ETHICAL PROBLEMS SURROUNDING THE PRACTICE OF LEGAL REFERENCE SERVICE

by

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This paper discusses the inherent problems facing librarians who deal with legal reference situations. These problems include (1) the potential for malpractice lawsuits, is there a precedent, and how feasible is a malpractice suit. (2) The lack of definition for the term unauthorized practice of law, why it remains undefined, and how it affects provision of reference service. (3) Debate over the assistance librarians may give and who determines where that level lays. (4) Discussion not only of the lack of library policy but what a policy should try to address and how to approach the problem. These items are all important for both institutions and individual librarians to keep in mind as the occurrence of legal reference inquiries at any reference desk, not just a law library, is rising.

Headings:

Ethics

Librarianship—Legal aspects

Reference Librarians

Reference Services—Legal aspects
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Introduction:

With the rise of pro se litigation (those who chose to represent themselves in court) there has been an increasing pressure on those who provide legal reference services, be it in an academic, public or law library setting. There are several problems and conflicts surrounding legal reference. The issues themselves remain very vague and many library policies do not address them specifically leaving librarians on their own when a patron or their inquiry becomes problematic. There is a fear of malpractice suits from patrons who are given incorrect or incomplete legal information by the librarian. There is a question about unauthorized practice of law, its definition, and how to apply it to the profession of librarianship. There are conflicting ethical issues addressing librarian loyalty. How does a librarian avoid the unauthorized practice of law while fully aiding the patron? The last issue is directed at policy itself. There are very few policies with specific guidelines for their librarians. Policies should try to be specific to alleviate the pressure and be able to enforce their policies. These issues complicate legal reference service greatly and each librarian must be aware of the issues surrounding this specific area of reference in order to be prepared for the possible conflict and complications.
The threat of malpractice has not yet been realized in the library profession and so it is the threat that creates the worry, not actual occurrence. Libraries do not carry malpractice insurance and the idea that a patron would sue over the information received in the library is foreign. The literature suggests that due to the nature of proving malpractice in court the chances of a successful suit are slim. Nonetheless even the thought of being sued is frightening and can affect reference service. As with the fear of engaging in unauthorized practice of law, librarians may feel it necessary to hedge their reference service and err on the side of safety in order to avoid any complications from assisting a legal reference inquiry.

The driving force behind the malpractice concerns is the unauthorized practice of law. There is no clear definition of this concept and it varies from state to state if it is addressed directly at all. The absence of a definition to work from makes policy hard to create; how can a library determine the ability and limitations of their staff and resources without a definition of what constitutes either practice of law or unauthorized practice of law. Vague definitions can have a profound effect on the way librarians approach their jobs at the reference desk when asked questions of law, possibly making them timid or hesitant to help, and causing them to doubt their ability. This hesitation to fulfill the duty of a reference librarian (which is to assist everyone equally and to the fullest) can not only
alienate patrons, but also violate ethics of the profession. Without clear policy or a uniform definition of what is considered the unauthorized practice of law, libraries and librarians will continue to struggle with questions of ability and limitations individually.

There are three approaches that emerge from the research on the limitations of legal reference. The first approach states that a librarian may point the patron to the resources and that is all, as advocated in articles such as “Legal Reference Services: Duties v. Liabilities” by Kirkwood and Watts (1983). This approach does not appeal to many reference librarians who feel that reference work goes beyond showing the location of books. The second school supports that a librarian may show resources and illustrate the use of the tools with unrelated examples, but they may not suggest related terms, alternate terms or which sources to look in. This argument is found, for example, in the article “Reference Services vs. Legal Advice: Is it Possible to Draw the Line” by Robin K. Mills (1980). The third school, one example of which is the Mosley article “The Authorized Practice of Legal Reference” (1995), holds that librarianship should not be dictated by another field and that as long as the librarian avoids client-attorney relationships, does not appear in court, and avoids specifically lawyerly tasks (interpreting what something says, filling out forms, selecting forms, etc) the librarian will avoid the
unauthorized practice of law and still assist the patron as much as possible. The librarian must not harm the patron, withholding assistance could be just as harmful as giving too much assistance or faulty legal advice.

