Book Burning in the Twenty-First Century: ABA Standard 606 and the Future of Academic Law Libraries as the Smoke Clears*

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This article examines the evolving American Bar Association (ABA) Standard 606 and its effects on the collections of academic law libraries. What the twenty-first-century academic law library will look like will depend to a large extent on how the ABA standards respond to the changing realities in the legal academic marketplace. While some are calling for the elimination of the physical academic law library, the more likely outcome is that, in response to the evolving ABA standards and current economic realities, the academic law library will shrink in both physical space and physical holdings, but it will continue to be the center within the law school that helps train and produce the “practice ready” lawyers that are the ostensible goal of current legal education reforms.
Introduction

¶1 The twenty-first century began with a bang as the United States came face to face with terrorism on its shores. A few short years later, the financial bubble burst, and prospects for recent law graduates began to plummet. This jolt, the effects of which continue to this day, has accelerated calls in the twenty-first century for reform of the legal education system in the United States. Beginning with the Carnegie Report¹ and carried forward by a frenzy of negative reports in the media on the state of legal education,² the predictions of the demise of law schools and the current legal education model have continued unabated. In the midst of these discussions, the question of the place and composition of the academic law library becomes very important, given that the law library is a law school’s second-largest cost center after faculty salaries.

¶2 This article examines the evolving American Bar Association (ABA) Standard 606 and its effects on the collections of academic law libraries. What the twenty-first-century academic law library will look like will depend to a large extent on how the ABA standards respond to the changing realities in the legal academic marketplace. While some are calling for the elimination of the physical academic law library,³ the more likely outcome is that, in response to the evolving ABA standards and current economic realities, the academic law library will shrink in both physical space and physical holdings, but it will continue to be the center within the law school that helps train and produce the “practice ready” lawyers that are the ostensible goal of current legal education reforms.

The Birth of the Academic Law Library

¶3 Law libraries have played a major role in the legal profession since well before the formation of the formal academic law library. In the early years of the Library of Congress, it had legal materials as part of its main collection. The importance of these materials can be inferred from the fact that in 1832 Congress passed a law that directed the Librarian of Congress to create a separate law library department within the Library of Congress.⁴ The Supreme Court and attorneys were to use this library until the establishment of a separate Supreme Court library in 1935.⁵ In areas outside of the District of Columbia, attorneys recognized the need to have a law library available to them. The Social Law Library in Boston opened its doors in 1804 as a resource for the local bar.⁶ The appearance of bar

⁴ Act of July 14, 1832, c. 221, 4 Stat. 579.
⁶ Howard L. Stebbins, History of the Social Law Library, Boston, 13 LAW LIBR. J. 57, 57 (1920). Other early law libraries included the Philadelphia Bar Library and the Institute of the City of New
association libraries did not excuse law schools from the need to create their own libraries, as evidenced by the fact that bar association libraries were not always open to non-bar members such as law students. Beyond private law libraries, some states established state and county law libraries. For example, California was an early adopter, in 1891, of the county law library system.

§4 While there was a definite boom in the creation of law libraries throughout the United States in the 1800s, it was clear that these law libraries were created for the benefit of practicing lawyers and judges, and not for law students. It should then come as no surprise that, as law schools began to proliferate throughout the United States, academic law libraries appeared along with them. The needs of law professors and law students were different from those of the practicing bar, and thus a law library dedicated to the academic needs of these patrons ensured the growth of academic law libraries.

§5 The first academic law libraries were, in fact, simply the private collections of those judges and attorneys who offered classes in the law. These “law office schools” were spread thinly across the country, and none survives today. One of the earliest was founded by Judge Tapping Reeve in Litchfield, Connecticut, in 1784. Another law office school was established in New Haven, Connecticut, around 1800 by Seth Staples, joined later by Samuel Hitchcock. Their law library became part of the original Yale University Law Library in 1845.

§6 One of the first major universities to begin a separate college dedicated to the study of law was Harvard University. In 1817, Harvard announced the creation of a law school, along with a promise that the students would have “access to a complete law library.” By 1820 the law library had 584 volumes, and by 1841 it had blossomed to a collection of 6100 volumes.

§7 In these formative years of law schools, the law libraries were small, and because they were most often established from existing practitioners’ collections, professors felt that they were insufficient for a proper study of the law. Shortly after he arrived at Harvard in 1829, Joseph Story sent a letter to Josiah Quincy (then York, which was founded in 1818. Elmer H. Blair, History of the Law Library Association, St. Louis B. J., Spring 1979, at 40.

7. For example, in 1873 Boston University Law School asked for law students to be granted admission to the Social Law Library. That request was refused. Stebbins, supra note 6, at 60.

8. Gail H. Fruchtman, The History of the Los Angeles County Law Library, 84 LAW LIBR. J. 687, 687 (1992). While the county system was created in 1891, Los Angeles County had a privately organized law library as early as 1886, which later became the county law library. Christine A. Brock, Law Libraries and Librarians: A Revisionist History; or More Than You Ever Wanted to Know, 67 LAW LIBR. J. 325, 331 (1974).

9. Brock, supra note 8, at 341. For a list of books found in this law library circa 1800–1810, see The History of Legal Education in the United States: Commentaries and Primary Sources 186 (Steve Sheppard ed., 1999).


11. Brock, supra note 8, at 342.


13. Id.

14. Brock, supra note 8, at 342.
president of Harvard University), complaining, “It is indispensable that the students have ready access to an ample law library which shall of itself afford a complete apparatus for study and consultation. . . . At present the students are compelled to resort to my own private library.”15

¶8 Many of the early law schools relied on public law libraries for their faculty and students’ needs. For example, the Union College of Law (later to become the law school at Northwestern University) opened in 1859 with no library facilities.16 The law students, even ones affiliated with Northwestern, “were expected to make use of the facilities of the Chicago Law Institute, a practitioners’ library, for legal materials.”17

¶9 Other schools relied on the general university library. At the University of North Carolina, this was true until the law school’s own law library opened in 1907.18 In some cases, the law library was just a collection of books in a room, such as that of the University of Kansas Law School.19 Law schools eventually realized that the academic mission of the school called for a true library with adequate staffing and a dedicated legal collection.

¶10 During the late nineteenth and early twentieth centuries, law schools began to multiply, and the law library flourished as a stand-alone library separate and distinct from the main university library and the bar association and public libraries. It was Christopher Columbus Langdell, dean of Harvard Law School from 1870 to 1895, who paved the way for “promoting the law library to a preeminent place in the research law school.”20 It is ironic that the decline in the strength of the academic library may well be due to the twenty-first-century backlash against Langdell’s method of studying law through the casebook. As legal education turns toward the training of practice-ready graduates, the emphasis is moving from what the law is to how to practice law. The law library as the center of the academic law school must reassess its role in that light, in addition to adapting to the world of electronic publishing.

The ABA and the Traditional Collections of Academic Law Libraries

¶11 As the idea that a law school needed a dedicated law library took hold, newly established law schools began to include a law library as an integral part of the enterprise. Tensions quickly arose about what type of library a law school should have. Law schools began to differentiate into large, research-oriented institutions and smaller, “bread-and-butter” institutions.21 The Association of American Law Schools (AALS) weighed in on this distinction in 1952, when it agreed that

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16. Brock, supra note 8, at 343.
17. Id.
19. Although the law school at the University of Kansas began in 1878, it was not until 1905 that the law school opened a true law library. Joyce A. McGray Pearson, A Brief History of the University of Kansas School of Law Library, 51 U. KAN. L. REV. 873, 877 (2003).
20. Brock, supra note 8, at 344.
21. Id.
the law collection should be a research library, not just a “working library” which would solve the run-of-the-mill problems which cross the lawyer’s desk with frequency. New fields of law demand broader searches and deeper analysis, and we are more aware that the older fields also need the same treatment.22

¶12 As law schools proliferated, two bodies, the AALS and the ABA, would have a direct impact on the growth of academic law libraries and the composition of their collections. Early on, the AALS did not set a high bar for member schools with respect to the composition of the law library collection. In 1900, the AALS Articles of Association, article 6, part 4, stated simply that a law school “shall own, or have convenient access to during all regular library hours, a library containing the reports of the State in which the School is located and of the United States Supreme Court.”23 This was not exactly the deep research library envisioned by Langdell.24 Over the first part of the twentieth century, the AALS would continually revisit these articles, placing a greater burden on accredited schools to have much larger collections.25

¶13 The AALS not only called for increasing volume counts, it also recommended that the academic law library move from being a working library—one designed to support practitioners—to one that focused on gathering a research collection.26 As the AALS emphasized the creation of research collections within academic law libraries, the requirements for those collections grew in depth and breadth.27 The AALS was just one of the driving forces that led to the rapid growth of academic law library collections. A second and more important agent in the late twentieth century, and continuing until today, was the ABA.

