Summer 2014

The ABA Section on Legal Education Revisions of the Law Library Standards: What Does It All Mean?

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LAW LIBRARY JOURNAL Vol. 106:3 [2014-20]

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In December 2012, the Council of the American Bar Association's Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed changes to accreditation standards that affect the law library: all of Chapter 6 (Library and Information Resources); Standard 405(c) in Chapter 4 (The Faculty) on security of position for clinical faculty members as they relate to Standard 603(d); specific standards in Chapter 7 (Facilities, Equipment, and Technology)—Standard 702 (Law Library), Standard 703 (Research and Study Space), and Standard 704 (Technological Capacity); Standard 509 (Consumer Information) as it relates to the law library in Chapter 5 (Admissions and Student Services); and Standard 106(2) (Separate Locations and Branch Campuses). On August 11, 2014 the ABA House of Delegates concurred in all of the proposed standards. Dean Russell examines the changes and provides analysis and suggestions for improvement.

Introduction

¶1 In 2008 the American Bar Association (ABA) Standards Review Committee (SRC) began "a comprehensive review of the *ABA Standards for the Approval of Law Schools* and the associated *Rules of Procedure for the Approval of Law Schools.*"[1] The SRC was charged with making recommendations to the Council of the ABA Section of Legal Education and Admissions to the Bar, which has the "authority to adopt, revise, amend or repeal Standards, Interpretations and Rules."[2] Under the rules, "[a] decision of the Council . . . shall not become effective until it has been reviewed by the House."[3]

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1. The official letter from the ABA to Deans of ABA Law Schools stated: "In September 2008, the Council of the Section of Legal Education and Admissions to the Bar will begin a comprehensive review of the ABA *Standards for the Approval of Law Schools* and the associated *Rules of Procedure for the Approval of Law Schools.* The Council will rely on the work of its Standards Review Committee to complete this project, which we expect to take at least the next two academic years." Memorandum from Randy Hertz, Chair, Council, Section of Legal Education and Admissions to the Bar, Don Polden, Chair, Standards Review Committee, and Hulett H. Askew, Consultant on Legal Education (Aug. 15, 2008) [hereinafter Hertz, Polden & Askew], http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/2008_comprehensive_review_memo_for_web_site.doc.

2. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2012–2013 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 51 (2012) [hereinafter ABA STANDARDS].

3. *See id.*

¶2 Though the project was expected to take at least two academic years,[4] the SRC was still working on the project in 2012 and tentatively scheduled meetings through July 2014.[5] However, the SRC eventually put the process on a fast track and, after the October 2012 meeting, sent to the Council the standards it had completed. The SRC continued to send its proposed revisions to the Council as each standard was completed and included an explanation of changes for each chapter.[6] The SRC sent Chapters 1–7 to the Council for consideration, and the Council, after review, approved these chapters for notice and comment.[7]

¶3 The Council has approved for notice and comment the following standards that affect the law library: all of Chapter 6 (Library and Information Resources); Standard 405(c) in Chapter 4 (The Faculty) on security of position for clinical faculty members as they relate to Standard 603(d) on the status of the law librarian; specific standards in Chapter 7 (Facilities, Equipment, and Technology)—Standard 702 (Law Library), Standard 703 (Research and Study Space), and Standard 704 (Technological Capacity); Standard 509 (b)(6), on library resources in Chapter 5 (Admissions and Student Services); and Standard 106(2) (Separate Location and Branch Campuses).[8]

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4. *See* Hertz, Polden & Askew, *supra* note 1.

5. In March 2012, the SRC scheduled committee meetings through July 2013, Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar Standards Review Comm., *Tentative Schedule: Nov. 2012 to July 2013*, http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/2012_13_src_tentative_meeting_agendas.authcheckdam.pdf (last visited Sept. 18, 2014). In February 2013 the committee created a schedule from April 2013 through April 2014 and a tentative meeting in July 2014. *Am. Bar Ass'n, Section of Legal Educ. and Admissions to the Bar Standards Review Comm.* (Feb. 6, 2013), http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/2013_14_src_meeting_schedule.pdf.

6. *See* Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar Standards Review Comm., *Chapter 6—Library and Information Resources* (Nov. 21, 2012), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/december_2012_council_meeting/2012_december_chapter6_explanation_nov.doc [hereinafter *Chapter 6—Library and Information Resources*]; *Chapter 7, Explanation of Changes*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/december_2012_council_meeting/2012_december_chapter7_explanation_nov.DOCX (last visited Sept. 18, 2014).

7. "At its meeting held on November 30–December 1, 2012, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Chapter 6 (Library and Information Resources) and Chapter 7 (Facilities, Equipment and Technology)"; "At its meeting held on March 15–16, 2013, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Chapter 2 (Organization and Administration) and Chapter 5 (Admissions and Student Services)"; "At its meeting held on August 8–9, 2013, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Chapter 1 [General Purposes and Practices], Chapter 3 [Program of Legal Education], Chapter 4 [The Faculty], Standard 203(b) [Dean], and Standard 603(d) [Director of the Law Library]." Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar Standards Review Comm., *Notice and Comment: Standards and Rules*, http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html (last visited Sept. 18, 2014).

8. *See* Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar Standards Review Comm., *Minutes, November 16–17, 2012* (Jan. 18, 2013), http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/July2012

¶4 This article identifies what accreditation objective each standard addresses[9] and provides an opportunity to compare the existing library standards with the revised standards relating to the law library and the status of librarians. The existing language of each standard and revisions are accompanied by a discussion of the change(s) and what impact the change(s) would have on academic law libraries and the law librarians who work in those institutions.

¶5 In the United States accreditation is a self-regulatory process that has "evolved into a form of public accountability providing assurance to those outside the higher education community as well as those inside it that the institution [has] the capacity to offer its programs."[10] With the passage of the Higher Education Act of 1965, the process morphed and accrediting bodies were "in essence, 'deputized' . . . to govern institutional eligibility for federal financial aid funds."[11] The reauthorization of the Higher Education Act (2008) expanded government authority over the conduct of the accreditation process. The ABA, as a federally recognized accreditor, is required to ensure that its member institutions comply with federal regulations governing accreditation.[12] In a 2011 article, Jay Conison, dean of the Valparaiso School of Law, articulated "five principal types of norms that might be used in law school accreditation systems: (1) process-quality norms, (2) outcome norms, (3) power-allocation norms, (4) self-determination norms, and (5) consumer-protection norms."[13] Individual norms will be identified with

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/2012_nov_src_meeting_materials.pdf [hereinafter *Minutes Standards Review Committee November 16–17*]. The proposed language for Chapter 6 is the language approved by the Standards Review Committee at its meeting in Chicago on November 16 and 17, 2012, specifically, "The Committee unanimously agreed to send the chapter forward to the Council for consideration." *Id. Standards Review Committee Meeting Agenda January 18–19, 2013*, http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/jan_2013_meeting/2013_jan_src_meeting_agenda_materials.pdf.

9. For a detailed history of the ABA accreditation standards that pertain to law libraries, see GLEN-PETER AHLERS, THE HISTORY OF LAW SCHOOL LIBRARIES IN THE UNITED STATES: FROM LABORATORY TO CYBERSPACE (2002). The book provides the text of the standards through each change. For a short summary see generally John A. Sebert, *ABA Accreditation Standards and Quality of Legal Education*, 11 TEX. REV. L. & POL. 395 (2007); William R. Roalfe, *Formulation of the Interpretations to the Library Requirements of the Association of American Law Schools*, 40 LAW LIBR. J. 229 (1947); Cindy Hirsch, *The Rise and Fall of Academic Law Library Collection Standards*, 31 LEGAL REFERENCE SERVICES Q. 65 (2012).

10. Frank Brush Murray, *From Consensus Standards to Evidence of Claims: Assessment and Accreditation in the Case of Teacher Education*, NEW DIRECTIONS FOR HIGHER EDUC., Spring 2001, at 49.

11. Peter T. Ewell, *Disciplining Peer Review: Addressing Some Deficiencies in U.S. Accreditation Practices, in* INQUIRY, EVIDENCE, AND EXCELLENCE: THE PROMISE AND PRACTICE OF QUALITY ASSURANCE 89, 91 (Mark La Celle-Peterson & Diana Rigden eds., 2012), *available at* http://www.teac.org/wp-content/uploads/2012/03/festschrift-book.pdf#page=101.

12. As an accrediting agency, the ABA Section of Legal Education and Admissions to the Bar is required under 34 C.F.R. § 602.24(f) (2013) to "conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours"; under § 602.16(1)(x), verify that the three-year cohort default rates are within the federal limit; under § 602.17(g), to confirm that institutions have effective procedures in place to ensure that each student enrolled in a distance education class is the same person who participates in and completes the course; and under § 602.24, to confirm that "an institution has transfer of credit policies that (1) [a]re publicly disclosed in accordance with section 668.43(a)(11); and (2) [i]nclude a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education."

13. Jay Conison, *The Architecture of Accreditation*, 96 IOWA L. REV. 1515, 1528 (2011).

each revised standard. It may be the case, though, that the revised library standard's prescriptions have less to do with ensuring quality and "providing a sound program of legal education"[14] and more to do with serving as "the gateway to the legal profession,"[15] thus erecting barriers to affordable legal education.[16]

¶6 Process-quality norms are standards that prescribe the procedural characteristics for achieving the two main purposes of law school education: "educating students and providing students with the opportunity for entrance into the legal profession."[17] Several law library accreditation standards appear to address this latter norm: Standard 601 (General Provisions), Standard 603 (Director of the Law Library), Standard 604 (Personnel), Standard 605 (Services), Standard 606 (Collection), and Standard 703 (Library Facilities) all address operational aspects of the library. These standards relate to the quality of the program of legal education.

¶7 If outcome norms are measures of expected outcomes, then a clear example of an outcome norm in the law school accreditation process is the bar passage standard.[18] This outcome-based measure is based on external standardized tests and provides a posteducational assessment of the overall success of the educational experience of the students.[19] There is a dearth of measurable outcomes in the existing library standards, and this remains true of the revisions.

¶8 The closest external outcomes norm for legal analysis, the Multistate Practice Test (MPT),[20] provides an opportunity to measure the success of legal analysis and writing programs at law schools:

14. ABA STANDARDS, *supra* note 2, at ix.

15. *Id.*

16. The *AALL Price Index for Legal Publications, 2013,* showed an average price of $315.12 for periodicals, an average increase of 6.66% from 2012; $2,250 for serials (excluding periodicals), an increase of 8.69% from 2012; $7,574.07 for federal and regional reporters, an increase of 5.40% over 2012; $3,928.41 for state, regional, and federal digests, an increase of 2.15% over 2012; $2,082.75 for state and federal codes, an increase of 5.85% over 2012; $5,703.67 for state and federal legal encyclopedias, an increase of 7.95% over 2012; $2,620.98 for looseleaf services, an increase of 28.36% over 2012; and $1,006.94 for titles in electronic format, a decrease of 5.77% over 2012. The price indexes are available online with an AALL password at http://www.aallnet.org/main-menu/Publications/products/pub-price. They are no longer published in print.

17. Conison, *supra* note 13, at 1528.

18. *See* ABA STANDARDS, *supra* note 2, at 18. The current standard requires that law schools demonstrate at least one of the following: that in the previous five years, 75% of its graduates who took the bar passed; that in at least three of the previous five years, 75% of its graduates who took the bar passed; or that in at least three of the previous five years, its first-time bar passage rate was no more than 15 points below the average bar passage rate for ABA-approved schools in the state where its graduates took the bar.

19. A number of articles question the usefulness of the bar exam. *See* Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change,* 81 NEB. L. REV. 363 (2002); Lorenzo A. Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success,* 78 U. COLO. L. REV. 69 (2007); Jane Yakowitz, *Marooned: An Empirical Investigation of Law School Graduates Who Fail the Bar Exam,* 60 J. LEGAL EDUC. 3 (2010); *Society of American Law Teachers Statement on the Bar Exam,* 52 J. LEGAL EDUC. 446 (2002).

20. *MPT FAQs,* THE MPT, http://www.ncbex.org/about-ncbe-exams/mpt/mpt-faqs/ (last visited Oct. 29, 2014). Currently forty-one jurisdictions require students to take the MPT.

> Purpose
>
> The MPT is designed to test an examinee's ability to use fundamental lawyering skills in a realistic situation. Each test evaluates an examinee's ability to complete a task that a beginning lawyer should be able to accomplish. . . .
>
> Contents
>
> The materials for each MPT include a File and a Library. The File consists of source documents containing all the facts of the case. The specific assignment the examinee is to complete is described in a memorandum from a supervising attorney. The File might also include transcripts of interviews, depositions, hearings or trials, pleadings, correspondence, client documents, contracts, newspaper articles, medical records, police reports, or lawyer's notes. Relevant as well as irrelevant facts are included. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client's or a supervising attorney's version of events may be incomplete or unreliable. Examinees are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.[21]

¶9 Although there is no similar external test on legal research and legal information literacy, the American Association of Law Libraries (AALL) has developed some competency standards that might provide ways to measure the effectiveness of the library and librarians in training students. The AALL Legal Research Competencies and Standards for Law Student Information Literacy provide a framework of legal research skills that a first-year associate should possess.[22] Law firms have also provided lists of skill sets that they expect first-year associates to have, and these often include specific legal research skills.[23] In July 2012 the National Conference of Bar Examiners released a report that identified the knowledge and skills that newly licensed lawyers should possess.[24]

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21. *Overview of the MPT*, THE MPT, http://www.ncbex.org/about-ncbe-exams/mpt/overview-of-the-mpt/ (last visited Oct. 29, 2014).

22. *See Report, AALL Law Student Research Competency Standards Task Force for the AALL Executive Spring Board Meeting, March 29–31, 2011*, http://www.aallnet.org/main-menu/Leadership-Governance/committee/cmte-final-reports/2010-2011/law-stu-tf.pdf (last visited Sept. 5, 2014), which was approved by the board in April 2011, *AALL Law Student Research Competencies and Information Literacy Principles Report*, http://www.aallnet.org/main-menu/Advocacy/recommended guidelines/Student-Research-Principles.pdf (last visited Sept. 5, 2014), and served as the foundation for development of the AALL Legal Research Competencies and Standards for Law Student Information Literacy that was adopted by the AALL Executive Board in July 2012. *Archived: AALL Legal Research Competencies and Standards for Law Student Information Literacy*, http://www.aallnet.org/main-menu/Leadership-Governance/policies/PublicPolicies/policy-lawstu.html (last visited Sept. 5, 2014).

