

# WIDENING THE LENS, SHARPENING THE FOCUS: MENTAL HEALTH AND THE LEGAL PROFESSION

*The Honorable Bernice Donald\* & Alex Bransford\*\**

## INTRODUCTION

Consider this: you are sitting on a bench in the back of a courtroom. The judge mounts the bench and calls the first case—not yours. With a muffled sigh, you lean back. As the clock ticks and your restless anxiety accrues, you think about your client, who will certainly not want to pay for this downtime. You know money is short at the firm you started; overhead costs don't care if clients can't pay. You recognize opposing counsel; they sit together with the relaxed confidence that comes from representing a wealthy client with deep and forgiving pockets. Waiting on this preliminary conference is wasted time for you, time for which your client will not pay and time you could have spent working on other files sitting stale on your desk. For opposing counsel, though, the wait may be mere annoyance.

Or consider this: your paralegal and secretary have left for the day, which gives you a moment to pause at your desk. With your face in your shaky hands, you finally whisper the words to yourself: “*I need help.*” You have known this for months, because these pills were never intended for daily use, and the idea of a mere happy hour seems quaint, but it is physically relieving to put those words out there. What next? You fire your computer up and search “lawyer mental health.” Why do these websites keep suggesting inpatient treatment for substance abuse? What would happen to your firm, to all these cases with looming deadlines? “*Sorry, Your Honor, I’m going to rehab.*” Twenty-eight days? Your clients would never trust you again, right? You read the suggestion that firms appoint a go-to person to manage leaves of absence for mental health treatment. What about you? You are the firm. Even if you pulled off the twenty-eight-day escape and passed off your cases to a friendly attorney, who would thereafter hold you accountable? How could you trust yourself to step back into the same environment that got you here in the first place? These questions pile up in your head, louder and

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louder, until you lean back, physically and metaphorically throw your hands up, and say: “*Another day. I’ll get help another day.*”

When considering mental health in our profession, often forgotten are the unique challenges that solo and small-firm attorneys face. We seek here to explore these challenges by applying entrepreneurial and small-business-ownership research to solo and small-firm lawyers, refusing to silo legal academia from the robust research we cull from other fields. Solo attorneys are entrepreneurs,<sup>1</sup> and any consideration of challenges unique to them must utilize preexisting research from other fields. Lawyers face inordinate mental health challenges. Entrepreneurs struggle too. What, then, are the challenges that entrepreneurial lawyers face? What can we—law schools, bar associations, court systems, and the lawyers themselves—do to help them?

## I. THE PROBLEM

### A. *The Mental Health of Attorneys Generally*

We start with lawyers in general. There is no shortage of research showing that lawyers experience greater mental health issues as compared to both the general population and similarly educated professionals.<sup>2</sup> In 2016, the American Bar Association (ABA) partnered with the Hazelden Betty Ford Foundation to conduct a comprehensive study of mental health in the profession.<sup>3</sup> From a large sample of nearly 13,000 attorneys, the study found that more than 21 percent of lawyers qualified as problem drinkers,<sup>4</sup> nearly *four times* the rate in the general population and double the rate of other highly educated professionals.<sup>5</sup> Over a quarter of lawyers struggle with depression, 19 percent show symptoms of anxiety, and over 10 percent express suicidal thoughts.<sup>6</sup>

Why is this? One set of factors is internal to lawyers themselves. For one, stress is baked into the profession. What makes a successful lawyer—be it perfectionism or a need for control—may also make a stressed lawyer.<sup>7</sup> So

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1. So, too are the small-firm lawyers we consider in this Article. We do not set any particular size limit when considering small firms, though we refer to those firms in which the lawyers are also the owner-managers. We therefore largely refer to these lawyers together as “entrepreneurial lawyers.”

2. AM. BAR ASS’N, ABA PROFILE OF THE LEGAL PROFESSION 99–102 (2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> [<https://perma.cc/KY33-5NCW>]; see also Rosa Flores & Rose Marie Arce, *Why Are Lawyers Killing Themselves?*, CNN (Jan. 20, 2014, 2:42 PM), <https://www.cnn.com/2014/01/19/us/lawyer-suicides/index.html> [<https://perma.cc/UW83-KV9D>].

3. Thomas E. Schimmerling, *Addressing Impaired Attorneys*, LAW PRAC. MAG. (May 1, 2019), [https://www.americanbar.org/groups/law\\_practice/publications/law\\_practice\\_magazine/2019/MJ2019/MJ19Schimmerling](https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2019/MJ2019/MJ19Schimmerling) [<https://perma.cc/A7JK-MF26>].

4. Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 48–52 (2016).

5. AM. BAR ASS’N, *supra* note 2, at 99.

6. *Id.*

7. Brittany Stringfellow Otey, *Buffering Burnout: Preparing the Online Generation for the Occupational Hazards of the Legal Profession*, 24 S. CAL. INTERDISC. L.J. 147, 160 (2014).

too does the lawyerly need to remain constantly on alert for the ways in which things can go wrong. The blame, however, does not all rest on the lawyer's shoulders; environmental factors play a role as well. The profession is largely conflict driven, which creates psychological distress.<sup>8</sup> Student debt weighs on lawyers.<sup>9</sup> Attorneys often experience burnout as a result of long working hours, billing expectations, and the increasingly thin line between work and home.<sup>10</sup>

## 1. The Mental Health of Entrepreneurs

### a. *The Bad News*

Researchers have long studied entrepreneurship and small business ownership, resulting in a nuanced understanding of what draws people to such work arrangements, what stressors they face, what factors mitigate that stress, and the best ways to cope. We begin with the bad news: self-employment is arguably “one of the most stressful occupational choices.”<sup>11</sup> The work often requires exceedingly long hours, intense time pressures, and immense work effort.<sup>12</sup> It can be risky.<sup>13</sup> Entrepreneurs and small business owners often invest a large portion of their personal assets into their business ventures, so more than just their jobs are on the line.<sup>14</sup> They face great responsibility in making choices that could directly impact their businesses, and they directly bear the brunt of any mistakes.<sup>15</sup> Entrepreneurs and small business owners also often face a lack of resources that employees at large firms do not, including employees to whom the worker may delegate tasks, feedback from supervisors, and social support.<sup>16</sup> This lack of resources makes small businesses particularly vulnerable during times of economic shock; indeed, “[t]he predicament of entrepreneurs in difficult economic times is dire—struggling to keep a business afloat in a declining economy

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8. Andrea Ciobanu & Stephen M. Terrell, *Out of the Darkness: Overcoming Depression Among Lawyers*, GPSOLO, Mar./Apr. 2015, at 37, 38.

9. AM. BAR ASS'N, *supra* note 2, at 24–28.

10. Otey, *supra* note 7, at 154, 163.

11. Melissa S. Cardon & Pankaj C. Patel, *Is Stress Worth It?: Stress-Related Health and Wealth Trade-Offs for Entrepreneurs*, 64 APPLIED PSYCH. 379, 379 (2015).

12. Dov Eden, *Organizational Membership vs. Self-Employment: Another Blow to the American Dream*, 13 ORGANIZATIONAL BEHAV. & HUM. PERFORMANCE 79, 91 (1975).

13. E. Holly Buttner, *Entrepreneurial Stress: Is It Hazardous to Your Health?* 4 J. MANAGERIAL ISSUES 223, 223, 225 (1992) (noting the rate at which small businesses fail and describing the inherent pressure placed on the small business owner due to every decision carrying significant risks to the welfare of the business).

14. *Id.*; see also Chris Dawson, *Financial Optimism and Entrepreneurial Satisfaction*, 11 STRATEGIC ENTREPRENEURSHIP J. 171, 171 (2017); Claude Fernet et al., *The Psychological Costs of Owning and Managing an SME: Linking Job Stressors, Occupational Loneliness, Entrepreneurial Orientation, and Burnout*, 3 BURNOUT RSCH. 45, 47 (2016).

15. See Michael G. Goldsby et al., *Entrepreneurship and Fitness: An Examination of Rigorous Exercise and Goal Attainment Among Small Business Owners*, 43 J. SMALL BUS. MGMT. 78, 81 (2005).

