Memorandum

To: Council
From: Barry Currier, Managing Director
Re: For discussion - Council working group to study the regulation of other-than-JD programs
Date: February 19, 2019

ABA-approved law schools enrolled over 18,000 students in other-than-JD degree or certificate program in the 2018-2019 academic year, over 14 percent of all enrollments in ABA-approved law schools. The enrollment is steadily increasing, and the number of programs is increasing more rapidly.

Other-than-JD programs are a (perhaps "the") primary additional, alternative revenue stream available to schools as JD program enrollments decline and tuition discounting increases. The variety of other-than-JD programs is expanding, both in the degree/certificates being offered and in subject matter.

These programs are subject to control by the university to which a law is attached, state licensing agencies, and regional accreditors. However, (a) there are a number of law schools not attached to universities, (b) other regulators do not have a deep understanding of law school or the legal profession/employment market, and (c) these other regulators may expect there is more regulation and oversight of these programs by the Council than is the case. Many of these programs are innovative, may well serve the students who enroll in them, and may serve the profession and the public well. But that may not always be so.

As you know, the Council “acquiesces,” but does not “approve” these programs. The standard for acquiescence is simply that a program does not interfere with a law school’s ability to operate its JD program in compliance with the Standards. Put a different way, there is no authority to consider the academic quality or viability of these programs. The distinction between “approval” and “acquiescence” is difficult to explain and is often obscure to potential students, employers, courts, and others. That these programs are often marketed to students or lawyers from outside the United States creates opportunities for U.S. law schools to play a useful role in the global legal marketplace, but may create additional concerns, too.

For these and other reasons we might discuss, I offer for discussion by the Council whether there is a need for it to form a working group or task force to gather facts about these programs and their impact on schools, students, and the profession and to consider, whether the Council should expand its activities to some additional level of regulation of these programs.

There are several major and complicated issues to be studied. It is not clear what the best course of action (including no action at all) might be. Any movement in this direction would require consultation with schools, courts, and employers. If the Council sees a need to move forward, this would be a long project. The market is already moving. If the Council can/should play a role, it needs to start exploring what it could/should be.