Self-Help Legal Materials in the Law Library: Going a Step Further for the Public Patron
by Merrilee Harrell

INTRODUCTION

Law libraries historically have been private institutions catering primarily to attorneys, judges and law students. As recently as 1980, an article in the *Law Library Journal* spoke of “the new patronage look,” referring to increasing numbers of public patrons in the law library.¹ Reasons for the change have been attributed to various developments in the last quarter of the 20th century, such as growing social activism, the creation and growth of the federal depository library system (which requires depository libraries to provide public access to depository documents),² and the U.S. Supreme Court’s decision in *Faretta v. California*,³ which concluded that pro se litigants had a right to represent themselves in court.⁴

As public demand for access to legal materials increased, so did the literature analyzing the legal ramifications, and so did the publication of self-help legal materials. Publishers of self-help legal information have since weathered challenges of unauthorized practice of law, and law librarians continue to question how far they can go to serve public patrons without crossing legal boundaries.

This paper explores the history and controversy of self-help legal materials, and the current status of self-help publications today, with an emphasis on collection development recommendations for public law libraries, including recommendations on librarian-authored or gathered local information resources such as resource guides, forms collections and training materials. The goal of this paper is to encourage development of a legal self-help collection and to provide guidelines for evaluating or producing such materials.

² 44 U.S.C. Ch. 19; In particular, the 1978 addition of § 1916, which expanded the depository system to allow law schools to be designated depositories, thus requiring them to allow access to the materials by the public.
³ 422 U.S. 806 (1975).
HISTORY

Plain-English Please

Asked whether I speak any foreign languages, I am tempted to confess, “I speak legalese.” The problem is, I’m not fluent. Years of legal training and experience, and I still find myself having to parse out meaning in legal documents. But I am not alone. Frustration with legalese in this country likely dates back to the moment the first lawyer arrived. As early as 1869, there appeared a “new edition” of Every Man His Own Lawyer, by John G. Wells, a 632-page guide and form book described as “a complete guide in all matters of law and business negotiations, for every state in the union.” The introduction explains that the publishers undertook a comprehensive revision of an earlier work due to the many changes wrought by the Civil War. The resulting revision is described as “[s]o critical and thorough… that it is the conviction of the publishers that the most implicit reliance can be place upon the work, as authority on all the subjects of which it treats.” Wells continued,

The utility of such a work no one will now question. The sale of hundreds of thousands of copies of the former editions, and the constant demand for it, have settled that point. The professional man, the farmer, the mechanic, the manufacturer, the soldier, the sailor, each requires a convenient, comprehensive and reliable work which will enable him to draw up any instrument in writing that may be required, in a legal form; which will furnish such legal information as is usually called for in the various avocations of life; a book that everybody can understand, and that will enable every man or woman to be his or her own lawyer. To make such a work, and make it well, was no small task; but by patient, continued, and intelligent labor, it has been achieved.

Another wave of legalese reform appeared in the mid-1960s with the publication of The Language of the Law, by UCLA law professor David Mellinkoff, who is

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5 John G. Wells, Every Man His Own Lawyer and Business Form Book (1869).
6 Id. (emphasis in original).
7 Id.
credited with starting (or perhaps restarting) the “plain English movement.”  
Mellinkoff undertakes a historic analysis of the development of legal language in
arguing for simplicity. Two years later, at the request of the American Bar
Foundation, Professor F. Reed Dickerson of Indiana University published The
Fundamentals of Legal Drafting, which, among other things, articulates the
importance of recognizing the audience for whom legal information is intended.
The plain English movement gained momentum in the 1970s as consumers
rebelled against the complicated language found in insurance policies, resulting in
more than half of the states passing legislation requiring that the language of
insurance policies be simplified. All fifty states have since adopted a plain-
English statute in one form or another, with California, Michigan and New York
leading in the number of such statutes.

Around the same time the plain language movement was gaining momentum, an
idealistic legal aid attorney named Ralph Warner co-founded Nolo Press, a
publishing house based in Berkeley that has become the largest publisher of legal
self-help materials. In a recent interview, Warner, who graduated from U.C.
Berkeley’s Boalt Law School in 1966 and started Nolo Press in 1971, explains
that as a legal aid attorney, he recognized that the wealthy could afford lawyers,
and the poor could get help from legal assistance organizations, but those in the
middle could neither afford a lawyer nor qualify for legal aid. Nolo’s first
publication, How to Do Your Own Divorce, retailed for $4.95.

