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# Trouble in Paradox

## Our Nation's Unmet Legal Needs and Unemployed Young Lawyers

By James R. Silkenat

**T**his nation is facing an “access to justice” paradox. On one hand, the legal needs of the poor, low- and moderate-income people are grossly unmet. In New York alone, court statistics show that 2.3 million people are unrepresented in civil proceedings annually.<sup>1</sup> Most of these people cannot afford legal representation, and this undermines the quality of justice that they receive. Data collected by the Legal Services Corp. (LSC) in the spring of 2009 shows that for every client who gets representation from an LSC-funded program, one person who seeks help is turned down because of insufficient resources.<sup>2</sup> Many people with serious legal problems do not even bother to seek legal help, realizing that it will be unavailable or unaffordable. State and national studies of the legal needs of poor and moderate-income people consistently show that only a small fraction (fewer than one in five) of the serious legal problems they experience are addressed with the assistance of a lawyer. Many low- and moderate-income people in America cannot find or afford a lawyer to defend their legal interests, no matter how urgent the issue.

On the other hand, the legal industry – for some time now – has not been able to fully absorb the number of young lawyers who are graduating from law school each

year. The number of jobs at large firms is not what it used to be, though the allure of these jobs has sustained the enrollment at law schools (that is, until very recently). We have watched the number of law students increase, while the number of lucrative job opportunities shrinks. Only 55% of the nearly 44,000 law school graduates of the class of 2011 had a law-related job nine months after graduation.<sup>3</sup> One “desperate” attorney in California went so far as to plead for a job on Craigslist (the classified advertisement website many people use to search for apartments and to buy or sell used furniture), saying that he would do whatever it took to get a legal job in “any area of law.”<sup>4</sup> And getting a job as a lawyer no longer guarantees a decent salary. In fact, while some large firms still offer associates starting salaries of \$160,000 or more, last year a Boston law firm advertised annual salaries for new associates of just \$10,000.<sup>5</sup> The firm had more than 50 applicants, despite the fact that the starting salary is below the 2013 federal poverty guidelines. To add insult to injury, many young lawyers are graduating law school saddled with staggering, six-figure debt from student loans.

How is it that we have people badly in need of a lawyer with no one to turn to and, at the same time, find

that thousands of young lawyers are unemployed and underemployed? The access to justice paradox seems to defy the most basic principles of supply and demand. There is almost universal agreement that the current system of providing access to justice to all Americans is broken. We, as lawyers and as leaders, must work together to find solutions to this growing problem. We must find a way to improve the fit between the needs of our society and the opportunities of our profession.

*“The only person who is educated  
is the one who has learned how  
to learn and change.”*

– Carl Rogers

With 400,000 members from all over the world, the American Bar Association is uniquely poised to address the many facets of this problem. In early 2013, the American Bar Association began convening its members and staff, as well as experts with experience in legal education, pro bono legal assistance and legal job incubators, to discuss ways that the ABA could take a leadership role in addressing and making these important issues a priority area during the 2013–2014 ABA year and beyond. A Legal Access Job Corps Task Force officially began working on this issue at the ABA’s Annual Meeting in San Francisco in August 2012. The Task Force is exploring the potential of the innovative programs that have been started by law schools and bar associations in response to today’s challenges and figuring out what is working and what is not. The group will also look at funding models for such programs. Some reputable and successful programs are running into long-term sustainability issues. Others are untested but could supply promising partnerships.

The paradox of unmet legal needs and unemployed or underemployed lawyers has already yielded some innovative solutions as well as promising ideas. In South Dakota, where the state bar president calls the Main Street attorney an “endangered species,” Gov. Dennis Daugaard signed a rural attorney recruitment bill into law on March 21, 2013.<sup>6</sup> This legislation made possible the creation of a pilot program that will give new lawyers an annual subsidy if they live and work outside the state’s biggest cities, provided they make a five-year commitment to their rural practices.<sup>7</sup> This four-year pilot program, similar to programs designed to attract doctors, nurses and dentists to rural areas, will be administered through the South Dakota court system, with the state appropriating 50% of the cost, local governments paying 35% and the state bar or its foundation covering the

remaining 15%. This lawyer recruitment program appears to be the first of its kind in the country, but it is replicable in any state with large rural areas, including New York.

