fear is a primary emotional response<sup>107</sup> to anything that overwhelms the brain’s ability to cope.<sup>108</sup> Often fear is the brain’s reaction to new situations, discomfort in those

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<sup>104</sup> COZOLINO, *supra* note 3, at 233; KAHNEMAN, *supra* note 17, at 26, 28 (“The best we can do is a compromise: learn to recognize situations in which mistakes are likely and try harder to avoid significant mistakes when the stakes are high.”); *see also* Silver, *supra* note 16, at 20 (discussing factors that lead to healthy attorney-client relationships, including the capacity to address strong emotional responses to the client).

<sup>105</sup> Susan Bryant, Elliot S. Millstein, & Ann C. Shalleck, *The Whole is Greater Than the Sum of Its Parts: Clinical Methodologies & Perspectives*, in TRANSFORMING THE EDUCATION OF LAWYERS, *supra* note 6, at 26.

<sup>106</sup> A note about the clinician’s role in working with students through this process: the clinician does not necessarily have to be the source of absolute knowledge, but rather can work with the student to build the scaffolding needed to embrace the uncertainty of the clinical experience. SIEGEL, *supra* note 5, at 20. The clinician is in an excellent position to offer learning material in a conditional format rather than as a series of truths. Clinical work is by definition experiential and active – yet the work described here requires the student and educator to be collaborative in approaching fear-inducing situations with RAIN as described below. As a collaborative experience between the clinician and the student, the clinician can both ask students how their own attitudes will shape the direction of their learning and engage the students as active participants in the process of learning the material. *Id.* at 7.

<sup>107</sup> Thagard, *supra* note 79. *See also* Pratt, *supra* note 53; Seltzer, *supra* note 98 (discussing how anger is secondary to feelings of disregard, guilt, devaluation, rejection, etc.). Fear, as an emotional response, is often followed closely by anger in the arc of the emotional experience. Fear and anger have similar chemical make-ups. This may be why some clinicians observe angry reactions from students about client behaviors and choices.

<sup>108</sup> This paper explores the experience of fear and shame on the operations of the brain. There is an extensive body of research available regarding the impact of fear, shame, and trauma on other parts of the body. *See, e.g.,* PAT OGDEN, KEKUNI MINTON & CLARE PAIN, *TRAUMA & THE BODY: A SENSORIMOTOR APPROACH TO PSYCHOTHERAPY* (2006); PETER LEVINE, *HEALING TRAUMA: A PIONEERING PROGRAM FOR RESTORING THE WISDOM OF YOUR BODY* (2005); PETER LEVINE, *WALKING THE TIGER: HEALING TRAUMA* (1997); RON KURTZ, *BODY-CENTERED PSYCHOTHERAPY: THE HAKOMI METHOD: THE INTEGRATED USE OF MINDFULNESS, NONVIOLENCE AND THE BODY* (1997); ALEXANDER LOWEN, *BIOGENETICS* (1994). This research offers another tool for the educator: to ask the student to sit with the emotional experience and identify where they feel it in their bodies. This kind of mindful examination of physical experience coupled with emotional experience allows for greater brain integration and empathy development. BADENOCH, *supra* note 2 at 98.

situations, and other unknowns or uncertainty. In the law school clinical environment, fear can be triggered<sup>109</sup> by anything from cultural differences to uncertainty about working with live human beings to researching unfamiliar law. Interestingly, at any point on the spectrum of fear-inducing situations, the level of fear a person experiences raises the emotional stakes of the interaction.<sup>110</sup> As an emotional, unthinking, and somewhat automatic<sup>111</sup> reaction, fear is not rational.<sup>112</sup> And, at its extremes, fear may make it impossible to connect with another person in any capacity.<sup>113</sup>

*A. Understanding Fear and Shame Through  
the Lens of Neuropsychology*

In terms of brain evolution, fear is what keeps us alive. Recall the “Is that a lion or is that a zebra?” experience. But what explains fear in the face of unfamiliar people or new situations? When we are not facing down the lion, fear is a response to a perceived interpersonal threat.<sup>114</sup> When we are afraid, fear takes over until we once again feel safe. Fear has been a good thing for the species allowing for its continued survival, but when humans find themselves in less dire circumstances, fear can trap us in the frameworks we have created in our heads to make sense of the world.<sup>115</sup> The human brain becomes overwhelmed when its owner is about to face a challenge to their conception of self, fear assumes control, and the most primal part of the brain takes over. We imagine a sense of danger and then create conceptual constructs to save ourselves, to save our personal identities. And we do this so we can predict and control outcomes, and most importantly, so we can protect how we see ourselves.<sup>116</sup>

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<sup>109</sup> For the purposes of this paper, “trigger” is used in the psychotherapeutic sense. A trigger is an external stimulus that prompts a recall of some earlier traumatic event. It is literally an emotional and psychological return to a previous experience. *EFFECTIVE TREATMENTS FOR PTSD: PRACTICE GUIDELINES FROM THE INTERNATIONAL SOCIETY FOR TRAUMATIC STRESS STUDIES* 274 (Edna B. Foa, Terence M. Keane, Matthew J. Friedman & Judith A. Cohen, eds., 2d ed. 2008).

<sup>110</sup> GOLEMAN, *supra* note 17, at 39.

<sup>111</sup> Resnick, *supra* note 90.

<sup>112</sup> Rationality is simply a reflection of what we value and is therefore emotional at its core. See RAYMOND S. NICKERSON, *ASPECTS OF RATIONALITY: REFLECTIONS ON WHAT IT MEANS TO BE RATIONAL AND WHETHER WE ARE* (2008).

<sup>113</sup> GOLEMAN, *supra* note 17, at 39.

<sup>114</sup> COZOLINO, *supra* note 3, at 178.

<sup>115</sup> SIEGEL, *supra* note 5, at 159 (“Fear drives us to shine a focused beam of light onto what we think we know, to keep us safe, to give us a sense of truth, of keeping the world the way we think it should be. We have words and ideas that frame and form the field of awareness that dull our senses, shaping what we think we know, in thoughts, about what can be known.”).

<sup>116</sup> *Id.* at 160. See also KAHNEMAN, *supra* note 17, at 97 (discussing the difference between how our brains answer difficult questions by reinterpreting them as heuristic ques-

Interestingly, fear is a response not only to what we physically see, but also to the mental intention we imagine is going on in someone's mind.<sup>117</sup> Human beings tie their emotional responses to people and situations to guessing things about them that fit that initial emotional response; the guesses are based on unconscious reading of non-verbal cues and on the operation of mental models.<sup>118</sup> That is, we have the fear response and *then* the brain looks for ways to explain why the fear makes sense (the limbic region takes over the brain while the brain is looking for a mental model to pin that fear on). These frameworks may be inherently flawed, but the brain reverts to them in times of exhaustion or high stress because they require the least amount of effort to understand the experience. It is, in ten words or fewer, the neural pathway of least resistance.<sup>119</sup>

For a visual representation of how fear and shame operate on the prefrontal and limbic regions, Dan Siegel's hand model—a copy of which appears in the Appendix—is a useful tool.<sup>120</sup> First, hold up the right hand with the thumb folded across the middle of the palm; the other fingers remain pointing upward. As a basic and oversimplified explanation, the thumb represents functioning of the limbic region of the brain. When you fold the fingers over the thumb (ensuring the thumb is covered as completely as possible by the fingers) the fingers represent the prefrontal cortex of the brain.<sup>121</sup> When fear takes over the brain, the prefrontal cortex and the amygdala disengage from each other. In effect, the amygdala vetoes the functioning of the prefrontal cortex and overrides integration. On your hand, the fingers point upward. It is an unconscious and immediate response to the stimulus the brain perceives as dangerous,<sup>122</sup> a literal and figurative “flipped lid” that occurs in part because of the neurochemical response to the perceived danger.<sup>123</sup>

### B. Fear & Shame in the Clinical Environment

The law school clinic is ripe for experiences of fear or shame that might be triggered by many things: fear of otherness, inexperience

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tions that provide answers that fit into our mental models).

<sup>117</sup> SIEGEL, *supra* note 5, at 166.

<sup>118</sup> KAHNEMAN, *supra* note 17, at 82, 87 (discussing research that highlights the perceptual bias he calls the “halo effect,” that is, how research participants responded to the presentation of one-sided evidence that could easily be refuted).

<sup>119</sup> *Id.* at 35, 44.

<sup>120</sup> SIEGEL, *supra* note 5, at 33. A diagram of the model is included as Appendix A.

