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# IMPLEMENTING PSYCHOLOGICAL RESILIENCE TRAINING IN LAW INCUBATORS

M. MARK HEEKIN\*

## I.

### INTRODUCTION

The practice of law has become increasingly challenging both professionally and personally. Solo practitioners face greater demands than do their colleagues in the profession. To help newly minted lawyers address the challenges of practice from the professional aspect, some law schools have formed law incubators. Other law schools seem to overlook the exhaustion and pressure the practice of law can place on lawyers personally. Statistics show that lawyers in solo practice are more likely to experience depression, alcohol abuse, substance abuse and similar problems. They need some mechanism that will help them to be able to deal with the stress and pressures they will face. The Small Practice Center, Charlotte School of Law's incubator, introduced the concept of psychological resilience to the new attorneys and implemented training exercises to develop resilience in these attorneys.

Fatigue from the personal challenges of the practice of law can manifest itself in a variety of negative ways: physical ailments, depression, alcoholism, drug use, and other self-destructive behaviors. Some state bars have recognized this problem and the devastating effect it has on their members resulting in development of programs to assist afflicted members, but most of the programs such as lawyers' assistance programs, are reactive rather than proactive. New lawyers in solo practice and small firm settings will quickly be exposed to the real-world problems of their clients—both in litigation and in transactional practices—in addition to the stress of learning to manage their own practice. Charlotte's Small Practice Center seeks to assist these new lawyers in a variety of ways, including psychological resilience training.

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Psychological resilience is the ability to bounce back when faced with stress, adversity, trauma, or other real or perceived pressures. Resilience is the ability to recover from difficult experiences with minimal long-term adverse effects (“Psychological Resilience”).<sup>1</sup> Early researchers believed that a person’s capability for resilience was set at birth. However, more recent studies have shown that resilience can be learned. A number of organizations, including the United States Military, have psychological resilience training programs to boost the effectiveness and overall wellbeing of the organization’s members. Research shows that one branch of psychological resilience development, positive psychology (“Positive Psychology”),<sup>2</sup> helps develop a more global, deliberate way of viewing things, which can also be beneficial to attorneys in representing clients and in managing their law practices. There are simple, manageable steps law incubators can take to implement psychological resilience training.

Charlotte School of Law (“CSL”) opened its incubator, the Small Practice Center (“SPC”), in 2012 after more than a year of planning and design. The decision to form an incubator was an easy one. CSL’s mission pillars are rooted in practice ready preparation, student

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<sup>1</sup> See generally *A Personal Strategy for Engaging and Building Your Resilience*, UNIVERSITY OF CALIFORNIA SAN FRANCISCO HUMAN RESOURCES, <https://hr.ucsf.edu/hr.php?A=1055&AT=cm&org=c> (last visited Mar.13, 2015) (The American Psychological Association reports that ‘resilience’ is the process of adapting well in the face of adversity, trauma, tragedy, threats, or even significant sources of stress—such as family and relationship problems, serious health problems, or workplace and financial stressors. Resilience is “bouncing back” from difficult experiences. Research has shown that resilience is ordinary not extraordinary and that people commonly demonstrate resilience. One example is the response of many Americans to the September 11, 2001 attacks and people’s efforts to rebuild their lives. Being resilient does not mean that a person doesn’t experience difficulty or stress. Emotional pain and sadness are common in individuals who have suffered major adversity or trauma in their lives. In fact, the road to resilience is likely to involve considerable emotional distress. Resilience is not a trait that people either have or do not have. The National Institute of Mental Health reports that resilience involves behaviors, thoughts, and actions that can be learned and developed in anyone).

<sup>2</sup> Todd D. Peterson & Elizabeth W. Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL’Y L. & ETHICS 357, 385-386 (2013).

(Positive psychology is the study of the traits and conditions that lead to human thriving. It is often characterized as the study of happiness, but it is more accurately the study of all positive emotions and character traits, including joy, contentment, gratitude, optimism, and resilience. Positive psychologists are quick to emphasize that their research is intended to supplement and not to replace traditional psychological research; it is designed to explore areas that have been neglected by traditional psychology to portray a more accurate and in-depth picture of the range of human experience. While traditional psychology focuses on what makes people distressed and how they can get back to neutral, positive psychology focuses on how people can move above neutral. It presupposes that happiness and well-being are not merely the absence of depression and anxiety, but rather are a whole host of states, traits, and emotions that combine to make life worth living.)

outcome focused, and service to the community.<sup>3</sup> As the team of faculty and administrators worked to develop the SPC, we were confident the practical preparation and service to the community would be high priorities,<sup>4</sup> but we wanted to ensure that the student outcome focus was transcendent. We wanted to make sure the attorneys who began their legal careers in the SPC were equipped not only with the skills to help them practice law, but also with the ability to thrive both professionally and personally.<sup>5</sup> As we designed the SPC, we recognized that we have the opportunity to leave a lasting impression on newly minted attorneys on several fronts: solid practice management, a commitment to public service through access to justice and pro bono services, and also Psychological Resilience skills.<sup>6</sup> To help with plans for exercises to develop Psychological Resilience, the director of the North Carolina Lawyers' Assistance Program volunteered as a consultant and continued to assist with the implementation of some Psychological Resilience exercises we developed. The SPC has offices for eight new attorneys and two seasoned solo practitioners who agreed to move their fulltime offices into the SPC where they would continue to run their practices alongside the new attorneys and serve as onsite mentors.<sup>7</sup> The mentors also assist with Psychological Resilience exercises. The law incubator setting is ideal for developing Psychological Resilience because many of the underpinnings are already present.

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<sup>3</sup> See generally, OUR MISSION, CHARLOTTE LAW, <http://www.charlottelaw.edu/about/our-mission/> (last visited Mar. 1, 2015).

<sup>4</sup> Charlotte School of Law students must complete 50 hours of pro bono service prior to graduation. See <http://apps.americanbar.org/legalservices/probono/lawschools/201.html> (last visited Mar. 1, 2015).

<sup>5</sup> Having been a transactional solo practitioner for the final seven years before leaving practice to teach fulltime, I had been acutely aware of the heightened risks to those in our profession who work in the small and solo practice setting of lawyer depression and the problems that may accompany it. Throughout my years in practice, I had taken precautions to avoid such ills. I wanted to try to provide the attorneys who were incubated in the SPC with coping mechanisms to help them deal with the stress and pressures of solo practice.

<sup>6</sup> See Heath Hamacher, *Incubator Helps Fledgling Lawyers Hatch Their Practice*, N.C. LAW WKLY, (Mar. 17, 2015), available at <http://nclawyersweekly.com/2015/03/17/incubator-helps-fledgling-lawyers-hatch-their-practice/> (For recent graduates of the Charlotte School of Law, that place could be the school's Small Practice Center, informally known as the "incubator." The incubator, by definition, provides a controlled environment to help the newest bar members develop the range of skills necessary to practice law while teaching them how to form and build their small business. It provides subsidized office space, in-person networking, pro bono opportunities, mentoring and a chance for newly minted attorneys to shadow well-established ones, honing their craft while learning to avoid the pitfalls that could lead to malpractice or disciplinary proceedings.).

<sup>7</sup> One onsite mentor is a former state court judge with more than thirty years of experience in practice as a criminal defense and general civil litigation attorney. The other onsite mentor has approximately nineteen years' experience in transactional practice.

The camaraderie or collegiality<sup>8</sup> that many new attorneys recognize as a benefit of launching their practice in an incubator is an effective nucleus from which to grow resilience. The SPC has two varieties of organized meetings: mandatory<sup>9</sup> monthly meetings and periodic best practices programs. Each best practices program is developed by the SPC Director and focuses on a specific topic that are important to the management of a law practice (e.g., trust accounting, red flags for malpractice situations, ethical client recruitment, website design). The mandatory monthly meetings, which are generally two hours long, are designed to allow for the Psychological Resilience exercises as detailed below.