23. Firms listing skill sets online for first-year associates include legal research among the skills they must possess. For example, a junior associate at Sullivan & Worcester "utilizes available research resources, spots and articulates issues; applies legal rules, concepts and theories and principles to facts; evaluates effectiveness of legal theories. Sullivan & Worcester, Performance Guidelines 2009, http://www.sandw.com/assets/attachments/Performance_Guidelines_-_ALL_(B0178242-7).pdf. By the end of their first year, associates at Vinson & Elkins must be able to "identify relevant issues and facts and to locate relevant authority or precedent and to apply that authority or precedent properly to the facts presented." Vinson & Elkins L.L.P., Firmwide Core Competencies, http://www.velaw.com/uploadedFiles/VEsite/Careers/firm_core_comp.pdf (last visited Sept. 5, 2014). *See also* the NALP Foundation for Law Career Research and Education, *Survey of Law Firm Use of Core Competencies and Benchmarking in Associate Compensation and Advancement Structures* (July 2009), http://www.nalpfoundation.org/uploads/PDCCompetenciesandBenchmarksSurveyResultsFINAL.pdf.

24. STEVEN S. NETTLES & JAMES HELLRUNG, NAT'L CONFERENCE OF BAR EXAMINERS, A STUDY OF THE NEWLY LICENSED LAWYER (July 2012), http://www.ncbex.org/assets/media_files/Research/AMP-Final-2012-NCBE-Newly-Licensed-Lawyer-JAR.pdf.

¶10 In an attempt to provide academic law libraries with some outcome measures that can be used to evaluate the perceived information literacy of students, the effectiveness of the library's instruction, and the library services in comparison with other academic law libraries, a set of consortium questions (see Appendix) was designed and made available to law schools as an add-on short survey to accompany the Law School Survey of Student Engagement. The questions attempted to capture student self-evaluation of certain principles identified by the AALL Legal Research Competencies and Standards:

> Principle I: A successful researcher should possess fundamental research skills.
> Principle II: A successful researcher should implement effective, efficient research strategies.
> Principle III: A successful researcher should critically evaluate legal and non-legal information and information sources.
> Principle IV: A successful researcher should apply information effectively to resolve a specific issue or need.
> Principle V: A successful researcher should be able to distinguish between ethical and unethical uses of information and understand the legal issues arising from discovery, use, and application of information.[25]

¶11 The third type of norm, power allocation, refers to the distribution of power and authority within the organization.[26] Power may be allocated within the law school structure in which the library exists or within the larger university structure in which the law school and the law library function.[27] Standards related to this norm are used to protect the law school and the law library and should allow the law school to carry out its accreditation mission of "providing a sound legal education" that facilitates "entry into the profession."[28] Several library standards address the relationship of the librarian with other stakeholders in the law school and the university: Standard 602 (Administration), Standard 603 (Director of the Law Library), Standard 604 (Personnel), and some provisions in Standard 606 (Collection).

¶12 All these standards address the distribution of power and authority, but do they ensure the ability of the law school to provide a sound legal education, or do they instead create unnecessary costs and reflect internal scrimmages and turf wars that serve to protect vested interests while increasing the costs of legal education? Does centralizing control of the law library within the law school make sense in a digital world?[29] Does the need to ensure that the law school library is supporting the provision of a sound legal education require law school control of the library, or are the standards cited above being used to further ancillary purposes outside the stated goals of law school accreditation?

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25. *Archived: AALL Legal Research Competencies and Standards for Law Student Information Literacy*, *supra* note 23.

26. Conison, *supra* note 13, at 1529.

27. *See* ABA STANDARDS, *supra* note 2, at 12 (discussing Standard 210, the Law School University Relationship).

28. *Id.* at ix.

29. *See* James G. Milles, *Leaky Boundaries and the Decline of the Autonomous Law School Library*, 96 LAW LIBR. J. 387, 2004 LAW. LIBR. J. 25 (reviewing the history of law library autonomy).

¶13 The fourth type of norm, self-determination, "govern[s] an institution's determination of its own mission, values, goals, and measures of success."[30] Some of the changes in the library standards require the library to engage in regular planning and assessment.[31] The revised Standard 606(a) requires law libraries to maintain a core collection, but 606(b) allows them to tailor the rest of the collection to meet the needs of the law school.[32] Finally, consumer-protection norms reflect law school standards that protect consumers. Standard 509 (Basic Consumer Protection) is an example of one such standard and previously included "library resources."[33]

¶14 In examining the SRC's revised standards that affect the library approved by the Council for Notice and Comment, and concurred in by the ABA House of Delegates, the SRC seemed to be tinkering within the existing framework of the standards when a more fundamental review might have been appropriate, given the changing nature of law libraries and legal information. Dean Donald J. Polden,[34] who chaired the SRC when the review started, noted that one of the most significant issues facing the SRC concerned the existing library standards' requirement of a core collection:

> The Standards currently require a law school library to provide a core collection of essential materials and to make it available for access and use through multiple and appropriate formats. However, some critics argue that the requirement of a uniform core collection is costly and unnecessary at a time when there are so many ways of accessing the core store of legal knowledge. Moreover, they argue that schools should have greater flexibility in making legal information available to their users. On the other hand, proponents of the current requirements argue that the body of stored knowledge in modern American law school libraries is the envy of many other countries' programs of legal education and that the law libraries should continue to maintain a common collection of material and information.[35]

¶15 Understanding the underlying norms that the standards address in the accreditation process and charting the previous language of the standards provides an opportunity to discuss the changes in the library standards.

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30. Conison, *supra* note 13, at 1531.

31. For example, Proposed Revision 601(a)(3) states that a law school should maintain a library that "working with the dean and faculty, engages in a regular planning and assessment process, including written assessment of the effectiveness of the library in achieving its mission and realizing its established goals." Am. Bar Ass'n Section of Legal Education and Admissions to the Bar Standards Review Committee, *Chapter 6—Library and Information Resources Clean Copy—Draft* (Nov. 21, 2012), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/december_2012_council_meeting/2012_december_chapter6_draft_clean_nov.doc [hereinafter *Chapter 6 Clean Copy—Draft* (Nov. 21, 2012)].

32. ABA STANDARDS, *supra* note 2, at 45 (discussing Standard 606(a)).

33. *Id.* at 39 (discussing standard 509(b)(6)).

34. Donald J. Polden has been dean of the Santa Clara School of Law since 2003 and was chair of the SRC from 2009 to 2012.

35. Donald J. Polden, *Comprehensive Review of American Bar Association Law School Accreditation Policies and Procedures: A Summary*, B. EXAMINER, Feb. 2010, at 43–43.

Review of the Revised Standards

Standard 601. General Provisions

Previous Language	Revised Standards, August 2014
~~(a)~~ A law school shall maintain a law library ~~that is an active and responsive force in the educational life of the law school. A law library's effective support of the school's teaching, scholarship, research and service programs requires a~~ direct, ~~continuing and~~ informed relationship with the faculty, students and administration of the law school.	(a) A law school shall maintain a law library **that:** **(1) provides support through expertise, resources and services adequate to enable the law school to carry out its program of legal education, accomplish its mission, and support scholarship and research;** **(2) develops and maintains** a direct, informed, and **responsive** relationship with the faculty, students, and administration of the law school; **(3) working with the dean and faculty, engages in a regular planning and assessment process, including written assessment of the effectiveness of the library in achieving its mission and realizing its established goals; and** **(4) remains informed on and implements, as appropriate, technological and other developments affecting the library's support for the law school's program of legal education.**
(b) A law ~~library shall have~~ sufficient financial resources ~~to support the law school's teaching, scholarship, research, and service programs. These resources shall be supplied on a~~ consistent basis.	(b) A law **school shall provide on a consistent basis** sufficient financial resources **to the law library to enable it to fulfill its responsibilities of support to the law school and realize its established goals.**
(c) ~~A law school shall keep its library abreast of contemporary technology and adopt it when appropriate.~~	

¶16 The existing vague aspirational language that a library should be an "active and responsive force in the educational life of the law school" in the General Provisions section of the library standards has been changed. The revised section 601(a) clearly delineates that the law school shall maintain a law library that supports the educational mission of the law school. The SRC had a general concern with the "opaque requirement that a law library be 'an active and responsive force,' in the life of the law school."[36] Standard 601 "now clearly states four basic requirements for the library (provide support, develop a responsive relationship with users, engage in planning and assessment, and implement technology when appropriate)

36. Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar, *Explanation of Changes*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201408_explanation_changes.authcheckdam.pdf (last visited Sept. 7, 2014).

and one requirement for the law school (provide sufficient financial resources for the library to fulfill its responsibilities)."[37]

¶17 In the explanation of the revisions to Chapter 6, the SRC "focused on three primary goals: to more concretely link library performance to the mission of the law school, to require measurements that are outcomes-related and focus on quality instead of quantity, and to alter the Standards to reflect the ways that legal information can be accessed or acquired in the 21st century."[38] These goals reflect an attempt to provide process-quality norms that "are based on a view of law school as an educational process and on a strategy for achieving quality-related purposes."[39] The new language attempts to delineate what a library must do, but the rest of the library standards do not provide outcomes-related measurements that provide meaningful, quality information about the library's performance as it relates to the mission of the law school.

¶18 Standard 606(a)(1) requires a reviewer to determine that a law school maintains a law library that provides adequate "expertise, resources and services . . . to enable the law school to carry out its program of legal education, accomplish its mission, and support scholarship and research." This new language creates ambiguity. How do you measure "adequate"? Does "adequate" imply that the library must provide sufficient expertise, resources and services or does it mean that if the library's expertise, resources and services are barely satisfactory, that they are "adequate"?[40]

¶19 The revised standard speaks of expertise. What is meant by "expertise"? Is this simply a matter of educational credentials? Is the standard met if the librarian has an M.L.S.? An M.L.S. and a J.D.? Can one acquire expertise through experience?[41] Does "expertise" require more than educational credentials or years of experience? If more, then what is required? Alvin Goldman provides a definition of what it means to be an expert:

> [W]e can say that an expert (in the strong sense) in domain D is someone who possesses an extensive fund of knowledge (true belief) and a set of skills or methods for apt and successful deployment of this knowledge to new questions in the domain. Anyone purporting to be a (cognitive) expert in a given domain will claim to have such a fund and set of methods, and will claim to have true answers to the question(s) under dispute because he has applied his fund and his methods to the question(s).[42]

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37. *Id.*

38. *Id.*

39. Conison, *supra* note 13, at 1528.

40. The *Oxford English Dictionary* defines "adequate" as "[f]ully satisfying what is required; quite sufficient, suitable, or acceptable in quality or quantity" or "[s]atisfactory, but worthy of no stronger praise or recommendation; barely reaching an acceptable standard; just good enough." OXFORD ENGLISH DICTIONARY, http://www.oed.com/view/Entry/2299?rskey=vawl9a&result=1&isAdvanced=false#eid (last visited Sept. 16, 2014); BLACK'S LAW DICTIONARY 42 (8th ed. 2004) defines it as "legally sufficient."

41. *See* K. Anders Ericsson, *The Influence of Experience and Deliberate Practice on the Development of Superior Expert Performance, in* THE CAMBRIDGE HANDBOOK OF EXPERTISE AND EXPERT PERFORMANCE 685, 689, 691 (K. Anders Ericsson et al. eds., 2006). As Erickson states, "Finally, the most compelling evidence for the role of vast experience in expertise comes from investigators who have shown that, even for the most talented individuals, ten years of experience in a domain (ten-year rule) is necessary to become an expert." At the same time: "many individuals seem satisfied in reaching a merely acceptable level of performance . . . . Once an acceptable level has been reached, they need only to maintain a stable performance, and often do so with minimal effort for years and even decades. For reasons such as these, the length of experience has been frequently found to be a weak correlate of job performance beyond the first two years."

42. Alvin I. Goldman, *Experts: Which Ones Should You Trust?*, 63 PHIL. & PHENOMENOLOGICAL RES. 85, 92 (2001).

Thus an expert must know a lot about something and be able to apply that knowledge to new situations. However, this would not seem to be what the standard contemplates since, as Jake Carlson and Ruth Kneale explain, librarians "demonstrate their expertise as information specialists" by "apply[ing] this expertise in ways that will have a direct and deep impact on the research, teaching or other work being done."[43] If this is the expertise contemplated by the standard, then it will be necessary to demonstrate to the accreditors that the library staff is having a direct and deep impact on the "program of legal education."

¶20 Requiring evidence that the library provides adequate resources and services that "enable" the law school to carry out the program of legal education, accomplish the mission of the law school, and support the scholarship and research at the law school is a broad directive. "Enable" contemplates that the law library has the ability or power to allow the law school to carry out the program of legal education and accomplish the law's school's mission.[44]

¶21 That a law school library enables a law school to accomplish its mission seems to put the cart before the horse. "Since academic law libraries exist to support the mission of the law school,"[45] the law library's mission should focus on the provision of information resources, teaching, instruction, and research service that assist the law school in achieving its mission.[46] The library may be able to show the resources it provides and the activities it engages in that assist the law school in achieving its mission. It will be more difficult to measure how effective the library is in doing this.

¶22 The law school should maintain a law library that supports scholarship and research. Proof that the library meets this standard may be shown by a list of the programs and resources the library has created to support the faculty and students engaged in scholarship, and surveys of the faculty and students that document how the library is effectively supporting the scholarship and research that they are engaged in. Each academic law library is free to be creative in supporting the scholarship and research being conducted within the law school. This may mean hiring librarians with subject matter skills beyond their library degree. Providing librarians with *Bluebook* expertise or with scholarly writing or editing skills to support the faculty in completing their scholarship may also increase faculty productivity.

¶23 Efforts to provide "different ways of decentralizing the delivery of services, by embedding librarians in customer groups"[47] and creating opportunities to work on projects with the faculty and students may all demonstrate law library support.

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43. Jake Carlson & Ruth Kneale, *Embedded Librarianship in the Research Context*, 72 C. RES. LIBR. NEWS, 167, 167 (2011).

44. *Black's Law Dictionary* defines "enable" as "[t]o give power to do something; to make able." BLACK'S LAW DICTIONARY 448 (spec. abr. 8th ed. 2005).

45. Virginia J. Kelsh, *The Law Library Mission Statement*, 97 LAW LIBR. J. 323, 324, 2005 LAW LIBR. J. 18, ¶4.

46. For examples of law school mission statements, see Gordon T. Butler, *The Law School Mission Statement: A Survival Guide for the Twenty-First Century*, 50 J. LEGAL EDUC. 240 (2000).