Many library policies do not address this problem beyond cautioning their librarians to be careful. Policies need to be more detailed in order to give their staff a framework of their ability and limitations on legal reference service. There are several suggestions among these articles on how to avoid the unauthorized practice of law and enforce library policy, such as: signs stating that the librarians cannot give legal advice; provision of self-help materials; and reference guides. The many potential pitfalls of legal reference have not made it to the courtroom yet, and as long as librarians can maintain the delicate balance of providing information without overstepping the limits of their skill, the profession should remain free of litigation.
Problem Summary:

The problems and conflicts involved in the practice of legal reference in any setting (public, academic, or law library) are both complicated and vague, which is what makes the problem so difficult to solve. The literature is full of references to malpractice suits but none have actually been brought against a library. There is no concrete definition of the unauthorized practice of law, but nobody may engage in it. There are two conflicting sides over the issue of how much reference assistance a librarian may give and over when reference turns into practice of law. Finally, many libraries have vague policies. They leave the defining of unauthorized practice of law up to the individual librarian, and do not provide specifics on allowed tasks or methods of enforcing policy and avoiding complicated situations. These issues are thrown around in articles and theory but are very hard to apply to and clarify for actual reference practice. That is why this field is so full of conflict, all the problems surrounding it are vague and hard to solidify.
There have been several articles mentioning the potential for malpractice suits against a librarian or library for performing unauthorized practice of law (Mackler, 1996; Leone, 1981; Healey, 1995). The ethics of librarianship maintain that librarians should assist all patrons regardless of question, race, or sex in their search for information. This conflicts directly with the concept that librarians are unable to help patrons any further than showing them locations, which is incomplete librarianship, though it is promoted as the answer to legal reference queries in many articles such as “The Reference Librarian and the Pro Se Patron” by Robert Begg (1976) and “Legal Reference Service: Duties V. Liabilities” by C.C. Kirkwood and Tim J. Watts (1983). Finally, the real problem is the question of recognizing the unauthorized practice of law. What is it? When do you know you have done it? How do you avoid it? Trying to explain these may help make the dilemma clearer to those who have not yet been faced with this issue.

While the worry of performing unauthorized practice of law is a legitimate one that could yield ethical problems such as harm to the patron, malpractice suits against the library and librarian, and causes libraries to be vague about their policy and doubt the ability of their librarians, a careful librarian can avoid these troubles and prevent negative effects on the practice of librarianship from entering their work. Excessive concern with unauthorized practice of law can cause timidity, prejudice against pro se
patrons and even the breakdown of reference service itself, leaving patrons empty-handed. Unfortunately, the things that would really help, such as a clear definition of unauthorized practice of law and clearer policies from the library itself are a long way coming, as they are controversial to both the library and legal communities.
Literature Review:

Four major issues regarding the practice of legal reference service emerge when the literature is examined. Each presents its own dilemma for the librarian behind the desk and the library they work for. These issues are malpractice, the unauthorized practice of law, the appropriate level of librarian assistance to legal reference questions, and discussion of library policy regarding legal reference. No article deals solely with one item or the other but many are weighted to one issue, inevitably involving the other three. The literature on this topic is all very similar in its research and analysis the only difference being the proscribed approach to solving the problem. This makes it easiest to divide the material by the focus it takes within this group of topics.