## II.

### THE STATE OF THE PRACTICE OF LAW TODAY

The practice of law is, as with many professions, fraught with challenges that can trap those seeking to perform a needed, beneficial service for society.<sup>10</sup> The challenges that can affect lawyers are many. There are challenges brought about by a profession witnessing the most change in generations and simply keeping up with ever-devel-

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<sup>8</sup> See generally, *In Their Own Words*, Americanbar.org, available at [http://www.americanbar.org/groups/delivery\\_legal\\_services/initiatives\\_awards/program\\_main/incubator\\_video.html](http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/incubator_video.html) (last visited March 21, 2015) (This is an American Bar Association-produced video in which dozens of new attorneys participating in law incubator programs around the nation report, among other things, that they consider the camaraderie among their peers as a significant benefit their incubator provides them.)

<sup>9</sup> Although the monthly meetings are “mandatory,” attorneys know that they are in the incubator to represent their clients and grow their practice, so court dates and client meetings are among the legitimate reasons to miss a meeting, but the attorneys do a very good job of attending the meetings.

<sup>10</sup> See Bruce D. Merrill & Tara A. Blanc, *State Bar Survey: Stress, Ethics, Professionalism Top Attorney Concerns*, ARIZONA ATTORNEY, (November 2014), available at [http://www.myazbar.org/AZAttorney/PDF\\_Articles/1114SurveyFINAL.pdf](http://www.myazbar.org/AZAttorney/PDF_Articles/1114SurveyFINAL.pdf) (finding that high stress and work-life balance are the two most significant personal challenges that members face in their work as attorneys. Among respondents to the survey, 29 percent said that high stress was a concern, while 27 percent cited the difficulties of balancing work and family life. Other key challenges included keeping up with new developments in the law and time management (21 percent each) and keeping up with technology (19 percent). The question about personal challenges was new to the survey this year. Members also were asked for the first time about what they see as the most significant challenges facing the legal profession. Respondents most often cited a lack of ethics and professionalism (27 percent), difficult economic times (27 percent), the affordability of legal services (26 percent), poor public perception (25 percent), and too many attorneys (23 percent). In a third related question, members were asked to identify the issues they believe are most important for the Bar to address. The most frequent responses included being more responsive to sole practitioners and small law firms (31 percent), efforts to increase professionalism (30 percent), working to preserve judicial independence (29 percent), working to improve public perception of the profession (25 percent), and technology training (22 percent)).

oping legal technology. Lawyer depression, stress-related physical ailments, alcoholism, drug use, and other self-destructive behaviors and the ills which accompany them (collectively, “Detrimental Manifestations”) continue to increase at a steady pace.<sup>11</sup> Studies show lawyers are increasingly dissatisfied with their chosen profession.<sup>12</sup>

Of all categories of attorneys, solo practitioners may take the greatest hit in suffering from both depression and substance abuse due to their lack of available resources and lack of support from other attorneys.<sup>13</sup> A survey conducted by the State Bar of Arizona found

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<sup>11</sup> See Ted David, *Can Lawyers Learn To Be Happy?* THE PRACTICAL LAWYER (August 2001), available at [http://files.ali-cle.org/files/periodical/articles/TPL1108\\_David.pdf](http://files.ali-cle.org/files/periodical/articles/TPL1108_David.pdf) (The statistics are not encouraging. Out of 105 professions, according to a John Hopkins University study, lawyers topped the list for major depression. One in four suffer psychological distress from feelings of inadequacy, inferiority, and anxiety. We are depressed at a rate 3.4 times higher than employed persons generally. We lawyers are twice as likely to commit suicide than ordinary folk in the population. And when we are not thinking about doing ourselves in, one in five is alcohol addicted. Substance abuse for lawyers is double the national level. Though statistics are scarce, divorce among lawyers is said to be higher than other professionals. One study of female lawyers found that they were twice as likely to divorce than female doctors and 20 percent to 40 percent more likely to divorce than teachers in secondary schools. Frankly, 52 percent of us simply describe ourselves as unhappy.).

<sup>12</sup> See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 882 (1999) (For almost thirty years, the University of Michigan Law School has been surveying its former students five years after they graduate. The last survey for which results have been reported was conducted in 1996. Given the stellar reputation of their alma mater, Michigan graduates would presumably have more employment options available than graduates of most other law schools and thus would presumably be among the most satisfied practitioners in America. Yet the annual surveys have discovered surprisingly low levels of career satisfaction in general and a marked decline in career satisfaction over time, at least for lawyers in private practice. For example, the percentage of graduates working as solo practitioners or in firms of fifty or fewer lawyers who were “quite satisfied” with their careers five years after graduation fell from 45% for members of the classes of 1976 and 1977 (and from a high of 52% for members of the classes of 1980 and 1981) to 37% for members of the classes of 1990 and 1991. The percentage of graduates working in firms of fifty-one or more lawyers who were “quite satisfied” with their careers fell from 53% for members of the classes of 1976 and 1977 (and from a high of 54% for the classes of 1978 and 1979) to 30% for members of the classes of 1990 and 1991. In the rather understated words of the Michigan Law School survey, “this picture is gloomy.”).

<sup>13</sup> See Timothy D. Edwards & Gregory J. Van Rybroek, *Addiction and Attorneys: Confronting the Denial*, 80 ST. B. WIS. 8 (2007), <http://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?Volume=80&Issue=8&ArticleID=1205>. (After all, lawyers are trained to analyze, to judge, to compare, to allocate blame, and to justify. This thought process begins in law school, where the law student often competes in isolation against her peers with little social interaction, and it is reinforced throughout the attorney’s career. When these skills are captured by the process of addiction, the addicted lawyer becomes his or her own worst enemy, and the denial process is strengthened at a very sophisticated level. Ironically, the skills that lawyers work so hard to develop fortify the cognitive defense system that addicts invoke when they feel threatened. According to Michael Cohen, the director of Florida’s lawyer assistance program, “the very skills that make us good lawyers make us terrible, terrible patients.” Attorneys face other specific

that lawyer dissatisfaction tended to be highest among solo practitioners or those practicing in firms of fewer than five attorneys.<sup>14</sup> To exacerbate the problem, newly admitted solo practitioners are also more likely to practice in areas of law that are highly stressful such as family law or criminal defense.<sup>15</sup> These practice areas tend to be “zero sum games,” where one side’s gain will be the other side’s loss. This can magnify the stress experienced by the lawyer.<sup>16</sup>

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problems that make intervention and treatment very difficult. Many lawyers and other professionals are highly competitive and, for good reason, they value their professional reputation. They fear the repercussions of disclosing personal information that might undermine their standing with colleagues, judges, and friends. Many attorneys fear that a label of “alcoholic” or “addict” is a sign of weakness or a concession of defeat. Often, the persona that attorneys pre-sent to professional colleagues and the true person are very different. When the common skills of attorneys (and other professional groups) are combined with addiction, the result is isolation and the anxiety associated with living a double life.); *see also* Marian V. De Souza, *Sole Practice: A New Year Resolution*, 10 L. SOC’Y OF ALTA. (2012) [http://www.lawsociety.ab.ca/advisory\\_2012/advisory\\_volume\\_10\\_is\\_sue\\_1\\_Jan2012/news/solepractice.aspx](http://www.lawsociety.ab.ca/advisory_2012/advisory_volume_10_is_sue_1_Jan2012/news/solepractice.aspx) (last visited Mar. 20, 2015).

<sup>14</sup> Merrill, *supra* note 10.

<sup>15</sup> Justin J. Anker, *R.C. Kessler: Attorneys and Substance Abuse*, Hazelden Foundation, BUTLER CTR. FOR RESEARCH (September 2012) (In addition to having a higher prevalence of job-related burnout, attorneys working in the public sector also experience higher levels of Post Traumatic Stress Disorder (PTSD) compared to individuals in the general population. Post-traumatic stress disorder is a predictor of substance abuse severity, and research indicates that family and criminal court attorneys experience greater levels of trauma compared to individuals in other high-stress jobs. The need to understand intimate details of a client’s trauma history is sometimes required of criminal attorneys and can lead to the formation of Secondary Traumatic Stress (STS). Symptoms of STS mimic those of PTSD and despite the high prevalence of this disorder in attorneys, STS has largely been overlooked by the research community. In a study by Levin et al. (2011), criminal litigation attorneys were compared to a group of legal administrative support staff members on several stress-related measures. Compared to administrative staff members, attorneys were significantly more likely to meet the criteria for STS (10% vs. 34%), PTSD (1% vs. 11%), and depression (19% vs. 40%). Furthermore, attorneys with more frequent, prolonged contact with trauma-exposed clients experienced more stress, burnout, and functional impairment. In summary, workload and frequent exposure to tense social interactions may increase stress and lead to increased drug abuse vulnerability in attorneys.).