47. David Shumaker & Laura Ann Tyler, *Embedded Library Services: An Initial Inquiry into Practices for Their Development, Management, and Delivery, A Contributed Paper for the Special Libraries Association Annual Conference, Denver Colorado* 1 (June 6, 2007), *available at* http://slablogger.typepad.com/paper_shumaker.doc.

The library must develop programs and support mechanisms if the library is to demonstrate it is supporting the scholarly and research needs of the law school.

¶24 Standard 601 focuses on faculty research and scholarship, which is easier to measure than teaching effectiveness.[48] The standards should be designed to allow for a variety of library structures and a variety of librarian skill sets that support the law school's program of legal education and mission. For example, at a school that uses technology to support teaching, librarians with technological skills and training to support and assist may be better equipped to assist than librarians with other skill sets. A school providing writing across the curriculum skills may look for these skill sets from the library to help train and support students outside the classroom. This may well require sustained or increased budgets to attract and retain highly qualified professionals who can do this work.[49]

¶25 Revised Standard 601(a)(2) requires that a law library "develop[] and maintain[] a direct, informed, and responsive relationship with the faculty, students, and administration of the law school."[50] The change in language is subtle but important. Originally, 601(a) tied "effective support of the school's teaching, scholarship, research, and service programs" to the "direct, continuing and informed relationships" with the faculty, students, and administration of the law school.[51] The revised language recognizes that a law library is an organic institution that changes over time; as it changes, new programs and services should be established to further a direct, informed, and responsive relationship with law school stakeholders. Accordingly, this provision requires the library to prove it has developed and maintains a direct, informed, and responsive relationship with the law school stakeholders. This is an outcome standard and provides an opportunity for the library to develop measurable evaluations such as surveys, focus groups, and statistical reporting of the outreach activities and services it offers to faculty, administrators, and students. The standard also challenges the library to work within the academic law library community to expand beyond the input measurements used to measure a print library[52] and

48. "Besides a lack of clear consensus on what an effective teacher is and does—or perhaps because of it—there is not a generally agreed-upon method for evaluating teacher effectiveness." LAURA GOE, COURTNEY BELL & OLIVIA LITTLE, NAT'L COMPREHENSIVE CTR. FOR TEACHER EFFECTIVENESS, APPROACHES TO EVALUATING TEACHER EFFECTIVENESS: A RESEARCH SYNTHESIS 2 (June 2008), *available at* http://files.eric.ed.gov/fulltext/ED521228.pdf; *see also* DEBORAH L. RHODE, IN PURSUIT OF KNOWLEDGE: SCHOLARS, STATUS, AND ACADEMIC CULTURE (2006).

49. *See* Darla W. Jackson, *Empirical Legal Research: The Next Big Thing for Law Librarians?*, 18 MAALL Markings 4 (2008), *available at* http://works.bepress.com/cgi/viewcontent.cgi?article=1040&context=darla_jackson.

50. Memorandum from Kent D. Syverud & Barry A. Currier, Am. Bar. Ass'n Section of Legal Education & Admissions to the Bar, Comprehensive Review of the ABA Standards for Approval of Law School Matters for Notice and Comment, Proposed Revision 601(a)(2), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20130222_notice_and_comment_standards_chs_6_7.authcheckdam.pdf.

51. "A law library's effective support of the school's teaching, scholarship, research and service programs requires a direct, continuing and informed relationship with the faculty, students and administration of the law school." ABA STANDARDS, *supra* note 2, at 43 (discussing Standard 601(a)).

52. Specifically, Sarah Hooke Lee suggests that

> [t]he ABA accreditation system, incorporating the print paradigm, serves at least four different functions. First, the accreditation standards are used for credentialing a law school, authorizing its graduates to sit for bar exams in the U.S. Second, a law school library uses these statistics for

develop ways to provide comparative analysis or make use of existing library assessment instruments to provide meaningful qualitative measurements.[53]

¶26 Finally, this standard also provides an opportunity for libraries to meet the mission and needs of their institutions in unique and different ways. How libraries develop and maintain a direct, informed, and responsive relationship to faculty, students, and administration provides an opportunity for academic law libraries to differentiate themselves and become more than cookie-cutter versions of each other.[54]

¶27 Revised Standard 606(a)(3) requires the library to engage in regular planning and assessment. The SRC drafted a proposal Planning and Assessment provision to replace Standard 203 (Strategic Planning and Assessment):[55]

> Standard 206. Regular Planning and Assessment
>
> The (dean and faculty) (law school) shall engage in regular planning and assessment process, including ongoing written assessment of
>
> (i) the law school's effectiveness in achieving its mission and realizing its established goals.
>
> (ii) the financial and other resources expected to be available to the law school;
>
> (iii) trends in applications to law schools generally;

> internal assessment in self-studies, budget projections, collection planning, buying decisions, and for other strategic planning purposes, including preparing for future ABA inspections. Third, the ABA statistics are used for external evaluation and comparative purposes, including determining the school's ranking by *U.S. News* and other law school directories. . . . Finally, the ABA quality standards and assessment techniques derived from them have implicitly protected the multiple core missions of academic law libraries. Volume-count-based evaluations encourage a library to actively collect and preserve many authoritative print resources, and to own tangible resources that are available to provide wide, equitable access to legal information.

Sarah Hooke Lee, *Preserving Our Heritage: Protecting Law Library Core Missions Through Updated Library Quality Assessment Standards*, 100 LAW LIBR. J. 9, 14, 2008 LAW LIBR. J. ¶22.

53. Currently the Law School Survey of Student Engagement (LSSSE) has one question that measures library assistance: "In your experience at your law school, how satisfied are you with each of these areas?" *See* Bill Henderson, *Benchmarking Law School Performance: Why Law Professors and Deans Should Care*, EMPIRICAL LEGAL STUDIES BLOG (Jan. 24, 2008), http://www.elsblog.org/the_empirical_legal_studi/2008/01/benchmarking-la.html. Robert Detwiler observes that "[s]ince many law students spend an extraordinary amount of time in school and in professional practice conducting legal research, the quality and quantity of exposure to law librarians and their school's library is a prominent part of the law school experience. The LSSSE staff should investigate the feasibility of adding questions on law libraries and law librarians to the annual survey." Robert R. Detwiler, Assessing Factors Influencing Student Academic Success in Law School, 91 (Dec. 11, 2011) (unpublished D. Phil. Dissertation, University of Toledo), *available at* https://etd.ohiolink.edu/ap/0?0:APPLICATION_PROCESS%3DDOWNLOAD_ETD_SUB_DOC_ACCNUM:::F1501_ID:toledo1318730664%2Cinline.

54. American academic law libraries, in striving to meet the requirements of the standards, became cookie-cutter versions of each other, relying too heavily on book selection aids to build their collections:

> Book selection aides include *Law Books in Print*, begun in 1957and continuing bound volumes and paper supplements. . . . As a further aid to book selection the *AALS* in 1967 sponsored a series of 48 pamphlets of *Law Books Recommended for Libraries* in subject areas from Admiralty to Water Law and Foreign and International Law Supplements were issued in 1974. . . . Another aid in book selection[,] the *National Legal Bibliography*, by Peter D. Ward and Margaret A. Goldblatt, was a monthly compilation of current cataloguing of several dozen law libraries.

Betty W. Taylor, *Law Library: Collections*, *in* WORLD ENCYCLOPEDIA OF LIBRARY AND INFORMATION SERVICES 438, 442 (Robert Wedgeworth ed., 3d ed. 1993).

55. ABA STANDARDS, *supra* note 2, at 10 (discussing Standard 203).

> (iv) trends in applications, matriculants, attrition, graduation bar passage and job placement for the law school; and,
>
> (v) identification of risks to the educational program and viability of the law school and the manner of addressing the risks.
>
> As part of this process, the law school will include regular ongoing assessment of its institutional effectiveness as required by Standard 305[56] and regular, ongoing assessment of its effectiveness in carrying out the planning for the law library provided in Standard 601 and Interpretation 601-2 [sic].
>
> When appropriate in light of effectiveness, the school shall revise its plans, goals, or mission.[57]

¶28 The SRC did not move forward with this proposal, however; instead it deleted Standard 203 and replaced it with Standard 315 (Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods).[58]

¶29 Standard 601(a)(3) requires the library to engage in regular planning and assessment. It would make more sense for the standards to require a general planning and assessment process that all law school departments engage in. It would be appropriate to view "ongoing assessment of the law school's effectiveness in achieving its mission and realizing established goals" through ongoing assessment of all law school departments. If there is a need to specifically identify library planning, it would be a simple matter to incorporate it within a general provision that the law school shall engage in regular planning and assessment process, including ongoing written assessment. This would be broader than Standard 315, which discusses only "ongoing evaluation of the academic program, learning outcomes, and assessment methods."[59] It would be better for the SRC to require assessment of all departments of the law school—admissions, career services, or information technology—and not just the library and the program of legal education.

¶30 The ABA has historically recognized the pivotal position of the law library. In 1940 the Council of the Section on Legal Education adopted a statement of factors bearing on the approval of law schools, and section 4 specifically addressed law libraries: "It is a basic principle of legal education that the library is the heart of the

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56. In the Proposed Revisions of Chapter 3 this is now proposed Standard 307, Assessment of Learning Outcomes, and states: "A law school shall utilize a variety of formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students." *Standards Review Committee Meeting Agenda, January 18–19, 2013*, http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/jan_2013_meeting/2013_jan_src_meeting_agenda_materials.authcheckdam.pdf.

57. This is the proposed language from the *Standards Review Committee Agenda April 27–28, 2012*, https://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/april2012/20120404_april12_src_meeting_materials.pdf.

58. Proposed Standard 315 states: "The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum." Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar Standards Review Comm., *Compilation of Proposals Out for Notice and Comment—January 2014*, http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/201401_compilation_proposals_notice_comment.authcheckdam.pdf.

59. *Id.*

law school and is a most important factor in training law students and in providing faculty members with materials for research and study."[60]

¶31 The current standards still reflect what might have been true when the library was the center of the faculty's and student's law school world,[61] but that centrality is no longer the case. There is a need for a standard to holistically address assessment including the library. Revised Standard 601(a)(3) mandates a separate library planning process whereas it makes more sense to fold library planning within the law school planning process. The law library should be required to determine specific goals and responsibilities relating to the law school's educational mission and program of legal education; the law library should also be expected to show that these responsibilities and goals are being implemented as part of the law school's strategic planning. This should also be true for other law school departments.

¶32 While the new Standard 601 is a marked improvement over the former language, perhaps it is time for the SRC to consider simplifying the library standards. Adopting the language used in the Southern Association of Colleges accreditation standards (hereafter SACS), Standard 601 could be restated this way:

> (a) The law school shall provide facilities and learning/information resources that are appropriate to support its teaching, research, and service mission.[62]

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60. AM. BAR ASS'N, STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION 5–6 (1940); AM. BAR ASS'N, STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION 6 (1947); In 1957 the language was changed to "it's a basic principle of legal education that the library is the laboratory of a law school." AM. BAR ASS'N, STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION 7 (1957); AM. BAR ASS'N, STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION 8 (1969).

61. Charles Eliot, during his presidency of Harvard University, stated that "the library is the very heart of the [Law] School." *President's Report for 1872–73 in* ANNUAL REPORTS OF THE PRESIDENT AND TREASURER OF HARVARD COLLEGE 1872–73, at 17, *available at* http://pds.lib.harvard.edu/pds/view/2574320?n=2093&printThumbnails=no. The standards reflected this central role of the library in a print world. The refrain is echoed in a 1935 editorial:

> In view of the uniqueness of our judicial system and the necessity for exploring the source materials for a proper understanding of it, there should be a realization that the library is the very heart of the school, the most essential feature of a law school, and that which is necessary to give it distinction. Reference should not be made to the mere fact of its existence, nor even to the more important fact of its growth and expansion, but rather to it as an institution, including the relation in which it stands to all the affairs of the law school.

Rufus C. Harris, Editorial, 10 TUL. L. REV. 102, 105 (1935); and in 1973:

> There is a saying, much beloved by librarians, that the library is the 'heart beat' of the law school. Despite its self-serving flavor the metaphor is apt. . . . It is a mere truism to say that the library, as the depository of all these words, is thus to our profession what the laboratory is to the votaries of the more exact disciplines.

Hardy Cross Dillard, *Frances Farmer*, 63 VA. L. REV. 349, 349 (1977). This view is still reflected today. *See* Beatrice A. Tice, *The Academic Law Library in the 21st Century: Still the Heart of the Law School*, 1 U.C. IRVINE L. REV. 157, 159 (2011).

62. *See* SOUTHERN ASS'N OF COLLS. AND SCHOOLS, PRINCIPLES OF ACCREDITATION: FOUNDATIONS FOR QUALITY ENHANCEMENT 31 (5th ed. 2011). SACS 3.8, Libraries and Other Learning Resources, sets forth three standards that must be met:

3.8.1 The institution provides facilities and learning/information resources that are appropriate to support its teaching, research, and service mission. (*Learning/information resources*)

3.8.2 The institution ensures that users have access to regularly and timely instruction in the use of the library and other learning/information resources. (*Instruction of library use*)

3.8.3 The institution provides a sufficient number of qualified staff—with appropriate education or experiences in library and/or other learning/information resources—to accomplish the mission of the institution. (*Qualified staff*)

If this language was adopted the revisions could be simplified and the law school could address financial resources and current technology in Standard 206.

¶33 The library is just one of several administrative departments in a law school but is the only one singled out to provide assessment. The assessment cycle has four stages: (1) planning assessment, (2) conducting assessment, (3) reviewing assessment, and (4) implementing actions.[63] Closing the loop on assessment requires collaborative review of the assessment results and consideration of the best alternatives for action plans.[64] The law library should be part of the institutional assessment of the law school along with other law school departments.

Interpretation ~~601-1~~ 606-4

Previous Language **Interpretation 601-1**	Revised Standards, August 2014 **Interpretation 606-4**
Cooperative agreements may be considered when determining whether faculty and students have efficient and effective access to the resources necessary to ~~meet~~ the law school's ~~educational needs~~. Standard 601 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region, or by providing electronic access.	*Cooperative agreements may be considered when determining whether faculty and students have efficient and effective access to the resources necessary to **enable** the law **school to carry out its program of legal education and accomplish its mission.** Standard 601 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region.*

See Discussion under Interpretation 606-4.