<sup>121</sup> See Siegel, *supra* note 47. For an excellent, simplified, and brief discussion of the relationship between the various areas of the brain, see BADENOCH, *supra* note 2, at 12-20.

<sup>122</sup> *Id.* at 126.

<sup>123</sup> *Id.*

with the law, and inexperience with all the various pieces of clinical practice that make up lawyering.<sup>124</sup> These triggers can make the relationship difficult for both the client and the student.<sup>125</sup> Many a clinician has seen the manifestation of fear in an avoidance of assigned work, tentative interactions with clients and court personnel, anger at the client,<sup>126</sup> and even in over-eagerness to please.<sup>127</sup>

Because emotions are causally connected, fear often walks hand in hand with shame.<sup>128</sup> Fear and shame<sup>129</sup> are limiters of experience. They influence the things we notice while at the height of the emotion,<sup>130</sup> and they shut down the capacity for empathy and connection. Fear and shame also limit a student's attentional capacity.<sup>131</sup> When a student's proverbial lid is flipped,<sup>132</sup> they may find it difficult to attend to and take in information from multiple stimuli simultaneously. Consequently, the quality of the lawyering tasks the student completes (or attempts, as the case may be) is impacted: the relationship between the student and the client, fact investigation, case evaluation, decision-making, action choices, and reflection on those experiences all suffer if fear and shame are in control.<sup>133</sup>

If fear can be triggered by the unknowns and uncertainties of the clinical experience, where, then, does the shame originate? The core experience of shame is feeling defective. In the law school context this may mean the student feels not smart enough, not quick enough, and/or not cut out for law school or the clinic in the first place.<sup>134</sup> Together

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<sup>124</sup> Wheeler, *supra* note 86, at 329.

<sup>125</sup> Shalleck & Aiken, in *TRANSFORMING THE EDUCATION OF LAWYERS*, *supra* note 6, at 184.

<sup>126</sup> As mentioned above, anger is a secondary emotion, often paired with fear. Research demonstrates that anger, especially defensive anger or rage, is a response to the fear of challenges to the sense of self or self-identity. SIEGEL *supra* note 5, at 149; BADENOCH, *supra* note 2, at 105. It also protects the ego. Seltzer, *supra* note 98. Finally, defensive anger is a tool the psyche uses to distance itself from other difficult emotions that feel less easy to control. *Id.*

<sup>127</sup> Weng, *supra* note 2, at 387. It is also true that students can bring wisdom and skills from past experiences into the clinic and into their lawyering that benefit the student-client relationship.

<sup>128</sup> According to Badenocho, fear is the limbic experience of shame. BADENOCH, *supra* note 2, at 108.

<sup>129</sup> ROBBENOLT & STERNLIGHT, *supra* note 14, at 55 (discussing the differences among embarrassment, guilt, & shame).

<sup>130</sup> *Id.* at 8.

<sup>131</sup> *Id.* at 9-10.

<sup>132</sup> I use "flipped lid" here as a colloquial expression meaning that fear has hijacked the integrated functioning of the prefrontal functioning. Using the hand model as the visual, when the fingers fly upward, detaching from the thumb, it resembles a lid flying off its container.

<sup>133</sup> Byyny, *supra* note 32, at 6.

<sup>134</sup> See Silver, *supra* note 15, at 30 (describing how shame can be triggered simply by vulnerability to a range of needs and desires including the need to not fail or lose and the

with random or intentionally developed systems for calling on students, a more traditional Socratic pedagogy stems from fear- and shame-based learning.<sup>135</sup> Even if not intended to shame, the Socratic classroom can create a cycle wherein the self-identity of the student is steeped in shame for not knowing or not knowing fast enough.

Students develop preconceptions of the shoulds and ought-tos of lawyering based on a myriad of influences, not the least of which is the time they spend in Socratic classrooms. These shoulds and ought-tos can limit their ability to be kind both to themselves and to their clients, particularly if the clients are not existing in the world in the same way the students do.<sup>136</sup> A student entering clinic with the expectation that any lack of knowing will be met with shaming behaviors by the clinician has developed a mental model of how the clinical experience will proceed. Consequently, when a student's mental model is wired to expect shame, there will be triggers that the clinician may not anticipate.<sup>137</sup>

Fear and shame together can completely block the experience of empathy or the opportunity for connection in a student-client relationship. They can also lead to defensiveness and anger. Emotional resonance through the operation of mirror neurons can make it a dynamic and iterative experience. The student feels fear and possibly shame as they enter the lawyering relationship, this triggers fear and/or shame in the client, which in turn increases the fear and shame in the student. Even a confident student may find themselves lawyering for clients who bring feelings of shame into the attorney-client dynamic—having legal needs may surface for clients feelings of inadequacy or inability to manage their lives.<sup>138</sup> Add to the client

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need to be seen as powerful).

<sup>135</sup> Most people of a certain age are familiar with John Houseman's portrayal of the uncompromising Professor Kingsfield in *The Paper Chase*. For many, Houseman's quintessential performance came to define the law school experience, Socratic method in particular. In the film, Kingsfield's classroom is a place well-known to breed fear (of being called on) and shame (for not knowing the answer). *THE PAPER CHASE* (20th Century Fox 1973). While it may be that the Kingsfields of the law teaching world are a rare breed, the specific patterns of socratic methodology that hide the ball or terrify students are not. Socratic methodology, in theory, is used to teach students to think like lawyers – identify the crucial facts in the case decision, extrapolate the rule, and articulate the holding quickly and clearly. At the same time, it can be a terrifying and exhausting pedagogy from the student perspective.

<sup>136</sup> From experience, clinicians know that students also come into clinical environments with ideas about how clients should and ought to behave. Some of these ideas or expectations are built from the same mental models that create stereotypes and biases. Others are reinforced by the somewhat sterile nature of case-book methodology used in more traditional Socratic classrooms.

<sup>137</sup> See ROBBENOLT & STERNLIGHT, *supra* note 14, at 11 (discussing the concept of priming and its impact on what is on a person's unconscious and conscious mind).

<sup>138</sup> Silver, *supra* note 15, at 29.

experience the need to reveal their problems to a host of people and personalities over the course of the representation relationship—the court, opposing party and counsel, clerks and other court personnel, not to mention whatever other services are required of the client to engage in the relationship—and the relationship is ripe with opportunities for fear and shame to grow.<sup>139</sup> Consciously or unconsciously, this may lead the student down the rabbit hole of difficult emotions themselves.

Fear and shame are often responses to the unknown. They are also learned reactions to mental models about difference, whether those differences be cultural, language-based, gender-based, class-based, or religious, among others. The mental models, because they are based on past experiences and filtered through subsequent experiences and time, often present themselves as negative biases, stereotypes, and judgments and assumptions about client choices and behavior. Students may not even be aware they carry these negative perceptions of the client. In some cases, students may project their negative perceptions onto the client, interpreting client behaviors as uncaring, unengaged, hostile, or aggressive (thus providing a rational explanation for their own responses). Accordingly, deliberate teaching of the neuropsychology of mental models on social interactions, together with reflection techniques, may help students to uncover their previously unconscious biases and judgments.<sup>140</sup>

#### V. REFLECTION AS A TOOL TO SUPPORT NEUROPLASTICITY AND CAMEL'S BACK REFLECTION

Lawyering is a fundamentally human and fundamentally collaborative endeavor. Humans do not exist in nature as solitary entities, and human brains do not exist as solitary entities.<sup>141</sup> Other people are the primary environment of the human experience.<sup>142</sup> Just as humans are social by nature, neuropsychology is uncovering exactly how social neurons in the brain are.<sup>143</sup> At the same time, while humans are social creatures, sometimes their social interactions and social brain connections misfire because they are not aware of either the connections between culture and behavior, or the mental models that support discrimination, biases, or negative judgments.<sup>144</sup>

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<sup>139</sup> *Id.* at 31.

<sup>140</sup> Weng, *supra* note 2, at 400.

<sup>141</sup> COZOLINO, *supra* note 3, at 4.

<sup>142</sup> *Id.* at 6.

<sup>143</sup> *Id.* at 29.

