Legal Information, Democratic Participation, and the Ethical Responsibilities of Libraries

Paul T. Jaeger
Kenneth R. Fleischmann
Vickie Yiannoulou

Center for Information Policy and Electronic Government
College of Information Studies
University of Maryland

From the foundation of the American Republic, access to legal information – laws, regulations, and myriad other legal materials – has been considered essential for governance and for participation (Quinn, 2003; Shuler, Jaeger, & Bertot, 2010; Walters, 1999). The Internet has opened many new possibilities for access to legal information, being provided online by governments and by private sources. Effective access to legal information depends on the literacy of the user in terms of the specific structures of the law, with many users needing help to successfully find and understand legal information (Danner, 1987; Kelley, 1993; Pettinato, 2007).

Users can be left with few readily available options for assistance in accessing legal information, however. While public libraries can provide access, public librarians mostly are not trained in the intricacies of legal information (Healey, 1995; Pettinato, 2007). The Federal Depository Library Program (FDLP) was intended to provide a public outlet to legal information through various public, academic, and law libraries, but many FDLP libraries have curtailed their program participation and levels of service related to the FDLP materials in recent years (Bertot, Jaeger, Shuler, Simmons, & Grimes, 2009; Jaeger, Bertot, & Shuler, in press; Shuler, Jaeger, & Bertot, 2010; Riley-Huff, 2009; Yelnick & Hinchcliff, 2009).

As such, public law libraries – including those that belong to the FDLP – are best positioned to act as guarantor of both public access to and assistance in accessing legal information. However, many law libraries may not be fully committed to meeting this need (e.g., Leone, 1980; McKenzie, Gemerallo, & Walters, 2000; Mills, 1979; Murray, 1992; Schanck, Dykstra, Sekula, & Mills, 1979; Snow, 1992). Examples of reduced service provided by some law libraries include: 1) differences between the American Association of Law Libraries Ethical Principles (AALL, 1999) and the Code of Ethics of the American Library Association (ALA, 2008); 2) reticence of law librarians to serve the public due to the popularization of the supposed danger of lawsuits for unauthorized practice of law; and 3) reduced participation in the Federal Depository Library Program (FDLP) due to economic and other concerns. This presentation will discuss these issues and their implications for library practice and the public, presenting recommendations to meet the tremendous need for public access to legal information.

One indication of the different approach of public libraries and law libraries can be found in their professional ethics documents. The ALA Code of Ethics states: “We provide the highest level of service to all library users through appropriate and usefully organized resources; equitable service policies; equitable access; and accurate, unbiased, and courteous responses to all

requests" (ALA, 2008: n.p.). This statement emphasizes responses to all requests, an unconditional call for librarians to serve the needs of users. In contrast, the AALL Ethical Principles, while they do contain statements emphasizing the need for service, qualify this emphasis by closing with the statement: "We acknowledge the limits on service imposed by our institutions and by the duty to avoid the unauthorized practice of law" (AALL, 1999: n.p.). While librarians are prohibited by law from giving legal (or tax or medical) advice, it is interesting to note that the Medical Library Association's Code of Ethics for Health Sciences Librarianship contains the emphasis on service without qualifications or limitations: "The health sciences librarian promotes access to health information for all and creates and maintains conditions of freedom of inquiry, thought, and expression that facilitate informed health care decisions" (MLA, 2010: n.p.). Thus, the AALL appears to stand apart in the emphasis that it places on prohibitions to unauthorized practice.

Reluctance to assist users with access to legal information for fear of being accused of unauthorized practice of law is a theme found within the academic and popular discourse of law librarianship since the 1970s. Guidance almost unfailingly errors on the side of caution through withholding service rather than emphasizing universal service, with a few notable exceptions arguing for an inclusive approach to service (Healey, 1995, 2008; Pettinato, 2007). However, the basis for this caution does not appear to be frequently borne out in practice. The fears and caution expressed by law librarians contrast with a lack of significant invocation of this restriction in lawsuits or other legal actions.

Reduced participation in the FDLP – which requires member libraries to make materials available to the general public, not just the target users of the libraries serves – is a further indication of some libraries' reduced emphasis on service to the general public. With increased emphasis on Internet-accessible electronic records, the incentive for participating in the FDLP has been reduced. Certain law libraries that have withdrawn from the FDLP have stated the desire to not provide services to members of the general public as a reason for leaving the program. An even larger number of academic libraries have indicated that they are considering leaving the program due to economic concerns.