16. See Denis C. Visentin et al., *Small Business Ownership and Mental Health*, 41 ISSUES MENTAL HEALTH NURSING 460, 460 (2020).

can have severe negative psychological effects on an entrepreneur,” including “helplessness, hopelessness, and desperation.”<sup>17</sup>

The reality is that entrepreneurs and small business owners often wear many hats that compound their stress. One line of research, role theory, identifies several sources of work-related stress.<sup>18</sup> Role ambiguity involves vagueness in job duties that makes it hard to meet one’s responsibilities.<sup>19</sup> Whereas an employee often has a clearly defined role, entrepreneurs must fulfill an array of often ill-defined roles.<sup>20</sup> Role conflict is the “simultaneous occurrence of two or more role sendings such that compliance with one would make more difficult compliance with the other.”<sup>21</sup> Entrepreneurs and small business owners face such role conflict both *at* work and as a conflict *between* work and home.<sup>22</sup> Role overload is when one’s resources and time are simply not enough to get the job done.<sup>23</sup> Entrepreneurs and business owners report greater role overload than do other employees.<sup>24</sup> Finally, “role insufficiency” refers to “conditions under which the education, training, skills, and experience of the [worker] are incompatible with or inadequate to the job requirements.”<sup>25</sup> When entrepreneurs faces some task they do not know how to tackle, whether through lack of experience or insufficient education, they experience role insufficiency.

Loneliness is another detriment to entrepreneurs’ mental well-being.<sup>26</sup> The self-employed often work alone or with a small number of colleagues and lack the support they might find in a larger organization.<sup>27</sup> Such loneliness extends not only to loneliness *at* the workplace but also to

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17. Jeffrey M. Pollack et al., *The Moderating Role of Social Ties on Entrepreneurs’ Depressed Affect and Withdrawal Intentions in Response to Economic Stress*, 33 J. ORGANIZATIONAL BEHAV. 789, 789 (2012).

18. Buttner, *supra* note 13, at 225–26; *see also* Antonio Ariza-Montes et al., *Can an Internal Locus of Control and Social Support Reduce Work-Related Levels of Stress and Strain?: A Comparative Study Between Spanish Owners and Managers*, 59 J. OCCUPATIONAL & ENV’T MED. 903, 904 (2017).

19. Pollack et al., *supra* note 17, at 803.

20. Visentin et al., *supra* note 16, at 460.

21. Buttner, *supra* note 13, at 225 (quoting DANIEL KATZ ET AL., *THE SOCIAL PSYCHOLOGY OF ORGANIZATIONS* 184 (2d ed. 1978)).

22. *Id.*

23. Pollack et al., *supra* note 17, at 803.

24. *See* David J. Prottas & Cynthia A. Thompson, *Stress, Satisfaction, and the Work-Family Interface: A Comparison of Self-Employed Business Owners, Independents, and Organizational Employees*, 11 J. OCCUPATIONAL HEALTH PSYCH. 366, 367 (2006).

25. Ariza-Montes et al., *supra* note 18, at 904. Though not itself referenced in research on role theory, we posit that “imposter syndrome” may be the flip side to such role insufficiency. Imposter syndrome is the sense of perceived fraudulence where high-achieving individuals “fail to internalize their accomplishments and have persistent self-doubt and fear of being exposed as a fraud or impostor.” Dena M. Bravata et al., *Prevalence, Predictors, and Treatment of Impostor Syndrome: A Systematic Review*, 35 J. GEN. INTERNAL MED. 1252, 1252 (2019).

26. Visentin et al., *supra* note 16, at 461; *see also* Ute Stephan, *Entrepreneurs’ Mental Health and Well-Being: A Review and Research Agenda*, 32 ACAD. MGMT. PERSPS. 290, 304 (2018).

27. Goldsby et al., *supra* note 15, at 81; *see also* Stephan, *supra* note 26, at 293.

loneliness resulting from the sacrifice of time with friends and family,<sup>28</sup> which itself generates more conflict between the competing interests of home and work.<sup>29</sup> Low levels of social interaction and support are major stressors among *all* workers,<sup>30</sup> so the inherently lonelier environment of entrepreneurship places strain on the self-employed.<sup>31</sup> Such loneliness is associated with higher levels of depression, generalized anxiety disorder, suicidal ideation, and burnout.<sup>32</sup> Working alone also limits brainstorming with colleagues or running ideas by them as a backstop, thus increasing the pressure of decision-making and increasing the resulting stress of decision-making responsibility.<sup>33</sup>

Though many entrepreneurial stressors are environmentally imposed, some of the strain is self-imposed. Entrepreneurs often place great responsibility on themselves to perform well.<sup>34</sup> They often associate their entire *identities* with their work ventures such that disappointments within their work translate into a sense of personal failure.<sup>35</sup> The loss of a job for the self-employed is significantly more harmful to the person's mental health than is the loss of a job for an employee.<sup>36</sup> Small business owners and entrepreneurs may also face guilt or feelings of low self-esteem at their inability to meet their families' expectations or their own ideals of independence and competence.<sup>37</sup> Beyond mere economic loss, entrepreneurs suffer disproportionately when faced with any sort of shock, be it a natural disaster or a personal emergency.<sup>38</sup>

Then we have optimism. Entrepreneurs are often more optimistic than others, as entrepreneurship offers "fertile conditions" for optimism because

28. Cardon & Patel, *supra* note 11, at 383.

29. Studies have shown that compared to other professions, entrepreneurs experience more work-family conflict despite characteristics of entrepreneurship that would seem to lend themselves to *less* conflict (e.g., scheduling flexibility and remote work), perhaps because of the increased level of "job involvement" (i.e., work obsession) shown in entrepreneurs. See Saroj Parasuraman & Claire A. Simmers, *Type of Employment, Work-Family Conflict and Well-Being: A Comparative Study*, 22 J. ORGANIZATIONAL BEHAV. 551, 565 (2001). This may, in part, explain why researchers consistently find entrepreneurship increases *work* satisfaction whereas the effect on *life* satisfaction is empirically weak. See Martin Binder & Alex Coad, *How Satisfied Are the Self-Employed?: A Life Domain View*, 17 J. HAPPINESS STUD. 1409, 1412–13 (2016).

30. Ariza-Montes et al., *supra* note 18, at 906.

31. David E. Gumpert & David P. Boyd, *The Loneliness of the Small-Business Owner*, HARV. BUS. REV., Nov.–Dec. 1984, at 18, 19; Visentin et al., *supra* note 16, at 461.

32. Manfred E. Beutel et al., *Loneliness in the General Population: Prevalence, Determinants, and Relations to Mental Health*, 17 BMC PSYCHIATRY, no. 97, Mar. 2017, at 1, 6; Fernet et al., *supra* note 14, at 46.

33. Gumpert & Boyd, *supra* note 31, at 19.

34. Cardon & Patel, *supra* note 11, at 383; see also Marcel Muenster & Paul Hokemeyer, *There Is a Mental Health Crisis in Entrepreneurship. Here's How to Tackle It*, WORLD ECON. F. (Mar. 22, 2019), <https://www.weforum.org/agenda/2019/03/how-to-tackle-the-mental-health-crisis-in-entrepreneurship> [<https://perma.cc/C9VE-Q2FF>].

35. Stephan, *supra* note 26, at 304.

36. Clemens Hetschko, *On the Misery of Losing Self-Employment*, 47 SMALL BUS. ECON. 461, 473 (2016); see also Stephan, *supra* note 26, at 304 (collecting studies).