<sup>144</sup> Weng, *supra* note 2, at 372. Weng also discusses how, by virtue of its specialized training, lawyering inherently creates a power imbalance in the lawyer-client relationship. This power imbalance, both as a lived experience and as a perceptual construct, can exacer-

And yet, mindful and practiced self-awareness supports neuroplasticity,<sup>145</sup> and that practice leads to experience and familiarity which rewires neural pathways<sup>146</sup> which in turn can lessen the number of times or the negative impacts of right-brain to right-brain misfires. Practicing self-awareness offers several benefits, primarily by improving the ability to respond flexibly to a client, increased insight, and different intuitive responses to circumstances. Flexibility in responding to the client includes the ability to pause before responding to a stimulus. The pause brings to the interaction a range of possible responses, time to evaluate those responses, and the neural integration to make a decision that supports the client.<sup>147</sup> Over the course of the clinical experience, clinicians want students to be aware, not overwhelmed or disconnected.<sup>148</sup> Self-awareness supports students in becoming cognizant of the fact that the contents of their minds are just that: contents that are not immutable but rather can be shaped and changed.<sup>149</sup> And finally, clinicians want to support the student in re-writing their mental models so that the intuitive, unconscious response to a situation is less likely to negatively impact their client relationships.<sup>150</sup>

All the methods discussed in the following section are based on using reflection in clinical supervision. Research overwhelmingly confirms the idea that self-reflection and personal awareness can have the greatest impact on rewriting mental models.<sup>151</sup> Reflection takes many forms, but in this context, it means a process of cognitive reappraisal,<sup>152</sup> or what some therapists call ‘name and contain’: identify the emotional experience, give it a name, and watch it lessen its impact. At its core, reflection serves three purposes: to encourage self-discovery; to support students in surfacing strategies and solutions in problem-solving; and to hold students accountable for their choices and the

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bate the misfiring of connections between lawyers and their clients. *Id.* at 374. In addition, Weng explores how substantive training on differing cultures can too narrow a student’s focus on knowledge of cultural differences to the exclusion of using other tools and methodologies to build stronger student-client interactions. *Id.* at 386-89.

<sup>145</sup> BADENOCH, *supra* note 2, at 43

<sup>146</sup> SIEGEL, *supra* note 5, at 3.

<sup>147</sup> *Id.* at 42; BADENOCH, *supra* note 2, at 30.

<sup>148</sup> SIEGEL, *supra* note 5, at 43 (discussing how therapists need to develop the ability to shape and tell a client’s story in a way that it retains emotional contact with its meaning); BADENOCH, *supra* note 2, at 31.

<sup>149</sup> SIEGEL, *supra* note 5, at 171.

<sup>150</sup> *Id.* at 44. As discussed earlier in this article, students may not even recognize that their unconscious reactions to their clients do not match their conscious beliefs and intentions. Self-awareness can help bring the mental model and the beliefs and intent into alignment. BADENOCH, *supra* note 2, at 32.

<sup>151</sup> See Byyny, *supra* note 32, at 3; Seltzer, *supra* note 98.

<sup>152</sup> See Resnick, *supra* note 90.

impacts of those choices.<sup>153</sup> Self-awareness and the capacity to self-regulate can lead to changes in behavior. It is the operation of neuroplasticity made manifest. Rewriting neural pathways and creating new mental models for the brain to fall back on can, as a consequence, create new behavior patterns.<sup>154</sup>

#### A. *Reflection to Facilitate Habit Five*

Reflection—reviewing choices made and why, their effectiveness in the moment or over the long-term trajectory of a case—is a critical practice in clinical pedagogy and key to supporting students in learning the practice of good lawyering. Reflection can also happen on both macro and micro levels: on the case as a whole and on specific client interactions.<sup>155</sup> In theory and in practice, reflecting with students on their lawyering experiences prepares them to address both their most glorious moments and their more profound missteps. And, the more reflection becomes a tool of student practice in the clinic, the more likely the student is to take the habit into their professional life.<sup>156</sup>

Clinicians can use reflection to activate the prefrontal cortex and to practice with students identifying when fear, shame, and the mental models that generate them take over their lawyering choices.<sup>157</sup> Any reflective practice is a challenging process that takes deliberate effort, especially because the brain is making decisions as quickly as it does.<sup>158</sup> As with any tool a clinician uses to work toward building student self-awareness, push back from some students is likely. The adversarial nature of the profession, as well as its focus on logic and rationality, might lead students to believe that attempts at self-understanding are unnecessary.<sup>159</sup> The students may not agree that comfort with their own internal emotional experience and with those of the client support positive approaches to both unfamiliar lawyering tasks and working with marginalized populations. And, in practice, Camel's Back reflection may profoundly challenge a student's self-identity.

Camel's Back reflection asks students not only to challenge their

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<sup>153</sup> Deb Kleinman, Lupine Collaborative, Lecture at the University of Wyoming College of Law Civil Legal Services Clinic (Oct. 29, 2019). Also, this came to me in a dream.

<sup>154</sup> Weng, *supra* note 2, at 376 (providing an anecdotal example of how such adjustment can work to improve the lawyer-client interaction); Parker, *supra* note 88; Byyny, *supra* note 32, at 2 (citing Wiley Souba, *The Science of Leading Yourself: A Missing Piece in the Healthcare Transformation Puzzle*, 2 OPEN J. LEADERSHIP 45 (2013)).

<sup>155</sup> Susan Bryant & Elliot Millstein, *Rounds: Constructing Learning from the Experience of Peers*, in TRANSFORMING THE EDUCATION OF LAWYERS, *supra* note 6, at 120.

<sup>156</sup> *Id.* at 119-20; Byyny, *supra* note 32, at 5.

<sup>157</sup> SIEGEL, *supra* note 5, at 128.

<sup>158</sup> Wheeler, *supra* note 86, at 329.

<sup>159</sup> Riskin, *supra* note 23, at 450.



assumptions about client behaviors and choices by considering Bryant's Habit Three: Parallel Universe Thinking<sup>160</sup> but also to take the next step to identify and address what biases and stereotypes they may hold about the client. As deeply ingrained patterns in the brain, biases and stereotypes can be the hardest mental models to identify, address, and change. Approaching Habit Five from a neurological framework allows the clinician and the student to earnestly tackle that process.

To provide a quick recap of the neuropsychological interpretation of stereotypes and biases: mental models create anticipation of what will happen when encountering a client. That anticipation may be the manifestation of a stereotype or bias the student holds. That same anticipation can create fear and possibly shame responses which cause the student's lid to flip, impacting the capacity to develop and or express empathy toward the client. The stereotype and/or bias is deeply ingrained in the student's brain's operation and may be consciously known or live deep in the unconscious recesses of the brain. As a self-protective measure, if the student is feeling fearful or shameful, they may turn that around onto the client, hurting the client by devaluing them.<sup>161</sup> While such a choice to rely on a judgment or stereotype may appear irrational, it is at heart the mental model exerting its influence.<sup>162</sup> The natural inclination is to interpret the experience as what is happening in the world at that moment, not to break down how neural networks might be influencing perception of what exists and what does not exist.<sup>163</sup> The amygdala has veto power over rational

<sup>160</sup> In addressing judgments and assumptions in the clinic environment, Bryant and Koh suggested Habit Four: Parallel Universes as an effective tool to challenge immediate negative responses to client behaviors. Parallel universes thinking involves trying to seeing the world from another's perspective. See Christina A. Zawisza, *Teaching Cross-Cultural Competence to Law Students: Understanding the 'Self' as 'Other'* 7, 17 FLA. COASTAL L. REV. 185, 234-36 (2016); Alistair E. Newbern & Emily F. Suski, *Translating the Values of Clinical Pedagogy Across Generations*, 20 CLIN. L. REV. 181, 207-09 (2013); Jean Koh Peters, *Habit, Story, Delight: Essential Tools for the Public Service Advocate*, 7 WASH. U. J. L. & POL'Y 17, 20 (2001). Specifically, students challenge themselves to understand that not everyone shares the same world view or has the same capacity for action; they do this by generating multiple reasons or interpretations of another's words, actions, choices. See Bryant, *supra* note 19, at 758-759. Parallel universes is both a way of interacting and a way of thinking; it is also a reflective tool for focusing the brain in a way that allows for it to counteract any lid-flipping it might be inclined to do. Research supports that the practice of generating counter-arguments, considering weaknesses, and/or considering alternative explanations is one of the most effective methods for debiasing judgment. This may be because the alternative explanations for client behavior do not have to be correct; it is a process of getting the student to think critically about the challenges the client may face as they navigate the legal system. ROBBENOLT & STERNLIGHT, *supra* note 14, at 78.

<sup>161</sup> Seltzer, *supra* note 98.

<sup>162</sup> BADENOCH, *supra* note 2, at 27.