The first issue is malpractice. The articles address malpractice, the definition of malpractice, the threat of malpractice and the likelihood of malpractice being brought against a librarian as a result of a patron who was harmed by poor legal reference service. There are two approaches, those who feel that malpractice is a strong possibility and those who argue that malpractice is intangible to prove in this situation and thus not a real threat. Both approaches are reflected in these articles (Mackler, 1996; Healey, 1995; Leone, 1981).
This initial set of readings support the thought that malpractice is not a tangible concern for a librarian. In an article by George Leone entitled “Malpractice Liability of a Law Librarian” (1981) the author discusses the requirements for proving malpractice in a court of law. The defendant must prove there was a duty owed by the librarian to provide the information, that this duty was neglected, and that the poor performance of this duty caused harm to the patron in order to sue successfully for malpractice. Fulfilling all of these requirements in court, when the patron may not even be able to claim that the librarian is an expert in the field (in this case law), makes malpractice appear to be an improbability. Another article, this one by Paul D. Healey (1995), concurs with Leone. “Chicken Little at the Reference Desk: The Myth of Librarian Liability” goes into more technical or legal explanation of the process of proving malpractice. Not only does the author discuss the lack of legal requirements (such as proof of negligence in relation to the law information provided), and mention the patron’s inability to reasonably believe the librarian is an expert in the field, it discusses the lack of cases on the subject as well. The author holds that this is not an instance of an out of court settlement that never made the books but an instance of no malpractice suits being brought against librarians thus far, Healey states that any librarian with a decent lawyer would not settle out of court in a malpractice suit and would appeal if needed. The author concludes that if a librarian had been sued we most certainly would know about it. Both of the two articles mentioned
here conclude that the threat of malpractice while a technical possibility is not really tangible in the field of librarianship.

The second approach, of course, is that malpractice suits are very real and very possible. This is shown best in an article by Mark Mackler and Michael Saint-Onge, “The Sky May Yet Fall on Firm Librarians: A Reply to Chicken Little at the Reference Desk” (1996), written as a response to the Paul D. Healey article discussed above. The authors here focus on the specific setting of a firm librarian. Part of the argument includes examples of law firms who have been sued for malpractice based on work done by the law firm librarian. These examples do in fact make liability seem more real. The authors are also forced to mention that the librarian was not held responsible because in a firm environment the lead counsel is held responsible for all work produced on the case. This almost negates the argument, as the librarian will always be working for a lead counsel in a law firm library. The article closes with the feeling that malpractice is very real, and that librarians have been the cause of malpractice suits. In today’s society the author’s imply it is only a matter of time before a librarian is sued for malpractice.

The issue of unauthorized practice of law is important not only because it is in fact illegal but also because there is very little definition of what constitutes the unauthorized practice of law. Relevant readings try to give loose definitions of the term and its limits such as “can locate sources but can not interpret, even just giving personal opinions is interpretation and can be legal advice” (Braithewaite, 42) or Brown, which states that providing form books and pamphlets is not the
unauthorized practice of law but applying any specific situation or personal context to the law is counted as unauthorized practice of law, or they address why the term is not defined and how it affects librarians (McLean, 1993; Healey, 1998). A uniform definition of the unauthorized practice of law would assist both librarians in their individual judgments about legal reference service and also the libraries in making their policy regarding legal reference.

The first group in this category addresses items that may be considered unauthorized practice of law. These articles avoid discussing the negative result to librarianship or venturing guesses as to why there is no definition. The 1993 article by Heather J. Braithwaite entitled “The Moveable Feast: Serving Diverse Client Groups in an Urban Law Library” focuses on the limits on librarians in order to avoid the unauthorized practice of law. The author mentions opinions (such as the meaning of a term, passage or case) and location of a specific form related directly to the patron’s situation (as opposed to showing the patron the form books) as examples of tasks that fall within unauthorized practice of law. The second article is a detailed approach to what constitutes the unauthorized practice of law. “From the Reference Desk to the Jailhouse: Unauthorized Practice of Law and Librarians” (1994) by Yvette Brown determines the difference between legal research and legal reference. “The librarian may guide the patron to the law, but the patron must choose the relevant law and apply the law.”(Brown, 37). According to the reading the librarian shows where the information is, what type of information is available, and how to use the sources.
The tasks of term selection and interpretation are the domain of the lawyer unless the librarian is under the direct supervision of an attorney, as in a law firm library. These two readings provide guidelines in an attempt to solidify the line between legal reference and legal research but they are not uniform and may never be unless the legal profession sets out to define unauthorized practice of law.