¶14 “Since 1952, the Council of the Section of Legal Education and Admissions to the Bar (‘the Council’) of the American Bar Association (‘the ABA’) has been approved by the United States Department of Education as the recognized national agency for the accreditation of programs leading to the J.D.”28 As part of its accreditation process, the Council developed a set of standards for academic law libraries that ensured they would increase their collections to the large size currently found in most of these institutions.

22. Id., (quoting ASS’N OF AM. LAW SCH., SPECIAL COMM. ON LAW SCH. ADMIN. & UNIV. RELATIONS, ANATOMY OF MODERN LEGAL EDUCATION 428 (1961)).
24. See Brock, supra note 8, at 343–44.
25. By 1932 article 6 of the association articles called on member law schools to “own a law library of not less than ten thousand volumes.” ASS’N OF AM. LAW SCH., PROCEEDINGS OF THE ANNUAL MEETING 176 (1932) [hereinafter 1932 AALS PROCEEDINGS]. By 1952 section 6–2, subsection 4, called on member law schools “to maintain and administer a working law school library sufficient to support its educational program, such library to contain not less than 20,000 usable volumes.” ASS’N OF AM. LAW SCH., PROCEEDINGS OF THE ANNUAL MEETING 217 (1952). The total volume requirement was dropped in 1962 with the adoption of a standard that required “[a] library adequate for the curriculum and for research.” ASS’N OF AM. LAW SCH., PROCEEDINGS OF THE ANNUAL MEETING 241 (1962).
While the Council has been approved to act as the accrediting body by the Department of Education since 1952, the ABA’s involvement in legal education stretches back to its founding in 1878. At the ABA’s first meeting, it created the Committee on Legal Education and Admissions to the Bar. This committee recommended, among other things, that state and local bar associations suggest a general course of study within law schools and that the course of study be three years, as a qualification for a candidate to sit for the bar exam. These recommendations were not adopted by the ABA, because “law school graduates were a minority among the practitioners and judges attending the meeting.”

By 1893, the committee was re-formed as the Section on Legal Education and Admissions to the Bar. The section continued to push for standards for law schools, but it was not until 1921 that the ABA promulgated its first Standards for Legal Education. The section and the House of Delegates of the ABA adopted the following resolution at the 1921 meeting:

1) The American Bar Association is of the opinion that every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:
   a) It shall require as a condition of admission at least two years of study, in a college.
   b) It shall require its students to pursue a course of three years duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.
   c) It shall provide an adequate library available for the use of the students.
   d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

2) The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by public authority to determine his fitness.

3) The Council on Legal Education and Admissions to the Bar is directed to publish from time to time the names of those law schools which comply with the above standards and of those which do not, and to make such publications available, so far as possible, to intending law students.

4) The president of the Association and the Council on Legal Education and Admissions to the Bar are directed to cooperate with the state and local bar associations to urge upon the duly constituted authorities of the several states the adoption of the above requirements for admission to the bar.

5) The Council on Legal Education and Admissions to the Bar is directed to call a Conference on Legal Education, in the name of the American Bar Association, to which the state and local bar associations shall be invited to send delegates, for the purpose of uniting the bodies represented in an effort to create conditions favorable to the adoption of the principles above set forth.

30. Id.
31. Id.
32. Id. at 440.
34. 44 ANN. REP. ABA 19, 38 (1921).
The earliest approved set of guidelines included a call for an adequate library available for the use of the students. In the proceedings of the 1921 meeting, the section commented that “[w]e consider the library facilities of a law school a matter of great importance, and therefore recommend that a law school shall not be deemed competent to educate students for the bar unless it provides an adequate library available for their use.”35 At this time, the ABA did not set out specific requirements for the collection of the law library, as the AALS had done in 1900, but it is clear from the language of the section that a library was seen as a necessity for any goodwill school.

The ABA standards underwent a major revision in the early 1970s, culminating in a revised set of guidelines that were approved by the ABA House of Delegates in February 1973.37 These revisions provided a clear set of guidelines for law schools that were either seeking accreditation or looking to keep their current accreditation. The standards once again addressed the need for a law library, but this time they prescribed a specific list of those items a law library “shall” contain if the law school wished to be in compliance with the standards.

Chapter VI. Library

601. The law school shall maintain and administer a library adequate for its program.

602. (a) The law school library shall contain:
   i. all publications listed in Library Schedule A, attached as Annex I,
   ii. those other materials that are reasonably necessary for the proper conduct of its educational program,
   iii. all publications listed on Library Schedule B, attached as Annex II, except those that are readily accessible to and available for use by students and faculty in another library facility.

(b) The Council is delegated the authority to revise the Library Schedules from time to time.38

These standards set the bar fairly high for new law schools, and they ensured that the more established law schools would continue the rapid expansion of their own law library collections. Academic law libraries therefore not only took up a considerable amount of space within a law school, but they also made up the second-largest portion of a law school’s budget.

While law libraries grew to meet the new standards, new technologies were being developed that would have a significant impact on law library collections. The introduction of electronic legal resources would not only transform how lawyers conducted research in the decades that followed, but would also clash with the ABA standards and force a close review of the traditional law library collection.

36. See Ass’n of Am. Law Sch., supra note 23, at ii.
The Rise of Electronic Legal Resources and Their Impact on Academic Law Library Collections

The Rise of Electronic Legal Resources

¶ 21 The printed book has played a valuable part in legal systems that were born out of the common law tradition. As lawyers and judges looked to legal precedents in order to determine arguments for their cases, access to the legal opinions of the past were vitally important. As a result, law libraries necessarily filled first with the printed reports of courts and then with all the commentary that grew up around them.

¶ 22 As the number of reported cases exploded in the latter part of the nineteenth century, legal publishers began publishing volumes of court reports at a rapid pace. At the same time, legal publishers were producing more and more commentaries on the law. Statutory law was rising in prominence, and thus the printed codes of the federal government and the fifty states were important to law library collections. As law schools flourished, academic law journals multiplied, adding another body of knowledge for attorneys to use. By the start of the twentieth century, lawyers were no longer limited to looking at case law. Instead there was a tremendous body of law and commentary that filled the academic law library. Recall that, by the early 1930s, the AALS had called on academic law libraries to have a collection that comprised no less than 10,000 volumes.

¶ 23 With an ever-growing body of primary and secondary literature available, lawyers began to think of different ways to research the law. As the twentieth century progressed, advances in computing technology did not go unnoticed by the legal profession. “By the 1960s, there was much talk in the legal profession about the geometric rate of increase in the amount of material a lawyer had to scan to do a comprehensive job of legal research.” With this in mind, lawyers began to look at newly emerging technologies as a potential solution to this information overload.

¶ 24 Academics were some of the first to put the new technologies to the test, with a pilot digitization project that started at the University of Pittsburgh in the early 1960s. The first major nonacademic foray into harnessing the power of

39. “The growth of court reports during the 19th century had been exponential. In 1810 there were 18 volumes of American reports. The number in 1848 had grown to 800. And less than 40 years later, in 1885, there were nearly 3,800.” Thomas A. Woxland, “Forever Associated with the Practice of Law”: The Early Years of the West Publishing Company, 5 Legal Reference Services Q., 1985, no. 1, at 115, 117.

40. 1932 AALS Proceedings, supra note 25, at 176.


42. Since the rise of the legal publishing industry, lawyers have been decrying the overwhelming amounts of information they must survey. In 1882, J.L. High wrote with exasperation about the ever-increasing number of law reports being produced. “[U]nless some means shall speedily be devised of checking this appalling number of publications, it is perhaps within the bounds of moderation to assert that lawyers now in practice at the bar may live to see the number of volumes of reports in the English-speaking countries exceed twenty thousand.” J.L. High, What Shall Be Done with the Reports?, 16 Am. L. Rev. 429, 435 (1882).

43. Harrington, supra note 41, at 544.
computers in the legal research process was undertaken by the Ohio State Bar Association (OSBA). The goal of this group was to create a “nonindexed, full-text, on-line, interactive, computer-assisted legal research service.” In essence, the group wanted the electronic equivalent of a law library’s print collection, with the searching capability to look through the whole library at once.

¶25 The OSBA created the Ohio Bar Automated Research (OBAR) nonprofit and partnered with the Dayton-based Data Corporation to begin developing this new research database. This early experiment in computer-assisted legal research would eventually lead to the creation of the first mass-market electronic research service, Lexis. In 1969, the Mead Corporation bought Data Corporation, forming Mead Data Central, which eventually produced Lexis and released it to the legal marketplace in 1973.