Standard 602. Administration

Previous Language	Revised Standards, August 2014
(a) A law school shall have sufficient administrative autonomy to direct the growth and development of the law library and to control the use of its resources.	**(a)** A law school shall have sufficient administrative autonomy to direct the growth and development of the law library and to control the use of its resources.
(b) The ~~dean and the~~ director of the law library, in consultation with the faculty ~~of the law school~~, shall determine library policy.	**(b)** The director of the law library **and the dean,** in consultation with the faculty, shall determine library policy.
(c) The director of the law library and the dean are responsible for the selection and retention of personnel, the provision of library services, and collection development and maintenance.	**(c)** The director of the law library and the dean are responsible for the selection and retention of personnel, the provision of library services, and collection development and maintenance.
(d) The budget for the law library ~~should~~ be determined as part of, and administered in the same manner as, the law school budget.	**(d)** The budget for the law library **shall** be determined as part of, and administered in the same manner as, the law school budget.

63. *See* MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD HESS, TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 136 (2009).

64. *See generally* Jerry R. Foxhaven, *Beyond Grading: Assessing Student Readiness to Practice Law*, 16 CLINICAL L. REV. 335 (2010); Lisa A. Kloppenberg, *The Balancing Act: Leadership in Strategic Planning*, 36 U. TOL. L. REV. 103 (2004); David E. Van Zandt, *The Northwestern Law Approach to Strategic Planning*, 31 U. TOL. L. REV. 761 (2000).

¶34 Standard 602 is a power-allocation norm; 602(a) requires that the law school demonstrate it has "sufficient administrative autonomy" to (1) direct and control the growth of the law library and (2) control the use of the library's resources. Standard 602's remaining subsections provide some guidance on how to determine whether there is autonomy. Subsection (b) requires that the law school determine library policies; subsection (c) that selection and retention of library staff, provision of library services, collection development and maintenance of the collection be under control of the law school; and subsection (d) that the library budget be part of the law school budgeting process and under control of the law school.

¶35 The changes to the standard are small but significant. Standard 602(b) changes the order of the dean and the library director, specifically, "[t]he dean and the director of the law library" is changed to "[t]he director of the law library and the dean." This change ensures that the library director determines library policies in consultation with the dean and the faculty, not that the dean in consultation with the library director and the faculty determines law library policies.

¶36 The change in subsection (d) replacing "should" with "shall" mandates that the law library's budget "be determined as part of, and administered in the same manner as, the law school budget." SRC's explanation of changes says these changes are only "for greater clarity."[65] I agree that the change clarifies how the library budget is determined. "When used in statutes, contracts, or the like, the word 'shall' is generally imperative or mandatory."[66] In contrast, "'[s]hould' generally denotes discretion and should not be construed as "shall."[67] This is more than just a minor change.

¶37 The change to the standard demonstrates what Conison defines as a "power-allocation norm" that allows the law school to "promote core goals or values while partially or wholly shielded from adverse action by other persons or groups that might seek to advance contrary purposes or values."[68] The shift from a "should" to "shall" mandates that the law library budget be part of the law school budget and under the control of the law school, and protects the law school from encroachments from its parent institution. The dean and faculty control law library spending as part of the law school's overall budget. This change allows the law school in a time of change to reallocate funds from the library or to the library,

65. *Chapter 6—Library and Information Resources*, *supra* note 6.

66. *See* Indep. School Dist. No. 561 Pennington and Marshall Cntys. v. Indep. School Dist. No. 35 & Indep. School Dist. No. 438 Beltrami and Marshall Cntys., 170 N.W.2d 433, 440 (Minn. 1969); *see also* People v. O'Rourke, 13 P.2d 989, 992 (Cal. Ct. App. 1932) (holding that "[i]n common, or ordinary parlance, and in its ordinary signification, the term 'shall' is a word of command, and one which has always, or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning, and it is generally imperative or mandatory. It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears; but the context ought to be very strongly persuasive before it is softened into a mere permission").

67. NORMAN SINGER & J.D. SHAMBIE SINGER, 3 SUTHERLAND STATUTORY CONSTRUCTION § 57:3 (7th ed. 2007).

68. Conison, *supra* note 13, at 1529.

free from competing interests. The struggle for reallocation of scarce resources remains with the law school and not the main university or the university library system. What is unanswered in this change is whether this power shift is necessary and meets goals the accrediting body should be supporting. As libraries undergo change because of the digital nature of information, does this change provide law schools and their parent institutions with the flexibility they need? Or does it increase the cost of legal education while not benefiting the goal of law school accreditation—assuring education quality, meeting the basic requirements and attributes of a fundamental and sound program of legal education, and holding law schools accountable for the funds taken from students?

¶38 With the development of legal education in the late nineteenth and early twentieth century, the position of the law library became a central issue because it was such a core part of learning the law. The law library was seen as the laboratory of the law school, but should it report to the central university or was it important for the law library to be under the direction of the law school? The current standard reflects the view that the law library is central to the operation of the law school and that the law school should control the library and the library budget. Is this still the case in 2014?[69]

¶39 The purpose of accreditation is reflected in U.S. Department of Education regulations.[70] Title 34, section 602.16 of the *Code of Federal Regulations* states that an accrediting agency must demonstrate that its standards "are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or program that it accredits."[71] Section 602 further specifies how an agency meets this requirement, including the publication and enforcement of accreditation standards in several areas,[72] but none of these are specific to the law library. In a world where primary and secondary legal

69. Tice, *supra* note 61.

70. 34 C.F.R. § 602 (2013).

71. 34 C.F.R. § 602.16(a) (2013).

72. 34 C.F.R. § 602.16(a)(1) (2013), which states:

The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

(i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including as appropriate, consideration of State licensing examinations, course completion, and job placement rates.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

(v) Fiscal and administrative capacity as appropriate to the specified scale of operation.

(vi) Student support services.

(vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(viii) Measures of program length and objectives of the degrees or credentials offered.

(ix) Record of student complaints received by or available to, the agency.

(x) Record of compliance with the institution's program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide the agency.

information is available in digital format, it is necessary to show that students have the legal information literacy skills to complete curricular requirements and meet state licensing requirements and the requisite legal research skills expected of a first-year practicing attorney. The library will also need to demonstrate how faculty needs may be met in ways other than by the presence of a physical library within a law school. Do such requirements make sense today, or are these requirements relics of a time when the only way to train law students was through the legal laboratory of the law library?

¶40 More likely, the library as the heart of the law school has reflected the physical manifestation as a *place*, a place to congregate, socialize, and study. With the development of the casebook and the Harvard casebook method,[73] law schools began building large libraries to meet the research needs of their faculty and to provide law review editors with the sources to cite check. These collections, however, were not used by a majority of law students. It is a sad commentary on law libraries that casebooks were encouraged "mainly in order to lessen competition amongst law students for use of the reports in law libraries and the wear and tear on library copies of reports"[74] and "[u]nquestionably conditions are radically wrong in law schools where the libraries are merely convenient places in which students may read their casebooks rather than [consulting] 'extremely important teaching aids.'"[75] Often the student learned research skills later, when they entered the practice. This truth was recognized early on:

> Law schools, rightly or wrongly, do not attempt to inculcate legal art, the ability to execute legal operations, the power to do legal business, but leave that to be acquired in the office. . . . On the very day that the graduate leaves the school and enters an office (besides being commissioned to check his chief's trunk or buy theater tickets for his wife), he will probably be requested to look up the law on some technical and undecided point in his own state. There is nothing in his case-books or notes to help him, and he is turned loose in the maze of codes, statute books, compilations and revisions of statutes annotated, of digests, abridgments, treatises, and encyclopedias. After disheartening hours of labor, struggle, and despondence he finds very little or nothing.[76]

Standards that required law libraries to warehouse library collections within the law school make even less sense today. The new emphasis on cross-disciplinary scholarship moves faculty research from the law library to the main university library. Dean Erwin Chemerinsky described the role he envisioned for the new law school at the University of California, Irvine: "My central vision for the law school is that it must be oriented towards preparing law students for practice at the high-

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73. *See* Edwin W. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL EDUC. 1, 8 (1951); Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991); Gary D. Finley, *Langdell and the Leviathan: Improving the First-Year Law School Curriculum by Incorporating Moby-Dick*, 97 CORNELL L. REV. 159, 162 (2011).

74. H. Tarlo, *Cases and Materials on Real Property*, 9 SYDNEY L. REV. 715, 716 (1980–82) (book review).

75. William R. Roalfe, *Relation of the Library to Legal Education*, 31 LAW LIBR. J. 141, 149 (1938).

76. Henry Winthrop Ballantine, *Adapting the Case-Book to the Needs of Professional Training*, 2 AM. L. SCH. REV. 135, 136 (1908). *See* Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 66–69 (2009) (discussing the failure of law schools to train students for the profession).

est levels of the profession. This involves both a heavy emphasis on skills and practical experience, and at the same time, a strong interdisciplinary focus."[77]

¶41 The interdisciplinary nature of law and the availability of the core collection in electronic format further alter the nature and role of the law library. Are the needs of the law school faculty and students served by the continued development of a large stand-alone library collection? In a world being reshaped to provide the practice skills needed by law students, where faculty are moving to more interdisciplinary research, requiring skill sets of librarians outside the traditional dual-degreed law librarians (J.D. and a library science degree), there needs to be a more flexible approach to the nature and structure of the law library within the university.

¶42 Shouldn't the standards be flexible and allow for divergent models to develop? The SRC should be grappling with this difficult question before tweaking the existing language to give less discretion to parent institutions. A law school should differentiate itself based on the institutional mission of the university. A university with strong political science or government departments might be heavy users of legal materials; moving those materials within the main library or providing digital access to the information might better foster interdisciplinary research with the law school.

¶43 Other law schools may see their mission as being centers of teaching excellence; they might want better access to materials traditionally held in the education library and the opportunity to work collaboratively with information technologists and education faculty to improve legal teaching and pedagogy. These radically different law schools are more likely to develop with a more flexible approach than the prescriptive language of Standard 602.

¶44 Faculty and students at a law school focused on teaching students to be effective lawyers in solo practice and small firms will have much different research needs than schools that are interested in interdisciplinary intersections of the law and other subjects. As the academy grapples with ways to cut the cost of legal education, it may be time for the Section on Legal Education to undertake a cost–benefit analysis of the standards to see if there are ways to efficiently cut the cost of legal education while preserving the goals of accreditation. Does control of the law library and the law library budget support, foster, or achieve a sound program of legal education and prepare students to have the core competencies that a first-year associate needs? The SRC was charged with reviewing the standards to ensure they meet the objective of providing a sound program of legal education, preparing students "to become effective members of the legal profession."[78] There may be a need to include some type of economic analysis since students with large debt loads may not be able to become effective members of the profession: "In 2010, only 4 law

77. *Interview with Dean Erwin Chemerinsky, University of California Irvine, School of Law*, TOP-LAW-SCHOOLS.COM (June 2009), http://www.top-law-schools.com/erwin-chemerinsky-interview.html.

78. The focus of the review, as directed by the Council in the Memorandum to Deans in 2008, was on "whether the Standards are appropriate and accomplishing their objective of assuring a sound program of legal education that will prepare law school graduates to become effective members of the legal profession." Hertz, Polden & Askew, *supra* note 1.

schools had graduates with average debt in excess of $135,000; in 2011, 17 law schools did. This past year 26 law schools surpassed this amount."[79] Before adopting these standards, an economic cost–benefit analysis might provide insight into whether requiring all academic law libraries to build these common collections of stored knowledge[80] furthers the goals of accreditation or serves as a barrier to accreditation.[81]

¶45 As law schools redefine their mission and the skill sets that graduates will need, they may find that a library's resources, expertise, and even the location of the library collection will be dramatically different from what has been the norm since Charles Eliot's assertion that the law library is the heart of the law school.[82] Today the law library warehouses books while students sit at tables next to these books and access the same information from their laptops, tablets, and smartphones.

¶46 Law librarians must think about freeing themselves from the traditional brick-and-mortar library, the library information desk, and librarian offices. Using "roving librarians"[83] who are freed from their offices and the reference desk to roam the library; librarians with iPads, tablets, and smartphones unfettered from the physical library to venture out where the students and faculty are[84]—cafeterias, student commons, student dorms, and faculty corridors; and embedded librarians who are physically placed with their core users outside the library[85] because "[v]ery often the library is no longer the place to visit but a resource to be consulted."[86] It is necessary for more flexible standards to provide opportunities to think outside the box and the traditional idea that the library is the heart of the law school.

79. Brian Tamanaha, *The Law Graduate Debt Disaster Goes Critical*, BALKANIZATION BLOG (Mar. 12, 2013), http://balkin.blogspot.com/2013/03/the-law-graduate-debt-disaster-goes.html.

80. Polden, *supra* note 35, at 48.

81. See Sarah Hooke Lee, *A.B.A. Standards and Law School Libraries*, 2 MASS. SCH. L L. REV. 65 (1994).

82. *President's Report for 1872–73*, *supra* note 61.

83. *See Mentor Group Training, Roving Librarians; the M.A.P.H.A.T. Song and Video*, YOUTUBE (Mar. 16, 2009), http://www.youtube.com/watch?v=rFhmSDIACew; Lisa Lavoie, *Roving Librarians: Taking It to the Streets*, 15 URB. LIBR. J. 78 (2008); Katherine Ott & Sueling Chhiu, *The First Wave: Floating in the Florida State University Strozier Library*, 108 NEW LIBR. WORLD 165 (2007).

84. *See* Meg Upjohn & Deborah Fitchett, *Library on Location: Taking Library Services Outside the Library Walls*, UC RESEARCH REPOSITORY (2008), http://hdl.handle.net/10092/2516.

85. Judith Siess, *Embedded Librarian: Our Future or Our Fear?* A Paper Presented at the Annual Conference Canadian Association of Law Libraries, Halifax, NS, Canada (May 27, 2009), http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CDUQFjAA&url=http%3A%2F%2Fwww.callacbd.ca%2Fconferences%2F2009%2FSiessPaper.doc&ei=coxEUbjyJuXi4AP3kIGgBg&usg=AFQjCNEwOwZSqJwWpusFpT344sGUHkKPwQ&sig2=stwtCUoLv6JnH90M7fOWZg&bvm=bv.43828540,d.dmg.

86. Deborah Lines Andersen, *Information, Mediation, and Users: A View of the Internet's Evolving Relationship to Information and Library Science*, 10 INTERFACE: J. EDUC. COMMUNITY & VALUES 4 (Nov. 2, 2010), http://commons.pacificu.edu/cgi/viewcontent.cgi?article=1063&context=inter10.