The second group of articles focuses more on the lack of definition, how it affects legal reference and speculation on the potential for a definition of the unauthorized practice of law in the future. “The Unauthorized Practice of Law by Librarians” (1993) by Jennifer McLean and Lee Finks addresses the lack of definition for this term as a “safeguard” (McLean, 16) for the legal profession, allowing lawyers to maintain their position as the only profession able to assist in legal matters. This lack of certainty causes librarians to question their position with the library and the patron resulting in a lower quality of service for the patron. Paul D. Healey’s article “In Search of the Delicate Balance: Legal and Ethical Questions in Assisting Pro Se Patrons” (1998) contains more detail on the disadvantages of vague terminology. Some of these results include lack of confidence on the part of the librarians, ethical conflicts and inconsistent service from librarian to librarian. These can all be serious problems, yet none of the authors predicted a clear definition of the unauthorized practice of law in the near future.

The third category encompasses those articles that focused on recommending level of librarian involvement. Half of the articles recommend a
very low level of assistance for patrons (Begg, 1976; Kirkwood, 1983; Schank, 1980) the other half support assisting those patrons with reference inquiries in the same manner as any other patron (Danner, 1983; Protti, 1991; Mosley, 1995). This is a large portion of the debate over legal reference, as most policies do not address anything as specific as librarian limits.

Three articles support very restrictive limits on a librarian’s ability to assist patrons with legal reference questions. C.C. Kirkwood and Tim J Watts’ article “Legal Reference Service: Duties V. Liabilities” (1983) and “The Reference Librarian and the Pro Se Patron” (1977) by Robert Begg support the strictest philosophy. They agree that pro se patrons bring a new host of problems to the desk (monopolizing time, more adamant about getting assistance) and that librarians only have a limited responsibility to assist these patrons. The articles also discuss the history of pro se litigation and highlight how recent the ability to represent oneself in court is. The authors also discuss how lawyers are more adequate to assist those with legal questions, having the ability to focus their time and provide confidentiality, coupled with their specialized training in the law. The Kirkwood and Watts article calls on the ethics of the librarian to not harm the patron with unprofessional information. These articles both recommend that the librarian may show a patron where the legal materials are and limit their assistance to just that. The third article by Peter C. Schank “Unauthorized Practice of Law and the Legal Reference Librarian” (1980) allows a more lenient approach. While the author makes similar arguments that lawyers have more time, training, access
and ability to assist in legal matters, the author also realizes the librarian’s ethical
duty to assist patrons as best they can. Because of this conflict the article supports
an approach where the librarian may assist the patron by not only locating the
tools on the shelf but also using unrelated examples to demonstrate how to use the
descriptive indexes, pocket parts and other features unique to legal reference
materials. The author states that the librarian may not “equate caution with
inaction” (Schank, 62) and that by withholding assistance, the librarian is doing
harm to the patron just as giving legal advice would harm the patron.

The three articles here follow a more active path towards legal reference
Reference Service” (1983) discusses the position of reference librarians to instruct
and give patrons the ability to educate themselves. If librarians are limited to tool
location, they are unable to educate the patron. The second article by Maria Protti
“Dispensing Law at the Front Lines: Ethical Dilemmas in Law
Librarianship”(1991) states that a librarian “has a duty to promote free and
effective access to legal information”(Protti, 239) and provides a guide for ethics
of information sharing in an “understandable, timely, relevant, complete and
appropriate”(Protti, 235) manner. The author holds that these standards of
librarianship cannot be achieved by merely showing the patron the location of
materials and how to use the tools with unrelated examples. The last article in this
category is “The Authorized Practice of Legal Reference Service” (1995) by
Madison Mosley. This article is perhaps the most adamant of the three. The
author discusses the need for librarians to dictate librarianship not the Bar Association and claims that librarians allow concerns such as unauthorized practice of law and malpractice to get in the way of providing good, thorough reference service to patrons. The article draws on other specific examples such as medical reference questions, where the librarian who is does not hold a medical degree is allowed to perform reference service without fear of malpractice or other legal threats. Mosley recommends (as do the previous two articles) that librarians treat legal reference questions as any other reference inquiry and simply avoid performing lawyerly tasks such as filling out forms and forming client-attorney relationships (Mosley, 1995). These three articles are more in line with the librarianship side of this issue (assisting all patrons equally).