¶26 Hot on the heels of the Lexis release came the announcement that the venerable legal publisher West Publishing would release its own electronic legal research system, known as Westlaw. Westlaw went on the market in 1975. The creation of Westlaw certainly contributed to the decline of the print law library. The dominant legal publisher had committed to converting its legal content to electronic form and making it accessible to its subscribers. William Harrington, one of the primary architects of computer-assisted legal research, predicted in 1984 that “[p]rint publication will not disappear, but electronic publishing will be the principal way the law profession obtains current information and digs through the world’s archives.”

¶27 Interestingly enough, Harrington also recognized that while the growth of electronic legal resources would affect the collections of law libraries, it would not eliminate the need for information professionals like librarians. In fact, he believed that libraries and librarians would become more important. The function of a librarian, after all, is not just to act as the custodian of an information warehouse; it is to make information useful, which of course means being able to call it out when it is needed. Already there are professionals who specialize in helping people to select the right electronic library and retrieve information from it. These specialists know what each library contains and how to use the various search protocols to retrieve it. With more and more information being created and stored, finding it and bringing it out becomes an increasingly important specialty. Rather than making librarians obsolete, the development of computer-assisted legal research makes librarians even more valuable.

¶28 The question of whether print or electronic sources are best for legal research is beyond the scope of this article. It is well established that electronic research has been, and will continue to be, a substantial part of a lawyer’s arsenal.

44. *Id.* at 545.
45. *Id.* at 547–48.
46. *Id.* at 553.
47. *Id.*
48. *Id.* at 555.
49. *Id.* at 556.
50. As early as 1986, it was recognized that “LEXIS and WESTLAW already have become an integral part of the arsenal of research tools.” Robert C. Berring, *Full-Text Databases and Legal Research: Backing into the Future*, 1 HIGH TECH L.J. 27, 28 (1986).
This article focuses on how the shift from print to electronic sources affects collection development in academic law libraries.

The Cost of Keeping Everything in Print

¶29 Since the turn of the twenty-first century, one of the big decisions facing academic law libraries has been what to do about print primary sources. Three forces are driving this question. The first is the dramatically rising price of these resources, the second is the cost of the space used to house them, and the third is their widespread availability in various electronic venues.

¶30 Academic law library acquisition budgets were, as a general rule, flat or declining over the first decade of the twenty-first century. In fact, according to a recent study conducted by the American Association of Law Libraries (AALL), “nearly 60 percent of its respondents have been making do with less for the past several years.” Some libraries have seen as much as a fifteen percent cut to their acquisition budgets. Thus, the steep increase in the cost of print primary sources has made it more difficult for academic law libraries to develop their collections in areas that are not available electronically. Monographs, for example, are not widely accessible online. If law libraries spend a higher proportion of their shrinking budgets on print primary sources that are duplicated online, they will be forced to cut back on items that are available only in print.

¶31 Library shelf space is another factor in the quandary over print primary sources. In the period from 1998 to 2008, academic law libraries reported a slight decrease in the amount of shelf space available in their libraries. According to the Comprehensive Law Library Statistical Table, published by the ABA, in 1998 law libraries at accredited law schools reported having a median of 39,449 linear feet of shelving capacity; ten years later, that number was 39,289.

¶32 During this same time period, legal materials continued to be published at a rapid pace. For example, between 1998 and 2008, West published close to two hundred volumes of their North Eastern Reporter, 2d, which take up approximately

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51. For example, the per-volume cost of West’s Federal Reporter rose from $129 in January 2009 to $269 in January 2013, a more than 100% increase in four short years. E-mail from Darin K. Fox, Director of the Law Library at the University of Oklahoma Law Center, to author (Feb. 15, 2013) (on file with author). According to the 2012 AALL Price Index for Legal Publications, the cost of materials rose between 2011 and 2012 in most areas. For example, the price of serials increased by 9.91%, reporters by 39.80%, and supplemented treatises by 9.26%. In the meantime, the price of materials in electronic format decreased by 3.17%. AM. ASS’N OF LAW LIBRARIES, PRICE INDEX FOR LEGAL PUBLICATIONS 2012, http://www.aallnet.org/Documents/Publications/Price-Index/price-index-2012.pdf (available to AALL members only).


54. Am. Bar Ass’n, Section on Legal Education & Admissions to the Bar, Comprehensive Law Library Statistical Table—Data from Fall 1998 Annual Questionnaire (1999) (on file with author); Am. Bar Ass’n, Section on Legal Education & Admissions to the Bar, Comprehensive Law Library Statistical Table—Data from Fall 2008 Annual Questionnaire (2009) [hereinafter Data from Fall 2008 Annual Questionnaire] (on file with author).
thirty-nine linear feet of shelf space. If the rest of the components of West’s National Reporter System grew at a similar rate, that would account for 390 linear feet of shelf space needed just for this one group of publications. Given that academic law libraries, like law firm law libraries, appear more likely to be losing space than gaining it, continuing to acquire resources in print that are available online is bound to cause problems for libraries.

¶33 The third factor in the decision about maintaining print primary sources is that many of them are easily accessible in various locations online. This issue was already being considered as early as 1986, when one of the law library world’s pre-eminent thinkers predicted that “[i]n the law office of the future, the firm computer will provide reporters and digests on-line.” The cost of purchasing and housing these resources in print, it seems like a dubious financial decision to spend money on these resources when they can be accessed electronically. Let’s take West’s New York Supplement, 2d Series as an example. This source contains the reported decisions of New York’s appellate courts. The cost of this resource in print rose from $131 per volume in January 2009 to $325 in January 2013, an increase of about 150%. The cases reported in these volumes are also available in no fewer than six fee-based online databases, multiple free online sources including Google Scholar, and the web site of the New York appellate courts.

¶34 The three factors discussed above, taken together, reveal that duplicating electronic sources by also acquiring them in print is problematic for academic law libraries. Another problem they face, however, in balancing electronic and print resources in their collections is meeting the standards of their accrediting organizations.

The ABA Standards and the Rise of Digital Information

¶35 The AALS was the first to officially recognize the growing importance of electronic materials when, in 1991, it changed its requirements relating to law libraries. Rather than an exhaustive list of the print publications a law library needed to own, the new AALS regulations included databases as one of the ways in


57. Berring, supra note 50, at 59.


59. See AM. ASS’N OF LAW LIBRARIES, supra note 51.

60. These include Westlaw, LexisNexis, Bloomberg Law, Casemaker, Loislaw, and Fastcase.


which access to materials could be provided. The executive committee’s explanation for these revisions acknowledges directly the technological changes under way in the information world, and it was not long before the ABA made a similar move in the ABA standards.

¶36 After the publication of the fairly rigid standards of the 1970s, the ABA was slow to acknowledge that even academic law libraries were moving steadily toward online-only access for the preponderance of their resources. In 1995, for the first time, the ABA standards for law library collections were changed to reflect the growing importance of online access to legal materials. The 1995 standards finally recognized that print was not the primary format for a collection. Interpretation 1 of Standard 606(a) stated, “The word ‘collection’ includes printed sources, microforms, audiovisual works, and access to electronic formats.” At the same time, the ABA was careful to make it clear that a shift to primarily one medium would not be sufficient to meet the standards (presumably this was aimed at those institutions that wanted to eliminate their print collections). Interpretation 4 of Standard 606(a) stated, “At present, no single publishing medium (electronic, print, microform, audiovisual) provides sufficient access to the breadth and depth of recorded knowledge and information needed to bring a law school into compliance with Standard 606. Consequently, a collection that consists of a single format may violate Standard 606.”

¶37 Prior to the 1995 ABA annual meeting, the Section of Legal Education and Admissions to the Bar had held numerous hearings, which culminated in their asking the ABA House of Delegates to adopt these sweeping changes to the standards. In explaining the reasons for these changes, Jose R. Garcia-Pedrosa (the delegate to the convention from the section) said that the amended standards and interpretations are intended to incorporate into the law library standards the enormous changes that computerization and the electronic revolution have brought about in the manner in which lawyers and law students perform legal research and memorialize and communicate the product thereof, and to lessen the weight of the regulatory hand by requiring that a law library meet various needs of the programs, faculty and students of the law school that library serves, as opposed to being required to meet specific criteria applicable to all law libraries at all law schools.

63. 8.5 Access to Information Resources. Availability of information resources includes ready access to central collections, databases, jointly held special collections, numerous supportive interdisciplinary materials, and any other type of off-site auxiliary resources that may enhance the member school’s ability to meet, and especially exceed, the objectives stated in Bylaw 6-1. This requirement also envisions that the library will provide resources sufficient to ensure reasonable availability by faculty and students, which may require duplication of certain materials. “Ready access” means reasonable access in terms of time and form based upon the type of material and nature of the teaching and research being performed.


