

Spring 2014

## Be the Change

James R. Silkenat

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Law Commons](#)

---

### Recommended Citation

Silkenat, James R. (2014) "Be the Change," *South Carolina Law Review*. Vol. 65 : Iss. 3 , Article 4.  
Available at: <https://scholarcommons.sc.edu/sclr/vol65/iss3/4>

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact [dillarda@mailbox.sc.edu](mailto:dillarda@mailbox.sc.edu).

KEYNOTE ADDRESS

**BE THE CHANGE**

James R. Silkenat\*

Good evening everyone. It is a great pleasure to be back in Columbia. I have a really unique advantage as ABA president—maybe an advantage that no other ABA president has had—and that is to have William Hubbard as president-elect of the ABA. He is a treasure for South Carolina and a treasure for the ABA, and it is so great to be able to work with him. William's one failing, however, is that he may actually believe I am going to give this job up in August. We are going to have to talk about that in great detail later.

In various talks around the country, I always say that American legal education is the best in the world. You have heard that already here tonight. For more than a century, the American legal profession—law schools, the American Bar Association, state supreme courts, and others—have collaborated to create a system of legal education that is widely admired all around the world. But today, it is clear that what we are doing is not enough. There is almost universal agreement that the current system needs to evolve.

Legal education in the United States must evolve to match the changes that are taking place in legal practice for all of us every day. We must transform the way we prepare law students and young lawyers to match up with the rapid changes that are taking place in the legal profession. All of us know that what we do today as lawyers differs radically from what we did when we started out. The issues are different, the procedures are different, and the technology is different. We have had to evolve and legal education needs to evolve too.

Earlier, you listened to the panel on the final report issued by the ABA's Task Force on the Future of Legal Education.<sup>1</sup> This is an entity that I pushed the ABA to create, and I am very pleased with the work that they did. The report has generated great discussion—some heat and some light—and I think it is going to continue to motivate people to work on the issues they raised. The report calls on law schools, bar associations, regulators, and others to redesign the model now prevalent in law schools, to revise the system that accredits law schools to permit more experimentation and innovation, and to expand opportunities for the delivery of legal services.<sup>2</sup> While it is certain that more can be said about the report, and will be said, I want to focus my remarks tonight on

---

\* President, American Bar Association.

1. AM. BAR ASS'N TASK FORCE ON THE FUTURE OF LEGAL EDUC., REPORT AND RECOMMENDATIONS 1 (Jan. 2014), *available at* [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf).

2. Press Release, Am. Bar Ass'n, ABA Legal Education Task Force Calls for Innovation to Reduce Cost and Improve Value of Law Degrees (Jan. 24, 2014), *available at* [http://www.americanbar.org/news/abanews/aba-news-archives/2014/01/aba\\_legal\\_education.html](http://www.americanbar.org/news/abanews/aba-news-archives/2014/01/aba_legal_education.html); *see generally* TASK FORCE REPORT, *supra* note 1, at 1–3 (discussing the mission of the Task Force and highlighting its conclusions).

one particular issue on which I have been working in parallel with the Task Force's efforts.

The American Bar Association has been working to address what we are calling an "access to justice paradox." Simply put, we are trying to tackle the twin problems of the enormous unmet legal needs across the United States and, at the same time, the large number of young lawyers who are currently underemployed and seeking experience and training. Too many low- and moderate-income people cannot afford legal representation today and, as a result, they are denied the justice they deserve. Meanwhile, too many recent law school graduates are without good jobs or the practical experience they need to be effective lawyers. So we are at a crossroads. How do we address a problem that seems to defy the rules of supply and demand? How do we confront this challenge to our most cherished principles?

One of my first actions as ABA president was to create the ABA Legal Access Job Corps, which is charged with improving the fit between the needs of our profession and the needs of our society.<sup>3</sup> I believe that the ABA, working with state bar associations all around the country, is really in a unique position to address these particular issues. To begin, we are committed to looking at the dearth of legal jobs and the large number of unmet legal needs as one problem, instead of keeping the two issues isolated in separate silos. We cannot afford to be a nation where the legal needs of a large portion of our citizenry are not being met in the way that our Constitution requires.