The last trend in the readings is the discussion of library policy. One of the largest problems for the individual library is that there are few policies in libraries, which help outline the librarians limits or lack thereof, leaving each librarian on their own without knowing if their institution will assist them when a judgment call must be made. There are three articles in this category and they address simply the concept of policy and how libraries may be able to assist their staff and a few suggestions for policy changes or additions.

Janet Sinder’s article “Answering Legal Questions: Reference or Unauthorized Practice of Law” (1991) provides suggestions for policy inclusions such as requiring the desk to have low cost attorney referrals and Nolo Polo self help books to provide a patron who wants more assistance than the librarian can
The author suggests that not having a concrete policy allows librarians to make their own decisions about their ability, but it can be a hindrance when librarians must point to a sign and say “library policy says I can not give legal advice”. The second article, “Communication Conflict at the Law Library Reference Desk: A Survey of General Library Science and Communications Literature” (1998) by Steven Anderson, ties in the concepts of librarianship with the specialized field of law libraries. The article holds that part of the problem with legal reference is a lack of uniform policy and that relief will not be achieved unless there is a uniform definition of unauthorized practice of law. The article discusses the need for clear library policy in all settings in order to give the librarians a framework from which to start. The final article by Gail Schlacter, “Where is the Line? Legal Reference Services and the Unauthorized Practice of Law” (1999), like others, discusses the basic need for policy in all types of libraries to assist the librarians in their work. The author also presents an example of a library which has a clear policy.

Texas A&M University has a policy that clearly states that librarians will show patrons the location of materials and demonstrate their use through unrelated examples and that is all (Schlacter, 1999). While this seems very limited to a reference librarian it does help them handle situations when a patron requests more because the library has a clear policy the patron can be shown. The author also suggests posting any policy the library may have, so patrons can be aware of it as they approach the reference desk. All three of these articles have a different
recommendation for various aspects of the legal reference issues but they all agree on the need for clear policy from the library administration to assist the reference staff in avoiding problems.
Guiding Questions:

There are four guiding questions surrounding the ethical issues of legal reference. First, what are the actual chances of being held responsible in a malpractice lawsuit? This fear has a negative effect of reference assistance by making people uncomfortable and the reality of the issue needs to be addressed. Second, why is there no definition of unauthorized practice of law and how does this affect libraries and librarians? Undefined, this term affects confidence and the ability of libraries themselves to make policy regarding legal reference. Third, Where do the priorities of librarians lie? Is there a higher calling to be of assistance to the patron or to avoid unauthorized practice of law by providing very limited assistance? Fourth, what should a policy regarding legal reference address and how can it be enforced? Part of the problem is the lack of uniformity on the subject; a clear policy can help the librarians in their decisions. These questions should be pondered by committees on policy and individual librarians alike because the answers will prepare the administration and staff for the “sticky” situations that arise from legal reference service.
Observations:

The four guiding questions are important for every library and librarian to anticipate before they are involved in legal reference situations. This will prepare them for their actions and judgments before they are needed. The question of malpractice and its feasibility is the most tangible threat arising from legal reference. Malpractice is very real in today’s society although it has not yet made its way to librarianship. The unauthorized practice of law is less tangible in that it is not even defined. The lack of definition and its very vagueness makes it dangerous because there is room for broad interpretation. Why is there no definition and how does the lack of one affect libraries and librarians? The level of assistance is a source for speculation in every reading of the topic. The largest question addresses the librarian’s responsibility and loyalty lie in assisting their patron or avoiding unauthorized practice of law as determined by an outside profession. There is no right answer to this question at this time and it is left to the individual libraries and librarians to decide for themselves. Finally, policies, which would alleviate the tension of the situation, are too vague if they exist at all. The term unauthorized practice of law cannot be used because there is
no definition to work from. What should a good policy include and how can it be enforced? These are all questions that will be explored in this paper.