In 2007, the court clerk’s office reported that an estimated 80% of divorces in Los
Angeles are now handled pro se. It would not be a stretch to assume that a legal
self-help guide, whether published by Nolo or assembled by a local law librarian,

10 F. Reed Dickerson, The Fundamentals of Legal Drafting (1965).
11 Id. at 20.
12 Kenneth B. Firtel, Plain English: A Reappraisal of the Intended Audience of Disclosure
13 Lexis search on “plain English” in all 50 states performed March 27, 2008.
14 Kathy M. Kristof, Legal Champion for the Middle Class, L.A. Times, Nov. 18, 2007, at
C3.
15 Id.
16 Id.
was a primary resource for a good portion of those who elected to proceed without an attorney.

**Unauthorized Practice of Law**

In the 1990s, with the growth of the legal self-help industry and emergence of legal self-help computer software, a number of state bar associations began to question whether the publishers of such materials were engaging in the unauthorized practice of law. The controversy begs the question of whether challenges are to protect the consumer or to protect the legal profession.

The source of the controversy stems from Rule 5.5 of the American Bar Association’s Model Rules of Professional Conduct, which provides, in part, “(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.”17 The Comments to Rule 5.5 note that “Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer’s direct action or by the lawyer assisting another person.”18

As early as 1967, the publication of a legal self-help book under attack as unauthorized practice of law was deemed protected free speech in New York,19 and other states took a similar position.20 But the definition and boundaries for unauthorized practice differ from state to state, and not all states agreed that self-help materials were to be granted such protection.

In March 1998, the Texas Unauthorized Practice of Law Committee (“UPL Committee”), composed of six Texas attorneys and three lay citizens appointed by the Supreme Court of Texas, notified Nolo Press that they were to appear at a hearing regarding certain Nolo publications that were distributed in Texas.21 Nolo requested that the UPL committee provide further information about the complaint, investigation and hearing process, but the Committee refused to provide the requested information on the grounds that the investigation was

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18 Id. at <http://www.abanet.org/cpr/mrpc/rule_5_5comm.html>.
21 See *In re Nolo Press/Folk Law*, 991 S.W.2d 768, 773 (Tex. 1999).
“confidential.” After some procedural two-stepping between the parties, the Texas Supreme Court vacated an earlier order shielding UPL Committee records from disclosure, and issued a new order compelling the UPL committee to respond to Nolo’s request for production.

Meanwhile, the UPL Committee was also pursuing another target, filing suit in 1998 against Parsons Technology, developer and publisher of software products such as Quicken, Turbo Tax, and Quicken Family Lawyer (“QFL”). The UPL Committee sought to enjoin sales of QFL in Texas, charging that the product violated the state’s unauthorized practice of law statute, which at that time provided:

> In this chapter the “practice of law” means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

Parsons’ primary argument was that under a plain reading of the statute, “the mere selling of books or software cannot violate the statute because some form of personal contact beyond publisher-consumer is required.” Alternatively, Parsons argued that enjoinment of the sale of QFL in Texas would violate their free speech rights under the First Amendment of the Constitution of the United States.

Addressing Parsons’ First Amendment argument, the court concluded that the Texas UPL statute was content-neutral and thus survived review under intermediate scrutiny as Texas “has a significant interest in regulating the practice of law and protecting its citizens from being mislead.” As to Parsons’ “personal

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22 Id. at 774.
23 Id. at 784.
26 Parsons, 1999 WL 47235 at 3.
27 Id. at 9.
contact” argument, the court concluded that “If Parsons believes such a personal contact requirement should be included in the Statute, it should address these concerns to the Texas legislature. It is not appropriate for this Court to be the first to read such a requirement into the Statute.”28 The Court enjoined sale and distribution of QFL in Texas.