According to the Legal Services Corporation, only a small fraction—really less than one in five—of the legal problems experienced by low-income people are addressed by a private attorney or legal services lawyer.<sup>4</sup> The demand is so great that, nationally, only one legal aid attorney is available for every 6,400 low income citizens.<sup>5</sup> In addition, there are significant portions of our country where the lawyer population is scant, or nonexistent, and where the population for all practical purposes does not have timely or proximate access to a lawyer.

*The New York Times* reported last year that when a lawyer in Bennett County, South Dakota, retired after sixty-four years in legal practice, there was not one attorney to take his place; the closest working attorney was more than 120 miles away.<sup>6</sup> So, in a country founded on the promise of justice for all, Americans without lawyers are Americans without justice. This means that a single mother living with her children in an apartment with unsafe floors, cockroaches, and severe mold will be unable to fight her landlord's illegal eviction attempts. A domestic violence survivor will be unable to obtain a

---

3. James R. Silkenat, *Legal Access Job Corps*, JUDGES' J., Winter 2014, at 1.

4. *Id.* (citing LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 1 (2009), available at [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf)).

5. *Id.* at 1 (citing LEGAL SERVS. CORP., *supra* note 4).

6. Ethan Bronner, *No Lawyer for 100 Country Miles, So One Rural State Offers Pay*, N.Y. TIMES, Apr. 9, 2013, at A1.

restraining order and gain custody of her children. An honorably discharged Marine living in a homeless shelter will be unable to access the military benefits that would enable him to get back on his feet. There are many examples of real, monumental life issues that can be alleviated with the help of a lawyer, and there is a pool of newly minted lawyers out there wanting to help.

You are all aware—even with the strength of your wonderful law school here—that young lawyers are looking for work. In 2012, only 56% of nearly 46,000 law school graduates had a job requiring bar passage nine months after graduation.<sup>7</sup> One attorney in California posted an ad on Craigslist that read: “Quite frankly, I am quite desperate and willing to learn and dedicate myself to any area of the law.”<sup>8</sup> The ABA is currently looking at the range of programs now in place—from rural outreach programs and nonprofit fellowships to modest needs programs and incubators—that help struggling lawyers meet the legal needs of the underserved. Everything is on the table at the national level, local level, and state level.

There has been some very exciting work done in my home state of New York. In 2007, the City University of New York launched the first incubator for new practitioners.<sup>9</sup> Today there are twenty-two such incubators around the country.<sup>10</sup> Additionally, Bob Katzmann, the chief judge of the Second Circuit, has launched an Immigrant Justice Corps that will also be a model for other programs around the country.<sup>11</sup> South Dakota’s Rural Practice Project is an example of an initiative that has grown organically at the state level.<sup>12</sup> Believe it or not, a state legislature was willing help here.<sup>13</sup> The state legislature and the state bar in South Dakota recently started providing financial incentives to lawyers willing to practice in the state’s rural areas.<sup>14</sup> Similar programs have

7. *Id.* (citing AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2012 LAW GRADUATE EMPLOYMENT DATA (2012), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/law\\_grad\\_employment\\_data.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/law_grad_employment_data.authcheckdam.pdf)).

8. Bus. Insider, ‘Desperate’ Unemployed Lawyer Puts a Plea on Craigslist, AOL (Jan. 30, 2013, 7:05 AM), <http://jobs.aol.com/articles/2013/01/30/unemployed-lawyer-craigslist/>.

9. Martha Neil, *CUNY Incubator Program to Help Law Grads Go Solo Is Now a Model for Other Schools*, A.B.A. J. (Sept. 6, 2011, 6:03 PM), [http://www.abajournal.com/news/article/cuny\\_incubator\\_program\\_to\\_help\\_new\\_law\\_grads\\_go\\_solo\\_is\\_now\\_a\\_model\\_for\\_oth/](http://www.abajournal.com/news/article/cuny_incubator_program_to_help_new_law_grads_go_solo_is_now_a_model_for_oth/).

10. *Incubator/Residency Programs Directory*, A.B.A., [http://www.americanbar.org/groups/delivery\\_legal\\_services/initiatives\\_awards/program\\_main/program\\_directory.html](http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_directory.html) (last visited Apr. 15, 2014).

