ABA Accreditation of Foreign Law Schools:

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Graduation from an ABA approved law school automatically qualifies an applicant for admission in every jurisdiction in the US, and thus constitutes a significant "gateway" to practice in American jurisdictions. The current accreditation regime is based entirely on the (historical and present) American system of graduate legal education. While this educational model is evidently capable of replication in non-American institutions beyond U.S. borders, it is less clear that some of the foundational aspects of the role of lawyers in American society are similarly portable. One threshold question may be whether the American legal profession is sufficiently distinct in its
identity, function or values to warrant attention to that
distinctiveness and the degree to which it exists as a result
of or as an adjunct to legal education.

The Special Committee did a very nice job, given time
and resource constraints, of identifying the pluses and
minuses of going forward. However, in thinking further
about this and discussing it with others, a number of other
questions come to mind which might suitably be discussed
by the Council in addressing the issue before it:

1. Should the ABA, as a matter of mission and policy,
become an international as well as a national accrediting
entity? It has been universally understood that the ABA
accredits American law schools, and current rules for bar
admission in most U.S. jurisdictions are based on the
assumption that graduation from an ABA-accredited school fulfills the educational requirements for such admission. Should the implications of a change in the scope of accreditation be discussed with state supreme courts and state bar examiners? Would proceeding without such consultation subject the ABA to criticism and resistance from bar examiners and supreme courts that may not be prepared to deal with the administrative burdens associated with admission of foreign applicants (e.g. background checks and character reviews)?

2. If such a step is properly part of our mission and is good policy, what are the implications for the resources necessary perform the function. While money may not be an immediate issue, in view of the fact that many costs are already borne by schools seeking approval, the impact on
staff and on volunteer resources could be significant. Will American lawyers, judges and academics be willing and able to conduct the site visits, prepare the reports, review the results, and monitor the progress of a potentially large (very large?) number of international schools?

3. Are there any natural or long-term limits on the number or location of schools with the resources (and the profit motive) to create American models of legal education? There are now more than 200 U.S.-based law schools and more are on the way. How long might it take before there are another 50 schools based abroad? Where is the most likely growth - China, other parts of Asia and India, the U.K. Australia, Europe, Latin America? If the current program in China, for example, moves forward, how many similarly-situated Chinese universities might be in a
position to replicate it?

4. On the policy side, what about reciprocity? Should an American accrediting entity invest resources in a process that will create access to U.S. law practice for foreign lawyers whose countries of origin prohibit similar access to American lawyers? This question relates directly to the first question above about the proper scope of the Council’s accreditation project.

5. Is there relevant experience in other professions that should be studied? Since foreign-trained physicians have been admitted to practice in the United States, medical boards have had to address issues specific to them. It might be useful to consult with the comparable entities in the medical field to determine what additional burdens and/or
benefits they have encountered.

6. Are there any potential risks of litigation resulting from accrediting schools in other countries? Would the ABA be subjecting itself to foreign jurisdictions for litigation purposes if it undertakes an accreditation function in other countries? Should discussions with ABA legal counsel explore this question before the Council acts?

7. Is there any disadvantage to undertaking a program of accrediting foreign law schools in the middle of the current comprehensive review of accreditation standards? There are at least two very significant changes to the standards under discussion (student learning outcomes and security of position requirements). Are there any special considerations that might make the foreign accreditation
project more complicated in a period of potential transition with the substance of the standards? For example, differences in culture and in academic and social environments could pose challenges in applying standards regarding clinical experiences, diversity, accessibility, academic freedom and freedom of speech.

8. Is accreditation of foreign law schools consistent with the goals of ABA accreditation and the Council’s strategic plan? There are at least two principal purposes of accreditation: 1) to protect current and future law students by ensuring that their education will adequately prepare them for admission to the legal profession; and 2) to satisfy the public that law school graduates have been adequately trained in the knowledge and skills they need to be competent lawyers. In what way does the accreditation of
foreign schools advance these purposes and has the Council’s strategic planning process accounted for this undertaking?

9. Is the Council sufficiently informed at this time to explore these questions and others in an adequate fashion? Should we expand our deliberation process to permit consultation with state supreme courts, state bar admission officers, law school deans, our own Accreditation and Standards Review Committees, NCBE, LSAC and NALP, non-legal professional accrediting bodies, ABA legal counsel and perhaps others? If further work is required, how might we structure it and how long should it take? Can we identify ways in which the current China project could inform our deliberation?
The Council has to this point been operating within significant time and resource constraints, illustrated by the very short turn-around time requested of the Kane subcommittee, which performed a great service in organizing an initial framework in its report but which had no access to outside consultation. An expanded discussion of the subcommittee’s recommendations that would include exploration of the foregoing questions (and presumably others not yet identified) might slow us down, but might in the end serve our mission and avoid unintended negative consequences for the overall mission of ABA accreditation. This is the Council’s call.