<sup>16</sup> Martin E.P. Seligman, Paul R. Verkuil & Terry H. Kang, *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33, 46 (Nov. 2001) (A zero-sum game is a familiar occurrence. It is an endeavor in which the net result is zero. For every gain by one side, there is a counterbalancing loss by the other. A sports event is a zero-sum game, in that there must be winners and losers. A non-zero-sum game, in contrast, is an endeavor in which there is a net gain. Reading this essay is a positive-sum game: your exposure to new information does not mean someone else has forgotten an equivalent amount of information. Rather, there are gains on both sides: the reader learns something new, the authors disseminate their ideas, and so forth. Robert Wright has recently argued that human civilization itself is moving in the inexorable, albeit bumpy, direction of more positive-sum games. This is a particularly appealing vision, because it is likely that negative emotions (i.e. anger, anxiety, and sadness) have evolved from zero-sum games, and that positive emotions have evolved from non-zero-sum games. Wright argues that we have reached our present state of social development by harnessing non-zero interactions, and

The number of lawyers in solo practice has been increasing steadily for some time.<sup>17</sup> There are a number of reasons that might explain this trend, however, the downturn in the economy has been a significant cause of the disintegration of the traditional large law firm model, driving some lawyers into solo practice. Meanwhile, millennials who place greater value on work-life balance may prefer to launch out on their own rather than follow traditional notions of working their way up the ladder in a law firm or corporate counsel offices.<sup>18</sup> These newly licensed attorneys will be thrust into the role of having to compete and survive in an already challenging profession. Whereas recent law school graduates used to go to work for law firms,

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that as we have continued to evolve, non-zero-sum games have become more numerous and elaborate, and have produced collective benefits to society.).

<sup>17</sup> Jennifer A. Rymell, *The Chair's Corner: The Growing World of Legal Entrepreneurs*, GPSOLO, Vol. 31 No. 1 available at [http://www.americanbar.org/publications/gp\\_solo/2014/january-february/the\\_chairs\\_corner\\_growing\\_world\\_legal\\_entrepreneurs.html](http://www.americanbar.org/publications/gp_solo/2014/january-february/the_chairs_corner_growing_world_legal_entrepreneurs.html) (last visited March 4, 2015) (According to the National Association for Law Placement (NALP), there were 46,364 new law school graduates in the United States in 2012. Of those graduates, some 5.1 percent indicated that they planned to start their own solo practice immediately after passing the bar exam. Since 2008 the number of new law graduates going into solo practice has steadily increased, hitting an all-time high in 2011 of 6.1 percent. Before 2008, only 3.5 percent or less of law school graduates were starting their own solo practice right out of law school. It is no secret that the economic downturn has had an impact on law firm, government, and corporate attorney positions, but is there something else that has contributed to this trend? Is the economy forcing lawyers to become solo practitioners or are they choosing that career path? The technology surge that we have seen over recent years has brought forth a new breed of professionals. Traditional legal career paths are no longer as attractive as they once were. There is no guarantee that law firm, government, or corporate employment will provide long-term job or financial security. Entrepreneurship is the new hot career choice, and lawyers who go solo are contributing to that trend by being legal entrepreneurs.).

<sup>18</sup> Karen K. Meyers and Kamyab Sadaghiani, *Millennials in the Workplace: A Communication Perspective on Millennials' Organizational Relationships and Performance*, J. BUS. PSYCHOL. VOL. 25, Iss. 2 (June 2010) available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2868990/>. (This website contains the information that follows. Millennial workers are likely to communicate an interest in flexible career paths because their priority is work-life balance (Carless and Wintle 2007; Smola and Sutton 2002). A recent Gallup poll found that Millennials desire a work-life balance that will allow them to balance play with work (Ott et al. 2008). Millennial-written blogs and popular press articles attest that they also freely and openly admit that they prioritize close personal relationships over career ("Cara" 2009; Raines 2002). Their coworkers may initially respond to Millennials' work-life balance attitude with resistance (Alvesson and Willmott 2002; Smola and Sutton 2002). In particular, Boomer coworkers who often are in leadership positions, may question Millennials' commitment and dedication to the organization, dismissing Millennial workers as selfish or lazy (Collinson and Collinson 1997; Raines 2002). Their subsequent interactions with Millennial coworkers may reflect a level of discomfort, disrespect, or even distrust. It is possible that Boomer generation workers will never completely accept new colleagues who do not share their work ethic. While this might be true for any newcomers with significantly different values, many Millennials may remain somewhat marginalized by their older and more senior coworkers, making it more difficult for Millennials to earn workplace respect and credibility.).

legal aid offices, gain clerkships, or work in governmental agencies and not have direct contact with clients and all the accompanying stressors until they had some experience and mentorship, newly admitted lawyers forming their own practices do not have that traditional luxury. To address the increased number of recent law school graduates who are forming solo and small firm practices thereby foregoing other more traditional routes of gaining both practice and practice management experience, law schools and some bars are increasingly looking to establish law incubators.<sup>19</sup>

On the one hand, such idealistic young attorneys are a reason to be proud of our profession and its future. Many of them went to law school and have elected to hang their own shingle for all the right reasons. Often, newly admitted solo practitioners have chosen their path to make a difference in an indifferent world and a sometimes indifferent profession. However, to protect them from the harsh consequences that the adversarial environment in the world of law, which often includes Detrimental Manifestations and all the ills that accompany them,<sup>20</sup> law incubators need to implement programs to help new attorneys develop mechanisms to cope with the stressors brought on by running a law practice.

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<sup>19</sup> See Lyle Moran, *Growth of Legal Incubator Movement on Display at Conference*, THE DAILY TRANSCRIPT (Mar. 3, 2015) (“When proponents of legal incubators held seminars several years ago about their efforts to address the unmet legal needs of the public, they say they were thrilled to draw anywhere from a half-dozen to a dozen people. This past weekend, 160 people gathered at California Western School of Law for the second annual international conference on legal incubators and residencies, a 33 percent increase in attendance over the first gathering last spring. Incubator pioneers said the large turnout and excitement among attendees demonstrates the state of the movement — which has seen an increase in the past three years from a handful to at least three dozen incubators worldwide — is as strong as it has ever been. Fred Rooney, who founded the first incubator in New York eight years ago and oversaw the launch of the first international one in the Dominican Republic in 2013, said he expects the momentum to continue, especially with additional projects funded or on the drawing board”); see also *Incubator/Residency Program Profiles available at [http://www.americanbar.org/groups/delivery\\_legal\\_services/initiatives\\_awards/program\\_main/program\\_profiles.html](http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_profiles.html)* (last visited Oct. 26, 2015).

<sup>20</sup> Rhonda Muir, *The Depression Demon Coming Out of the Legal Closet*, MANAGEMENT, PROFESSIONAL DEVELOPMENT, RETENTION, RISK MANAGEMENT (Sept. 5, 2008) available at <http://www.lawpeopleblog.com/2008/09/the-depression-demon-coming-out-of-the-legal-closet/>. (Evidence of the problem is long-standing. A landmark 1991 study by Johns Hopkins University ranked lawyers first, among 105 professions surveyed, in the rate of clinical depression. A 1992 OSHA report found that male lawyers in the US are two times more likely to commit suicide than men in the general population. Lawrence Krieger, a clinical professor at Florida State University College of law, who focuses on work-life issues for lawyers, has research showing that practicing lawyers exhibit clinical anxiety, hostility and depression at rates ranging from 8 to 15 times that in the general population. Research in North Carolina indicates that 11% of lawyers in that state think of taking their own life at least once a month.).