When the public need for access to legal information is not met by law and academic libraries, the public is likely to seek legal information online in public libraries, as they provide free Internet access and training (Jaeger, 2008, 2009; Jaeger & Bertot, 2009). This service is in addition to many other new uses of the public library, such as government institutions similarly sending citizens to public libraries to access government forms instead of providing print copies or providing public access to the Internet in government offices. Further, public librarians are frequently less qualified to assist members of the public with law information access questions, and due to their reduced training in this regard, are perhaps more likely to cross the line into unauthorized practice of law. Aside from unauthorized practice concerns, a typical public librarian will lack specialized training in the use of LexisNexis or WestLaw, potentially leaving the user to rely on a less complex and less comprehensive resource, like Google.

Given the vital nature of access to legal information to democratic participation, these issues merit greater focus in LIS discourse in terms of practice, policy, and ethics. To ensure libraries are serving citizens and communities by providing access to legal information, different types of

libraries need to work together to ensure that changes in technology and concerns about potential lawsuits do not erode this vital public service that libraries provide in the United States.

References

ALA. (2008). "Code of Ethics of the American Library Association" Available: http://staging.ala.org/ala/aboutala/offices/oif/statementspols/codeofethics/codeethics.cfm

AALL. (1999). "AALL Ethical Principles." Available: http://www.aallnet.org/about/policy_ethics.asp

Bertot, J. C., Jaeger, P. T., Shuler, J. A., Simmons, S. N., & Grimes, J. M. (2009). Reconciling government documents and e-government: Government information in policy, librarianship, and education. *Government Information Quarterly, 26*, 433-436.

Healey, P. D. (1995). Chicken Little at the reference desk: The myth of librarian liability. *Law Library Journal, 87*, 515-533.

Healey, P. D. (2008). *Professional liability issues for librarians and information professionals*. New York: Neal-Schuman.

Jaeger, P. T. (2008). Building e-government into the Library & Information Science curriculum: The future of government information and services. *Journal of Education for Library and Information Science, 49*, 167-179.

Jaeger, P. T. (2009). Public libraries and local e-government. In C. G. Reddick (Ed.), *Handbook on research on strategies for local e-government adoption and implementation: Comparative studies* (pp. 647-660). Hershey, PA: IGI Global.

Jaeger, P. T., & Bertot, J. C. (2009). E-government education in public libraries: New service roles and expanding social responsibilities. *Journal of Education for Library and Information Science, 50*, 40-50.

Jaeger, P. T., Bertot, J. C., & Shuler, J. A. (in press). The Federal Depository Library Program (FDLP), academic libraries, and access to government information. *Journal of Academic Librarianship.*

Leone, G. (1980). Malpractice liability of a law librarian? *Law Library Journal, 73*, 44-65.

McKenzie, E. M., Gemellaro, E., & Walters, C. (2000). Leaving paradise: Dropping out of the Federal Depository Library Program. *Law Library Journal, 92*, 305-319.

Mills, R. K. (1979). Reference service vs. legal advice: Is it possible to draw the line? *Law Library Journal, 72*, 179-193.

MLA. (2010). Code of Ethics for Health Science Librarianship. Available: http://www.mlanet.org/about/ethics.html

Murray, J. E. (1992). Limiting secondary patrons' use of academic law libraries during examination periods. *Law Library Journal, 84*, 365-382.

Pettinato, T. R. (2007). Legal information, the informed citizen, and the FDLP: The role of academic law librarians in promoting democracy. *Law Library Journal, 99*, 695-716.

Quinn, A. C. (2003). Keeping the citizenry informed: Early congressional printing and 21st century information policy. *Government Information Quarterly, 20*, 281-293.

Riley-Huff, D. A. (2009). Web services as public services: Are we supporting our busiest service point? *Journal of Academic Librarianship, 35*, 65-74.

Schanck, P., Dykstra, G. S., Sekula, M., & Mills, R. K. (1979). Legal information to the people. *Law Library Journal, 72*, 612-627.

Shuler, J. A., Jaeger, P. T., & Bertot, J. C. (2010). Implications of harmonizing e-government principles and the Federal Depository Library Program (FDLP). *Government Information Quarterly, 27*, 9-16.

Snow, B. J. (1992). When goals collide: Planning and implementing a restricted access policy at the University of Michigan Law Library. *Law Library Journal, 84*, 383-400.

Walters, J. S. (1999). Whose vision fulfilled?: Toward a rightful ideological progenitor for the U.S. Federal Depository Library Program. *Journal of Government Information, 26*, 347-359.

Yelnick, K., & Hinchcliff, M. (2009). Accidental government documents librarian: A review of experiences and training needs of interim documents librarians. *Journal of Academic Librarianship, 35*, 46-56.