Since the downturn of the national economy, law firm incubator and residency programs have emerged as models to help bridge the gaps, and the ABA Division for Legal Services has already surveyed a number of these programs.<sup>8</sup> A few notable programs include the following:

- City University of New York’s “alpha” incubator has been operational since September 2007. Its mission is to provide training and technical assistance to public interest attorneys starting solo and small-firm practices and nonprofits. The program is operated under the auspices of a law school with participants operating their own independent law firms. It is funded through law school support, grants, donations and revenue from participants. The CUNY program provides opportunities for participants to take on pro bono and moderate-income clients. Participants pay a flat monthly license fee for the space and training while enrolled in the program (18 months to two years); they must also obtain their own malpractice insurance. Approximately eight or nine young lawyers participate in the program at any given time.
- The Chicago Bar Foundation’s Justice Entrepreneurs Project (JEP) is significant because it is being started by a bar foundation with expectations that the program will become freestanding. Launched this past June, the Justice Entrepreneurs Project seeks to develop market-based solutions to serve the unmet legal needs of those with moderate incomes, and to do so at an affordable cost. The JEP will help entrepreneurial and public-interest-minded new attorneys develop law practices that use innovative methods to deliver cost-effective, quality legal services to clients of low and modest means. It will also bring together the Chicago legal community to support and collaborate in this effort. By using an incubator model, participants will not be considered part of a single-program law firm, but instead will operate their own independent law firms. While the Chicago Bar Foundation has provided the seed money, the program will be funded through a combination of bar association/foundation support, grants, donations, revenue from participants and law school support specifically tied to stipends for participants. There will be a participation fee during the last 12 months of the 18-month program. In addition, the program will purchase umbrella insurance that applies to the program itself and is seeking discounted rates for participants. The program will begin with 10 participants; it plans to add 10 more at each six-month interval to an

envisioned maximum of 30 participants at a time. The program will also include a 20-hour-per-week pro bono component to be performed during the first six months of the program.

- Arizona State University's program is a practical, hands-on residency, analogous to medical residencies. As of this writing, the program is slated to begin in the fall of 2013. The program will be self-sufficient after a brief startup phase supported by the Arizona State Law Alumni Association. The program will hire 10 associates a year (with a maximum of 30), who will be part of a single program law firm that will include five supervising attorneys and approximately 20 support staff. The two- to three-year program will have insurance that covers participants and will require that participants take on both pro bono and moderate-income clients.

In addition, public interest models are emerging, such as Lawyers for America. This is a 501(c)(3) nonprofit founded by the University of California-Hastings to create two-year fellowships that begin during law students' final year of law school and continue through their first year as new attorneys. The University of Miami's award-winning Miami Law Legal Corps is a postgraduate fellowship program that places recent law graduates in public sector organizations nationwide.

These new efforts complement the American Bar Association's longstanding commitment to help lawyers be prepared for the practice of law and to find work now and in the future. The ABA's Law Student Division and Young Lawyers Division are focused on helping law students and young lawyers nurture their entrepreneurial spirit and leadership potential – two key ways for young lawyers to set themselves apart from the competition in this difficult economy. The Young Lawyers Division Career Development Initiative and its New Lawyer Bootcamp, as well as its Next Steps Challenge Program,

are a few examples of the ways in which the ABA has been tackling this issue.

The challenges of the new economy are now mixed in with the age-old challenge of providing access to justice for all. The collective responses from law schools, courts, and bar associations – and all the other stakeholders in the legal profession – create a laboratory setting that is worthy of our greatest attention. If we meet these challenges, the rewards will be high. We will provide legal services to those who have been denied them and at the same time address the needs of unemployed and underemployed young lawyers. If these new programs are not sustainable, we need to understand why and move forward from there. What we cannot do when confronted with the paradox of unmet legal needs and unemployed lawyers is to stand on the sidelines and do nothing. ■

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