The threat of malpractice the most tangible concern in regards to legal reference. Malpractice can be defined and proven in court. Libraries do not carry malpractice insurance and thus not only would the library suffer in the areas of trust and reputation; the financial ramifications of a successful malpractice suit would be great (Healey, 1995). This first section explores the concept of malpractice in a library setting to answer the question what is the feasibility of a malpractice suit actually being brought against a library?

While there have been no instances of malpractice against a librarian thus far, there are reported instances of law firms being sued for malpractice because of a mistake on the librarian’s part. For example a law firm librarian researched environmental regulations for each state and failed to notice that there were only 49 states listed in the manual. The state that was not included then sued the firm’s client for violation of environmental laws and the client sued the law firm for malpractice (Mackler, 459). Stories like this make the possibility librarians being sued for malpractice appear just around the corner. However, the actual nature of suing someone and proving their guilt of malpractice is much harder than it is made to sound in the above example (Leone, 1980).

Proving malpractice requires several items to not only be present but provable within a courtroom. Leone writes that
“actionable malpractice can be sustained only upon a showing that there was a (1) duty owed by a librarian to a patron (2) which was breached and (3) the breach was the proximate cause (4) of the damage to the patron” (Leone, 56)

All of these factors must be proved for a librarian to be held responsible for malpractice.

There is the further question of the term malpractice itself. Malpractice is a form of negligence, which is a form of tort law (“a civil wrong other than a breach of contract, for which the court will provide a remedy in the form of an action for damages”(Healey, 522)). Malpractice is negligence associated with professionals in regard to their clients. Malpractice is based on the standards of care that are required by the profession in question and is often associated with professions, such as medicine and law, where the professional “does not just assist the client, but actually assumes responsibility for an important aspect of that person’s life” (Healey, 525). Librarianship does not even fall into this definition as librarians do not accept responsibility for their patrons, nor are there licenses to obtain or formal standards of legal librarianship on which to base malpractice. As a result of the difficulty of proving malpractice in court, the question of whether or not librarianship is a profession which can be held to malpractice due to a lack of standards, and the fact that the job does not require librarians to take significant responsibility for their patron’s lives, the threat of a librarian being sued for malpractice can be viewed as highly unlikely even in today’s highly litigious society (Leone, 1980).
The next question to be answered focuses on the concept of unauthorized practice of law. This concept can have great impact on reference librarians. Why does it remain undefined and how does it affect librarianship? This question needs to be addressed by librarians individually because the affects of this vague term can be great.

The term unauthorized practice of law is used quite casually in the readings on this subject, but there is never a clear definition. This lack of a definition causes great problems. The literature if full of statements such as “librarians have a duty not to practice law or engage in the unauthorized practice of law or create a client-attorney relationship” (Kirkwood, 73) and that unauthorized practice of law is “rendering the services peculiar to the profession” (Mosley, 204). These statements help sustain the mystery surrounding unauthorized practice of law, they do nothing to clarify what constitute the unauthorized practice of law for the librarian, or anyone (McLean, 1993). Why is there no definition? There could be several reasons. The law is cumbersome and large, to define what constitute unauthorized practice of law would be a monumental undertaking and could present problems in the future if the definition was found to be lacking or to broad.

There is also the unavoidable fact that by leaving the term undefined “works to the advantage of lawyers collectively who hold a monopoly on interpreting legal information” (Protti, 238). Without a clear and concise definition, the door is always open for the legal community to claim that someone has engaged in the unauthorized practice of law (Protti, 1991). Often this is
limited to professions such as realtors and paralegal firms who perform lawyerly tasks, but the potential is there and as long as it remains undefined, it will pose a problem to librarians (Mosley, 1995).