64. “The regulations acknowledge the importance of having information resources within the library’s collection as well as having access to information resources through networks, consortia, or other cooperative activities. The approach of the amendments is to allow sufficient flexibility in the regulations for technological and financial changes in library science.” ASS’N OF AM. LAW SCH., PROCEEDINGS OF THE 1991 ANNUAL MEETING 91 (1991).


66. Id.


It is interesting to note that in the explanation of the proposed revisions, the section felt the need to point out to the delegates “that neither the current Standards nor the proposed amendments of those Standards require, nor even recommend, the number of books or computers that a law school must have.”

§38 The standards continued to set forth what types of materials must be present in a law library’s core collection. The list simply moved from the appendix of the standards to the interpretations. The essence of what a law library collection should contain remained the same, presumably in recognition that a core collection of legal materials was still necessary for legal research by the faculty and students. The key point to emerge from the new standards was the acknowledgment, as laid out in Interpretation 2 of Standard 606(b), that the format of the core materials depended more on the needs of the library and its patrons than on the materials themselves.

§39 This point became the focus of the subsequent revision of the standards as they relate to law libraries, which came about in 2005, after the Council of the Section of Legal Education and Admissions to the Bar sought comments on proposed revisions to various chapters, including chapter 6. For the first time, the ABA added the word scholarship to Standard 601(b) and (c), stating that the “resources necessary to support scholarship, especially faculty scholarship, may be different than the resources necessary to satisfy the more general requirement that there be sufficient support of research.” This official recognition of the fundamental divide between academic and practical law libraries harkens back to the very beginnings of law schools and their libraries. In the twenty-first century, that divide will be yet another factor affecting the balance of print and electronic resources in academic law libraries.

§40 The 2005 revision of the standards also made allowance for the increasing reliance on online resources, but the revised Interpretation 601-1 cautioned libraries that “providing electronic access to materials alone would not satisfy the Standard.” This revision, coupled with Interpretation 606-2, which retained the statement that “[a] collection that consists of a single format may violate Standard 606,” should give pause to academic law libraries planning to move their entire collections online. How much of the collection can be in one format continues to be the parameter that tests the boundaries of these standards.

§41 The tension about print versus digital collections can be seen in the slight but important revisions to Standard 606 on the content of the collection in that same year. The Council specifically revised the standard with an eye toward

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69. Report No. 2 of the Section, supra note 67, at 414.
70. See infra appendix C for the list.
71. Am. Bar Ass’n, supra note 65, at 51.
73. Id. at 491.
74. Id.
76. While the Council continued to dance around the question of what format the collection must be provided in, it made very few changes to what the core collection should actually include. The only change made was to require only current treaties, international agreements of the United States, and current federal and state regulations. Report No. 3 of the Section, supra note 72, at 492. See infra appendix D for Interpretation 606-5.
providing flexibility to libraries “in view of the availability of different formats and the needs of the library’s clientele in the rapidly changing law library environment.”\(^\text{77}\)

The Council called this a functionality test, which recognized “a better approach to ensuring sufficient access to needed materials.”\(^\text{78}\)

\(\S\)42 The previous language of Standard 606, from 2000, was as follows:

Standard 606(a) A law library collection, including printed sources, microforms, audiovisual works, and access to electronic informational resources, shall:

1. meet the research needs of the law school’s students, satisfy the demands of the law school curriculum, and facilitate the education of its students;
2. support the teaching, research, and service interests of faculty; and
3. serve the school’s special teaching, research, and service objectives.

(b) A law library shall provide within the law school’s facilities, through ownership or reliable access, a core collection of essential materials.\(^\text{79}\)

\(\S\)43 The new language was changed to read:

Standard 606(a) The law library shall provide a core collection of essential materials accessible in the law library.

(b) In addition to the core collection of essential materials, a law library shall also provide a collection that, through ownership or reliable access,

1. meets the research needs of the law school’s students, satisfies the demands of the law school curriculum, and facilitates the education of its students;
2. supports the teaching, scholarship, research, and service interests of faculty; and
3. serves the school’s special teaching, scholarship, research, and service objectives.\(^\text{80}\)

\(\S\)44 The standards thus finally took into account the reality that digital materials were dramatically affecting the collections of academic law libraries. The changes in the 2005 standards signaled a shift in their requirements: they no longer dictated a specific format for the collection, and they focused on what sorts of content the collection should provide rather than specifying exactly what the collection should contain.\(^\text{81}\) In addition, the Council recognized in this revision that law libraries needed not only to ensure sufficient access to necessary materials, but to do so in a cost-effective manner.\(^\text{82}\)

\(\S\)45 Since 2005, digital information has continued to evolve and expand. While law libraries’ collections have continued to transition from print to electronic, the standards have not changed. The conversation has continued, and in late 2012, the Council approved proposed revisions to the standards regarding law libraries.\(^\text{83}\) The proposed changes were announced, and interested individuals were given until May 14, 2013, to submit comments. A hearing on the proposed changes was sched-

\(^{77}\) Report No. 3 of the Section, supra note 72, at 492.

\(^{78}\) Id.


\(^{81}\) Report No. 3 of the Section, supra note 72, at 492.

\(^{82}\) Id.

uled for that same date.84 The transcript of the hearing does not reveal a ground-swell of opposition to the proposed changes. One witness, Gordon Russell, called for even less stringent language than the already more liberal terms included in the proposed standard.85 There were a small number of written comments submitted to the committee, which ranged from wholesale support86 to vehement opposition.87 In the absence of any strong objection to the proposed changes, there is some hope that the ABA will approve further reform of the standards.88

§46 During the past eight years, there has been mounting pressure from outside groups to lower the cost of legal education. The ABA standards are seen as one of the main culprits in keeping costs high. In 2013, the Illinois State Bar Association released a report from a special committee that studied the impact of law school debt on the delivery of legal services.89 In the report, the special committee “developed a series of recommendations to mitigate the law school debt crisis and transform legal education to focus on educating lawyers for practice at an affordable price.”90 The special committee recommended reform of the ABA standards,
including “allow[ing] law schools to meet the requirements for library collection through digital access.”

¶47 The proposed Standard 606 “reflects the change from an emphasis on ownership of materials to providing reliable access to legal information.” The standards adopted in 2005 stated, “The law library shall provide a core collection of essential materials accessible in the law library.” The proposed standard provides that “The law library shall provide a core collection of essential materials through ownership or reliable access.” It goes on to say that

choice of format and of ownership in the library or a particular means of reliable access for any type of materials in the collection, including the core collection, shall effectively support the law school’s curricular, scholarly, and service programs and objectives, and the role of the library in preparing students for effective, ethical, and responsible participation in the legal profession.

This may be one of the most important shifts in the standard, recognizing as it does that one size does not fit all. This proposed change might well allow academic law libraries to differentiate themselves from one another while staying within the bounds of the standards.

¶48 Furthermore, in the proposed revisions, the list of core titles has been removed from Interpretation 606-5 and included as Standard 606(b). No explanation is provided for this change, and only minor alterations have been made to the list. Proposed Interpretation 606-2 spells out in much more detail than prior versions of the standards exactly what “reliable access” might mean:

**Interpretation 606-2**

Reliable access to information resources may be provided through:

a) databases to which the library or the parent institution subscribe or own and are likely to continue to subscribe and provide access;

b) authenticated and credible databases that are available to the public at no charge and are likely to continue to be available to the public at no charge; or

c) participation in a formal resource-sharing arrangement through which materials are made available, via electronic or physical delivery, to users within a reasonable time period.

These changes, if adopted, would go a long way toward allowing law libraries to shift the bulk of their collection from print to online. The Council was not, however, willing to endorse a strictly online-only academic law library. Proposed Interpretation 606-1 continues to carry the cautionary note from the previous versions of the standards that “[a] collection that consists of a single format may violate Standard 606.”

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91. *Id.* at 5.
93. *Id.* at 6.
94. *Id.*
95. See *infra* appendix E for the list of proposed core titles.
97. *Id.* at 7.
The question that remains for libraries seeking to invest primarily in electronic resources and eliminate print is exactly how many of the legal materials they need can actually be found online.

### Is the Print World Duplicated Online?

If, as some have recommended, the physical academic law library is to be phased out, it must first be established that all the necessary print resources are duplicated online. The debate over whether print should be eliminated in favor of digital materials has been raging for twenty years or more. While much has been, and will likely continue to be, written about the benefits of each format over the other, this article focuses instead on the intersection of digital information and the academic law library collection envisioned by Standard 606. It may well be, as Michelle Wu has suggested, that both formats are still needed—but how much of each? This section investigates this question by examining the digital availability of the required materials set forth in the current ABA Standard 606 and Interpretation 606-5.

