

Comment submitted to the Comprehensive Review Standards Committee- August 14, 2009

## MEMORANDUM

To: Accreditation Policy Task Force

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I have been a library director for six years and have served on two ABA site teams. I am also experienced with ABA reaccreditation reviews of my own library. I am a published author and prior conference speaker on the future of libraries, having been invited to address the subject of the future of libraries before both national and international forums. I do not represent any organization, and my comments reflect only my own conclusions.

In general, the problem with current standards is that they are not focused on outcomes but on resources. In addition, the standards should better articulate the underlying value of the library and librarians. While resources are important, we are in an era when the exact function of the library is in transition. The ABA can play an important role in ensuring that the library continues to play a vital role in legal education by grounding its standards in outcomes and values.

### **Ensuring that Libraries have Impact**

With respect to law libraries, the most important, current ABA standard is section 601(a) – in particular the language that requires the law library be “an active and responsive force in the educational life in the law school.” The question is does the library have an impact? What is its value-added? For 2008, 197 law schools reported to the ABA that they averaged 11.6% of their annual total spending or \$2,750,335 per school on their libraries. This amounts to \$541,815,995, an enormous sum given the current economic crises. Given the considerable cost, the question on every law school administrator’s mind is whether the law school is getting its money’s worth. Consequently, the attention of the ABA on the impact or value added of academic law libraries needs to be paramount in revising the standards and their respective interpretations.

The three basic principles that any ABA standard regarding library impact should be based upon are (i) greater use or “consumption” of legal information in a school is better than less, (ii) librarians are specialists in legal information and research, a recognized field in its own right, and (iii) greater integration of libraries, librarians and “information literacy” standards into the curriculum will produce attorneys better qualified to serve in a changing legal information environment. Adherence to these principles will not only lead to increased legal research

competency in the profession, but better professional and academic scholarship and the adoption of “life-long learning” as part of the professional ethic of the practicing attorney.

Use of information can be measured by looking at circulation, reference service, interlibrary loan and database usage. Currently, only interlibrary loan statistics are collected annually by the ABA. While some law librarians may object that circulation and reference statistics are difficult to collect on a uniform basis and that they often provide an incomplete picture of the comparative value of a particular library, the absence of such information leaves librarians, law school administrators, and the ABA with nothing to benchmark (other than traditional measures about the size of a collection). ABA standards should encourage the evaluation of libraries in terms of their value added and based upon better data about information consumption, such as described above.

The level of integration of librarians and the library into the curriculum is a measure of the library’s value to a particular school. By promoting the integration of librarians and libraries in its accreditations standards, the ABA will help law schools understand if their libraries are not serving their fundamental needs. In particular, the library and librarians should be integrated into the curriculum to further the fundamental goal of advancing the legal profession’s information literacy. To understand the law library’s potential role in the curriculum, I refer the ABA to information literacy standards of the Association of College Research Libraries, posted at <http://www.ala.org/ala/mgrps/divs/acrl/standards/objectivesinformation.cfm>, and other literacy standards posted by the American Library Association at [http://wikis.ala.org/professionaltips/index.php/Information\\_Literacy](http://wikis.ala.org/professionaltips/index.php/Information_Literacy). These standards provide workable frameworks that can be adapted to information literacy in the context of legal education. Sound literature and carefully refined standards already exists for other academic disciplines with respect to the library’s involvement in the curriculum; legal academia needs to demand the same of law librarianship.

In June of 2009, law librarian scholars met at the University of Colorado and produced *The Boulder Statement on Legal Research Education*, a copy of which is included with this submission. While not speaking for AALL, the statement aspires to express law librarianship’s commitment to legal research instruction and provides a general framework for further work in the profession to define information literacy standards for law students.

At a minimum, ABA standards should require law schools to have their own published information literacy standards and to provide evidence of integration of the library into the curriculum in their efforts to attain those standards. The American Association of Law Libraries could be called upon to provide model standards, which would ideally be incorporated by reference into ABA standards. Finally, site team investigators should be required to look for evidence of positive outcomes flowing from adopting these standards and integrating the library into the law school curriculum. Graduate surveys, feedback from graduates and employers, and syllabi from legal research, legal research and writing, and advanced legal research courses all could be used to document the level of integration and positive outcomes. The level of staffing devoted to research instruction, the credits offered for legal research courses, and the degree to which information literacy and legal research and writing standards have been incorporated into strategic planning and implemented according to these plans also provide evidence of

commitment to integrating the library into the educational life of the law school. The key is to use the standards to ensure that the library's expertise is engaged in the effort to promote information literacy.

Collection size and dollars spent are easy to measure, but standards of integration and outcomes are more difficult to measure. However, by continuing to develop internal standards and by considering a wide range of measures beyond resources alone, the ABA can insure that law schools attend to the fundamental outcomes of information literacy and improve the educational experience of law school graduates, including legal research skills and commitment to life-long learning and vigorous research in the pursuit of professional excellence.

## **Collection Standards**

Currently, there is great confusion about what constitutes a core collection, both with respect to print collections, and the combined print and electronic collections. How does one assess this with so much primary and secondary research material available online? Indeed, because all of items described under Interpretation 606-5 (which a "core collection" must include) are available online, site team visitors invariably make highly subjective judgments about whether print collections looks "about right" (i.e., whether they looks like their own collections).