In response to higher than average incidence of Detrimental Manifestations, and other addictive behavior in the ranks of attorneys, many state bars have established Lawyers Assistance Programs (“LAPs”) to help the attorney who has succumbed to the stressors of the practice of law.<sup>21</sup> To be sure, LAPs are a step in the right direction. Nothing in this article should be construed as negative criticism of LAPs because they address a problem in our profession and seek to resolve the problem. These programs work to save troubled attorneys from personal and professional destruction. This is certainly not a call to abandon LAPs or diminish the good work they perform for lawyers who need assistance. However, LAPs tend to be reactive programs rather than proactive ones. This may be due of the nature of the problem—those who are succumbing to Detrimental Manifestations refuse or fail to recognize it. Also, it is not uncommon for those around a troubled attorney to be reluctant to intervene.<sup>22</sup>

Unfortunately, for sundry reasons LAPs tend to treat the problem after it has manifested itself rather than provide lawyers with prophylactic measures they could incorporate into their daily routine to prevent Detrimental Manifestations and related ills. Proactive measures that could cultivate coping mechanisms to prevent such Detrimental Manifestations would be a tremendous asset to individual lawyers and to the profession as a whole. The benefits would include enhanced quality of life, improved delivery of legal services, as well as cost savings of not having to treat lawyers suffering the effects of Detrimental Manifestations and dependency. The difficulty is the “buy-in” from lawyers. This makes law incubators the optimal vehicle to introduce coping mechanisms. It has been my experience that lawyers beginning their careers in incubators are looking for direction on processes to develop their law practices. While they are scrambling to figure out how to practice law, incubator directors should make psychological resilience an integral part of these new attorneys’ professional lives.

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<sup>21</sup> *Directory of Lawyer Assistance Programs*, Americanbar.org (2015) <http://apps.americanbar.org/legalservices/colap/lapdirectory.html> (last visited Oct. 25, 2015).

<sup>22</sup> Cecie B. Hartigan, *New Hampshire Lawyers Assistance Program: Annual Report 2012-2013*, <http://www.lapnh.org/wp-content/uploads/2013/11/Annual-Report-201213.pdf> (last visited March 20, 2015) (The New Hampshire Lawyers Assistance Program (LAP) is a confidential, independent organization created for the sole purpose of providing confidential, immediate and continuing assistance to New Hampshire lawyers, judges and law students who are suffering from physical or psychological illness, substance abuse or emotional distress, age-related issues, or other personal or professional crisis. Because of the sensitive nature of addiction and psychological problems, law students, attorneys, or judges who need help — or want to assist someone else who might need help — are often reluctant to seek assistance.).

If the legal profession seeks to stamp newly minted lawyers with good, healthy practice habits, this is the optimal time and place to also help them with psychological resilience habits to ensure a long, healthy career of doing good. CSL's Small Practice Center has developed an informal program of exercises designed to help develop coping mechanisms in its new attorneys.

### III. PSYCHOLOGICAL RESILIENCE

Individuals demonstrate Psychological Resilience when they face formidable obstacles and prevail in spite of the challenges, coming away unharmed by the obstacles and challenges. Resilient individuals are able to bounce back from situations that might otherwise have caused long-term harm. The United States Military has recognized the importance of Psychological Resilience in maintaining healthy and effective armed forces.<sup>23</sup> Military leaders were trying to find help to diminish the trauma of battle and its effects, including post-traumatic stress disorder ("PTSD") and also the long-term effect of the stress of lengthy and sometimes multiple deployments on not only members of the armed forces, but on their family members, as well. While it would be foolish to attempt to equate the stress of going into battle with the stress of opening a law practice, there are certain commonalities. Both involve zero-sum game situations, both require attention to detail, worst-case scenarios is important in planning strategy for both; these are some of the parallels.<sup>24</sup> Therefore, application of some of the military's programs to develop Psychological Resilience exercises

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<sup>23</sup> Martin E.P. Seligman, *Building Resilience*, HARV. BUS. REV. (Apr. 2011) <https://hbr.org/2011/04/building-resilience/ar/1> (last visited Feb. 12, 2015) (Thirty years of scientific research has put the answers to these questions within our reach. We have learned not only how to distinguish those who will grow after failure from those who will collapse, but also how to build the skills of people in the latter category. I have worked with colleagues from around the world to develop a program for teaching resilience. It is now being tested in an organization of 1.1 million people where trauma is more common and more severe than in any corporate setting: the U.S. Army. Its members may struggle with depression and post-traumatic stress disorder (PTSD), but thousands of them also experience post-traumatic growth. Our goal is to employ resilience training to reduce the number of those who struggle and increase the number of those who grow. We believe that businesspeople can draw lessons from this approach, particularly in times of failure and stagnation.).

<sup>24</sup> Dan Bowling, *You're in the Army Now*, THE CAREERIST (Apr. 18, 2011), <http://thecareerist.typepad.com/thecareerist/2011/04/stop-whining-youre-in-the-army-now.html> (last visited Mar. 13, 2015) (Lawyers love war metaphors. They are constantly "doing battle," "facing Armageddon," or "donning armor." Rhetorical flourishes aside, there are parallels between the life of a lawyer and that of a soldier. Actual combat is a different thing altogether, of course, but both occupations involve constant stress: Failure is not an option; only the mission matters; and family needs run a distant second.).

for lawyers is plausible.<sup>25</sup> The Army program, which was developed with the assistance of Martin Seligman, has objectives that match up with those for the legal profession.<sup>26</sup> Resilience is not an uncommon characteristic. It can be found in the average person and can be learned and strengthened with training and practice.<sup>27</sup>

There is a misconception that people who are resilient remain optimistic regardless of challenges and setbacks they encounter without ever entertaining negative thoughts or emotions. However, resilient people do experience negative thoughts and emotions, but are able to effectively balance negative emotions with positive ones. People with Psychological Resilience are those able to see the silver lining in the dark clouds as they travel through life and encounter challenges and setbacks. They are able to accept criticism, are more eager to improve their performance, see more broadly, are more eager to collaborate with peers, and generally are able to accomplish more. Furthermore, lawyers who exhibit characteristics of Psychological Resilience are often viewed as more successful.<sup>28</sup> This can lead to greater personal and professional satisfaction.

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<sup>25</sup> Dan Bowling & Shannon Polly, *Does Happiness Really Drive Results?* TALENT MANAGEMENT (June 29, 2012), <http://www.talentmgt.com/articles/does-happiness-really-drive-results> (last visited Feb. 16, 2015) (The Army training consists of modules conducted by Penn-trained Army and civilian facilitators to improve skills such as managing emotions and challenging pessimistic thinking processes. Psychologist Martin Seligman, one of the driving forces behind the Penn-Army effort, said the training has direct applicability in the business world. “We believe that businesspeople can draw lessons from this approach, particularly in times of stress or stagnation.”).

<sup>26</sup> *Supra* note 23; *see also* [www.goarmy.com](http://www.goarmy.com) (noting mental health programs offered by the army to increase resiliency among soldiers)(last visited Oct. 28, 2015).

<sup>27</sup> Bowling & Polly, *supra* note 25. (There is more to the science of happiness than just strengths. During the past two years, the biggest adopter of a wide range of positive psychology techniques has been the United States Army. In response to increased incidents of mental and emotional distress among troops facing repeated deployment, the Army started working with positive psychologists from the University of Pennsylvania in 2009 to teach “mental toughness” skills to the 1.1 million men and women in uniform. Central among these skills is resilience. Resilience is the ability to bounce back from adversity. The Army training consists of modules conducted by Penn-trained Army and civilian facilitators to improve skills such as managing emotions and challenging pessimistic thinking processes. Psychologist Martin Seligman, one of the driving forces behind the Penn-Army effort, said the training has direct applicability in the business world. “We believe that businesspeople can draw lessons from this approach, particularly in times of stress or stagnation.”).