Interpretation 602-1

Previous Language	Revised Standards, August 2014
This Standard ~~recognizes that substantial operating autonomy rests with the dean, the director of the law library and the faculty of a law school with regard to the operation of the law school library. The Standards require that decisions that materially affect the law library be enlightened by the needs of the law school educational program. This~~ envisions law library participation in university library decisions that may affect the law library. While ~~the preferred structure for administration of a law school library is one of law school administration~~, a law ~~school~~ library may be administered as part of a ~~general~~ university library system if the dean, the director of the law library, and faculty are responsible for the determination of basic law library policies.	*This Standard envisions law library participation in university library decisions that may affect the law library. While **it is preferred that the law school administer the law library,** a law library may be administered as part of a university library system if the dean, the director of the law library, and faculty **of the law school** are responsible for the determination of basic law library policies, **priorities and funding requests.***

¶47 Interpretation 602-1 prefers that the law library be under the purview of the law school, but it recognizes that a law library may be administered by the main university library system if the law school is "responsible for the determination of basic law library policies, priorities and funding requests." The language strengthens the law school's role in administering the law library beyond library policies by including "priorities and funding requests." The interpretation reflects a power shift to the law school when the preferred law library model is usurped by the parent institution. If a decision is made to have the law library under the main university library system, the new language makes it clear that the law library's budgeting process and its requests for funding must be under the control of the law school. Maintaining financial control of the library is expanded with the changes to the interpretation. While the explanation from the SRC is that the standard is only being "rewritten for greater clarity,"[87] it would appear that the standard is being changed to ensure greater control of law school funds.

¶48 With the change of "should" to "shall" in Standard 602(2), "[t]he budget for the law library **shall** be determined as part of, and administered in the same manner as, the law school budget," the interpretation reinforces the mandatory language of the standard. The change may reflect recent concerns about the autonomy of academic law libraries or it may be just protecting turf. What is meant by "autonomy"?[88] Is it "nothing more and nothing less than placement of the law library under the law school dean"?[89]

¶49 This change maintains control of the law library budget by the law school. At any law school where the general university library administers the law library, the law library budget must be part of the law school budgeting process and subject to law school approval. The committee might have been more honest by including the provision as a subsection of Standard 602:

87. *See Chapter 6—Library and Information Resources, supra* note 6.

88. Milles, *supra* note 29.

89. James F. Bailey, III, *The Autonomous Law School Library: What It Can Mean to You*, 68 LAW LIBR. J. 274, 276 (1975).

(a) While *it is preferred that the law school administer the law library,* a law library may be administered as part of a university library system if the dean, the director of the law library, and faculty *of the law school* are responsible for the determination of basic law library policies, *priorities, and funding requests.*

Interpretation 602-1 is more of a standard than an interpretation because of its mandatory nature—it requires that the dean, the law library director, and the faculty determine "basic" policies, priorities, and funding requests for the law library. It may not be clear whether a policy, priority, or funding request is "basic."

Standard 603. Director of the Law Library

Previous Language	Revised Standards, August 2014
(a) A ~~law library shall be administered by~~ a full-time director whose principal ~~responsibility is the management of~~ the law library.	(a) **A law school shall have** a full-time director **of the law library** whose principle **responsibilities are managing** the law library **and providing information resources in appropriate formats to faculty and students.**
(b) The selection and retention of the director of the law library shall be determined by the law school.	(b) The selection and retention of the director of the law library shall be determined by the law school.
(c) 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.	(c) A director of a law library **shall have appropriate academic qualifications** and shall have knowledge of and experience in library administration **sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards.**
~~(d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.~~	**(d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.**

¶50 The changes to Standard 603[90] are significant. The previous language of 603(c) at least provides that the director "should" have a law degree and a library or information science degree. The revised language talks only about "appropriate academic qualifications and experience in library administration." This is also a power-allocation norm between the law school and the law library. Its effect will be to significantly increase the dean's power to control the library and possibly shift power to the faculty to select someone more like him- or herself to direct the library. The AALL's Academic Law Libraries Special Interest Section (ALL-SIS) proposed alternative language for 603(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.[91]

90. Standard 603 was not part of the package sent to the Council and approved. The SRC reviewed 603 excluding 693(d), which was considered previously (since it relates to security of position) at the April 26–27 meeting, and the proposed language included here is the draft language that came out of the committee. *See* E-mail from Scott Pagel, Member of the SRC, to Law Library Directors listserv (Lawlibdir) (May 1, 2013, 1:57 PM) (on file with the author).

91. Letter from the Academic Law Libraries Special Interest Section of the American Association of Law Libraries to Donald J. Polden, Chair Standards Review Committee, et al. (Nov. 29, 2010), http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education

In this digital age, where information literacy is critical, the requirement that a library director have both a law degree and a library degree is essential. ALL-SIS went on to say: "We do not believe that it is in the ABA's interest to loosen the educational requirements for administration of the law library."[92] Removal of the required training that is part of an advanced degree in librarianship leaves concerns about how the phrase "shall have a sound knowledge of and experience in library administration" will guide the hiring of law library directors.[93]

¶51 Individuals without a library degree have been appointed as law library directors and can be justified because the previous standard said that the librarian "should have . . . a degree in library or information sciences." However, what about the requirement that the person hired "shall have a sound knowledge of and experience in library administration"? In 2008, John Palfrey was appointed vice dean of library and information resources and became a tenured professor of law at Harvard Law School.[94] Palfrey had an A.B. and J.D. from Harvard and an M. Phil. from the University of Cambridge, and he had been a member of the faculty at Harvard since 2003. However, did he have "a sound knowledge of and experience in library administration"? One commentator noted that

> [t]he appointment violates Standard 603(c) not because John [Palfrey] doesn't have both a JD and MLS but because he does not have 'sound knowledge of and experience in library administration.' Under 603(c), the use of "should" clearly indicates that the dual degree is desirable but optional. However, the use of "shall" means that the "knowledge and experience" clause is a requirement because legal codes, something the drafters of the standards certainly know, use "shall" to express mandatory action. If the standards are "minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education" the drafters could have used "should" instead of "shall" in this clause to make sound knowledge of and experience in library administration also desirable but optional.[95]

/committees/standards_review_documents/comment_library_academic_law_library_special_interest_section_november_2010.authcheckdam.pdf; *See also* Letter from the Task Force for the Review of ABA Standards, Academic Law Libraries Special Interest Section of the American Association of Law Libraries, to Donald J. Polden (Mar. 31, 2011), http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/20110331_comment_libraries_aall_academic_law_libraries_sis.authcheckdam.pdf.

92. Letter from the Academic Law Libraries Special Interest Section of the American Association of Law Libraries to Donald J. Polden, *supra* note 91.

93. *Id.* at 5. As the letter states,

> 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.

94. *Palfrey Appointed as New Head of Harvard Law School Library*, HARVARD LAW TODAY (Apr. 30, 2008), http://www.law.harvard.edu/news/2008/04/30_palfrey.html.

95. *See* David Walker, *A Standard Is a Standard Is a Standard Unless It's Not Enforced by the ABA*, July 8, 2008, *available at* https://web.archive.org/web/20111114034810/http://lawprofessors.typepad.com/law_librarian_blog/2008/07/a-standard-is-a.html. When John Palfrey stepped down he was

¶52 Based on these past practices the changes will further erode the need for specific credentials for law library directors. The removal of the term "sound" and requiring only "knowledge and experience in library administration" is now qualified by "appropriate to the stated mission of the law school and enable it to operate in compliance with the Standards and carry out its program of legal education." This change would seem to be shifting the power to the faculty and the dean and to allow the library to be administered by anyone who understands the mission of the school and is familiar with the library standards.

¶53 With no changes to 603(d), the status accorded to law librarians is the same as that for other members of the full-time faculty (see Standard 405. Professional Enviroment). Will we see the end of law librarians hired with tenure?[96] Will we see the continuation of appointments of faculty without law degrees to head the library?

Interpretation 603-1

Previous Language	Revised Standards, August 2014
~~*The director of the law library is responsible for all aspects for the management of the law library including budgeting, staff, collections, services and facilities.*~~	***Having a director of a law library with a law degree and a degree in library or information science is an effective method of assuring that the individual has appropriate qualifications and knowledge of and experience in library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards. A law school not having a director with these credentials bears the burden of demonstrating that it is in compliance with Standard 603(c).***

¶54 The changes in Standard 603(a) incorporate the duties of the law librarian and are much more limited than what was contemplated in the previous Interpretation 603-1. The law librarian is now responsible for managing the library and "providing information resources in appropriate formats to faculty and students." Budgeting and staffing decisions could be handled administratively. The new Interpretation 603-1 is a safe harbor provision now that Standard 603(c) does not require that a library director have a degree in library science. If the library director does have a degree in law and library science, then he or she has the "**appropriate qualifications and knowledge of and experience in library administration,**" but if the law librarian does not have these credentials, the burden shifts to the law school to demonstrate that the librarian has the requisite knowledge and experience.

replaced by Jonathan Zittrain, who also did not have a library degree or experience in library administration. *Zittrain, Wones to Step into Leadership Roles for Harvard Law School Library*, HARVARD LAW TODAY (Mar. 7, 2012), http://today.law.harvard.edu/zittrain-wones-to-step-into-leadership-roles-for-harvard-law-school-library/.

96. For a discussion of law library directors and tenure, see James P. Bailey & Mathew P. Dee, *Law School Libraries: Survey Relating to Autonomy and Faculty Status*, 67 LAW LIBR. J. 3, 16–17 (1974); James M. Donovon & Kevin B. Shelton, *Tenure and the Law Library Director*, 61 J. LEGAL EDUC. 406 (2012).

~~*Interpretation 603-2*~~

Previous Language	Revised Standards, August 2014
~~*The dean and the faculty of the law school shall select the director of the law library.*~~	[deleted]

¶55 This interpretation was redundant, it just restated in a slightly different form Standard 603(b).

~~*Interpretation 603-3*~~

Previous Language	Revised Standards, August 2014
~~*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.*~~	[deleted]

¶56 Previous interpretation 603-3 clarified Standard 603(d), but the new language does not require that a library director have tenure or be tenure track. While a library director could be tenured, the librarian under Standard 603(d) should, except under "extraordinary circumstances . . . hold a law faculty appointment with security of position." However, there is no definition of "faculty appointment" or "security of position." Would appointment as an adjunct faculty meet the requirements? The term "security of position" may be more closely associated to the security of position afforded legal writing teachers (Standard 405(d)). Librarians, like legal writing instructors, will receive as much security of position as may be necessary to (1) attract and retain" a librarian "that is well qualified" to be function in that position. For legal writing instructors the standard "does not preclude short-term contracts" (Interpretation 405-9). Might this become the norm for library directors?

~~*Interpretation 603-4*~~

Previous Language	Revised Standards, August 2014
~~*It is not a violation of Standard 603(a) for the director of the law library also to have other administrative or teaching responsibilities, provided sufficient resources and staff support are available to ensure effective management of the library operations.*~~	[deleted]

¶57 This interpretation addressed the problem that Standard 603(a) required a law school to have a full-time director of the law library whose principal responsibility was the management of the library. The removal of this interpretation means that a law library director who is engaged in other administrative or teaching responsibilities could violate Standard 603. The change circumscribes the law library director's role as administering the library, determining the appropriate format for information resources and providing them to the faculty and students.

Standard 604. Personnel

Previous Language	Revised Standards, August 2014
The law library shall have a ~~competent~~ staff, sufficient in number to provide appropriate library and informational resource services.	The law library shall have a staff, sufficient in **expertise and** number to provide **the** appropriate library and **information** resources services **to the school.**

¶58 In its explanation of changes, the SRC states that "[t]he standard has been changed slightly to require a staff with expertise that will support the goals of the library and law school,"[97] but the change from competent staff to "sufficient in expertise and number" raises the bar. *Merriam-Webster* defines "competent" as "having requisite or adequate ability or qualities" while "expertise" is defined as "special skill or knowledge: the skill or knowledge that an expert has" or in this case the requisite skills to "provide appropriate library and informational resource services to the school."[98] The standard goes beyond the number of staff and requires a showing that the staff has the expertise necessary to provide appropriate services to the school. This provision may mean that professional librarians will need a library degree and the library director will not.

¶59 This standard will allow library staffing to be less cookie-cutter and focus more on the mission of the law school and how best to provide a library staff with the expertise that will support the needs of the institution. This may mean hiring more librarians with practical legal experience, information literacy skills, technological skills, and so on. It may allow outsourcing services or allowing consortiums to provide virtual reference services.

Interpretation 604-1

Previous Language	Revised Standards, August 2014
Factors relevant to the number of librarians and informational ~~resource~~ staff needed to meet this Standard include ~~the following~~: the number of faculty and students, research programs of faculty and students, a dual division program in the school, graduate programs of the school, size and growth rate of the collection, range of services offered by the staff, formal teaching assignments of staff members, and responsibilities for providing informational resource services.	*Factors relevant to the number **and expertise** of librarians and **information** resource staff needed to meet this Standard include: the number of faculty and students, research programs of faculty and students, **whether there is** a dual division program in the school, **any** graduate programs of the school, size and growth rate of the collection, range of services offered by the staff, formal teaching assignments of staff members, and responsibilities for providing **information** resource services.*

¶60 The change incorporates the word "expertise" which was discussed previously. The relevant factors to be considered have not changed, and the rest of the revisions are grammatical housekeeping changes.

97. *See Chapter 6—Library and Information Resources*, *supra* note 6.
98. *See Chapter 6 Clean Copy—Draft* (Nov. 21, 2012), *supra* note 31.

Standard 605. Services

Previous Language	Revised Standards, August 2014
A law library shall provide the appropriate range and depth of reference, instructional, bibliographic, and other services to meet the needs of the law school's teaching, scholarship, research, and service programs.	A law library shall provide the appropriate range and depth of reference, instructional, bibliographic, and other services to meet the needs of the law school's teaching, scholarship, research, and service programs.

¶61 The SRC's explanation of changes notes, "No changes are recommended for the Standard. The Interpretation has been rewritten to better state how those services can be provided."[99] The ALL-SIS Task Force on ABA Standards Review proposed a change to this standard:

> 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.[100]

¶62 The ALL-SIS Task Force's proposed changes focused on reference support, information literacy, training, research instruction and access to resources. The proposal also attempted to eliminate the need for an interpretation and would have allowed libraries to develop mechanisms to assess and measure the competencies enumerated. Law librarians have developed a set of questions to be included with the Law School Survey of Student Engagement. These questions offer a mechanism for providing some statistical comparison with other law libraries through student self-evaluation on a standard survey.[101] However, the SRC, in electing not to change the language of the standard, addressed some of the concerns raised by ALL-SIS with changes to Interpretation 605-1.

