The following article was published in the National Law Journal and available on Law.com on Wednesday, August 28, 2013:

It's About Time to Fix the 3-Year J.D. Problem

The process for law school accreditation by the American Bar Association is under severe attack as being too rigid and too expensive, amid rising tuition costs and a tight job market. Even President Barack Obama weighed in on August 23, suggesting that the third year of law school should be outsourced to firms and legal organizations to engage in yearlong externships.

In the discussions that have followed, it is important to separate the two related strands of thought: that three years is too long and can be shortened, and that the time on task — meaning the minutes of instruction ABA-accredited schools must provide to law students — can be cut to allow law students to opt out of a third year and become partially licensed.

The first option is already possible and growing, while the second, more extreme argument, is a bad idea.

It is truly a bad bargain to contemplate a lesser-by-design law program disguised as being beneficial to those who cannot afford a three-year program of study. Critics of the existing standard argue that this time-on-task requirement represents unnecessary accreditation rigidity.

Just to be clear, however, the ABA Section of Legal Education and Admission to the Bar, which is the ABA's accreditation body, does not prohibit law schools from compressing the time it takes to get a juris doctor degree, or from extending it beyond the traditional three-year duration. At the same time, no law school should be interested in reconstituting its three-year law degree into the equivalent of a two-year advanced paralegal degree.

With the ABA's requirement of 58,000 minutes of instruction, law schools can and do offer options to spend the required time in different ways. For example, Northwestern University School of Law offers a compressed program of study that saves the accelerated J.D. students money, largely by sheltering them the rising tuition costs of a traditional three-year period and by reducing living expenses to two years instead of three. In other words, Northwestern students pay the equivalent of one semester less by compressing the required study into one less semester.

By manipulating a yearlong calendar and removing downtime, any ABA-accredited law school could compress the time it takes to get a degree even further, and still require the minimum time in residence. But there are only so many arithmetic ways to shrink or extend the calendar.

Northwestern Dean Daniel Rodriguez and New York University School of Law professor Samuel Estreicher have gone further. They have proposed enabling state bar authorities to grant juris doctor degrees after just two years of course work. This is the truly bad idea. Even if a particular state were to adopt such a standard, it is not clear that the ABA would allow it. Washington state has recently implemented a license for certain legal technicians, but no other
state offers reciprocity to allow these technicians to practice anywhere else. What if these people decide they want to move or their jobs take them to another jurisdiction, as happens frequently?

There is a deep and complex relationship of state bars with each other, and if one state did allow members to sit for its bar examination having completed two-thirds of the hours that others require for admissions, these bar-passers could find themselves ineligible for temporary jurisdiction, pro hac vice appointments or other bar memberships that chose not to have reciprocal relationships such as exist widely now — even when all applicants have met or exceeded the standards and requirements.

There are many possibilities for reforming the perceived "third-year problem," and if this growing chorus is any indication of such a call to reform, many ideas will emerge, and institutions will find their own mixture of the ingredients for successful implementation.

In addition, serious, substantive changes are occurring in the worldwide practice of law and the U.S. political economy — the entire economic system and legal marketplace — over which legal educators will have little or no influence. But virtually every law school can use its resources to improve its lot. Some schools will consider closing, and the expanded universe will likely stop growing. I do not consider this to necessarily be a bad development.

These complex issues are different from, but related to, the larger economic and political problems facing higher education and college governance in the United States.

It does not mean that we should simply wait on the sidelines while they play themselves out, but financial aid legislation, accreditation, demographic influences and the worldwide economic restructuring all have affected higher education, and system remedies are necessary to return it to health. I predict an increased role for accreditation, accountability and transparency, which are the major themes of reform from the political left and right.

At the least, consider this: If today's third-year graduates are not "practice-ready," how much less preparation will they have in a two-year structure? Those who advocate reducing our time on task by one-third have a substantial burden of persuasion, and there is nothing in today's increasingly complex practice that will justify this regression to a lower mean.

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