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Legally Speaking-Reference Questions and the Unauthorized Practice of Law

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It was a dark and stormy night, and a crime was about to be committed.

The scene: a library reference desk.

The characters: a well-meaning librarian and an upset patron.

PATRON: I need your help, please! I wrecked my car, and the police officer gave me a ticket. I got these forms in the mail from the court. What do I do? Is there some sort of form I can use to respond?

LIBRARIAN: How long do you have to respond? What kind of ticket did you get?

PATRON: I have 20 days, so that makes the response due on the 5th. The officer said that I must have been going too fast, or else I wouldn’t have slid into his lane. I was only going 25, but the ice was very thick and I just lost control! He said that I must be in control of my car at all times and under all conditions. Is that right?

LIBRARIAN: [taking PATRON to law books]: Well, let us see. Why don’t we take a look at West’s Digest for this state. O.K., here we are—a case on the liability of a driver on a patch of ice. The case is Smith v. Jones. It was a case where someone was killed, and the court said that drivers can’t be prosecuted for problems that occur as a result of weather.

PATRON: Oh, I’m so glad to hear that. I guess it means that I can fight the ticket. I know that if I challenge the ticket in court and lose I will have to pay court costs and an even higher fine. How do I respond to the court?

LIBRARIAN: [taking PATRON to State Form Book]: Well, here is a form for replying to a traffic violation. I hope that this helps you.

PATRON: You have really helped me a lot. You relieved me, and now I know what the law is. Thank you very much.

LIBRARIAN: Good luck.

The librarian committed a crime. What is wrong with this scenario? First of all, the librarian committed the Unauthorized Practice of Law (UPL). We can easily imagine this happening to us, but what the librarian did was to find the law for the patron, explain the law to the patron, and recommend a form. This behavior would have been acceptable if the question had involved business or history. However, by answering the patron’s question about the law, the librarian stepped over the edge.

In fact, the librarian’s answer was wrong. Most states specify that the driver must be in control at all times. For example, the Ohio Revised Code states that “No person shall operate a motor vehicle . . . on any street, highway, or property open to the public for vehicular traffic without being in reasonable control of the vehicle . . . .” A case involving someone who died might indeed say that the person can’t be held responsible for vehicular homicide, but it has nothing to do with a traffic ticket. So our librarian not only committed a crime, but also gave improper advice which might cause the patron to pay a higher fine.

Pro se library users, patrons who are planning to represent themselves in court without an attorney, can sometimes be the cause of problems. According to Paul Healey, a law librarian at William Mitchell School of Law in St. Paul, Minnesota, and an expert on librarians and UPL:

Pro se library users can . . . approach the law library with a number of misapprehensions. In addition to being unfamiliar with legal materials, pro se users often misunderstand essential aspects of law and the legal process. The fluid nature of the law often comes as a surprise, including the lack of a clear answer to most legal questions. They often underestimate the skill required for effective representation in almost any legal matter, as well as the value of a dispassionate, but fully informed, point of view on a legal case. This often results in frustration for the pro se user, a condition that they hope the law librarian will help alleviate.
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use of a specific form for a particular situation. You should absolutely never give any interpretation or advice about the law or about legal opinions. In other words, the librarian must not do legal research or give advice about any kind of legal issue. As Brown indicates, the penalties for UPL can be severe.

In order to avoid UPL, librarians should know how to answer a reference question without directly giving legal advice. For example, if a patron asks for information about the law on a particular topic, the librarian can provide a list of sources where the patron can find the information they need. However, if the patron asks a specific question about the law, such as whether a certain action is legal, the librarian should direct the patron to a legal professional.

Now, let's consider the example of a law student who asks a librarian about the UPL laws in their state. The librarian should be able to provide information about the laws without giving legal advice. For instance, the librarian can tell the student where to find the laws and how to interpret them. However, the librarian should not tell the student how to use the laws to support their own arguments or how to present their case in court.

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Questions & Answers
Copyright Column

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QUESTION: An instructor has an old 16mm film published by Southern Bell Telephone and Telegraph Company. He wants to put it on videotape to use for his class. Is this infringement? Should he contact AT&T archives?