Interpretation 605-1

Previous Language	Revised Standards, August 2014
~~Appropriate services~~ include ~~having adequate~~ reference services, providing access (such as indexing, cataloging, and development of search terms and methodologies) to the library's collection and other information resources, offering interlibrary loan and other forms of document delivery, enhancing the research and bibliographic skills of students, producing library publications, and creating other services to ~~further the law school's~~ mission.	***Factors relevant to determining whether services are appropriate under Standard 605 include the extent to which services** enhance the research and bibliographic **and information literacy skills of students,** provide access (such as indexing, cataloging, and development of search terms and methodologies) to the library's collection and other information resources, offering interlibrary loan and other forms of document delivery, produce library publications **and manage the library's web site,** and create other services to **carry out its program of legal education and accomplish its mission.***

99. *Chapter 6—Library and Information Resources, supra* note 6.

100. *Memorandum from the ALL-SIS Task Force on ABA Standards Review, Recommendations for ABA Standards Revision Relating to Academic Law Libraries* (Sept. 14, 2009), www.aallnet.org/sis/allsis/committees/abastandardstaskforce/allsisabastandardstaskforcefinal.pdf.

101. The additional library questions appear in the appendix.

¶63 The SRC addressed the proposed changes to the standard by incorporating several ALL-SIS proposals in the laundry list of appropriate services identified in the interpretation, including reference services, faculty research support, and student information literacy skills. The committee also added another item to the list: managing the library's website.

¶64 Interpretation 605-1 also identifies the purpose of these services: "to enable the law school to carry out its program of legal education and accomplish its mission." The library services standards encompass process-quality norms and outcomes norms, as can be seen in the expanded list of appropriate services: (1) providing reference services; (2) providing faculty research support; (3) enhancing student research, bibliographic, and information literacy skills; (4) providing access to the library's collection; (5) offering interlibrary loans and other forms of document delivery; (6) producing library publications; (7) managing the library's website; and (8) creating other services. It is interesting that the list includes no services supporting faculty teaching or service programs of the law school, both of which are listed in Standard 605. By creating a list of appropriate services, libraries will focus on meeting the requirements of the list to meet Standard 605 rather than thinking outside the list. The list will have the potential to inhibit creativity and opportunity to consider what to stop doing while addressing higher-priority initiatives.[102] The interpretation constrains librarians from rethinking what the law library is and how to meet the changing needs of the law school.

¶65 The laundry-list approach differs from the SACS approach to library accreditation standards. In the 2012 Principles of Accreditation, SACS 3.8 (Libraries and Other Learning Resources) is composed of only three standards. Standard 3.8.1 and 3.8.2 provide a different approach to assessing the library services.[103]

¶66 The *SACS Resource Manual for the Principles of Accreditation: Foundations for Quality Enhancement* provides guidance for each of these standards under *Rationale and Notes, Review Questions for Consideration and Documentation.*[104]

Standard 606. Collection

Standard 606(a)

Previous Language	Revised Standards, August 2014
(a) The law library shall provide a core collection of essential materials ~~accessible in the law library.~~	(a) The law library shall provide a core collection of essential materials **through ownership or reliable access. The choice of format and of ownership in the library or a particular means of reliable access for any type of material in the collection, including the core collection, shall effectively support the law school's curricular, scholarly, and service programs and objectives, and the role of the library in preparing students for effective, ethical, and responsible participation in the legal profession.**

102. *See* Carl A. Yirka, *What Should Law Libraries Stop Doing in Order to Address Higher Priority Initiatives?*, 12 AALL SPECTRUM, July 2008, at 28.

103. SOUTHERN ASS'N OF COLLS. & SCHOOLS, *supra* note 62, at 31.

104. *See* SOUTHERN ASS'N OF COLLS. & SCHOOLS, RESOURCE MANUAL FOR THE PRINCIPLES OF ACCREDITATION: FOUNDATIONS FOR QUALITY ENHANCEMENT (May 2012), *available at* http://www.sacscoc.org/pdf/Resource%20Manual.pdf.

¶67 The standard maintains the requirement of a core collection. The SRC discussed whether the standards "should continue to list in detail the core collection of essential materials. The library committee had suggested the list was no longer necessary. The Committee decided to continue to include the list."[105] As Polden observes, the debate over mandating a core collection is between those who believe that requiring a core collection is expensive and duplicative versus those that think the core collection requirement distinguishes U.S. law school libraries from all other international legal education programs.[106] It is interesting to note that the only librarian on the SRC, Scott Pagel,[107] recommended that the core collection requirement be removed.

¶68 Three major changes are proposed in 606(a). First, there is an explicit recognition that the format and method of access to "any type of material in the collection, including the core collection" can be achieved through "ownership or reliable access." Second, the format and access model of the core collection "shall effectively support the law school's curricular, scholarly, and service programs and objectives." Third, the format of the material in the collection "shall effectively support" the "role of the library in preparing effective, ethical and responsible participation in the legal profession."

¶69 The ALL-SIS task force noted that the current language regarding the format of the core collection was not clear:

> 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.[108]

¶70 The task force split on a totally electronic core collection: "The majority of the Task Force believes that the core collection should not be entirely in electronic format." However, "[a] strong minority of the task force believe that the Standards should be format neutral."[109]

¶71 The proposed language "links the choices of format and means of access to the needs of the institution."[110] The standard allows the law school to determine whether ownership or "reliable access" is best, providing the law school with more flexibility in times of change. The proposed Interpretation 606-2 offers guidance on "reliable access." The SRC's explanation of changes accompanying Interpretation 606-2 stated that it "elaborates on the definition of 'reliable access' by providing ways to meet the Standard through ongoing access to databases or participation in a formal resource-sharing arrangement with other libraries."[111]

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105. *See Minutes Standards Review Committee November 16–17*, *supra* note 8, at 4.

106. Polden, *supra* note 35.

107. Scott B. Pagel is the Associate Dean for Information Services, Director of the Law Library, and Professor of Law at The George Washington University. *Scott B. Pagel*, GW LAW, http://www.law.gwu.edu/Faculty/profile.aspx?id=1762 (last visited Sept. 16, 2014).

108. *Memorandum from ALL-SIS Task Force on ABA Standards Review*, *supra* note 100, at 5.

109. *Id.*

110. *See Chapter 6—Library and Information Resources*, *supra* note 6.

111. *Id.*

¶72 Digital formats that provide reliable access allow academic law libraries to offer full and complete access to the collection, including the core materials as defined by the library standards. Faculty and students can remotely access the material via the Internet from their own computers, smartphones, and tablets, freeing the library from physical restraints and integrating it more completely within the law school. Digital collections offer 24/7 access and allow librarians to redefine library space. The library as place takes on new contours in a virtual world. The library must demonstrate that choice of format and ownership versus reliable access "effectively support the law school's curricular, scholarly and service programs and objectives" as per 606-2.

¶73 The library must demonstrate that the collection supports the curriculum. With digital resources, the library has unique opportunities to support the curriculum. The library can build "just in time" collections, adding records of digital materials and then purchasing access or ownership when a patron requests the title. The library can track and access the development of the collection.

¶74 Usage statistics offer libraries an opportunity to calculate return on investment. Law libraries that subscribe to West Academic's *Digital Study Aids*[112] receive monthly usage statistics. At the end of the subscription the reports provide statistical information at the macro level such as the total number of students that accessed materials in the collection as well as what materials were accessed and when they were accessed. At the micro level, information about individual usage is available, such as what each patron viewed and for how long. This information can be used by the library to decide whether to renew the service and help the library negotiate the price based on the usage. For libraries that also have the material in print, the digital usage statistics can be compared to circulation information on the same titles. For libraries that do not have the material in print, the usage statistics may be used to make future decisions on print or electronic access to these materials. Under these proposed changes, libraries will be able to redirect spending.

¶75 However, Standard 606(a) requires that the librarians' "choice of format and means of reliable access . . .shall effectively support . . . the role of the library in preparing students for effective, ethical and responsible participation in the legal profession." This language mirrors the proposed language in Standard 301(a)[113] that a "rigorous academic program" prepares students for "effective, ethical and responsible participation" as a member of the bar. A report from the Global Network of Public Interest Law states that "[a]lthough preparing law students to become effective, ethical lawyers is the announced goal of law schools, the course of study at most U.S. law schools does not necessarily reflect a sequence of courses designed to teach and train students to be lawyers. Instead, U.S. law schools have a heavy emphasis on teaching legal doctrine and legal analysis."[114] It is unclear how

112. See *West Academic Study Aids Subscription*, WEST ACADEMIC, http://www.westacademic.com/bookprograms/ (last visited Sept. 14, 2014).

113. Proposed Standard 301: "A law school shall maintain a rigorous academic program that prepares its students, upon graduation, for admission to the bar and for effective, ethical and responsible participation as a member of the legal profession. *Minutes Standards Review Committee November 16–17, supra* note 8, at 44.

114. Margaret M. Barry, John C. Dubin & Peter A. Joy, *Legal Education "Best Practices" Report, United States*, at 9, PILNET (Aug. 10, 2010), http://www.pilnet.org/public-interest-law-resources/11-the-development-of-legal-education-in-the-united-states.html.

the library will demonstrate that the choice of format and means of reliable access support the role of the library in preparing students for effective, ethical, and responsible participation in the legal profession.

~~*Interpretation 606-5*~~ Standard 606(b)

Previous Language **Interpretation 606-5**	Revised Standards, August 2014 **Standard 606(b)**
A law library core collection shall include the following:	(b) A law library core collection shall include the following:
(1) all reported federal court decisions and reported decisions of the highest appellate court of each state;	(1) all reported federal court decisions and reported decisions of the highest appellate court of each state **and U.S. territory;**
(2) all federal codes and session laws, and at least one current annotated code for each state;	(2) all federal codes and session laws, and at least one current annotated code for each state **and U.S. territory;**
(3) all current published treaties and international agreements of the United States;	(3) all current published treaties and international agreements of the United States;
(4) all current published regulations (codified and uncodified) of the federal government and the codified regulations of the state in which the law school is located;	(4) all current published regulations (codified and uncodified) of the federal government and the codified regulations of the state or **U.S. territory** in which the law school is located;
(5) those federal and state administrative decisions appropriate to the programs of the law school;	(5) those federal and state administrative decisions appropriate to the programs of the law school;
(6) U.S. Congressional materials appropriate to the programs of the law school;	(6) U.S. Congressional materials appropriate to the programs of the law school;
(7) significant secondary works necessary to support the programs of the law school, and	(7) significant secondary works necessary to support the programs of the law school, and
(8) those tools, ~~such as citators and periodical indexes~~, necessary to identify primary and secondary legal information and update primary legal information.	(8) those tools, necessary to identify primary and secondary legal information and update primary legal information.

¶76 The most important change is moving the core collection list from an interpretation to a standard with only minor changes—adding U.S. territories and dropped the direct reference to citators and periodical indexes. SRC maintains the requirement that there is a set of materials that all accredited law libraries must provide access to—a core collection—but has stated that the law school may maintain this collection in a format that best meets its needs and to decide whether to own or provide reliable access to these materials.

Standard 606~~(b)~~(c)

Previous Language **Standard 606(b)**	Revised Standards, August 2014 **Standard 606(c)**
In addition to the core collection of essential materials, a law library shall also provide a collection that through ownership or reliable access,	In addition to the core collection of essential materials, a law library shall also provide a collection that through ownership or reliable access,
(1) meets the research needs of the law school's students, satisfies the demands of the law school curriculum, and facilitates the education of its students;	(1) meets the research needs of the law school's students, satisfies the demands of the law school curriculum, and facilitates the education of its students;
(2) supports the teaching, scholarship, research, and service interests of the faculty; ~~and~~	(2) supports the teaching, scholarship, research, and service interests of the faculty;
(3) serves the law school's special teaching, scholarship, research, and service objectives.	(3) serves the law school's special teaching, scholarship, research, and service objectives; **and**
	(4) **is complete, current and in sufficient quantity or with sufficient continuing access to meet faculty and student needs. [formerly Interpretation 606-1]**

¶77 The standard has been renumbered and Interpretation 606-1 has been edited and incorporated within Standard 606(c). This standard provides an example of language stating the collection, regardless of format, must be complete, current, and accessible to faculty and students.

Standard 606~~(c)~~(d)

Previous Language **Standard 606(c)**	Revised Standards, August 2014 **Standard 606(d)**
A law library shall formulate and periodically update a written plan for development of the collection.	**The** law library shall formulate and periodically update a written plan for development of the collection.

¶78 The standard requires that a law library have a written collection development plan that is periodically updated.

Standard 606~~(d)~~(e)

Previous Language **Standard 606(d)**	Revised Standards, August 2014 **Standard 606(e)**
A law library shall provide suitable space and adequate equipment to access and use all information in whatever formats are represented in the collection.	**The** law library shall provide suitable space and adequate equipment to access and use all information in whatever formats are represented in the collection.

¶79 There is no change in the requirement that the library provides suitable space and adequate equipment to access and use all information in whatever formats represented in the collection.

~~*Interpretation 606-1*~~ *Standard 606(c)(4)*

Previous Language **Interpretation 606-1**	Revised Standards, August 2014 **Standard 606(c)(4)**
~~*All materials necessary to the programs of the law school shall be*~~ *complete* ~~*and*~~ *current and in sufficient quantity or with sufficient access to meet faculty and student needs.* ~~*The library shall ensure continuing access to all information necessary to the law school's programs.*~~	**(4) is** complete, current and in sufficient quantity or with sufficient continuing access to meet faculty and student needs.

See the discussion in Standard 606(c)(4).

Interpretation ~~606-2~~ 606-1

Previous Language **Interpretation 606-2**	Revised Standards, August 2014 **Interpretation 606-1**
The appropriate mixture of collection formats depends on the needs of the library and ~~*its clientele.*~~ *A collection that consists of a single format may violate Standard 606.*	*The appropriate mixture of collection formats depends on the needs of the law library and* ***the law school.*** *A collection that consists of a single format may violate Standard 606.*

¶80 The change in this interpretation from "its clientele" to "the law school" clarifies that the appropriate mix of collection formats is a decision of the law library and the law school. The fact that a law school may serve the public, the bar, and its alumni besides its faculty and students influences what the law school determines is the appropriate mix. The standard maintains that a "single format" collection "may violate" the standard. The standard has not changed, allowing a school to show that the single-format collection is appropriate. It is possible under the current standards for a school to develop a curriculum in which one-third of the law school curricular instruction involved non-face-to-face classroom instruction[115] and the contemplated changes to the distance education standards allow schools to offer fifteen hours of distance education classes,[116] making a compelling argument for a single-format collection. A library contemplating an all-digital collection or an all-print collection would have to demonstrate that a single-format collection would not violate the standards.

