50th Charles Evans Hughes Memorial Lecture
Wednesday, April 10, 2013
6 p.m.
14 Vesey Street
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As incoming President of the New York County Lawyers’ Association, and as a clinical law professor in my other life, I am doubly pleased to welcome you to the Home of Law and to NYCLA’s 50th Charles Evans Hughes Memorial Lecture, sponsored by our long-time partner, Hughes Hubbard & Reed.

We are delighted to have James R. Silkenat here with us tonight to deliver the Hughes Lecture. Jim is the President-Elect of the American Bar Association and a partner at Sullivan & Worcester LLP here in New York. In his private practice, Jim coordinates the firm’s cross-border/international business practice and concentrates on project and infrastructure finance, banking, securities law, M&A, privatizations and corporate law.

At the ABA, Jim has already made it his top priority to address two pressing problems facing the American legal system: On the one hand, many Americans lack access to the legal services they need at a price they can afford. As a nation, we are in danger of seeing legal representation become a privilege that is enjoyed only by the very rich, who can pay for it, and the very poor, who are sometimes eligible for public legal aid. On the other hand, many of America’s young lawyers, particularly those who graduated in recent years, are unemployed or underemployed and struggling to pay off their law school debt. And perhaps I should add a third problem as well: even as we speak, budgets are being slashed in Washington and in state capitols around the country. It seems unlikely that the government will come to the rescue on a big enough scale to provide the necessary subsidies to induce those young lawyers to serve disadvantaged populations.

Given these challenges, Jim’s topic tonight is not just timely but critical. American legal education is at a crossroads—and those of us in the academy are well aware of it. Bar associations, law schools, law firms and public service organizations all have a stake in identifying a path forward that will keep the American legal system the envy of the world.

Like the 49 lecturers who came before him, Mr. Silkenat embodies the ideals of Justice Charles Evan Hughes. NYCLA’s Board of Directors established the Hughes Lecture 65 years ago to honor Justice Hughes for his devotion to the betterment of the law and for his service to NYCLA.
Few lawyers in the 20th century had a more distinguished career or a greater impact on the evolution of law and public policy than Hughes. He served as Governor of New York and Associate Justice of the United States. He left the Court to become a candidate in the 1916 U.S. Presidential election, losing narrowly to Woodrow Wilson. He then served as Secretary of State under President Warren Harding, and in 1930 he became Chief Justice of the United States. In his spare time, he founded the firm now known as Hughes, Hubbard, & Reed, and served as NYCLA’s eighth President, from 1919 to 1921.

NYCLA was established in 1908 as the great democratic bar association, open to lawyers of all colors and creeds at a time when this was not the norm. Over the past century NYCLA has grown into a community of nearly 9,000 attorneys, judges, academics, and law students. We offer seminars and lectures, a vibrant committee system, professional networking opportunities, a broad menu of CLE seminars and webinars (at preferred pricing to members), a real gem of a library, an expanding pro bono program, publication opportunities, and much more. Historically, NYCLA has been one of the largest and most influential county bar associations in the country, and continues to offer members the opportunity to grow their own careers while also helping the greater community through pro bono work and public policy development. If you are not yet a NYCLA member, I encourage you to visit nycla.org slashjoin to learn more about membership—or pick up a membership form from Jodi Ann, who is right outside the door.

Now I’d like to welcome James Kobak of Hughes Hubbard & Reed, who served as NYCLA’s President in 2010 and 2011—and on whom I intend to lean heavily when I assume the same office next month.
I welcome you on behalf of my firm as well as former President of NYCLA to the 50th Hughes Lecture which is now sponsored by my firm. Charles Evans Hughes is one of three partners from my firm to have served as President of this Association. He also served as President of The City Bar and President of ABA. So especially fitting to have the next ABA President and first New Yorker to hold that position in 25 years address us tonight.

Also fitting that subject is legal education. Not only is this a timely and important topic for the profession and NYCLA, the ABA and every other bar association, but it was always a subject near to the heart and mind of Charles Evans Hughes. Early in his career he was a law professor at Cornell and was for many years an active lecturer or what we would now call an adjunct at Cornell, NYU and New York Law School.

I also have the pleasurable and easy role of introducing another speaker who truly needs no introduction to an audience of engaged NY lawyers, Michael Cardozo, the Corporation Counsel for The City of New York since 2002. Michael, like Charles Evans Hughes, is a former President of a certain midtown bar association; he is a former partner at the Proskauer firm which has a long tradition of public service including 3 former presidents of NYCLA. I also learned that Charles Evans Hughes’ son -- a very prominent lawyer and Solicitor General of the U.S. -- was a law clerk to Benjamin Cardozo. So there is definitely less than 6 degrees of separation. He also chairs the Fund for Modern Courts and is a graduate of Brown and Columbia Law School. NYCLA and the City have occasionally been adversaries but we’ve also worked with the Corporation Counsel on many projects and are always honored and delighted to see Michael and his colleagues here at the Home of Law.