#### The Growth of Digital Information’s Duplication of Print Materials

In 1998, the University of Washington Law Library undertook a study to try to determine what percentage of its print collection was duplicated on Westlaw and Lexis. That study concluded that only 13% of the print collection was duplicated online. The study was based almost exclusively on primary legal materials and academic law journals and excluded treatises and other types of secondary sources. One of the predictions of the study, which directly affects the current state of the academic law library, revolved around those items not found online. The article asks:

> [W]hat is in the 87% of the collection that is not duplicated online? Much of what makes this a valuable research library is not duplicated online today and may NEVER be—historical works, foreign legal materials, back runs of periodicals, older editions of treatises, biographies, collections of essays, government reports, and more.

In 2002, Gordon Russell, then director of the St. Thomas University Law Library in Miami, Florida, wrote a response to Penny Hazelton’s article. In his article, Russell took issue with Hazelton’s findings and conclusions and predicted

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101. Id. at 4.

102. Id. at 6.

103. Id. at 7.

the demise of the print library as access to online resources continued to grow. Russell predicted that

[t]he Alexandrian library of the future will be digital, for the masses of our day demand access to society’s cultural riches wherever and whenever they please. If we embrace technology now, our collections, our services, and our stature as a profession will grow in quality and sustainability even as our board feet shelving needs decrease accordingly.105

The truth of the conclusions and predictions of both Hazelton and Russell exists somewhere in the middle, though the evidence is a bit heavier on Russell’s side of the scale.

¶53 Much of the material Hazelton’s study found to be unavailable online has since been made available. For example, the 1998 study noted that not all the material in the National Reporter System was online.106 Today all the cases of the National Reporter System are available on Westlaw, LexisNexis, and Bloomberg Law.107 The study found that legal periodicals were not reliably complete for volumes prior to 1994.108 This is no longer the case for academic legal periodicals and for many ABA-sponsored legal journals.

¶54 The online offerings of Westlaw and LexisNexis have expanded greatly over time. In 1992, the Westlaw Database Directory was 140 pages long. In 2000 (shortly after Hazelton’s article appeared), the directory had grown to 700 pages, and by 2007, it had grown to 1150 pages.109 The LexisNexis service saw similar growth in its offerings. In 1994, the LexisNexis database directory alphabetical listing ran to 124 pages;110 in 1999 that had grown to 231 pages,111 and by 2007 it had grown to 401 pages.112 In 1994, the LexisNexis database contained about 70 legal periodicals;113 this number had grown to more than 650 by 2004.114 Similarly, LexisNexis’s inclusion of secondary sources increased across the board. For example, in 1994 it contained only four secondary sources;115 by 2004 it had seventy-four.116 This growth in resources was seen across the LexisNexis service: in 2004 LexisNexis added 1300 new resources,117 and in 2007 it added 1150.118 This dramatic increase in online offerings is in line with Russell’s predictions that there would be continued growth in online access to legal materials.

105. Id. at 30–31.
106. Hazelton, supra note 100, at 8.
107. See ¶¶ 56–62 infra.
108. Hazelton, supra note 100, at 10.
109. E-mail from Diana Yund, Law School Product Specialist at Thomson Reuters, to author (Apr. 24, 2013) (on file with author) who reviewed these sources at the Thomson Reuters Corporate Library in Eagan, Minnesota.
111. LEXIS-NEXIS DIRECTORY OF ONLINE SERVICES (1999).
113. 1994 LEXIS-NEXIS LIBRARY CONTENT, supra note 110.
115. 1994 LEXIS-NEXIS LIBRARY CONTENT, supra note 110.
117. Id.
118. LEXIS-NEXIS DIRECTORY OF ONLINE SERVICES (2007).
How Much of the Core Collection Is Duplicated Online?

§55 In terms of the resources required by ABA Standard 606, how much of the academic law library core collection is actually duplicated online? Hazelton’s 1999 article indicated that only 13% of the print collection was duplicated online at that time.119 Since then, however, many of the resources Hazelton identified as valuable to a research library have been made accessible online. How then should the academic law library determine what part of its collection is duplicated online? One useful measure is to look at each piece of ABA Standard Interpretation 606-5120 and determine how much of the material is available online.

1. All reported federal court decisions and reported decisions of the highest appellate court of each state. Available on LexisNexis, Westlaw, and Bloomberg Law, including both current and historical decisions. Current opinions of the overwhelming majority of state and federal courts are also available via the courts’ web sites.

2. All federal codes and session laws, and at least one current annotated code for each state. Available on LexisNexis, Westlaw, and Bloomberg Law. Current unannotated versions of the statutes are available on Bloomberg Law as well as the legislatures’ web sites.

3. All current published treaties and international agreements of the United States. Available on LexisNexis, Westlaw, and HeinOnline, including both current and historical agreements. Current agreements are also available on the State Department’s web site.

4. All current published regulations (codified and uncodified) of the federal government and the codified regulations of the state in which the law school is located. Available on LexisNexis, Westlaw, and Bloomberg Law. Current regulations of the overwhelming majority of state and federal agencies are also available via the agencies’ web sites.

§56 For the first four items, it is clear that academic law libraries that subscribe to even one of the major databases will have reliable access to all of these resources. Given that almost every academic law library subscribes to at least LexisNexis and Westlaw,121 with more and more subscribing to Bloomberg Law,122 there is already, at minimum, double coverage of these materials.

5. Those federal and state administrative decisions appropriate to the programs of the law school. Available on LexisNexis and Westlaw, including current

119. Hazelton, supra note 100, at 4.
120. See infra appendix D. This section of this article focuses on the current text of the standard and not the proposed revisions to the core collection being considered in the 2013 drafts. Even if the 2013 proposed changes are adopted, the changes in the core collection are so minor that relying on the current core collection descriptions serves as well for this exercise.
121. E-mail from Lori Chester, West Academic Representative, to author (June 3, 2013) [hereinafter Chester e-mail] (on file with author) (confirming that all ABA-approved law schools currently subscribe to Westlaw).
122. As of June 2013, 170 of ABA-approved law schools subscribe to Bloomberg Law. E-mail from Jill Goodkind, Bloomberg Law representative, to author (June 6, 2013) (on file with author).
and many historical decisions. Current decisions for many agencies are also available via the agency’s web site.

6. **U.S. Congressional materials appropriate to the programs of the law school.** Available on LexisNexis and Westlaw, including access to congressional testimony, hearings, committee reports, and committee prints. Both current and historical documents are available. Current (and some past) coverage of these documents is available on the Library of Congress web site at no cost, as well as on many congressional committee web pages.

¶57 For items 5 and 6, once again, academic law libraries that subscribe to even one of the major databases will have reliable access to all of these resources. Given that almost every academic law library subscribes to at least LexisNexis and Westlaw,¹²³ there is already, at minimum, double coverage of these materials. For these two items, careful consideration must be given to the curricular, research, and scholarship needs of the faculty and the school. Because items 5 and 6 are reference materials “appropriate to the programs of the law school,” it will be up to the law library to ascertain what these needs are and to ensure that the online offerings are sufficient to meet them.

7. **Significant secondary works necessary to support the programs of the law school.**

¶58 We now come to the one area of the standards where electronic access becomes more difficult. Many secondary works are available online, but many are not. Most of the heavily used secondary sources can be found on proprietary databases such as Westlaw, LexisNexis, Bloomberg Law, and CCH IntelliConnect. Major secondary sources such as legal encyclopedias, American Law Reports, legal periodicals, and loose-leaf services, as well as some of the leading treatises such as Chisum on Patents and Nimmer on Copyright, can be found online. But there are still many legal treatises that either are not available online, or are items that law faculty prefer to use in print.

¶59 For example, in the 2011 edition of Recommended Publications for Legal Research,¹²⁴ there are just over 500 new titles listed. Of those titles, fewer than 5% can be accessed through one of the large legal research databases.¹²⁵ While in the future more of such titles might be made available online, the present reality suggests that many legal treatises are still published exclusively in print. The availability of legal treatises online varies from publisher to publisher, and each school will have to choose whether to provide electronic access whenever possible or whether to acquire these items in print only.

¶60 Item 7 is worded in a way that allows law schools to make decisions based on their individual circumstances. One school might get away with providing many of its treatises online, while another might find its faculty up in arms if the

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¹²³. Chester e-mail, *supra* note 121.
¹²⁵. These data were compiled based on searching these titles in a law library online catalog, and searching Westlaw, LexisNexis, and Bloomberg Law databases to see if any of them were available in an electronic format.
print version of Corbin on Contracts is removed from the shelf. Regardless of how much online access a law library provides, if during a sabbatical inspection an ABA inspector hears from law faculty and students that they are not able to effectively conduct their research and scholarship, it is less likely that the law library will be judged to be meeting the requirement expressed in this part of the standard.