37. Visentin et al., *supra* note 16, at 461.

38. Stephan, *supra* note 26, at 305.

uncertainty is high, the chances of success are seemingly within an entrepreneur's control, and the individual often has an emotional commitment to the outcome.<sup>39</sup> Why, then, do we discuss optimism in the section of this article covering the *negative* aspects of self-employment? Expectations. Though optimism undoubtedly has its benefits,<sup>40</sup> optimistic entrepreneurs risk overestimating their business prospects, and when the actual performance falls short of expectations, that discrepancy harms the entrepreneur.<sup>41</sup> Moreover, because optimists underestimate negative events, they may forgo taking precautions to mitigate those risks.<sup>42</sup>

As a result of these stressors, many entrepreneurs struggle with their mental health. One study found that 49 percent of a group of American entrepreneurs reported having at least one mental health condition, as compared to 32 percent of nonentrepreneurs.<sup>43</sup> The entrepreneurs also reported higher rates of ADHD (29 percent), depression (30 percent), substance use (12 percent), and bipolar disorder (11 percent).<sup>44</sup> The stress of entrepreneurship may also wear the body down: stress can lead to exhaustion or burnout, high blood pressure, weight gain, substance abuse, and neglecting exercise and diet.<sup>45</sup> And because these entrepreneurs work alone or in small groups, they have fewer coworkers who might notice signs of mental health disorders and, ideally, guide the individual to help.<sup>46</sup> This places the burden on the entrepreneur to recognize the symptoms of mental health conditions and then seek help. The failure to recognize symptoms of mental health conditions is one of the primary hindrances to seeking treatment.<sup>47</sup>

#### b. *The Good News*

There is, however, some good news. To contextualize this news, we begin with Robert Karasek's 1979 seminal work introducing the "Job Demand-Control" (JDC) model.<sup>48</sup> The model explains the occurrence of mental strain in the workplace based on two strands of workplace characteristics: job

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39. Dawson, *supra* note 14, at 172–74; *see also id.* at 174 (“[E]ntrepreneurs do indeed have higher levels of optimism, both in estimating their financial prospects as well as being optimistic over other nonfinancial domains.”).

40. *Id.* at 174 (citing Michael F. Scheier & Charles S. Carver, *On the Power of Positive Thinking: The Benefits of Being Optimistic*, 2 CURRENT DIRECTIONS PSYCH. SCI. 26, 27 (1993)).

41. *Id.* at 172; Visentin et al., *supra* note 16, at 461.

42. Dawson, *supra* note 14, at 172.

43. Michael A. Freeman et al., *The Prevalence and Co-occurrence of Psychiatric Conditions Among Entrepreneurs and Their Families*, 53 SMALL BUS. ECON. 323, 331 (2019).

44. *Id.* at 336.

45. Cardon & Patel, *supra* note 11, at 384 (collecting studies).

46. Visentin et al., *supra* note 16, at 460.

47. *See* NAT'L TASK FORCE ON LAW. WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 13 (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf> [<https://perma.cc/3HE8-UDBU>].

48. *See generally* Robert A. Karasek Jr., *Job Demands, Job Decision Latitude, and Mental Strain: Implications for Job Redesign*, 24 ADMIN. SCI. Q. 285 (1979).

demands and job control.<sup>49</sup> Job demands are quantitative aspects of the work, such as workload and time pressures.<sup>50</sup> Job control refers to the extent to which a person is able to control her tasks and work activity.<sup>51</sup> Jobs high in demand and low in control place workers at most risk of illness and reduced well-being. Jobs low in demand and high in control present the least risk.<sup>52</sup>

Therein lies the good news: because self-employment inherently provides higher levels of autonomy (i.e., job *control*)—which is, for many, the motivation for starting their own businesses<sup>53</sup>—applying the JDC model to self-employment suggests that the increased autonomy enjoyed by the self-employed acts as a buffer against the stressors inherent in the workplace (a theory referred to as the “buffer hypothesis”).<sup>54</sup> That “autonomy of self-employment provides individuals with various opportunities to use coping tools more effectively than employees.”<sup>55</sup> An entrepreneur who wants to take a break or take the firm in a new direction would have the flexibility to do so.<sup>56</sup> Studies have found that job demands can increase with almost no threat to psychological outcomes for the entrepreneur, *as long as* the individual retains job autonomy.<sup>57</sup>

Although beneficial, autonomy is not automatic, and the entrepreneur or business owner must make efforts to maintain that autonomy in the face of “autonomy threats,” such as an important assignment or client (“temporarily sacrificed job autonomy”) or financial constraints (“involuntarily lost job autonomy”).<sup>58</sup> Nor is such autonomy always a good thing. Autonomy gives the individual freedom to set the strategic direction of the business and make important decisions, but that decision-making responsibility may spur feelings of inadequacy or uncertainty. Autonomy gives the individual the

49. *Id.*

50. Jan Alexander Häusser et al., *Ten Years On: A Review of Recent Research on the Job Demand-Control (-Support) Model and Psychological Well-Being*, 24 WORK & STRESS 1, 2 (2010).

51. *Id.*

52. *Id.*

53. Sukanlaya Sawang et al., *Business Owner-Managers’ Job Autonomy and Job Satisfaction: Up, Down or No Change?*, 11 FRONTIERS PSYCH., no. 1506, July 2020, at 1, 1 (collecting studies). Such autonomy is the “degree to which the job provides individuals with freedom, independence, and discretion in work scheduling, decision making, and work methods.” *Id.*

54. Häusser et al., *supra* note 50. Although autonomy and “being one’s own boss” primarily drive satisfaction in entrepreneurship, other benefits of self-employment include increased flexibility, skill utilization, and higher perceived levels of job security. Mark Binder & Alex Coad, *Life Satisfaction and Self-Employment: A Matching Approach*, 40 SMALL BUS. ECON. 1009, 1012 (2013).

55. Holger Patzelt and Dean A. Shepherd, *Negative Emotions of an Entrepreneurial Career: Self-Employment and Regulatory Coping Behaviors*, 26 J. BUS. VENTURING 226, 235 (2011).

56. Toon W. Taris et al., *All Day and All of the Night: The Relative Contribution of Two Dimensions of Workaholism to Well-Being in Self-Employed Workers*, 22 WORK & STRESS 153, 160–61 (2008).

57. Jan de Jonge et al., *A Longitudinal Test of the Demand-Control Model Using Specific Job Demands and Specific Job Control*, 17 INT’L J. BEHAV. MED. 125, 132 (2010).

58. Sawang et al., *supra* note 53, at 3; Marco van Gelderen, *Entrepreneurial Autonomy and Its Dynamics*, 65 APPLIED PSYCH. 541, 560 (2016).

freedom to work whenever and wherever she wants, but that freedom may blur the lines between work and home. Autonomy frees the individual from working for a boss, but that also means the individual must directly face various stakeholders with an interest in the business.<sup>59</sup>

Under these conditions—high levels of stress and demand but also high levels of autonomy—some entrepreneurs thrive, while others struggle. Studies show that entrepreneurs who took on the jobs due to opportunity (“opportunity entrepreneurs”) had better mental health and well-being than those who set out on their own out of necessity (“necessity entrepreneurs”).<sup>60</sup> Opportunity entrepreneurs displayed higher levels of deliberate choice and experienced autonomy as a positive force.<sup>61</sup> Under the self-determination theory, individuals derive well-being only from autonomous action like voluntarily choosing self-employment; however, if circumstances *force* an individual into self-employment, that individual will not reap the same benefits even if the individual experiences the same level of autonomy as the opportunity entrepreneur.<sup>62</sup> Some studies also explain the difference between opportunity and necessity entrepreneurs’ mental health outcomes by pointing to differences in education levels, personality traits (including risk aversion and proactiveness), and work preferences (including the desire for autonomy or power).<sup>63</sup>

### B. *The Mental Health of Entrepreneurial Attorneys*

Solo practice merges the life of an entrepreneur with the life of an attorney.<sup>64</sup> Similarly, small-firm practice merges the life of a small business owner with the life of an attorney. Solo and small-firm attorneys comprise the majority of the legal profession,<sup>65</sup> though they receive less attention in the academic literature than attorneys in large firms despite being “the most enduring segment of the bar that has consistently helped individuals in our society navigate the democratic legal system we live in.”<sup>66</sup> Solo and small-firm attorneys must not only practice law, they must also manage businesses. In so doing, these attorneys combine the challenges of being a lawyer with the challenges of entrepreneurship and, as a result, we might expect such entrepreneurial lawyers to face immense threats to mental well-being.

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59. Sawang et al., *supra* note 53, at 9; van Gelderen, *supra* note 58, at 544.

60. Stephan, *supra* note 26, at 295; *see also* Peter van der Zwan et al., *Factors Influencing the Entrepreneurial Engagement of Opportunity and Necessity Entrepreneurs*, 6 EURASIAN BUS. REV. 273, 274 (2016).

61. *See, e.g.*, Binder & Coad, *supra* note 54, at 1029.

62. Binder & Coad, *supra* note 29, at 1413.

63. Stephan, *supra* note 26, at 295; *see also* van der Zwan et al., *supra* note 60, at 275–78, 287.

64. Carla Sanderson, *Going Solo: The Best Decision of My Legal Career*, LITIG., Fall 2019, at 54, 56 (“Solo practice is where entrepreneurship and the practice of law converge.”).