Michael made a special effort to be here between other commitments because of his esteem for our lecturer, and we warmly welcome him again here tonight.
It is a great pleasure to be here tonight to introduce Jim Silkenat. The Charles Evans Hughes Memorial Lecture is one of the most distinguished legal lectures in this country, as can be seen by the list of prior Hughes lecturers including: Roscoe Pound, Henry Friendly, Arthur Vanderbilt, Jack Weinstein, John Sexton and Judith Kaye. Our speaker well deserves to join this very special group.

Let me say before I start, that due to an unavoidable conflict, I will not be able to stay through the end of what I am confident will be a very important presentation. Given the subject of Jim's presentation, I am sure that all of us in the profession who, like myself, are actively working towards the goal of improving legal education, will be studying every word that Jim has to say this evening.

Jim is not only the President-Elect of the American Bar Association, but he is also a very good friend of mine. I first got to know Jim about 18 years ago when I was president of that other Bar Association uptown from this one,. When I was President of the City Bar, Jim was very active, serving on three different committees. It was then that I learned what a special person he is. He did an outstanding job on all of those committees but he did so much more than that. While active in the City Bar and maintaining an active practice concentrating in numerous international matters he was at the same time a key part of the ABA, serving as a member of its house of delegates, and then later on its Board of Governors, and its executive committee, before rising to his present position as ABA president-elect.

Think of what this position means. Jim is about to become president of the largest Bar Association in the world with almost 400,000 members. Jim, if you can run an organization of 400,000 lawyers you must be qualified to do almost anything.

And looking at what Jim has done in his professional career he has shown he can do almost anything. Jim is a doer, not just a joiner, and he is particularly a shaper of new ideas. He is the editor or co-editor of 14 books and more than 100 articles. And virtually every one of those books and articles relates to how to improve the world, the rule of law and the legal profession.

As lawyers we know that the Code of Professional Conduct requires us “to demonstrate respect for the legal system and to seek improvement of the law.” But how many of us can look ourselves in the mirror and say, yes, I help to improve the law. Well Jim Silkenat has improved the law; in fact he has devoted a major portion of his professional life to doing just that and tonight he is taking another step in that very direction. When Jim became president elect of the ABA last year he identified as one of his priorities improving legal education and dealing with unemployment in the legal profession. Tonight he is taking that issue head on.
I note parenthetically that the ABA is a critical player in dealing with the issues of legal education, since it is the ABA that gives accreditation to law schools, and if changes in legal education are to be made, the support of the ABA in making those changes is essential.

I am sure that most of us are now aware of the profound challenges and changes facing our profession. Law school applications have declined 38% since 2010; one-third of law school graduates can’t find legal jobs on graduation, and law students now graduate with an average of $100,000 in loans. To compound these problems, law students find it increasingly difficult to obtain the needed legal experience and training during law school; junior attorneys find it more and more difficult to find the kind of job that will train them to succeed in the profession; and legal employers and, perhaps more importantly, their clients complain that recent law school graduates aren't "practice ready" when they do get hired. Notwithstanding all this, the lower class, the underclass and people in rural areas of this country cannot obtain needed legal representation.

I have no doubt that tonight’s 50th Charles Evan Hughes Memorial Lecturer will offer critical insights into how to address the problem of legal education that we face today.

Ladies and gentlemen, the President-Elect of the American Bar Association, Jim Silkenat.
There are many important and difficult legal and legal profession issues that we could discuss this evening: gun violence; cybersecurity; immigration; attorney/client privilege; court funding; access to justice; diversity. On all of these topics it is hoped that lawyers and judges, working together, can come up with better solutions than our legislators currently seem able to provide.

However, our topic for tonight is a different one and one that affects all parts of the legal profession and the justice system: how do we overcome the current problems facing American legal education, so that it can train new members of our profession and do so in a way that produces real competence, really ethical conduct and all at a realistic (and affordable) price?

In parallel with the legal education situation, we have an “access to justice” paradox. On one hand, we have too few jobs for the young lawyers graduating from law school each year. On the other hand, the legal needs of the poor and other disadvantaged groups are not being met in ways that our Constitution requires. In fact, in New York alone, court statistics show that 2.3 million people are unrepresented in civil proceedings annually.¹

There is almost universal agreement that the current system is broken. The role of American legal education is at the crossroads of this quandary.

Fingers are being pointed: at law schools, at law professors, at law students, at the student loan industry and at the American Bar Association, where I have growing responsibilities. The finger-pointing has been going on, in the press, for quite some time, and as you can imagine, it has not moved us closer to a solution. In various talks around the country, I always say that American legal education is the best in the world. But that it has to evolve to match up with the rapid changes that are taking place in the legal profession.