11. Kirk Semple, *Seeking Better Legal Help for Immigrants*, N.Y. TIMES, Jan. 29, 2014, at A19.

12. See Patrick G. Goetzinger, *Project Rural Practice: Saving an Endangered Species by Recruiting the Sweet Sixteen*, B. LEADER (July–Aug 2013), [http://www.americanbar.org/publications/bar\\_leader/2012\\_13/july\\_august/project\\_rural\\_practice\\_saving\\_endangered\\_species\\_recruiting\\_sweet\\_sixteen.html](http://www.americanbar.org/publications/bar_leader/2012_13/july_august/project_rural_practice_saving_endangered_species_recruiting_sweet_sixteen.html).

13. See *id.*

14. See *id.*

now evolved in a number of states and even in parts of New York State.<sup>15</sup> There are counties where access to a lawyer really is not available. As a national association of nearly 400,000 members,<sup>16</sup> the ABA should help coordinate, stimulate, and assist these efforts around the country. Many of the existing solutions to these problems have faced challenges in terms of funding and long-term sustainability. We are paying particular attention to that set of issues. When it comes to financing, we want to make sure that we are not creating systems that take money away from current programs that we know are already chronically underfunded.

The ABA has a long history of advocating for legal aid funding, pro bono, and many other forms of legal assistance for those in need. Our work in creating and promoting the Legal Access Job Corps to plug at least a portion of the access to justice gap and, at the same time, help younger lawyers gain needed experience at the beginning of their careers, is at the center of what we should be doing as an association. I am deeply interested in you—today’s law school students—and in your future, and we should all be deeply concerned about the shape of our legal profession in the years ahead. Access to justice is at stake in the choices that we make and the priorities we choose.

To practice law properly is to engage in a public service of the highest order. Law is a great profession and it can, and does provide a meaningful and inspiring career. As a profession, we will continue to seek pragmatic ways to address today’s economic and marketplace realities. There is a lot of work for us to do, it is important work, and I am eager for all of us to do it together. So what we are going to do now is show a short video about our Access to Justice Job Corps,<sup>17</sup> which elaborates on the access to justice paradox that I described, and then I will be happy to answer questions and get your reaction to the issues raised in the video.

That is what the ABA is doing. Questions from anyone?

Audience Member: Can I offer editing suggestions?

Silkenat: Tone the music down a bit. I know.

Audience Member: No the music is great; there are a lot of great things about it. Many of our law schools are doing things, and it is great to see them highlighted. But the information about the number of jobs is seriously misleading because it says 73,000 jobs for 300,000 plus law grads.<sup>18</sup> That

15. See, e.g., Silkenat, *supra* note 3, at 36 (“Other rural justice programs have been started in Colorado, Iowa, Nebraska, Utah, and Vermont.”); RURAL L. CENTER OF N.Y., <http://www.rurallawcenter.org/pg1.cfm> (last visited Apr. 15, 2014) (describing the initiative designed to meet the legal needs of people in rural areas of New York).

16. *About the American Bar Association*, A.B.A., [http://www.americanbar.org/about\\_the\\_aba.html](http://www.americanbar.org/about_the_aba.html) (last visited Apr. 15, 2014).

17. Video: Be the Change (Legal Access Job Corps, A.B.A. Feb. 27, 2014), *available at* [http://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/legal\\_access\\_jobs\\_corps/vid eo2.html](http://www.americanbar.org/groups/leadership/office_of_the_president/legal_access_jobs_corps/vid eo2.html).

18. *Id.* at 0:26–0:33; see also Debra Cassens Weiss, *Law School by the Numbers: 300K Additional Law Grads by 2020; 73K New Jobs Forecast for Decade*, A.B.A. J. (Nov. 5, 2012, 5:29

73,000 is what the Bureau of Labor Statistics projects in additional jobs; it does not deal with retirements.<sup>19</sup> So that suggests an enormous gap between the number of law grads and the number of jobs—when the projection by the Bureau of Labor Statistics is a meaningful gap, but not even in the ball park of what it says there.