<sup>163</sup> *Id.* at 28. As a general rule, most people tend to underestimate the extent to which mental models influence their present experiences. This is, in part, why the same experience or information can be so differently described by different people. ROBBENOLT &

thought; fear and shame can flip the lid from connecting emotional responses to rational interpretations. It takes intentional effort working on neuroplasticity to reorganize thought patterns from amygdala-based biases and judgments to be able to sense others as they are.<sup>164</sup>

Working with students on a neuropsychology-focused Camel's Back reflection is neither easy nor quick, as any clinician who has made the effort at any Camel's Back work can attest. Mental models are intrusions of past experiences that are triggered by environmental and internal cues,<sup>165</sup> and when built from interpersonal experiences of fear and shame, they are notoriously difficult to combat.<sup>166</sup> The distraction of the difficult emotions makes it hard to calm down enough to become self-aware and to self-regulate because those emotions are deeply encoded reactions to external stimuli.<sup>167</sup> What is true for all mental models, when triggered in day-to-day interactions, is that there is no time stamp on the implicit memory that created it. There is no reference in the present-moment-processing of where the mental model came from. As a result, we interpret the mental model not as a reactivation of a past experience but as a rational reaction to something occurring in the present moment.<sup>168</sup>

Fear and shame experiences are both the result of mental models operating on interpersonal dynamics and perpetuators of those mental models. They are also directly tied to biases and stereotypes which are, in turn, tied to judgments and assumptions about client behaviors and choices. Connection with the client becomes difficult when the mental model interferes in the relationship because the student's perceptual system will be activated and interpretation and attribution may be skewed by the meanings the amygdala provides.<sup>169</sup> If the student feels any disgust along with that fear, this too can cause shame which can produce embarrassment which can lead to anxiety and further breakdown in the relationship and effective communication.<sup>170</sup> When the amygdala takes over, the skewed perceptions might amplify real and/or imagined differences<sup>171</sup> and any fear the student is feeling fear tends to exaggerate that difference.<sup>172</sup> This can be true even when

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STERNLIGHT, *supra* note 14, at 21.

<sup>164</sup> BADENOCH, *supra* note 2, at 30.

<sup>165</sup> COZOLINO, *supra* note 3, at 24.

<sup>166</sup> BADENOCH, *supra* note 2, at 30.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 25; GOLEMAN, *supra* note 17, at 78 (explaining that when we retrieve a memory or access a mental model, the brain updates it a bit according to present concerns and understandings).

<sup>169</sup> BADENOCH, *supra* note 2, at 55.

<sup>170</sup> Thagard, *supra* note 79.

<sup>171</sup> ROBBENOLT & STERNLIGHT, *supra* note 14, at 25.

<sup>172</sup> Resnick, *supra* note 90.

the student might be motivated to figure out the perspective of the client.<sup>173</sup>

As a side note, approaching Habit Five from a neurological perspective can offer students some shape of “rational” explanation for how empathy works. Self-awareness and self-understanding are important prerequisites for the development of empathy<sup>174</sup> because empathy for the self is critical to the ability to have empathy for others.<sup>175</sup> Therapists use self-awareness to promote security and trust with their clients.<sup>176</sup> Trust is based in part on a sense of attunement between parties and reciprocal interactions, while lack of trust is born from a perception that someone is unresponsive or mis-attuned to our state of mind.<sup>177</sup> In other words, lack of trust and weaker relationships derive from the perception that the therapist does not have empathy for the client.

Lawyers can use self-awareness and self-understanding in the same way. Connection between lawyer and client starts when both are paying attention, and not just to the facts.<sup>178</sup> To be the comfort the client needs, the student must feel comfortable.<sup>179</sup> The ability to embrace and manage the continually unfolding inner experience (of both themselves and the client) supports effective student lawyering by sustaining positive outlooks and relationships.<sup>180</sup> Positive relationships in turn provide a sense of belonging and intimacy that allows the student and the client to feel competent, not judged, and part of a network of mutual obligations.<sup>181</sup>

Building self-awareness takes intention on the part of both the clinician and the student. It requires time and effort to get students to think about their own thinking.<sup>182</sup> Emotional self-awareness might not be the primary characteristic of the average law student. As a broad generalization, students may come to the law looking for rationality and reason, internally divorcing those concepts from emotion.<sup>183</sup> Ironically, rationality and reason are based fundamentally not only on

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<sup>173</sup> ROBBENOLT & STERNLIGHT, *supra* note 14, at 25.

<sup>174</sup> COZOLINO, *supra* note 3, at 231.

<sup>175</sup> *Id.*

<sup>176</sup> BADENOCH, *supra* note 2, at 23.

<sup>177</sup> COZOLINO, *supra* note 3, at 194.

<sup>178</sup> BADENOCH, *supra* note 2, at 53.

<sup>179</sup> *Id.* at 92.

<sup>180</sup> *Id.* at 91.

<sup>181</sup> COZOLINO, *supra* note 3, at 245.

<sup>182</sup> SIEGEL, *supra* note 5, at 13; *see also Id.* at 40 (“Awareness of one’s moment-to-moment experience creates the opportunity to sense and accept one’s own mental experience directly.”).

<sup>183</sup> Silver, *supra* note 15, at 8, 40; Susan Daicoff, *Lawyer Personality Traits as Related to Lawyering*, in AFFECTIVE ASSISTANCE OF COUNSEL, *supra* note 3, at 95.

emotion but on value systems that are ingrained in our psyches from an early age. And, as Bonnie Badenoch explains, “by thoroughly developing differentiated core understandings (intellectual and experiential) about the brain, the mind, and the inner community, linkages will emerge, helping us gain a richer sense of what it is to be human.”<sup>184</sup> At the end of the day, self-awareness allows the student to pay attention on purpose, not through the automatic responses the mental models might prefer,<sup>185</sup> and to be open to what is happening such that they can respond to it in meaningful, authentically empathetic ways. It can be liberating to be self-aware. Self-awareness allows for the ability to step back from the tight grip of current experience to notice how the mind pulls in one direction or another.<sup>186</sup>

### B. *Approaching a Brain-Wise Camel’s Back Reflection*

All students carry mental models into the clinic environment, and mental models are critical to self-identity. Students may not even be aware of the mental models they carry relative to race, gender, sexuality, class, age, and other cultural influences and differences.<sup>187</sup> In fact, a student’s unconscious mental models may not align with their conscious intentions and beliefs about themselves.<sup>188</sup> And yet, mental models take the shape of biases and stereotypes that translate into judgments and assumptions about client motivations and choices that may unintentionally lead to behaviors that sabotage the student-client relationship.<sup>189</sup> Any challenge to the unconscious mental model can create fear and shame. How the clinician interacts with the student can reinforce those feelings or it can jumpstart the building of new neural connections.<sup>190</sup> This does not mean giving up the rigor of

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<sup>184</sup> BADENOCH, *supra* note 2, at 5.

<sup>185</sup> SIEGEL, *supra* note 5, at 132-33.

<sup>186</sup> BADENOCH, *supra* note 2, at 26.

<sup>187</sup> Shalleck & Aiken, *supra* note 125, at 179; Weng, *supra* note 2, at 370 (discussing the topic of mental models from the perspective of the institutional and structural biases we may create for white students with diversity initiatives. Weng’s approach does not address mental models per se, rather she looks at how mental models might be contradictorily reinforced in the name of diversity exposure and training).

<sup>188</sup> Byyny, *supra* note 32, at 3.

<sup>189</sup> *Id.* It is important to mention something that many students might respond with, that is, “I didn’t mean to [do whatever the thing was that upset the client relationship].” In these circumstances, discussing intent versus impact is crucial. “That wasn’t my intent,” is an effort at protecting self-identity. If the student feels their identity is being challenged, their lid can flip and any learning or growth may be stifled. Working through the lens of impact may shift that challenge from one against self-identity to one of effective lawyering or unintended consequences of choices, the limbic and prefrontal regions may stay integrated, creating room for growth in the experience. This may be a place to begin with students the difficult journey of rewiring mental models and developing new neural pathways.

<sup>190</sup> BADENOCH, *supra* note 2, at 108.

clinical methodology, rather the teaching-learning relationship becomes akin to the therapist-client dynamic: if clinicians embrace their students with kindness and knowledge they can use the relative safety<sup>191</sup> of the clinical space to be a model for the student in a way that the student can then take to the relationship with the client. It is therefore incumbent upon clinicians to create spaces for students that are not shaming while maintaining the challenge of examining self.

It is fundamental to therapeutic relationships that the greater the empathetic capacity of the therapist, the more successful the therapy is likely to be.<sup>192</sup> To some extent, empathy is about training in therapeutic processes, but it is more than that. It is the capacity to be meaningfully present with the client, providing them space to be heard. For the client in crisis, or the client who simply needs a sounding board for whatever reason, feeling seen is critical to feeling understood.<sup>193</sup> Feeling understood begets feelings of attunement with the therapist, which, in turn, creates a sense of safety.<sup>194</sup> Although limited, the information available about brain science on this point confirms that being heard literally makes the brain feel good—the experience releases chemicals into the body that inspire joy, warmth, and comfort.<sup>195</sup> Mindsets of safety and joy can support clients in sharing deeper and more meaningful information. As a parallel, countless studies have been done to measure what a client wants from her lawyer; what is almost universally true is that clients want to know that their lawyers care about them.<sup>196</sup> Clients want to feel heard, not judged, as though

<sup>191</sup> Clinics are safe spaces for students on many levels. They offer a place to explore new substantive areas of law and to make mistakes with the relative safety net of a professor's license to support them. They may also offer spaces in which students can experience emotional reactions to the clients and cases without embarrassment.

<sup>192</sup> See, e.g., J. Hutterer & M. Liss, *Cognitive Development, Memory, Trauma, Treatment: An Integration of Psychoanalytic and Behavioral Concepts in Light of Current Neuroscience Research*, 34 J. AM. ACAD. PSYCHOANALYSIS & DYNAMIC PSYCHIATRY 287 (2006).

<sup>193</sup> SIEGEL, *supra* note 5, at xiv.

<sup>194</sup> *Id.* at 130.

<sup>195</sup> BADENOCH, *supra* note 2, at 117. See also SIEGEL, *supra* note 5, at 130.

<sup>196</sup> See, e.g., Melissa L. Breger, Gina M. Calabrese & Theresa Hughes, *Teaching Professionalism in Context: Insights from Students, Clients, Adversaries, & Judges*, 55 S.C. L. REV. 303, 327 (2003); Anne E. Thar, *What do Clients Really Want? It's Time You Found Out*, 87 ILL. BUS.J. 331 (1991); Gary A. Hengstler, *Vox Populi: The Public Perception of Lawyers: ABA Poll*, 79 A.B.A. J. 60 (1993); Stephen Ellman, *Empathy & Approval*, 43 HASTINGS L.J. 991, 994 (1992) ("The features that clients seek in their lawyers . . . include loyalty, respect, warmth, advice, and understanding."); WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 6 (Carnegie Foundation for the Advancement of Teaching 2007) (identifying that the current state of legal education fails to support the development of ethical and social skills); Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1274-75 (1993); Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the*

there is a pathway for them to have their needs met.<sup>197</sup>

When a student meets a client for the first time (or maybe even the 300th time), there are a myriad of influences on the interaction that cause both physical and emotional reactions in the body. Gender, appearance, and smell all impact student decisions about what to say and how to act.<sup>198</sup> These kinds of external characteristics can trigger fear which then triggers biases and stereotypes. At the same time, those initial external cues (gender, appearance, age, etc.) are only a small fraction of the data the brain is gathering and processing at any one time. And that data impacts the conscious and unconscious non-verbal messages the student sends to the client.<sup>199</sup>

As an initial step, it may serve the clinician and the student both

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*"Heart" of Lawyering*, 87 NEB. L. REV. 25, 16 (2008) ("In other words, while analyzing the law and using one's intellectual skills is the key to preparation, learning the law, conducting legal research, and analyzing problems, once the lawyer steps into the room with the client, her understanding, empathy, and compassion. . . become equally important.").

<sup>197</sup> One of a myriad of goals in client-centered representation is to recognize that the client is not there to fit their facts into the law, rather, the lawyer is there to fill the law in around the facts as they exist. This focus supports the client in making the decisions that will serve them the most. Many clinicians teach their students that, in the client-centered context, clients are experts in their lives and that offering legal options that ignore the realities of motivation, goals, and context is less helpful. Clinicians take this approach because the events that brought the client to the clinic were set in motion long before the client arrived at the door, and because the impact on the client of the decisions and outcomes on the case will last long after the representation relationship ends. Many clinicians use the iceberg analogy—lawyers see only the top of the iceberg of the client's life, but there is a whole world of information under the surface of the water that they know nothing about and that world is significantly greater than what the lawyer sees. Clients in law firms and clinics want to be seen and heard without the influence of biases and stereotypes and without a singular or solitary focus only on legal remedies and strategies. As such, it is a long-held tenet of clinical pedagogy that working with students to develop and strengthen their empathetic skills is crucial to the clinical experience. See Susan Bryant & Conrad Johnson, *Fieldwork: The Experience That Sparks the Learning*, in TRANSFORMING THE EDUCATION OF LAWYERS, *supra* note 6 at 258-59; BINDER et al., *supra* note 2, at 1-10. As clinical programs grew from the simple idea that law schools were in a unique position to provide representation to marginalized populations and communities, theories and pedagogy around empathy development also grew. At their core, empathetic skills allow students to approach the client's world and legal problems from a non-judgmental perspective. They also allow students to creatively problem-solve with their clients around strategies for addressing the clients' legal needs. Empathy, as used in this article, means not only the ability to perceive the world from the client's perspective but also the ability to be in a supportive, nonjudgmental relationship with that client while also maintaining appropriate professional boundaries. Daniel Goleman describes empathy as having three different meanings or components: knowing another person's feelings; feeling what that person is feeling; and responding compassionately to those feelings. Goleman, *supra* note 18, at 58. Strong neural integration between the prefrontal and limbic regions of the brain improves the ability to develop Goleman's described components, in part because it allows us to manage our mental models so that we can sense the other person somewhat more accurately. SIEGEL, *supra* note 5, at 42; BADENOCH, *supra* note 2, at 31.

<sup>198</sup> COZOLINO, *supra* note 3, at 5

<sup>199</sup> Parker, *supra* note 88.

to offer a quick lesson on how the brain and body language operate together to convey messages about value, believability, and “worthiness.”<sup>200</sup> When one party to an interaction can convey that they are authentically engaged in the conversation, stronger relationships are born. One aspect of active listening is body language, because how a student responds non-verbally to the client is as important as the verbal responses. Facial expressions and the sound of the voice all convey the capacity for listening in an attuned manner.<sup>201</sup> We teach that things like open body posture, gaze, gestures, and other actions of the entire body<sup>202</sup> like not focusing too intently on a notepad or computer screen are positive body language techniques that express engagement and build connection. Nonconscious interactions occur throughout a conversation primarily through non-verbal communications;<sup>203</sup> they go well beyond how students carry their bodies, however. Neuropsychology tells us that non-verbal communication is one of the strongest forms of communication in human relationships. Non-verbal cues, often unconscious, send messages of engagement, fear, and acceptance. In fact, some theorists posit that the faces of other people are some of the most important sources of information we glean about the world.<sup>204</sup>

Facial expressions are quite literally limitless in number, but some are universal across culture, age, and gender. Disgust, fear, joy, surprise, sadness, and anger all have similar manifestations across groups.<sup>205</sup> When a student’s fear is triggered by an unconscious mental model, the body may react in non-verbal ways before an awareness of that reaction comes to the conscious mind. The amygdala<sup>206</sup> is central in appraising environmental information for a speaker;<sup>207</sup> this may be because being able to read facial impressions in group settings was integral to social bonding and survival.<sup>208</sup> Essentially, the amygdala receives information from other parts of the brain and creates emotional meaning from the non-verbal cues at a rate too quick for the conscious mind to recognize.<sup>209</sup> Non-verbal reactions to fear are made within 100 milliseconds of exposure, well before we even become

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<sup>200</sup> This is, at heart, an extension of any lesson on active listening techniques.

<sup>201</sup> BADENOCH, *supra* note 2, at 60.

<sup>202</sup> COZOLINO, *supra* note 3, at 199.

<sup>203</sup> BADENOCH, *supra* note 2, at 33.

<sup>204</sup> COZOLINO, *supra* note 3, at 162; GOLEMAN, *supra* note 17, at 33.

<sup>205</sup> COZOLINO, *supra* note 3, at 188. Anyone who has seen the film *Inside Out* will be familiar with five common emotional states represented in the film’s human characters: disgust, fear, joy, sadness, and anger. *INSIDE OUT* (Pixar Animation Studios 2015).

<sup>206</sup> COZOLINO, *supra* note 3, at 188.

<sup>207</sup> *Id.* at 165.

<sup>208</sup> *Id.* at 189.

<sup>209</sup> GOLEMAN, *supra* note 17, at 15.

aware that we are afraid.<sup>210</sup>

Non-verbal cues come in many shapes and are the result of a complex network of interactions in the brain.<sup>211</sup> One of the most noticeable of non-verbal cues is conscious body movement. In addition to posture and gestures, eye gaze can convey intimacy, threat, hierarchy, and dominance<sup>212</sup> and can even be used to exercise social control.<sup>213</sup> The direction of eye gaze offers a theory of what that other person knows, wants, and is likely to do next.<sup>214</sup>

Unconscious cues carry as much influence on a person's ability to maintain prefrontal and limbic integration as conscious cues.<sup>215</sup> For instance, blushing is correlated to different states of self-attention like shyness, shame, and modesty;<sup>216</sup> it is an entirely involuntary and yet completely perceivable expression of the degree to which a person's emotions are activated.<sup>217</sup> Pupil dilation is another example. Our pupils involuntarily dilate when we look at sad faces and the degree of dilation correlates with the amount of empathy we have for that person.<sup>218</sup> While our pupils are constantly changing size during social interactions, our brains are unconsciously processing information about other people's pupil changes.<sup>219</sup>

Nonverbal communication is a two-way dynamic, and it is virtually impossible not to communicate non-verbally, because every action conveys a message to the other party in the interaction. The client is actively engaged in assessing the non-verbal cues of the student, just as the student is assessing those of the client. Both people's neural networks are unconsciously interpreting the movements of the other and trying to predict what that person will do next. As humans, we automatically assess, interpret, and react to the nonverbal cues of

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<sup>210</sup> COZOLINO, *supra* note 3, at 194.

<sup>211</sup> GOLEMAN, *supra* note 17, at 15.

<sup>212</sup> COZOLINO, *supra* note 3, at 167.

<sup>213</sup> *Id.* at 165.

<sup>214</sup> *Id.* at 174. Cozolino also explores how eye gaze is driven by the projection of our own desires and motives onto other people. *Id.*

<sup>215</sup> *Id.* at 162. Cozolino goes on to explain that this proclivity toward reading facial expressions is an evolutionary development designed to support parental bonding and growth of neural systems. *Id.* at 163.

<sup>216</sup> *Id.* at 172.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.* at 171.

<sup>219</sup> *Id.* at 169. While the exact reasons behind pupil dilation and eye movement are not entirely clear, it may be that they correlate with the desire to be understood and comforted. *Id.* at 171. For more information on and descriptions of research about the movement of pupils during periods of high intensity effort, see KAHNEMAN, *supra* note 17, at 32-35. Kahneman's research concludes that rates of pupil dilation are a good measure of the physical arousal that accompanies mental effort. *Id.* at 34.



others.<sup>220</sup> We cannot control these interactions consciously so we must rely on our own brains to offer reactions that convey that which we wish to convey.<sup>221</sup>

Awareness that bodies provide continuous non-verbal messages and cues is important to improving the quality of the student-client relationship. As actors in the human dynamic, we cannot do much about our unconscious, involuntary reactions except work to rewire the neural pathways that create them. Building comfort with clients requires challenging mental models that generate fear; it is a process of literally changing the body's biochemical response to the unknown and the attendant unconscious physical responses. This may make the client more comfortable, which itself creates a new dynamic in the relationship. Instead of fear and shame perpetuating themselves in a vicious cycle between the student and client, the difficult emotions are replaced with curiosity, openness, and acceptance.<sup>222</sup>

### C. Using the RAIN Method to Learn Discernment, Build Self-Awareness, and Learn Empathy

When the student expresses the experience of judging a client or making assumptions (and perhaps identifying a stereotype or bias that influenced it), whether with clinician prompting or on their own, the clinician has an opportunity to support the student in becoming self-aware of what else is happening internally. The hand model is an excellent and easily portable tool for increasing self-awareness, if only of the experience of fear or shame.<sup>223</sup>

The first step in building self-awareness is to learn empathy toward the self. Dan Siegel calls this discernment, a kind of dis-identification from the workings of the mind or a recognition that what happens in the mind does not make the person.<sup>224</sup> Therapist and author Bonnie Badenoch refers to learning discernment as a process she calls RAIN:<sup>225</sup> teaching her clients to *recognize* their emotional experience, to *accept* it without judgment, to *investigate* its sources, and to

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<sup>220</sup> COZOLINO, *supra* note 3, at 189. Non-verbal dynamics are a deeply profound experience related to determining whether a predator is at the door. *Id.* at 199-200 (discussing the conclusions of several research studies dedicated to investigating the role of neural processing in interpreting bodily movement). Weng provides an example from her clinic of a client who lied to her student attorney. In discussing the interaction, Weng points out that the client may very well have been aware of the student's judgments about her situation, even without the student directly stating those judgments, and that the client may have adjusted her behaviors to avoid those judgments. Weng, *supra* note 2, at 381.

<sup>221</sup> BADENOCH, *supra* note 2, at 33.

<sup>222</sup> SIEGEL, *supra* note 5, at 15.

<sup>223</sup> ROBBENOLT & STERNLIGHT, *supra* note 14, at 60.

<sup>224</sup> SIEGEL, *supra* note 5, at 19.

<sup>225</sup> BADENOCH, *supra* note 2, at 181.

learn *nonidentification*, e.g., that experiencing the emotion does not define the worth of the student.<sup>226</sup> Badenoch and Siegel both discuss how RAIN helps their clients learn how much external stimuli or internal evaluation they can take before they start to flip their lid, something they call the “window of tolerance.”<sup>227</sup> Over time, practicing RAIN can expand the window of tolerance such that it lessens the likelihood that therapeutic clients will experience a limbic system veto over all other brain processes.<sup>228</sup> In turn, they will develop new neural pathways that allow them to manage or release fear and shame more effectively.<sup>229</sup>

Using RAIN to break down mental models, or at least to recognize them, and learning to broaden the window of tolerance, allows students to identify how and when their own and others’ behavior is guided by those same mental models, or in other words, how culturally learned values influence interactions.<sup>230</sup> Understanding the emotions of others depends in large part on the ability to experience and be aware of our own feelings;<sup>231</sup> this broader self-awareness can support stronger, less judgmental student-client relationships.

After self-awareness, self-regulation is the critical next step. As we consider the three fundamental purposes of reflection, the last step of encouraging student accountability is directly tied to self-regulation. Accountability is a complicated concept; it means different things in different contexts. Ultimately, as clinicians we wish to change the narrative for the student or lessen the use of stereotypes and biases in clinic interaction, and self-regulation of the impulse to stereotype and judge is foundational to the clinical learning process. For many students, it is not enough to say, “Don’t let the bias influence the representation,” or “Change the behavior you exhibit.” Introducing tools and building upon them through practice must also occur.

Once the student has an idea of what is happening in the brain when it is in the throes of a fear or shame reaction, the student can focus their mind in very specific ways on moment-to-moment interactions. This would include deep reflection on the mental model that is influencing the experience, its sources, and how exactly it is working in the client dynamic.<sup>232</sup> Reflection with the student might include not

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<sup>226</sup> SIEGEL, *supra* note 5, at 19.

<sup>227</sup> BADENOCH, *supra* note 2, at 21.

<sup>228</sup> *Id.* at 51. In a well-integrated healthy brain, the limbic and prefrontal regions work to tie emotion and cognition together creating a larger window of tolerance. *Id.* at 125.

<sup>229</sup> *Id.* at 51.

<sup>230</sup> Weng, *supra* note 2, at 385.

<sup>231</sup> COZOLINO, *supra* note 3, at 70.

<sup>232</sup> This is a demanding process that can lay the student bare, leaving them vulnerable. Wheeler, *supra* note 86, at 327.

only repeated returns to RAIN to identify the fear, but also conversations around how judgments and mental models may prevent a strong client-attorney bonds from forming. RAIN supports students in creating new automatic responses in their brains, automatic responses that have a much greater chance of impacting their conscious, visible responses.<sup>233</sup> It is a process that can teach a student how to figure out what emotions they are having, when they are having them, and how they are experiencing them.<sup>234</sup> Expanding the window of tolerance by lessening the impact of biases and stereotypes can only improve the attorney-client dynamic. Marco Iocaboni and Dan Siegel have confirmed that it is important for people to be attuned to their own internal states so that they can attune to others.<sup>235</sup> Better awareness improves communication which improves relationship.<sup>236</sup> Ultimately, we want the student to be able to perceive their emotions without reacting to them, stay present with their conscious responses to their emotions, describe what is happening to them,<sup>237</sup> and be nonjudgmental<sup>238</sup> of their experience.<sup>239</sup> In short we want the student to be able to move from unconscious, automatic reactions driven by past mental models to reactions that are healthier for the lawyer-client relationship. And, as students develop self-awareness and kindness toward themselves, they can be kinder to their clients.<sup>240</sup>

Self-regulation is comprised of a cluster of skills, many of which build from the RAIN process.<sup>241</sup> Namely, teaching and practicing self-regulation includes limiting reaction to inner experiences, the

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<sup>233</sup> BADENOCH, *supra* note 2, at 51. RAIN is a reflective technique that can also be turned into what Leonard Riskin calls a loving kindness meditation. In Riskin's articulation of the meditation, we can sit in contemplation and notice any thoughts, emotions, sensations that arise from an experience, notice any resistance, fear, or sadness, notice any softening to a feeling of safety, and finally feel safe from inner or outer harm. Riskin, *supra* note 24, at 461. Riskin's meditation is a more personal, perhaps private, way to "name and contain."

<sup>234</sup> ROBBENOLT & STERNLIGHT, *supra* note 14, at 57.

<sup>235</sup> SIEGEL, *supra* note 5, at 168.

<sup>236</sup> ROBBENOLT & STERNLIGHT, *supra* note 14, at 142. *See also* GOLEMAN, *supra* note 17, at 25 (discussing how even Freud recognized that psychoanalysts who attuned themselves to their own bodies had a clearer look into the experiences of their clients).

<sup>237</sup> BADENOCH, *supra* note 2, at 183.

<sup>238</sup> For the purposes of this paper, I use the definition of nonjudgment offered by Susan Brooks, as a focus on the what and not the why of choices and behavior. The focus should be on current functioning as opposed to past history. Brooks, *supra* note 3, at 70.

<sup>239</sup> BADENOCH, *supra* note 2, at 182.

<sup>240</sup> SIEGEL, *supra* note 5, at 19.

<sup>241</sup> *Id.* at 12. *See also* Antoine Lutz, John D. Dunne, & Richard J. Davidson, *Meditation and the Neuroscience of Consciousness*, in CAMBRIDGE HANDBOOK OF CONSCIOUSNESS (Philip David Zelazo, Morris Moscovitch & Evan Thompson, eds. 2007) (describing the experience of life without the imposition of a constructed self and external expectations as "ipseity," a way of being that exists beneath the influence of mental models, perceptual biases, and the experiences of shoulds and ought-tos).

ability to observe, notice and attend to emotions, perceptions, and thoughts, acting with awareness, capacity to describe emotional experiences, and the ability to be nonjudgmental about the experience.<sup>242</sup> Learning to self-regulate begins with learning to listen to a client's needs and stories with openness. It is a breaking down of the listening experience into the component parts of naming emotional reaction (What am I feeling?), introspection (Why am I feeling it?), and examination (What expectations of the client do I have that are or are not being met in this interaction?). When a student learns to be both inwardly and outwardly attentive<sup>243</sup> they may be able to let go of the past mental models and achieve better self-regulation.<sup>244</sup>

At a minimum, the end goal of the Camel's Back reflection process is to have two fully integrated (or as fully integrated as possible under the circumstances) right brains facing each other across the table – the student and the client. We want to get the brain back online so the prefrontal cortex can do its job. Ideally, however, the student has learned a new skill—the skill of approaching their own emotional experiences without judgment and moving toward nonjudgmental awareness of the client's experiences.<sup>245</sup>

## VI. CONCLUSION

Lawyering is a fundamentally human endeavor. Lawyering in the law school clinic engages the humanness of the professor, the student, and the client as the student learns to build relationships and practice law.<sup>246</sup> Operating from stereotypes and biases are an inherent piece of that humanness and occur in almost every human interaction.<sup>247</sup> However, stereotypes do not exist in a vacuum; they are bodily and brain responses to outside stimuli that can and do influence an attorney's responses to clients, circumstances, and other people.<sup>248</sup> At the same time, the way a student manages their biases influences the way the client interacts with both the lawyer and the legal system. It is incumbent upon clinicians to provide students some of the tools they can use to develop their representation relationships.<sup>249</sup>

Fear and shame-based stereotypes and biases can have a significant negative impact on the quality of a lawyering relationship. Clini-

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<sup>242</sup> SIEGEL, *supra* note 5, at 12.

<sup>243</sup> BADENOCH, *supra* note 2, at 55.

<sup>244</sup> SIEGEL, *supra* note 5, at 101.

<sup>245</sup> *Id.* at 10; Silver, *Emotional Competence*, *supra* note 15, at 23.

<sup>246</sup> Marjorie A. Silver, *Introduction*, in *AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 3, at xxiii.

<sup>247</sup> Silver, *supra* note 15, at 12.

<sup>248</sup> ROBBENOLT & STERNLIGHT, *supra* note 14, at 45; GOLEMAN, *supra* note 17, at 61.

<sup>249</sup> ROBBENOLT & STERNLIGHT, *supra* note 14, at 46.

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*Brain-Wise Lawyering for the Clinical Law Student*

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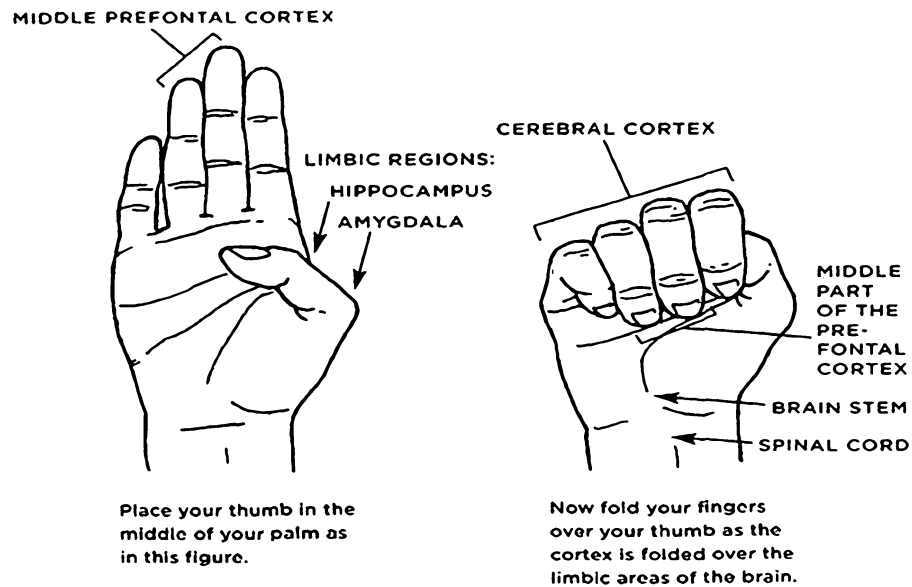
cians can use principles across neuroscience, psychology, and lawyering to increase or improve a student's resources for achieving self-awareness and self-regulation. Ultimately, this article hopes to inspire an appreciation of right-brain to right-brain connection as a tool for lessening any negative consequences of stereotypes that become evident in representation. By exploring the mechanisms of the brain and the attendant psychological principles associated with addressing distinctly difficult emotions, this paper demonstrates how insight into the mechanisms of the brain can shape clinical pedagogical approaches.<sup>250</sup>

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<sup>250</sup> SIEGEL, *supra* note 5, at 22.

## APPENDIX A

## DAN SIEGEL'S HAND MODEL



## APPENDIX B

WORKING WITH CIVIL LEGAL SERVICES STUDENTS ON  
CAMEL'S BACK REFLECTION

I thought it might be helpful to have a guide to how I use RAIN as a reflective tool in the my clinic. To support your understanding of the choices I have made in this regard, I feel you should have some background on my Civil Legal Services Clinic.

First, the Civil Legal Services Clinic (CLSC) is a general civil clinic providing representation in the kitchen-sink of legal issues that may face people living in poverty in Wyoming. At last calculation, the Kaiser Family Foundation estimated that as much as 33% of the population in the state qualifies for free legal services. The CLSC is one of the largest direct services providers in the state. Our caseload runs the gamut from public benefit work to landlord-tenant to family. At the time of this writing, about half our caseload is family-related cases and the other half fall generally into property, debt collection, and benefits cases. During my time here we have also provided representation in Social Security proceedings, discharge upgrade requests, and special education cases. We carry anywhere from 30-40 open cases at a time. There are regularly 8-11 students in the clinic any given semester, including the summer, and I am the only faculty member. As a note, I also teach one 3-credit course every semester outside the clinic.