<sup>28</sup> Susan Daicoff, Lawyer, *Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1395 (1997)(noting that “successful lawyers were more often rated as ‘contented, fair-minded, sincere, ambitious, competitive, confident, outgoing, sophisticated, intelligent, capable, reasonable, and self controlled.’ Less successful lawyers were more often rated as ‘cautious, dissatisfied, vulnerable, defensive, depressed, frustrated and lonely.’ The less successful group, overall, appeared to be more neurotic, hostile, and inhibited and less creative, imaginative, and interested in sentimental, ‘softer’ interests”).

There are many different factors that will afford the development of Psychological Resilience in an individual. The most significant, however, is conscientiously cultivating positive relationships with family, friends, and peers.<sup>29</sup> This may tend to put solo practitioners at a disadvantage because they often feel isolated professionally. Not having another peer down the hall to talk with may cause solo practitioners to feel detached. It is the single most critical means of handling both ordinary and extraordinary levels of stress. The positive relationships include traits such as mutual, reciprocal support and caring. These types of relationships help strengthen a person's resilience.

### A. Positive Psychology

Generally, the reason people retain lawyers is because they have a problem. Few people retain lawyers because of good news. The client may have a serious personal problem such as a criminal charge against them, an unfaithful spouse or a deportation hearing scheduled. Or the client may have a good problem such as owning a piece of property they plan to sell and need to have the real estate closing conducted properly or they may want to adopt a child and need legal representation in the adoption. Nonetheless, people come to lawyers when they have a problem. In dealing with people's problems for a living, lawyers tend to develop pessimism.<sup>30</sup> If a lawyer isn't cognizant

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<sup>29</sup> See generally *A Personal Strategy for Engaging and Building Your Resilience*, UNIV. OF CAL. SAN FRANCISCO HUMAN RES., <https://hr.ucsf.edu/hr.php?A=1055&AT=cm&org=c> (last visited Mar.13, 2015) (Many factors contribute to one's resilience. Many studies demonstrate that the primary factor in resilience is having caring and supportive relationships within and outside the family. Relationships that create love and trust provide role models, and offer encouragement and reassurance help bolster a person's resilience. The American Psychological Association reports the following factors regarding resilience:

- The capacity to make realistic plans and to take steps to carry them out.
- A positive/optimistic view of yourself and confidence in your strengths and abilities.
- Skills in communication and problem solving.
- The capacity to manage strong feeling, emotions and impulses.).

<sup>30</sup> Seligman, Verkuil, & Kang, *supra* note 16, at 39-40 ("'Pessimism' is a term emerging from a reformulation of learned helplessness theory, a theory first systematically articulated by researchers studying animal behavior. Pessimism is defined not in the colloquial sense, as "seeing the glass as half full or half empty," but rather as a pessimistic "explanatory style." This is the tendency to interpret the causes of negative events in stable, global and internal ways: "It's going to last forever; it's going to undermine everything; it's my own fault." Under this definition, the pessimist will view bad events as unchangeable. The optimist, in contrast, sees setbacks as temporary. That crucial distinction is what connects pessimism to unhappiness. Research has revealed, predictably, that pessimism is maladaptive in most endeavors: pessimistic life insurance agents make fewer sales attempts, are less productive and persistent, and quit more readily than optimistic agents. Pessimistic undergraduates get lower grades, relative to their SAT's and

of all the things that can go wrong in the legal matter for which they are engaged, they may not adequately protect the interests of their client. It is easy for a lawyer to become mired in the negative and it can be difficult to step away from that mindset. However, lawyers today, particularly solo practitioners, must be able to separate themselves from the pessimism.<sup>31</sup>

Positive psychology is the study of characteristics, traits and behaviors that cause individuals and social institutions to flourish. This branch of psychology asserts that people who are resilient in the face of obstacles view those obstacles with an optimistic outlook, typically as a challenge, but not a permanent one. Those who view the very same obstacles from a pessimistic perspective are likely to be less resilient thereby giving up on challenges easily. These people view the obstacles as insurmountable and there is nothing that can be done to change the situation. The pessimistic thinker succumbs to “learned helplessness,”<sup>32</sup> leading to depression and other Detrimental Manifestations. Those who lack resilience see the dark cloud and believe there’s nothing they can do about it, whereas those with resilience see its silver lining.

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past academic record, than optimistic students. Pessimistic swimmers have more standard swims and bounce back from poor swims less readily than do optimistic swimmers. Historical research even suggests that pessimistic world leaders take fewer risks and act more passively during political conflicts than their optimistic counterparts. In the context of a military crisis and aggression by an adversary, such passivity can have devastating consequences.”).

<sup>31</sup> Larry Richard, *Resilience and Lawyer Negativity*, WHAT MAKES LAWYERS TICK (Sept. 19, 2012), <http://www.lawyerbrainblog.com/2012/09/resilience-and-lawyer-negativity/> (last visited Mar. 22, 2015) (Today there is increasing pressure on lawyers to improve their low Resilience. Lawyers today are called upon to play many other roles besides merely practicing law—They are asked to be leaders, managers, supervisors, mentors, coaches, committee chairs, rainmakers—all of these roles require greater levels of social skill for their success than the practice of law does. And all of them—particularly the leadership role—require higher levels of Resilience for optimum effectiveness.).

<sup>32</sup> Seligman, *supra* note 23. (In the late 1960s I was part of the team that discovered “learned helplessness.” We found that dogs, rats, mice, and even cockroaches that experienced mildly painful shock over which they had no control would eventually just accept it, with no attempt to escape. It was next shown that human beings do the same thing. In an experiment published in 1975 by Donald Hiroto and me, and replicated many times since, subjects are randomly divided into three groups. Those in the first are exposed to an annoying loud noise that they can stop by pushing a button in front of them. Those in the second hear the same noise but can’t turn it off, though they try hard. Those in the third, the control group, hear nothing at all. Later, typically the following day, the subjects are faced with a brand-new situation that again involves noise. To turn the noise off, all they have to do is move their hands about 12 inches. The people in the first and third groups figure this out and readily learn to avoid the noise. But those in the second group typically do nothing. In phase one they failed, realized they had no control, and became passive. In phase two, expecting more failure, they don’t even try to escape. They have learned helplessness.)

Although the study of Positive Psychology as a distinct movement in psychology is said to have begun with Martin Seligman's Presidential Address to the American Psychological Association, earlier psychologists sporadically noted that some individuals were able to make greater use of resources available to them than were other individuals.<sup>33</sup> Interestingly, there is a long-standing Native American fable attributed to a Cherokee elder that describes a fight between two wolves that each person has inside themselves, one a good wolf and the other an evil wolf.<sup>34</sup> Despite any uncertainty about origins, Positive Psychology began to advance at a much greater pace after Seligman recognized it in his speech to the American Psychological Association.

Some studies dealing with Positive Psychology reveal it could make lawyers more effective at their jobs and healthier in general. The broaden-and-build theory, which was developed by Barbara Fredrickson, a professor of psychology at University of North Carolina, states that positive emotions can broaden a person's capacity for thought and action,<sup>35</sup> as well as build a person's intellectual, physical and emotional resilience.<sup>36</sup>

Positive Psychology is sometimes utilized by athletes to elicit and maintain high levels of performance.<sup>37</sup> It is not uncommon to hear a

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<sup>33</sup> See generally Jeffrey J. Froh, *The History of Positive Psychology: Truth Be Told*, NYS PSYCHOLOGIST (May/June 2004), available at [http://mina.education.ucsb.edu/janeconoley/ed197/documents/Froh\\_TheHistoryofPosPsych.pdf](http://mina.education.ucsb.edu/janeconoley/ed197/documents/Froh_TheHistoryofPosPsych.pdf).

<sup>34</sup> See *Native American Legends: Two Wolves: A Cherokee Legend*, <http://www.firstpeople.us/FP-HTML-Legends/TwoWolves-Cherokee.html> (last visited Mar. 24, 2015) (An old Cherokee is teaching his grandson about life. "A fight is going on inside me," he said to the boy. "It's a terrible fight and it is between two wolves. One is Evil – he is anger, envy, sorrow, regret, greed, arrogance, self-pity, guilt, resentment, inferiority, lies, false pride, superiority, and ego." He continued, "The other is good – he is joy, peace, love, hope, serenity, humility, kindness, benevolence, empathy, generosity, truth, compassion, and faith. The same fight is going on inside you – and inside every other person, too." The grandson thought about it and then asked his grandfather, "which wolf will win?" The old Cherokee simply replied, "The one you feed.").