8. Those tools, such as citators and periodical indexes, necessary to identify primary and secondary legal information and update primary legal information.

§61 It has been a number of years since citators, periodical indexes, or the library catalog have been used in a print format. Shepard’s and KeyCite are used exclusively online, and the advances in periodical indexing make it far more convenient and fruitful to use indexes such as LegalTrac and the Index to Legal Periodicals online than to use their print counterparts. The card catalog of yesteryear has been transformed into a global search engine that provides patrons with access to all of the law library’s print collection, and, increasingly, to its online holdings as well.

§62 Given that seven out of the eight areas of the core collection are accessible in multiple online venues, both fee-based and free, it seems reasonable to conclude that the vast majority of a law library’s collection could be made reliably available online, and the associated print volumes eliminated. Yet Standard 606 still cautions against collections in a single format, most likely due to the secondary works discussed under item 7 of Standard Interpretation 606-5 above. What, then, will the twenty-first-century academic law library look like?

ABA Standard 606 and the New Model of the Academic Law Library

§63 If, as the findings above suggest, the majority of legal information to which an academic law library must provide access is available online, to what extent should the twenty-first-century academic law library keep a print collection? Answering this question must, once again, begin with an examination of ABA Standard 606(a–b):

(a) The law library shall provide a core collection of essential materials accessible in the law library.
(b) In addition to the core collection of essential materials, a law library shall also provide a collection that, through ownership or reliable access,
(1) meets the research needs of the law school’s students, satisfies the demands of the law school curriculum, and facilitates the education of its students;
(2) supports the teaching, scholarship, research, and service interests of the faculty; and
(3) serves the law school’s special teaching, scholarship, research, and service objectives.126

§64 One factor in determining if a law library needs a print collection is whether the ABA adopts the proposed changes to these standards. If it does so, then academic law libraries will be much freer to transition to a predominantly online environment. As discussed previously, however, adherence to the standards still

precludes an exclusively online environment, as the proposed revisions retain the warning that a collection that consists of a single format might violate the standards.\footnote{127 Syverud & Currier, supra note 83, at 7.}

\footnote{125 Perhaps the bigger challenge will be to satisfy the second part of the standard, that is, to provide a collection that meets the research needs of the law school’s students, satisfies the demands of the law school curriculum, and facilitates the education of its students; supports the teaching, scholarship, research, and service interests of faculty; and serves the school’s special teaching, scholarship, research, and service objectives. It seems that the ABA standards are becoming flexible enough to allow different academic law libraries to collect and organize their information in a way that could vary from collection to collection based on the needs of the particular institution.}

\footnote{126 In pursuing the goal of training practice-ready graduates, what could evolve is a return to the old. Recall that in the earliest days of law schools, the law library was usually not much more than the personal library of one of the founders or professors of the school.\footnote{128 See Brock, supra note 8, at 331.} If academic law libraries were simply to mimic practitioners’ law libraries, then online-only law libraries could become the rule rather than the exception throughout the academic world.\footnote{129 For a short article arguing that the academic law library should follow the lead of law firms in their collection development goals, see Victoria Trotta, Collection Development in Academic Libraries: What Can We Learn from Law Firms?, AALL Spectrum, July 2013, at 31.} But law school libraries must conform to the ABA standards, which call for them to support not only the research of the students and faculty, but their scholarship as well. While some might dispute the value of scholarship,\footnote{130 See, e.g., the statement of Chief Justice John Roberts to the 4th Circuit Judicial Conference: “[W]hen asked about the influence of [law reviews] on Supreme Court opinions, Chief Justice John G. Roberts Jr. dismissed them as abstract and irrelevant.” Richard Brust, The High Bench vs. the Ivory Tower: More Law Reviews Give Professors Places to Publish, but Judges Stick Up Their Noses at Elite and Useless Articles, A.B.A. J., Feb. 2012, at 50.} it is clear that the ABA considers it to be one of the pillars of a law school, and therefore a law library is charged with supporting it.}

Some of the largest research-oriented law libraries have already begun to embrace this change. For example, in 2010, the Harvard Law Library “revised its collection development policy and made several ‘digital only’ changes to its collections practices.” These changes included canceling subscriptions to lower federal court reporters and state reporters. Both the Yale and Cornell law libraries have followed suit, canceling almost all the print reporters contained in the National Reporter System. This change is certainly in line with what is happening in law firms.

As academic law libraries make the inevitable transition to primarily digital collections, they should consider carefully what parts of their print collections to cancel. Several articles have already addressed this topic, providing advice on criteria to be used in choosing between print and digital information sources. Two key factors law libraries identified in deciding to cancel print resources were cost and efficiency of information retrieval. While these are important considerations, because ABA Standard 606(b) calls for the law library to provide a collection (through ownership or reliable access) that meets and supports the teaching, scholarship, research, and service needs of the faculty and the curriculum, perhaps a more crucial one is the actual use patterns of faculty and students.

Including patrons in the decision-making process will certainly ease the transition from print to digital. Rita Reusch has commented that when making these tough choices, academic law libraries should consider whether to include the faculty in the conversation, perhaps through the library committee (if one exists) at the law school. They should also think about whether to publicize the cancellations or simply wait for faculty, or others, to complain. One thing is certain: if the faculty is not consulted during this process, a law library director will most certainly hear about it during the law school’s next ABA sabbatical inspection.

In 2002, in an excellent piece of analysis, Michael Chiorazzi hypothesized that the twenty-first-century law library could exist with a print collection of 25,000 volumes. This proposition was based in part on the Pareto principle,
which “states that 80% of use (or need) is met by 20% of available resources.” Indeed, Chiorazzi argued that in truth closer to ninety percent of patrons’ needs are met by digital materials, which include primary sources of law, international agreements, and standard secondary sources (including legal periodicals). While this proposal was a bold attempt to whittle down the print collection of the academic law library, the present article’s evaluation, coupled with the evolving nature of the ABA standards, suggests that it is time for a more aggressive elimination of print sources.

¶73 The current ABA Standard 606 and the proposed revision to the standard arguably eliminate the need for a collection that retains many of the print sources in Chiorazzi’s hypothetical library. The ability to reliably access virtually all American primary materials online allows the elimination of all print reporters and the majority of state codes and international agreements. Shepard’s in print has been obsolete for well over a decade, and its use is tantamount to malpractice. Legal periodicals are widely distributed online in multiple formats, and some well-respected journals have already made the leap to online-only publication. In fact, some of the larger academic law libraries have begun to cancel their subscriptions to student-edited law reviews in print, as well as to the more expensive journals that are available in online databases subscribed to by a university’s main library. Many of the key legal titles from Thomson Reuters, LexisNexis, CCH, and Bloomberg BNA are accessible via their online portals. The one area where reliable digital access remains elusive, as noted previously, is legal treatises.

¶74 The findings presented here constitute strong evidence that the academic law library of the twenty-first century will consist primarily of reliably accessible digital information, with a print collection restricted to the following:

1. The official reports (if any) of the appellate decisions of the school’s home state, or, if there are no official reports, the reporter that publishes the appellate decisions.

141. Id. at 4.
142. Id. at 5. The 25,000 volumes include the entire National Reporter System, the federal codes and regulations, all state codes, the American Law Reports, digests, legal encyclopedias, Shepard’s, treatises and loose-leafs from prominent publishers, and legal periodicals. Id. at 9.
145. Aiken, Cadmus & Shapiro, supra note 134, at 15.
146. While it is true that publishers are beginning to work with libraries to sell bundles of e-books, this format is still in a developmental stage. Most e-books are popular titles rather than scholarly legal treatises, and some publishers have expressed reluctance to provide cost-effective licensing terms to law libraries. Unlike primary legal materials, serials, and some of the more standard secondary sources, legal treatises remain the one area where print is not yet dead.
2. A copy of the *United States Code Annotated* or the *United States Code Service* and the *United States Statutes at Large*.

3. A copy of the annotated code and session laws for the state in which the school is located.

4. The *Code of Federal Regulations* and the regulatory code for the state in which the school is located.

5. Those significant secondary works necessary to support the programs of the law school. The makeup of this collection of secondary works will have to be tailored to each library, based on the curricular, research, and scholarship needs of the library’s school.

