

Memorandum

To: Elizabeth Adelman, ALL-SIS Chair

From: ALL-SIS Task Force on ABA Standards Review

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Date: September 14, 2009

Re: Recommendations for ABA Standards Revision Relating to Academic Law Libraries

The AALL Academic Law Library Special Interest Section's Task Force on the ABA Standards Review appreciates the opportunity to comment on the comprehensive review of the ABA Standards for Approval of Law Schools. We have focused our comments on those sections of the Standards that relate to library and information resources and legal research instruction. We support the move to a more outcome-based assessment of quality in the law school accreditation process, and have attempted to reflect in our comments ways in which outcomes assessment may be incorporated in our suggestions.

We recognize that the development of meaningful measurement criteria is an on-going process, and ultimately evaluate the overall quality of the law school under review. The law library's many roles in the law school—in the instructional and research programs, in curricular development and support, in technological advances, and in the permanent preservation of the scholarly record, to name just a few—require active involvement by librarians in the creation and application of library-related criteria. The AALL, its Academic Law Libraries Special Interest Section, and its individual members, are prepared to participate in this process with the ABA as it moves forward to ensure the creation of the most appropriate and complete measurements possible.

The personnel, resources, and services of academic law libraries are indispensable to the fulfillment of a law school's academic mission. Academic law libraries perform, contribute to, and support the core goals of law schools, including teaching legal research, assisting with faculty research, scholarship, and curricular development, supporting student scholarship and curricular needs, and facilitating administrative research. Academic law libraries preserve the scholarly record of the law school and the legal profession, and organize and make available legal information for current and future users. Academic law librarians provide legal research instruction formally, as course instructors, and informally, as invited speakers to classes, through library seminars, and in the course of supporting student research. The contributions

of the academic law library to the law school and the legal profession reach across the curriculum and throughout the legal profession.

Academic law librarianship, as a profession, is guided by a series of principles that provide insight into the foundational values of law libraries.¹ These principles include:

- Stewardship (preserving the scholarly record; wise management of resources, including human, financial, tangible/physical resources)
- Service (ensuring all policies and procedures are promulgated and evaluated using service as a guiding criteria)
- Literacy and learning (making the library the focus of legal research literacy instruction)
- Rationalism (organizing and managing library services, programs, and facilities in logical and rational manner, using best practices where appropriate)
- Intellectual freedom (maintaining commitment to the ideal that people in a free society should be able to read and access whatever they wish)
- Equity of access (ensuring that all members of the law school community and other legitimate users have access to library resources and programs)
- Privacy (ensuring confidentiality of library records to the fullest extent under federal and state laws)
- Democracy (participating in the educational process to ensure the educated citizenry that is vital to democracy; helping maintain the values of a democratic society)

We believe these values should guide the formulation of law school accreditation standards relating to academic law libraries, just as the larger standards review is guided by the principles of accreditation review enumerated by the ABA.² The two sets of principles are compatible and strengthen each other. In addition to being guided by the above principles of academic law librarianship, we believe that the ABA's accreditation standards should remain flexible enough to allow creativity and innovation while supporting the vital role the law library plays in the mission of legal education.

We respectfully submit the following recommendations to the Standards Review Committee as it engages in the comprehensive review of the current ABA Standards for Approval of Law Schools.

Standard 302(a)(2)—Curriculum. As noted in both *Educating Lawyers* (the “*Carnegie Report*”)³ and *Best Practices for Legal Education*,⁴ one of the core commitments of a law school should be preparing students for practice. Standard 302, with its enumeration of

¹ These values are adapted for academic law libraries from Michael Gorman, *Our Enduring Values: Librarianship in the 21st Century* (American Library Association, 2000).

² Donald J. Polden, *Statement of Principles of Accreditation and Fundamental Goals of a Sound Program of Legal Education*, 40 *Syllabus* (no. 3) 1 (Spring 2009).

³ WILLIAM M. SULLIVAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (Jossey-Bass 2007).