The number of large firm jobs is not what it used to be, though the allure of these jobs has sustained the enrollment at law schools until very recently. For years now, we have watched the number of law students

increase, while the number of lucrative job opportunities shrinks. Only 55 percent of the nearly 44,000 law school graduates in 2011 had a law-related job nine months after graduation.\(^2\)

To add insult to injury, these students are increasingly saddled with staggering, six-figure debt from law school when they graduate. The prospects for many of today’s newly minted lawyers are far worse than a generation ago.\(^3\)

Meanwhile, the justice gap widens. There continues to be a major breach between the legal needs of low-income people and the legal help that they receive.\(^4\) Data collected by the Legal Services Corporation in the Spring of 2009 (the last time data was collected) shows that for every client served by an LSC-funded program, another person who seeks help is turned down because LSC does not have the resources to help them. The fact is that many low-income Americans cannot afford a lawyer to defend their legal interests, no matter how urgent.

Similarly, there are significant geographic regions of our country, primarily out West, but also in parts of New York State, where the lawyer population is scant or non-existent and where the local population, for all practical purposes, does not have timely or proximate access to a lawyer.

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 profession and those of society.

The problems of American legal education are many-fold, but there are three central issues at play: financial constraints; a disconnect between what is being taught and what is needed in practice; and a crisis of identity.

The first issue is the most straightforward. Lawyers are suffering from our current economic crisis along with the rest of the country. There are pockets of recovery (both for lawyers and for the economy), but they are scattered and inconsistent. The cost of law school has skyrocketed while the economic recession has diminished salaries and job opportunities. Students have increasingly financed their education with mountains of loans, only to find that their high-priced law degrees may not pay off the way that they planned.

At the same time, our clients want us to do more with less. The law is growing more complex and technology is playing new roles in how legal work is done. “Smart” software is often cheaper and more efficient to use to search documents for evidence, as opposed to using young associates to do the research. Products like LegalZoom promise legal documents for a fraction of what an attorney might typically charge. From the recession, to technology, to globalization: changes in the legal profession have resulted in less work for newer (and even some older) lawyers.

As more law school graduates discover that their JD is not the golden ticket they thought it would be, applications to law school are decreasing by record numbers. In turn, law schools have suffered, and some have made unfortunate attempts to keep their numbers up by being less transparent concerning graduate employment data. Sadly, as we have seen in the press, for a handful of law graduates the first courtroom they enter after law school is one in which they accuse their alma mater of enticing students with false promises and bad information.


This particular problem is being taken very seriously by the ABA. We are tracking it closely and imposing accreditation sanctions where law schools have not been honest with their students. We are working especially hard to improve transparency. By providing prospective students with good data about law school applications and legal graduate employment, we are giving them the tools they need to make informed decisions.

The bottom line is that it has become increasingly difficult for law students to compete in the job market. Which brings me to my second point – the disconnect between what is being taught and what is needed in practice.

Law school is a place to teach law students to “think like a lawyer” and for students to take courses in legal ethics and substantive law. Law schools have not historically prioritized or done a very good job of teaching law students what they actually will do when they become lawyers. Traditionally, the law firm has played the crucial role of teaching young associates the craft and customs of practicing law. And clients have footed the bill, understanding that this is how young lawyers learn. But we are finding that clients and employers are no longer as willing as they once were to pay for associate training.

The economics of law schools today have put a great deal of pressure on the traditional model of legal education. Many schools have done their best to resist the pressure to change. Yet more and more – especially as admissions numbers drop – law schools are finding out that they must change or die trying. Law schools are finding ways to make their instructional programs more multi-dimensional through student pro bono work, clinical education programs and externships. This is the concept of “experiential” legal education that has drawn such attention recently.

The future of legal education is a critical issue for the ABA and for the American legal profession in general. At my urging last year, the ABA commissioned a 20-member Task Force on the “Future of Legal Education” to determine how law schools, the ABA and other stakeholders can address issues concerning the economics and delivery of legal education. The Task Force is exploring all avenues of legal education and legal practice: from the number of years needed for a law degree, to student debt levels, to accreditation standards and even to whether “law” ought to be an undergraduate degree.

The task force is soliciting views in the widest way possible to help identify and report on how the bench, the bar and the legal education community can work together to provide meaningful legal careers for law students and graduates. In fact, the Task Force held a lively set of hearings during the ABA’s Midyear Meeting in February, is meeting again in Indianapolis next week and aims to produce a report with concrete proposals for the ABA to consider during my term as ABA President this Fall.

Separate and apart from the work of this Task Force, my top priority as President of the ABA will be to explore the creation of a Legal Access Job Corps to match lawyers who need jobs with disadvantaged clients who need legal assistance. I have already started convening ABA 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 can take a leadership role in addressing these complex issues.