¶75 Several articles have been written in the past few years that can give guidance about the types of print sources to retain. One recent study recommended basing part of the “collection of print secondary and practitioner sources on the clinical and experiential learning programs that exist at the school.”147 This would afford “students the opportunity to interact with secondary source materials that they may use in practice in a different way.”148 The same study reported the results of a survey of practitioner research preferences, which indicated a desire for libraries to keep local jurisdiction secondary sources.149 “[T]he goal of the library should be to keep at least some of these materials, so that they may be used in a practical pedagogical setting that could also include legal research instruction.”150

¶76 Regardless of the format a library chooses for purchasing and retaining secondary works, these resources are still essential for an academic law library and its patrons. Dick Danner, one of the leading thinkers in the academic law library community, put it best when he wrote of the twenty-first-century legal treatise:

In the twenty-first century, American lawyers could benefit most from authoritative works on specialized subjects by knowledgeable scholars who are not only able to provide interpretive frameworks for tackling new questions but also conversant with the technologies that lawyers employ for seeking and working with legal information. Twenty-first century Blackstones will be technologically literate legal scholars who understand the relationships between form, content, and structure, and who possess the skills to present legal information in innovative ways appropriate to the formats in which information is now published, identified, and delivered.151

**What Do We Do with All the Books Already on the Shelves?**

¶77 As academic law libraries transition to primarily digital collections, they will face the question of what to do with the older legal materials currently sitting on the shelves. If an academic law library switches to online-only access, will it lose access to older materials? This is a commonly voiced concern,152 but it is something


148. *Id.* at 430, ¶ 73.

149. *Id.* at 430, ¶ 75.

150. *Id.* at 430, ¶ 74.


152. “The concern is that materials that are not online will disappear from history and won’t be part of our societal knowledge.” Temple, *supra* note 52, at 38–39 (quoting Michelle Wu).
of a red herring. A move to a primarily digital collection is designed to provide better access to legal materials, as “electronic resources in many cases provide superior access to information.”

But it does not mean that law libraries have to jettison their print collections. What it means is that they will be better able to manage the growth of their print collections in the face of shrinking physical space.

Furthermore, because so much of the older primary legal information is now available online, whether or not to keep all the older print materials is a decision each academic law library must answer based on its own space constraints. While it might be reasonable for a law library to maintain older materials from the jurisdiction in which its law school is located (plus federal materials), it might be impossible, financially or physically, to house these collections.

There is no question that there is still a role for academic law libraries to act as repositories for legal resources, but it is no longer necessary for every academic law library to be such a repository. For example, in the practicing world, an attorney might ask her librarian for a copy of an article, a pleading, or a chapter from a legal treatise, and the attorney might need the material immediately as she prepares for litigation. The firm librarian might first check the library’s online databases; if the information is not available in a database to which the firm subscribes, the librarian might send a request to other librarians via a listserv, or he might check with the local or regional law library (whether that be a state law library, academic law library, or county law library) to locate the material.

In the academic setting, the process is quite similar. The academic law librarian will check the online databases, then the physical collection, and then either request an interlibrary loan or send a more informal query to a law librarian listserv. The main difference between the academic setting and the law firm setting is that it is rare that the patron in the academic setting needs the information immediately. The academic law library, like the law firm library, does not need to own the print version of all resources that might be requested. Access via an online database, or reliable access from sources outside the library, should be sufficient to provide for the needs of the faculty and students.

Under the current ABA standards, items in the core collection must be accessible in the law library, although this access may be made available in print or online, with the caveat that the entire core collection cannot be in one format.

Agreements for the sharing of information resources, except for the core collection, satisfy Standard 606 if:

(1) the agreements are in writing; and

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154. See Data from Fall 2008 Annual Questionnaire, supra note 54.
Thus, for example, a law library need not maintain all the current legal periodicals in its print collection, but could subscribe to only a handful of primary academic journals in print and rely on its subscriptions to HeinOnline, Westlaw, LexisNexis, or JSTOR, and on any free online access, for the rest.

§82 If the proposed changes to the ABA standards are adopted, database subscriptions and resource-sharing models like consortia could be used for materials that are included in the core collection. For example, a group like AALL could create a fifty-state consortium of participating law libraries that would act as a lending library for state print annotated codes. Rather than subscribing to all fifty state annotated codes, a law library could subscribe to its own state’s annotated code in print and rely on access to all the other annotated codes via an online database. In the unlikely event that a patron needed access to the print version (or the online access was not available), the consortium could facilitate the interlibrary loan of the physical item, or copy the relevant sections and fax or scan and e-mail them to the requesting law library.

§83 The proposed Interpretation 606-2(c) states that such materials should be “made available, via electronic or physical delivery, to users within a reasonable time period”; so what is a “reasonable” time period? Given that the standards allow for flexibility as long as an academic law library can show that its patrons are well served, if students and faculty are satisfied when the material is available to them within, say, a week’s time, then this should meet the requirement of the interpretation of the standard.

§84 As an academic law library works to transform its collection from primarily print to primarily digital, the collection will only pass muster if, when the ABA inspection team comes calling, it is met with a resounding show of support from the faculty and students. As long as these patrons are reporting that their teaching, research, and scholarship needs are being met by the digital collection, it is likely that Standard 606 will be deemed to have been satisfied.

A Caveat

§85 As mentioned previously, one size does not fit all—each law library must tailor its collection to its own situation. Some libraries, for instance, will see the shift to a primarily digital collection as contrary to their mission. Consider, for example, the scholarship support model, which asserts that “the core purpose of an academic law library is to serve the needs not only of today’s users but also tomorrow’s.” According to this mission, “the library must have an enduring col-

158. A model like this is already being tested for certain primary sources. For example, the Desert States Law Libraries Consortium (made up of academic law libraries from Arizona, Colorado, New Mexico, Nevada, Utah, and Wyoming) “is engaged in an inventory of print primary materials [in the] six states held by member libraries with an eye to last copy commitments and digitizing some subset of [their] holdings down the road.” Reusch, supra note 139, at 561, n.26.
159. Syverud & Currier, supra note 83, at 8.
lection of resources that is accessible and meaningful to both current and future scholars.”161 Other law libraries might see themselves as having a broader mission than serving the research needs of the school. For example, the law library at the University of Nevada, Las Vegas states:

Our mission is to support the research, instruction, and public services activities of an innovative institution and an engaged group of scholars. As the largest law library in the state, and the only law library in Nevada maintaining comprehensive collections of United States legal materials, the Wiener-Rogers Law Library also serves as a resource and archive for the entire state, providing services and making its collections accessible to researchers across disciplines and to members of the general public.162

§86 For law libraries that have similar missions, the ABA standards are just one element to be considered in their collection development plans.163 For a law library with a statewide or regional mission, having in print all case reporters, the statutes of the fifty states, and other large serial titles might make sense. But the collection of those materials in print would be done for a reason separate and apart from the requirements of the ABA standards. These law libraries would be collecting materials that might have no direct bearing on the curricular, research, and scholarly pursuits of the law school.

§87 Law libraries must also be sensitive to the preferences of their particular patrons. One school might have a faculty that is particularly wedded to certain print publications. If the library does not listen to these faculty members or cannot persuade them to use the digital version of the materials, then that law library risks running afoul of the ABA standards. In this case the infraction would not be because the library chose digital over print, but because it is not supporting the scholarship, research, and service interests of the law school’s faculty. If unhappy faculty members complain to an ABA sabbatical inspection team, the team could very well find that the law library is in violation of the standard.

§88 Law libraries can ease the transition to a primarily digital collection by instituting a healthy education campaign along with individualized attention for faculty and students who need extra guidance. While not every faculty member will support the change, as time progresses, budgets continue to shrink, and space in the law library becomes more scarce, they will probably come to realize that digitization is not a choice but rather a necessity for law libraries if they are to meet the challenges of the twenty-first century.

161. Id.
163. For an excellent article examining the public mission of the public law school library, see Connie Lenz, The Public Mission of the Public Law School Library, 105 LAW LIBR. J. 31, 2013 LAW LIBR. J. 2.
Conclusion

¶89 “Libraries in the future are going to be mostly digital.”164 This prediction by James G. Milles from 2005 appears to be coming to pass in current law firm libraries,165 and if the findings in this article prove correct, it will be the future of academic law libraries as well. The current and the proposed changes to ABA Standard 606 appear likely to give law libraries greater flexibility in their collection development and design.

¶90 With the cost of print publications soaring, space in academic law libraries shrinking, and the amount of digital information growing, a strong argument can be made that a primarily digital academic law library could pass muster under ABA Standard 606. With the overwhelming majority of the core collection now available online in a reliable and accessible format, it is very possible that an academic law library could support its institution’s scholarship and research needs, satisfy the demands of the law school curriculum, and facilitate the education of its students with a primarily digital law library.