The problems created by this lack of definition are unique. The lack of a definition prevents libraries from being able to come up with clear policy and it also puts tremendous pressure on the librarians to decide what they feel may or may not be the unauthorized practice of law. This can affect confidence, demeanor and treatment of patrons (Healey, 1998). It is not the library profession’s responsibility to define what constitutes the unauthorized practice of law “definitions undertaking this have been universally found to be self-limiting and invite evasion…should be left to the courts to decide.” (Mosley, 204). Despite the legal profession’s unwillingness to define unauthorized practice of law, defining it as libraries would be to interpret the law, and as has been found in the readings there is little chance of the term being defined in any concrete, uniform manner in the near future (Begg, 1976; Kirkwood, 1983). This leaves the library with an unclear standard, which they are expected to uphold and cannot define for ourselves because that could be considered unauthorized practice of law. In addition to confusing the policy makers, the vagueness affects individual librarians. Without that policy, librarians are not sure if they are supported by their institution in their decision. This can result in timidity and even lead to avoidance of those patrons who have a legal reference inquiry “pro se users are seen as presenting a variety of problems…tend to dominate the reference
librarian’s time, requiring instruction…demanding legal interpretation…” (Healey, 133). This attitude reflects the insecurity felt by those behind the reference desk.

The third guiding question addresses the librarian’s role and determination of the librarian’s responsibilities. Do they lie with the patron or avoiding the unauthorized practice of law? Where is the line and how do they determine what crosses that line? This is perhaps the most controversial aspect because it moves away from the theoretical musings of malpractice and the definition of terms and into the librarian’s day to day activities.

There is an ethical duty of librarians to cause no harm to the patron (Protti, 1991). This is used as supporting argument for both sides of this conflict. Those that feel the first duty of the librarian is to avoid UPL at all costs holds that performing tasks any further than locating items on the shelf will cause harm to the patron (Kirkwood, 1983). Those supporting that the librarian’s first duty is to the patron hold that by not helping them understand how to use and navigate the tools and what tools are available to them the librarian is causing harm to the patron (Healey, 1998). It is an interesting conflict with both sides using the same arguments from different angles.

By providing anything other than directional assistance, librarians are claimed to harm the patron. Attorneys have specified training in the law and the ability to research at leisure. An attorney may also establish a confidential relationship with their client, which a librarian may not. A librarian may assist the opposing side unknowingly. This inability of the librarian to shut out intrusion,
establish a confidential relationship, focus all their time and employ specialized training is used to demonstrate how the librarian can cause harm to the patron (Kirkwood, 1983; Brown, 1994; Begg, 1976).

The other side of the coin is that by being overly concerned with unauthorized practice of law the patron is hurt as well, and the librarian is unprofessional.

“Reference librarians allow concerns about giving legal advice and being charged with unauthorized practice of law when answering legal reference questions to deter them from their fundamental purpose-the finding of information.” (Mosley, 203)

The tools of legal reference are often very confusing and it is important that the patron have someone to assist in the navigation of these tools. To leave the user floundering by themselves would be a disservice, just as dispensing legal advice would be (Protti, 1991). Any attempt of the legal profession to dictate the limits of librarianship potentially inhibits thorough reference practice. The librarian’s loyalty lies with the patron and their information need. It is best to help the patron as much as possible, source and term suggestion, instruction on using the tools, guides, referrals, and other pieces of assistance and avoid performing lawyerly tasks and establishing a client-attorney relationship. If the line into lawyerly function is not crossed and the librarian is working inside the boundaries, they may assist their patrons without needing to fear unauthorized practice of law (Mosley, 1995).
Finally, library policy: What would a useful policy include and how can it be communicated to the patrons? This is particularly difficult again because of the lack of clarity from the legal profession on the unauthorized practice of law. When considering the responsibility of librarianship to its patrons the library may be able to circumvent unauthorized practice of law altogether.