I suggest a new approach. With respect to the collection, the issue is not what we own, but whom we wish to impact, and how. For the core collection, the two programs ABA standards should try positively influence are reference services and legal research.

One element of a workable definition might be that the "core" refers to the items necessary for effective reference services—what might be needed for the "quick answer" or be required to address most reference questions. This ensures that reference services will remain effective and valued—a desired outcome for any library.

Another element of a workable standard might be that a core consists of the items needed for the first year legal research and writing. The objective of a "core" collection standard should be to foster better legal research classes (at all levels), by having collections expressly designed for these programs. AALL could use both of these elements as a framework for crafting a model, but flexible, standard for a core collection.

I have also found that one way to demonstrate that my law library had a "core" is to use OCLC's WorldCat Collection Service to determine how many titles my library had compared to the 9,532 titles held by ten of the top eleven law schools ranked by the *US News & World Report* (two schools were tied for tenth in 2008). Currently, most law libraries do not have this service. While there is an expense for the subscription, the service would be beneficial, and libraries should be encouraged to subscribe or find other means to collect the same information, especially in years when the ABA is visiting for purposes of reaccreditation. A standard interpretation suggesting that such information provides evidence, although not the exclusive evidence, of core compliance would be helpful both to site team administrators and would encourage the law library profession to adopt more precise methods to evaluate their collections.

Similar comments can be made about whether the rest of the collection meets the needs of the school's faculty and students. If a school emphasizes international law or tax, comparative data about the holdings of the library with respect to those programs could serve as evidence of compliance under the Interpretations of ABA standards. The ABA should expect this type of data, rather than simply rely upon the subjective impressions of individual site team evaluators.

Finally, data about the relative age of the collection, i.e., how much of the collection was acquired since the last site visit, reveals whether a collection is being maintained. Interpretations should stress the utility of this information in evidencing that a collection meets the needs of students and faculty. Unfortunately, because the ABA will no longer be collecting volume counts and comparing growth from year-to-year, this information will become harder to come by (although WorldCat Collection Analysis does provide an excellent alternative for those libraries which subscribe).

## **Tenured Law Faculty Status for Library Directors**

There is no question that this standard is of great importance to directors and is not uniformly adhered to by law schools. The primary reasons for tenured status are academic freedom (applicable to several issues – faculty governance, research agendas and teaching philosophies) and as an incentive for scholarly production. Both of these justifications apply to the library profession.

The real issue concerning academic freedom is not simply protecting the choices that a law library director makes in the books she selects, her philosophy of instruction, or her research agenda, but the freedom with which a director may engage in discussions and take positions on sensitive issues (such as curriculum reform, budget allocation, and interpretation of compliance with ABA standards).

With respect to their own scholarship, there are not enough incentives to encourage law librarians below the rank of director to engage in productive research and publication. Few find a tenure track outside of the possibility of one day becoming a director. If tenure track positions decrease or disappear altogether among law library directorships, my fear is that most of the serious scholarly efforts in the profession would likewise vanish. Engagement in law library scholarship would come to be seen as a luxury and a distraction, and therefore be resented. This is a time when good scholarship has never been more needed among law librarians. The information environment is rapidly changing and so is the practice of law and the nature of legal scholarship. Scholarship of law librarians is important not only to law librarianship as a specialized profession, but to the legal profession, legal academia, and the library profession in general.

I have also observed that it is in the law school's interest to grant the directors tenure or tenure-track status in the law faculty, rather than the university library. By doing this, the director's loyalties, energies and orientation are directed toward the law school. Additionally, as a result of going through the tenure process, the library director often gains credibility with the law faculty and comes to fully appreciate the challenges facing them as scholars.

Finally, without some possibility of tenure, recruiting librarians, particularly the brightest and most talented individuals, will become much more difficult. It is the librarians and their services, not the print collection, or even online databases, that are the most valuable component of any library. I know I would never have left the practice of law for librarianship without the possibility of publishing academic scholarship, receiving professorial recognition, and achieving tenure. I have spoken with other librarians, often newer librarians from top law schools, who share this viewpoint. If anything, the ABA and AALL should be studying how to provide more incentives to attract ambitious and capable librarians to the profession. Otherwise, the tradition of “giants” – a few, but extremely influential chain of talented librarians – may be irretrievably broken. It is not only in the law library profession’s interest to maintain a rigorous tenure standard for directors, but it is in the interest of legal academia and education. Maintaining the standard is a way to sustain the underlying value of the library.

## **Conclusion**

I appeal to the Standards Review Committee to carefully consider the matter of law library accreditations standards. In general, standards need to move from measurements of resources to outcome-based measures. In particular, the most important standard for consideration concerns the impact of the library, its “value-added” contributions, and how librarians and the library are integrated into the educational programs, planning and mission of their host schools. Other standards, such as those pertaining to the collection, and in particular, the core, need to be more carefully defined in terms of the needs to be served and must encourage the use of better practices and methods for assessment. Finally, any changes to the standards regarding director status need to be considered in light of the impact on law library scholarship, recruitment into the law library profession, and the independence of the library director to speak his or her mind as a member of the faculty, particularly with reference to sensitive topics taken up by the faculty and administration, such as curriculum reform, budgets, and compliance with ABA standards.

## 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.

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