Legal Education on Trial: Is the Third Year Necessary?

By Jennifer Smith

A suggestion by President Barack Obama to shrink the duration of law school could buoy the case of people who long have questioned whether law students really need a third year of academic study.

But the idea comes as law schools already are struggling with declining enrollment and could be reluctant to cut into their sources of revenue.

The main path to law practice in the U.S. is by earning a J.D. degree, which takes most full-time students three academic years to complete. Elite law schools began adding a third year of study at the turn of the previous century, and other schools soon followed suit.

In the first two years, students generally take courses covering the basics of law, such as contracts, property and antitrust. The third year often is devoted to more-specialized electives or clinical courses.

The debate over whether that third year is necessary is gaining traction as law-school tuition continues to climb and law graduates, some saddled with hundreds of thousands in loans, vie for a shrinking pool of jobs. At some top schools, tuition exceeds $50,000 a year.

Yet some critics say that even at three years, law schools don't adequately equip their students with the practical skills they need.

"In the first two years, young people are learning in the classroom," Mr. Obama said Friday in upstate New York. "The third year they'd be better off clerking or practicing in a firm, even if they weren't getting paid that much. But that step alone would reduce the cost for the student."

Some law schools have been tinkering with their third-year curriculum to incorporate more practical work experience or technical skills.

Other schools offer programs that compress the typical curriculum into two years. But while...
Third-year law students would ‘be better off clerking or practicing in a firm,’ President Barack Obama says.

Law Schools on Trial

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"If we’re not producing good results in three years—and many of the critics say we are not—how are we going to do it in two years?" says Michael A. Olivas, a professor at University of Houston Law Center.

It is unclear if Mr. Obama’s apparently extemporaneous remarks signal that he intends to push law schools to slim down. His separate proposal to rate colleges and universities based on their performance and to tie federal financial aid to school affordability and educational outcomes, would apply to all institutions that receive so-called Title IV funding. That includes law schools.

Legal experts on both sides of the two-year debate say the president’s remarks could galvanize the push by a small group of educators who have been advocating for shorter law school programs.

"This shows that it’s in the air," says Samuel Estreicher, a professor at New York University School of Law.

He has proposed that New York allow students to take the bar exam after just two years of study at an ABA-approved law school. Candidates who pass could practice without getting their law degrees.

Current requirements allow students who have finished a year of study to take the exam if they have also completed a three-year apprenticeship. Prof. Estreicher would remove that requirement for students with two years under their belts.

He says his proposal would force law schools to "earn the third year."

Some educators caution that the rising cost of legal education is driven by an array of factors, such as faculty salaries and the expense of providing clinical programs that require relatively small teacher-student ratios.

"Maybe we can’t afford three years of legal education anymore," says Barry Currier, the ABA’s managing director of accreditation and legal education. "But there are a lot of ways to reduce cost, and just slicing off a whole year is a blunt instrument."
Harvard Law School Says It's Holding the Line

Students wondering whether to take the plunge into law school may want to consider this: An evaporating pool of applicants could boost their chances of getting into Harvard. The latest figures show that more students are eschewing a legal education, and Harvard Law School is no exception. Applications to the school dropped 27% last year from 2009.

A side effect is that the percentage of students admitted has gone up. Harvard's acceptance rate was 15.9% last year, up from 11.2% in 2009.

Law school spokesman Robb London said Harvard wouldn't be releasing this year's figures for another few weeks but said the trend is ending.

"I can tell you that Harvard did not experience any decline in applications versus last year, so our admit rate for this year's entering class will be lower than last year's class," he said by email. "I think applicants have realized that this is a great time to apply to top law schools like Harvard."

Jacob Gershman

Bar Association Softens Its Stance on Sharing Fees

The legal profession's gatekeepers are sending the strongest signal yet that they are open to sharing their world with nonlawyers. The American Bar Association has long prohibited law firms from opening their doors to outside investors. Ethics rules bar most U.S. lawyers from sharing profits with nonlawyers. The District of Columbia is the exception. But in recent years, the idea of firms splitting profits with nonlawyers has caught on in Britain and Australia.

The ABA last week said it was softening its stance on fee sharing, handing down guidelines that allow law firms indirectly to split fees with outsiders.

The association's Committee on Ethics and Professional Responsibility said it would let law firms split fees with other lawyers or law firms practicing in jurisdictions that have more relaxed rules. Such situations come up when multiple firms work together for a single client.

The formal opinion, the closest the legal community is likely to get to an endorsement from the ABA, isn't binding. But the opinion could reflect a shift in attitudes about the financial arrangements of law firms and encourage states to relax their own rules on fee sharing.

The debate over fee sharing has polarized the legal community for more than a century.

"There are traditionalists who resist change of any kind," said Proskauer Rose LLP litigator Charles Mokrisky, a member of the ABA's ethics committee.

Jacob Gershman

Gibson Dunn Again Hires A High-Court Progeny

Lawyers tend to beget other lawyers, and the latest example of the apple falling not far from the tree comes from a sturdy oak—the U.S. Supreme Court. Phillip Alito, the son of Supreme Court Justice Samuel Alito, is joining Gibson Dunn & Crutcher LLP as an associate in the firm's Washington office.

"He is a smart, talented and hardworking young lawyer with impressive credentials," Thomas Dupree, Jr., the office's hiring partner, said by email. Other high-court members also count attorneys among their nearest and dearest. Justice Anthony Kennedy's son Gregory practiced law at Sullivan & Cromwell LLP before moving to investment banking. And Columbia Law School professor Jane Ginsburg is the product of a particularly brainy legal union: Justice Ruth Bader Ginsburg and the late Martin Ginsburg, a tax-law professor at Georgetown University Law Center.

The younger Mr. Alito, a 2012 Duke Law School graduate, shouldn't have much trouble finding his way around Gibson Dunn—he was a summer associate there in 2011.

And should he need advice on his special pedigree, he can walk down the hall for a chat with partner Eugene Scalia, a son of Justice Antonin Scalia.