⁴ ROY STUCKEY, *BEST PRACTICES FOR LEGAL EDUCATION* (Clinical Legal Education Association 2007).

curricular requirements, speaks to this commitment. Legal research is an essential skill for any legal career, but the “legal research literacy,” or “information literacy” skills of law students and practitioners have been a matter of concern for some years. The continually changing and ever-more complex research environment demands that more attention be paid to legal research instruction. Therefore, as part of either Standard 302 or as a new Standard, we recommend a requirement that each school draft and adopt minimum information literacy expectations for its students.

The ABA’s 1992 *MacCrate Report* included a pioneering effort at drafting information literacy expectations.⁵ *MacCrate’s* outline can serve as a basis for a more current set of research literacy skills. In the alternative, there are several projects underway, by individuals and by the American Association of Law Libraries, which could be the basis for the development of legal information literacy skills. In any event, the “legal research standard” should speak not only to providing an effective curricular component to meet this goal but also to the implementation of some assessment, preferably by describing and measuring legal information literacy skills, to ensure that the school standards are met.

The Task Force supports *The Boulder Statement on Legal Research Education* (2009) which is appended to this report (Appendix 1). *The Boulder Statement* expresses an ideal legal research educational experience, and may provide guidance to the Standards Review Committee in its development of stronger standards for legal research instruction.

Standard 601 – General Provisions. This standard should be revised to reflect the reality that academic law libraries do more than just support and respond to the law school’s teaching, scholarship, research and service programs. Law library services often are based on the most advanced technology applications in the law school, and are drivers for the adoption of enhanced instructional and support technology. Library services frequently anticipate faculty and student needs, and instructional and research services are put in place before the rest of the law school community knows the need exists. The Standard should recognize the integral nature of law libraries in legal education.

For example, development of new curricular offerings and research centers should include the law librarians’ expertise from the beginning. The law librarians can contribute to the identification of needed information infrastructure and can provide instruction to faculty and students in new information resources and research methods. As research experts, law librarians should be involved in the creation of a school’s information literacy standards, and in the instruction and evaluation of students in that area.

Proposed language:

601(a) A law school shall maintain a law library that is involved in all appropriate aspects of the educational and research mission, and that is an active force in the

⁵ AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT ON THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (hereinafter “MacCrate”).

educational life of the law school. This requires a direct, continuing and informed relationship with the faculty, students and administration of the law school.

(b) A law library shall have sufficient financial resources to be involved effectively and appropriately in the law school's teaching, scholarship, research and service programs, including financial resources for the adoption and support of contemporary technologies. These resources shall be supplied on a consistent basis.

Standard 602 – Administration. The standard should strongly support a close and informed relationship between the law school and the law library. The language of existing Interpretation 602-1 gives a strong preference to law libraries that are administered by the law school and not the university library system. We support this preference. The academic law library director who reports to another university department, or whose staff report to another university department, or whose budget is derived from another university department, will be challenged unnecessarily to administer a law library that provides quality services that meet the needs of the law school. Divided reporting and budgeting structures can compromise the law library's programs and services, and interfere with the law school's control of key personnel and its permanent intellectual resource. We recommend that the language in 602 (d) be changed from aspirational to mandatory, and that the language of Interpretation 602-1 be changed to reflect the changed Standard.

Proposed language:

602 (d) – The budget for the law library shall be part of, and administered in the same manner as, the law school budget.

Standard 603 – Director of the Law Library. The Task Force supports the existing standard regarding the employment status of the law library director. The American Association of Law Libraries last communicated with the ABA Standards Committee in July 2009; that letter is appended to this report (Appendix 2.)

Standard 605 – Services. It is through the library services expressed in this Standard – reference, instruction, bibliographic access to library collections, interlibrary loan and other document delivery services, library publications, and numerous other value-added services – that the law library advances the mission of the law school. We support the continued mandate of involvement by law libraries in all facets of the law school's programs.

As noted above regarding Standard 302, information literacy skills are an increasingly important aspect of legal education. Law librarians, as research experts, are uniquely able to contribute to the establishment of information literacy standards as well as to instruct students (and faculty) in those skills through formal and informal experiences. Law schools should ensure that students receive instruction on the use of information resources and information technologies. Library and information personnel should be consulted in the development of these standards, and should contribute to educating students in their use.

Proposed language:

605 – A law library shall provide the appropriate range and depth of reference support, information literacy skills training and research instruction, access to resources, and bibliographic and other services to meet the needs of the law school's teaching, scholarship, research, and service programs.