65. Brooke Moore, *2019 Solo & Small Firm*, AM. BAR ASS’N: ABA TECHREPORT (Dec. 4, 2019), [https://www.americanbar.org/groups/law\\_practice/publications/techreport/abatechreport2019/solosmallfirm19](https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/solosmallfirm19) [<https://perma.cc/T88Q-MNVW>].

66. Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 DENV. U. L. REV. 887, 898 (2012).



The data supports this expectation. The Hazelden Betty Ford Foundation study shows that solo practitioners scored higher than employees in all six other work environments on *each* subsection of the DASS-21 scale, a self-reported instrument to measure depression, anxiety, and stress.<sup>67</sup> The median score for solo practitioners on the depression scale was 4.27, with the second highest score (private firm practitioners) at 3.47.<sup>68</sup> The median score for solo practitioners on anxiety was 2.18, with private firm practitioners again ranking second at 2.01.<sup>69</sup> Finally, solo practitioners scored highest on the stress scale with a median of 5.22, followed by private firm practitioners at 5.11.<sup>70</sup>

What is making solo attorneys stressed, depressed, and anxious? For some, it's trying to manage the practice of law on top of managing a business, which many lawyers feel unprepared to do coming out of law school; or, if using the language of role theory: role insufficiency.<sup>71</sup> Lacking business acumen compounds the stress that all new lawyers face: How will I get clients? How do I set up an office? How do I actually manage my cases? Do I know enough law to properly advise my clients?<sup>72</sup> These are things that junior associates at larger firms largely do not have to worry about. Wearing this many hats places the solo lawyer not only at risk of role insufficiency (“I don’t know how to do this”) but also role ambiguity, conflict, and overload (“One person can only do so much”).<sup>73</sup> This is not to minimize the stress that lawyers at big firms face but instead is intended to note that entrepreneurial lawyers face an entirely different set of stressors *in addition* to those that all lawyers face. Learning both skills—how to be a lawyer and a business owner—at the same time “is a tall order” for which the entrepreneurial lawyer may be unprepared.<sup>74</sup>

It may also be the loneliness. The law is already one of the loneliest professions,<sup>75</sup> and the inherently lonely nature of entrepreneurship and small business ownership likely compounds that. Most solo lawyers work alone,

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67. Krill et al., *supra* note 4, at 50. The Hazelden Betty Ford Foundation study measured mental health by using the DASS-21 scale, a forty-two-item self-report test designed to measure the related negative emotional states of depression, anxiety, and tension/stress. See *Depression Anxiety Stress Scales (DASS)*, PSYCH. FOUND. OF AUSTL. (July 26, 2018), <http://www2.psy.unsw.edu.au/groups/dass> [<https://perma.cc/422W-6XLF>].

68. Krill et al., *supra* note 4, at 50.

69. *Id.*

70. *Id.*

71. See Ariza-Montes et al., *supra* note 18, at 904.

72. John Christian Waites & Fred Rooney, *What We Know and Need to Know About Law School Incubators*, 67 S.C. L. REV. 503, 504 (2016) (noting the primary concerns of new lawyers entering law school “incubators”); see also Gary Bauer, *Addressing the Needs of Solo/Small Firm Practitioners Through Law School Based Programs to Reduce Stress in Practice—Several Approaches*, 6 T.M. COOLEY J. PRAC. & CLINICAL L. 1, 2 (2003); K. William Gibson, *Flying Solo Without Flying Blind: Preparing to Make the Leap into Solo Practice*, 83 UMKC L. REV. 911, 911–12 (2015).

73. See Buttner, *supra* note 13, at 225.

74. Gibson, *supra* note 72, at 911.

75. Shawn Achor et al., *America’s Loneliest Workers, According to Research*, HARV. BUS. REV. (Mar. 19, 2018), <https://hbr.org/2018/03/americas-loneliest-workers-according-to-research> [<https://perma.cc/Z3NK-XLZY>].

and few outsiders may have interest in the “trials and tribulations” of the lawyer’s daily life.<sup>76</sup> Studies have found that such occupational loneliness, when combined with the standard job stressors of entrepreneurship, is a psychological mechanism leading to burnout—a state of physical, emotional, and mental exhaustion.<sup>77</sup> The loneliness may stem not only from the lack of actual coworkers but also from the choice the attorney must make between family or friends and managing the business.<sup>78</sup> Further, loneliness may also result from the lawyer’s need to always be “on” with potential clients at every turn, thus forcing the lawyer to put on a veneer of “I-have-it-togetherness,” which reduces the vulnerability and “realness” necessary to form true connections.<sup>79</sup>

Aside from the negative psychological effects of being alone, working alone also means there are fewer people to whom the lawyer might delegate the sorts of tasks that a partner or senior associate would pass down to juniors.<sup>80</sup> Being alone may also make the lawyer prone to making bad choices or getting bad advice, which may be one of the reasons that solo lawyers are disciplined more frequently than others.<sup>81</sup> There is no safety net.<sup>82</sup> The solitude may make it harder for the entrepreneurial lawyer to seek help in the event the lawyer wants treatment for, say, problematic drinking (which is itself more common in the lonely).<sup>83</sup> The inherent solitude of solo or small-firm practice might promote problematic drinking through the effects of loneliness and stress, while also making it difficult to both attend treatment and be held accountable after treatment. The practical challenges of obtaining help highlight one disadvantage of solo or small-firm practice.

Aside from the loneliness and stress of managing a business, solo and small-firm attorneys may also reap fewer benefits of autonomy than other entrepreneurs. Such autonomy—the buffer against the stressors of an entrepreneurial career<sup>84</sup>—is not automatic, and because law is a service profession, the entrepreneurial lawyer is beholden to the needs of a client and

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76. Gibson, *supra* note 72, at 912.

77. Fernet et al., *supra* note 14, at 45, 47.

78. See Cardon & Patel, *supra* note 11, at 383.

79. Shawn Healy, *Lawyer Loneliness: You’re Not Alone in Feeling Alone*, ATT’Y AT WORK (Aug. 10, 2018), <https://www.attorneyatwork.com/lawyer-loneliness> [<https://perma.cc/TER2-N697>].

80. Dan Heilman, *Handling the Anxiety of Being a Solo Lawyer*, DET. LEGAL NEWS (Nov. 25, 2016), <http://legalnews.com/detroit/1434342> [<https://perma.cc/6CL2-CYJW>].

81. See Leslie C. Levin, *Preliminary Reflections on the Professional Development of Solo and Small Law Firm Practitioners*, 70 FORDHAM L. REV. 847, 851 (2001) (collecting discipline statistics showing solo and small-firm lawyers receiving a disproportionate amount); see also Bauer, *supra* note 72, at 12 (“Loneliness and isolation have been two factors attributed to disciplinary problems with solo and small-firm attorneys.”).

82. Bauer, *supra* note 72, at 6.

83. One study found that loneliness had a significant effect on substance use through increased stress. Though loneliness was not itself associated with the *amount* of alcohol consumed, lonelier people did report more problematic drinking (such as problems in work due to drinking) and greater prescription medicine use. See Chris Segrin et al., *Indirect Effects of Loneliness on Substance Use Through Stress*, 33 HEALTH COMM’N 513, 516–17 (2018).

84. Häusser et al., *supra* note 50, at 2.

the demands of the court system. From tracking one's time in six-minute increments to attending a preliminary conference where little gets done,<sup>85</sup> the entrepreneurial lawyer may often face involuntarily lost job autonomy. Facing multiple responsibilities like this may wear down the lawyer's sense of autonomy, thus depleting the traditional barrier standing between the entrepreneur and stress.<sup>86</sup> Economic crises and downturns—such as the COVID-19 pandemic, which is having a “devastating impact on solo and small firm practitioners”<sup>87</sup>—not only reduce autonomy<sup>88</sup> but also pose a disproportionate risk of negatively affecting lawyers' mental well-being. After all, “[f]or entrepreneurs, one of the most taxing work-related causes of stress is economic decline” as “entrepreneurs are compelled to change their strategies, cut costs, reduce assets, and seek alternate revenue generation outlets.”<sup>89</sup> Lawyers in nearly all practice areas are experiencing similar negative consequences of the pandemic, but the effects of the pandemic may disproportionately affect entrepreneurial lawyers who rely on a sense of autonomy to act as a buffer against the stressors inherent in their work. Autonomy stems from the feeling that one is in control,<sup>90</sup> and economic shocks like a pandemic run the risk of disintegrating any sense of autonomy because the trajectory of the pandemic is out of any individual lawyer's control.<sup>91</sup>

The entrepreneurial lawyer may also not experience autonomy in the same way if that lawyer did not set out to become an entrepreneur. This tracks the distinction between necessity and opportunity entrepreneurship, whereby those who choose an entrepreneurial career reap the benefits of autonomy as a buffer against stress, while those who are entrepreneurs by necessity do not.<sup>92</sup> The 2008 recession sent more attorneys into solo practice as law firm and government hiring froze.<sup>93</sup> Though too early to tell, the pandemic may

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85. See REPORT OF THE COMMISSION TO EXAMINE SOLO AND SMALL FIRM PRACTICE 10–13 (2006) [hereinafter NYS COMMISSION REPORT], <http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/ssfreport.pdf> [<https://perma.cc/ZH6Y-KES2>] (explaining the disproportionate burden that preliminary conferences and other mandatory hearings place on solo attorneys); see also Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 596 (2015) (finding that billable hours led to a decreased sense of autonomy as well as increased alcohol use—although this is, of course, true for lawyers in all practice areas).

86. Fernet et al., *supra* note 14, at 51. The lawyer may also face *voluntarily* lost job autonomy if the lawyer chooses to, say, take on a particularly important matter or client. Sawang et al., *supra* note 53, at 3.

87. Jack Newsham, *NY State Bar Planning Help for Pandemic-Hit Solos, Small Firms*, N.Y.L.J. (Mar. 26, 2020, 1:42 PM), <https://www.law.com/newyorklawjournal/2020/03/26/ny-state-bar-planning-help-for-pandemic-hit-solos-small-firms> [<https://perma.cc/3QPW-PNR6>] (quoting Greenberg Traurig, LLP president Hank Greenberg).

88. Sawang et al., *supra* note 53, at 3 (describing financial constraints as an example of involuntarily lost job autonomy).

89. Pollack et al., *supra* note 17, at 791.

90. Stephan, *supra* note 26, at 293.

91. See, e.g., Michael Schroth, *Life and the Law During COVID-19: One Solo Practitioner's Experience*, OHIO LAW., Apr.–June 2020, at 20, 20.

92. Stephan, *supra* note 26, at 295 (collecting studies).

93. Herrera, *supra* note 66, at 887–88.

also lead to an influx of new solo or small-firm attorneys, as waves of new graduates enter a field doing little hiring.<sup>94</sup> These attorneys—if they do not understand the benefits of an entrepreneurial career and are entering by necessity—may not enjoy the same benefits of autonomy that lawyers who *choose* entrepreneurship enjoy.

There are, however, reasons to be optimistic about the mental health of entrepreneurial attorneys; in one study, 75 percent of solo attorneys expressed satisfaction in their decisions to become lawyers.<sup>95</sup> Some point to the flexibility inherent in solo work, while others like the creativity and independence a solo career allows.<sup>96</sup> Susan Cartier Liebel, founder of the Solo Practice University, explains that solo practice offers the chance for attorneys to define their own notions of success—whether that be success through money, through finding a good work-life balance, or through helping others.<sup>97</sup> In a sense, entrepreneurial law allows attorneys to “choose their own adventure.”<sup>98</sup>

Minority attorneys, who work in solo practice more so than white attorneys, are especially satisfied with solo practice.<sup>99</sup> Authors of one study proffer several possible explanations: for one, because minority solo attorneys work for themselves (i.e., are autonomous), they are less likely to face workplace discrimination than they would be at a larger firm.<sup>100</sup> Minority attorneys working at larger firms may also be constrained by “superiors’ tendency to implicitly or explicitly view them as less competent than their white peers” such that when they are no longer restricted by those biases, they are happier and more able to fully reap the benefits of

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94. See generally *Coronavirus: How Law Firms Are Handling the Downturn*, LAW360 (Dec. 23, 2020), <https://www.law360.com/articles/1264699/coronavirus-how-law-firms-are-handling-the-downturn> [<https://perma.cc/J854-C2SV>]; see also *Law Firm Job Hunting and Recruiting in the Age of COVID-19*, ABOVE THE L. (May 29, 2020, 5:17 PM), <https://abovethelaw.com/2020/05/law-firm-job-hunting-and-recruiting-in-the-age-of-covid-19> [<https://perma.cc/868M-S7QJ>] (describing hiring freezes at law firms).

95. The study, “After the JD,” gathered data from three sets of surveys in 2003, 2007, and 2012. The study also found that 76.9 percent of small-firm attorneys (i.e., attorneys at firms with two to twenty lawyers) were satisfied with their decision to become lawyers. See Mike Stetz, *Where the Happiest Lawyers Work*, 28 NAT’L JURIST, Fall 2018, at 20, 22–23 (citing GABRIELE PLICKERT, AM. BAR FOUND. & NALP FOUND. FOR L. CAREER RSCH. & EDUC., AFTER THE JD III: THIRD RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 52 tbl.6.2 (2014), [http://www.americanbarfoundation.org/uploads/cms/documents/ajd3report\\_final\\_for\\_distribution.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/ajd3report_final_for_distribution.pdf) [<https://perma.cc/BK5C-RLAG>]).

Public interest lawyers and legal services/public defenders were the most satisfied (87.6 percent and 86.1 percent, respectively). *Id.* Those in law firms of 101–250 lawyers and those in business but not practicing law were the least satisfied (64.8 percent and 63.4 percent, respectively). *Id.*

96. Herrera, *supra* note 66, at 913; Sanderson, *supra* note 64, at 56.

97. See generally Susan Cartier Liebel, SOLO PRAC. UNIV., <https://solopracticeuniversity.com/faculty/susan-cartier-liebel> [<https://perma.cc/LSZ9-TBY2>] (last visited Apr. 14, 2021).

98. Telephone Interview with Susan Cartier Liebel, Founder, Solo Prac. Univ. (Sept. 10, 2020).

99. See AM. BAR ASS’N, *supra* note 2, at 43; see also Milan Markovic & Gabriele Plickert, *The Paradox of Minority Attorney Satisfaction*, 60 INT’L REV. L. & ECON. 1, 5 (2019).

100. Markovic & Plickert, *supra* note 99, at 9.

autonomy.<sup>101</sup> Finally, the authors remark that solo attorneys often represent individuals who are members of their own communities, allowing the solo attorney to be of service to that community, which may act as a source of meaning and pride in “giving back.”<sup>102</sup> These findings related to drivers of minority attorney happiness track a broader study of attorney happiness, which found that the primary motivators of subjective well-being are internal factors—finding work that is meaningful and focusing on providing needed help to others—rather than external factors, such as grades and prestige.<sup>103</sup>

## II. THE SOLUTION

We turn now to an entirely nonexhaustive list of ways that our profession might help solo practitioners. In so doing, we apply the research culled from entrepreneurial and small-business-ownership studies and describe various successful initiatives and point out resources for further study.

### A. Law Schools

Often law schools teach law students how to be *employees* rather than their own employers, only nodding their head to law students who seek to hang out their own shingle and who thereby “cut[] in half the value of their degree.”<sup>104</sup> Few law students graduate with an understanding of the challenges and opportunities involved in starting one’s own firm.<sup>105</sup> Law schools should drop outdated notions of the prestige of herding students into large firms and instead prepare for the reality that many students will enter solo or small-firm practice.<sup>106</sup> Law schools should present an entrepreneurial career as a viable option rather than a necessity or a fallback. Doing so (and doing so early)<sup>107</sup> may increase the likelihood that students entering entrepreneurial careers will do so as opportunity entrepreneurs rather than necessity entrepreneurs.<sup>108</sup> Law schools could inform students of the benefits of these careers—the flexibility, the autonomy, the opportunity for

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101. *Id.*

102. *Id.* at 10.

103. See Krieger & Sheldon, *supra* note 85, at 592, 607.

104. Telephone Interview with Susan Cartier Leibel, *supra* note 98; see also Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 472 (2004). Matasar, one of the most stringent critics of legal academia, argues that law schools merely assume that their students’ future employers will actually teach the new lawyers how to be lawyers. *Id.* at 472. This assumption, of course, proves remarkably flawed when one considers a newly graduated solo attorney who has no such employer to fill in those gaps.

105. See Herrera, *supra* note 66, at 889.

106. *Id.* at 931–32 (explaining that the contraction in legal hiring after the Great Recession created “an unprecedented opportunity for local law schools to abandon outdated notions of prestige and to prepare lawyers to do the work legal services consumers need”); see also William Hornsby, *Challenging the Academy to a Dual (Perspective): The Need to Embrace Lawyering for Personal Legal Services*, 70 MD. L. REV. 420, 436–37 (2011).

107. Bauer, *supra* note 72, at 32 (“Many [law students] are unable to find employment after graduation and ‘hang out their shingle’ in desperation having given no thought to solo practice before graduation. They need to get the information early so that if they enter solo practice, they can do it by *choice and not by default.*” (footnote omitted)).

108. See Stephan, *supra* note 26, at 295.

creativity—while also being realistic with students about the challenges. Educating students about the realities allows these students to make an informed choice, and those students who do choose an entrepreneurial position will approach their careers with a mixture of optimism and healthy realism, mindful that overly optimistic entrepreneurs are some of the least satisfied entrepreneurs.<sup>109</sup>

Law schools should also consider their curricula. To reduce the stress and strain associated with role insufficiency, law schools must help bridge the gap between law as a theoretical concept and law as a *business* by providing students with law-practice-management skills.<sup>110</sup> Because the practice of law is a business,<sup>111</sup> the perennial focus on teaching students to “think like lawyers” is insufficient and misguided because it fails to appreciate the reality that many students rely primarily on their professional education to teach them those business skills. Shifting a school’s focus may lower the school’s *U.S. News & World Report* ranking but could help distinguish that school as a “student-centric” leader focusing on the realistic needs of its students.<sup>112</sup>

There have been recent steps in the right direction. In 2015, the New York Court of Appeals adopted section 520.18 to the Rules for the Admission of Attorneys and Counselors at Law.<sup>113</sup> Applicants seeking licensure in New York must now establish that they “have acquired the skills and . . . professional values necessary to competently practice law.”<sup>114</sup> While helpful in terms of bridging the gap between legal academia and the practice of law, there is a crucial difference between practical *legal* courses and practical *business* courses; a student might satisfy the requirement by taking skills-based classes in depositions or negotiation, but those courses do not

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109. See Dawson, *supra* note 14, at 172; see also Visentin, *supra* note 16, at 461 (explaining the drawbacks of optimism). Entrepreneurial theory’s “Attraction-Selection-Attrition” model posits that entrepreneurial academic programs “weed out” those entrepreneurs who are not “cut out” for the job through enacting realistic and high-pressure situations for to-be entrepreneurs, thus emphasizing the high-stress nature of entrepreneurship. See Robert Baron et al., *Why Entrepreneurs Often Experience Low, Not High, Levels of Stress: The Joint Effects of Selection and Psychological Capital*, 42 J. MGMT. 742, 745 (2016).

110. Hornsby, *supra* note 106, at 436–37 (noting that according to a 2006 ABA report, fewer than half of responding schools taught *any* course in law office management; half of those were merely two-hour courses, and four-fifths were taught by adjunct professors). Debra Curtis’s study revealed similar numbers; in a search for law-practice-management courses at 131 schools, she found such courses at only sixty-five schools. Debra Moss Curtis, *Teaching Law Office Management: Why Law Students Need to Know the Business of Being a Lawyer*, 71 ALB. L. REV. 201, 206–07 (2008).

111. See Curtis, *supra* note 110, at 202 (citing Gary A. Munneke, *Opening Remarks*, 23 PACE L. REV. 515, 515 (2003)); see also Herrera, *supra* note 66, at 936.

112. Herrera, *supra* note 66, at 936. Doing so will be all the more crucial as the market for legal services continues to open up (including to nonlegal competitors), disproportionately affecting solo practitioners and small firms. See Richard S. Granat & Stephanie Kimbro, *The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm*, 88 CHI.-KENT L. REV. 757, 760–61 (2013).

113. Notice to the Bar from John P. Asiello, Chief Clerk & Legal Couns. to the Ct. (Dec. 16, 2015), <http://www.courts.state.ny.us/ctapps/news/nottobar/nottobar121615.pdf> [https://perma.cc/8S7V-TWXX].

114. *Id.*

necessarily teach students about the *business* aspects of the practice of law. What about financing the firm? Handling malpractice insurance carriers? Forming a client base? Without these business skills competency courses, new entrepreneurial attorneys still face a deficit in the practical business skills needed to get one's feet on the ground. We worry law schools may satisfy themselves that they have prepared their students to meet the challenges of practicing law by developing courses necessary to meet New York's requirements while still failing to provide the *business* skills necessary to practice the business of law. One may learn how to conduct a deposition but may not know how to market oneself to a client whose case would necessitate a deposition.

Some law schools have experimented with incubators as a means of training young lawyers who are interested in solo or small-firm practice but who seek a structured environment to develop their practical skills.<sup>115</sup> These are essentially law firms for recent graduates; often the incubator provides office space and equipment, mentorship, and assistance in developing a client base. In terms of tangible benefits, they offer the lawyers knowledge of how to set up an office, gain and properly advise clients, and handle difficult legal and ethical issues.<sup>116</sup> They also give the new attorneys mentorship, confidence in their legal (and business) skills, and a network of school alumni in the area.<sup>117</sup> In addition to building these professional skills, participating in incubators may also help new lawyers establish social and professional ties that will help ease the burden of loneliness that many entrepreneurial lawyers face.<sup>118</sup>

Well-designed law school clinics may serve similar purposes for current law students. The elder law clinic at Thomas M. Cooley Law School serves as one successful example.<sup>119</sup> Professor Gary Bauer, one of the clinic leaders, says that the clinic teaches students the practical realities of small-firm practice, how to develop a support system to combat loneliness, and practical office-management skills, all while they receive feedback from student mentors.<sup>120</sup> Students learn how to handle a caseload, ask for help, engage with clients, and develop their own styles of practice.<sup>121</sup> Bauer notes that the school "entrust[s]" students and treats them like adults who "find their own way" through mentors, rather than as recipients of information bestowed on them by law professors.<sup>122</sup> In other words, the clinic trains students in how to navigate autonomy, which will help students both reap the benefits of that autonomy (and position them as opportunity rather than

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115. See Waites & Rooney, *supra* note 72, at 503.

116. *Id.* at 504; see also Deborah J. Merritt, *Incubators*, LAW SCH. CAFE (Jan. 3, 2013), <https://www.lawschoolcafe.org/2013/01/03/incubators> [<https://perma.cc/YPG8-VGBS>].

117. See Herrera, *supra* note 66, at 923–27.

118. For an extensive list of available incubators, see *Lawyer Incubator Profiles*, AM. BAR ASS'N, [https://www.americanbar.org/groups/delivery\\_legal\\_services/initiatives\\_awards/program\\_main/program\\_profiles](https://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_profiles) [<https://perma.cc/VLJ6-RZ9T>] (last visited Apr. 14, 2021).

119. See Bauer, *supra* note 72, at 7–23.

120. *Id.* at 8–9.

121. *Id.*

122. *Id.* at 9.

necessity entrepreneurs) and help them understand their own legal capabilities—which may lessen the imposter syndrome burden facing many new entrepreneurial lawyers.<sup>123</sup>

### B. Bar Associations

Bar associations do not have the best track record with solo and small-firm attorneys. Although solo and small-firm lawyers helped make bar organizations a substantial part of the profession, “[s]omewhere along the way . . . many bar associations began to lose this elemental, ‘first-cause’ relationship with solo and small-firm lawyers.”<sup>124</sup> Bar associations began to view this group of attorneys as “an undifferentiated collection of individual lawyers, with no overriding set of common interests and no special needs or activities of their own.”<sup>125</sup> In turn, solo and small-firm attorneys unsurprisingly dropped out or never joined such organizations.<sup>126</sup>

That is unfortunate, as bar associations are uniquely situated to provide support for these attorneys. What they must first do is simply ask solo and small-firm attorneys what they want and need.<sup>127</sup> Two “main themes” that recur when discussing how to reach entrepreneurial attorneys include training in technology and assistance in avoiding disciplinary infractions, both of which reflect a broader need for law-practice-management training.<sup>128</sup> In general, bar associations must recognize that “solo and small-firm lawyers have distinct needs and interests, different from those of their large-firm and in-house colleagues.”<sup>129</sup> The New York State Bar Association, for example, penned a model policy for law firms that explains that law firms should develop return-to-work agreements for attorneys returning from mental health treatment; these agreements would include such measures as verification of treatment and commitment to alcohol or drug screenings.<sup>130</sup> Though helpful for larger firms with the resources to implement those policies, bar associations should create model policies that take account of the specific needs of solo and small-firm attorneys.

Some bar associations have launched successful outreach programs. The Solo, Small Firm, and General Practice Division (“GPSolo”) is the ABA’s

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123. See *Imposter Syndrome?: 8 Tactics to Combat the Anxiety*, AM. BAR ASS’N (Oct. 2018), <https://www.americanbar.org/news/abanews/publications/youraba/2018/october-2018/tell-yourself-yet-and-other-tips-for-overcoming-impostor-syndr> [<https://perma.cc/VUU9-2FS9>] (describing the disproportionate impact of imposter syndrome on solo attorneys, as they cannot “camouflage” themselves like their peers at larger firms).

124. Harvey B. Rubenstein & James R. Silkenat, *Solo and Small-Firm Lawyers: A Renewed Priority for Bar Associations*, BAR LEADER, Spring 2011, at 12, 12.

125. *Id.*

126. See *id.* The authors point out that although—at least in 2011—more than 48 percent of U.S. attorneys were in solo practice, they made up only 12 percent of ABA membership. *Id.*

127. Marilyn Cavicchia, *Service, Support, Connection: How Bars Reach Solo and Small-Firm Lawyers*, BAR LEADER, Spring 2011, at 10, 10.

128. *Id.*; see also Levin, *supra* note 81, at 851–52.

129. Rubenstein & Silkenat, *supra* note 124, at 12.

130. Schimmerling, *supra* note 3.



flagship program for solo and small-firm lawyers.<sup>131</sup> Membership in the division provides extensive resources to solo and small-firm attorneys, including networking opportunities, a resource center, and the popular “SoloSez” discussion board of over 3500 attorneys—including (in their words, not ours) “fat lawyers, skinny lawyers, [and] even lawyers who climb on rocks”<sup>132</sup>—which provides a platform to share “legal questions, client referrals,” technology problems, “or just to gloat about a court victory or vent about a local judge.”<sup>133</sup> If few others have an interest in the “trials and tribulations” of a solo or small-firm lawyer’s daily life,<sup>134</sup> then a platform of like-minded lawyers can help mitigate the loneliness endemic to solo or small-firm practice. The forum might also provide the much-needed safety net that can help these attorneys navigate new technologies and the practical difficulties of setting up a new firm.

### C. Courts

Courts are not off the hook. Courts should strive to make the court system work just the same for the solo lawyer as it does for the associate from a mega firm.<sup>135</sup> Chief Judge Judith Kaye of the New York Court of Appeals explained:

Solo and small firm practitioners have a different perspective on how best to address changes in the legal profession resulting from globalization, technological change, legal and regulatory complexity, and higher client expectations. Since they do not usually have large support staffs, these lawyers in daily practice also face challenges in meeting schedules and complying with competing court appearance obligations. In some instances, fairly simple changes in administrative requirements could make a big difference for these practitioners and their clients.<sup>136</sup>

Later that year, Chief Judge Kaye appointed the Commission to Examine Solo and Small Firm Practice, a group of solo and small-firm practitioners that came together to make recommendations for improvements in New York’s court systems.<sup>137</sup>

Conserving time showed up repeatedly in the commission’s findings, as “[t]ime is a resource that cannot be stretched or leveraged by a solo or small

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131. See generally *Solo, Small Firm and General Practice Division*, AM. BAR ASS’N, <https://www.americanbar.org/groups/gpsolo> [<https://perma.cc/3F4Q-G6W4>] (last visited Apr. 14, 2021); see also Carolyn B. Lamm, *No Reason to Go It Alone: ABA Membership Offers Abundant Resources to Assist Solo and Small-Firm Lawyers*, ABA J., July 2010, at 8, 8.

132. See *About SoloSez*®, AM. BAR ASS’N, <https://www.americanbar.org/groups/gpsolo/resources/solosez/MoreAboutSoloSez> [<https://perma.cc/9TPY-DPU3>] (last visited Apr. 14, 2021).

133. *Id.*; see also Lamm, *supra* note 131, at 8 (describing SoloSez).

134. Gibson, *supra* note 72, at 912.

135. See NYS COMMISSION REPORT, *supra* note 85, at 4.

136. JUDITH S. KAYE, N.Y. STATE UNIFIED CT. SYS., *THE STATE OF THE JUDICIARY 2004*, at 18 (2004), <http://www.nycourts.gov/admin/stateofjudiciary/soj2004.pdf> [<https://perma.cc/M7LS-TMFV>].

137. NYS COMMISSION REPORT, *supra* note 85, at 1.

firm practitioner” and “[t]ime spent unproductively cannot be regained.”<sup>138</sup> The commission focused on how the court system could streamline its procedures; in particular, its report criticized the use of mandatory, in-person preliminary conferences—which often becomes an exercise in scheduling dates that everyone knows are subject (and likely) to change.<sup>139</sup> Solo and small-firm practitioners expressed frustration at time spent waiting in court and anxiety over whether their clients would pay for that “down time.”<sup>140</sup> The commission accordingly recommended that courts allow attorneys to agree on a discovery plan in lieu of a court appearance, establish uniform procedures whereby conferences are adjourned whenever a dispositive motion is filed, stagger calendars when possible, and determine whether such conferences should be required only when counsel is unable to resolve any discovery plan disputes.<sup>141</sup>

New York is not alone in suggesting changes to the court system that might aid lawyers’ well-being. In 2017, the National Task Force on Lawyer Well-Being released a report that included key changes that various stakeholders should make to help instill greater well-being in the profession.<sup>142</sup> Its recommendations for courts are similar to the New York commission’s: courts should evaluate their practices concerning deadlines, the difficulty of and limited bases for seeking extensions of time, and the refusal to allow lawyers to extend trial dates.<sup>143</sup> These recommendations are not specific to solo or small-firm attorneys—they benefit *all* lawyers—but per the findings of the New York commission, the burden of tight deadlines or the difficulty of seeking extensions of time may fall disproportionately on solo or small-firm attorneys who do not have an army of associates to churn out work product on a tight deadline or take over the conference in the event of a rescheduling. The court system is “ripe for streamlining,”<sup>144</sup> and finding greater efficiency will ease the burden on solo and small-firm attorneys. As we have noted in other places, the COVID-19 pandemic may ultimately benefit attorneys to the extent that the pandemic has forced courts to experiment with virtual proceedings.<sup>145</sup> Such increased efficiency—and the resulting decrease in stress and strain on entrepreneurial attorneys—may be one silver lining.

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138. *Id.* at 4.

139. *Id.*

140. *Id.*

141. *Id.* at 10, 13.

142. NAT’L TASK FORCE ON LAW. WELL-BEING, *supra* note 47, at 10–11.

143. *Id.* at 17.

144. NYS COMMISSION REPORT, *supra* note 85, at 10.

145. *See, e.g.*, Douglas Keith & Alicia Bannon, *Promise and Peril as Courts Go Virtual amid Covid-19*, BRENNAN CTR. FOR JUST. (May 29, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/promise-and-peril-courts-go-virtual-amid-covid-19> [https://perma.cc/4BGX-67FR].

#### D. Lawyers

Finally, we turn to the lawyers themselves. Perhaps the most important thing for these attorneys to do to maintain their well-being is to maximize autonomy. Entrepreneurial attorneys who already enjoy autonomy as part and parcel of their jobs should be mindful of the paradoxical ways autonomy functions. For one, though the ability to make decisions is often a primary benefit of entrepreneurship, attorneys with feelings of self-doubt may experience an uneasy coupling of autonomy and fear of decision-making.<sup>146</sup> Additionally, these attorneys should remember that autonomy is not automatic; economic shocks run the risk of degrading autonomy to the extent solo and small-firm lawyers feel an overwhelming sense of lack of control.<sup>147</sup> To cope, these lawyers should distinguish the things they *can* control from those they cannot, resist applying lawyerly worst-case-scenario “if-then” thinking to nonlawyerly situations, and allow themselves to experience the discomfort of uncertainty and lack of control rather than fighting these feelings.

