



American Association of Law Libraries

MAXIMIZING THE POWER OF THE LAW LIBRARY COMMUNITY SINCE 1906

March 31, 2011

Donald J. Polden, Dean
Santa Clara Law School
Santa Clara University
500 El Camino Real
Santa Clara, CA 95053

RE: Proposed Revised Accreditation Standards

Dear Dean Polden:

We write on behalf of the Academic Library Special Interest Section (ALL-SIS) of the American Association of Law Libraries (AALL) in response to your March 11, 2011 invitation to comment on the most recent draft of the Ch. 6 (except 603) provisions. We are pleased to provide the Standards Review Committee (SRC) with our timely comments. We request that a copy of our comments be promptly distributed to all Committee members and be posted on the Standards Review website.

Standard 405 Professional Environment (Academic Freedom and Security of Position)

The Wolff/Barry Draft dated February 26, 2011 is a promising alternative proposal and we will be interested in the SRC's discussion of the language. While we are happy to see even-handed treatment of all faculty, at least on the surface of language of the Standards, employee rights are better protected by the Wolff/Barry proposal. For example, in the first-presented SRC proposed revision, 405(b) provides that "A law school shall have an established and announced policy that provides protection for the academic freedom of its full time faculty in exercising their teaching responsibilities, including those related to client representation in clinical programs...." The Wolff/Barry draft, at 405(d) requires a written policy for the protection of faculty members' academic freedom and policies to ensure enforcement. And at 405(c), schools are forbidden to discriminate in provision of security of position or any other rights and privileges based upon a full time faculty member's field of study or method of teaching.

Tenure

We do not favor eliminating the use of the term “tenure” in favor of “security of position.” The latter term is not as clearly defined. “Security of position” offers a fuzzy standard for schools to meet and still maintain its good standing with the ABA. Standards should not be fuzzy. Although the Committee is attempting to find ways to accommodate different law school operating styles, we feel there is ample opportunity to do so by permitting faculties to define tenure as they see fit. The American Association of University Professors (AAUP) reported in *On the Imposition of Tenure Quotas* the problem of “ossification” or “tenuring in” can be better addressed as a long-range planning issue, not as a short-term solution. A variety of choices and factors affect the ratio of tenured to non-tenured faculty. Such factors include, for example, rate of growth of the institution and faculty, use of visiting faculty members, average length of probationary period to tenure; fraction of tenure-track faculty who achieve tenure; institutional policy on retirement; and age distribution of the faculty all affect the ratio. (From AAUP Statement on ABA Standards Review Committee’s Consideration of Chapter 4 Accreditation Standards, dated July 1, 2010, p. 7, *On the Imposition of Tenure Quotas*, AAUP POLICY DOCUMENTS AND REPORTS 57, 58 (10th ed. 2006.))

We are concerned that turning away from use of the term “tenure” in the standards invites an erosion in the quality of legal education. The AAUP reported in their above-referenced statement, about an investigation they undertook at Stetson University when three law school faculty members’ were dismissed based on vague accusations of poor teaching which were later withdrawn. The Stetson College of Law had no tenure system at that time. No hearing was ever held before or after the faculty were summarily dismissed from their posts. (AAUP Statement, p. 4, citing *Academic Freedom and Tenure: John B. Stetson University*: 28 AAUP BULL. 377 (1938))

One has only to check recent news to find attacks on clinicians, faculty who do legislative work, and on librarians who make information available to support the academic program and spark intellectual debate.(See, for instance http://www.firstamendmentcenter.org/speech/libraries/topic.aspx?topic=banned_books , though this focuses on public and school libraries, the ALL-SIS membership recounted a depressing number of anecdotes similar in nature, though based on different grounds, in law school libraries). A mere requirement for a written policy to protect academic freedom and even a policy to ensure enforcement is not adequate if one considers the marred history for the battle of academic freedom. Requiring the law school provide due process hearing before dismissal is a good starting point and would be well received by members of our organization.

The quality of legal education is strengthened when a law school has tenured faculty. Without it, faculty who are fearful of prosecution will avoid challenging cases in the clinic. They will skimp on potentially political or thought-provoking statements in doctrinal classes. Librarians who are afraid of dismissal or challenges will avoid purchasing databases, books or journals that contain

any but the most uncontroversial content. And our law students, and colleagues will be the poorer for it. If we want to teach our students to argue boldly and inquire freely, our faculty must be in a position to model the same behavior themselves.

Tenure protects academic freedom better than any other arrangement. Since its founding in 1915, the AAUP has observed many experiments with alternatives to tenure. They conclude, “Simply put, a university, and a school dedicated to the academic study of law, can thrive only in an atmosphere of academic freedom; and, as the historical record amply evidences, academic freedom rarely thrives without tenure.” AAUP Statement at p. 7. We concur and strongly urge the SRC to retain the term. We strongly support the proposed revision supplied by CLEA on March 25, 2011.