115. "Courses in which two-thirds or more of the course instruction consists of regular classroom instruction shall not be treated as 'distance education.'" ABA STANDARDS, *supra* note 2, at 26 (discussing Interpretation 306-3).

116. *See* Proposed Standard 311(e): "A law school shall not grant a student more than a total of 15 semester-hours (or equivalent quarter hours) toward the J.D. degree for courses qualifying under this Standard," *Id.* at 54, 55.

Interpretation 606-2

Previous Language	Revised Standards, August 2014
	Reliable access to information resources may be provided through: ***(a) databases to which the library or the parent institution subscribe or own and are likely to continue to subscribe and provide access,*** ***(b) authenticated and credible databases that are available to the public at no charge and are likely to continue to be available to the public at no charge; or*** ***(c) participation in a formal resource-sharing arrangement through which materials are made available, via electronic or physical delivery, to users within a reasonable time period.***

¶81 This new language "elaborates on the definition of reliable access"[117] and recognizes that the library may have access to information it owns or subscribes to or its parent institution owns or has access to from "authenticated and credible" publicly available databases or through resource sharing.

¶82 The question is, what are "authenticated and credible" databases?[118] In July 2011, the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission) approved the Uniform Electronic Legal Material Act.[119] Section 5 of the Act talks about authentication:

> An official publisher of legal material in an electronic record that is designated as official under Section 4 shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.[120]

The effect of authentication is that the copy is deemed an accurate copy of the original legal material; the burden of contesting the accuracy of the material shifts to the contesting party, who must prove "by a preponderance of the evidence that the legal material is not authentic."[121] Is the term being used as a term of art—that is, does it require that the record be designated as authenticated?

¶83 Second, what is meant by "credible databases"? Unlike "authenticated," it is not a term of art, and there are no cases that define it. Should we take the *Oxford English Dictionary* definition of "credible" ("[w]orthy of belief or confidence; trustworthy, reliable")[122] and view proprietary databases that the library pays for access to as "credible"?

117. *See Chapter 6—Library and Information Resources*, *supra* note 6.

118. *See* Michael Whiteman, *The Death of the Twentieth-Century Authority*, 58 UCLA LAW REV. DISCOURSE 27, 37 (2010). Assuming that "authenticated and credible databases" is meant to be a term of art, AALL provides a discussion of digital authentication at *Digital Authentication*, AM. ASS'N OF L. LIBR., http://www.aallnet.org/main-menu/Advocacy/aallwash/summit (last visited Sept. 16, 2014).

119. UNIF. ELEC. LEGAL MATERIAL ACT (2011).

120. *Id.* § 5.

121. *Id.* § 6.

122. OXFORD ENGLISH DICTIONARY, http://www.oed.com/view/Entry/44110?redirectedFrom=credible#eid (last visited Sept. 16, 2014).

Interpretation 606-3

Previous Language	Revised Standards, August 2014
~~*Agreements for the sharing of information resources except for the core collection, satisfy Standard 606 if:*~~ ~~*(1) The agreements are in writing, and*~~ ~~*(2) The agreements provide faculty and students with the ease of access and availability necessary to support the programs of the law school.*~~	**See Proposed Interpretation 606-2(c)** ***(c) participation in a formal resource-sharing arrangement through which materials are made available, via electronic or physical delivery, to users within a reasonable time period.***

¶84 Revised Interpretation 606-2(c) uses the term "formal resource-sharing arrangement," which contemplates some type of written agreement. The reviewer would need to determine if these services are provided to the library's users "within a reasonable time period," which is an improvement over "with the ease of access and availability necessary to support the programs of law school." This new language should encourage law libraries to work together to develop shared collection development agreements.

Interpretation ~~606-4~~ 606-3

Previous Language **Interpretation 606-4**	Revised Standards, August 2014 **Interpretation 606-3**
Off-site storage for non-essential material does not violate the Standards so long as the material is organized and readily accessible in a timely manner.	*Off-site storage for non-essential material does not violate the Standards so long as the material is organized and readily accessible in a timely manner.*

¶85 There is no change. The ability to store materials in an organized and readily accessible off-site storage facility meets the standards.

Interpretation ~~606-1~~ 606-4

Previous Language **Interpretation 601-1**	Revised Standards, August 2014 **Interpretation 606-4**
Cooperative agreements may be considered when determining whether faculty and students have efficient and effective access to the resources necessary to ~~meet the law school's educational needs.~~ Standard 601 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region, ~~or by providing electronic access.~~	*Cooperative agreements may be considered when determining whether faculty and students have efficient and effective access to the resources necessary to* ***enable the*** *law school* ***to carry out its program of legal education to accomplish its mission.*** *Standard 601 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region.*

¶86 The discussion of cooperative agreements has been moved to Interpretation 606-4 with some changes. There is no direct reference to cooperative agreements in Standard 601(1); however, the standard requires that a law school maintain a library that "provides support through . . . resources and services adequate to enable the law school to carry out its program of legal education." Revised Interpretation 606-4 keeps the language "efficient and effective access to the resources necessary" while Standard 606(a) talks of a "core collection of essential materials through ownership or reliable access." The retention of this provision in light of the proposed Interpretation 606-2(c) is at best perplexing and at worst an attempt to continue requiring

costly duplication of resources. Proposed Interpretation 602-2(c) uses the term "formal resource-sharing arrangements":

> Reliable access to information resources may be provided through:
> (c) participation in a formal resource-sharing arrangement through which materials are made available, via electronic or physical delivery, to users within a reasonable time period.

¶87 Interpretation 606-4 contemplates cooperative agreements involving resources and appears to be addressed in Interpretation 606-2(c). If, however, the real reason for retaining the language in Standard 606-2 is to keep the last sentence—"Standard 606 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region"—the same goal could be accomplished by adding a section after Interpretation 606-2(c):

> Reliable access is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region.

¶88 As law schools grapple with the high cost of legal education, the ability to consider and enter into creative ways to provide students access to legal information is stifled by library standards. Perhaps these standards were designed to protect established law schools and the large law library collections they have invested in over time. In 2005, Drexel University moved to open a law school. It proposed a physical core library collection that included the resources required by the ABA and collections supporting the law school's special programs, wide access to electronic resources, and an affiliation with Jenkins Law Library two miles from the law school.[123] This proposal sparked discussions on law library blogs over whether it amounted to outsourcing the law library and whether it would violate the standards.[124] However, as law libraries move to electronic delivery, scanning to pdf, overnight delivery, and access to significant collections at the main university

123. Drexel posted this announcement on its website:

> Drexel's law library will be . . . state-of-the-art. In fact, it will be three-dimensional. First, it will have a "physical core library." This will include the resources that the American Bar Association requires all law schools to have. It will also include special depth in those areas that will be the focal points of the law school programs—health law, intellectual property, entrepreneurial business, environmental law, elder law, and the like.
>
> Second, Drexel will offer its faculty and students wide access to the thousands of electronic books, records, and services that are now available over the Internet. Because Drexel is a wireless campus, all of these resources will be available to you wherever you are on campus; and otherwise over the Internet.
>
> Third, Drexel will have a unique affiliation with one of the best, most extensive, and oldest law libraries in the country: the Jenkins Law Library. Founded in 1802 and maintained ever since as the law library for the legal profession in Philadelphia, it contains more than 589,000 volumes, including: comprehensive federal and state materials, statutes, regulations and reporters, court records and briefs, treatises, audio and videocassettes, centuries-old rare materials, as well as Internet resources.
>
> Jenkins is fully staffed with professional legal librarians, who will train all law students not only in computerized legal research, but factual investigation techniques as well. The library has two dozen computers and is wireless for those having laptop computers.

Joe Hodnicki, *Arrogance, Ignorance & Drexel Law (Or Has the Future of Collection Development Arrived)*, LAW LIBRARIAN BLOG (June 22, 2005), https://web.archive.org/web/20111115193723/http://lawprofessors.typepad.com/law_librarian_blog/2005/06/arrogance_ignor.html.

124. *Id.*

library, resource-sharing agreements with other institutions that provide reliable access to significant portions of the "core collection" make sense.

¶89 How does Interpretation 606-4 interact with the "reliable access" in Standard 606(a) and Interpretation 606-2(c), which states: "Reliable access to information resources can be provided through: . . . (c) participation in a formal resource-sharing arrangement through which materials are made available, via electronic or physical delivery, to users within a reasonable time"?

¶90 Interpretation 606-4 appears to be redundant with the addition of reliable access and the ability to provide resources through resource-sharing agreements. Interpretation 606-2(c) is more specific than Interpretation 606-4 in clarifying how the material is delivered—via "electronic or physical delivery."

~~*Interpretation 606-6*~~ Standard 606(d)

Previous Language **Interpretation 606-6**	Revised Standards, August 2014 **Standard 606(d)**
~~*The dean, faculty, and director of the law library should cooperate in formulation of the collection development plan.*~~	**The** law library shall formulate and periodically update a written plan for development of the collection.

¶91 Standard 606(d) requires the library to formulate and update a collection-development plan. This might more appropriately be incorporated in Standard 601(3) or as an interpretation for the regular planning and assessment that the law library is required now to engage in. Interpretation 606-6 removes the requirement that the dean and faculty should cooperate with the library director in the formulation of the plan.

~~*Interpretation 606-7*~~ Standard 606(e)

Previous Language **Interpretation 606-7**	Revised Standards, August 2014 **Standard 606(e)**
~~*This Standard requires the law library to furnish the equipment to print microform and electronic documents and to view and listen to audio-visual materials in the collection.*~~	**The** law library shall provide suitable space and adequate equipment to access and use all information in whatever formats are represented in the collection.

¶92 This Interpretation was redundant. Standard 606(e) states, "the law library shall provide suitable space and adequate equipment to access and use all information in whatever formats are represented in the collection." This more generic language provides for technological changes in the library.

In Chapter 7 of the existing standards, Standard 703 dealt with the law library.

Standard ~~703. LAW LIBRARY~~ 702(a)(2)

Previous Language **Standard 703**	Revised Standards, August 2014 **Standard 702(a)(2)**
The ~~physical facilities for the~~ law library **shall be** sufficient in size, location, and design in relation to the law school's programs and enrollment to accommodate the law school's students and faculty and the law library's services, collections, staff, operations, and equipment.	A law library that is **suitable and** sufficient in size, location, and design in relation to the law school's programs and enrollment to accommodate **the needs of** the law school's students and faculty and the law library's services, collections, staff, operations, and equipment;

¶93 Under the proposed changes, Standard 703 disappears and its language, with some significant changes, is moved to Standard 702(a)(2). The change from "physical facilities for the law library shall be sufficient in size, location, and design" to "A law library that is suitable and sufficient in size, location and design in relation to the law school's programs and enrollment" would seem to be requiring more than "[a]dequate; of such quality, number, force, or value as is necessary for a given purpose,"[125] which is the definition of "sufficient" given in *Black's Law Dictionary*. Furthermore, "suitable" is defined as "fit and appropriate for their intended purpose."[126] This, coupled with adding "the needs of" the students and faculty, means that accreditors will be requiring evidence that "the needs of" the law school's students and faculty and the law library's services, collections, staff, operations, and equipment are accommodated by the library. I contend that a virtual library could be "suitable and sufficient" if it meets the needs of the law school's students and faculty and the needs of law library services, collections, staff, operations, and equipment are accommodated by the library. This list of library functions raises an interesting question: should they be kept in-house or can they be outsourced? Ron Friedmann has an answer: "My recommendation to managers is to worry more about finding the best people to do the job—and 'best' has lots of different meanings. Don't worry quite as much about where they work, or whose name is on the paycheck they receive."[127] So, what is the future of law libraries? Can library staffing be reduced; can the move from print to digital reduce the space required for the library; can librarians be integrated throughout the law school; can using virtual reference allow for outsourced support; can using self check and RFD technologies streamline and reduce library staffing needs; can "just in time" e-book collections change the nature of the academic library enterprise? Under Standard 702(a)(2), coupled with the removal of the Interpretation 702-1 below, could a virtual library with a small working print and audiovisual collection that is barcoded and available for self-checkout be "suitable and sufficient" to meet the needs of law students and faculty?

125. BLACK'S LAW DICTIONARY 1474 (8th ed. 2004).

126. *Id.* at 1476.

127. Ron Friedmann, *Outsourcing: Bad Word or Wrong Word?*, LEXICIAN (Mar. 3, 2011), http://lexician.com/lexblog/2011/03/outsourcing-bad-word-or-wrong-word/.

~~*Interpretation 702-1*~~ Standard 701(b)(8)

Previous Language **Interpretation 702-1**	Revised Standards, August 2014 **Standard 702(a)(8)**
~~*A law library shall have sufficient seating to meet the needs of the law school's students and faculty.*~~	**(a) A law school's facilities shall include:** **(8) suitable and sufficient space and seating for its students and faculty for quiet study and research; and**

¶94 The need to have space in the law library for sufficient seating disappears and the need for sufficient seating for students could be met by space in the library or such space could be anywhere within the law school. Moving the seating requirement out of the traditional confines of the law library and into the law school is in line with what most law schools are doing these days. It relieves the burden of the law library to seat everyone and allows more opportunities for the "planned collision" between students and faculty.

Standard 701. General Requirements

Previous Language	Revised Standards, August 2014
A law school shall have ~~physical~~ facilities ~~that are adequate both for~~ its **current** program of legal education ~~and for growth anticipated in the immediate future.~~	**(a)** A law school shall have facilities, **equipment, technology and technology support that enable it to operate in compliance with the Standards and carry out its** program of legal education. **(b) A law school is not in compliance with the Standards if its facilities, equipment, technology or technology support have a negative and material effect on the school's ability to operate in compliance with the Standards; or to carry out its program of legal education.**

Interpretation 701-1

Previous Language	Revised Standards, August 2014
~~*Inadequate physical facilities are those that have a negative and material effect on the education students receive or fail to provide reasonable access for persons with disabilities. If equal access for persons with disabilities is not readily achievable, the law school shall provide reasonable accommodation to such persons.*~~	**In determining whether technology and technology support comply with this Standard, among the factors to be considered are:** **(1) the hardware and software resources and infrastructure available to support the teaching, scholarship, research, services and administrative needs of students, faculty and staff of the law school;** **(2) staff support and space for staff operations and** **(3) the law school's financial resources and overall ability to maintain and, as appropriate, adopt new technology.**

~~*Interpretation 704-1*~~ Standard 701(b)

Previous Language **Interpretation 704-1**	Revised Standards, August 2014 **Standard 701(b)**
~~*Inadequate technological capacities are those that*~~ *have a negative and material effect on the education* ~~*students receive.*~~	**A law school is not in compliance with the Standard if its facilities, equipment, technology support** have a negative and material effect on the **school's ability to operate in compliance with Standards; or to carry out its program of legal** education.