Meanwhile, Nolo was gearing up to defend itself against the Texas UPL Committee’s charges that the distribution of certain Nolo products in Texas constituted unauthorized practice of law. Nolo’s CEO Ralph Warner decided against a First Amendment defense, and instead anticipated seeking a jury trial, “to see whether 12 Texas citizens could tell the difference between a book and a lawyer.”29 But in the wake of the decision in Parsons, Parsons took their concerns to the Texas legislature, and with the help of technology industry lobbyists, succeeded in changing the statute.

In 1999, the Texas legislature introduced House Bill 1507, which amended §81.101 of the Texas Government Code (the UPL statute).30 The analysis of HB 1507 refers to the Parsons decision that held that sale of a software product constituted unauthorized practice of law per §81.101.31 HB 1507 added the following language to §81.101:

[T]he “practice of law” does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney.32

Although the original effective date of the legislation was September 1, 1999,33 the final version of the bill, effective June 18, 1999, added a provision making the

28 Id. at 7.
29 Kristof, supra note 13.
33 House Bill Analysis, H.B. 1507, supra note 31.
statute effective on passage, noting that “[t]he importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity…” 34 It is surely no coincidence that eleven days later, Unauthorized Practice of Law Committee v. Parsons Technology, Inc. came up for review by the Fifth Circuit of the U.S. Court of Appeals. The decision of the Texas District Court was vacated in light of the revised legislation. 35

The legislative change rendered any further litigation on the matter moot, and opened the door for the self-help publishing business to thrive, in Texas and elsewhere. 36 Needless to say, the Texas UPL Committee did not pursue any further action against Nolo Press.

EVALUATING MATERIALS

Although Nolo would seem to be the leader of the legal self-help pack, with over 200 products available to consumers, 37 there are dozens of practitioners throughout the United States offering state-specific materials, often self-published or published through small, independent presses. Perhaps many of these works are a labor of love and would not pass muster with a major publisher, but where typical acquisition considerations such as reputation and publisher come in to play, should the librarian apply a looser collection development analysis in order to cast a broader net?

It is common for the collection development policies of academic law libraries to focus on serving their academic communities, while the private firm library seeks to serve the needs of its attorneys and clients. But self-help legal materials should not be relegated to the public law library alone. Law libraries of all types should consider and include self-help materials as part of their collection development policy. In the academic realm, such materials would fit in with any comprehensive research on a subject. In the private firm, self-help guides could help clients to understand complex legal concepts, in addition to helping the attorney to better communicate with clients who have little experience with the legal system.

34 H.B. 1507, supra note 32.
35 Unauthorized Practice of Law Committee v. Parsons Technology, Inc., 179 F.3d 956 (Tex. 1999)
37 Nolo 2007 Fall Catalog.
Collection Development Policy

The collection development policy of any publicly-funded law library should recognize the library’s responsibility to be inclusive of public patrons, and thus should take into consideration materials that meet the needs of that audience. From a public relations standpoint, a law library that is inclusive of the public that helps pay for the books on its shelves is more likely to find the support of that public when it comes time for the powers that be to determine how to allocate monetary resources. Law libraries that are designated federal depository libraries should also take seriously the requirement that their status as such requires that they provide public access to these materials. The further step of maintaining a collection of legal self-help materials is simply good practice from a public policy standpoint.

From the mission statement to the selection criteria to the “conspectus” analysis, the collection development policy should consider legal self-help materials in both print and electronic formats. The mission statement can be seen to be inclusive of such a collection by merely recognizing the general public as among its potential patrons. Selection criteria should consider self-help materials explicitly to assist the selector in knowing under what circumstances self-help materials are to be considered. More detailed collection development policies may also want to include guidance as to whether to provide such materials in print or electronic formats, or both. Consider, for example, what guidelines to be used in deciding whether to provide a link to an electronic copy of a self-help resource (and whether to add this electronic resource to your catalog), whether to purchase (or print) a hardcopy for the stacks, or both. The importance of public access to these materials should be at the heart of such decisions.

State-specific materials are of particular value and should receive an appropriate amount of deference to allow for inclusion in the local self-help collection. An even greater emphasis should be made on providing access to electronic versions of local resources such as forms, instructions, and research guides, particularly in


subject areas of greatest need, such as family law, consumer issues and landlord-tenant law.

When analyzing materials under the conspectus model, legal self-help materials can be seen to fit into collection level 3 (study or instructional), 4 (research) or 5 (comprehensive). Students not only could benefit by having legal self-help materials as an aid to learning the material, but for many research topics, knowledge of the availability and content of self-help materials would be an important aspect of the research. Law students may find such materials especially valuable as they quickly learn that family and friends turn to them immediately with their legal questions (in which case, the law student becomes an instant reference librarian, steering loved ones to the materials that will be more useful than any advice the fledgling attorney-to-be could possibly offer.) It is also hopeful to consider that today’s law student could also be tomorrow’s author of a self-help publication (or law librarian), and familiarity with the format and availability of legal self-help materials can only enhance the skill set of the budding legal professional.

Subject areas that are most popular (because they are the most needed) in the self-help publishing arena, such as titles pertaining to family law, estate planning, small business, and consumer issues, should be standard for any public law library’s collection. Overviews of civil procedure and how to do legal research are also excellent topics to include in the self-help collection as they allow the librarian to provide a resource while keeping a safe distance from the legal advice boundary.

**Credentials**

Among the standard, oft-repeated criteria for evaluation of legal materials is to consider the reputation and recognition of the author and publisher. While publishing companies under the umbrella of the “big three,” Thomson, Reed Elsevier, and Wolters Kluwer, are pretty much an automatic stamp of approval with regard to “reputation and recognition,” and Nolo has certainly come into its own as far as reputation and recognition in the self-help market, these publishers generally produce generic, non-state-specific materials (although Berkeley-based Nolo publishes a number of California-specific materials). Because the state-

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specific materials are by their nature directed at a smaller audience, the smaller publishers that address this market warrant a closer look.

While the credentials of the author should still be considered, “reputation and recognition” on a national scale become less important. Valuable background information can be gleaned about attorney-authors through the bar association with which the attorney is affiliated. Is the author a current member in good standing of the bar in the jurisdiction in which s/he is writing? How long has the attorney been in practice? Other sources, such as Martindale-Hubble or even a Google™ search can reveal additional information. Does the attorney practice in the area in which s/he is writing? Has s/he published other materials? The evaluator should also look at the author’s institutional affiliation, and see if additional biographical information is available through the institution’s website.

If the answers to questions about the author’s credentials are satisfactory, a review of the usefulness and quality of the material by the librarian should reveal whether it is a good addition to the self-help collection. Personal evaluation of the resource becomes more important with small press materials, but a search for reviews can also shed light on the product. Where personal review of an item has been accomplished, the librarian should consider writing a review for AALL or the AALL local affiliate to alert other librarians to a potential small-press gem. Considerations should also include the quality of the writing, currency of the information, use of language appropriate to the audience, the existence and usefulness of reference aids (table of contents, index, glossary), and effective use of visual aids such as graphs, tables, and charts.

**State-Specific and Other Local Materials**

It is a common theme among collection development policies to place emphasis on state and other local materials. But outside of Nolo’s coverage of California, state-specific self-help books are hard to come by, no doubt due to limited audience as compared to production costs. When state-specific materials are available, the librarian should be somewhat more forgiving in his/her evaluation if overall the product would be of use to the pro se patron.

**Small Presses and Other Publishers**

A sampling of some of the small press materials available is instructive in recognizing how limited availability makes these materials more valuable, despite what might otherwise be perceived as flaws in the overall presentation.
Eagle Publishing
Out of Boca Raton, Florida, this publisher specializes in state-specific publications on estate planning matters such as wills, trusts, probate, and estate administration. Popular titles include *Guiding Those Left Behind in [state]*, and *A Will is Not Enough in [state]*. The company also maintains a website that purports to keep Eagle’s publications “fresh and up to date” by posting any changes to the law or errors that come to light after the book has gone to print. *Guiding Those Left Behind* includes a table of contents, index and glossary, and uses simple language, checklists and samples.

Self-Counsel Press
Based in Bellingham, Washington, this press publishes a number of general legal titles geared toward the lay reader, but also includes some state-specific titles including Landlord/Tenant Rights in Oregon and divorce guides for Washington, Oregon and Illinois. According to Self-Counsel Press’s website, they have been publishing self-help titles since 1971, and all of their legal titles are written by lawyers who practice in the field they are writing about.

Sphinx Publishing
This Illinois-based publisher offers both national and regional self-help materials, including materials written in Spanish. Founded in 1983, topics include family law, immigration, estate planning, business, and real property (including landlord/tenant materials.)

CLE Materials
There are a number of Continuing Legal Education (CLE) providers that offer state-specific materials, such as the National Business Institute, and Lorman Educational Services. These companies provide continuing legal education for attorneys and other professionals, and offer numerous CLE materials in print for sale. Although geared primarily toward the practitioner and other professionals, the materials are much more accessible than academic treatises. Many single-subject legal materials are available, typically written by practicing attorneys. Print materials usually include a table of contents, and often include forms related to the topic.

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SELECTED RESOURCES

There are numerous finding guides and selection resources available to the law librarian, to the extent that one can even find finding guides for finding guides. But when focusing on self-help or local materials, some of the resources listed below should be added to the librarian’s list of finding tools.

Amazon.com – just type in “legal self-help” into Amazon’s search field, and you’re on your way to finding hundreds of titles. Amazon is also a good place to look for specific titles and find reviews of popular titles.


American Bar Association (ABA) – The ABA’s Division for Public Education offers a number of publications directed at a lay audience, including publications on consumer issues, family law, and estate planning. The site also includes pages containing brief, easy-to-understand information about how the civil and criminal justice systems work.


National Consumer Law Center - As the name suggests, this non-profit organization’s primary mission is consumer protection. A number of publications geared toward the lay reader are offered on their website.

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Nolo.com – In addition to providing information about all of their product offerings, Nolo’s website also offers abundant information on many legal topics for free.

State Bar Association Web Sites – The Web sites of state bar associations often offer materials either directed at the general public, or other materials, such as CLE materials, that can be useful to the non-attorney. The Washington State Bar Association, for example, offers a “What You Should Know” series of pamphlets directed at consumers, on subjects such as landlord-tenant rights, wills, divorce, and many other topics. 47

Kendall F. Svengalis, Legal Information Buyer’s Guide & Reference Manual (2007) – This selected bibliography and finding tool provides information on developing a core collection with both comprehensiveness and cost-consciousness in mind, and includes many self-help titles. The manual also includes a helpful chapter on “Finding Law on the Internet” that provides information about reliable free sources of legal information on the Internet.

Werner’s Manual for Prison Law Libraries 48 – It is worth noting a bit of history here regarding the rise and fall of prison law libraries. Following a 1977 U.S. Supreme Court decision, prisons were required to provide prisoners access to the courts, either through legal services or “adequate” law libraries. 49 Over the next two decades, while prison law libraries grew, so did prison litigation, including litigation over what constituted an “adequate” law library. 50 In 1996, the U.S. Supreme Court heard a case arising out of a class action filed by inmates of prisons in Arizona who claimed, among other things, that their legal research facilities were inadequate, and thus in violation of Bounds. 51 The Court essentially overturned that portion of Bounds that required access to legal materials, significantly narrowing the types of materials prisons were required to provide to “those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement.” 52


50 Werner’s, supra note 44, at 2.


52 Lewis, 518 U.S. at 355.
As a result, many prison law libraries either closed their doors or downsized tremendously.

Considering the history, *Werner’s Manual* has distilled to its essence recommendations for prison law libraries, and offers an excellent collection guideline that includes a good number of self-help materials and resources.

**State and Local Government Resources**

In addition to the state and local laws and regulations that would typically be considered part of a core collection for a law library in that library’s jurisdiction, the library should additionally review and obtain resources developed for the lay audience by local government agencies and non-profit organizations. Examples would be publications on employment rights, housing issues, consumer issues, immigration, etc. While much of this can be added to the collection electronically, as a stand-alone item or linked through a resource guide, materials should also be evaluated for inclusion as a print resource.

**THE LIBRARIAN AS “PUBLISHER”**

Indispensable to today’s public law library are the librarian-authored or gathered local information resources, including research guides, forms collections and training materials. While much has been written about the potential dangers of crossing the line between providing legal information and providing legal advice, librarians are in a unique position to seek, gather, and disseminate local legal information for the public patron. “Librarian liability” fears have hopefully given way to common sense, but it remains prudent to be cognizant of potential liabilities, and to know there is a line to be drawn between legal information and legal advice. Yet it is equally important to recognize that the lack of litigation in this area quite possibly reflects recognition that public policy considerations grant the librarian some leeway in providing information without fear of reprisal.

**Librarian Liability**

Numerous articles have appeared in the library literature over the last few decades raising concerns about the potential liability of librarians who may be perceived as having provided legal advice to public patrons. Perhaps this fear evolved as increasing numbers of law librarians had both law and library science degrees.53

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53 In 1968, the Association of American Law Schools amended its articles to recommend such a dual degree requirement. Kathleen Price and Nancy Kitchen, *Degree-Oriented*
One could also speculate that the growing plain language movement and emergence of “do it yourself” law materials in the early 1970s, which gave rise to allegations that publishers of such materials were engaged in the unauthorized practice of law, raised similar concerns among law librarians. An early article by Allan Angoff published in *American Libraries* has been described as the article that “may have started the persistent but apocryphal belief that some library somewhere has been sued for reference activities.” In his annotated bibliography on articles related to reference liability, Professor and Law Librarian Paul D. Healey remarks that “an astonishing number of articles are written by nonlawyers who, in the course of telling people not to give legal advice or practice law, end up giving legal advice and, at least in theory, practicing law.” Healey describes the Angoff article as “aimed more at provoking than informing… [the article] is riddled with legal errors…[and] is notable only for its effect on subsequent literature.” And indeed, many articles on the subject of librarian liability that followed quote the Angoff article.

In 1976, Robert T. Begg raised the alarm that assisting public patrons put law librarians at risk of unauthorized practice of law. Begg characterized pro se patrons as an ignorant lot who were a drain on library resources and who, as secondary patrons, used library materials at the expense of primary patrons. Mr. Begg’s UPL concerns seem to be a veiled lament at the loss of exclusivity in the law library as more public patrons took advantage of the requirement that publicly-funded law libraries provide access to public patrons. Mr. Begg suggests that in order to minimize the risk of unauthorized practice allegations, the library should consider excluding public patrons from the law library, either explicitly, or

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55 Id., supra note 50, at 134.

56 Id.


58 Id. at 30.
where that cannot be done due to the library’s status as a public entity, achieve exclusion through imposition of user fees. Begg concludes with the ominous advice, “[o]nce you identify a pro se patron, be nice to him; if not, you may have an opportunity to see first hand how effective in court he can be.”

Many articles have followed, attempting to offer guidance to law librarians who may have trouble distinguishing between providing legal reference services and legal advice. Yvette Brown notes that public patrons don’t understand the difference between services provided by an attorney and services provided by a librarian, and offers the practical advice that librarians are to “disseminate legal information, not vindicate fundamental rights at the reference desk,” She wisely advises that the role of the librarian is to point patrons to resources, not interpret material, and cautions against “forming an attorney-client relationship with patrons.”

Brown acknowledges that jurisdictions have not ruled explicitly on the applicability of unauthorized practice of law to law librarians, and even encourages libraries “to collect material, such as form books and self help books, to assist the pro se patron.” She also advocates for providing research guides to help patrons, though seems to be of the opinion that, rather than providing thoughtful, quality guides, such materials should be “short and dirty” one page handouts with large, bold disclaimers.

In 1995, Professor Healey, then still a law librarian student, first sought to debunk the notion of librarian liability, noting that the wealth of literature on librarian liability “fails to mention any specific or actual cases” and asserting that “librarian liability seems to be a belief given uncritical acceptance by the library profession.” Healey stressed a common sense approach, suggesting that librarians should consider themselves “information intermediaries” purposed with

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59 Id. at 31.  
60 Id. at 32.  
62 Id. at 33.  
63 Id. at 41.  
64 Id.  
helping to fill an information need. Don’t offer legal advice, and make sure the patron knows you are not offering legal advice, would seem to be his simple conclusion. In a later article, Healey noted that “Lawyers are required to hold nonclients at arm’s length in order to protect the interests of all parties. A law librarian, whether a lawyer or not, serves patrons best by assuming a similar stance.”

A 1995 report by the American Bar Association’s Commission on Nonlawyer Practice reveals recognition of the importance of improving the dissemination of legal information to the general public, and suggests that legal information dispensed by well-informed employees or representatives of non-profit or governmental entities, such as organizations to help veterans, immigrants, battered women, or the disabled, is valuable from a public policy standpoint. The report further states,

Informal help with legal problems, coming from neighbors, friends, co-workers, religious advisors, teachers, social workers, law librarians and others who have had experience handling a similar legal problem or who are considered to be reliable sources of information, has not generally been considered unauthorized practice.

The Commission’s recommendations, including allowing paralegals expanded legal activity and representation in administrative proceedings by non-attorneys, appear to reflect the ABA’s recognition that the intent of unauthorized practice laws is to protect the public, not the legal profession, and that those in a position to assist in providing legal information to the general public should be encouraged to do so.

Several states have developed guidelines in an attempt to narrow the perceived gray area between providing legal information and providing legal advice.

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Blogger David Giacalone of The Self-Help Law ExPress (SHLEP), a Harvard-hosted web log, reviewed the Arizona Supreme Court’s Task Force on Legal Information v. Legal Advice: Final Report and Recommendations, finding the recommendations overly cautious. Noting that the report recommends that where clerks “are uncertain if [they] are being asked to give legal advice,” they should suggest consulting an attorney.” Giacalone responds, “Telling a pro se litigant to consult an attorney to answer one borderline question will seldom be helpful. I’d say ‘bend over backward – or stick out your neck – to help them.’”

AALL’s Ethical Principles also reflect the conundrum that has arisen with respect to librarian liability. The Principles retain cautionary language with respect to unauthorized practice:

> We provide zealous service using the most appropriate resources and implementing programs consistent with our institution's mission and goals. We acknowledge the limits on service imposed by our institutions and by the duty to avoid the unauthorized practice of law.”

Professor Healey similarly recognizes that one must be cautious about recognizing where the line is drawn, but expresses concern that the alarmist articles “risk putting librarians in the position of violating their ethical obligation to provide the full measure of assistance possible without engaging in unauthorized practice.”

**Zealous Service**

So how can law librarians zealously serve their public patrons while keeping them “at arm’s length”? As legal information professionals, each of us will need to decide where to draw the line based on many factors that should include a mix of experience, knowledge of the law and any related legal developments pertaining to librarian liability, and interaction with our colleagues and professional organizations. The librarian’s knowledge and experience should put the threat of

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69 Id.


72 Healey, supra note 50, at 134.
librarian liability into realistic perspective so that the production and dissemination of self-help materials for the public patron can be accomplished as thoroughly and effectively as possible.

Common tools the librarian can develop for public patrons include resource guides, form books with instructions, and training courses. In each of these cases, the gatherer of the information does precisely what the librarian does best: point to information resources. By gathering the information and presenting it in a format that is easily understood by the average public patron, the librarian provides a service not only to the patron, but also gives the librarian another tool for providing efficient reference services.

Research Guides

Whether available in print or as a web-site, legal research guides developed by librarians, whether in conjunction with professors for their students, or with other legal service organizations for the public patron, can be a rich source of self-help information. At the national level, the on-line research guides of major law school libraries should be evaluated as potential linked sources. But of even more value will be the local research guides that provide jurisdiction-specific information, particularly in subject areas that see a high volume of need due to the high cost of securing representation relative to the legal problem at hand. Such subject areas include family law, consumer law, landlord-tenant law, and estate planning.

To the extent possible, research guides should be made available in electronic format, with links to other relevant electronic resources. This allows the librarian to offer such materials to a broad patron base, and makes currency much easier to achieve as new materials become available. More and more librarians are receiving the training necessary to build and maintain websites. Having internal control over the library’s website is important where the library has decided to self-publish electronic research guides in order to maintain currency, and in the long run, control costs. Using a contract web-developer can be costly, and frustrating if content cannot be timely updated.

Public law librarians should also be collaborating with their state’s court system and non-profit organizations that seek to assist the public with legal matters. An excellent (and award-winning) model website is Maryland’s Peoples Law Library.73 The site is maintained by the Maryland State Law Library and features

73 Maryland’s Peoples Law Library (visited Apr. 27, 2008) <http://www.peoples-
content from legal aid programs, public interest attorneys, and community advocacy groups.

Good website design practices should be followed when developing on-line research guides, with attention paid to use of an easy-to-read font, use of plain English, short sentences, and short paragraphs. Narrative should be kept to the minimum necessary to effectively describe the resource. If the research guide is extensive, it should be kept organized with a side-bar table of contents to allow the user to click-jump to the desired content.

Links should be provided where possible, with links to official websites and highly static websites preferred. Links should be briefly and simply annotated to help the user understand what the resource is about. A “last updated” date should be provided on the Web page indicating how current the material is, and each resource guide should be reviewed at least annually to verify that the information provided is still current and that all links are still working. On-line guides should also indicate authorship and a copyright date. If applicable, the Web page can include a statement of purpose and intended audience as helpful introductory material, but such information should be kept brief.

Finally, it cannot go without saying that in a climate of fear about unauthorized practice of law, a disclaimer that the information provided does not constitute “legal advice” should be provided.

Form books and instructions

The legal business is awash in a sea of forms, confusing enough for attorneys and librarians, but virtually un navigable to the untrained. Gathering and organizing binders of form books with instructions is one of the most important services a library can provide to the public patron. Official forms and instructions available from official government websites should be the primary (if not only) resources gathered by the librarian.

To avoid unauthorized practice of law concerns, the librarian should be cautious in responding to questions about the filling out of forms, offering general information rather than anything that could be construed as being particular to the patron’s situation. The primary objective is to be as comprehensive and organized as possible in gathering official forms and instructions for use by the

law.info/Home/PublicWeb>.
public so the “answers” to questions about how to fill out the form, as prepared by the entity responsible for the form, can be used as guidance by the patron.

Training guides

Librarians should be encouraged to proactively share their knowledge with public patrons beyond the reference desk. In addition to developing research guides for publication on the library’s website, providing in-person training classes on research topics can be helpful for attorney and non-attorney alike. An example of popular topics for the general public, students, paralegals, and other non-law professionals includes:

- How to use the library
- Legal research basics
- How to use the library’s research databases
- Finding public information

Posting training schedules in the library, on the library’s website, and through email to courts, non-profit groups and select professional organizations, helps promote the library’s services to a broader audience, offering yet another tool for the wide variety of non-librarian information providers who seek to assist the public or themselves with legal concerns.

CONCLUSION

While there is little doubt that the public law librarian will experience a far greater need for legal materials geared toward the general public than other publically-funded law libraries (such as state law schools), the collection of such materials by any law library that receives such patrons, even if only as secondary patrons, not only provides an essential public service, but also provides valuable tools to the librarian. Such materials also help keep the librarian on the “providing information” side of any potential librarian liability concerns.

While materials by major publishers such as Nolo are high-quality resources that could be useful to public patron and law student alike, state-specific publications by smaller presses should be encouraged, and some latitude given in analysis by the selector in deference to providing material where such resources are few and far between. Production of materials by the library itself should also be encouraged, in particular through web-based research guides and training classes to help the public patron find and use available resources.
Bridging the gap between the legal system and the public is an ongoing challenge, and librarians, as information specialists, must recognize the importance of their role in narrowing the divide. From the plain English movement, to the emergence of self-help publications, to the growth of legal resources on the internet, consumers are increasingly demanding greater participation in their own legal affairs and providing materials that can be read and understood by the average reader should be the goal of any library that purports to serve the public patron.

As Professor F. Reed Dickerson stated in 1980: “Be persistent. Be patient. . . . I have been crusading against legal gobbledygook for more than 40 years and only recently have we made any real dent in it. . . .”74

74 Gary D. Spivey, F. Reed Dickerson: The Persistent Crusader, 6 Scribes J. Legal Writing 149, 152 (1996).