Among our first activities is to explore the innovative programs that have been started by law schools, bar associations and courts in response to today’s challenges. Incubator programs are springing up all around the country to foster the development of law practices for recently admitted lawyers, just as business incubators foster start-up businesses.

Some firms have started residency-style programs. UC Hastings College of the Law has created “Lawyers for America.” This pilot program, based on the medical profession model, is intended to provide greater access to justice while responding to the challenging legal marketplace for graduating law students. We would like to examine these programs to figure out what is working and what is not working and to see how best to expand this trend on a sustainable basis all around the country.
We will also necessarily look at funding models for such programs. Some reputable and successful programs are running into long-term financing issues. Others are untested, but have promising partnerships. For example, yesterday’s edition of the Times described a new development in South Dakota, when a bill was successfully passed, against all odds, in support of a program to recruit young lawyers to work in rural areas where sufficient lawyer coverage does not now exist.

This four-year pilot program will be administered through the South Dakota Court system, with the state appropriating 50% of the cost, the local governments paying 35%, and the state bar or its foundation, covering the remaining 15%. As far as we know, this rural recruitment program will be the first of its kind in the country. It is relevant and needed, in a number of other states, including Nebraska, Kansas, Montana and parts of other states, including New York.

These new efforts are in addition to the American Bar Association’s longstanding commitment to help lawyers to 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,” its “New Lawyer Bootcamp” and its “Next Steps Challenge Program” are some examples of the ways in which we are tackling this issue.

The ABA’s website also has an online career center and job board, and the ABA offers many networking and leadership opportunities for aspiring and new lawyers.

The ABA also provides a one-year complimentary membership to new bar admittees so that they can get ABA benefits, including networking and professional development opportunities, in addition to the educational and training program which have always been our priority.

In doing all of this, we must not lose sight of the Association’s commitment to diversity in the legal profession and the judiciary, as we seek a more inclusive and broadly representative profession. While legal education is at a crossroads, we cannot afford to go backwards on the progress we have made in the area of diversity. We need to do much more to encourage and enable students of color, from grade school through law school, to pursue and attain law degrees.

The ABA’s Legal Opportunity Scholastics Fund, which provides law school scholarships to minority students (in order to make our profession more closely resemble the public that we serve), is one of the best things the ABA has done to help promote the needed diversity.

Earlier I said there were three main components of the legal education crisis. The third and final component is what some have called an “existential crisis.”

Lawyers are suffering from our current economic crisis along with the rest of the country. But there remains an essential place for the legal profession in our democracy and in our daily lives. Roscoe Pound reminded us that the legal profession is a unique vocation and not just a job. He said:

“Historically, there are three ideas involved in a profession: organization, learning, and a spirit of public service. These are essential. The remaining idea, that of gaining a livelihood, is incidental.”

While we, as lawyers, need to provide for the well-being of our families, that notion of a “learned craft” and its role in promoting justice, is an inspiring one that still motivates the best within us.

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I am deeply concerned about our law school students, our young lawyers and their futures. And I am deeply concerned about our future as a legal profession. Access to justice is at stake in the choices that we make and the priorities that we choose.

Many new lawyers have too much debt to work in public interest positions or to make a living by providing affordable legal services. They need higher salaries than they can get working in our nation’s rural, underserved areas.

This is where I look to you – lawyers, judges and leaders in the legal profession – to serve as mentors, teachers and friends to our young lawyers. And to consider your business decisions in the broader context of what it means to practice law.

We must make more efforts to find ways to meaningfully involve lawyers and judges in the lives of law students and young lawyers.

Think back to when you were in law school or just getting started as a young associate. Who helped you? None of us made it to where we are today solely on our own.

On both the local and national levels, economic forces will continue to put pressure on the way legal services are delivered. The clinical movement and the incorporation of experiential learning into the traditional law curriculum is one way to adapt, and is a movement that will continue to grow.

But what is missing is the level of personal involvement and commitment that has always been part of being a lawyer.

We cannot continue to point fingers at law schools, legal educators, law students, Biglaw or the student loan industry. We must get involved, establish cooperative efforts with other parts of society, and use these collaborations to develop workable solutions. These personal relationships were more evident 30 and 40 years ago, but we have moved away from that sense of community with the emergence of an increasingly competitive marketplace.

To practice law properly is to engage in public service of the highest order. As a profession, we will continue to seek pragmatic ways to address today’s economic and marketplace realities. As we do so, let us remember what inspired us to become lawyers in the first place. And, let us help new generations of lawyers reach for those same goals.

Law is a great profession and can, and does, provide a meaningful and inspiring career. That truth is still true today.

Thank you for allowing me to share these ideas with you tonight. There is a lot of work for us to do concerning legal education in the United States. It is important work and I am eager for us to get to do it together.