Standard 606 – Collections. A key, overarching service provided by law librarians is that of providing access to legal information resources. Access may be through the law library's own physical collections, via its electronic resources, through consortial borrowing, or in cooperation with the institution's general library services. The existing requirement of Standard 606 (a) of a core collection of essential materials "accessible in the law library" does not recognize this new information environment. The problem is complicated by the language of Interpretation 606-2, which is generally read (if inaccurately) to require a core collection primarily in print.

The Task Force supports the language of this standard where it approves the development of information resource collections that support the particular requirements of the law school's curriculum, scholarship, programmatic and service objectives. However, the Task Force urges the Standards Review Committee to reconsider the 'one size fits all' approach of the language concerning core collections, and modify it to allow greater discretion in the development of information resource collections.

The Task Force has discussed the issue of print and electronic formats extensively. Legal information resources and the use of legal information resources are in the middle of a major paradigm shift. This shift has led to some confusion over the requirements of Standard 606.

The majority of the Task Force believes that the core collection should not be entirely in electronic format. Many employers still maintain part of their collection in print format and expect associates to know how to use these materials intelligently and effectively. It is possible that in several years, this will no longer be the business landscape but, until such time, libraries have an obligation as educators to ensure the presence of print formats in our collections. The entire core collection need not be present in tangible format in every law library. The core collection should be a blend of formats that supports the school's mission and programs.

A strong minority of the Task Force believe that the Standards should be format neutral. These members believe that the language of the Standards requiring a collection to support the various missions of the school is sufficient to guide format choices. These members recommend, in addition to the following proposed language, that Interpretation 606-2 be removed or edited to make it format neutral. This could be achieved by removing the last sentence of the Interpretation which reads, "A collection which consists of a single format may violate Standard 606."

All members of the Task Force support the following proposed language.

Proposed language:

606 (a) – The law library shall provide a core collection of essential materials available in the law library through ownership or reliable access. The choice of ownership or a particular means of reliable access for any type of material in the core collection shall effectively support the law school’s curricular, scholarly, and service programs and objectives.

The Task Force also reviewed Standard 604: Personnel, Standard 702: Law Library Facilities, and Standard 703: Research and Study Space and supports them as currently written.

Thank you for your consideration of these recommendations.

APPENDIX 1: The Boulder Statement on Legal Research Education (2009)

Introduction

The *Conference on Legal Information: Scholarship and Teaching* was attended by legal research professionals who gathered at the University of Colorado Law School in Boulder, Colorado on June 21-22, 2009, to discuss legal information scholarship and instruction. The following **Boulder Statement on Legal Research Education** was developed at that Conference and reflects the consensus of the conference participants on the theoretical foundation of a signature pedagogy for legal research education.

The Statement is based on the model proposed by the Carnegie Foundation's *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007). Generally referred to as the "Carnegie Report," *EDUCATING LAWYERS* calls for a systemic revision of legal education. In particular, the Report advocates moving from the present signature legal pedagogy of the Socratic method to a manner of teaching that incorporates practical education with theoretical and doctrinal instruction and that emphasizes professional responsibility. The Report suggests that the most effective legal education occurs through three inter-related "apprenticeships"—practical; cognitive or intellectual; and identity and purpose—which, experienced together, encourage students to explore all aspects of a legal problem and allow for contemporaneous feedback

Building on this recommendation, the *Legal Information Conference* attendees focused on defining a pedagogy of legal research instruction that recognizes the fundamental nature of legal research in legal education and law practice. The Statement expresses a comprehensive approach to legal research instruction that, when implemented, will significantly improve the preparation of law students for their legal careers.

The Boulder Statement on Legal Research Education

Legal research education teaches the resolution of legal problems through an iterative and analytical process. Students will experience a practical apprenticeship of identifying significant facts; determining legal issues and problems; and locating, evaluating, and manipulating research authorities.

Students will experience a cognitive apprenticeship by learning the importance of understanding the legal system in which their question arises and evaluating available legal resources. Through this apprenticeship the student will synthesize information about legal systems and resources to identify the best research plan for a given question. The students will also learn to continually re-evaluate their progress and results to arrive at the optimal answer to the legal problem.

Throughout the process, students will learn to apply the professional and ethical norms implicated by their research, which will reinforce their apprenticeship of identity and purpose. For legal research instruction, this includes an ongoing examination of professional standards including the identification of ethical

responsibilities, the avoidance of plagiarism, and the fulfillment of the ethical duty to conduct adequate and thorough research.

June 22, 2009

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APPENDIX 2: AALL Statement on Faculty Status, July 2009

**Statement
to the American Bar Association
Council on Legal Education and Admissions to the Bar**

**On the Report of the
Special Committee on Security of Position**

And

On the Comprehensive Review of Standards and Interpretations

July 1, 2009

The American Association of Law Libraries (AALL), the largest professional organization in the world representing law librarians, was founded in 1906 to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information. We number nearly 1900 academic law librarians among our 5,000 members. AALL has

long been a member-driven organization. Our policies and positions on issues are determined by an elected executive board and an actively participating membership.

AALL welcomes the opportunity to comment on the Report of the Special Committee on Security of Position and to address the Standards Review Committee's comprehensive review of the Standards for Approval of Law Schools and the included Interpretations. We acknowledge the complexity of the task undertaken by the Special Committee, as well as the challenge inherent in a complete examination of the standards and interpretations.

We join with many other organizations, including CLEA, LWI, SALT, and many deans, former deans, and professors, who urge the Standards Review Committee to make no substantive changes to the existing standards and interpretations regarding security of position, for the sound reasons in their several letters and statements. AALL's primary interest in the security of employment issue is, as expected, Standard 603(d), providing for security of employment for the Director of a law school's library. Standard 603(d) recognizes the necessity of the library Director, as an integral part of the educational team, having the same academic protections as other faculty.

Academic law librarianship is dedicated to ensuring the ability of faculty and students to find and use information. This is a controversial and often-contested activity, as information itself can be controversial. One needs only to open the daily newspaper to see multiple examples of disputes over the control and use of information: intelligent design and evolution, anti-abortion and pro-choice, pro and con the death penalty, the definition of pornography and its availability, global warming and climate change, the existence of weapons of mass destruction, and the actions of the executive branch of our federal government are all areas in which the use, control, interpretation, and dissemination of information are central to life-affecting situations. Information is controversial.

Academic freedom is critical to preserve the ability of an academician to teach, to research, to discover, to explain, and to communicate. Academic freedom is tied inextricably to the ability to find and use information. For example, law teachers regularly incorporate policy discussions of past and current issues into their teaching. Similarly, students often research policy considerations for class, for seminars, and for their own knowledge. These activities are important components of a complete legal education, especially today given the importance of a legal perspective in virtually all policy debates at every level of government. Information on all sides of an issue is required for law professors and students to form knowledgeable opinions and present sound justifications.

The position of law library Director is unique in legal education. No other person in the law school so directly affects the learning and intellectual pursuits of all students and all faculty. The ability of students to learn the language of the law and of faculty to analyze and produce scholarship about the law depends on a law library that can meet the information needs of the law school community, regardless of how controversial the

information may be. It is the responsibility of the law school's library Director to provide this information. Information resources are made available through extensive processes involving locating, evaluating, acquiring, and organizing resources in every format, from multiple sources. Provision of information includes instructing faculty and students on the contents and use of resources. These activities come with an obligation to provide resources and services regardless of individual or institutional bias. The law library, through its Director, has an integral and indispensable role in carrying out the law school's educational mission in this manner.

The Standards for Approval of Law Schools require a library that is an "active and vital" force in the law school's educational program. Providing unfettered access to information on all sides of an issue, and instructing in its use, are among the major ways in which the law library carries out this mandate. It requires the library Director to use discretion, judgment, and specialized knowledge to adequately perform his or her job. And it requires that the library Director have protection against challenges to these activities. Law library Directors must have the guarantee of academic freedom.