A good library policy would address what specifically the librarians can do for the patrons. In order to arrive at this conclusion many things need to be discussed amongst the administrative staff. First the issues surrounding legal reference as well as the implications of these issues. A good policy will be based on thoughtful discussion of concepts such as unauthorized practice of law, and the role librarians need to play take on in order to assist those pro se patrons who seek reference assistance and of course the possibility of a malpractice suit as a result of incorrect legal information or unauthorized practice of law (Begg, 1976; Mosley, 1995; Brown, 1994; Leone, 1980). Second specific boundaries need to be set up based upon the discussion of these issues. It is suggested by Mosley in particular that librarianship should not be run by another profession and that the best practice is to avoid the performance of lawyerly tasks (form filling, client-attorney relationship, court representation, interpreting cases) and not worry about the nuances of defining the unauthorized practice of law (Mosley, 1995). Once these specific limitations have been settled upon the next step is to create guidelines that are easy both for the staff to follow and communicate to the patrons. These guidelines could include prohibiting selection of specific forms for the patron.
This allows the librarian to demonstrate how to locate forms but saves them from providing the specific form needed, resulting in potential inaccurate legal advice (Kirkwood, 1983). Another guideline may be not allowing any opinions in regards to the text of the law. Again the librarian may suggest terms to start the patron off, demonstrate use and suggest resources but they can absolutely draw the line at assisting with the text within the tools such as cases, forms, and statutes (Mosley, 1995; Healey, 1998). A third guideline may be to avoid becoming bogged down in the personal aspects surrounding the patrons need for the information. This may open the librarian up to a client-attorney relationship and increase the librarian’s sympathy making them want to assist as much as possible even if it meant inadvertently providing legal advice (Brown, 1994; Schank, 1979). These are just some examples of guidelines that could help the staff tremendously by providing clear limits to their service yet giving them the flexibility to assist the patron fully. Once the policy has addressed the issues, specific tasks and guidelines the next step is to inform the patrons of this policy.

It is clear and easy to follow such a policy on the librarian’s part but how can it be communicated to the patrons? Placing the policy on legal reference service in a prominent position where patrons may read it as they wait their turn at the desk is one suggestion. In addition to this, there should be available directories and referral lists of attorneys and local association numbers to give the patrons who need legal advice. Study guides and self help texts by such publishers as Nolo Press will help the patron and perhaps prevent any directive contact at all
with the librarian in the initial stages of searching (Brown, 1994; Sinder, 1991). It is important that these policies are clear so that the staff and patrons alike can understand them. Any vague policy may result in conflict at the desk as a particularly persistent patron interprets what the library means by not engaging in unauthorized practice of law. None of this will prevent all conflict but they will help in lessening them.
Conclusions:

The complex aspects of legal reference such as the definition of unauthorized practice of law may not be nailed down in the immediate future. It will be up to individual institutions and their staff to determine where the line between legal reference and engaging in the unauthorized practice of law lies. The threat of malpractice will be something hinted at but probably never actualized. There will continue to be debates over the level of assistance librarians are able to give their patrons. The one thing libraries have direct control over is their policy regarding legal reference. The institution with its librarians can make a specific policy that is easy for everyone to follow and enforce through any of the suggested methods mentioned or steps of their own devising. Regardless of good policy each librarian must keep these questions in mind, how realistic is a malpractice suit, how is that and the fear of unauthorized practice of law affecting my work, where is the line for me in my assistance of patrons, who is my responsibility and what is their library policy regarding the issue? Discussions of these issues should occur regularly among librarians and lawyers, especially in the contexts of reference services. Law library directors will be wise to advocate the development of continuous discourse. By being prepared, librarians may avoid
serious conflict over legal reference service, saving themselves and the library trouble without limiting the quality of their service.
Bibliography:


