



*American Association of Law Libraries*  
MAXIMIZING THE POWER OF THE LAW LIBRARY COMMUNITY SINCE 1906

**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

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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

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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

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responsibility of insuring the availability of information and ideas, no matter how controversial, so that teachers may freely teach and students may freely learn.”<sup>1</sup>

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.

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,

Barbara Bintliff

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

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<sup>1</sup> 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).



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