The Dual Degree: A Requirement in Search of a Justification

Stephen E. Young
The Catholic University of America, Columbus School of Law

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The Dual Degree

A requirement in search of a justification

By Stephen Young

"Minimum qualifications: A JD from an accredited ABA Law School and a master's degree in library and information science from an ALA-accredited institution are required."

It doesn’t take more than a quick glance at the various law library job postings to see requirements either identical to or similar to the one posted above. This is particularly true if one is looking for a position in an academic law library; however, this requirement is also increasingly being demanded for some law firm and government positions. The debate over the dual-degreed law librarian is certainly not new. As far back as the 1920s, Frederick Hicks addressed the issue of the proper training and education of law librarians and, in so doing, strongly advocated for “some knowledge of law.” While no one questions that some knowledge of law is indeed a very useful skill for this profession, is there really a need for law librarians to go to law school for three or four years and potentially spend as much as $150,000 in the process? I would argue that the skills sets needed for this profession do not require this immense expenditure of time and financial resources.

The most recent debate over this topic took place in July 2011 at AALL’s 104th Annual Meeting in Philadelphia. A panel of academic law librarians, including Robert Nisensbaum, director of the law library and professor of law at Fordham University Law Library in New York; Kumar Jayasuriya, associate law librarian for patron services at Georgetown University Law Library in Washington, D.C.; Chuck Marcus, faculty services librarian at University of California Hastings College of the Law Library in San Francisco; and I engaged in a lively one-hour discussion moderated by Christine Ciambella, part-time reference librarian at American University College of Law Library in Washington, D.C. Although we cannot claim to have resolved the issue, we did succeed in getting people talking about the topic in the context of the current economic climate. Unfortunately, our one-hour slot on the conference schedule was not enough time to address many of the issues that surround this important topic, so I would like to highlight some of those while also briefly revisiting some of the points that we were able to debate during the program.

The Value of Legal Knowledge

Perhaps the strongest argument advanced in favor of requiring both the law and library degree has traditionally evolved from Hicks’ statement on legal knowledge. Obtaining a law degree provides a librarian with not only substantive and procedural knowledge of the law, but also the experiential aspect of having attended law school—the empathy factor, for want of a better term. Law librarians who have attended law school can rightly argue that they understand the law and law students better than a law librarian who has not attended law school. However, I’m not sure how many would argue that three years of law school are required to obtain enough of an understanding of the law to do their jobs capably.

An argument could also be made that no amount of law school would ever be enough to provide sufficient knowledge to tackle the breadth of questions reference librarians receive in the course of their work. Although a valid point, I think that in arguing it onecedes too much ground to the notion that being trained “just” as a librarian is not enough to do the job. Instead, I contend that as librarians we are not in the business of applying our understanding of the law; we are using our skills to help others find and apply the law. We are librarians who work in law, not lawyers who work in libraries.

A 2010 Reference Services Review article by Debbi A. Smith and Victor T. Oliva indicated that 79 percent of all librarians surveyed agreed that “knowing how to address a reference question and conduct a reference interview are more important than understanding the subject being researched.”

One criticism of the current system argues that the need for legal skills actually diminishes the more the requirement for the two degrees exists. Allow me to explain. Although most entry-level reference jobs in academic law libraries require both degrees, there is still a smattering of openings that allow the single-degreed librarian an opportunity to apply. However, entry-level positions are probably the ones most likely to involve answering legal reference questions and require the librarian to have an understanding of the legal system. As one advances to more administrative positions, such as head of reference, head of public services, or even director, the likelihood of encountering openings that do not...
require the two degrees quickly diminishes, and yet the actual work involved becomes less related to the discipline of law. An argument has been made that the skillsets required for many mid- and high-level management positions in law libraries are best obtained from a business school, not a law school.

Our Colleagues in Medicine and Business

The experiential aspect of having gone through law school, thus arming the law librarian with the ability to say to a law student, "I feel your pain," appears at first glance to have some merit. Certainly, one who has sat in a first-year class and been called on by a professor to brief a case can more clearly empathize with the stressed out J.D. than one who has never been in that situation. But before conceding the point, it behooves us to take a look at a couple of our sister professions: medical librarianship and business librarianship.