The clinic class is one semester at 3 credits, requiring the students to complete a minimum of 150 hours of work. In addition to classroom time, students must complete a community outreach and education event each semester as well as represent clients in their legal matters. We also meet as a full clinic one time per week to review everyone's cases together. The students run all the phone intake for the clinic and initiate conflict checks with our community partners. Like many law school programs, the work is heavy, often fast-paced, intense, and extremely varied.

I realized that to use RAIN-based reflection, given these parameters, I had to be particularly goal-focused and clear about what I want and need to accomplish with the students. I had to be honest with my ambitions about what the students could reasonably learn in an average of 14 weeks and what I wanted them to walk out of the semester being able to do on their own. I answered that with: With the use of the RAIN tool, my students will be able to identify not only when their emotional responses are impacting their client relationship development but also where those responses come from and how to challenge negative responses for the betterment of the representation. It is not necessarily my endgame to get the student to eliminate the

stereotype or bias (I do not believe this is possible given the clinic's situational factors), more to recognize how it impacts the representation and to find ways around it to serve the client more effectively. It is important for me to note, too, that in my conceptualization of RAIN and addressing Habit 5, the process of becoming aware of what is happening is more important than the content of the emotional experience itself. As a result, I don't always move through all the steps with every student in each semester.

To recap the process, RAIN teaches students to *recognize* their emotional experience, to *accept* it without judgment, to *investigate* its sources, and to learn *nonidentification*, e.g., that experiencing the emotion does not define the worth of the student. RAIN opens the door for the student to understanding their implicit world and to make sense of beliefs, including stereotypes and biases, and behavioral strategies. As with any tool, there are limitations to using RAIN in the clinical context. I am not present for every client interaction or every experience that is going to cause a student to flip her lid. And some stereotypes or biases are beyond my capacity and the student's emotional capacity to address. At the same time, we can use pieces of each of the steps to begin the work.

#### STEP 1

The first thing I work with students on is Siegel's hand model, or "flipping the lid." We talk about the model and the different parts of the brain involved. We discuss what it means from a neuropsychological perspective to flip your lid and what the impact is on the brain's ability to process new or challenging information. It is usually a pretty light-hearted conversation and I use it whenever I can. I also try to make this lesson clinic-wide whenever possible so that every student is being reminded of the model and of the fact that lawyering can be deeply fear generating.

The first few times I use the hand model, I do not ask the students to go beyond recognizing when they may be flipping their lid. I have found that RAIN requires a significant amount of foundation building both in terms of the complexity of reflection and in terms of my own relationship with the student – students newer to the clinic or unfamiliar with my teaching methodologies need time to adapt.

#### STEP 2

When it seems a student is ready, meaning, the student can come to me to explain or indicate that they have let their fears overcome the completion of some work or some client interaction, then I move with that student specifically to focusing on the challenging emotional ex-



perience. My office is located right next to what I call the bull pen, the carols where all the students sit to work, so I am easily accessible to them in the midst of many of their lawyering activities.

If Step 1 is an easy move toward identifying emotional response, this next step starts the reflection process in a gentle way. I ask the student to focus one thing that may help to bring their fear response down: how many blue things can you count in the room, listen to your heart beat, or slow your breathing. This helps the amygdala to relax and encourages better integration. I am not always explicit about what this step accomplishes, but I do remind the students that doing these things over and over helps them to develop their capacity to choose where they put their attention. And, like the hand model, it is an easy enough tool to walk out of the clinic with.

When the student has calmed some, I ask if they find themselves curious about anything. I often ask if the student can identify exactly what the feeling is she is having. We then explore what might have triggered the response (What did the client do? What did it mean for you when the client did it?).

Step 2 is helpful for a few different reasons. First, the students see that I am not reacting to their emotions, but rather that I am curious to explore the reaction. This supports accepting reactions without judgment so that they can be investigated. Second, it helps students to recognize that emotional reactions can have very physical manifestations which brings some awareness of how body language can influence the attorney-client interaction. Third, it opens the door to curiosity without which we cannot even begin to approach Habit Five. Finally, it offers the student a concrete task like focusing on blue things or breathing or counting heartbeats and in my experience, having a tangible task to accomplish is gold for many of my students.

### STEP 3

I label this a step on its own, but it is really more spread throughout the entire experience. Step 3 is about helping the student to recognize that the reflection and growth processes can be hard, stressful, and uncomfortable. It is also about helping students to understand that I recognize that growth rarely happens in a straight line from beginning of semester to end of semester – it more accurately looks a squiggly line with maybe some loops thrown in for good measure because mistake-making is real.

Step 3 is about coming to understand that learning and mistake-making go hand in hand. Neither critical self-reflection nor acceptance of constructive critique are skills most of my students bring to the CLSC when they join. Fortunately, in the early part of the semester, I

can use mistakes on pleadings or in trial preparation to lay this foundation before asking students to dive deep into their emotional reactions. I use a belly flop analogy here both because it feels accurate and because it is a solid visual that tends to stay with the students. The belly flop analogy goes like this: You will do a task and it will be done incorrectly or incompletely or you will have no idea what to do and you will jump off the diving board and you will belly flop. And then we'll talk about it and you'll try again and you will belly flop. And you will go through this process over and over and at some point, as you think about what mistakes you made and why, the belly flop will start to feel less floppish and just awkward and uncomfortable. And you'll keep working on it and eventually, without even realizing it, you will be swan diving right into a beautiful pleading/discovery response/deposition/trial opening/whatever. But the trick is, you have to recognize that you may be having feelings about the process that are making it harder for you to get out of the belly flop. And we'll work on that together if you're open to it.

Step 3 allows the students room to connect how their emotional reactions to mistake-making might lead to a circular experience of self-critique, shame or embarrassment, and fear to try again or to make changes. Step 3 supports students in noticing and being flexible about what is happening inside of them that could influence their client relationship.

As it relates to reflection on more emotional issues, I use Step 3 to point out to students that reflection may itself make them tense or anxious. Asking oneself where one's emotional responses are coming from is not easy to do, answering is even harder. Like everything else we do in the clinic, it is a process and certainly not a linear one.

I also use Step 3 to support students in recognizing the impact of their emotional reactions on their client interactions. For instance, together with Step 4 described below, we talk about how conscious and unconscious body language and verbal communication might perpetuate a challenging cycle of client behavior, lawyer responses, etc.

#### STEP 4

Step 4 takes students to the next level of difficulty and complexity in the reflection process because in Step 4 I ask the students to begin working in earnest to identify what mental models are influencing their emotional reactions and how those mental models are influencing what is happening in the student's body. This is another lesson not only in identifying the tangible, like the emotion, but the less controllable like body language. I do not necessarily explain this to students, but mental models are in constant relationship with the body, they

influence not only emotional responses, but also behavioral impulses and bodily sensations.

In Step 4, I ask a lot of ‘what’ and ‘how’ questions, sometimes ‘where’ questions. I do not ask a lot of ‘why’ questions (why did you make that choice, or why did you respond in that manner) because ‘why’ is often implicitly perceived as judgmental. The last thing I want, in an already challenging process, is for the student to feel judged or shamed. As described in the body of the paper, that shame experience is likely to shut down any ability the student has to receive my suggestions or engage in deep reflection on their own.

With a question like “What are/were you feeling?” there is a danger of the student moving to explain the feeling as opposed to just identifying it. It is critical here to work on description without explanation because it is the feeling that matters. For example I want the student to say, ‘I was angry,’ before, ‘because the client would not listen to me,’ because I want the focus to stay on the student and away from the client’s behavior. There is a lot of follow up that goes in this exploration, although it depends on what is happening with the student how deep I will ask her to go. In the above example, if the student says, “I was angry,” I might follow up with: What does the anger feel like in your body? Where might the anger come from (not the client’s behavior, but where in you)? Or I might ask, “What about the client’s response to you brings the anger?”

This line of follow up may calm the amygdala enough for me to get to the next set of questions: What are you afraid might happen if you accept the client’s choices/behaviors/beliefs without resorting to judgment? What do you think your job is here and as you move forward into a lawyering career? These are the hardest questions to ask, and often the hardest for the student to answer. They are, however, what I perceive as the crux of doing a Camel’s Back reflection completely.

For many students, nearly all in fact, I am able to only touch on or introduce Step 4 before the end of the semester. Often I find that we are returning to Step 2 or engaging in serious reflection along the lines of Step 3. The strongest work from the students individually usually comes if they return to the clinic for subsequent semesters either as fully registered participants or as Independent Study participants.