Silkenat: Good comment. You all are not exactly test subjects, but this is the first showing of the video, so I am delighted to get reactions around the room.

Audience Member: How do you see the questions about the cost of it? Obviously, these are programs that do cost money in some manner: some are being underwritten by law schools and some are being underwritten by foundations' dollars. Do you see it just as a combination of sources of funding for these types of things?

Silkenat: We, of course, are looking for the really deep pocket here—a government pocket, a philanthropy, or just some rich person to fund this initiative. Not having found any of those quite yet, what we are looking for now is a combination of sources to find something that works and makes a difference. Now we are not going to be able to solve 100% of the access to justice problem; that is impossible. However, if we can have an impact on 15 or 20% of the problem, that is a huge number of people that we are helping. I think that is the direction we will wind up going—pursuing best practices, regional groupings, and regional efforts—so that our initiative can have an impact on the ground rather than the grand, national organization that we would do if we had the money for it.

Audience Member: It looks like there are a large amount of opportunities available for new students who are coming out of law school to get involved in a lot of these programs and to get out and make a difference. How do these programs pay for student loans and put food on their tables?

Silkenat: For almost all of these programs, there is a salary that goes along with it. It's not a full time salary—what you would make as a second- or third-year associate—but it is a living wage. One of the programs that we cite very often is the University of Miami Law School program.<sup>20</sup> After people pass the bar, the school will pay them a wage for the next six months.<sup>21</sup> Of the folks that enter the program, 98% of them at the end of six months have a full time job

AM), [http://www.abajournal.com/news/article/law\\_school\\_by\\_the\\_numbers\\_300k\\_additional\\_law\\_grads\\_by\\_2020\\_73k\\_new\\_jobs/](http://www.abajournal.com/news/article/law_school_by_the_numbers_300k_additional_law_grads_by_2020_73k_new_jobs/).

19. See generally Debra Cassens Weiss, 'Hysterias-R-Us Legal Lemming Movement' Attacked; Law Prof Predicts Robust Legal Market, A.B.A. J. (Mar. 12, 2014, 6:00 AM), [http://www.abajournal.com/mobile/article/hysterias-r-us\\_legal\\_lemming\\_movement\\_attacked\\_law\\_prof\\_predicts\\_robust](http://www.abajournal.com/mobile/article/hysterias-r-us_legal_lemming_movement_attacked_law_prof_predicts_robust) (explaining how these predictions have been criticized for overlooking the job openings created by lawyer retirement).

20. See UNIV. OF MIAMI SCH. OF LAW, LEGAL CORPS HANDBOOK (2013), available at <https://www.law.miami.edu/career-development-office/pdf/2013/legal-corps-handbook-application-class-2013.pdf>.

21. See *id.* at 4–5.

at a full salary—either with that institution or at another one—because they have a skill now that they can sell. They have experience and they can do something.

Audience Member: Jim, maybe it was intentional and the work of the Task Force; I have not really looked at the chart. The video does not highlight very many things that bar associations themselves are doing; it is almost totally focused on the law school activity. Maybe that was the purpose, but there are so many good things that bar associations are doing as well.

Silkenat: Bar association programs were included in the mix and, admittedly, the video coverage was a bit quick. There were three or four bar association programs that were listed. We could have cited a range of things. We want to encourage more bar association activity and we want to encourage more law school activity here. It has got to be a combination to make this work because the same thing does not necessarily work in each location.

Audience Member: If I can just follow up. There are things that the Elder Law Section, or senior lawyers, are doing. There are a lot of retired lawyers, or lawyers who are winding down, doing this kind of thing too. How does that play into the work the project is doing?

Silkenat: The focus of this initiative at the beginning was to address the two silo issues that I mentioned: the lack of access, which is probably the most important, but also training and experience for younger lawyers. So our focus at the beginning was younger lawyers because we wanted to address that very topical problem now. In discussing this around the country, it is obvious that a way to help on the access to justice side is to take advantage of those of us moving eventually toward the end of our careers and to use that talent to slice a little bit of the access to justice problem off too.

Well thank you very much. It has been a great pleasure being with you this evening. Thank you.