<sup>35</sup> Peterson and Peterson, *supra* note 2, at 402.

<sup>36</sup> *Id.* at 404.

<sup>37</sup> Niyc Pidgeon, *Positive Psychology for Peak Performance*, THE SPORT IN MIND (Sept. 5, 2013) <http://www.thesportinmind.com/articles/positive-psychology-for-peak-performance/> (last visited Feb. 12, 2015) (Higher order skills associated with the management of emotions may be related to the positive psychology concepts of resilience and emotional intelligence. Resilience is defined as the positive capacity to be able to deal with stress and adversity, and is developed through a combination of lower order constructs of optimism and self-awareness, and positive emotions. Resilience is characterized by the ability to adapt to changing situations, to learn from adversity, rise above it, and perform even better. Self-awareness is also important when looking to develop emotional intelligence. Emotional intelligence is a skill, rather than being fixed, and as such can benefit from the adoption of a growth mindset, as discussed previously. Emotional intelligence encompasses the ability of an athlete to recognize his or her own emotional state, to be able to sense

championship athlete recount having visualized the positive outcome of a competition before it occurred. Although the athlete has surely invested countless hours, if not years, training and preparing for the competition, yet they have found that positive thoughts enhance performance of even the most prepared, well-trained athlete. Negative thoughts and emotions are counterproductive at that point. Similarly, Positive Psychology can cultivate characteristics in lawyers that will serve them well on several fronts: professionally, personally, physically and mentally.<sup>38</sup>

### B. *Pro Bono Legal Services*

Perhaps the most fundamental exercise lawyers in solo practice can do to improve resilience is to participate in a program to provide pro bono services and know that he or she is doing good.<sup>39</sup> The ability

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emotion in others, to recognize how to motivate themselves to create peak performance, and to be able to build productive relationships. In sport, developing emotional intelligence can enhance an athlete's ability to control emotional impulses that may lead to poor performances, create emotions that lead to good performances, and afford athletes with the discipline to know when to do each.)

<sup>38</sup> Barbara L. Fredrickson & Christine Branigan, *Positive Emotions Broaden the Scope of Attention and Thought Action Repertoires*, NIH PUBLIC ACCESS AUTHOR MANUSCRIPT (May 1, 2005), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3156609/> (last visited Mar. 1, 2015) (Whereas the narrowed thought-action repertoires of negative emotions were likely adaptive to our ancestors within specific threatening instances, the broadened thought-action repertoires of positive emotions were likely adaptive over the long-run. Broadened thought action repertoires gain significance because they can build a variety of personal resources (Fredrickson, 1998, 2001). These resources may include physical resources (e.g., physical skills, health; Boulton & Smith, 1992; Danner, Snowdon, & Friesen, 2001), social resources (e.g., friendships, social support networks; Aron, Norman, Aron, McKenna, & Heyman, 2000; Lee, 1983), intellectual resources (e.g., knowledge, theory of mind, intellectual complexity, executive control; Csikszentmihalyi & Rathunde, 1998; Lesley, 1987; Panksepp, 1998), and psychological resources (e.g., resilience, optimism, creativity; Folkman & Moskowitz, 2000; Fredrickson, Tugade, Waugh, & Larkin, 2003). Importantly, the personal resources accrued during states of positive emotions are durable—they outlast the transient emotional states that led to their acquisition. As such, these resources can function as reserves to be drawn on later, to improve coping and odds of survival.)

<sup>39</sup> Maren Robinson, *The Benefits of Volunteerism in the Law*, 42-JUN BOS. B. J. 8, 13-14 (Cotton Mather once said: "If any man ask, Why is it so necessary to do good? I must say, it sounds not like the question of a good man." The moral pluralism of our modern society as well as the breadth and diversity of the legal profession allow attorneys fairly to ask: Why should we do pro bono? The answer from a number of legal perspectives is because it is morally and economically the right thing to do. The benefits that flow from it serve both important individual and professional goals for attorneys. Nevertheless, many attorneys regularly participating in pro bono work acknowledge that, whatever the benefits to us as legal professionals, the most satisfying benefit is derived from not turning away from another human being in need.). See also Christopher Bergland, *Positive Actions Build Social Capital and Resilience: Prosocial behavior improves well-being in times of crisis*, PSYCHOLOGY TODAY (June 17, 2013), available at <https://www.psychologytoday.com/blog/the-athletes-way/201306/positive-actions-build-social-capital-and-resilience> (last visited March 20, 2015) (Social capital is the personal or economic benefits derived from creating

to use the power of the legal profession to help those in need of assistance can give meaning and an altruistic satisfaction to balance the cynicism that can arise many other times in the practice of law.<sup>40</sup> New attorneys at the SPC have an annual pro bono services requirement of fifty hours, although they are encouraged to provide more pro bono services than the minimum. We also encourage the SPC attorneys to consider low bono services, which allow those of moderate means, but who do not qualify for pro bono services, to have legal representation.<sup>41</sup> There is a vast population of potential clients who need legal

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strong social networks. Social connectivity not only impacts the happiness levels of individuals and groups, it makes people more resilient in times of crisis. John Helliwell has found that humans are happier when they practice prosocial behavior and ‘do the right thing.’ According to Helliwell, “Communities that stick together and do good for one another cope better with crises and are happier for it.” Prosocial behavior, or “voluntary behavior intended to benefit another,” consists of actions which “benefit other people or society as a whole,” “such as helping, sharing, donating, co-operating, and volunteering.” Ideally, prosocial behavior occurs when someone is altruistic and helps another person without expecting something in return. More realistically, prosocial behavior is a blend of empathy and concern about the welfare and rights of others, combined with egoistic or pragmatic motivations. Many studies have confirmed that prosocial behavior and social connectivity are key to well-being. Empathy has deep roots in our evolutionary biology. The warm fuzzy feeling we get from being nice is woven into our human nature and is universal.)

<sup>40</sup> Deborah L. Rhode, *Rethinking the Public in Lawyers’ Public Service: Pro Bono, Strategic Philanthropy, and the Bottom Line*, 77 *FORDHAM L. REV.* 1435, 1436-1437 (Part of what individuals find fulfilling about charitable work is a sense that they are expressing moral values and serving broader social objectives. A wide array of evidence suggests that selfless action is good for the self; it enhances satisfaction, health, and self-esteem. Moreover, as a practical matter, encouraging individuals to engage in public service for intrinsic reasons rather than extrinsic rewards serves societal objectives. It is generally less expensive and more effective to rely on internal motivations than on external incentives and sanctions to ensure quality assistance); see also Kathryn E. Story, *Thriving in Times of Change: Mastering Resilience in Legal Practice*, ACLEA 49<sup>TH</sup> ANNUAL MEETING (Aug. 3-6, 2013) [http://c.yumcdn.com/sites/www.aclea.org/resource/collection/B3FC6413-704E-4E77-B02E-0219FC78FED5/33\\_-\\_Thriving\\_in\\_Times\\_of\\_Change.pdf](http://c.yumcdn.com/sites/www.aclea.org/resource/collection/B3FC6413-704E-4E77-B02E-0219FC78FED5/33_-_Thriving_in_Times_of_Change.pdf) (last visited Mar. 22, 2015) (Meaning- finding your signature strengths and putting them to work in the service of an inspiring purpose

- Self-awareness is key to developing meaning
- Meaning is the motivation that moves us to push ourselves to the limit
- Contributing to something bigger than yourself creates meaning
- Resilient people are goal-oriented: intrinsic, self-determined, authentic goals
- Process of working towards goal equally important as attaining it
- Meaning is the highest form in the progression of happiness: from pleasure to engagement to meaning).

<sup>41</sup> Luz E. Herrera, *Encouraging the Development of “Low Bono” Law Practices*, 14 *U. MD. L.J. RACE, RELIGION, GEND. & CLASS* 1, 3-4 (Low bono is a term that many bar leaders, law faculty and new graduates have heard but may not fully understand. A definition of low bono is not yet included in Black’s Law Dictionary but the frequency of its use is increasing in the legal profession. Low bono is used synonymously with the practices of offering reduced legal fees. Low bono fee arrangements embrace the idea that lawyers should make legal services affordable for those who cannot afford market rates. It is a system of billing that takes into account the financial constraints and the legal needs of

services, but may not be able to afford the fees charged by traditional law practices that are unable or unwilling to charge less, offer flat-fee representation or unbundled legal services.<sup>42</sup>

#### IV. APPLICATION OF PSYCHOLOGICAL RESILIENCE TO LAW INCUBATORS

Given that lawyers are prone to depression and other Detrimental Manifestations, helping those in the legal profession develop Psychological Resilience through Positive Psychology seems like a sound prophylactic remedy. If lawyers learn to recognize the risks and prevalence of Detrimental Manifestations in the legal profession prior to the onset of problems, they may be more inclined to be on the lookout for symptoms. Teaching about these risks in law school may not be as effective because law students generally do not view themselves as lawyers yet (although I've encountered a 1L or two who would disagree) and might be inclined to view the problem as likely to happen to others, but not them. Teaching about the risks once lawyers have a year or two of practice experience under their belts might be too late. By then, they may already be settling into practices and routines that include habits leading to depression and other Detrimental Manifestations. While nascent attorneys are learning the actual practice of law in a structured environment such as an incu-

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average means Americans. In a low bono fee arrangement a lawyer agrees to charge her client a lower rate for her services, not a discount for work performed. Still, what constitutes a low bono fee varies based on the market rate of the particular geographic region where the lawyer practices. In a community where it is common to find hourly attorney rates of \$300, a low bono rate can be as high as \$150 and still be considered affordable. Generally, a low bono rate is 40-50% lower than the prevailing market rate.).

<sup>42</sup> Luz E. Herrera, *Educating Main Street Lawyers*, 63 J. LEGAL EDUC. 189, 192-193 (Unfortunately, the unmet legal services need is not just an issue for the poor. Millions of individuals in our country experience legal problems annually but do not earn enough to hire lawyers. Many middle-income individuals, living from paycheck to paycheck, do not qualify for free legal services and are priced out of the lawyer marketplace. The housing market crises and the economic downturn increased the number of Americans living below the poverty line or those who, despite their stable income, now are classified as near poor. Many facing evictions or foreclosures are, for the first-time, confronted with an issue that requires involvement with the legal system. In California, it was estimated that in 2000 more than 7.5 million individuals were not poor enough to qualify for free legal services but earned at or below the state median income. This group struggles to find affordable legal advice for common matters such as housing, government benefits, consumer rights, employment law and other domestic concerns. Further, some individuals who are faced with long periods of unemployment begin their own businesses. These business owners also require legal counsel when determining how to comply with government regulations, state laws and tax matters.).

bator or law firm, they should also be encouraged to develop positive habits that will keep them resilient during their career.<sup>43</sup>

*A. Exercises to Improve Psychological Resilience and Assessments to Measure Progress*

This section will discuss some of the exercises that have been utilized at the SPC to develop and improve Psychological Resilience. This is by no means an exhaustive or authoritative list of exercises. Exercises and assessments should be tailored to best fit the structure and personnel of the particular incubator. There are a variety of resources available, both free of charge and for a fee, to guide law incubator directors in learning more, comparing, and selecting exercises that might fit their specific incubator program. The University of Pennsylvania's website, Authentic Happiness, has a number of very good Psychological Resilience exercises.<sup>44</sup> Recommendations from the U.S. Army resilience study indicated that Psychological Resilience training should be designed to integrate with existing programs.<sup>45</sup> Therefore, to the extent Psychological Resilience exercises can conform to the existing structure of the incubator program, the more likely they are to be accepted by new attorneys.

The Values in Action Inventory of Strengths ("VIA"), which is available on the Authentic Happiness website is a detailed, 240 question tool for appraisal of strengths that allows for greater self-aware-

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<sup>43</sup> Debra C. Weiss, *Law Firms Should Follow Army's Lead, Try Resilience Training, Psych Expert Says*, ABA JOURNAL, (Apr. 20, 2011), available at [http://www.abajournal.com/news/article/law\\_firms\\_should\\_follow\\_armys\\_lead\\_try\\_resilience\\_training\\_psych\\_expert\\_say/](http://www.abajournal.com/news/article/law_firms_should_follow_armys_lead_try_resilience_training_psych_expert_say/) (last visited Mar. 26, 2015) (Large law firms would be well-advised take the lead from the Army, which is training its recruits in resilience skills, according to a lawyer who teaches positive psychology at the University of Pennsylvania. Writing at the Careerist blog, lawyer and professor Dan Bowling says the Army's efforts should get lawyers' attention, since they suffer from mental and emotional disorders at a higher rate than other professionals. "It is time for BigLaw to incorporate training based on these principles into its associate orientation programs, or for interested individuals to pursue it on their own," writes Bowling, who is also a senior lecturing fellow at Duke Law School.).

<sup>44</sup> See generally *Authentic Happiness*, AUTHENTICHAPPINESS.ORG at <http://www.authenticahappiness.org/> (containing a wealth of information, assessments and other resources).

<sup>45</sup> Lisa S. Meredith et al., *Promoting Psychological Resilience in the U.S. Military*, RAND CTR. FOR MIL. HEALTH POL'Y RESEARCH, pp. 74-75. (Resilience programs must be designed to dovetail with existing training and community-based programs. At the individual and unit levels, regularly scheduled training should include materials that capture the factors described in this monograph. An excellent example of this is the Marine OSCAR program, which delivers resilience concepts in a format already familiar to Marines alongside existing operational training. Chapel and family programs are ideal examples that promote family and community resilience using existing structures and programs in the community.).

ness for attorneys.<sup>46</sup> The SPC also has a volunteer trained in the enneagram system<sup>47</sup> conduct a personality typing as a structured means of introducing principles of self-awareness to the attorneys. Since the VIA and enneagram both define characteristic strengths and weaknesses for personality types, we also discuss strategies to build a law practice incorporating those strengths and weaknesses. Having the attorneys concentrate on using and developing their strengths in dealing with situations they encounter in their practices can make them more resilient and less prone to Detrimental Manifestations.<sup>48</sup>

At the SPC monthly mandatory meetings, the attorneys, mentors and director have a round-robin discussion that lasts for approximately two hours. This meeting is an opportunity to discuss each

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<sup>46</sup> Peterson and Peterson, *supra* note 2, at 389-390 (Peterson and Seligman have developed an assessment tool, called the VIA Inventory of Strengths, that identifies which character strengths an individual most strongly exhibits and celebrates as his or her own. An individual's top, or "signature," strengths prove to be mostly stable over time, though they can change in response to significant life events or to concerted efforts at lifestyle change. While exhibiting any of the twenty-four character strengths is associated with life satisfaction, Peterson and his colleagues have found that the strengths most strongly associated with happiness are love, hope, curiosity, gratitude, and zest. Other findings have been equally interesting: for instance, "Students with the strengths of perseverance, prudence, and love earn better grades, even when ability test scores are held constant." Studies at the U.S. Military Academy have shown that the strength of hope predicts who will stay in the service. And the strength of zest is associated with perceiving one's life work as a calling, as opposed to simply a job. The more researchers learn about which strengths correlate with which positive outcomes—for instance, success in law school—the more valuable it will be for people to learn about the VIA and reaffirm these strengths in their daily lives).

<sup>47</sup> See generally *Enneagram of Personality* [http://en.wikipedia.org/wiki/Enneagram\\_of\\_Personality](http://en.wikipedia.org/wiki/Enneagram_of_Personality) (last visited Mar. 16, 2015); see also Tony Schwartz, *Seeing Through Your Blind Spots*, HARV. BUS. REV., (Aug. 15, 2012) available at <https://hbr.org/2012/08/seeing-through-your-blind-spots.html>.

