November 29, 2010

Donald J. Polden,
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Dear Dean Polden, Mr. Askew and Ms. Stretch:

Thank you for the opportunity to comment upon the proposed revisions currently under consideration by the Standards Review Committee (SRC). The members of the Academic Law Libraries Special Interest Section of the American Association of Law Libraries (ALL-SIS) have followed the revision process closely and appreciate the work of the SRC. As legal professionals with a tradition of participation in the development of legal education in our country, the academic law librarians offer the following comments on the proposed standards revisions. We request that a copy of our comments be promptly distributed to all Committee members and be posted on the Standards Review website.

The Purposes of the Standards

As the recognized accrediting body for law schools, the ABA's Council of the Section of Legal Education and Admissions to the Bar plays the major role in protecting the interests of the public, the practicing Bar, and current and potential law students in the assurance of quality legal education standards. Academic law librarians have historically participated in the process of developing these standards by serving on the many related ABA committees, and have participated in the process of enforcing them by serving on accreditation site evaluation teams. We have always considered the Standards the means by which the Council ensures that legal education continues to offer a consistently high-quality product.

The Library Standards (Section 600): General Comments

Proposed changes in the library standards correctly reflect recent developments in the delivery of information resources. Prescriptive language about the format and ownership of core materials is disappearing, as is any language mandating study space or seating capacity. The proposed standards recognize that information sources change constantly, and reliable access to

them can be assured in a variety of ways. At the same time, the profession is moving toward outcome-based measurements rather than input measures, and libraries are taking steps to provide this information. The ALL-SIS is comfortable with these proposed changes.

This same uncertain future that necessitates flexible standards in the areas of library collection, services, and physical plant, however, requires even more assurances that competent library professionals will manage the law library. Today's environment requires a professional librarian to keep up with these changes, evaluate new products, and ensure that the library's resources support the school's educational mission. In this environment, indications that the SRC is considering abandoning the requirement that the administrator of the law library hold the J.D. and a degree in library/information science are alarming. Today, more than ever, the law library requires management with expertise in information/knowledge systems, legal research methods, and the integration of electronic and print materials.

We are similarly skeptical of the apparent willingness of the SRC to eliminate the traditionally preferred status of the law library director as a member of the law faculty. We recognize that this is part of a larger movement to do away with security of position wherever possible, and a bow to the trend in academia toward the Dean-as-CEO and away from faculty governance. We believe that this is an unfortunate trend. Academic freedom is as fragile today as it has ever been, and the tenure system is what protects that academic freedom. Arguments against the tenure system fail to suggest any substitute protection for academic freedom, while holding up the business model as the better, more efficient, organizational model for academia.

The Library as an "active, responsive and integral force in the educational life of the law school": Standard 601

We are pleased with standard language and interpretations which require the identification of how the law library furthers the mission of the law school, is included in its strategic planning, and is considered in outcome-based measures. We believe that law libraries and their facility to integrate legal research skills and the value of life-long learning should constitute an important object in the reform of legal education. We would strengthen proposed revisions to ensure that the library is involved in strategic planning, curriculum reform, and the setting of its goals, but to 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."

Core Collection: Standard 606

Proposed changes in the library Standard 606, pertaining to the collection, correctly reflect recent developments in the delivery of information resources. Prescriptive language about the format and ownership of core materials is disappearing, as is any language mandating study space or seating capacity. The proposed standards recognize that information sources change constantly, and reliable access to them can be assured in a variety of ways. At the same time, the profession is moving toward outcome-based measurements rather than input measures, and libraries are taking steps to provide this information. The ALL-SIS is comfortable with these proposed changes.

In addition, librarians know that currently publishers are charging the same amount for electronic materials as they charge for print. While we expect that eventually the market will correct itself and digital materials will begin to present cost savings, it is important to understand that currently, there are few cost savings realized by switching from print to electronic. In fact, with draconian digital rights management protections attached to subscriptions, libraries often end up paying more or the same amount for electronic titles that provide less in terms of access or ownership. Eventually, we do hope that vendors will come to understand that a fair market will come down somewhere closer to current print access or at least in the middle of where digital publishers are now and print access rights. We thus think the flexible language in Standard 606 will stand law schools in good stead during this time of change.

This same uncertain future that necessitates flexible standards in the areas of library collection, services, and physical plant, however, requires more than ever the assurance that competent library professionals will manage the law library. Today's environment requires a professional librarian to keep up with these changes, evaluate new products, and ensure that the library's resources support the school's educational mission. In this environment, indications that the SRC is considering abandoning the requirement that the administrator of the law library hold the J.D. and a degree in library/information science are alarming. Today, more than ever, the law library requires management with expertise in information/knowledge systems, legal research methods, and the integration of electronic and print materials.

Academic Freedom: Tenure, Security of Position, and Standard 405

Academic Freedom is discussed in greater detail below, but ALL-SIS strongly urges the retention of the language "security of faculty position" in Standard 603(d) in tandem with 405, referring specifically to law library directors. In addition, we strongly support the extension to <u>all</u> types of faculty a clear statement of academic freedom and tenure.

The Section is concerned that efforts to reduce "security of faculty position"or tenure in the name of increased efficiency represent a false promise. While trumpeting a message that the corporate models will "save money" and be more responsible to society, those who urge such reforms overlook recent systemic failures of corporations among society's institutions. Universities, by contrast, have been models of stability and American universities, in particular, are beacons attracting students from around the world. It would be a serious mistake to reduce the protections provided for faculty governance and freedom of expression.

We are concerned, as Professor Robert Gorman points out, that the movement to dismantle tenure is, a classic management attack on labor, though cloaked in linguistic disguise. We strongly support the comments made by Prof. Gorman and by Professor Emerita Roxane Harvey Gudeman, and Professor Cary Nelson on behalf of the AAUP on these issues. We urge retention the actual word tenure in the standards, as well as their interpretations. If anything, we believe the ABA needs to make a clearer statement in support of tenure.

We also wholly support the comments of ALWD and CLEA dated October, 2010. We particularly draw your attention to ALWD's strong arguments against the essential gender

discrimination inherent in tiered faculty, where such a preponderance of legal writing, and indeed, library faculty, are female. The second-class citizenship offered by law schools which offer tenure to doctrinal faculty but not to writing faculty, clinicians, and/or librarians have a disproportionate impact on women.. It is quite clear that these schools are building pink collar ghettos within their own walls. We urge our colleagues to act according to the values and ideals inherent to legal education and the practice of law, and remove or diminish the adverse affect on gender due to diminished "security of position" provided to legal research and writing faculty and library directors.

Director of the Law Library: Standard 603 (Generally)

The Committee strongly urges the Review Committee to retain in the standard the following language and to consider the single modification we suggest:

> (a) A law library shall be administered by a full-time director whose principal responsibility is the management of the law library.
> (b)…
> (c) Except in extraordinary circumstances, [a] director of a law library should have a law degree and a degree in library or information science and shall have a sound knowledge of and experience in library administration.
> (d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.

We are similarly skeptical of the apparent willingness of the SRC to eliminate the traditionally preferred status of the library director as a member of the law faculty. We recognize that this is part of a larger movement to do away with security of position wherever possible, and a bow to the trend in academia toward the Dean as CEO and away from faculty governance. We believe that this is an unfortunate trend. Academic freedom is as fragile today as it has ever been, and the tenure system is what protects that academic freedom. Arguments against the tenure system fail to suggest any substitute protection for academic freedom, while holding up the business model as the better, more efficient organizational model for academia. We support strongly the comments previously advanced by Professors Gorman, Gudeman, and Nelson attacking these arguments very ably.

It is interesting to note that two major topics of conversation in the academy today are the increasing costs of higher education and the wisdom of replacing faculty governance with the business model. There is a reason that these two subjects are current at the same time, since a move to the business model inevitably results in higher administrative costs and higher tuition.

One result of this trend away from faculty governance is to deny law library directors the faculty status that traditionally afforded them academic freedom and ensured that they were directly connected with the faculty. When tenure itself is under attack, the status of the library director may seem a minor consideration, but the two are inextricably related.

Full-time Directors with Dual Degrees: Standard 603(c)

We do not believe that it is in the ABA's interest to loosen the educational requirements for administration of the law library. We believe the pattern of appointments of non-librarian administrators by a number of law schools to be particularly imprudent and contrary to the interests of legal education, based upon any justifiable standard. Such appointments constitute a gross failure by the ABA to enforce its current standards and to recognize the validity and contributions of the law library profession. The field of law librarianship and library education are dynamic and evolving in tune with changes in education and the information environment. Through career experience and education librarians acquire diverse expertise in research techniques, information literacy, pedagogy, collection development, bibliography, meta-data, digitization, preservation (both electronic and print), budgeting, grant-writing, library metrics, bibliometrics, management theory (including knowledge and information management), employment and labor issues, human-computer interface and web design, vendor relations, management theory (including knowledge and information management), and information technology systems. Trends to appoint non-librarian directors reflect ignorance about the field and the evolving nature of librarianship and the information environment.

We also observe that the trend in appointment of non-librarian directors has been to place males in management positions over a largely-female profession. It has also almost always resulted in a female librarian serving as an associate director, with diminished pay, but the responsibility for the day-to-day operations of the library. At the same time, the male director receives the preferred title and salary. ALL-SIS members view this as gender discrimination, paternalistic and patently offensive. They see the ABA's failure to enforce current standards, and its willingness to consider more flexible standards, permitting non-librarian directors, will make it more difficult for women to reach the top in the law library profession. This is not a step forward for legal education. It is certainly not a step forward for women. And it is not a step the ABA should contemplate. It also makes it more difficult to recruit and retain librarians with the narrow field of academic law librarianship.

Engagement of full time directors of the law library are mission critical to law schools. Librarianship is a profession. If the director of a library, due to lack of experience as a librarian, is not truly engaged in the law library community, networking opportunities may be missed. As a result the director may fail to pick up on important developments and best practices that need to be passed on to staff.

At the same time, if the individual who actually runs the daily operations of library lacks real or at least the best connections to the faculty and decision-making committees within the school, there will be disconnects between the library and the school. Library decisions will be better if informed in a timely fashion by news from the law school. If the faculty has decided on a new curriculum, or a new center, the library needs to support those decisions with changes in the collection. This necessary synergy between the law library and the law school is the basis for current ABA standards that strongly encourage a law library director who is a member of the tenure-track faculty and who is an experienced librarian with a proper degree in the field and experience in the area of management and librarianship or information science.

An example of the disconnect and the damage it can cause is the current problem at the law library at SUNY, Buffalo. Since the ABA inspection there, not one person on the library staff

has been given any copy or report on the library portion of the report to the ABA by the accreditation inspection team. The dean of the school made the decision to sequester the ABA report in his office, and only law faculty members are allowed to read the report there, but not to make copies, or take any portion away. Consequently, no librarian has access. The current director of the law library, who is a doctrinal faculty member appointed to the post after the last MLS/JD director stepped down, has not thought to take any information to his staff on the ABA's library portion of the inspection. If there are any action points or suggestions in the report, the library staff does not know about them.

Standard 603(d) – Library Director Status

On July 12, 2010, the ABA Section of Legal Education and Admissions to the Bar's Law Libraries Committee (the "Committee) submitted comments regarding Law Library Standards. ALL-SIS finds that the Committee's revision of 603(d) and Interpretation 603-3 are flawed because (i) they fail to consider whether library directors should have faculty voting rights, (ii) the relationship of library director status to ABA's interests in reforming legal education, and (iii) the adverse effects on the library director's relationship to the balance of power between law school deans and faculty. The Committee's proposals for the Standard 603(d) read:

> 603(d) ~~Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with the security of faculty position.~~ The director of the law library shall have the necessary security of position to fulfill his/her obligations, including, but not limited to, academic freedom in teaching, scholarship, and in developing and maintaining the library's collection in support of the school's program of legal education.

> Interpretation 603-3 ~~The granting of faculty appointment to the director of the law library under this Standard normally is a tenure or tenure track appointment. If a director is granted tenure, this tenure is not in the administrative position of director.~~ The director of the law library shall be given a faculty appointment and have security of position reasonably similar to tenure in order to ensure his/her ability to serve as an advocate for the library and to provide the information resources necessary for the mission of the institution. The director shall have the opportunity to participate in law school activities, including committee appointments, as needed to maintain a direct, continuing, and informed relationship with law school constituencies.
>
> Security of position reasonably similar to tenure can be achieved by placing the director in a law school faculty tenure track position; creating

a separate tenure track position specific to the director; or providing a series of probationary contracts over a period reasonably similar in length to that of a faculty member progressing towards tenure, and leading to presumptively renewable long-term contracts that are at least five years in duration. If given a separate tenure track position, the director, after a probationary period reasonably similar to that for other full-time faculty, may be granted tenure in that position. If a law school provides security of position to the director through a separate tenure track or a series of contracts, it has no obligation to grant his/her request to move into a full-time teaching capacity.

If adopted, the revised standard and corresponding interpretation would facilitate directorships with non-law faculty status (such as a separate category of tenure which might be interpreted to include tenure with the university libraries) or as an alternative status similar to clinical faculty with renewable five-year contracts. ALL-SIS finds these alternative conditions of employment to be contrary to the interests of the ABA and legal education.

The Failure to Address Voting Rights

A failure to guarantee voting rights on the law faculty for library directors is contrary to ABA interests to reform legal education and encourage candid reporting among its accredited law schools. Although Interpretation 603-3 addresses participation ("The director shall have the opportunity to participate in law school activities, including committee appointments, as needed to maintain a direct, continuing, and informed relationship with law school constituencies"), it does not require voting privileges of the law faculty. In all probability, new directors would not have such voting rights if the ABA standard failed to mandate it.

Faculty Allies for Education Reform

As the ABA changes standards to outcome-based measures in line with the *Carnegie Report*, faculties at all law schools will confront important decisions about how to reform legal education at their institutions. These debates will often be heated, and the issues may often be divisive. It is the experience of the authors of this ALL-SIS comment that library directors are universally in favor of curriculum reform, particularly because of their desire to address deficiencies in the legal research skills area and to instill the value of "life-long learning" in the law among law school graduates. However, if the ABA adopts the proposed standard and interpretation, it is taking a step backwards by disenfranchising key allies in its effort to reform legal education. The same arguments can be made for clinical and legal writing faculty. Indeed, a "doctrinal" faculty member once opined that the reason librarians (below director level) and clinical and legal writing faculty would never be admitted to the law faculty was that they might vote in a block against the "interests" of traditional faculty, particularly with matters related to the curriculum. The potential voting status of non-traditional faculty was seen as a threat to entrenched notions of legal education. This is the nub of the matter. If it is in the interests of the ABA and the profession to reform legal education, rather than encouraging the contraction of voting privileges, the ABA needs to work to expand voting rights among legal educators (especially, librarians, clinicians and legal writing instructors).

The Value of Faculty Governance and the Participation of the Library Directors

ALL-SIS reaffirms the value of faculty governance in legal education. Faculty governance has come under assault at a time when many of society's other institutions, such as the corporation, are failing so spectacularly. The irony is that many other proposed models of education—such as for-profit law schools—are based on the corporate model or more hierarchical power structures. While we recognize the need to permit differing models for legal education according to the needs of particular institutions and constituencies, faculty governance has provided stability to universities for hundreds of years and, with tenure, it is responsible for the culture of independent thinking that is the hallmark of Western education. Indeed, independence is the trademark of the legal profession. The exclusion of directors from full participation in faculty governance, by denying voting rights or the possibility of tenure, is an ill-considered step, which actually weakens faculty governance by narrowing its membership to a less-diverse group of viewpoints and stake-holders.