Another autonomy paradox to be mindful of is the extent to which flexibility to manage one’s own time may nonetheless place strain on one’s ability to balance work and home.<sup>148</sup> Perhaps *as a result of* their autonomy and the extent to which their identities are melded with their work, entrepreneurs often work inordinately long hours.<sup>149</sup> The autonomy of an entrepreneurial career often creates buffers against the stress of those long hours,<sup>150</sup> but where autonomy is limited—through, say, the effects of COVID-19, worried and demanding clients, or court-imposed deadlines—the attorney may be more exposed to the deleterious effects of long work hours and other characteristics of entrepreneurial jobs. With external factors weakening the autonomous buffer, attorneys might make their own buffers: taking a vacation, either literally or figuratively. After all, “[t]he one immutable axiom is that every lawyer needs to get away from the practice periodically.”<sup>151</sup> Furthermore, “[v]acations cannot wait for an ease in work pressures. *That time will never come.*”<sup>152</sup> While a true vacation may prove difficult for the entrepreneurial attorney, research shows that the negative

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146. See van Gelderen, *supra* note 58, at 543–44 (describing paradoxes of autonomy). Imposter syndrome very well may affect anyone, no matter the level of achievement. Justice Sotomayor herself has been open about the extent to which she struggled with imposter syndrome. See Jess Bravin, *Memoir Details Justice’s Difficult Ascent*, WALL ST. J. (Jan. 14, 2013, 12:54 AM), <https://www.wsj.com/articles/SB10001424127887324595704578239760608699742> [<https://perma.cc/2JXD-Z6Z3>].

147. See Sawang et al., *supra* note 53, at 3 (describing financial shocks as threats to entrepreneurs’ autonomy); see also Pollack et al., *supra* note 17, at 791 (describing the effects of economic decline on entrepreneurs).

148. See van Gelderen, *supra* note 58, at 544 (discussing the effect of autonomy on dependents).

149. See Eden, *supra* note 12, at 84.

150. Sawang et al., *supra* note 53, at 2 (“The perception of autonomy is an important buffer of negative stress.”).

151. Phil J. Shuey, *Finding a Life While Practicing Law*, GP SOLO & SMALL FIRM LAW., Apr./May 1999, at 12, 13.

152. *Id.* at 14.

effects of workaholism in entrepreneurs stem less from the number of hours one works and more from the entrepreneurs' inability to psychologically detach from work, which is likely made worse by the ubiquity of technology allowing work to seep into every moment of our lives.<sup>153</sup> Entrepreneurial lawyers should treat their time away from work as sacrosanct,<sup>154</sup> establish boundaries with clients regarding availability,<sup>155</sup> and engage in non-work-related hobbies (though mindful that overly solitary pursuits may worsen the loneliness of entrepreneurship).<sup>156</sup>

Indeed, entrepreneurial lawyers must guard against loneliness in more ways than just avoiding only solitary nonwork pursuits. Although those who choose these positions often do so with the intent of abandoning their security zones, they must also create a system of social and professional support to avoid stress and burnout.<sup>157</sup> Again, one of the benefits of entrepreneurship—autonomy—inherently leads itself to solitude, which may work against the lawyer's well-being.<sup>158</sup> Connection with others is an essential ingredient for psychological health.<sup>159</sup> Social support theory explains that lawyers should seek to establish both structural and functional support.<sup>160</sup> Structural support—be it through an informal mentor or the solo and small-firm division of a bar association—provides access to resources and information.<sup>161</sup> Studies show that such structural support helps an entrepreneur regain a sense of control,<sup>162</sup> which is vital when the attorney is faced with external events that threaten the attorney's sense of autonomy and control.<sup>163</sup> Structural support could also mean establishing a relationship with another lawyer that will allow the attorney to take a vacation or take a break to obtain needed mental health treatment.<sup>164</sup> Functional support “provides encouragement, empathy, and a ‘sounding board’” to express one's emotions.<sup>165</sup> It could come from family, friends, mentors, or the very

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153. See Taris et al., *supra* note 56, at 162; see also Otey, *supra* note 7, at 150–51.

154. See Gill Corkindale, *Detach Yourself from Your Work*, HARV. BUS. REV. (Jan. 28, 2011), <https://hbr.org/2011/01/detach-yourself-from-your-work> [<https://perma.cc/8AL8-8CDD>].

155. Ideally, the lawyer should establish such boundaries within a written work agreement. See, e.g., Lisa Caplan, *MSBA Wellness Tip Sheet: Solo Does Not Have to Mean Alone*, MD. STATE BAR ASS'N (Jan. 21, 2019), <https://www.msba.org/msba-wellness-tip-sheet-solo-does-not-have-to-mean-alone> [<https://perma.cc/5KGY-L53Q>].

156. Gumpert & Boyd, *supra* note 31, at 22 (warning of the dangers of entrepreneurs adopting solitary hobbies).

157. See Herrera, *supra* note 66, at 913; see also Fernet et al., *supra* note 14, at 45 (describing the psychological costs of small business ownership and loneliness).

158. See Achor et al., *supra* note 75.

159. See Fernet et al., *supra* note 14, at 47.

160. See Pollack et al., *supra* note 17, at 792.

161. See *id.*

162. See *id.*

163. See *id.* at 791; Sawang et al., *supra* note 53, at 3.

164. See Bauer, *supra* note 72, at 13; see also Gibson, *supra* note 72, at 912.

165. Pollack et al., *supra* note 17, at 792.

same business ties that provide structural support.<sup>166</sup> This sort of empathy helps lawyers realize that they are not alone.<sup>167</sup>

Tackling loneliness is hard because dealing with it requires introspection, objectivity, and persistence.<sup>168</sup> Our society and profession place a high value on popularity and extroversion, such that admitting loneliness may invoke a sense of failure, particularly if the attorney assumes she is personally responsible for the loneliness rather than seeing it as an inevitable result of working in a perfect storm of loneliness.<sup>169</sup> This stigma surrounding loneliness hints at a broader stigma regarding mental health as a whole; opening up about one's mental health struggles may not only combat loneliness through the connection resulting from being vulnerable with another person,<sup>170</sup> it may also help whittle away at the willful blindness our profession has long shown toward mental health struggles.<sup>171</sup> One of the factors hindering those suffering with mental health conditions from seeking treatment is society's negative attitude about these conditions, as well as fear of an adverse reaction when one admits to such a struggle.<sup>172</sup> If more lawyers open up about their struggles—and realize the world did not fall down as a result of their honesty and vulnerability—other lawyers may do the same.

#### CONCLUSION

Luz Herrera writes that “[p]racticing on my own was intellectually and emotionally challenging. It was also frightening and isolating. It does not have to be that way.”<sup>173</sup> We agree. Because large firms do not generally represent low- or middle-income clients, most Americans in need of legal services will turn to solo or small-firm lawyers.<sup>174</sup> Accordingly, “solo practice is more than a career path of last resort. It is the most enduring segment of the bar that has consistently helped individuals in our society navigate the democratic legal system we live in.”<sup>175</sup> It is incumbent on the various stakeholders in the legal profession to identify the unique problems facing these lawyers and work collaboratively to ensure the well-being of the lawyers who, in many respects, represent the best of our profession.

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166. *See id.* at 793.

167. *See id.*

168. *See Gumpert & Boyd, supra* note 31, at 24.

169. *See id.* at 19.

170. Healy, *supra* note 79.

171. *See* Michael L. Perlin, “Baby, Look Inside Your Mirror”: *The Legal Profession’s Willful and Sanist Blindness to Lawyers with Mental Disabilities*, 69 U. PITT. L. REV. 589, 589 (2008).

172. *See* NAT’L TASK FORCE ON LAW. WELL-BEING, *supra* note 47, at 13.

173. Herrera, *supra* note 66, at 938.

174. *See id.* at 898.

175. *Id.*