While 55 percent of academic law librarians are dual degree (compared with 33 percent of all law librarians, 8.4 percent of law firm librarians, and 24 percent of state, court, and county law librarians), the equivalent numbers for librarians in medicine and business are far smaller. Although the Medical Library Association does not officially keep this statistic, a phone call to the organization revealed that less than 1 percent of all its members possess both a medical degree and a library degree. Meanwhile, various surveys of business librarians report that approximately 20 percent hold a master's in business administration in addition to their library degree.

Does this mean that the overwhelming majority of librarians in these respective professions lack the understanding of their subject to perform their job at a high level? Does this also mean that a medical librarian is somehow deficient because he or she is unable to look the medical student in the eye and say, "I have walked in your shoes?" No. I think we all recognize that librarians in medicine, business, and other special libraries can and do provide an excellent level of service without having obtained the second advanced degree. If the library degree is good enough for the life-and-death environment of medicine, surely it's good enough for law.

My favorite rejoinder to the empathy argument comes not from medical librarians or business librarians but from prison librarians. While it is fair to suggest that the prison librarian argument might strike one as facetious, the point is not lost: being a good librarian does not require having shared similar experiences with one's patrons. If the counter-argument to this discussion is that it is unrealistic to expect librarians to hold a four-year medical degree, one might surely ask whether it is any more reasonable to expect librarians to hold a three-year law degree.

A Comparative Approach

At this point, it would be too easy to get caught up in a back and forth between those arguing the benefits of having attended law school and those arguing that it's an unnecessary requirement for the profession. In order to avoid this, I think it is useful to provide a comparative perspective and examine industry practices in other countries. If we begin by glancing north of the border to our colleagues in Canada, we notice that though approximately 60 percent have the advanced degree in librarianship, a small number have both the library and law degree. Various surveys, including a 2010 survey that appeared in the Canadian Law Library Review, indicate that approximately 11 percent of law librarians in Canada are dual-degreed.

As recently as last year, the libraries of three of the top 10 law schools in the country were led by directors who did not possess both the law and library degrees.

Upon examining the profession in the United Kingdom, it initially appears to be more supportive of the dual-degree scenario. According to surveys from the Society of Legal Scholars and the British and Irish Association of Law Librarians, 76 percent of law libraries at "old universities" have staff with legal qualifications. This is an impressive number, but a closer examination reveals two things: first, the 76 percent refers to the institutions, not the personnel, and second, we must remember that a "legal qualification" in the U.K. also includes the undergraduate degree of law. Although there are no reliable figures on how many law librarians in the U.K. possess both advanced degrees, anecdotal evidence points to a fairly small number, certainly well below the numbers seen in the United States.

The ABA Standards

When asked, most people in the profession agree that if there is one position in law librarianship that demands the two advanced degrees, it is the position of director of an academic law library. A glance at the numbers seems to confirm this assumption; in the most recent AALL Salary Survey, 100 of the 110 reporting academic library directors indicated that they possessed both a law degree and a library degree. The reason put forward for these overwhelming numbers usually includes some combination of the following points: the standards for law schools require directors to hold both degrees; as a tenured position in the law school, the director must have a law degree; or in order to be a voice heard in the law school and to have a seat at the decision-making table, the director must be a full faculty member. In order to determine the validity of this reasoning, we must examine each of these points individually.

Let's begin with the standards. The American Bar Association (ABA) Standards and Rules of Procedure for Approval of Law Schools Standard 603(c) states: "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."

As any student of statutory interpretation will attest, the key to this provision is the use of the words "should" and "shall." The ABA has intentionally made the possession of the two degrees discretionary, while mandating the exposure to library administration. As recently as last year, the libraries of three of the top 10 law schools in the country were led by directors who did not possess both the law and library degrees. The fact that these schools chose to opt out of this ABA preference highlights just how discretionary this provision is.

A further dilution of the standards argument occurs when taking into account the recent Comprehensive Review of the Standards. Although not complete, the review has included draft proposals that over haul the language used in Standard 603(c). Gone would be the preference for the two degrees and in its place the following language: "A director of a law library shall have the requisite skills, education, and experience to provide leadership to the law school's information resource needs and shall have a sound knowledge of and experience in library administration, library technology, and issues involving legal research and legal education."

It is too early to know whether the final review of the standards will include this revised language; however, it is clear from both the existing standard and the proposed revisions that the ABA does not consider the possession of dual degrees an essential part of being an academic law library director.
Arguments Against Tenure

Tenure
In the context of the dual-degree debate, tenure is thought to play a role in that the law degree is often seen as an essential element in obtaining tenure.

No law degree, no tenure. The issue of tenure for law librarians is a thorny one that requires a lot more space devoted to it than this article can provide. Setting aside some of the more common arguments against the role of tenure in a law library, I see the tenure issue as a red herring that actually doesn’t lend much credibility to the argument posited by those advocating for the dual-degree requirement in the profession. Starting at the top with the position of academic law library director, almost one third are not tenure-track positions. When one examines the nondirector positions in academic law libraries, the reality is that only 6 percent of those positions are academic law libraries, the reality is that examines the nondirector positions not tenure-track positons.

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Returning briefly to the review of the ABA Standards, it is worth noting that Interpretation 603-3, calling for library directors to be “normally a tenure or tenure-track position,” is increasingly coming under attack. In the introductory comments to one draft from January 2011, the Standards Review Committee wrote the following in reference to the appointment of library directors to positions on the tenure track: “It is not clear why accreditation policy is advanced by mandating that they be granted ‘security of position.’” In the same draft, Interpretation 603-3 is deleted in its entirety. While there is little to suggest that the era of the tenured academic law library director is coming to an end, I think it is equally clear that the tenure card can be overplayed in the dual-degree debate.

A Seat at the Table

Inseparably tied to the tenure issue is the argument that being a full-time member of the faculty accords the director with participatory rights and responsibilities in the governance of the law school.

There is little doubt that the law library is best represented by someone who does have a voice in the governance of the law school. But does that necessarily mean that the law library is somehow underserved if the director is not a full faculty member? Certainly, there are other members of the law school community who do have a voice and who are not full faculty members. These might include various associate or assistant deans for admissions, careers, or alumni relations, as well as the head of the law school computer or systems department and the head of the clinical programs. Additionally, one must consider the ability of the vast majority of university or college librarians who operate in environments where they are not accorded full faculty status. These individuals are able to successfully manage their libraries and serve as library advocates on campus without the privileges of faculty status. I would therefore allow that while a case can be made that having a director with full faculty status provides the library with an effective advocate, I’m not so sure the reverse of this proposition is necessarily true.

How Does This Impact the Patron?

So far I have discussed the impact of the dual degree on the librarian and on the institution, but missing in all of this has been the most important criterion: what impact, if any, does this have on the patrons? Is there a correlation between the educational qualifications of the librarian and patron satisfaction? Library literature is surprisingly sparse on this topic, which makes arriving at a conclusion somewhat difficult. In a 2003 Law Library Journal article, Mary Whisner cited a couple of studies that took into account the educational level of the librarian in determining patron satisfaction with reference transactions. These studies determined that education was not a factor in influencing patron satisfaction accuracy or accuracy in answering reference questions. The variables that played the largest role in influencing patron satisfaction and accuracy of answer were librarian behavior and, not surprisingly, difficulty of reference question.

Anecdotal evidence, based on 25 years of observing librarian/patron interactions, leads me to believe that, for the most part, the patron has little knowledge of, or interest in, the academic qualifications of the librarian. The patron’s primary interest is receiving timely, accurate information from a pleasant and understanding person.

The Financial Considerations

The tremendous financial cost of attending law school is no secret. Between 1989 and 2009, college tuition in America rose 71 percent, while law school tuition during the same period rose more than 300 percent. A 2009 ABA report indicated that the average cost of tuition alone was more than $35,000 for private law schools and almost $20,000 for in-state residents attending a public law school. The total amount borrowed for law school averaged $106,000 for students attending a private law school and $68,000 for students attending a public law school. With tuition increasing an average of 6 percent per year, those figures are now even higher. Combine these numbers with the costs associated with obtaining a law degree, in addition to whatever debt is being carried over from an undergraduate education, and many students end up starting their professional law library careers owing more than $150,000.

Even the ABA stated in its report, “going to law school may not pay off for a large number of law students,” and we must remember they were envisioning future lawyers, not future librarians.

Having examined the upfront costs of obtaining a law degree, it’s only fair to talk about the expected salary bump enjoyed by those in the profession with both degrees. According to the AALL 2011 Salary Survey, the mean salary for academic reference/research librarians with the MLS was $65,965, while the mean salary for academic reference/research librarians with both degrees was $63,189. A difference of $2,776, but the difference is in favor of the MLS-only librarian. Even when one compares mid-management positions, such as the associate or deputy librarian position, the difference is a mere $1,036, albeit in favor of the dual-degree individual. Furthermore, the cost/benefit aspect of obtaining the law degree continues to diminish when one considers that over the past 10 years, salaries for administrative positions in academic law libraries have increased by 40 percent, while tuition for in-state residents attending a public law school has risen by more than 152 percent.

Offering a Solution

Does a more affordable and accessible path exist, one that equips law librarians with just enough legal knowledge to assist them in their careers? Maybe it does. Linda Greenhouse, the New York Times Pulitzer Prize-winning journalist who covered the Supreme Court for
many years, serves as a prime example of someone who came into contact with the law on an almost daily basis as part of her nonlegal profession. In order to provide herself with the necessary skills to work with legal materials and understand the legal system, Greenhouse didn't attend law school. Instead she obtained a master of studies in law (MSL) degree from Yale Law School in 1978 and went on to become one of the most respected legal commentators of our time.

I am certainly not the first in our profession to propose the MSL as a suitable alternative to the three-year law degree. In 1991, Jim Hambleton wrote a chapter in the first edition of The Spirit of Law Librarianship in which he eloquently argued in favor of the MSL. A couple of years later, Penny Hazleton, while acknowledging the realities of the JD requirement, also spoke of the advantages of the MSL programs. Today, a number of MSL programs exist around the country that target professionals who need a working knowledge of the law in order to function in their professions. Although some programs are aimed at foreign students, programs such as the one at Pittsburgh Law School specifically mention librarians in their promotional materials.

I also think it's worth taking a final look across the Atlantic to what is happening in the U.K. Recognizing that law librarians are unlikely to pursue an advanced degree in law, the British and Irish Association of Law Librarians offers a Legal Foundations course at the University Of Westminster School Of Law in London. This affordable one-year course provides law librarians with a solid grounding in basic legal concepts including torts, contracts, civil procedure, and criminal law.

As a final thought, let's consider the current nationwide downturn in law school applications. The number of people taking the LSAT has declined 25 percent over the past two years, and nationwide applications to law schools are down almost 16 percent in just the past year. With fewer students pursuing a law degree, the dual-degree requirement creates a smaller and smaller pool of eligible candidates for academic law library positions. This thinly veiled form of gatekeeping is not in the best interests of a profession seeking good people to replace a rapidly retiring workforce. All of us know of talented librarians who would be welcome in the profession were it not for their lack of a law degree. I would argue that on balance, the costs of the current way of doing business outweigh the benefits, and it is now time for the profession to look at alternatives to the dual-degree requirement.

Stephen Young (young@law.edu) is a reference librarian at the Judge Kathryn J. DuFour Law Library at The Catholic University of America Columbus School of Law in Washington, D.C.

announcement

The Call for Papers Has Begun

Have you been thinking of writing an article of interest to law librarians? The AALL/Law Libraries Call for Papers Committee has opened the initiative to get you started. The committee is soliciting articles in four categories:

- Open Division: for active and retired AALL members and law librarians with five or more years of professional experience.
- New Member Division: for recent graduates and AALL members who have been in the profession for less than five years.
- Short Form Division: for AALL members, articles in this category will be shorter than a traditional scholarly article and be appropriate for publication in AALL Spectrum, a web journal, or a chapter of special interest section newsletter.
- Student Division: for students in library, information management, or law school. Participants in this division need not be members of AALL. To submit to this category, you must have been enrolled in law school or in a library school, information management, or equivalent program in the Fall 2012 semester or Spring 2013 semester.

Submissions in the Open, New Member, and Short Form Division must be received by March 1, 2013. Articles in the Student Division must be received by May 15, 2013.

The winner in the Open, New Member, and Student Divisions will receive $500, and the Short Form Division winner will receive $300. All generously donated by LindTwain, site the opportunity to present their winning papers at a program during the 2013 AALL Annual Meeting in Seattle. Winning papers in the Open, New Member, and Student Divisions are also considered for publication in Law Library Journal.

For more information, a list of previous winners, an application, and instructions on how to submit your article, please visit www.allnet.org/wp-content/member_resources/AALLjournals/awards-call-for-papers.html. Winning papers from earlier competitions can also be found at web.archive.org/web/20121028000000.

If you have any questions, please contact one of the AALL/Law Libraries Call for Papers Committee Chair Mark W. Podvia (mpodvia@bobg.com), the Editor Benjannia J. Kneale (kneale@bohlin.com), Shawn E. Nevers (nevers@bwhq.ca), or Wei Wang (wangwei@uw.edu).