¶95 The SRC's explanation of changes states that "[c]urrent Standard 704 and current Interpretations 701-1 and 704-1 have been incorporated in proposed Standard 701(b), explaining that in order to violate the requirements of the Standards, the facilities, equipment, technology or technology support must have a 'negative and material effect on the school's ability . . . to operate in compliance with the Standards; or . . . carry out its program of legal education.'"[128] Moreover, "[t]he Council added this modification to the Standards as part of a review process initiated pursuant to an antitrust consent decree with the U.S. Department of Justice, and the norm was designed to adjust power between a law school and its university. Specifically, it was designed to limit the ability of law schools to invoke the ABA Standards as a way to press universities for new or improved law school facilities."[129]

~~*Interpretation 701-2*~~ *Standard 702(a).*

Previous Language **Interpretation 701-2**	Revised Standards, August 2014 **Standard 702(a)**
(a) ~~*Adequate physical facilities*~~ *shall include:*	(a) **The** facilities shall include:
(1) *suitable class and seminar rooms in sufficient number and size to permit reasonable scheduling of all classes* ~~*and seminars;*~~	(1) suitable class and seminar rooms in sufficient number, **functionality,** and size to permit reasonable scheduling of all classes, **skills offerings,** and seminars;
	(2) a law library that is **suitable and** sufficient in size, location, and design in relation to the law school's programs and enrollment to accommodate **the needs of** the law school's students and faculty and the law library's services, collections, staff, operations, and equipment;
~~(2) *suitable space for conducting its professional skills courses and programs, including clinical, pretrial, trial, and appellate programs;*~~	(3) suitable and sufficient space for staff providing support services, including student support services, to the program of legal education;
~~(3)~~ *an office for each full-time faculty member* ~~*adequate for faculty study*~~ *and for faculty student conferences, and sufficient* ~~*office space*~~ *for part-time faculty members adequate for faculty-student conferences;*	(4) office **space** for each full-time faculty members **that is suitable for faculty research, class preparation,** and faculty -student conferences; **and suitable and** sufficient space for part-time faculty members **to conduct** faculty-student conferences;

128. Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar Standards Review Committee, *Explanation of Changes for All Proposals Circulated for Notice and Comment*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/march2014councilmeeting/2014_02_%20explanations_of_changes_to_proposed_standards.authcheckdam.pdf (last visited Sept. 23, 2014).

129. Conison, *supra* note 13, at 1530 (footnotes omitted).

~~(4) space for co-curricular, as opposed to extra-curricular, activities as defined by the law school;~~	(5) **facilities and equipment that meet all applicable health, safety, and fire codes;**
(5) ~~suitable space for all staff, and~~	
(6) *suitable space for equipment and records* ~~*in proximity to the individuals and offices served.*~~	(6) suitable **and sufficient** space for equipment and records;
	(7) **suitable and sufficient space appropriate for conducting any in-house clinical programs in a manner that assures competent and ethical representation of clients and meaningful instruction and supervision of students, including confidential space for (i) client interviewing, (ii) working on and discussing client cases, and (iii) security for client files;**
	(8) **suitable and sufficient space and seating for its students and faculty, on site, for quiet study and research; and**
	(9) **suitable and sufficient space, on site, for group study and other forms of collaborative work.**

Standard 702(b)

Previous Language	Revised Standards, August 2014
	A law school shall provide reasonable access and accommodation to persons with disabilities, consistent with applicable law.

Standard 703. Research and Study Space

Previous Language **Standard 703**	Revised Standards, August 2014 **See Standard 702(b)(8) and (9)**
~~A law school shall provide, on site,~~ sufficient quiet study and research seating for its students and faculty. ~~A law school should provide~~ space ~~that is suitable~~ for group study and other forms of collaborative work.	(8) **suitable and** sufficient **space and seating for its students and faculty for** quiet study and research; **and** (9) suitable **and sufficient space for group study and other forms of collaborative work.**

¶95 Quiet study and research seating and suitable group study space are often found in the library. The standards for research and study space outside the law library were in the current standards and this space could be found anywhere in the facilities while reflecting the mandatory nature of "suitable and sufficient space" within the law school facilities. This space could be in the law library, but it also could be incorporated elsewhere in the law school, allowing schools to redefine where students engage in group study and quiet study in the building. This change redefines the role of the library and provides more opportunities for re-creating the library in the digital world.

Standard 509(b). ~~Consumer Information~~ Required Disclosure

Previous Language	Revised Standards, August 2014
A law shall publicly disclose on its website ~~consumer information in the following categories~~:	**(b) A law school shall publicly disclose on its website, in the form and manner and for the time frame designated by the Council, the following information:**
~~(4)~~ number of full-time and part-time faculty and administrators;	**(5)** number of full-time and part-time faculty, **professional librarians** and administrators;
~~(6) library resources~~	(6) **[DELETED]**

¶96 Under Standard 509(b) the requirement that library resources be disclosed is deleted. There is now a requirement to disclose the number of professional librarians but the requirement does not distinguish between full-time and part-time librarians or define "professional librarians," and nowhere in the library standards is the term "professional librarians" used. It will be necessary for the Council to determine the "form and manner" of the information that law schools are to publicly disclose. To ensure consistency the Council will need to define "professional librarians."

~~Interpretation 105-2~~ Standard 106. Separate Locations and Branch Campuses

Previous Language **Interpretation 105-2**	Revised Standards, August 2014 ***Standard 106***
~~*The establishment of a Branch campus of an approved law school constitutes the creation of a different law school. Consequently, a Branch campus must have a permanent full-time faculty, an adequate working library, adequate support and administrative staff, and adequate physical facilities and technological capacities. A Branch campus shall apply for provisional approval under the provisions of Standard 102 and Rule 4.*~~	**(a) A law school that offers a separate location shall provide:** **(2) Library resources and staff that are adequate to support the curriculum offered at the separate location and that are reasonably accessible to the student body at the separate location;**

¶97 The interpretation that requires an "adequate working library" has been clarified as a standard that focuses on library resources and staff. First, the resources and staff must be "adequate to support the curriculum offered at the separate location"; second, the resources and staff must be "reasonably accessible to the student body at the separate library." As previously discussed, the term "adequate" is ambiguous.[130] It would also appear that the separate or branch library must support the curriculum, but how a library pursues reasonable access to staff might be met through virtual reference services if those are the services being offered at the main law library.

130. *See supra* note 40 and accompanying text.

Conclusions

¶98 In describing how university provosts and presidents evaluate the ABA accreditation process, Saul Levmore stated:

> it would be unsurprising if university provosts and presidents reported that the accreditation of law schools was no different from that of schools established to certify engineers, doctors, and architects. But by all accounts the comparison suggests that we lawyers win the prize for overregulation. . . . It is only law schools that are constantly burdening their central administrators with regulations. This fact suggests a bureaucracy out of control, instituted by well-meaning people but bogged down by interest groups that have brought about a large number of regulations and standards currently in place.[131]

¶99 Prior to these changes, the Accreditation Committee of the ABA Section of Legal Education and Admissions to the Bar had a simple test in assessing the library that belies the extensive library standards: "[t]he gravamen of the test now, as the accreditation committee has applied it, is whether the collection and the library services adequately meet the needs of the school's faculty and students."[132]

¶100 As noted throughout this article, the library standards remain prescriptive and fail to reflect the changing nature of the physical library in today's universities. What does this mean for the library department or professional school library? The revised standards will continue to require significant library expenditures to provide a core collection that goes beyond what is needed to adequately meet the needs of the faculty and students.

¶101 John O'Brien, the former chair of the Council of the ABA Section of Legal Education and Admissions to the Bar, stated, "Look at the standards and ask: 'What is it that the A.B.A. requires that I wouldn't be doing anyway?' The answer is precious little, if anything."[133] Despite this statement, the pervasive attitude within the academy is that the A.B.A. requirements have resulted in the escalating cost of legal education. At the New England School of Law, where O'Brien has served as dean for the past twenty-four years, tuition has increased from $22,475 in 2004 to $42,490 in 2012.[134]

¶102 At the end of the day, the library standards sent to the Council, approved for Notice and Comment—the proposed revisions to Chapter 6 (Library and Information Sources) and Chapter 7 (Facilities, Equipment, and Technology),[135] and

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131. Saul Levmore, *Uncapturing Law School Regulation*, 11 TEX. REV. L. & POL. 391, 394 (2007).

132. Sebert, *supra* note 9, at 396.

133. Quoted in David Segal, *For Law Schools a Price to Play the A.B.A.'s Way*, N.Y. TIMES, Dec. 18, 2011, at BU1, *available at* http://www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html?pagewanted=all&_r=0. Quoting the *Boston Globe*, Debra Cassens Weiss recently pointed out that O'Brien, dean of an unranked law school, may be the highest-paid dean in the nation. Debra Cassens Weiss, *Dean of Unranked Law School May Be Highest-Paid in Nation*, ABA JOURNAL (Jan. 14. 2013 01:12 PM CST), http://www.abajournal.com/news/article/dean_of_new_england_law_school_may_be_highest_paid_in_country/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email,; *see also* I. Richard Gershon, *In Ten Years, All New Law Schools!* 44 U. TOL. L. REV. 335 (2013).

134. *See Bust Out: Some Numbers for Your Monday Morning*, INSIDE THE LAW SCHOOL SCAM (Jan. 14, 2013), http://insidethelawschoolscam.blogspot.com/2013/01/bust-out.html.

135. *See generally* Memorandum from Kent D. Syverud & Barry A. Currier, *supra* note 50.

concurred in by the ABA House of Delegates on August 11, 2014,[136] have not fundamentally changed from what previously was in place. It is often easier to hack at the branches while failing to strike the root of the problem. After almost four years the SRC sent to the Council only modest changes to the library standards.

¶103 The previous Chapter 6 comprises three standards and thirteen interpretations, and the revised standards approved by the Council comprise six standards and seven interpretations. The SRC reorganized Chapter 6 by integrating several prescriptive interpretations as standards and reducing the number of interpretations. While this reorganization is an important step in moving away from interpretations, this four-year process has not resulted in an overhaul of the library standards that would allow more flexibility in the provision of cost-effective services that the faculty and students need.

¶104 At a time when applications to law school declined,[137] the Section of Legal Education and Admissions to the Bar engaged in a review of the standards, and the Council voted to accept the changes chapter by chapter. However, it is interesting that the ABA also created the Task Force on the Future of Legal Education "in the summer of 2012, to meet over the next two years and charged [it] with making recommendations to the American Bar Association on how law schools, the ABA, and other groups and organizations can take concrete steps to address issues concerning the economics of legal education and its delivery."[138] The task force was not placed under the Section of Legal Education and Admissions to the Bar but under the ABA's Center for Professional Responsibility. The task force has created two subcommittees, one to examine "the potential for innovation and improvement in how law schools deliver education" and the other to look at "the economics of legal education and its impact on individual graduates and the profession."[139]

¶105 The subcommittees have themes to address including the "recogni[tion] that there are several models under which accredited law schools can operate to deliver a quality J.D. education."[140]

¶106 It is likely that by the time the task force makes recommendations, the SRC and Council will have completed their review of the accreditation standards and the revised standards will have been approved by the ABA's House of Delegates. It is unfortunate that the SRC's comprehensive review of the standards will not

136. *Revised Standards and Rules Concurred in by the ABA House of Delegates*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/2014_hod_standards_concurrence_announcement.authcheckdam.pdf (last visited Nov. 12, 2014).

137. Since 2009–10 the numbers of takers have dropped each year. There was a 9.6% drop in 2010–11 from 2009–10, a 16.2% drop in 2011–12 from 2010–11, a 13.4% drop in 2012–13 from 2011–12, and a 6.2% drop in 2013–14 from 2012–13. *LSATs Administered*, LAW SCH. ADMISSION COUNCIL, http://www.lsac.org/lsacresources/data/lsats-administered (last visited Sept. 16, 2014).

138. *About the Task Force*, AM. BAR ASS'N CTR. FOR PROF'L RESPONSIBILITY, http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation.html (also at http://www.webcitation.org/6Dw1jdEiS) (last visited Sept. 16, 2014).

139. *Task Force on the Future of Legal Education: Themes, Ideas, Questions and Invitation to Comment*, AM. BAR ASS'N CTR. FOR PROF'L RESPONSIBILITY, http://blurblawg.typepad.com/files/invitation-to-comment.pdf (last visited Sept. 16, 2014).

140. *Id.*

have the benefit of the task force's report to provide a framework that might lead to radically rethinking the accreditation standards.

¶107 The declining applicant pool and the poor job market for lawyers are causing both a supply and demand problem whose solution is the subject of articles by a number of scholars.[141] A more bare-bones set of library standards that more closely mirrors the library standards in the SACS accredidation process, requiring that the institution (1) provide appropriate facilities and resources to support the teaching, research, and service mission; (2) ensure that users have regular and timely instruction in the use of the resources; and (3) provide a sufficient number of appropriately educated or experiences in library/information resources staff[142] if adopted by the ABA might allow for more variations in law school libraries at a lower cost.[143]

141. *See* David Barnhizer, "Redesigning the American Law School," 2010 MICH. ST. L. REV. 249 (2010); E. Thomas Sullivan, 2012 James P. White Lecture on Legal Education: The Transformation of the Legal Profession and Legal Education, 46 IND. L. REV. 145 (2013); BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS (2012).

142. SOUTHERN ASS'N OF COLLS. & SCHOOLS, *supra* note 62.

143. There is a general lack of quantitative analysis of the standards. This was noted thirty-five years ago and remains true today: "[T]he rest of the ABA standards have been and continue to be officially justified on the grounds that they improve the quality of legal education. Undoubtedly, they have helped to improve the nation's schools; nevertheless, the relationships between the number of books, study spaces, and so forth, possessed by a law school and the quality of the legal education provided by it has never really been explored." Donna Fossum, *Law School Accreditation Standards and the Structure of American Legal Education*, 1978 AM. B. FOUND. RES. J. 515, 541 (1978).