In addition, ALL-SIS believes that the effect of five-year contracts and non-law tenure track positions will ultimately shift power to deans away from law faculty. In many instances, this may be undesirable, despite the fact that empowering deans may sometimes facilitate their ability to act as "change agents" in the reform of legal education. The problem is that under a five-year contract, the natural tendency is for the library director's interests and entire orientation to line up with that of his or her reporting supervisor—the dean. There will be less incentive for the director to weigh fully the interests of the faculty in decisions, and more of an incentive to please the dean on every issue. It may be true that law school employees with five-year contracts are often evaluated by a committee of the faculty, but it will never be in the library director's interest to stray far from or oppose his or her dean's agenda, even if there is good reason for doing so. Under the stewardship of a good dean, this reorientation of the library director might be beneficial, but it presents opportunities for a dean to overreach and act in such a way as to harm their law school's interests, even chilling expression, debate and transparency without any checks or balances in place**.** When they do so, the culture of the institution is imperiled, and legal education suffers. It is in the interest of all of the constituencies of legal education for law library directors to remain fully fledged members of the faculty, with tenure and voting privileges, and with the unfettered ability to take controversial stands, just as any other faculty member may do.

We also believe that affirmations of "academic freedom" for long-term contractual positions, but without tenure or voting rights, miss the mark, since freedom to write, publish, teach, and select books are frequently not the issue in disputes over academic freedom. Rather, taking a stance on divisive issues (including voting on such issues), which is the essence and strength of faculty governance, is an inseparable part of that institutional whole that constitutes academic freedom. The same arguments apply to affirmations of voting rights to the extent that the expression of such rights may be chilled by non-tenured employment and reviewed by the dean or a committee of the faculty.

Candid Reporting to the ABA

ALL-SIS also believes that library directors will report more frankly to the ABA if current 603(d) standards requiring tenure or tenure-track positions on the law faculty are

retained. Library directors have frequently stated, when discussing the issue of their status, that there are things they have said to faculty members, their respective deans, and ABA inspectors, which they never would have expressed if they had not had tenure. To ensure open and honest reporting, the ABA should continue to require tenure (or tenure-track) positions on the law faculty.

Additional Considerations

We realize that these same arguments can be made with respect to directors of clinical and legal writing programs. The fact that many of them do not have tenure or tenure-track status is not a valid argument for diminishing the current standards in 603(d). Rather, it is in the interest of the ABA to improve their status.

There are many other good reasons expressed in comments to the ABA in favor of retention of the director as a tenure or tenure-track member of the law faculty. We support them in full. We particularly note the concerns about the ability of the law library profession to produce the great librarians that are a part of our legacy: the kind of librarians who have made significant contributions to academic and professional literature, who have been honored with endowed chairs, and who have served as deans at law schools. We feel the ability to attract the best talent for law librarianship will be impeded by the change in library director status. Equally troubling is that as the status of library directors decreases, the attractiveness of "jumping ship" to become directors at other kinds of libraries – college, university, corporate, and public libraries – will become a serious factor in maintaining leadership in the field.

We hope the ABA takes careful considerations of its interests and the needs of the legal profession. In doing so, we believe it will find ample reason to retain current standards for section 603(d).

We appreciate this opportunity 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,

/s Elizabeth McKenzie, Suffolk University, *Chair*

/s Paul Callister, U.Missouri,Kansas City

/s Gail Daly, Southern Methodist University

/s Kristina Niedringhaus, Cleveland State U.

/s Victoria Szymczak, Brooklyn Law School

/s Marcia Zubrow, SUNY, Buffalo