Standard 601 General

We support the changes and interpretations the SRC has proposed. The first statement of ALL-SIS urged that Standard 601

“...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. ...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....” ALL-SIS First Statement p. 4 (2010)

The language of the proposed draft for standard 601 largely reflects the concerns and interests of the section. Ideally, we would strengthen proposed revisions to ensure that the library is involved in strategic planning, curriculum reform, and the setting of its goals, and go further to ensure that the law school can articulate how the library supports its mission and objectives as an “active, responsive and integral force in the educational life of the law school.” But we believe that the standard and interpretations as proposed certainly encompass these, if read correctly.

Standard 602 Administration

The proposed draft makes no changes in the current standard. The first statement of ALL-SIS urged the revision committee to consider changing 602(d) to make the budget autonomy mandatory:

“(d) The budget of the law library ~~should~~ shall be ~~determined~~ as part of, and administered in the same manner as, the law school budget.”

ALL-SIS First Statement p. 5

The stronger language would give more leverage to law schools struggling for autonomy.

Standard 603 Director of the Law Library

Degrees and Experience

The proposed changes to Standard 603 eliminate the need for a law library director to hold an advanced degree in library sciences. It states:

(c) A director of a law library shall have the requisite skills, education and experience to provide leadership to the law school's information resource needs and shall have a sound knowledge of and experience in library administration, library technology, and issues involving legal research and legal education.

ALL-SIS strongly believes that both degrees should be mentioned explicitly and recommended, except in exceptional circumstances for the director of a law school library. We propose that the following alternative language be adopted which serves both the Committee's desire to allow experimentation with this position and the common sense approach that calls for an appropriate educated individual to hold this position.

(c) Except in extraordinary circumstances, [a] director of a law library shall have a law degree and a degree in library or information science and shall have a sound knowledge of and experience in library administration library technology, and issues involving legal research and legal education.

We reiterate our comments from our statement dated November 29, 2010. It is not in the interest of the ABA to dilute the standards requiring particular education and experience for the law library director. Unlike other specialists on a faculty, librarians are required to pursue an advanced degree. Librarianship is a separate profession and law librarianship is extremely specialized. The evolution of information in a digital world, along with complicated legislation to guide the distribution of that information, demands the attention of a professional lawyer who has the formal education to coordinate the needs of the academic program, is capable of working toward a future vision of the institution's library, and can implement project planning on a large scale. It is more, not less, critical today than ever before that an appropriately credentialed individual be appointed to this important post.

Standard 604 Personnel

The revisions to Standard 604 appear to be editorial in nature, and we have no comment.

Standard 605 Services

We regret that the proposed draft does nothing to modernize the language of Standard 605, leaving the standard's focus many years out of date. The ALL-SIS First Statement offered a proposal that did a great deal to bring the language into the 21st century of library practice. We

will offer that language again, and suggest that it would assist accreditors in writing their reports and library directors in communicating with their constituencies:

“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.” ALL-SIS First Statement p. 5

The modifications to the Interpretation do nothing to aid in modernizing the language of the Standard.

Standard 606 Collection

The unanimous support of the First Statement for the language in the proposed revision of Standard 606(a) persuades this group to also support that change in the standard. We also support the addition in the Interpretation 606-2 of language recognizing that the appropriate mixture of formats, even for the core collection, will depend upon the mission of the institution and the needs of the library and its clientele. This extends to the recognition made explicit in Interpretation 606-3(1), that reliable access can include a reliable mixture of digital and resource-sharing agreements. This opens the way to the first primarily digital law school libraries, a very exciting prospect. We are also happy to see Interpretation 606-3(2), though, which notes that availability of one or two databases alone does not provide sufficient access to a core collection. We support the rest of the editing of interpretations for this standard.

We also looked at Standards 702, 703 and 704.

Standard 702. Law Library

The only change proposed here is the abolition of the Interpretation regarding sufficient seating for students and faculty. While we note a resurgence in many of our libraries in students’ use of the physical space, we do recognize that in many schools, the library is being used in a different way as more and more material and services are available electronically. We do not comment on the proposed editing of the interpretation.

Standard 703. Research and Study Space Standard 704 Technological Capacities

Although not specifically targeted for libraries, we elected to examine these standards, since they very much affect libraries. It appears that the revisions are editorial changes, and we have no comment.

We appreciate the opportunity to comment again on the latest revisions, and to participate with the SRC and the Council in this comprehensive review process. The ALL-SIS thanks the SRC members who have devoted time and energy to revising the standards to reflect necessary

changes in our system of legal education. We are grateful for your consideration of our specific suggestions, and wish you the best of luck in your endeavors.

Respectfully submitted,

The Task Force for the Review of ABA Standards,
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