¶91 Given that “the most heavily used research sources—statutes, cases, administrative regulations and rulings, treatises, and even law journals—will be used most exclusively in electronic format,”166 it is not hard to imagine an academic law library subscribing only to its own jurisdiction’s statutes, judicial opinions, administrative regulations, and rulings in print (as well as some federal materials) while maintaining access to other jurisdictions’ materials online. Only those materials that are not found online, or are demanded by specific faculty, would be kept in print.

¶92 It is not unreasonable to believe that, based on the findings in this article, an academic law library in the very near future might meet the requirements of ABA Standard 606 with a collection that is ninety-five percent digital and five percent print. With the gradual change in language over the years, the ABA’s move to its current focus on “reliable access” signifies a fundamental shift for the accrediting body of law schools. With proper planning, an academic law library should be able to undertake a significant shift in its collection. This shift will save the law school money,167 provide broader access to digital materials, and continue to satisfy the needs of the law school’s curriculum, faculty, and students.

166. Milles, supra note 164, at 11.
167. Michael Chiorazzi estimated in 2002 that the law library he proposed would drop the average cost of library materials spent per FTE student from a median of $1430 to between $100 and $110. Chiorazzi, supra note 140, at 14.
Appendix A

1984 AALS Association Handbook Executive Committee Regulations 8.1

8. Library
8.1 Collection.
   a. The library of a member school should contain at least the following volumes if it is to achieve the very lowest level of adequacy.

   Publications of or for special use in the state in which the school is located.
   1. The published reports of decisions of all appellate courts (including lower reports where published).
   2. The best available current statutory compilation. This assumes an annotated edition if one is available.
   3. The session laws.
   4. A state digest and legal encyclopedia, if available.
   5. Shepard’s Citations.
   6. All significant local text books and treatises of current value as well as available Attorney General Reports, State Bar Reports, and Form and Practice Books.

   Publications concerned with Federal Law.
   1. The reports of decisions of the United States Supreme Court.
   2. One complete annotated edition of federal statutes with service.
   3. Statutes at Large.
   4. A digest of the United States Supreme Court Reports and a digest of all Federal Reports.
   5. Shepard’s United States Citations.

   General American publications.
   1. The published reports of decisions of the courts of last resort, prior to the National Reporter System, in at least 19 states in addition to the state in which the school is located.
   2. The National Reporter System complete, including the New York Supplement, provided that if the decisions of the United States Supreme Court included in the Supreme Court Reporter are available in one of the other regular sets of these decisions, the Supreme Court Reporter may be omitted.
   3. The American Digest System.
   4. The American Law Reports (complete with digests, etc.).
   5. Current state statutory compilations for 12 states in addition to the state in which the school is located.
   7. Two hundred significant Anglo-American legal periodical titles.
   8. Index to Legal Periodicals.

9. All American Law Institute Restatements.
10. Texts in each substantive field selected from the Lists of the Association of American Law Schools Libraries Study Project or equivalent bibliographical list.
11. One legal dictionary of recognized worth.
12. One unabridged general dictionary.
13. One general encyclopedia of recognized worth.
15. Shepard’s Citations for all units of the National Reporter System.

*English publications.*
1. English Reports, Full Reprint.
2. Law Reports complete.
4. One general legal digest or encyclopedia.

*Other publications.*
Other set of the loose-leaf or equivalent services in Corporations, Securities, Commercial Law, Labor Law, Trade Regulation, and State and Federal Taxation.

b. All publications referred to in (a) above should be complete from the beginning. If they are provided with a current service, the service should be maintained. Should some volumes of a publication not be immediately available or only at a disproportionately heavy cost, their acquisition may be postponed if the missing materials are likely to become available later at a reasonable price. Their non-acquisition may be excused if in all probability they will remain unprocurable at reasonable prices in the future. In such cases, some other publication of substantially equivalent worth for the collection may be substituted.

c. Duplication. The library shall contain additional sets of more commonly used materials if necessary for efficient use by the faculty and students.
Appendix B

1973 A.B.A. Section of Legal Education & Admissions to the Bar Standards, Chapter VI, Library

Library Schedule A

(A school is not required to have a unit in the National Reporter System which duplicates an official set of reports in the collection, e.g., Supreme Court Reporter, California Reporter.)

**National Materials—General**
- American Digest System
- Corpus Juris and Corpus Juris Secundum
- American Jurisprudence and American Jurisprudence, Second
- Words and Phrases
- Annotated Reports Complete
- Restatements
- Uniform Laws Annotated

**Federal Materials**
- United State Supreme Court (at least one set, any edition)
- Federal Reporter and Federal Reporter, Second
- Federal Supplement
- Federal Rules Decisions
- Tax Court Reports
- Federal Digest and Modern Federal Digest
- Statutes at Large, current from date of application for approval
- U.S. Code, Annotated
- Code of Federal Regulations
- Administrative Agency Reports for at least those agencies whose work is relevant to courses in the school
- U.S. Code Service
- Attorney General Opinions

**State in which the School Is Located**
- Official state reports
- Specialized reports whose subject matter is particularly relevant to the educational program of the law school
- Session laws, complete
- Latest code or other statutory compilation
- Attorney General Opinions
- Administrative code or similar publication, if any
- Local digests and encyclopedias, if any
- Form and practice books
- CLE materials

**Other States**
- National Reporter System, complete Reports prior to the National Reporter System for

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(i) all states in the same unit of the National Reporter System as the “local” state;
(ii) another 10 selected states whose case law is significant in the educational program of the school

Specialized reports whose subject matter is particularly relevant to the educational program of the law school

*Texts, Treatises, Loose-leaf Services*

- Loose-leaf services for all subjects relevant to the educational program of the school
- All generally recognized texts and treatises

*Reviews and Journals*

- Publications of the Bar of the State and of the ABA, included in the latter the ABA Journal and section and other publications
- All publications by approved law schools in the State, complete
- An additional twenty publications of recognized national significance, complete from at least 1940
- Specialized journals whose subject matter is particularly relevant to the educational program of the school

*Library Schedule B*

*Federal Materials*
- Federal Cases
- Board of Tax Appeals
- Federal Register

*Other States*
- Statutes, in current compilation, of those states whose statutory law is significant in the educational program of the school

*English*
- All English Selected Reprints and All England Reports, or Law Reports Complete
- English Ruling Cases
- British Ruling Cases
- Halsbury’s Laws of England
- Mews Digest
Appendix C

1995 A.B.A. Standards for Approval of Law Schools and Interpretations, Chapter VI, Library\textsuperscript{170}

Interpretation 1 of Standard 606(b):
A law library core collection must include the following:

1. all reported federal court decisions and reported decisions of the highest appellate court of each state,
2. all federal codes and session laws, and at least one current annotated code for each state,
3. all published treatises and international agreements of the United States,
4. all published regulations (codified and uncodified) of the federal government and the codified regulations of the state in which the law school is located,
5. those federal and state administrative decisions appropriate to the programs of the law school,
6. U.S. Congressional materials appropriate to the programs of the law school,
7. significant secondary works necessary to support the programs of the law school, and
8. those tools, such as citators and periodical indexes, necessary to identify primary and secondary legal information and update primary legal information.

\textsuperscript{170} \textit{Am. Bar Ass'n, Standards for Approval of Law Schools and Interpretations} 50–51 (1995).
Appendix D

2006–07 A.B.A. Standards and Rules of Procedure for Law Schools, Chapter VI, Library

Interpretation 606-5:
A law library core collection shall include the following:

1. all reported federal court decisions and reported decisions of the highest appellate court of each state,
2. all federal codes and session laws, and at least one current annotated code for each state,
3. all current published treatises and international agreements of the United States,
4. all current published regulations (codified and uncodified) of the federal government and the codified regulations of the state in which the law school is located,
5. those federal and state administrative decisions appropriate to the programs of the law school,
6. U.S. Congressional materials appropriate to the programs of the law school,
7. significant secondary works necessary to support the programs of the law school, and
8. those tools, such as citators and periodical indexes, necessary to identify primary and secondary legal information and update primary legal information.

Appendix E

2013 A.B.A. Proposed Standards for Approval of Law Schools and Interpretations, Chapter VI, Library

Proposed Standard 606(b)

(b) A law library core collection shall include the following:

(1) all reported federal court decisions and reported decisions of the highest appellate court of each state and U.S. territory;

(2) all federal codes and session laws, and at least one current annotated code for each state and U.S. territory;

(3) all current published treaties and international agreements of the United States;

(4) all current published regulations (codified and uncodified) of the federal government and the codified regulations of the state or U.S. territory in which the law school is located;

(5) those federal and state administrative decisions appropriate to the programs of the law school;

(6) U.S. Congressional materials appropriate to the programs of the law school;

(7) significant secondary works necessary to support the programs of the law school; and

(8) those tools necessary to identify primary and secondary legal information and update primary legal information.