

# THE VIRTUE OF VULNERABILITY

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*My vulnerability to my own life is irrefutable.  
Nor do I wish it to be otherwise,  
As vulnerability is a guardian of integrity.*  
Anne Truitt, sculptor and psychologist

Ten years ago, vulnerability scholar Martha Fineman began examining how vulnerability connects us as human beings and what the universal human condition of vulnerability says about the obligations of the state to its institutions and individuals.<sup>1</sup> Central to Fineman's work is recognition that vulnerability is universal, constant, and inherent in the human condition.<sup>2</sup> Fineman has spent the past decade examining how structures of our society will manage our common vulnerabilities, in hopes of using these vulnerabilities to move society toward a new vision of equality.<sup>3</sup> While Fineman focuses on how vulnerability can transform society as a whole, here I examine the role of vulnerability in transforming individual relationships, particularly the attorney-client relationship. I argue that lawyers can benefit greatly by showing their vulnerabilities to clients.

As a common syllogism goes, "All men are mortal. Socrates is a man. Therefore, Socrates is mortal."<sup>4</sup> Similarly, we could say that a particular

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1. Martha A. Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 1 (2008) (noting that vulnerability is part of the human universal condition).

2. *Id.*

3. *Id.* at 1-2.

4. Ruggero J. Aldisert, Stephen Clowney & Jeremy D. Peterson, *Logic for Law Students: How to Think Like a Lawyer*, 69 U. PITT. L. REV. 1, 3 (2007).

lawyer, say Clarence Darrow, is a lawyer, all lawyers are human, and therefore Clarence Darrow is human. This is logical but is the middle part of this syllogism true? Are all lawyers human? Biologically, at least so far, all lawyers are human. Why then do so many clients seek more humanity in their lawyers?

Professional rules of ethics require that we take steps to build relationships with others as we perform legal services,<sup>5</sup> and some legal educators have suggested ways to bring more humanity to the profession and to law school,<sup>6</sup> given that being human is part of our job. Suggestions for ways to bring more humanity to legal education include training in active listening, empathy, and secondary trauma.<sup>7</sup> Here, I add vulnerability training to the list. By practicing vulnerability, we can connect with others on the most fundamental level, the level at which we realize that we are all human and we all make mistakes.

What does it mean to be human? All human beings experience a broad range of emotions,<sup>8</sup> but lawyers often suppress these emotions, which does not serve us or our clients. In this essay, I argue that broadening our expressions can improve our client relations and decrease the likelihood that when that inevitable mistake occurs, we will be sued for it. I also argue, based upon virtue ethics, that practicing vulnerability is also virtuous and thus worthwhile in and of itself.

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5. See AMERICAN BAR ASSOCIATION, 2018-2019 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 16 (2017), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_standards\\_chapter3.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_standards_chapter3.authcheckdam.pdf). Interpretation 302-1 states, “[F]or the purposes of Standard 302(d), other professional skills are determined by the law school and may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.” *Id.*

6. See Peter Huang & Corie Rosen Felder, *The Zombie Lawyer Apocalypse*, 42 PEPP. L. REV. 727, 749-53 (2015) (suggesting that practicing mindfulness would reverse the “zombification” of lawyers).

7. *Id.* at 750-51; Jennifer Brobst, *The Impact Of Secondary Traumatic Stress Among Family Attorneys Working with Trauma-Exposed Clients: Implications for Practice and Professional Responsibility*, 10 J. HEALTH & BIOMEDICAL L. 1, 42-45 (2014); Peter Margulies, *Re-Framing Empathy in Clinical Legal Education*, 5 CLINICAL L. REV. 605, 606 (1999); Larry Richard, *Hiring Emotionally Intelligent Associates*, 26 VT. B.J. 23, 25 (2000);.

8. William Ury, author of *Getting to Yes with Yourself*, uses the analogy of inviting all of his emotions to the kitchen table and welcoming them all, one by one. See WILLIAM URY, *GETTING TO YES WITH YOURSELF* 28-29 (2015). He suggests we watch as various emotions come to visit, fear, hope, and so on, asking us to observe, go to the “balcony,” and watch our emotions rather than trying to squelch them. *Id.* Similarly, the Sufi poet Rumi discusses embracing our emotions in the poem called *The Guest House*. See *The Guest House: A Poem*, MRS. MINDFULNESS, <https://mrsmindfulness.com/guest-house-poem/> (last visited Oct. 17, 2018).

I start this essay by describing the traits people look for in lawyers as well as evidence that clients often feel that their lawyers are less than human. I then examine how legal education contributes to this problem by making it difficult for law students to demonstrate vulnerability to their peers, and then later to their clients, due to the structures and expectations modeled for students in law school.

From there, I share empirical research from medical malpractice studies showing that physicians who communicate well and show humility, vulnerability, and an open communication style, get sued less for their mistakes, even if their patients are badly injured. Next, I briefly review empirical evidence from the attorney malpractice industry as well as anecdotal evidence from attorney disciplinary actions, to show that the same is true of lawyers. Lawyers who build true human relationships with clients, including by showing their own weaknesses and vulnerabilities, are less likely to be sued or brought before a disciplinary board. Finally, I briefly describe how virtue ethics supports the idea that vulnerability should be practiced for its own sake. I then provide tips on how to practice vulnerability and teach law students to do the same.

## I. THE VULNERABLE LAWYER: AN OXYMORON?

### A. *The Current State of Legal Education and Humanity*

#### 1. What Clients Want from Lawyers

Given the choice, people prefer to receive legal services from a human rather than a robot. Dealing with the law can be one of the most stressful experiences that people have in life, so it is not surprising that most clients prefer a human touch when receiving legal services. Indeed, when asked what traits are most important to them when receiving legal services, clients report that they want to feel listened to, they want to feel that the lawyer has empathy, and they want to know that the lawyer is trustworthy and will keep his or her word.<sup>9</sup> In other words, they want their lawyers to be human. Because clients care about these human skills, law firms do too.<sup>10</sup> Many

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9. In their in-depth studies of attorney skill sets, the Holloran Center has confirmed several times that the number one cluster of traits lawyers identified as important for new lawyers hired in the office was integrity/honesty/trustworthiness. Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C.L. REV. 547, 557-58 (2014).

10. Richard, *supra* note 7, at 23.

firms now acknowledge that interpersonal skills are as important, if not more important, in their young associates as skills like legal research and writing.<sup>11</sup>

## 2. What Clients Often Get from Lawyers

Despite this desire for humanity in legal services, the desire is largely unmet. According to the American Bar Association (“ABA”), many clients find their lawyers lack basic human emotions and provide less than ideal services as a result.<sup>12</sup> According to this ABA research, 60% of clients polled had negative reactions to their lawyers, even though clients felt that their lawyers were smart and knowledgeable.<sup>13</sup> These data show that more than half of all clients hold animosity toward their own lawyers.<sup>14</sup> If that were not enough, the more contact the client had with his or her lawyer, the lower the client’s opinion of his or her lawyer.<sup>15</sup> When asked why people had these negative views of their lawyers, a common explanation was that lawyers seemed to lack care and compassion.<sup>16</sup> They had no empathy.<sup>17</sup> Remarkably, clients reported caring more about feeling listened to and cared for than about the traditional legal skills of the lawyer.<sup>18</sup> In other words, “caring is as much a part of the legal profession as intelligence.”<sup>19</sup>

## 3. The Role of Legal Education in Dehumanizing Lawyers

Given the importance of human skills, one wonders how this condition came to be. Unfortunately, traditional legal education “systematically eliminate[s] empathy from law students.”<sup>20</sup> The current structure of legal

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11. Alli Gerkman & Logan Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient*, INST. FOR ADVANCEMENT AM. LEGAL SYS. 3 (2016), <http://iaals.du.edu/blog/foundations-practice-future-law-students-law-schools-and-profession>.

12. See DOUGLAS O. LINDER & NANCY LEVIT, *THE GOOD LAWYER* 7 (2014).

13. *Id.*; see also HEIDI K. BROWN, *THE INTROVERTED LAWYER* 39 (2017), citing Professor Joshua Rosenberg of University of San Francisco School of Law and Emily Gould of the Vermont Disputer Resolution Section of the Vermont Bar Association (noting that legal scholars describe empathy as “the sense, emotional and cognitive, of knowing what it is like to be the other,” and becoming “attuned to the emotional resonance of another person.”).

14. LINDER & LEVIT, *supra* note 12.

15. *Id.*

16. *Id.*

17. *Id.* at 8.

18. *Id.* at 7-8.

19. *Id.*

20. BROWN, *supra* note 13 (citing Professor Ian Gallacher of Syracuse College of Law); see also Joan Bibelhausen, Katherine M. Bender & Rachael Barrett, *Reducing the Stigma: The Deadly Effect of Untreated Mental Illness and New Strategies for Changing Outcomes in Law Students*, 41 WM. MITCHELL L. REV. 918, 937 (2015) (noting that legal training “involves removing emotions and thinking analytically.”).

education dehumanizes students as part of its regular training. When Harvard Law School's dean, Christopher Columbus Langdell, moved legal education from a law school as "trade school" model, to a more analytical and academic model, he transformed teaching methods in law school from traditional lectures to a teaching method using real cases and hypothetical problem-solving techniques.<sup>21</sup> Langdell thought of the law as a science.<sup>22</sup> This change also resulted in the now ubiquitous Socratic method.<sup>23</sup> According to realist Karl Llewellyn, another famous academic and the father of commercial law in the U.S., this system unfortunately took thinking and feeling individuals and turned them into thinkers only.<sup>24</sup> The process took the feeling out of lawyering:

The first year . . . aims to drill into you the more essential techniques of handling cases. It lays the foundation simultaneously for law school and law practice. It aims, in the old phrase, to get you . . . "thinking like a lawyer[.]" The hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking, along with ideas all fuzzed along their edges. You are to acquire [the] ability to think precisely, to analyze coldly, to work within a body of materials that is given, to see, and see only, and manipulate, the machinery of the law.<sup>25</sup>

This process is what the Carnegie *Report on Educating Lawyers* (the Carnegie Report) calls a "temporary moral lobotomy."<sup>26</sup> It may not be temporary, however. The effects of law school teaching methods could be lasting and damaging, as Professor Llewellyn notes:

It is not easy thus to turn human beings into lawyers. Neither is it safe. For a mere legal machine is a social danger. Indeed, a mere legal machine is not even a good lawyer. It lacks insight and judgment. It lacks the power to draw into hunching that body of intangibles that lie in social experience.<sup>27</sup>

Almost 90 years after Llewellyn's statements, in an article entitled *The Zombie Lawyer Apocalypse*, legal scholars Peter Huang and Corie Rosen Felder liken law school training to a zombie apocalypse:

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21. Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 526-28 (1991); see also Olufunmilayo B. Arewa et al., *Enduring Hierarchies in American Legal Education*, 89 IND. L. J. 941, 945-46 (2014).

22. See Arewa et al., *supra* note 21, at 945-46; Weaver, *supra* note 21, at 527-28.

23. Weaver, *supra* note 21, at 518.

24. See KARL N. LLEWELLYN, *THE BRAMBLE BUSH* 116 (1930).

25. *Id.*

26. WILLIAM SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 78 (2007).

27. LLEWELLYN, *supra* note 24, at 116.

[M]onsters recently released into our midst, are roaming the fair streets of our city. They appear each morning and again at each day's end, carrying briefcases and book bags, riding bicycles, walking, or, most ominously, taking the local trains. It is up to us to discover their origins and the best means for dispatching them.

This Zombie Apocalypse, as those who read the papers already know, has now reached dangerous proportions . . . . In the kind of twist so typical of horror tales, the apocalypse has targeted only a single segment of the population. Researchers are hard at work trying to discover how and why this apocalypse has zombified only those among us possessed of a special set of skills and educational experiences. Yes, Dear Reader. You already know which members of our society we speak of . . . . The Zombie Lawyer Apocalypse has targeted those who most want to engage our business, political, and public sectors. We are talking, of course, about law students and lawyers.<sup>28</sup>

In this article, Huang and Felder draw parallels between the zombie state of being—that of being mindless, thoughtless, and devoid of hope—and the state of legal culture and legal education today. They review the causes of lawyer zombification, which include a demoralizing mode of education, a de-emphasis on fairness and justice, and a disconnect between how the subject matter of law is taught and most students' core values.<sup>29</sup> Practicing and teaching vulnerability may help de-zombify legal education, if only we can bring ourselves to do it.

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28. Huang & Felder, *supra* note 6, at 728.

29. *Id.* at 739-44. They also propose some solutions to the ongoing problem, including the following:

As an institution, we are in a position to produce, not zombies, but fully realized human beings who care about accomplishment and relationships, about meaning and not only money, and about themselves, their peers, and the broader world around them.

. . . .  
If we are to stem the tide of law student and lawyer depression . . . we must . . . begin to change the way we engage with one another and with our institutions. We must move away from a culture of dehumanizing competition and away from the notion that the legal discipline is a purely instrumental one, devoid of human emotion, engagement, and ideas. Instead, we must embrace the tenets of mindfulness, ethical decision[-]making, and positive psychology in order to build a profession and professional education system that encourages individuals and organizations to flourish . . . . “[W]hen individuals flourish, health, productivity, and peace follow.” If we can shift the culture of the legal profession and the legal academy and begin to work toward flourishing, then we can end the Zombie Lawyer Apocalypse and breathe life back into those who have been harmed by the profession.

*Id.* at 770-71 (footnotes omitted). What Huang and Felder are suggesting is part of one of the biggest revolutions in legal education, one that changes the profession from the inside out, to one that values interpersonal skills at the same or a higher level than other attorney attributes. *Id.*

B. *Got Vulnerability?*

1. What is Vulnerability and Why Is It So Hard for Us and Our Students to Exhibit It?

Vulnerability is integral to the human condition. Indeed, scholar Martha Fineman believes that much of society and democracy should be organized around the principle.<sup>30</sup> While one definition of vulnerability is to be open to attack, damage or criticism,<sup>31</sup> vulnerability need not be seen as negative as it is an inescapable and generative aspect of the human condition.<sup>32</sup> Vulnerability is the human condition even if showing it is not common. We can learn to “practice vulnerability.” Practicing vulnerability helps us connect with others and builds trust.<sup>33</sup> It is both freeing and frightening, as it requires that we reveal layers of ourselves in order to reach an authentic, tangible connection with another person. Practicing vulnerability involves sharing our heart, insecurities, and mistakes, which is how and why showing vulnerability builds trust.<sup>34</sup> Ironically, showing vulnerability or weakness requires strength.<sup>35</sup>

Much has been written about the vulnerability of those we serve,<sup>36</sup> but what about our own vulnerability? What is stopping us from showing it? First, legal culture does not value expressions of vulnerability. As law professors, most of us recall the need to know the answers to all of our students’ questions and to appear smarter than them. At the beginning of our careers, most of us are insecure about our abilities and as a result, we go the extra mile to be ultra-prepared for our classes. This extra preparation is a noble act and can be very helpful to our students. We, of course, want students to get their money’s worth and to appreciate our expertise, and perhaps pass this expertise onto their own clients as they enter the profession.

We may also fear that unless we are much smarter and more knowledgeable than our students, they might lose confidence in us or believe that we lack credibility. We intensely prepare for each class to develop domain knowledge, which serves us very well in the beginning, given our

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30. Fineman, *supra* note 1, at 1-2.

31. *Vulnerable*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/vulnerable> (last visited, Oct. 1, 2018).

32. See Fineman, *supra* note 1, at 1.

33. See Melissa W. Joyce, *The Power of Vulnerability and Authentic Connection*, HUFFPOST: LIFE (May 31, 2016, 10:48 AM), [https://www.huffingtonpost.com/melissa-wilder-joyce/the-power-of-vulnerabilit\\_4\\_b\\_10184732.html](https://www.huffingtonpost.com/melissa-wilder-joyce/the-power-of-vulnerabilit_4_b_10184732.html) (last updated Jun. 1, 2017).

34. *Id.*

35. See MICHAEL PUETT & CHRISTINE GROSS-LOH, *THE PATH 100-01* (2017).

36. See Martha Minow & Mary Lyndon Shanley, *Relational Rights and Responsibilities: Revisioning the Family in Liberal Political Theory and Law*, 11 HYPATIA 4, 4 (1996).

lack of knowledge in the early years of our careers. Intense preparation is especially useful for new professors of color and women professors.<sup>37</sup>

Through this initiation to the profession, however, we learn to mask our own vulnerability, humility, and lack of knowledge. As valuable as these valiant efforts are, the “mask” begins to hurt us once we gain domain knowledge.<sup>38</sup> The mask hurts our students as well, along with the clients they serve. We model invulnerability for students and they in turn model invulnerability to clients. The mask inevitably hurts the profession and society by separating us from those we serve.

## II. EMPIRICAL EVIDENCE THAT VULNERABILITY HELPS IN HUMAN RELATIONSHIPS

People who lack human emotion or at least fail to show human emotion do not easily form client relationships. Vulnerability is among the human emotions that help build strong client connections.<sup>39</sup> Below I survey studies showing that in both law and medicine, a failure to communicate in human terms can keep a relationship from forming and also break down an existing professional-client relationship. I discuss medical malpractice and communications first and then move to attorney malpractice and communication. In both cases, communicating vulnerability is the key to not being sued. Malpractice is not the focus here but merely the evidence of the failed relationship.

### A. *Doctors, Malpractice, and Vulnerability*

In the context of medical malpractice complaints, several empirical studies have shown that showing vulnerability leads to less malpractice complaints. One groundbreaking study of malpractice in the context of the physician-patient relationships contains a most improbable finding, namely that there was no difference in the quality of medical care provided by physicians who had been sued compared to those who had not been sued.<sup>40</sup>

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37. See Margaret E. Montoya, *Máscaras, Trenzas, Y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185, 197-98 (1994).

38. *Id.*

39. See Catherine Gage O'Grady, *A Behavioral Approach to Lawyer Mistake and Apology*, 51 NEW ENG. L. REV. 7, 47 (2016).

40. Wendy Levinson et al., *Physician-Patient Communication: The Relationship with Malpractice Claims Among Primary Care Physicians and Surgeons*, 227 J. AM. MED. ASS'N 553, 553 (1997).



Rather, when faced with a bad outcome, patients sued doctors that they felt were not caring or compassionate.<sup>41</sup>

Other studies confirm these results. One study analyzed deposition transcripts,<sup>42</sup> another asked plaintiffs to fill out questionnaires,<sup>43</sup> and another used telephone surveys of plaintiffs to determine why they sued their doctors.<sup>44</sup> The overwhelming dominant theme in each study was that people sued their doctors following a breakdown in the patient-physician relationship caused by unsatisfactory patient-physician communication.<sup>45</sup> According to study participants, patients sued because their doctors failed to listen, did not talk openly about what went wrong, and failed to warn patients of long-term risks of the medical treatments provided.<sup>46</sup> Patients who sued their doctors also reported that their doctors deserted them or were otherwise unavailable, devalued patient or family views, delivered information poorly, and failed to consider the patient's point of view or perspective.<sup>47</sup>

Conversely, patients were less likely to sue physicians with whom they had developed a trusting and mutually respectful relationship.<sup>48</sup> As Huntington and Kuhn note, "simply put, patients do not sue doctors they like and trust."<sup>49</sup> Remarkably, this holds true even for severely injured patients.<sup>50</sup> In other words, it does not matter what actually happened to the patient or how he or she was harmed physically, but rather, how the doctor handled the mistake or mishap.<sup>51</sup>

Patients judged the quality of care received on the basis of the physician-patient interaction. What separates the adequate or average physician from the truly great physician is how well the physician practices the "art" of medical care, "conveying those highly valued human skills of compassion and caring concern that patients seem to need so much."<sup>52</sup> Nothing seemed

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41. *Id.*

42. Beth Huntington & Nettie Kuhn, *Communication Gaffes: A Root Cause of Malpractice Claims*, 16 BAYLOR U. MED. CTR. PROC. 157, 157 (2017) (citing Howard B. Beckman et al., *The Doctor Patient Relationship and Malpractice: Lessons from Plaintiff Depositions*, 154 ARCH INTERN. MED. 1365, 1365 (1994)).

43. *Id.* (citing Vincent C. Young and A. Phillips, *Why Do People Sue Doctors? A Study of Patients and Relatives Taking Legal Action*, 343 LANCET 1609, 1609 (1994)).

44. *Id.* (citing Gerald B. Hickson et al., *Factors That Prompted Families to File Medical Malpractice Claims Following Perinatal Injuries*, 267 J. AM. MED. ASS'N, 1359, 1359 (1992)).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 158.

52. *Id.*

to defuse “patient anger better and faster than a sympathetic . . . physician who is willing to discuss not just the successful outcomes of care but the glitches and problems that arise as well.”<sup>53</sup> Moreover, what patients wanted after a mistake was an apology and the assurance that what happened to them will not happen to someone else.<sup>54</sup>

This means that doctors have a great deal of control over their own malpractice rates and incidents. They can reduce these incidents of malpractice by improving their communication skills, showing vulnerability, showing remorse and admitting mistakes, and showing empathy for the losses that occur while a patient is in their care.<sup>55</sup> Lest you think that admitting error could lead to more lawsuits and higher verdicts against the apologetic doctors, the opposite seems to be the case.<sup>56</sup> While doctors cite fear of litigation as a major reason not to apologize, only 1% to 2% of negligent adverse events led to actual claims, and most who sued did so because their physician did not disclose the error, was insensitive in handling the error, and showed poor communication afterward.<sup>57</sup>

“Patients were more likely to sue when they believed there was a ‘cover-up’ . . . or when they wanted more information and the only way they could get it was to file a lawsuit.”<sup>58</sup> In other words, patients are not suing because of a perception that their physician was at fault for their outcome but rather because they have no other way of getting information about their medical condition.<sup>59</sup> Patients are thus *more* willing to “forgive the humanness of physicians . . . than physicians are willing to forgive themselves.”<sup>60</sup>

*B. Lawyers, Malpractice, and Vulnerability and Some Evidence of Same for Lawyers.*

Given the data on the causes of doctor malpractice claims, it is not surprising that a failure to communicate is also a leading cause of attorney malpractice.<sup>61</sup> Failing to properly communicate with clients will not only

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53. *Id.* at 159.

54. *Id.*

55. *Id.* at 159-60.

56. *Id.* at 160.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. See *Attorney Malpractice—A Failure to Communicate is a Leading Cause of Malpractice Claims*, LSQAURED INSURANCE AGENCY (Jan. 9, 2017, 9:59 AM), <https://www.l2insuranceagency.com/blog/attorney-malpractice-a-failure-to-communicate-is-a-leading-cause-of-malpractice-claims.aspx>.

land a lawyer in malpractice trouble, but also may lead to a disciplinary board complaint against the attorney.<sup>62</sup> ABA Model Rule 1.4 states that a lawyer “shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”<sup>63</sup>

As with the doctors discussed above, attorneys can be their own worst critics, which interferes with our ability to forge bonds with clients.<sup>64</sup> As one author noted, “the toughest acknowledgement of mistake is the one we make to ourselves—we fail even to recognize that we made a mistake.”<sup>65</sup> Only after we admit our mistakes to ourselves can we move to admitting them to senior attorneys and clients, paving the way for the human experience clients crave. We tend to think of apologies in terms of clients apologizing or failing to apologize to the opposing side in a dispute, but we also can use our own mistakes, which are inevitable, to hone the art of the apology and form deeper human bonds.

### III. FROM THE PHILOSOPHICAL TO THE PRACTICAL: VIRTUE ETHICS, MINDFULNESS, AND THE ACTUAL PRACTICE VULNERABILITY

#### A. *Virtue Ethics*

Above, I have provided two very practical reasons to be vulnerable in teaching and practicing law: first, to improve relationships with clients and students and second, to avoid being sued. Now I suggest a third. To openly practice vulnerability may be virtuous in and of itself. In this section, I support this idea through virtue ethics, which align with mindfulness and reliance on one’s own internals compass in decision-making.

Virtue ethics is a broad term embodying all philosophies that emphasize the role of character, goodness, and being good for the sake of it, rather than because a duty or rule requires good behavior or because we seek a good result.<sup>66</sup> The point of applying virtue ethics is to seek human flourishing on the broadest level possible, not merely for moral correctness.<sup>67</sup> While virtue ethics is resisted in some legal circles because it is not as practical as result-

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62. Telephonic Interview with William Slease, Chief Disciplinary Counsel, Disciplinary Board of the New Mexico Supreme Court, July 24, 2018.

63. MODEL RULES OF PROF’L CONDUCT r. 1.4 (AM. BAR ASS’N).

64. See O’Grady, *supra* note 39, at 29.

65. *Id.* at 7.

66. Nafsika Athanassoulis, *Virtue Ethics*, INTERNET ENCYCLOPEDIA PHIL., <https://www.iep.utm.edu/virtue/> (last visited Oct. 1, 2018).

67. David Thunder, *Can a Good Person Be a Lawyer?*, 20 NOTRE DAME J.L. ETHICS & PUB. POL’Y 313, 325 (2006).

based rules, many legal scholars have embraced virtue ethics in a wide array of fields, including bankruptcy, criminal law, and health care.<sup>68</sup>

Most virtue ethicists take their inspiration from Aristotle, who defined virtue based upon a person's natural internal tendencies to be good, which each of us can nurture.<sup>69</sup> With practice, these traits become stable over a lifetime.<sup>70</sup> For example, a virtuous person might act kindly over a lifetime because it is her nature, not to get ahead, derive a benefit, or fulfill a duty.<sup>71</sup> Virtue ethicists ask themselves questions like, "How should I live?" and, "What is the good life?"<sup>72</sup>

Virtue ethics asks us to be mindful and internal. It allows us to rely on our own intuition and desire to improve our character and to determine how to act. Perhaps most critically, virtue ethics allows us to focus on a certain state of mind by being mindful and developing a purposeful and deep respect for others.<sup>73</sup> Virtue ethics emphasizes right action based on this mindful state.<sup>74</sup>

### B. Practicing Vulnerability

Virtue ethics has some similarities to the idea of karma in Buddhism, which translates roughly into "cause and effect" or "action and result."<sup>75</sup> Habits cause us to wire our brains and repeat the same behavior over and over again. If we can wire, we can rewire. We just need to practice the new intention or behavior. All action begins in the brain, when we decide to do something. While these actions ultimately become habitual and we no longer need to think about them, by watching and thinking about them anew, we can change our thinking and our actions. As Jack Kornfield explains in *The Wise Heart*, "From intention springs the deed, from the deed springs the habits.

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68. Matthew A. Bruckner, *The Virtue in Bankruptcy*, 45 LOY. U. CHI. L.J. 233, 239 (2013); David A. Jones, 21 *Human Dignity in Healthcare: A Virtue Ethics Approach*, 21 THE NEW BIOETHICS 87, 94 (2015); Ekow N. Yankah, *Virtue's Domain*, U. ILL. L. REV. 1167, 1169 (2009).

69. Athanassoulis, *supra* note 66.

70. *Id.*

71. *Id.*

72. *Id.*

73. Virtue ethicists do not compare their work to mindfulness, so these connections are my own conclusions.

74. Criticisms of virtue ethics include self-centeredness, relativism, and a questionable assumption that human nature is ultimately good. Athanassoulis, *supra* note 66; *see also* Thunder, *supra* note 67, at 322 (stating "[t]hrough law is clearly designed to restrain 'bad men,' it is also designed to coordinate benign human endeavors and teach people to subordinate their private ends to the good of the wider community.").

75. JACK KORNFELD, *THE WISE HEART* 274-75 (2008).

From the habits grow the character, from character develops destiny.”<sup>76</sup> What we practice becomes habit and vulnerability is no exceptions.

How do we practice vulnerability? The same way we practice meditation or tennis or designing a meaningful series of Socratic dialogue questions. We can model vulnerability and help our students express vulnerability. Without oversharing, we can reveal our own weaknesses and give our students the opportunity to share weaknesses or mistakes in our classes. We can also look at examples of vulnerability in our everyday lives and celebrate those. After all, everyday life is a training ground for professional success.<sup>77</sup>

For example, my mindful colleague George Bach has a cartoon on his office door that says, “George is a deep thinker, but his thoughts rarely come to the surface.” For another example, one year, a rising second year explained to our entering class of 110 first-year students at orientation that he was enjoying law school and also that he had never gotten an A. Despite being risky, sharing our weaknesses feels good. We allow others to see the real us and discover that they still trust and admire us. Perhaps people like us more because we are human, just like them. Practicing vulnerability thus improves our lives, not just our lawyering.

#### CONCLUSION

As aptly explained by philosopher David Thunder, the role of lawyer is only as good as its contribution to a good or flourishing human life.<sup>78</sup> Practicing vulnerability contributes to the good or flourishing human life because it makes us more human. After all, the demands of lawyering can never be allowed to outweigh the requirements of a good human life.<sup>79</sup> Practicing vulnerability can contribute to the good human life, inside and outside the law.

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76. *Id.*

77. *See, e.g., id.* at 331-33.

78. Thunder, *supra* note 67, at 330-31.

79. *See id.* at 331.