ANSWER: According to the Copyright Act, only a library or archives may convert the format of a work for preservation purposes. Before that may be done, section 108(c) dictates that the library first try to purchase a copy in the desired format at a fair price. If it is not available, then for preservation, a library may reproduce the videotape. So, your library probably does have to contact Southern Bell to try to obtain another copy since it appears to be the publisher.

It is possible that under fair use a faculty member might copy the entire film to a new format, but the law is less clear about whether that might constitute infringement as opposed to when a library does the preservation.

QUESTION: May a federal government library photocopy an entire issue of a journal in order to bind a complete volume? The library has a subscription to the journal and has all of the issues for the year except one. That issue was received but was lost.

ANSWER: The answer is yes. Again, under section 108(c), if the library first tries to buy the missing issue and it is not available, or is available but not at a fair price, then the library may reproduce it for its collection.

QUESTION: An academic library was contacted by a person not affiliated with the university requesting loan of a copy of a PBS video which is no longer in production and which he was unable to obtain from them. A faculty member here does not want to risk losing the video by loaning it. May the library copy the video to loan it?

ANSWER: Unfortunately, this is not what is meant by preservation in the copyright law. It is infringement to duplicate videos for someone just to loan them. In fact, only under the preservation sections can libraries copy videos at all! Section 108(b) applies only if the video is unpublished, and section 108(c) applies only when the library’s copy has been lost, damaged, stolen, deteriorated or is obsolete.

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State ex rel Oregon State Bar v. Wright, 280 Or. 713, 573 P.2d 294. Showing specific forms, explaining how a law or rule applies to a specific person, or interpreting cases is a clear violation of the laws against the unauthorized practice of law.

- A non-attorney who, as incidental to another transaction or calling, solves legal questions for another at his request by giving him advice is “practicing law” if difficult or doubtful legal questions are involved which, to safeguard the public, reasonably demand the application of a trained legal mind. Gardner v. Conway, 234 Minn. 468, 48 N.W.2d 788.

There is a way to satisfy our patrons without crossing the line into UPL. So please don’t shy away from helping with reference questions if the patron has a legal issue. Instead, remember the principles of effective reference service, and apply them to the situation. So how should the librarian in our opening scene have handled the patron? Let’s turn back time and see how the transaction should have been handled.

PATRON: I need your help, please! I wrecked my car, and the police officer gave me a ticket. I got these forms in the mail from the court. What do I do? Is there some sort of form I can use to respond?

LIBRARIAN: What kind of ticket did you get?

PATRON: I have 20 days, so that makes the form due on the 20th of the month. The officer said that I must have been going too fast, or else I wouldn't have slid into his lane. I was only going 28, but the ice was very thick and I just lost control! He said that I must be in control of my car at all times and under all conditions. Is that right?

LIBRARIAN: [taking PATRON to law books] Well, let us see. Why don’t we take a look at West’s Digest for this state. In a nutshell, the Digest puts cases together by an numbering system. It is kind of like the Library of Congress Classification System or the Dewey Decimal Classification System. So you can look up your topic in the index and find out what number it is under. When you look under that number, you will find cases on your topic.

PATRON: Thank you very much! I’ll take a look at this and decide whether to fight the ticket or pay it. If I challenge the ticket in court and lose I will have to pay court costs and an even higher fine. How do I respond to the court?

LIBRARIAN: [taking PATRON to State Form Book] Well, here are the forms book and court rules for our state. Take a look at this and see if anything looks applicable to your situation. I hope that this helps you.

PATRON: You have really helped me a lot. You relieved me, and now I know where to find the law. Thank you very much.

LIBRARIAN: Good luck.

Endnotes
1. Ohio Revised Code 4511.202 OPERATION WITHOUT REASONABLE CONTROL.
4. For example, I worked on a policy at UPL when I was the Reference and Computer Services Librarian at Hamline University Law Library. See, Hamline University School of Law Library, “Reference Policy on the Unauthorized Practice of Law,” created by Bryan M. Carlson and John Tessmer (February 8, 1998).
5. Brown, supra n. 3.