Libraries have long dealt with questions of censorship and attempted restrictions on the use of information. Like issues of personal scholarship and teaching, these library use-based situations are academic freedom issues also, which must be resolved by the library Director when they arise. Confrontations over academic freedom can come in the form of challenges aimed at library practices and procedures. Librarians routinely deal with confidential information, especially in the form of user circulation records and computer use logs. Disputes over library records have been in the headlines recently as government officials sought information under National Security Letters and the USA PATRIOT Act, although internal questions are more common. For example, the Director of a private law school's library reports challenges from a senior faculty member over the library's refusal to divulge the identity of patrons using certain materials. This was not an academic integrity issue, but rather one involving the professor's desire to prevent the materials' use by others because of his disagreement with the opinions expressed in them. The tenured law library Director denied the professor's request, successfully defending the right to confidentiality and academic freedom of all patrons.

While necessarily anonymous, a few examples of challenges to the academic freedom of law library Directors include:

- The Director of a private law school's library at a religiously affiliated institution purchased a copy of a popular legal/political book with personal funds and donated it to the library, which displayed it as the "book of the week." The ensuing controversy, and challenges by students especially, almost resulted in the Director's loss of employment.
- The tenure-track, but untenured, Director of a public law school's library was threatened with a negative reappointment vote by another faculty member who disagreed with a long-standing collection development policy. The library had been acquiring primary materials from a jurisdiction with political and legal

practices that the faculty member felt were wrong; the reasoning behind the threat was that the library was supporting the jurisdiction through purchase of its materials.

- The Director of a private law school library at a religiously affiliated institution reports of a challenge to the acquisition of a popular opinion magazine that featured articles contrary to the teachings of the school's sponsoring church.
- The Director of a public law school's library was challenged by an influential alumnus over a display of books. Some of the books contradicted the legal theories advanced by the alum in a then-current major case being litigated. The alum threatened to call state legislators and have the law school's funding reduced because the library had purchased those books.
- The Director of a private law school's library reports that exhibits of art, tied to an Art and the Law class, were found objectionable by law school employees, who complained to the university administration about the Director's choice of exhibits.

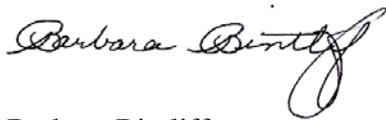
In all instances, the law library Director is the point person for the academic freedom challenges. The Director is the buffer between the library staff and all non-library personnel. The Director must bear the brunt of the threats and challenges, and offer the library's response. Academic law library Directors must have academic freedom and the security of employment provided by tenure. Without academic freedom's strongest protections, as guaranteed through tenure, the Director cannot fully meet the information needs of the law school. "Academic freedom . . . is indispensable to librarians, because they are trustees of knowledge with the responsibility of insuring the availability of information and ideas, no matter how controversial, so that teachers may freely teach and students may freely learn."⁶

The calls today to eliminate the security of position provisions from the Standards only highlight the necessity of retaining them. Further, as so well described in the statements of other organizations, the disparate impact of removing these provisions is felt on women and faculty of color, including on law library Directors, the majority of whom are women. Protecting those who deal with the most controversial aspects of legal education, legal information, make the retention of these Standards imperative. Had the security of position provisions in the Standards not been necessary, they would not have been written initially. The situation calling for their inclusion has not changed.

⁶ ACRL/AAC/AAUP Joint Statement on Faculty Status of College and University Librarians, available at <http://www.ala.org/ala/mgrps/divs/acrl/standards/jointstatementfaculty.cfm> (1972; reaffirmed 2007).

The ABA Council on Legal Education and Admissions to the Bar's Standards may be the only higher education accrediting rules in the country that have such clear protections for academicians. If true, the Council should be proud. The American Bar Association should lead the country in offering strong protections to its academy. It is incumbent on the profession that protects the rights of all to guarantee the strongest protections possible for its teachers. AALL appreciates the efforts of the Special Committee on Security of Position to fulfill its charge by proposing an alternative to the existing provisions of the Standards; we also recognize that some may find the Special Committee's Alternative Approach an appealing option. However, we believe that the existing standards are implementing satisfactorily the policies they were intended to further, and that no changes are needed. The American Association of Law Libraries therefore urges that the Standards Review Committee and the Council retain the existing Standards protecting the security of position of law library Directors.

Respectfully submitted,

A handwritten signature in cursive script, reading "Barbara Bintliff". The signature is written in black ink and is positioned above the typed name.

Barbara Bintliff

AALL Representative to the ABA Council on Legal Education and Admissions to the Bar