

Beyond Lawyer Assistance Programs: Applying the United States Marine Corps' Concepts and Principles of Spiritual Fitness as a Means Towards Increasing the Health, Resiliency, and Well-Being of Lawyers—While Restoring the Soul of the Profession

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**BEYOND LAWYER ASSISTANCE
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To be a good lawyer, one has to be a healthy lawyer. Sadly,
our profession is falling short when it comes to well-being.

—The 2017 National Task Force on Lawyer Well-Being¹

INTRODUCTION

Lawyer Assistance Programs (“LAPs”) are recognized as an invaluable tool for increasing well-being by assisting lawyers to secure confidential treatment in order to overcome various addictions and mental health issues. The 2017 report by the National Task Force on Lawyer Well-Being underscores this notion by asserting that LAPs “play a pivotal role in lawyer well-being.”² While this is true, the legal profession would do well to look beyond LAPs and broaden its discussion regarding wellness. In particular, the American Bar Association (“ABA”) should more

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¹ BREE BUCHANAN & JAMES C. COYLE, NATIONAL TASK FORCE ON LAWYER WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 1 (2017), <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf> [<https://perma.cc/JW3D-L3LN>].

² *Id.* at 45.

robustly recognize and encourage spirituality as a means towards health, resiliency, and well-being, much like the United States Marine Corps (“USMC”) has done. Spirituality,³ as viewed by the USMC, is another valuable resource, among others, that is an important means to increase the health and resiliency of its members.⁴ Indeed, spiritual fitness is prominently referenced

³ For purposes of this Article, spirituality may be understood as “an inherent dimension of individual and social life.” Franklin Eric Wester, *Soldier Spirituality in a Combat Zone: Preliminary Findings about Correlations with Ethics and Resiliency*, 1 J. HEALTHCARE, SCI. & HUMS. 68, 68 (2011). Additionally,

[d]efinitions of spirituality have evolved over the past decades, to say nothing of the various expressions of spiritually-oriented practices across a wide range of faith groups and cultures. The form of the word suggests a journey or process tied to spirit defined here as a multi-dimensional, cohesive core of the individual expressed in beliefs, ideas, practices, and connections.

Id. at 70. Others have presented a Catholic perspective on spirituality. *See generally* Father John Bartunek, *What is the Essence of Catholic Spirituality? I of II*, CATH. SPIRITUAL DIRECTION (Aug. 29, 2011), <https://spiritualdirection.com/2011/08/29/what-is-the-essence-of-catholic-spirituality-part-i-of-ii> [<https://perma.cc/EYL4-UUGN>]. Father John Bartunek describes spirituality as a term signifying

an itinerary for growth in our friendship with Christ. This itinerary has as its final destination what we call holiness, an individual’s firm, deep, integral, and dynamic communion with God. We call this itinerary “spirituality” because we achieve communion with God through the purifying [of] our spiritual faculties (intelligence and will) and aligning them with the wisdom and will of God. Our intelligence, our capacity to perceive and understand truth in a self-conscious manner, was severely darkened by original sin, and darkened even more by our personal sin and the sinful tendencies of the world around us. Growth in the spiritual life gradually increases the influence of God’s revelation and wisdom (a “light for our path and a lamp for our feet” as Psalm 119 puts it) in correcting, healing, and strengthening our minds. In this way we come to see and understand ourselves, God, and the world around us truthfully, i.e., as God does. Our will, the capacity of self-determination which allows us to make self-aware choices, was also severely weakened by original sin, personal sin, and the evil tendencies of the world around us. Growth in the spiritual life gradually heals and strengthens our will, so that we emerge out of self-centered and self-indulgent habits into virtuous living. Virtues are those good habits of the will that enable us to choose what is truly good and right in any circumstance, even at great immediate cost to ourselves.

Id.

⁴ *See* Hope Hodge Seck, *Corps to Add ‘Spiritual Fitness’ to Professional Education*, MILITARY.COM (Oct. 18, 2016), <https://www.military.com/daily-news/2016/10/18/corps-to-add-spiritual-fitness-to-professional-education.html>

[<https://perma.cc/KML5-2AF6>]. In the article, Rear Admiral Brent W. Scott, who was the chaplain of the USMC at the time, explained that “[s]piritual does not necessarily mean religious.” *Id.* Rear Admiral Scott began planning the initiative on spiritual fitness when he arrived at his post, saying:

We’re now at the tail end of what was a long war in Iraq and Afghanistan. We found that much of the resilience we saw was not necessarily attributed

and has its own section in the official website of the USMC maintained by Headquarters Marine Corps.⁵ Along with this, General Robert B. Neller, then Commandant of the USMC, recognizing the importance of spiritual fitness in a 2016 ALMAR⁶ message to all Marines, stated that “[r]esearch indicates that spiritual fitness plays a key role in resiliency, in our ability to grow, develop, recover, heal, and adapt. Regardless of individual

to something that somebody could do in the gym A lot had to do with the heart and soul of the individual.

Id. In describing the rollout of spiritual fitness, the article notes that the Corps would

release a video featuring Scott, Commandant Gen. Robert Neller and Sergeant Major of the Marine Corps Ronald Green talking about the importance of spiritual fitness. This initiative will be proved successful, Scott said, if Marines begin talking about spiritual fitness and maintaining spiritual health as openly as they discuss physical fitness and physical training.

Id.

⁵ See *Marine Corps Spiritual Fitness*, U.S. MARINE CORPS, <https://www.hqmc.marines.mil/Agencies/Marine-Corps-Spiritual-Fitness/> [<https://perma.cc/9MW4-HF2Z>] (last visited Jan. 24, 2021). It is important to relay the following official statement on the homepage of the Marine Corps Spiritual Fitness website:

Content posted on this site, to include the appearance of hyperlinks does not constitute endorsement by the U.S. Marine Corps. The U.S. Marine Corps does not exercise any editorial control over the information you may find at linked locations. This website is intended to provide resources for Marines to use at their own discretion in accordance with Marine Leader Development. Spiritual fitness has been shown to be an important part of overall well-being and promotes mission readiness. However, the USMC does not promote any specific religious tradition or practice. While religion may play an important role for some individuals in their spiritual development, it is not the only way to be spiritually fit. The practice of religious beliefs is a personal decision. This site focuses on the aspects of spirituality that are not necessarily religious in nature, but may be adapted by individuals to apply to their personal beliefs. Therefore, as part of training Marines to be mission-ready, Marines and families are encouraged to attend to their spiritual fitness according to their own personal beliefs. The content of this website is intended as a resource only and should not be considered mandatory to Marine readiness, nor should it be used as a standard against which Marines be evaluated.

Id.

⁶ An ALMAR is an acronym for “All Marine Corps Activities.” See *Marine Corps Acronyms*, [https://www.usmcu.edu/Portals/218/MARINE%20CORPS%20ACRONYM S.pdf](https://www.usmcu.edu/Portals/218/MARINE%20CORPS%20ACRONYM%20S.pdf) [<https://perma.cc/8372-ANT5>] (last visited Sept. 13, 2021). As such, ALMAR 033/16 is a direct communication from the Commandant of the USMC providing his guiding thoughts on spiritual fitness to the force. Anything coming from the Commandant is important, but an ALMAR is a more personal way to communicate thoughts and ideas than the more formal White Papers, as a way to address things specific to USMC life and important to the Commandant.

philosophy or beliefs, spiritual well-being makes us better warriors and people of character capable of making good choices on and off duty.”⁷

Setting aside the significant differences in the demands, work, and lifestyles of Marines as warriors compared to that of lawyers as white-collar professionals, there are enough similarities between the professions as they relate to wellness to link the concept of spirituality as a means towards increasing well-being among lawyers. For example, both professions often involve great difficulties and test the breaking point of its members; additionally, both professions often involve highly stressful work with long hours, considerable responsibility, and the need for excellence and results-generated productivity. Perhaps most importantly, both professions often involve weighty responsibilities and heavy burdens that entail enormous

⁷ All Marines Message, 033/16, 031813Z Oct 16, Commandant, Marine Corps, subject: Spiritual Fitness, <https://www.marines.mil/News/Messages/ALMARS/Article/962784/spiritual-fitness/> [hereinafter ALMAR]. The ALMAR in its entirety reads as follows:

R 031813Z Oct 16

ALMAR 033/16

MSGID/GENADMIN/CMC WASHINGTON DC DMCS//

SUBJ/SPIRITUAL FITNESS//

GENTEXT/REMARKS/

1. Fitness is a vital part of being a United States Marine. Although we all understand the importance of being physically fit, it is also important to remember the other three aspects of overall fitness: spiritual, mental, and social. All of these aspects are essential to the well-being of each individual Marine and Sailor, and our Corps as a whole.
2. As Americas [sic] force in readiness, we must be prepared to answer our Nations [sic] call on a moments [sic] notice. A large part of that ability is our capacity for resilience. Regardless of the battle we just fought, we must be ready for our next success. Research indicates that spiritual fitness plays a key role in resiliency, in our ability to grow, develop, recover, heal, and adapt. Regardless of individual philosophy or beliefs, spiritual well-being makes us better warriors and people of character capable of making good choices on and off duty.
3. Beginning in October, the Marine Corps will be emphasizing all components of fitness, particularly the physical and spiritual aspects. During this time, I ask each of you to reflect on what you and the Marines and Sailors you lead are doing to achieve and maintain an optimal level of strength and resilience. Your leaders and chaplains at all levels stand ready to engage with you in this task. By attending to spiritual fitness with the same rigor given to physical, social and mental fitness, Marines and Sailors can become and remain the honorable warriors and model citizens our Nation expects.
4. Semper Fidelis, Robert B. Neller, General, U.S. Marine Corps, Commandant of the Marine Corps//

Id.

consequences and impact on other people. Certainly, the stress associated with these factors does not, in and of itself, cause addiction or mental health issues. But it undoubtedly often serves as a catalyst or trigger in some individuals for addictive behavior or certain mental health conditions, such as depression, which can spiral into destructive behavior or poor life choices.

As such, both professions have members who may, at some point in their careers, be temporarily or permanently overcome by the stress and demands of their environments. Consequently, they may turn towards self-medication with alcohol or other forms of chemical dependencies, or worse, experience depression and ultimately commit suicide. Hence, despite whatever real differences there may be between the professions, the reality is that members of both professions share many of the same fundamental struggles in life, since all people share the essential composition and summation of what makes up our inherent nature as human beings. While LAPs do much to help lawyers receive professional assistance, this Article proposes that the legal profession would do well to look beyond LAPs towards the concepts and principles of the USMC, with spiritual fitness as an additional and vital resource for increasing the health, resiliency and well-being of its members. That spirituality could assist the legal profession towards health and wellness is underscored by the 2017 National Task Force on Lawyer Well-Being's frank acknowledgment that the "profession is falling short when it comes to well-being."⁸ The concept of spiritual fitness and the recognition of spirituality as yet another tool or means towards resiliency beyond LAPs may help overcome at least some of this recognized shortfall within the legal profession.

Fundamentally, the USMCs' notion of spiritual fitness publicly embraces the "total fitness" concept that recognizes the vital importance of strengthening all components that comprise the human person—not just the physical, social, mental and emotional apparatuses, but also the spiritual element—as a critical means towards increasing health and resiliency, especially when confronted with any form of adversity or crisis in life.⁹

⁸ See BUCHANAN & COYLE, *supra* note 1.

⁹ It is important to note that the "total person" notion advocated by the National Task Force On Lawyer Well-Being conceptually embraces spirituality. The Institute for Well-Being in Law, the entity responsible for the National Task Force On Lawyer Well-Being, has a downloadable infographic on its website homepage headlined "Defining Lawyer Well-Being." See *Catalyzing Positive Change*, INST. FOR WELL-

With this in mind, the main thrust of this Article is decidedly simple: to intentionally recognize spirituality as a strengthening agent and to recommend that the legal profession look towards the concepts and principles of spiritual fitness embraced by the USMC as an additional means to increase resiliency and enhance well-being among lawyers. Accordingly, Part I peers into the dark side of the profession, with an overview of the various assortment of crises facing the profession writ large, including lawyers. Part II moves to a granular examination of the specific crisis of lawyer wellness, providing a situational analysis on the state of health and well-being of present-day lawyers. Part III then uses General Robert B. Neller's 2016 ALMAR 033/16 on spiritual fitness as a springboard to engage in an in-depth discussion on the USMCs' concepts and principles of spiritual fitness as a means to strengthening resiliency and well-being among Marines and the USMC as a whole, to include other commentary and research pertinent to the discussion. The Article then concludes that the legal profession would do well to embrace spirituality more visibly—as a total approach to the person—and to adopt the USMCs' approach towards strengthening the total person by encouraging spirituality as a strengthening agent that increases the health, resiliency, and well-being of lawyers. Both the legal profession and lawyers are struggling. Spiritual fitness among lawyers will not only strengthen individuals themselves and help them towards health; in doing so, it will also help restore the soul of the profession.

I. PEERING INTO THE DARK SIDE OF THE LEGAL PROFESSION

The legal profession is already struggling. Our profession confronts a dwindling market share as the public turns to more accessible, affordable alternative legal service providers. We are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and

BEING IN L., <https://lawyerwellbeing.net/> [<https://perma.cc/4PYR-JCLD>] (last visited Jan. 24, 2021). The infographic highlights the various elements in the continuous process of developing lawyer well-being: Emotional, Occupational, Intellectual, *Spiritual*, Physical, and Social. *Id.* (emphasis added). However, nowhere within the Task Force's recommendations is the importance of spirituality acknowledged or addressed as part of wellness or lawyer well-being. See BUCHANAN & COYLE, *supra* note 1, at 9.

to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.

—*The 2017 National Task Force on Lawyer Well-Being*¹⁰

Lawyers belong to what is traditionally recognized as an important and honorable profession, having a nobility in purpose to secure justice while faithfully pursuing the rule of law.¹¹ Indeed, at the beginning of the profession hundreds of years ago, lawyers occupied positions of high social status with substantial power and authority, and rightfully “regarded themselves and their colleagues with pride (frequently mixed with self-righteousness) as an intellectual elite who deserved to enjoy power, wealth, and other privileges because what they did was difficult, demanding, and vital to the well-being of society.”¹² Today, however, that noble edifice upon which the profession was originally erected has eroded and developed substantial fissures. Those long-held notions of the profession now seem quaintly anachronistic, rooted as they are in bygone eras, centuries-long

¹⁰ BUCHANAN & COYLE, *supra* note 1, at 1.

¹¹ See Nelson P. Miller, *The Nobility of the American Lawyer: The Ennobling History, Philosophy, and Morality of a Maligned Profession*, 22 T.M. COOLEY L. REV. 209, 211–12, 217 (2005) (opining for a recovery of the most noble, profound, and higher purposes and attributes of the legal profession); *In re Applicants for License*, 55 S.E. 635, 642 (N.C. 1906) (Brown, J., dissenting) (“The profession of the law is one of the noblest and most important of all professions.”); *Bergh v. Stephens*, 175 So. 2d 787, 791 (Fla. Dist. Ct. App. 1965) (The legal profession “has for centuries been regarded and adjudicated to be a great and noble profession, as distinguished from a business, and it is so today.”); *Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 310–11 (1989) (Kennedy, J., concurring) (“Lawyers, like all those who practice a profession, have obligations to their calling [O]urs remains a noble profession.”); William G. Paul, *A Vision for Our Profession*, 86 ABA J. 4, 8 (June 2000) (“[T]here is a nobility of purpose about the [law]”). *But see* Robert F. Cochran, Jr., *Honor as a Deficient Aspiration for “The Honorable Profession”: The Lawyer as Nostromo*, 69 FORDHAM L. REV. 859, 860 (2000) (asserting that great “corruption abound[s]” and that “[t]he legal profession is not honored” nor “honorable”).

¹² JAMES A. BRUNDAGE, *THE MEDIEVAL ORIGINS OF THE LEGAL PROFESSION: CANONISTS, CIVILIANS, AND COURTS* 3–4 (2008). Certainly, “[a]dvocates and doctors of law, they insisted, were every bit as essential to a community as the soldiers who protected it from its enemies. Hence lawyers claimed that they were entitled to the same rights and respect that knights enjoyed.” *Id.* at 4 (footnote omitted).

past.¹³ Unlike ever before, however, the standing and vitality of the profession within American society is now very much in question.¹⁴ Along with the decline in professionalism, the resiliency and well-being of lawyers is a recognized grave, weighty, and deeply concerning issue.¹⁵ To maintain public confidence, the difficulties facing lawyers today demand that we openly and honestly peer into the dark side of the legal profession to understand the depth of the health and resiliency problem and to recapture the nobility of the calling.¹⁶

The mounting concern regarding lawyer well-being is at least partly rooted in the crisis in professional identity that has developed over the past few decades. In reality, the legal profession has transformed over recent decades into something much less like a “relaxed and gentlemanly” profession, as it was once widely understood, into something that is more akin to indebted jobholders laboring in an insecure *post-professional* occupation.¹⁷ Though recognized still for their critically important role as protectors of the constitutional order, lawyers today work more as functionaries—performing essentially as bureaucratic employees of law firms, corporations, and governments—rather than as the truly independent and

¹³ See, e.g., *id.* at 7. The author explains that by the mid-thirteenth century, lawyers were considered members of a recognized profession marked by a high degree of social prestige and occupied considerable positions of authority and power. *Id.* To the dismay of philosophers and theologians, the study of law

attracted a great many of the most original and talented minds in the generations that flourished during the centuries that followed 1150. Members of the legal profession were crucial players in the social and intellectual revolutions that began with the so-called renaissance of the twelfth century and continued to unfold well into the later Middle Ages.

Id. at 2.

¹⁴ See *infra* notes 17–32 and accompanying text.

¹⁵ See *infra* notes 33–79 and accompanying text.

¹⁶ See Joseph Cardinal Bernardin, *The Dark Side of the Legal Profession*, 14 HUM. RTS. 3, 20–21 (Spring 1987) (discussing the importance of being “open and honest about the problems which confront the legal profession” so as not to lose the sense of the nobility of the calling).

¹⁷ This transition has been operative over the past several decades, and was the topic of a 1983 New York Times article heralding the dawn of a new era. See Tamar Lewin, *A Gentlemanly Profession Enters a Tough New Era*, N.Y. TIMES, Jan. 16, 1983 (§ 3), at 1 (internal quotations omitted). The Times observed that “the practice of law has ceased to be a gentlemanly profession and instead has become an extremely competitive business.” *Id.* One of the managing partners at Donovan Leisure Newton & Irvine, Samuel Murphy Jr., offered this pithy observation: “It was a lot more fun in the old days It was more relaxed and gentlemanly. We all believed we were engaged in a profession that was a little different. In the last 10 years, the fundamental change is that what we’re doing has become a business.” *Id.*

autonomous professionals that they once were widely recognized to be.¹⁸

As such, being a lawyer in the modern era can be seen as devolving substantially into a highly competitive trade of sorts, involving a largely commoditized line of work. This concept, if true, rings even more true as technology continues to rapidly displace the traditional value of a legal education and disrupts the need for the esoteric knowledge of a lawyer gained by years of costly education and experience—all while the sheer number of lawyers continues to exponentially grow beyond need.¹⁹ Added to this is the increasingly heightened concern for generating income, which forces lawyers to be motivated by self-interest in order to survive—such that they are no longer focused on true client needs but rather on monetizing productivity.²⁰ This notion

¹⁸ See *id.*; see also Herbert M. Kritzer, Research Note, *The Professions Are Dead, Long Live the Professions: Legal Practice in a Postprofessional World*, 33 LAW & SOC'Y REV. 713, 713–14 (1999) (“Lawyers increasingly find themselves working not as independent professionals but as employees of bureaucratically organized law firms, corporations, and government.”).

¹⁹ See RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 4 (2008) (detailing the impact of technology on changing the legal profession, with lawyers eventually suffering the fate of other guild-members whose way of life was destroyed by technology and market forces beyond their control). *But cf.*, Dana Remus & Frank Levy, *Can Robots be Lawyers? Computers, Lawyers and the Practice of Law*, 30 GEO. J. LEGAL ETHICS 501, 505 (2017) (discussing how computers will change the work of lawyers but not necessarily replace them); Milan Markovic, *Rise of the Robot Lawyers?*, 61 ARIZ. L. REV. 325, 328 (2019) (challenging on empirical and normative grounds the notion that artificial intelligence will displace lawyers); Thomas R. Moore, *The Upgraded Lawyer: Modern Technology and Its Impact on the Legal Profession*, 21 UDC/DCSL 27, 27–28 (2019) (discussing technology’s impact on the legal profession which presents a challenge to traditional notions of the practice of law, but opining that history suggests that lawyers have historically adapted to shifts in technology). Consider as well the impact of LegalZoom and Rocket Lawyer on undercutting the work of solo practitioners and their provision of services. See, e.g., Isaac Figueras, Comment, *The LegalZoom Identity Crisis: Legal Form Provider or Lawyer in Sheep’s Clothing?*, 63 CASE W. RESV. L. REV. 1419, 1419–20 (2013). They (online legal services) have “the potential to transform traditional notions of legal services by providing an online forum whereby unrepresented persons obtain answers to legal questions and issues.” *Id.* (citing Cassandra Burke Robertson, *The Facebook Disruption: How Social Media May Transform Civil Litigation and Facilitate Access to Justice*, 65 ARK. L. REV. 75, 84 (2012)). The bottom line is that technology and online legal services are clearly transforming the nature of the legal profession by disrupting the flow of business that would otherwise go to solo practitioners or small firms.

²⁰ See Elizabeth A. Kovachevich & Geri L. Waksler, *The Legal Profession: Edging Closer to Death with Each Passing Hour*, 20 STETSON L. REV. 419, 423 (1991). The authors note the “common perception . . . that lawyers are primarily motivated by self-interest and the desire to make money.” *Id.* Underscoring this point, the authors comment:

is reflected by the relentless and unceasing need to generate billable hours.²¹ Additionally, law firms are shaken as well by larger external cultural forces and economic drivers beyond their control, and they must rethink their offering of legal services in order to compete in this environment.²² Accordingly, law firms must accept the reality that they function now as businesses and that the traditional notions of the profession—“esoteric knowledge, altruism, and autonomy”—no longer truly apply as they once did.²³

Consequently, the legal profession has increasingly adopted methods that seem designed to bring about desired fees, rather than desired results: several lawyers are assigned to a project that could easily be handled by one; conferences, depositions, and other meetings are attended by groups of lawyers from the representative firms; discovery tends to drag on for months; issues are researched prematurely and previously acquired research is not used at all; quick settlements are discouraged.

Id. at 426.

²¹ See, e.g., Peter J. Riga, *Spirituality of Lawyering*, 40 CATH. LAW. 295, 299 (2000) (lamenting that for far too many, lawyering is not a profession, but an economic trade “where the bottom line and billable hours seem to control all they do”).

²² See, e.g., Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341, 341–42 (2011) (asserting that the practice of law has been affected significantly in recent years). In analyzing the trends in law and their impact on law firms and education, the author includes a discussion, among other things, on downsizing, mobility for associates, lateral partner mobility, increasing competition among firms, alternate methods of billing and moderating legal fee increase, and the devaluation of new associates. *Id.* at 342–55.

²³ See Marvin E. Aspen, *The Search for Renewed Civility in Litigation*, 28 VAL. U. L. REV. 513, 516–17 (1994) (“Many lawyers believe it is now as much a business as a calling or a profession.”). Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229, 1238 (1995). The author reflects on barriers to entry in the early legal profession that are reflective of the traditional notions of the profession:

The esoteric nature of the knowledge made it very difficult for lay persons, including clients and the general public, to evaluate the profession’s work. In contrast, all persons could understand how businesses worked and what they produced, so that government could regulate them and individuals could make knowledgeable purchases on the market.

... [A]ltruistic lawyers placed the interests of the common good and of their clients above their own financial and other self-interests. Clients ... could trust that professionals would not use esoteric knowledge to exploit them. Similarly, society could trust that professionals would exercise independent judgment and would not use esoteric knowledge to [exploit it].

... Accordingly, in contrast to a business, which was subject to government regulation and market control, the [legal] profession obtained the authority to regulate itself.

Id. at 1239–1240 (citations omitted).

Fundamentally, the enumerated crises within the profession writ large mean that the status quo no longer suffices.²⁴ Given the dynamic and the rapidly evolving market for legal services, neither law firms nor the professional standing of lawyers will ever again be what they had been in the halcyon past.²⁵ Because of the unsettled nature of the ongoing paradigm shift, the essence of the profession has been irreparably altered over the past few decades.²⁶ The practice of law, as one commentator explains, has “become a war for legal business.”²⁷ Despite the disruption, members of the profession tend to cling to outmoded references to the past, to the origin of the profession, and to bygone ways of thinking. They are too often caught flat-footed, failing to keep up with the ever-changing nature of the modern profession, and so have ineffectively responded to the paradigm shifts and rapid world developments affecting them.²⁸ Accordingly, much like

²⁴ See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1340 (1997) (“In the last ten to fifteen years, three related crises have emerged with respect to the legal profession: ‘professionalism’ has declined, public opinion of attorneys and the legal profession has plummeted, and lawyer dissatisfaction and dysfunction have increased.”); see also JAMES E. MOLITERNO, *THE AMERICAN LEGAL PROFESSION IN CRISIS: RESISTANCE AND RESPONSES TO CHANGE 1* (2014) (“More often, the world changed to the profession’s dismay, and the walls of resistance built by the profession were overrun.”).

²⁵ See e.g., Quintin Johnstone, *An Overview of the Legal Profession in the United States, How That Profession Recently Has Been Changing, and Its Future Prospects*, 26 QUINNIPIAC L. REV. 737, 797 (2008) (discussing significant changes that have occurred in the legal profession as indicative of trends likely to continue and will result in further important changes in the legal profession); Erin J. Cox, *An Economic Crisis Is a Terrible Thing to Waste: Reforming the Business of Law for a Sustainable and Competitive Future*, 57 UCLA L. REV. 511, 511–13 (2010) (“The U.S. legal profession should take advantage of an ongoing paradigm shift to emerge from the crisis with liberalized business structures that allow firms to build sustainable, competitive practices that deliver more efficient services to their clients.”).

²⁶ See MOLITERNO, *supra* note 24, at 206 (“Law firms will not be what they have been for the last 100 years; legal services will be distributed by means that make a mockery of the state-by-state licensing model. Technology and globalization have won in blitzkrieg fashion, rapidly overrunning the profession’s defenses.”); see also MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* 6 (Farrar, Straus & Giroux 1st ed. 1994) (examining the loss of bearings by contemporary lawyers, including a reshuffling of values, and the fundamental changes occurring in the legal profession that is transforming American society).

²⁷ See Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 ST. JOHN’S L. REV. 85, 94–95 (1994).

²⁸ See MOLITERNO, *supra* note 24, at 2. In discussing that as the world changes to the profession’s dismay, the author notes that:

[T]he profession too often looks inward to diagnose and solve its crises. Doing so has caused the profession to be a late-arriving member of society

guild-members of past eras whose ways of life were destroyed by technological advances and other forces beyond their control, the notion of the legal profession as a ticket to economic success and social standing is no longer true. Indeed, the sheer number of lawyers, accompanied by significantly reduced prospects of securing work within the legal job market, stands as a harsh testament to the reality facing lawyers today.²⁹ Looking at this

during times of change. . . . Rather, the profession has too often seen itself as a last bastion of a prior time, clinging too tightly to its past and failing to grow in step with world developments. . . . The legal profession, as an institution, most often stays blind to change that is happening all around it.

Id.; see also Donald J. Polden, *Lawyers, Leadership, and Innovation*, 58 SANTA CLARA L. REV. 427, 432 (2019). In describing the importance of change leadership to respond to challenges when technologies and markets change, the author concludes that:

[W]hile law firms and legal services businesses engage in sophisticated and needed changes to their business and practice models, many firms lack engaged and capable leadership to plan and implement the changes they need to survive and succeed. As a result, there is growing uncertainty about the ability of those organizations to provide the scope and depth of services that clients—individual as well as businesses and government—need in today’s global and technology-dependent environment.

Id. at 429.

²⁹ See Marc Galanter, *Predators and Parasites: Lawyer-Bashing and Civil Justice*, 28 GA. L. REV. 633, 645–47 (1994) (discussing the phenomenon of too many lawyers). See also *Occupational Outlook Handbook: Lawyers*, U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/ooh/legal/lawyers.htm#tab-6> [<https://perma.cc/DR8K-H7JR>] (last updated Sept. 1, 2020). The employment prospects for lawyers are “projected to grow 6 percent from 2018 to 2028, about as fast as the average for all occupations.” *Id.* However, there is no guarantee of stable employment in the profession:

Despite the projected growth in new jobs for lawyers, competition for jobs should continue to be strong because more students are graduating from law school each year than there are jobs available. According to the American Bar Association’s National Lawyer Population Survey, a compilation of data collected by state bar associations or licensing agencies, there were over 1.3 million resident and active attorneys as of December 2016. Some law school graduates who have been unable to find permanent positions turn to temporary staffing firms that place attorneys in short-term jobs. These firms allow companies to hire lawyers as needed and permit beginning lawyers to develop practical experience. Many other law school graduates and licensed lawyers end up finding work in other occupations or industries due to the difficulty in finding jobs with traditional legal employers.

Id.; see also Nicole Black, *The Myth of the Upper-Middle-Class Lawyer*, AM. BAR ASS’N (Sept. 1, 2012), https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2012/september_october/myth_upper_middle_class_lawyer/#:~:text=The%20greatest%20challenge%20is%20an,of%20jobs%20at%20law%20firms.&text=It%20was%20hard%20to%20find,more%20graduates%E2%80%94a%20bad%20combination. Commenting on job prospects, the author states that:

from the 10,000-foot level, the implications and consequences of the dramatic external forces systemically sweeping over and through the profession leads firmly to the conclusion that the profession is in crisis,³⁰ and is dying or ostensibly already dead.³¹

Either way, the once “noble and honorable profession”—such as it may still vestigially exist—must urgently address a burgeoning internal crisis of well-being among lawyers that is arguably much more concerning than the broader crises affecting the profession writ large.³² In other words, many of the factors in

It used to be that becoming a lawyer was considered a surefire way to ensure economic and social success. A law degree was viewed as the ticket to a life of comfort and prestige. Those days are no more. Newly minted JDs face an unpredictable, debt-laden future—a future where even the best and brightest graduates are sometimes finding it difficult to obtain volunteer entry-level legal positions, let alone the six-figure salaries that once awaited those graduating at the top of their class from first-tier law schools.

Id.

³⁰ See *supra* note 10 and accompanying text; Cox, *supra* note 25, at 512–13; Daicoff, *supra* note 24; see also *infra* notes 31–32 and accompanying text; Cheryl Ann Krause & Jane Chong, *Lawyer Wellbeing as a Crisis of the Profession*, 71 S.C. L. REV. 203, 204 (2019) (“The legal profession is in the throes of a mental health crisis.”). *But cf.* Bryant G. Garth, *Crises, Crisis Rhetoric, and Competition in Legal Education: A Sociological Perspective on the (Latest) Crisis of the Legal Profession and Legal Education*, 24 STAN. L. & POL’Y REV. 503, 503–11 (2013) (commenting that the proliferation of crisis rhetoric about legal education and the legal profession itself is overwrought, and opining that the “doomsday” rhetoric is a recurring feature hearkening back to similar statements in other eras).

³¹ See Carl T. Bogus, *The Death of an Honorable Profession*, 71 IND. L.J. 911, 911 (1996) (“The legal profession is dead or dying. It is rotting away into an occupation.”); Robert F. Blomquist, *The Pragmatically Virtuous Lawyer?*, 15 WIDENER L. REV. 93, 94 (2009) (opining that “a chorus of voices has arisen” in recent years mourning “and even wailing of the ‘death’ of the honorable profession of being a lawyer”). See also Warren E. Burger, *The Decline of Professionalism*, 63 FORDHAM L. REV. 949, 949–50 (1994) (asserting that the law is on its way to being less than a profession due to a broad and serious decline in professionalism); Miller, *supra* note 11, at 209–10; SUSSKIND, *supra* note 19; Kovachevish & Waksler, *supra* note 20, at 423–26; MOLITERNO, *supra* note 24, at 2, 4. *But cf.* Kritzer, *supra* note 18, at 715. The author opined that as society moves into a period in which the role of professions is radically changing and is in sharp decline, “the changes wrought by postprofessionalism will not mean the extinction of professions, but rather a wholesale reshaping of [the] turn-of-the-millennium institution, hence my suggestion, ‘the professions are dead, long live the professions.’” *Id.*; see also ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 370 (1993). The author opined: “The law has become a business like any other . . . The loss of this culture is final, and the only choice that lawyers now have is whether to struggle futilely against their fate or accept it with a measure of dignity and grace.” *Id.*

³² See Marta Manus, *The Crisis of Purpose in the Legal Profession*, SAN DIEGO CTY. BAR ASS’N (Jan. 29, 2019), <https://blawg401.com/the-crisis-of-purpose-in-the-legal-profession/> [<https://perma.cc/J9L9-78ZS>]. The author states that:

the crises affecting the profession as a whole, as outlined above, can be coolly analyzed and aptly addressed with appropriate and timely solutions with lawyers and the profession adjusting to the new normal; however, the crisis of lawyer health, resiliency, and well-being is a crisis more intractable, indurate, and seemingly more insoluble entailing life or death consequences.³³ Recognizing the ongoing peril to lawyer well-being, state and local bar associations across the nation have responded over the past few decades by establishing LAPs to assist lawyers struggling with substance abuse and mental health concerns.³⁴ At their core, LAPs “provide confidential services and support to judges, lawyers and law students [who are facing] mental health or substance use issues.”³⁵ While LAPs are undoubtedly a critical

The crisis of purpose in the legal profession is a serious crisis which impacts us all. The world needs lawyers, these high-IQ, dedicated individuals to serve their communities. Solutions to this crisis will come when awareness of the mental health and lack of well-being in the profession are brought to the surface and recognized as a serious crisis in need of change.

Id.; see also MOLITERNO, *supra* note 24 (“The law is a crisis-prone profession. It seems that every decade or so, events take hold that cause the profession to self-identify a personal crisis . . .”).

³³ See J.E. (Buddy) Stockwell, *Preventing Depression, Burnout and Stress in the Legal Profession*, 59 LA. B. J. 103, 103 (2011). The author notes that “smart lawyers and judges are convinced they can think their way out of all the problems they encounter. Sadly, this is literally killing people in our profession.” *Id.* He then goes on to explain that there is hope:

The good news is that there are members of our profession making a difference and speaking out publicly about their personal experiences with mental health issues such as depression. The Erie Bar Foundation in New York has produced the short film, “A Terrible Melancholy,” that centers on Abraham Lincoln’s history of chronic depression. The film also, in part, features appearances by Dan Lukasik, a lawyer who recovered from depression and then spearheaded www.lawyerswithdepression.com. [His] website provides a plethora of information about depression: what it is, what causes lawyers and judges to suffer from it at shocking rates, and what can be done to combat it.

Id.

³⁴ See, e.g., Sarah Cearley, *Lawyer Assistance Programs: Bridging the Gap*, 36 U. ARK. LITTLE ROCK L. REV. 453, 453 (2014). LAPs provide a wide array of services, such as assessments, interventions, counseling, and referrals; they are an excellent resource “to help suffering lawyers, judges, their family members and law students through difficult times and to support them in developing new tools to achieve and maintain healthier physical and mental lifestyles.” *Id.*

³⁵ *Commission on Lawyer Assistance Programs*, AM. BAR ASS’N, https://www.americanbar.org/groups/lawyer_assistance/ (last visited Jan. 28, 2021). For example, the State of Illinois’s Lawyers’ Assistance Program was founded “by a concerned group of lawyers” in 1980. *Concerned Lawyers on a Mission*, ILL.

resource for lawyer well-being, the ABA found that they are underutilized, which it identified as “the most pressing problem” facing LAPs.³⁶ Stigmatization likely plays a large part in LAP underutilization as judges or lawyers deny their problem for fear of looking weak.³⁷ In addition, another significant hurdle to the effectiveness of these programs is “a lack of trust.”³⁸ Part of the

LAWS.’ ASSISTANCE PROGRAM, <https://illinoislap.org/about-lap/history/> [<https://perma.cc/TW59-C7Q8>] (last visited Jan. 24, 2021). They saw a need “to reach out to help colleagues impaired by alcohol abuse and addiction.” *Id.* The Program’s mission is devoted to the advancement of well-being in the legal profession and to assure that every judge, lawyer and law student has access to support and assistance when confronting alcoholism, substance use disorders or mental health issues so that lawyers are able to recover, families are preserved and clients and other members of the public are protected.

Press Release, *Dr. Diana Uchiyama Appointed to ABA Section of Litig. Mental Health & Wellness Task Force & Receives Presidential Appointment to the ABA Comm’n on Lawyer Assistance Programs*, ILL. LAWS.’ ASSISTANCE PROGRAM, https://illinoislap.org/wp-content/uploads/2020/06/LAP-Press-Release_Executive-Director-Dr.-Diana-Appointments.pdf [<https://perma.cc/946F-LQ9L>] (last visited Jan. 24, 2021); *see also* Cearley, *supra* note 34, at 453–54 (“Most LAPs see clients for similar issues: substance abuse and addiction, mental health disorders and illness, marriage and family problems, financial and career issues, and issues that arise with aging. In many LAP offices, mental health consults outnumber substance abuse as the presenting problem.”).

³⁶ AM. BAR ASS’N COMM’N ON LAWYER ASSISTANCE PROGRAMS, 2014 COMPREHENSIVE SURVEY OF LAWYER ASSISTANCE PROGRAMS 49 (2015). In fact, the commission states in its conclusion that of “the most pressing problems facing LAPs, the most highly rated problem continues to be under-utilization, suggesting there is still some work to do in connecting those in need with the programs.” *Id.* at 55.

³⁷ *See* BUCHANAN & COYLE, *supra* note 1, at 23. The commission notes that “the stigma surrounding mental health and substance use disorders poses an obstacle to treatment.” *Id.* *See also* Joan Bibelhausen et al., *Reducing the Stigma: The Deadly Effect of Untreated Mental Illness and New Strategies for Changing Outcomes in Law Students*, 41 WM. MITCHELL L. REV. 918, 920–21 (2015). The authors explain that:

Stigma refers to a feeling of disgrace or fear, often experienced by those with a mental health condition. According to the Centers for Disease Control (CDC), “this stigmatized trait sets the bearer apart from the rest of society, bringing with it feelings of shame and isolation.”

. . . .

There are two types of stigma associated with those suffering from mental health concerns: anticipated self-stigma and perceived public stigma. “Perceived public stigma refers to discrimination and devaluation by others, and anticipated self-stigma refers to internalization of negative stereotypes about people who seek help.”

Id. (citations omitted).

³⁸ *See* Cearley, *supra* note 34, at 454. The author notes that:

One of our biggest hurdles is a lack of trust that comes from generations of lawyers taught that their job is not only to solve their clients’ problems, but also to singlehandedly solve their own problems; that for a lawyer to let

problem, according to J.E. (Buddy) Stockwell, the executive director of Louisiana's LAP, is that "[l]awyers and judges are extremely independent and self-sufficient by nature and it is not in our natures to admit anything that can be remotely perceived as a weakness."³⁹ Thus, while critically important, LAPs should be seen as just one powerful tool that can be drawn from the wellness toolkit to increase the health, resiliency, and well-being of lawyers; in and of themselves, they are far from a panacea that makes lawyers people of character capable of making good choices, whether on the clock or not.⁴⁰ Rather, LAPs should be

anyone know he has a problem is to lose his professional self and career; that for a judge to show a chink in her armor is to lose her reputation and her next race.

Id.

³⁹ Stockwell, *supra* note 33.

⁴⁰ Cf. ALMAR *supra* note 7. In his ALMAR, General Neller speaks favorably of spiritual fitness when it comes to resiliency and making Marines "people of character, capable of making good choices on or off duty." *Id.* See generally ANNE M. BRAFFORD, WELL-BEING TOOLKIT FOR LAWYERS AND LEGAL EMPLOYERS (Aug. 2018) [hereinafter BRAFFORD], https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_wellbeing_toolkit_for_lawyers_legal_employers.authcheckdam.pdf [<https://perma.cc/3XPE-ZJTQ>] (providing a useful guide to enhance individual and workplace well being). For a broader discussion on lawyer happiness that leads to well-being, see e.g., ANNE M. BRAFFORD, *Worksheet #1: How to be Happier? Make it a Priority*, in WELL-BEING TOOLKIT FOR LAWYERS AND LEGAL EMPLOYERS, *supra*, at 45–48; see also Daniel S. Bowling, III, *Lawyers and Their Elusive Pursuit of Happiness: Does it Matter?*, 7 DUKE F. L. & SOC. CHANGE 37, 39 (2015) ("[W]ell-being is in fact an important component of legal professionalism, and it is in the interests of enhancing the profession and its role in society that its leaders institute measures to better understand and promote it."); Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 554 (2015) (providing a comprehensive picture of the psychodynamics of lawyers by identifying "correlates and contributors to [their] well-being and life satisfaction"); Peter H. Huang & Rick Swedloff, *Authentic Happiness & Meaning at Law Firms*, 58 SYRACUSE L. REV. 335, 335 (2008) (using "empirical and experimental research" to advocate policies within law firms that "foster authentic happiness and meaning" in lawyers' professional lives); NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* 78–79 (2010) (using positive psychology, neuroscience and sociology to present a "happiness toolbox" that includes down-to-earth steps to take towards happiness); Richard Delgado & Jean Stefancic, *Can Lawyers Find Happiness?*, 58 SYRACUSE L. REV. 241, 248, 253–54 (2008) (reviewing the downside to excessive formalism in the law and suggesting ways to restructure legal practice to increase satisfaction and happiness in the profession); Nancy Levitt & Douglas O. Linder, *Happy Law Students, Happy Lawyers*, 58 SYRACUSE L. REV. 351, 351 (2008) ("[L]awyers by and large are unhappier than those in many other professions."); Martin E. P. Seligman et al., *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33, 36–38, 43–45 (2001) (describing the psychological explanations for lawyer unhappiness and discussing remedies for pessimism and suggesting steps

appreciated and recognized for their utility, but only with the understanding that lawyer resiliency and well-being could be further strengthened by the power of spirituality as an additional and valuable complementary tool. Simply put, “[y]ou can’t ‘lawyer’ your way out of alcoholism or chemical brain diseases. As such, the self-reliance that previously served lawyers or judges so well can be their total undoing because it blocks the path to help.”⁴¹

Beyond this, the roots of the well-being crisis can be addressed both metaphysically and spiritually. Within Catholic understanding, things such as harmful addictions can be recognized as connected to, and rooted in, the spiritual dimension, because the internal crisis finds a connection to the effects of our fallen human nature in which “our minds are darkened, our wills weakened, and our desires disordered.”⁴² The

that can be taken to improve the lives of lawyers); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 872 (1999) (“The bad news is that the profession . . . is one of the most unhappy and unhealthy on the face of the earth—and, in the view of many, one of the most unethical. The good news is that you can join this profession and still be happy, healthy, and ethical.”).

⁴¹ J.E. (Buddy) Stockwell, *Asking for Help*, 59 LA. B.J. 350, 350 (2012). Underscoring this, the author notes that:

Lawyers and judges are particularly resistant to the concept of seeking help, especially for a personal problem. As professionals, we are not accustomed to surrendering to anything. This is not surprising given our training. In law school, we developed intellectual stamina and analytical skills that afford us legitimate academic confidence. While practicing law, we gained well-earned confidence in complex problem solving. Simply put, as lawyers and judges, we are trained to *handle* problems, not *suffer* problems.

Our admirable attributes of independence and tenacity serve us well right up until we suffer a personal problem that can’t be outsmarted. Alcoholism, drug addiction, depression and other physiologically-based chemical brain diseases simply can’t be defeated with analytical skills and confidence.

Id.

⁴² Joseph Koterski, S.J., *Human Nature from a Catholic Perspective*, 71 AM. J. ECON. & SOC. 809, 822 (2012). Koterski provides an exposition on the traditional Catholic theological understanding of human nature. *See id.* In explaining the inclination to sin or disorder, the author asserts that:

As the one type of being that is made in God’s own image and likeness, human beings also have a triadic structure, and concomitantly, a tri-partite pattern of loves. But human nature as we know it is invariably fallen nature, not some pure nature that is still unaffected by the fall. . . . One traditional way of describing the effects of the fall has been to say that *our minds are darkened, our wills weakened, and our desires disordered.*

Id. (emphasis added). The impact of original sin corresponds with the Catholic understanding of spirituality. *See* Bartunek, *supra* note 3 (noting that “[o]ur

resulting pathos affecting the human condition originates as a result of original sin, which necessarily entails the idea of human suffering entering into the world, including self-inflicted wounds, from such choices as substance abuse.⁴³ While the concept of disordered desires, weakened wills, and darkened minds may be rooted in the traditional theological doctrine of the Christian faith, the concept may also be broadly understood as providing an intuitive understanding as to why so many highly intelligent people, such as Marines and lawyers, are so often afflicted with emotional distress, chemical dependency, depression, and suicide, and too often risk their professional standing, or even freedom, by electing to make poor choices with devastating ramifications impacting their lives. With regard to lawyers, these choices often include deliberate actions to commit embezzlement, fraud, and other forms of white-collar crimes that leads to reprimand, suspension, sanction, or disbarment.⁴⁴

intelligence, our capacity to perceive and understand truth in a self-conscious manner, was severely darkened by original sin, and darkened even more by our personal sin and the sinful tendencies of the world around us.”); *see also* Joseph Koterski, S.J., *The Concept of Nature: Philosophical Reflections in Service of Theology*, in *THEOLOGY NEEDS PHILOSOPHY: ACTING AGAINST REASON IS CONTRARY TO THE NATURE OF GOD* 54, 69 (Matthew L. Lamb ed., 2016). In his section pertaining to metaphysics of nature in theology, Koterski notes:

As the one type of being that is made in God’s own image and likeness, human beings also have by their very nature a triadic structure, and concomitantly, a tri-partite pattern of how they ought to love. But human nature as we know it is fallen. It is not some pure nature that is still unaffected by the Fall. One traditional way describing the effects of the Fall has been to say that our minds are darkened, our wills weakened, and our desires disordered. The advantages of this way of speaking are considerable.

Id. (footnote omitted).

⁴³ *See* CATECHISM OF THE CATHOLIC CHURCH ¶¶ 388–89, 397–400 (2d ed. 1997) (discussing the linkage between humankind’s proclivity towards sin and disorder to the doctrine of original sin). Accordingly, human nature has been “weakened and inclined to evil.” *Id.* ¶ 405. More specifically, human nature is “subject to ignorance, suffering and the domination of death, and inclined to sin.” *Id.* ¶ 418. The catechism further expounds on the wounded nature inclined to evil and the suffering that results stating that “no one can escape the experience of suffering or the evils in nature which seem to be linked to the limitations proper to creatures: and above all to the question of moral evil.” *Id.* ¶ 385.

⁴⁴ *See, e.g.*, Bruce A. Green, *The Criminal Regulation of Lawyers*, 67 *FORDHAM L. REV.* 327, 331 (1998). The author notes that “although lawyers are sworn to uphold the law and are sometimes charged with enforcing the law, nothing in a law degree or law license wards off the human impulses and temptations to break the law.” *Id.* at 327. That said, even though human nature is afflicted with disordered desires, lawyers’ wills weakened and their minds darkened because of the fall, attorneys’ are nonetheless individuals free to choose and are not simply slaves to

Marines also commit crimes that seem inexplicable and are held accountable by military punishment that corresponds to the level of infraction or wrong doing; such punishments may include a reduction in pay, restriction, confinement, loss of rank, imprisonment, and separation from service with a dishonorable discharge.⁴⁵ Whether a lawyer or Marine, poor choices result in profound levels of individual human suffering—including loss and moral injury at a deeply personal level—that sometimes cannot be understood without a spiritual component to include *darkened minds, weakened wills, and disordered desires*. Indeed, the striking reality of so many lawyers or Marines, chained to various forms of addiction making incredibly poor choices that have such profound impact on their well-being—lays wound to the profession itself, and stands as evidence of a serious internal crisis among lawyers that must be of greatest concern to the legal profession as a whole, as highlighted by the 2017 National Task Force on Lawyer Well-Being.

committing unethical or immoral actions. Conscience is an ever-present moral guide. See Bruce Green & Jane Campbell Moriarty, *Rehabilitating Lawyers: Perceptions of Deviance and Its Cures in the Lawyer Reinstatement Process*, 40 *FORDHAM URB. L.J.* 139, 162 (2012). With regard to conscience helping individuals make the right decisions despite the admittedly gray areas of life, and making ethical and moral decisions given our darkened minds, the authors comment that:

For most of us, our conscience, formed in part internally and in part by our environment, governs the extent and degree of our deceptive behavior. Most people are neither unnaturally honest nor wholly dishonest; we all fall somewhere on a spectrum and various factors may affect our behavior, including pressures encountered and the perceived risk of detection. Thus, predicting the likelihood of a given individual's deceptiveness in the future is a complicated and possibly futile task.

Id.

⁴⁵ For military members, institutional censure and the most severe punitive discharge from military service is a dishonorable discharge. It is reserved for servicemembers who are convicted in a general court-martial for committing the direst of military offenses and crimes, including rape, murder, high treason or desertion. For instance, in 2018 a Lance Corporal was convicted of aggravated assault at a general court-martial at Camp Lejeune, North Carolina and sentenced to 40 months of confinement, reduction of rank to private, and given a dishonorable discharge. The Lance Corporal had nearly killed a Corporal by striking in him in the head with a metal rod during an altercation at the barracks. See Shawn Snow, *Dishonorable Discharge Stands for Lance Corporal Sentenced for Bludgeoning, Nearly Killing Another Marine at the Barracks Smoke Pit*, *MARINE CORPS TIMES* (Feb. 5, 2019), <https://www.marinecorpstimes.com/news/your-marine-corps/2019/02/05/dishonorable-discharge-stands-for-lance-corporal-sentenced-for-bludgeoning-nearly-killing-another-marine-at-the-barracks-smoke-pit/>; see also *Forms of Military Discharge*, VA.ORG, <https://va.org/forms-of-military-discharge/> [<https://perma.cc/DF6P-KHMU>] (last visited Jan. 24, 2021) (presenting additional information on the types of military discharges).

II. PEERING INTO THE DARKNESS: THE CRISIS IN WELL-BEING

[T]oo many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence. This research suggests that the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust.

—*The 2017 National Task Force on Lawyer Well-Being*⁴⁶

The crisis of well-being among judges and lawyers is the result of an amalgamation of many deleterious factors at play within society and the profession, including the deeply concerning fact that Americans have a low regard for members of the legal profession.⁴⁷ Lawyers are often the subject of jokes, ridicule, and even scorn.⁴⁸ In fact, the legal profession scored the lowest among the professions in terms of perceived contributions

⁴⁶ See BUCHANAN & COYLE, *supra* note 1.

⁴⁷ See, e.g., Robert J. Cosgrove, Comment, *Damned to the Inferno? A New Vision of Lawyers at the Dawning of the Millennium*, 26 FORDHAM URB. L.J. 1669, 1670–71 (1999) (commenting on societal disdain and hostility towards lawyers); Roger E. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 GEO. J. LEGAL ETHICS 367, 367 (1996) (noting that “[l]awyers are held in extraordinarily low regard,” scoring “near the bottom” in “surveys ranking public esteem of various professions”); Geoffrey C. Hazard, Jr., *The Future of Legal Ethics*, 100 YALE L.J. 1239, 1240 (1991) (“[T]he public, and perhaps the profession itself, seem increasingly convinced that lawyers are simply a plague on society.”).

⁴⁸ See, e.g., Aspen, *supra* note 23, at 513 (“[L]awyer bashing has become our new national pastime.”); Robert C. Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass*, 75 CAL. L. REV. 379, 379 (1987) (“The most striking aspect of the image of the lawyer in popular culture is the intense hostility with which it is invested.”); Galanter, *supra* note 29, at 634 (“When it comes to lawyer-bashing, there is not much new under the sun. Hostility toward lawyers is a perennial.”); Marc Galanter, *Tournament of Jokes: Generational Tension in Large Law Firms*, 84 N.C. L. REV. 1437, 1437 (2006) (“[T]he profession has been the target of a great surge of anti-lawyer sentiment, one manifestation of which is a great increase in the presence and hostility of jokes about lawyers.”); MARC GALANTER, LOWERING THE BAR: LAWYER JOKES AND LEGAL CULTURE 3 (2005) (“From ancient Greece and the New Testament to our own day, lawyers have long been objects of derision.”). Other authors have further analyzed the societal bashing expressed in lawyer jokes. See, e.g., Roger C. Cramton, *What Do Lawyer Jokes Tell Us About Lawyers and Lawyering?*, 23 CORNELL L. F. 3, 3 (1996) (observing that lawyer jokes have much to say about the identity of lawyers); Thomas W. Overton, Comment, *Lawyers, Light Bulbs, and Dead Snakes: The Lawyer Joke as Societal Text*, 42 UCLA L. REV. 1069, 1074 (1995) (analyzing public cynicism about the legal profession that leads to lawyers being the subject matter for jokes).

to society, according to the Pew Foundation.⁴⁹ Contributing to the lack of trust and societal esteem is the notion that lawyers are not honest or truthful, and cannot be entrusted to have their clients' interests at heart.⁵⁰ All of this stands in stark contrast to the time when the profession was considered a noble calling and lawyers were well regarded intellectual elites with high social status and a vital role to the well-being of society.⁵¹ Many have concluded that both the profession and lawyers themselves are in crises.⁵²

Against this backdrop, it is not surprising that resiliency and well-being begins to degrade starting in law school as the emotional toll of learning to think like a lawyer takes hold.⁵³ Notably, things such as “grading curves, trial advocacy and writing competitions, high stakes exams, and intense rivalry for 2L summer jobs often have intimidating effects on students The constant barrage of measuring, sorting, and ranking in law school can leave many students with feelings of

⁴⁹ *Public Esteem for Military Still High*, PEW RSCH. CTR. (July 11, 2013), <https://www.pewforum.org/2013/07/11/public-esteem-for-military-still-high/> [<https://perma.cc/FY9N-QJGB>] (determining that the esteem of the legal profession ranks decidedly at the very bottom of various professions and scores the lowest in terms of its perceived contributions to the well-being of society).

⁵⁰ See John A. Humbach, *The National Association of Honest Lawyers: An Essay on Honesty, “Lawyer Honesty” and Public Trust in the Legal System*, 20 PACE L. REV. 93, 94 (1999). The author comments that “on the whole, [lawyers] can *not* be trusted. The reason is not merely that some lawyers sometimes do not tell the truth. The problem is far more systematic and pervasive. The reason lawyers cannot be trusted is that . . . most lawyers do not even purport to present the objective truth.” *Id.* Indeed, no less a figure than Abraham Lincoln had thoughts that reflected his concern on this matter. Speaking to new law students during a class lecture in 1850, he said: “[R]esolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.” See Abraham Lincoln, *Fragment: Notes for a Law Lecture*, in 2 THE COLLECTED WORKS OF ABRAHAM LINCOLN 81, 82 (Roy P. Basler et al. eds., 1953).

⁵¹ See *supra* notes 11–12 and accompanying text.

⁵² See *supra* notes 14, 15, 17–35 and accompanying text.

⁵³ It is said that during the first semester of law school, law students begin the iconic transformation of “thinking like a lawyer.” Indeed, Karl Llewellyn famously described this phenomenon to his new law school students with these thoughts:

The hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking, along with ideas all fuzzed along their edges. You are to acquire ability to think precisely, to analyze coldly, to work within a body of materials that is given, to see, and see only, and manipulate, the machinery of the law.

K.N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 116 (1960).

insecurity, failure, and demoralization.”⁵⁴ Law school is, in short, a time rife with considerable stress and anxiety, as catalogued in an important multischool study documenting the prevalence of such things as binge drinking, the abuse of prescription drugs, and other mental health concerns.⁵⁵ Consequently, it is not surprising that an unusually high prevalence of psychological distress begins to develop and take hold among law students, resulting in significantly higher rates of emotional disabilities, including anxiety and depression, than that of both the general population and students of other professions.⁵⁶ In an effort to

⁵⁴ See Filippa Marullo Anzalone, *Lawyer and Law Student Well-Being*, AALL SPECTRUM, Mar./Apr. 2018, at 44, 45. These stressors and the process of ending “fuzzed” and “woozy” thinking frequently comes at a notable cost to well-being. See LLEWELLYN, *supra* note 53. Changing habits of thinking, shared norms, and mental models on how to interpret and apply the law to fact patterns in order to think like a lawyer is often accompanied by stress, anxiety, and fear of failure. See Lawrence Silver, Comment, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201, 1201–02 (1968) (exploring general problems encountered by first year law students, including anxiety resulting from an intense fear of failure); B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 627 (1991) (opining that due to the extremely competitive nature of law school, the stress to achieve causes students to experience effects ranging from passive aggressiveness to hostility to “fight or flight” reactions); Jennifer Jolly-Ryan, *Promoting Mental Health in Law School: What Law Schools Can Do for Law Students to Help Them Become Happy, Mentally Healthy Lawyers*, 48 U. LOUISVILLE L. REV. 95, 96 (2009) (offering ideas to increase happiness while helping law students cope with the stress of law school).

⁵⁵ See Jerome M. Organ, et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 117 (2016) (noting that similar to medical school or any other doctoral program of study, law school “can be a time riddled with anxiety, stress, and financial upheaval”). This study included the Survey of Law Student Well-Being (“SLSWB”), “the first multischool study in over twenty years,” providing a much-needed snapshot on the use of binge drinking, misuse of prescription drugs, and mental health challenges among present day law students. *Id.* at 118. This study was co-authored by the ABA Commission on Lawyer Assistance Programs (“CoLAP”) which also co-authored the 2016 Hazelden Report. See *infra* notes 66-70 and accompanying text. See also Commission on Lawyer Assistance Programs, *Survey of Law Student Well-Being*, ABA (Mar. 30, 2020), https://www.americanbar.org/groups/lawyer_assistance/research/law_student_survey/ [<https://perma.cc/M5AW-QCHC>].

⁵⁶ See Jolly-Ryan, *supra* note 54, at 97, 103 (recognizing law school as among the most stressful of all educational environments with law students blaming the educational process itself for the deleterious emotional toll it takes on them and their elevated stress levels); see also Corie Rosen, *The Method and the Message*, 12 NEV. L.J. 160, 161 (2011) (asserting that law students’ depression is on the rise, while wellness is rapidly declining); Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65, 69 (1985) (reporting a higher prevalence of psychiatric distress among law students than the general population); G. Andrew H. Benjamin et al., *The Role of Legal Education in*

relieve anxiety and stress, many law students turn to alcohol use that many would consider problematic—a habit that continues and often intensifies over the course of their careers.⁵⁷ The stress does not end at the completion of 3L and passing the bar exam; newly minted lawyers enter a work environment of not only daily stressors and tension, but of widespread dissatisfaction and professional misery.⁵⁸ Just as when they were students, when problems begin to surface, young lawyers are reluctant to get help for fear of seeming weak,⁵⁹ and so they simply assimilate into a profession known for generating inordinate levels of psychological distress,⁶⁰ blithely joining the ranks of attorneys

Producing Psychological Distress Among Law Students and Lawyers, 1986 AM. B. FOUND. RSCH. J. 225, 225 (1986) (using the results of a cross-sequential research design to empirically assess whether the emotional well-being of law students is impaired by the educational process and discussing the implications of the results); Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 L. & HUM. BEHAV. 55, 55 (1999) (“review[ing] and evaluat[ing] the existing literature on anxiety and depression among law students”).

⁵⁷ Jennifer Jolly-Ryan, *The Last Taboo: Breaking Law Students with Mental Illnesses and Disabilities out of the Stigma Straitjacket*, 79 UMKC L. REV. 123, 126 (2010) (asserting that drinking becomes a habit for some law students who condition themselves to use alcohol to ease social interaction and reduce daily stressors and tensions). The author also asserts that as a result, a lifelong habit of using alcohol to relieve stress may develop, which can eventually “adversely affect the law student’s career as a lawyer.” *Id.* at 126–27.

⁵⁸ See JEAN STEFANCIC & RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS* xiii–xiv (2005) (acknowledging the widespread professional misery experienced by contemporary lawyers); John P. Heinz et al., *Lawyers and Their Discontents: Findings from a Survey of the Chicago Bar*, 74 IND. L.J. 735, 742–45 (1999) (interviewing nearly 800 lawyers and determining the rate of dissatisfaction among members of the bar). *But cf.* Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225, 274 (2011) (summarizing the scholarship while analyzing the dichotomy between data suggesting lawyer satisfaction/dissatisfaction, and concluding that despite the personal and professional challenges inherent in the practice of law, “there is no need to despair completely that a life in the law will inevitably lead to dissatisfaction”).

⁵⁹ See *supra* notes 36–39, 41 and accompanying text.

⁶⁰ For purposes of this Article, “psychological distress” is an umbrella term referring to various problematic emotional and mental health issues, including anxiety, stress, and depression, with symptoms of varying intensity. See *Psychological Distress*, AM. PSYCH. ASS’N DICTIONARY OF PSYCH., <https://dictionary.apa.org/psychological-distress> [<https://perma.cc/69WZ-PKDV>] (last visited Jan. 24, 2021). The dictionary describes psychological distress as:

[A] set of painful mental and physical symptoms that are associated with normal fluctuations of mood in most people. In some cases, however, psychological distress may indicate the beginning of major depressive disorder, anxiety disorder, schizophrenia, somatization disorder, or a

with dubious stress hardiness.⁶¹ This tendency towards anxiety and psychological distress is laid bare by the fact that depression rates are significantly higher among lawyers—effectively double the rates in the general population.⁶² Indeed, among various professions, the same elevated rates among lawyers also holds true.⁶³ Not surprisingly, lawyers disproportionately suffer from alcoholism⁶⁴ and other forms of substance abuse and chemical

variety of other clinical conditions. It is thought to be what is assessed by many putative self-report measures of depression and anxiety.

Id.

⁶¹ See e.g., Pamela Bucy Pierson et al., *Stress Hardiness and Lawyers*, 42 J. LEGAL PROF. 1, 4 (2017) (empirically analyzing stress hardiness in the legal profession and its impact on the mental health of lawyers); James J. Alfini & Joseph N. Van Voreen, *Is There a Solution to the Problem of Lawyer Stress? The Law School Perspective*, 10 J. L. & HEALTH 61, 62 (1995) (discussing that the stress and pressure in modern practice resulting in psychological distress).

⁶² See, e.g., William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL & ENV'T. MED. 1079, 1083, 1085 (1990) (exploring major depressive disorder across a range of occupations and concluding that among all the professions, lawyers suffer the highest rate of depression); Jon Jefferson, *But What Role for the Soul?*, 77 ABA J., Dec. 1991, at 60, 60 (citing a Johns Hopkins study that lawyers suffer depression at “more than twice the rate in the general population”); G. Andrew H. Benjamin et al., *Comprehensive Lawyer Assistance Programs: Justification and Model*, 16 L. & PSYCH. REV. 113, 114 (1992) (citing studies that show high levels of depression among lawyers); Rebecca M. Nerison, *Is the Law Hazardous to Your Health? The Depressing Nature of the Law*, 22 B. LEADER, Mar.–Apr. 1998, at 14, 14–15 (exploring the causes leading to depression among lawyers); BENJAMIN SELLS, *THE SOUL OF THE LAW* 99 (1994) (positing that lawyers rank first of 105 professions in rates of depression).

⁶³ In fact, the epidemic rate of depression and other issues of distress within the legal profession led to the establishment of LAPs nationally. See *supra* notes 33–35, 37 and accompanying text; see also J.E. (Buddy) Stockwell, *Lawyers Assistance Program, Inc. Establishes Free Depression Recovery Groups Statewide*, 61 LA. B. J. 190, 191–92 (2013) (noting “the epidemic of depression in the legal profession” and the establishment of statewide depression recovery groups); Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law School Depression: What Law Students Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 358 (2009). The authors note that:

In a country where the depression rate is ten times higher today than it was in 1960, lawyers sit at the unenviable zenith of depressed professionals. *Of all the professionals in the United States*, lawyers suffer from the highest rate of depression after adjusting for socio-demographic factors, and they are 3.6 times more likely to suffer from major depressive disorder than the rest of the employed population. . . . With such disproportionate levels of unhappiness, it is not surprising that the profession itself is suffering.

Id. (emphasis added) (footnotes omitted).

⁶⁴ See *supra* notes 35, 41, 55 and accompanying text. For additional research on the prevalence of alcoholism in the profession, see, e.g., Laurie Bilz Dowell, *Attorneys and Alcoholism: An Alternative Approach to a Serious Problem*, 16 N. KY. L. REV. 169, 170 (1988) (reviewing studies which indicate that practicing lawyers have an

dependency.⁶⁵ Recently, in the most comprehensive study of its kind surveying nearly 13,000 lawyers, it was determined that over 28.9 percent of licensed, employed attorneys within their first 10 years of practice scored at a level consistent with problematic drinking, while levels of anxiety, depression, and stress among the same cohort of attorneys that reported at least mild or higher was at 28 percent.⁶⁶ Commonly known as the

unusually high incidence of emotion dysfunction and alcohol dependency); Michael A. Bloom & Carol Lynn Wallinger, *Lawyers and Alcoholism: Is It Time for a New Approach?*, 61 TEMP. L. REV. 1409, 1413 (1988) (calling attention to the severity of alcohol and substance abuse in the legal profession and proposing a new approach); Jonathan Goodliffe, *Alcohol and Depression in English and American Lawyer Disciplinary Proceedings*, 89 ADDICTION 1237, 1243 (1994) (discussing the links between alcohol use, lawyer misconduct, and malpractice); Rick B. Allan, *Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?*, 31 CREIGHTON L. REV. 265, 265–66 (1997) (discussing the relationship between a heightened percentage of attorneys who chronically abuse alcohol and drugs, as compared to American adults generally, and “loss of public trust”).

⁶⁵ See *supra* notes 35, 41, 55 and accompanying text. For discussion on lawyers experiencing a higher rate of substance abuse and other forms of chemical dependency, see, e.g., Daicoff, *supra* note 24, at 1347 (footnotes omitted) (concluding that lawyers experience “a significantly higher level of depression (19%) and substance abuse (15-18%) than individuals in other professions”); Jarrett A. Green & Rebecca A. Simon, *Self-Mastery: The Pathway to Peak Performance and Well-Being in the Law*, 48 SW. L. REV. 207, 208 (2019) (noting that the legal profession statistically ranks the worst of all occupations for substance abuse, depression and suicidal ideations). See also G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among Lawyers*, 13 INT’L J. L. & PSYCHIATRY 233, 242 (1990) (“[D]epression, problem drinking, and cocaine abuse is likely to affect lawyers at similar rates, regardless of jurisdiction . . .”).

⁶⁶ Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 48, 51 (2016), https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the_prevalence_of_substance_use_and_other_mental.8.aspx. The Hazelden Betty Ford Foundation and the ABA CoLAP funded the study of nearly 13,000 lawyers on mental health and substance abuse disorders. *Id.* at 46. In addition to the 2014 survey of law student well-being and the 2016 Hazelden Report, there is an additional prominent survey among Harvard law students pertaining to well-being. See James C. Coyle, *The Report of the National Task Force on Lawyer Well-Being and the Role of the Bar Admissions Community in the Lawyer Well-Being Movement*, 87 B. EXAMINER, Summer 2018, at 8, 9, https://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2018%2FBE-870218-Coyle.pdf. The author refers to a recent study conducted at Harvard that reflect similar findings:

A study conducted in November 2017 by Harvard Law School student government found that out of 886 Harvard law students, 24% reported anxiety, 25% reported depression, a staggering 20.5% were at heightened suicide risk, and 66% reported new mental challenges in law school. . . .

The results from each of these studies signal an elevated risk in the legal community for mental health and substance use disorders that is tightly intertwined with an alcohol-based social culture. While the studies

Hazelden Report, the landmark research goes into much detail, revealing revealed “substantial and widespread levels of problem drinking and other behavioral health problems in the U.S. legal profession.”⁶⁷ According to Patrick Krill, the lead author of the study, the findings are “very alarming.”⁶⁸ Fundamentally, the study validates that the “profession faces truly significant challenges related to attorney well-being,” and it “paints the picture of an unsustainable professional culture that’s harming too many people.”⁶⁹ Not only that, “[a]ttorney impairment poses risks to the struggling individuals themselves and to our communities, government, economy and society.”⁷⁰ Given the besieged portrait painted by the Hazelden Report, is there any wonder that even successful and prominent lawyers are falling victim to burnout⁷¹ and depression,⁷² and are committing suicide

also reflect that the majority of lawyers and law students do not have a mental health or substance use disorder, this does not mean that they are thriving. Many lawyers experience a “profound ambivalence” about their work, and different sectors of the profession vary in their levels of satisfaction and well-being. A recent study concluded that the practice of law is the loneliest kind of work for members of all professional occupations, stating that the single most impactful behavior leaders can undertake to counteract loneliness is to create opportunities for building shared meaning with colleagues.

Id. at 9–10 (footnotes omitted).

⁶⁷ ABA, *Hazelden Betty Ford Foundation Release First National Study on Attorney Substance Use, Mental Health Concerns*, HAZELDEN BETTY FORD FOUND. (Feb. 3, 2016), <https://www.hazeldenbettyford.org/about-us/news-media/press-release/2016-aba-hazelden-release-first-study-attorney-substance-use> [<https://perma.cc/4FVE-6Y3S>].

⁶⁸ *Id.*

⁶⁹ *Id.* According to Krill, “[t]his long-overdue study clearly validates the widely held but empirically under supported view that our profession faces truly significant challenges related to attorney well-being.” Krill also said, “[a]ny way you look at it, this data is very alarming, and paints the picture of an unsustainable professional culture that’s harming too many people. *Id.*”

⁷⁰ *Id.*

⁷¹ See Kurt M. Hughes, *Data’s Congestion*, 25 VT. B. J. & L. DIG., June 1999, at 18, 18 (describing burnout as “an intellectual/emotional/spiritual flu” creating an overwhelming sense of exhaustion or anxiety); Janine Robben, *Burnout: Cautionary Tales*, 69 OR. ST. B. BULL., Oct. 2008, at 17, 19–25 (discussing the typical reasons, phases, and treatment of burnout); Lee Norton et al., *Burnout and Compassion Fatigue: What Lawyers Need to Know*, 84 UMKC L. REV. 987, 990–97 (2016) (describing the biology of burnout and compassion fatigue and examining the susceptibility and reasons for lawyer burnout); see also Stockwell, *supra* note 33. J.E. (Buddy) Stockwell offered a number of practical ways that judges and lawyers can use to prevent or mitigate burnout:

1. Re-assess your balance of career success versus personal fulfillment. Sacrificing time with family and rarely having time for interests outside work and the practice of law indicates a potential need for

at rates significantly higher than their peers in other professions or the general public?⁷³

To recapitulate the foregoing, lawyers are disproportionately affected, in terms of both ubiquity and intensity, by stress and anxiety, depression and suicide, alcoholism and substance abuse, and other forms of psychopathologies leading to a crisis in well-being.⁷⁴ To address these problems, the National Task Force on

-
- recalibration. Make it a point to set goals to better balance work and play.
2. Don't allow yourself to become isolated. Get out of the office and the house and make sure you are still genuinely and openly involved with friends and engaged in extracurricular activities and hobbies that are NOT in any way associated with being a lawyer, judge or practicing law.
 3. Listen to others. Pay attention to signs that perhaps you need to change problematic interpersonal habits and pessimistic thinking.
 4. Beware of the "golden handcuffs" and becoming so entrenched in a high-income lifestyle that it is difficult to scale back billable hours as necessary to make time for a healthy personal life outside the practice of law.
 5. Don't bring your "lawyering" home with you. Being skeptical, judgmental and striving to always be "right" with friends and family can destroy those personal relationships.
 6. Be cognizant that, as lawyers and judges, we are trained to operate at a high level of intellectual abstraction that is analytical and disconnected from personal emotions so as to allow us to represent clients effectively. That mode of thinking, however, can be severely damaging to our well-being if stress is allowed to fester. Mental health care professionals recommend that lawyers and judges take the time to develop and adhere to a daily routine of stress management tools such as exercise, diet, meditation, yoga and simple things such as learning to say "no" to new tasks when overburdened and stressed out.

Stockwell, *supra* note 33.

⁷² See *supra* notes 33, 46, 56, 62, 66 and accompanying text.

⁷³ See, e.g., Laura Gatland, *Dangerous Dedication: Studies Suggest Long Hours, Productivity Pressures Can Cause Serious Health Problems and a Higher Suicide Rate for Attorneys*, ABA J., Dec. 1997, at 28, 28 (reviewing data that found the suicide rate among male lawyers was double that of the general population); 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/9E9C-XJQG>] ("Lawyers are 3.6 times more likely to suffer from depression than non-lawyers."); Patrick Krill, *Why Lawyers Are Prone to Suicide*, CNN (Jan. 21, 2014, 10:15 AM), <https://www.cnn.com/2014/01/20/opinion/krill-lawyers-suicide/index.html> [<https://perma.cc/ZUM9-NBD5>]. Perhaps it's little wonder, then, that in popular culture, lawyers are commonly depicted as "tortured souls." Lance McMillian, *Tortured Souls: Unhappy Lawyers Viewed Through the Medium of Film*, 19 SETON HALL J. SPORTS & ENT. L. 31, 34 (2009) (surveying the cinematic portrayal within different films and gleaning insights into the tortured lives of attorneys based on character portrayals).

⁷⁴ See Susan Daicoff, *Lawyer, Be Thyself: An Empirical Investigation of the Relationship Between the Ethic of Care, the Feeling Decisionmaking Preference, and*

Lawyer Well-Being and numerous commentators referenced throughout this article have proffered a variety of recommendations,⁷⁵ methods and techniques to counter the negatives while encouraging resilience, including various forms of cognitive intervention and positive psychology.⁷⁶ Starting in law school, the goal is to help law students prepare for the intellectual and emotional demands of the practice of law by developing habits of resilience and cultivating mindsets that increase mental health and produce lawyers that are stable,

Lawyer Wellbeing, 16 VA. J. SOC. POL'Y & L. 87, 88 (2008) (footnotes omitted) (“[A]pproximately one in five lawyers is suffering from clinically significant levels of alcoholism, substance abuse, depression, anxiety, or some other form of psychopathology.”).

⁷⁵ See, e.g., BUCHANAN & COYLE, *supra* note 1; BRAFFORD, *supra* note 40. It is important to point out that neither document provides any substance with regard to the importance of spirituality as a means towards lawyer resiliency and well-being except for an opaque reference to spirituality in *Well-Being Toolkit: For Lawyers and Legal Employers*. BRAFFORD, *supra* note 40, at 7. Notably, in the Task Force Report’s table of contents, recommendations are made for all stakeholders in Part I, and for specific stakeholders in Part II, to include regulators, legal employers, law schools, bar associations, lawyers’ professional liability carriers, and LAPs. See BUCHANAN & COYLE, *supra* note 1, at 4–5. Despite a total of forty-four specific recommendations, there is no recommendation on using spirituality for lawyer well-being. In addition, the table of contents also reveals that Appendix B of the Report, which contains “Example Educational Topics for Lawyer Well-Being,” again has no separate reference to spirituality despite thirteen topics being presented. *Id.* at 6. Finally, in Section 8.13 of Appendix B, entitled “Additional Topics,” the Report notes that:

Many topics are possible for programming aimed at boosting work engagement and overall well-being (through resource-development) and curbing stress and burnout (by limiting demands) or otherwise promoting lawyer well-being. Additional topics to consider include: psychological capital (composed of optimism, self-efficacy, hope, and resilience), psychological hardiness (composed of commitment, control, and challenge), stress mindset, growth mindset, grit, effort-reward balance, transformational leadership, self-determination theory, strengths-based management, emotional intelligence and regulation, organizational fairness, nutrition, interpersonal skills, and political skills.

Id. at 56–57 (footnotes omitted). Note that among the potential educational topics for lawyer well-being, there is again no mention of the importance of spirituality despite being a part of the National Task Force On Lawyer Well-Being downloadable infographic headlined, “Defining Lawyer Well-Being” on the homepage. See INST. FOR WELL-BEING IN L., *supra* note 9.

⁷⁶ See, e.g., Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270, 273, 278, 285 (1979) (concluding that anxiety and depression are at the heart of most of the problems among law students and that despite the “variety, color and intensity” of these issues, the great majority of students with “adverse emotional reactions can respond quite rapidly to a variety of simple, specific [cognitive] interventions”); Peterson & Peterson, *supra* note 63, at 361–62 (asserting that the field of positive psychology may provide some useful solutions to the problem).

happy, and mentally healthy.⁷⁷ Nevertheless, efforts to reduce distress and increase well-being among law students have yielded mixed results with limited success.⁷⁸ These results correlate to the simple fact that “law students most in need of help are reluctant to seek it.”⁷⁹ The same is unfortunately true for practicing attorneys. Increasingly frustrated and disillusioned,⁸⁰ they are abandoning the legal profession en masse with nearly 40,000 lawyers leaving the profession annually due to disillusionment and dissatisfaction.⁸¹ The

⁷⁷ See Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L. REV. 959, 984–87, 990–91 (2018) (identifying and suggesting a tiered set of tangible techniques aimed at helping students cultivate growth mindsets and habits of resilience with techniques designed to help the students of today be more effective and engaged lawyers tomorrow).

⁷⁸ See Abigail Loftus DeBlasis & Elizabeth Adamo Usman, *Unrealized Potential: How Shifting the Focus to Student Learning Outcomes Could Reduce Law Student Distress*, 95 U. DET. MERCY L. REV. 179, 183–84 (2018) (“[L]aw students, like the lawyers they hope to become, are disproportionately psychologically distressed and face a high rate of substance abuse . . .”).

⁷⁹ Organ et al., *supra* note 55, at 116.

⁸⁰ See Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1248 (1991) (marking on the frustration and disillusionment of lawyers); Sofia Yakren, *Lawyer as Emotional Laborer*, 42 U. MICH. J. L. REFORM 141, 141 (2008) (“[L]awyers, too, may face acute psychological distress and professional dissatisfaction.”); Susan Daicoff, *Making Law Therapeutic for Lawyers: Therapeutic Jurisprudence, Preventive Law, and the Psychology of Lawyers*, 5 PSYCH., PUB. POL’Y & L. 811, 811 (1999) (recognizing the “pervasiveness of . . . lawyer job dissatisfaction” and discussing solutions to some of the problems currently besieging the legal profession); see also Deborah L. Rhode, *Foreword: Personal Satisfaction in Professional Practice*, 58 SYRACUSE L. REV. 217, 219–20 (2008) (noting that, due to experiencing career dissatisfaction, a growing tide of lawyers have abandoned the legal field). For instance, one survey showed that sixty-six percent of attorneys would not recommend a legal career to others. *Id.* at 219 (citing Stephanie Francis Ward, *Pulse of the Legal Profession: 800 Lawyers Reveal What They Really Think About Their Lives, Their Careers, and the State of the Profession*, 93 ABA J., Oct. 2007, at 30, 32). In response to an ABA survey, just fifty-five percent indicated they were happy with their legal jobs. *See id.* (citing Ward, *supra*).

⁸¹ See Peterson & Peterson, *supra* note 63 (citing Diana Nelson Jones, *Legally Unhappy: Experts Worry About Growing Tide of Lawyers Abandoning Careers*, PITTSBURGH POST-GAZETTE (May 4, 2005, 12:00 AM), <https://www.post-gazette.com/business/businessnews/2005/05/04/Legally-unhappy-Experts-worry-about-growing-tide-of-lawyers-abandoning-careers/stories/200505040141> [<https://perma.cc/X8TV-6NEA>]) (“[G]rowing disaffection with the practice of law pushes 40,000 lawyers to leave the profession every year.”). Like any occupation, lawyers leave the labor force for any number of reasons, including retirement or temporarily exiting for personal reasons. Lawyers may be transferring to other occupations or may simply be moving up or down the occupational ladder, such as becoming judges or clerks. However, the vast majority of the attrition indicates that many want out. *See* Leigh McMullan Abramson, *The Only Job with an Industry Devoted to Helping People Quit*, THE

evidence is clear: both the profession itself and lawyers are in crises. LAPs are a critically important tool for lawyer wellness, among others; however, something more is needed, to include the recognition of spirituality as a means to increase the health, resiliency, and well-being of lawyers *while restoring the soul of the profession*.

III. APPLYING THE CONCEPTS AND PRINCIPLES OF THE
UNITED STATES MARINE CORPS' UNDERSTANDING OF SPIRITUAL
FITNESS AS A MEANS TOWARDS GREATER LAWYER
HEALTH, RESILIENCY, AND WELL-BEING

The gem cannot be polished without friction, nor man perfected without trials.

—*Chinese proverb*⁸²

All of these topics are rooted, first and foremost, in the issue of a need for an increase in general awareness. Until lawyers and judges become more aware of the true epidemic of stress, burnout and depression in the legal profession, and how it is impacting them personally, our profession will remain under siege.

—*J.E. (Buddy) Stockwell*⁸³

A. *The United States Marine Corps' Concept and Principles of Spirituality and Spiritual Fitness*

With the publication of ALMAR 033/16, General Robert B. Neller, Commandant of the USMC, emphasized the concept of spiritual fitness as an important component of the individual Marine's overall fitness.⁸⁴ Physical toughness has long been a hallmark of the USMC but spiritual fitness along with mental and social fitness have been recognized as important factors to a Marine's well-being. To help guide subsequent examination and analysis the term spirituality will generally refer to "that which gives meaning and purpose in life. The term may be used more

ATLANTIC, (July 29, 2014), <https://www.theatlantic.com/business/archive/2014/07/the-only-job-with-an-industry-devoted-to-helping-people-quit/375199/> [<https://perma.cc/G7P8-3Y43>] (discussing that, with so many lawyers wanting out, there is a cottage industry of consultants and coaches specializing in assisting them in finding a new direction).

⁸² F. W. Elwell, *Aphorisms & Quotes*, PSU, https://www.courses.psu.edu/art/art101_jxm22/aphorisms.html [<https://perma.cc/FE84-TUN5>] (last visited Jan. 27, 2021).

⁸³ See Stockwell, *supra* note 33.

⁸⁴ See ALMAR, *supra* note 7.

specifically to refer to the practice of a philosophy, religion, or way of living.”⁸⁵ Furthermore, spiritual fitness can be defined as “a person’s overall spiritual health and reflects how spirituality may help one cope with and enjoy life.”⁸⁶ The USMCs’ concept of spiritual fitness was not implemented as an objective metric or training standard but rather a tool for self-reflection. To aid in this self-reflection, Marines are encouraged to discuss spiritual fitness with Navy Chaplains and unit leaders, though not a mandatory component of the spiritual fitness concept.⁸⁷

⁸⁵ See, e.g., The U.S. Navy Chaplain Corps, *Marine Corps Spiritual Fitness Guide*, MARINE CORPS U. RES. LIBR., https://grc-usmccu.libguides.com/ld.php?content_id=45569794 [<https://perma.cc/DPQ6-4PKR>] (last visited Jan. 27, 2021). The Navy outlines two expressions of spirituality:

- (1) Human Expression: Refers to the essential core of the individual. Includes activities that strengthen self and build healthy relationships. Examples include commitment to family, love of life, and esprit de corps[;]
- (2) Religious Expression: Refers to the application of faith. Includes activities that connect one to the Divine, God, and the supernatural. Examples include prayer, worship, and participation in the sacraments. Buddhism encourages pursuit of the Noble Path. Christianity has a focus on seeking the Holy Spirit. Islamic spirituality is derived from the Quran and following the Sunnah.

Id.

⁸⁶ *Id.*

⁸⁷ The Navy supports the USMC with Chaplains to promote the spiritual, religious, moral, and personal well-being of Marines. As directed by the Secretary of the Navy, commanders are expected to:

- (1) Support the free exercise of religion . . . ; (2) Have a Command Religious Program (CRP) . . . ; (3) Provide the [Religious Ministry Team] with dedicated work spaces that are readily accessible to personnel and adequate to meet the . . . requirement for private access to a chaplain;
- (4) Grant the chaplain direct access pursuant to reference (b). Ensure the senior ranking chaplain in any command will be positioned organizationally as a direct report to the Executive Officer, or the Chief of Staff where such a position exists;
- (5) Ensure that attendance at public worship is voluntary with the exception of [Religious Ministry Team] personnel present in an official support capacity;
- (6) Decide which, if any, “religious elements” to include in command functions other than “divine services” or “religious services” . . . ;
- (7) When mission requirements permit, allow chaplains time to participate in [Chaplain Corps] Communities of Interest (COIs) and [Chaplain Corps] working groups, as members of a professional community;
- (8) When mission requirements permit, identify and train [Religious Ministry Teams] as first responders in all emergency response plans;
- (9) Collect data and submit CRP reports as required . . . ;
- (10) Assign only appropriate collateral duties for chaplains and [Religious Program Specialists] . . . ;
- (11) As necessary, seek advice from unit and supervisory chaplains regarding the standards in this instruction and [Personal Naval Chaplaincy] community expectations;
- (12) Direct contracting officers to inform senior supervisory chaplains of any contracts in support of [Command Religious Program];
- (13) Commanders will not

Developed by the Navy's Chaplain Corps, the Spiritual Fitness Guide provides a framework for an assessment and determination of an individual's spiritual fitness.⁸⁸ The Spiritual Fitness Guide contains a self-assessment tool that consists of four categories including fit, stressed, depleted, and drained.⁸⁹ The ideal outcomes of spiritual fitness are to be: "[e]ngaged in life's meaning [and] purpose," "[h]opeful about life [and the] future," "[m]ak[ing] sound moral decisions," "[f]ully engaged with family, friends, and community," "[a]ble to forgive self and others," "[r]espectful of others," and "[e]ngaged in core values [and] beliefs."⁹⁰ At the other end of the spiritual fitness spectrum, a Marine identified as spiritually drained is characterized as someone who: "[f]eels like life has no meaning [or] purpose," "[h]olds no hope about life [or the] future," is "[e]ngaged in extreme immoral behavior," is "[n]ot engaged with family, friends or community," believes "[f]orgiveness is not an option," has "[c]omplete disrespect for others," and has "[a]bandoned core values [and] beliefs."⁹¹ The Navy and USMCs' values of honor, courage, and commitment factor prominently in spiritual fitness.⁹² Their importance cannot be overlooked as they are engrained throughout officer candidate school, enlisted training, and boot camp.⁹³

allow or require chaplains to: (a) Serve as director, solicitor, or treasurer of funds (other than as administrators of Religious Offering Funds); (b) Serve as investigating officer, or stand watches other than duty chaplain (other than the commander of the Naval Chaplaincy School and Center (NCSC)); (c) Perform any duties in a combat area other than those related to [Religious Ministry] under Article 1063 . . . ; (d) Empanel a chaplain as a member of a court-martial except in cases of extreme necessity, to avoid seriously impeding the delivery of [Religious Ministry]; (e) Violate the standards and practices of their [Religious Organizations] or compromise the ability to maintain confidential communications; . . .

All Navy Instruction, SECNAVINST 1730.7E, Sec'y of the Navy, subject: Religious Ministry within the Department of the Navy (Mar. 11, 2019) (on file with author).

⁸⁸ See The U.S. Navy Chaplain Corps, *supra* note 85.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² See MARINE CORPS, SPIRITUAL FITNESS: STEEL YOUR SPIRIT 11, [https://www.hqmc.marines.mil/Portals/61/Docs/Chaplain%20MC/SF/SF%20Leaders%20Guide%20Notebook%20\(locked\).pdf](https://www.hqmc.marines.mil/Portals/61/Docs/Chaplain%20MC/SF/SF%20Leaders%20Guide%20Notebook%20(locked).pdf) [<https://perma.cc/UHF6-SSS3>]; see also Headquarters Marine Corps Human Res. & Org. Mgmt., *What are the Marine Corps Values?*, U.S. MARINE CORPS, <https://www.hqmc.marines.mil/hrom/New-Employees/About-the-Marine-Corps/Values/> (last visited Oct. 14, 2020) [hereinafter Headquarters Marine Corps] (providing an understanding of Marine Corps values).

⁹³ Headquarters Marine Corps, *supra* note 92.

The USMCs' role in national security is to be America's force in readiness, to be ready when the Nation is least ready. General Neller clarified how spiritual fitness supports the USMCs' primary mission by stating, "[s]teel your spirit so that you can better deal with adversity. Prepare yourself so you will be ready for the decisive moment in combat."⁹⁴ Combat tests individuals physically, emotionally, and mentally. People react differently to the stress, strain, and uncertainty of war. While training engrains proper reactions and procedures to situations faced in combat, the aftermath of the experiences confronted in war are much more nuanced and difficult to predict and mitigate. The USMCs' recent emphasis on spiritual fitness is a way to better address not only the performance of Marines during stressful and dangerous situations faced in combat but their ability to recover from those situations and maintain the ability to face new challenges in the future.

The USMC is committed to the belief that spiritual fitness will better enable Marines to be more resilient and increase their ability to "grow, develop, recover, heal, and adapt" before, during, and after combat.⁹⁵ The spiritual aspect of overall fitness and well-being can take a secondary role to physical training, mental preparation, education, and unit exercises when preparing for combat. However, these important aspects of the USMC must be supported by spiritual fitness to endure over months, years, or even decades as Marines deploy to combat and return home. Spiritual fitness prepares Marines for the unpredictable and dangerous nature of war, but it also serves a far-reaching goal of creating "better warriors and people of character capable of making good choices on and off duty."⁹⁶ It is not enough to win battles. Marines must be honorable in their conduct, especially during times of war, or the USMC runs the risk of losing America's trust and admiration. Well-publicized events such as Marines urinating on dead Taliban fighters in Afghanistan⁹⁷ or

⁹⁴ See MARINE CORPS, *supra* note 92, at 3.

⁹⁵ *Id.* at 5 (quoting ALMAR, *supra* note 7).

⁹⁶ *Id.*

⁹⁷ See Graham Bowley & Matthew Rosenberg, *Video Inflames a Delicate Moment for U.S. in Afghanistan*, N.Y. TIMES, (Jan. 12, 2012), <https://www.nytimes.com/2012/01/13/world/asia/video-said-to-show-marines-urinating-on-taliban-corpses.html> [<https://perma.cc/LWH2-NRJP>] ("The [2011] video showed the four Marines, in their distinctive sand-colored camouflage, urinating over the three bodies — one covered in blood. One Marine says, 'Have a great day, buddy.'"); see also Dan Lamothe, *Marine Who Urinated on Dead Taliban Has Conviction Thrown Out Due to General's*

the Marines United scandal⁹⁸ demonstrate that the Nation expects and demands more than just men and women capable of responding to threats against the country; they must do so with character and honor.

The focus on spiritual fitness is not simply an idealistic goal reminiscent of a bygone era. The available evidence supports the hypothesis that spiritual fitness creates better outcomes and individual behaviors during combat. The United States Army conducted a large-scale survey of combat veterans serving in Iraq in 2009 and concluded that spirituality correlates positively with ethical behavior, moral courage, moral confidence, and the ability to create increased psychological and physical resilience.⁹⁹ The Excellence in Character, Ethics, and Leadership (“EXCEL”) survey sampled more than 1,250 Soldiers deployed to a combat-zone and measured three factors of spirituality—“connection to others, religious identification, and hopeful outlook”—through the implementation of 11 specifically-designed questions utilizing a 1-5 Likert scale.¹⁰⁰ The survey included men (1,123) and women (130), regular Army and reservists, married and unmarried, ranging in age from 18 to over 48, and 76% were the grade E-5 (sergeant) and below.¹⁰¹

Spirituality also had a high positive correlation between resiliency and several factors of ethics: “Moral Courage/Ownership,” “Moral Efficacy,” “Embracing Army

Meddling, WASH. POST (Nov. 9, 2017, 5:50 PM), <https://www.washingtonpost.com/news/checkpoint/wp/2017/11/09/marine-who-urinated-on-dead-taliban-has-conviction-thrown-out-due-to-generals-meddling/> [<https://perma.cc/B2AA-WC9S>] (reporting that one Marine’s conviction under the Uniform Code of Military Justice was eventually dismissed because of unlawful command influence, which occurs when a senior officer uses his or her position of authority to influence legal proceedings).

⁹⁸ See Shawn Snow, *Seven Marines Court-Martialed in Wake of Marines United Scandal*, MARINE CORPS TIMES, (Mar. 1, 2018), <https://www.marinecorpstimes.com/news/your-marine-corps/2018/03/01/seven-marines-court-martialed-in-wake-of-marines-united-scandal/> [<https://perma.cc/RUQ4-DSY6>]. Marines United was “a secretive Facebook page that contained sexually harassing comments and nude images of female service members and civilians, [and] had roughly 30,000 members. In some instances, the posts resulted in the stalking of victims. . . . It forced the Corps to address the issue of sexual harassment across the Corps.” *Id.* After a year-long investigation, the USMC identified ninety-seven Marines as part of the scandal and brought varied charges against them, including “nonconsensual posting of images, extortion, [and] distribution of filmed sex acts without knowledge of the victim.” *Id.*

⁹⁹ See Wester, *supra* note 3, at 70 (“The [survey’s] [h]ypothesis (which included three additional statements) was: ‘Spirituality incorporates the three elements of a spiritual worldview, personal piety, and connection to a faith community.’”).

¹⁰⁰ *Id.* at 70, 72.

¹⁰¹ *Id.* at 72–73.

Values,” “Intent to Report Unethical Conduct,” and “Soldier Identification.”¹⁰² Additionally, spirituality had an inverse correlation with “physical and psychological fatigue” and “somatic complaints.”¹⁰³ The EXCEL survey also provided military leaders and Chaplains with useful data from which recommendations for the cultivation of spirituality in the ranks could be drawn, such as:

- Acknowledging the value and positive impact of religious and spiritual activities on ethical behavior and resilience.
- Promoting Soldiers’ participation in spiritual activities as a means of moral development within the limitations of regulations.
- Ensuring Soldiers have opportunity to practice their faith.
- Providing adequate resources (funding, time on the training schedule) to unit Chaplains to offer spiritual fitness training and activities.
- Providing opportunities for relationship building to promote ethical behavior.
- Praying, providing instruction on prayer, and conducting prayer services, while emphasizing prayer as a means of resilience akin to an item of personal protective gear and encouraging connections with those “back home” who will offer prayers on behalf of the Soldiers.
- Conducting spiritual fitness training, providing instruction on scripture and the meaning and purpose of life and God, while working in evil situations.
- Emphasizing the treatment of others with respect and dignity, and the practical application of love as selfless service, while looking to scripture for guidance in navigating moral dilemmas.¹⁰⁴

Similarly, in 2013, the RAND Corporation, in conjunction with the United States Air Force, conducted a study of available research to determine the correlation between spirituality and resiliency.¹⁰⁵ The study concluded that spirituality improved individual well-being, provided a buffer against stress, and offered the following recommendations to promote spirituality:

- Ensure cultural appropriateness in spiritual interventions to support diverse groups within the Air Force community;

¹⁰² *Id.* at 79.

¹⁰³ *Id.* at 83.

¹⁰⁴ *Id.* at 76, 79–80, 84–85.

¹⁰⁵ See generally Douglas Yeung & Margret T. Martin, *Spiritual Fitness and Resilience: A Review of Relevant Constructs, Measures, and Links to Well-Being*, in RAND PROJECT AIR FORCE SERIES ON RESILIENCY 1 (2013).

- “Leverage [e]xisting [e]vidence-[b]ased [g]uidance on [i]mplementing [s]piritual [i]nterventions”;
- “Explore [a]lternative [a]pproaches to [e]nhancing [s]piritual [f]itness”; and
- “Consider [n]on-[s]pirituality-[s]pecific [i]nterventions.”¹⁰⁶

To further articulate the positive aspects of spirituality on military units, the authors conducted a survey aboard USMC Air Station New River at Marine Aircraft Group-29.¹⁰⁷ Senior officers and enlisted Marines at the squadron level were asked the following questions:

- “[W]hat is the importance of spirituality as commanders and why is it important to be spiritually resilient in the same way that Marines strive to be physically, mentally, and socially fit?”;
- “Using General Neller’s ALMAR 033/16 as an original source, please comment on the Commandant’s message regarding spiritual fitness as well as the importance of spirituality for resiliency”;
- “Utilizing the USMC website on Spiritual Fitness, please break down the importance of spiritual fitness for Marines, including commentary on personal faith, foundational values and moral living”;
- “Using Marine Corps Tactical Publication (MCTP) 3-30D, Religious Ministry in the [USMC] please comment with references on the importance of religious ministry in the Marine Corps.”¹⁰⁸

While many of the respondents were not familiar with ALMAR 033/16 or MCTP 3-30D, the importance of spirituality and the Chaplain Corps was evident in their responses and reflections on personal experiences. All respondents were combat

¹⁰⁶ *Id.* at 39–41. This study referred to resilience as “the ability to withstand, recover from, and grow in the face of stressors and *fitness*, which is related, as a ‘state of adaptation in balance with the conditions at hand.’” *Id.* at iii (quoting Michael Mullen, *On Total Force Fitness in War and Peace*, 175 MIL. MED. 1, 1 (Supp. 2010)). Spiritual fitness was defined as “the capacity for adherence to core personal values (i.e., a belief system) that reflect beliefs in transcendent or ultimate meaning and purpose.” *Id.* at 6.

¹⁰⁷ Memorandum from LCDR David A. Daigle, Grp. Chaplain, Marine Aircraft Grp. 29, U.S. Marine Corps on ALMAR 033/16 Questionnaire to various Heavy Helicopter Squadron Commanding Officers, U.S. Marine Corps. (July 6, 2020) (on file with author). Lieutenant Commander David A. Daigle, CHC, USN provided the survey questions for application of senior leaders to this article. The responses do not reflect the official views or policies of the USMC and are solely based on the personal experiences and opinions of the respondents.

¹⁰⁸ *Id.*

veterans with near or over 20 years of service.¹⁰⁹ Their responses highlight three important aspects of spirituality as it relates to resiliency and individual well-being. First, spirituality enables us to “find inner peace and our sense of purpose in life.”¹¹⁰ In the military context, this sense of purpose originates from personal belief and allows Marines to focus on the unit’s mission rather than on the personal stress, danger, or discomfort inherent in combat.¹¹¹ Second, the respondents identified that, through spiritual fitness, Marines are better able to cope with combat because “[a] spiritually fit Marine is better capable of adapting to the rapidly changing environment of combat due to their foundation in personal beliefs.”¹¹² This adaptability breeds resilience that enables Marines to perform in rapidly changing environments fraught with potential danger, incomplete information, and the challenges of leading people during times of considerable stress.¹¹³ Last, many of the respondents recognized spirituality as a necessary bridge between their personal beliefs and the USMCs’ values of honor, courage, and commitment. They recognized the ability to uphold both personal and organizational values as vital to their ability to lead others through challenging situations. One squadron commander bluntly stated, “I find it difficult to believe that a Marine lacking a spiritual foundation will be prepared to uphold our Corps’ values in difficult times.”¹¹⁴

Spiritual fitness and the vital components of military life it supports did not begin with ALMAR 033/16. The Navy’s Chaplain Corps was founded November 28, 1775, and since that time, Navy Chaplains have been “every clime and place” that Marines have fought in support of the Nation. It has long been

¹⁰⁹ See *Marine Aircraft Group 29 Subordinate Units*, U.S. MARINE CORPS, <https://www.mag29.marines.mil/MAG-29-Units/> [<https://perma.cc/WJS9-JKK3>] (last visited Jan. 28, 2021).

¹¹⁰ E-mail from LtCol Michael J. Saddler, HMHT-302 Commanding Officer, U.S. Marine Corps, to LtCol Daniel V. Goff, HMH-366 Commanding Officer, (July 14, 2020) (on file with author) [hereinafter E-mail from LtCol Saddler to LtCol Goff].

¹¹¹ See Yeung & Martin, *supra* note 105, at xi; see also E-mail from LtCol Saddler to LtCol Goff, *supra* note 110.

¹¹² E-mail from LtCol Jeremy C. Hawkins, HMH-464 Commanding Officer, U.S. Marine Corps, to LCDR David A. Daigle, MAG-29 Group Chaplain, U.S. Marine Corps (July 10, 2020) (on file with author).

¹¹³ *Id.*

¹¹⁴ E-mail from LtCol Daniel V. Goff, HMH-366 Commanding Officer, U.S. Marine Corps, to LCDR David A. Daigle, MAG-29 Grp. Chaplain, U.S. Marine Corps (July 8, 2020) (on file with author).

understood that to risk one's life for an idea requires spirituality and identification with a cause greater than oneself. Recent emphasis on spiritual fitness and formal research such as the Army's EXCEL survey has further articulated how spiritual fitness impacts combat performance and personal well-being.¹¹⁵ It should not come as a surprise that spiritual fitness has been identified as a key component to well-being and resiliency. However, it may be surprising that spiritual fitness has such a positive impact given that the military—and the USMC in particular—are keenly focused on training metrics, physical standards, and professional military education at the individual level. The available research makes clear that, while there are many individual factors that go into making a combat-ready Marine capable of responding effectively in dangerous and uncertain circumstances, the spiritual development of the individual Marine can never be replaced by training and education. Such a replacement would create individual fragility and run the risk of Marines acting dishonorably outside the USMCs' sacred values.

B. Applying the United States Marine Corps' Concept of Spiritual Fitness to the Legal Profession

The profession of law and the profession of arms have many dissimilarities and do not lend themselves to comparison at face value. However, the similarities they do share are fundamental to understanding how spiritual fitness contributes to the success and proper functioning of each profession. Both professions are vital to the health and prosperity of America and conform to a set of mutually agreed-upon standards. While the legal profession is currently experiencing a period of crisis, the solution to achieve greater social acceptance, trust, and esteem while steering away from personally destructive behaviors can be found in part by developing spiritual fitness. Just as in the USMC, spiritual fitness in the legal profession is not a new concept, but one that has lost its central importance as economic gain and an overarching corporate outlook have diminished the profession. Anne M. Brafford's *Well-Being Toolkit for Lawyers and Legal Employers* identifies the need for a spiritual foundation in order for lawyers to maintain a general sense of well-being and

¹¹⁵ See Wester, *supra* note 3, at 82.

purposefulness.¹¹⁶ Similarly, Lucia A. Silecchia's *Integrating Spiritual Perspectives With the Law School Experience: An Essay and Invitation* articulates the importance of developing spirituality to help cope with the "burn-out, disillusionment, and stress" encountered by lawyers.¹¹⁷ Lawrence Krieger and Kennon Sheldon's data-driven research to determine what makes lawyers happy concluded that prayer and affiliation with a faith group have a residual correlation with well-being.¹¹⁸

Just like the USMC, the legal profession has a set of values that guides the personal and institutional conduct of lawyers to provide focus and strength. The values of "access to justice, independence of the bar and judiciary, diversity, and the rule of law"—much like honor, courage, and commitment—are standards of conduct that empower individual actions and support the greater good which the legal profession aims to serve.¹¹⁹ To live these values is incompatible with dishonesty, selfishness, and self-destructive behaviors. Spiritual fitness in the legal profession, much like the profession of arms, creates a mindset that allows individuals to focus on the important aspects of their chosen profession and not the individual stresses and uncertainties, which will always plague each profession. Only through individual spiritual fitness and the alignment of values will the professions of law and arms be able to remain resilient and capable of meeting the needs of the Nation in times of uncertainty and doubt—now and in the future.

CONCLUSION

The best time to plant a tree was 20 years ago. The second best time is now.

—*Chinese proverb*¹²⁰

¹¹⁶ See BRAFFORD, *supra* note 40, at 7.

¹¹⁷ See Lucia Ann Silecchia, *Integrating Spiritual Perspectives with the Law School Experience: An Essay and an Invitation*, 37 SAN DIEGO L. REV. 167, 170–71 (2000).

¹¹⁸ See Krieger & Sheldon, *supra* note 69, at 609–10.

¹¹⁹ See H. Thomas Wells, Jr., *Common Core Values*, B. LEADER, Sept.–Oct. 2008, at 16, 16–18, https://www.americanbar.org/groups/bar_services/publications/bar_leader/2008_09/3301/corevalues/.

¹²⁰ Richard H. Smith, *The Best Time to Plant a Tree Was 20 Years Ago, No Matter*, PSYCH. TODAY (Apr. 14, 2015), <https://www.psychologytoday.com/us/blog/joy-and-pain/201504/the-best-time-plant-tree-was-20-years-ago-no-matter> [<https://perma.cc/462D-WMZM>].

[T]he legal profession is at a tipping point, and we present these recommendations and action plans for building a more positive future. We call on you to take action and hear our clarion call. The time is now to use your experience, status, and leadership to construct a profession built on greater well-being, increased competence, and greater public trust.

*—Report from the National Task Force on Lawyer Well-Being*¹²¹

The legal profession is indeed at a tipping point. Mental health and substance abuse disorders abound among practicing attorneys and law students. The National Task Force on Lawyer Well-Being 2017 Report on improving resiliency and well-being in the profession is a critical first step towards addressing the crisis of wellness among lawyers. The Hazelden Report reveals the unsustainable nature of the conduct of far too many lawyers within the current culture of the legal profession and validates the idea that lawyers, like Marines, must cope with severe internal and external environmental stressors that can lead to addiction or mental health issues.

Having peered into the darkness, it is clear that the new reality wrought by paradigm changes has generated crises not only within the profession writ large but also among lawyers themselves. LAPs, while critically important, are not the sole solution to the many challenges afflicting lawyers. There is no way to simply “lawyer” your way out of the profession today. The legal profession would do well to adopt, in some fashion, the USMC’s concept of spirituality and its focus on core values as another important tool for resiliency and as a means of assisting lawyers in overcoming various forms of addiction. The ABA, as the national representative of the legal profession, should more publicly recognize the importance of spirituality and spiritual fitness as a means towards lawyer resiliency—just as the USMC has done for Marines.

Specifically, the ABA should make it an imperative to embrace spirituality by (1) having the President of the ABA issue an equivalent to the Commandant of the USMCs’ ALMAR regarding the importance of “spiritual fitness” as a means to

¹²¹ BUCHANAN & COYLE, *supra* note 1, at 2; *see also* Bree Buchanan & James C. Coyle, *Report from the National Task Force on Lawyer Well-Being*, AM. B. ASS’N (Nov. 9, 2018), https://www.americanbar.org/groups/lawyer_assistance/task_force_report/.

strengthen lawyers in the concept of the “total fitness”;¹²² (2) expounding on and further promoting the idea of spiritual well-being on the National Task Force on Lawyer Well-Being website, which currently only vaguely mentions spirituality as a component of “[h]olistic . . . [w]ell-[b]eing in the [l]egal [p]rofession” without providing any other resources;¹²³ and (3) explicitly identifying spirituality as a resiliency factor in the critically important annual National Task Force on Lawyer Well-Being report, rather than only briefly referencing “[m]indfulness [m]editation” like in the 2017 edition.¹²⁴

In his ALMAR, General Robert B. Neller emphasizes that, regardless of a person’s individual philosophy or beliefs, spirituality is essential to resiliency, that improves well-being, and strengthens Marines to be better people of character, “making good choices on or off duty.”¹²⁵ As the 2017 Task Force Report notes, “[t]he legal profession is already struggling” and is “at a crossroads.”¹²⁶ To maintain confidence in the profession, the toxicity, mental health issues, and substance abuse disorders that have festered must be addressed now. Part of the courageous commitment to re-envisioning the profession and what it means to live the life of a lawyer is to recognize the importance of spirituality and spiritual fitness as a means towards resiliency. Adopting and applying the concepts and principles embraced by the USMC will lead to bettering the health, resiliency, and well-being of lawyers—and *will restore the soul of the profession.*

¹²² See ALMAR, *supra* note 7; See *supra* note 9 and accompanying text.

¹²³ See *Read the Report That Launched a Movement*, INST. FOR WELL-BEING IN L., <https://lawyerwellbeing.net/the-report/> [<https://perma.cc/NY2X-LYMU>] (last visited Jan. 27, 2021).

¹²⁴ BUCHANAN & COYLE, *supra* note 1, at 52.

¹²⁵ ALMAR, *supra* note 7.

¹²⁶ *Id.* at 1.