<sup>48</sup> Peter H. Huang and Rick Swedloff, *Authentic Happiness & Meaning at Law Firms*, 58 SYRACUSE L. REV. 335, 344 (2008) (Identifying and learning signature strengths can help law students find law school courses and law firm associates find practice areas that are personally fulfilling and meaningful, and can help law firms and associates craft their work to become more personally fulfilling and meaningful. Seligman and psychologist Christopher Peterson spearheaded a team of prominent psychologists, psychiatrists, and youth development practitioners and identified six core virtues: wisdom and knowledge, courage, humanity, justice, temperance, and transcendence. Each core virtue can be divided further into a number of strengths, resulting in twenty-four human character strengths, which all meet a set of criteria, including these: each strength is malleable, valued for its own sake, and valued by almost every culture. The virtue of wisdom and knowledge is divisible into the cognitive strengths of creativity, curiosity, open-mindedness, love of learning, and perspective. Courage consists of the emotional strengths of bravery, persistence, integrity, and vitality. Humanity is made up of the interpersonal strengths of love, kindness, and social intelligence. Justice is comprised of the civic strengths of citizenship, fairness, and leadership. Temperance contains the strengths of forgiveness and mercy, humility/modesty, prudence, and self-regulation. Finally, transcendence involves the strengths of awe, gratitude, optimism, playfulness, and spirituality.).

other's practices and experiences. These meetings are an opportunity for each person, new attorney and mentor alike, to report on five topics: (i) things (professionally or personally) for which they're grateful,<sup>49</sup> (ii) recent accomplishments in their law practice, (iii) pro bono cases on which they're working and the good they see coming from those cases, (iv) some challenges they're facing, (v) failures they've experienced recently, if any. The monthly meetings give the group an occasion to express gratitude and celebrate the successes, achievements and good fortunes of one another, but also to examine mistakes and failures. This is an excellent opportunity for the mentors and meeting leader to remind the attorneys that mistakes are an opportunity to learn in their young legal careers. Very often the mentors will recall a similar mistake they (or other attorneys they know) have made similar mistakes. Then, with a positive outlook, we examine the actions and circumstances involved in the mistakes and failures to find silver linings in what could be dark clouds. Frequently the attorney who made the mistake takes ownership of the situation and comments on how they could have handled the situation differently. The examination of the event in a non-threatening environment allows all of the attorneys to realize that they control the events in their law practice, including those that could be viewed as setbacks. The monthly meetings further enhance camaraderie and an optimistic view that bad situations are not permanent or unavoidable. We also

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<sup>49</sup> See THE IMPORTANCE OF GRATITUDE, An Official UMass Dartmouth Web Page Publication, available at <http://www.umassd.edu/counseling/forparents/recommendedreadings/theimportanceofgratitude/> (last visited March 29, 2015) (Researchers like Martin Seligman, Robert Emmons, and Michael McCullough are turning their attention to the study of gratitude and its relationship to health and mental well-being. I will present some of their findings here to help us understand how gratitude is helpful and why it's important to our well-being.

- People who keep gratitude journals on a weekly basis have been found to exercise more regularly, have fewer physical symptoms, feel better about their lives as a whole, and feel more optimistic about their upcoming week as compared to those who keep journals recording the stressors or neutral events of their lives.
- Daily discussion of gratitude results in higher reported levels of alertness, enthusiasm, determination, attentiveness, energy, and sleep duration and quality. Grateful people also report lower levels of depression and stress, although they do not deny or ignore the negative aspects of life.
- People who think about, talk about, or write about gratitude daily are more likely to report having helped someone with a personal problem or offered emotional support to another person.
- Those with a disposition towards gratitude are found to place less importance on material goods, are less likely to judge their own or others success in terms of possessions accumulated, are less envious of wealthy people, and are more likely to share their possessions with others.
- Emerging research suggests that daily gratitude practices may have some preventative benefits in warding off coronary artery disease.).

invite the attorneys who have graduated from the SPC to return for the monthly meetings when their schedules permit. There are situational opportunities to discuss Psychological Resilience in addition to the scheduled monthly meetings.

There are a variety of assessment instruments available to measure increases in Psychological Resilience.<sup>50</sup> Generally, the type of assessment adopted should depend on the exercises used and the structure and personnel at the law incubator.

### *B. Challenges to Implementation*

Perhaps the greatest challenge to implementation of Psychological Resilience training could be the buy-in on the concept of Psychological Resilience and Positive Psychology. The U.S. Army program noted several challenges to implementation. The most significant one was lack of support by military leadership.<sup>51</sup> Regardless of whether the new attorneys buy in to the concepts of Psychological Resilience and Positive Psychology, they have the pro bono requirement that will build resilience. However, to obtain the greatest benefit from the program, buy-in of the Psychological Resilience exercises is imperative.

To address the buy-in challenge, during orientation for new SPC attorneys, we present them with statistical information regarding solo practitioners and the incidence of Detrimental Manifestations that can affect them personally and professionally. I impress upon them that this is *not* law school any more. This is a word of caution to them as colleagues who have recently entered a profession for which I have great respect. I offer to them that if they truly feel Psychological Resilience exercises have nothing to offer them, the exercises will not

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<sup>50</sup> See generally *Authentic Happiness*, *supra* note 44; see also Dr. Aaron Jarden, *Positive Psychological Assessment: A practical introduction to empirically validated research tools for measuring wellbeing*, available at [http://www.positivepsychology.org.nz/uploads/3/8/0/4/3804146/workshop\\_4\\_-\\_dr\\_aaron\\_jarden\\_-\\_positive\\_psychological\\_assessment\\_workbook.pdf](http://www.positivepsychology.org.nz/uploads/3/8/0/4/3804146/workshop_4_-_dr_aaron_jarden_-_positive_psychological_assessment_workbook.pdf) (last visited March 20, 2015).

<sup>51</sup> Meredith, *supra* note 45, at 69 (There were five types of barriers to implementation and program operation commonly identified by the representatives of resilience programs we reviewed. The most prevalent barrier to program success was lack of support from military leadership. Other barriers included logistical challenges associated with coordinating training efforts and program events in the context of a dynamic and demanding military environment. Limited funding was also mentioned as a barrier to sustainment and expansion of many resilience programs, particularly with regard to bridging mental health and military training paradigms—neither of which are fully aligned with resilience paradigms. Several programs also mentioned the challenges of tailoring program content to the military audience and the stigma of mental health. Despite these barriers, many programs were able to overcome them. Some of the primary lessons were to involve senior leadership early in the program development process, adopt a flexible curriculum, and reorient the content to emphasize strength building and similarity to physical fitness.).

be forced on them. I tell them that I will give them a few days to think about it before deciding whether or not they want to include Psychological Resilience exercises in their incubator regimen. So far, we have enjoyed one hundred percent buy-in.

## V.

### CONCLUSION

Recent law school graduates who form solo practices face increasing pressure both personally and professionally. They face the challenges of learning under intense time pressure the substantive practice of law, client management, and grasping the intricacies of practice management while their peers who have chosen a more traditional entry to the legal profession are gradually inculcated with such knowledge. These solo practitioners need some instrumentality that will protect and prepare them for the stress and pressure they will face. Whether they practice as litigators or in the transactional setting, their practice areas tend to be zero-sum games, which can amplify the stress. If they do not develop some coping mechanism, the sudden exposure to the stresses and challenges of the practice of law may cause them to succumb to Detrimental Manifestations.

Law incubators are the ideal setting to introduce exercises that can develop Psychological Resilience. The exercises can be adopted and incorporated with minimal expense and time commitment. Once the new attorneys have committed to the notion that Psychological Resilience can be beneficial, buy-in and implementation can proceed quickly. There are simple, manageable steps to implement Psychological Resilience training. The attorneys who have participated in Charlotte School of Law's Small Practice Center have found value in the exercises to develop Psychological Resilience. If they carry those exercises with them as they travel through their legal careers, they will be far less likely to suffer from many of the psychological pitfalls that plague many members of our profession.