April 1996

Juris Libris

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Recommended Citation

Montgomery, Jack G. (1996) "Juris Libris," *Against the Grain*: Vol. 8: Iss. 2, Article 19.
DOI: <https://doi.org/10.7771/2380-176X.2025>

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Librarians and the Legally Underserved

Column Editor: **Jack G. Montgomery** (Technical Services Librarian, Law Library, University of Missouri Columbia) <MONTGOMERY@law.missouri.edu>

Column Editor's Note: It gives me great pleasure to introduce a new author to this new column. Susan J. Hemp is the assistant law librarian/assistant professor of library administration and has been at the University of Illinois Law Library at Champaign since 1991. She provides both reference service and acts as the documents librarian. Ms Hemp received both her law and library degrees from the University of Illinois. — JM

Librarians and the Legally Underserved

by **Susan J. Hemp**
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These days, more and more citizens are undertaking legal action without enlisting the aid of a lawyer. There are at least a couple of reasons for this, one of which is a dislike and/or mistrust of lawyers. Some people who could afford to hire a lawyer would rather not, on general principle. Others may have hired an attorney but want to save money by doing some of the work themselves. But the most significant reason nonlawyers engage in legal research is purely economic: many people need a lawyer but cannot afford one. A nationwide study published by the American Bar Association in 1994 concluded that, among low- and moderate-income households, between three-quarters and two-thirds had legal needs that were not met by the professional justice system. (*Legal Needs and Civil Justice: A Survey of Americans: Major Findings from the Comprehensive Legal Needs Study*. Chicago: Consortium on Legal Services and the Public, American Bar Association, 1994) What's more, Congress has again cut funding for the Legal Services Corporation, resulting in closings or staff reductions at legal aid offices across the country.

A library is not a legal aid office, nor can a librarian act as a lawyer. Still, the widespread shortage of affordable legal assistance means more and more people are likely to turn to their local public library, or to the nearest law library or academic library, for solutions to their legal problems. It's difficult to know how to help these "pro se" patrons, who often expect (or at least hope) that the librarian will go beyond reference service and dispense legal advice. Given the fact that what the patron may really need most is a lawyer, is there a role for the librarian in addressing the needs of the legally underserved?

There is. To start with, he or she can develop a collection of materials that provide

guidance for the novice legal researcher. This is a task not lightly undertaken; however, there are hundreds of "do-it-yourself law" titles, but many are not appropriate for all jurisdictions, and all run the risk of containing outdated or misleading information. Fortunately, other professionals, often law librarians, have created tools for assessing and selecting *pro se* materials.

Law librarians can be a useful resource for their colleagues in other ways. The American Association of Law Libraries has a special interest section called Legal Information Service to the Public (LISP) which works to promote access to legal resources for everyone. Law librarians are generally willing to conduct tours or legal-research sessions for other librarians so that the latter can better help their patrons. Additionally, LISP has published a 12-page booklet, *"How to Research a Legal Problem: A Guide for Non-Lawyers."* An individual copy is free; multiple copies are 50 cents apiece from the American Association of Law Libraries, 53 W. Jackson Blvd., Suite 940, Chicago, Ill. 60604. Telephone 312-939-4764.

The bibliographies and other materials I've listed below give practical guidance for those who want to establish *pro se* collections or programs. There is also a selection of the many articles that deal with the ethical "big picture": Does a librarian in fact have a duty to provide legal reference service? If so, is there a point at which "legal reference" starts to look more like legal advice? Additionally, I have listed a few legal sites on the World Wide Web that are directed toward nonlawyers. Any library that is open to the public can benefit from these materials. Even though a public or general academic library may not have a complete collection of primary law for its jurisdiction, which a serious-minded patron would need to proceed with in his or her research, often there is a county law library or law school library nearby. The local library's *pro se* collection can then be the gateway to the nearest complete legal collection.

Bibliographies/Articles

Janet L. Crowther, "Legal Information for the Public: A Public Library Perspective," 84 *Law Library Journal* 559-565 (1992). A discussion of the role public libraries should play in providing legal reference service, and suggestions for ways to help patrons find the information they need.

Frank G. Houdek, *Law for the Layman: An Annotated Bibliography of Self-Help Law Books*. Littleton, Colo.: Fred B. Rothman & Co., 1991. Looseleaf. 214 pp. \$42.50. Houdek, president/elect of the American Association of Law Libraries, provides detailed annotations to self-help law books, arranged under more than 50 subject headings. The annotations note whether the publications contain special features, such as forms, checklists, or step-by-step procedures. Includes author, title, and jurisdiction indexes and a list of publishers. This is an excellent, comprehensive source. A second edition, written by Jean McKnight, is expected out soon.

Rashelle S. Karp, "Law Books for Laypeople," *Booklist* 185-189 (Sept. 15, 1991). The author outlines the components of a core legal collection and then critiques a selection of materials under these topics: *Guides to the Field, Legal Research, Encyclopedias, Handbooks, Writing Aids, Directories, Legal Summaries, General Resources for Laypeople, and Do-It-Yourself Resources.*

Pat Lorenzo, "Answering Legal Questions at the Reference Desk: Issues of Ethics, Liability, and Use of Legal Collections," 19 *Current Studies in Librarianship* 13-23 (1995). An examination of current thinking on liability for librarians who provide legal information. Suggestions for avoiding difficulty include resource-sharing, aggressively weeding to ensure that legal materials are up to date, and developing user-friendly collections for nonlawyer patrons. *Bibliography.*

Sue Vest McCallum, "Legal Research for Non-Law Librarians," 6 *Government Publications Review*, 263-273 (1979). While this article is older than the others, it provides timeless and highly useful information, with

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concise overviews of the legislative and judicial systems, a description of the documents each produces, and an explanation of how basic legal research works. As Ms. McCallum points out, "Every depository library provides, within the reach of the public and the public librarian, a basic legal collection." Bibliography.

Madison Mosley Jr., "The Authorized Practice of Legal Reference Service," 87 *Law Library Journal* 203-209 (1995). There's a difference between reference service and legal advice, the author points out, and librarians who are acting as librarians in helping patrons to use legal resources are not practicing law.

Joan Pedzich, "Taking the Law into Your Own Hands," *Library Journal* 79-84 (June 1, 1993). An annotated bibliography of legal research guides and the self-help material available in different areas of the law, such as estate planning, domestic issues, real estate and debtors' rights. The author also discusses the importance of keeping legal information current and provides other selection guidelines.

Gail Reinertsen, "Bibliography on Public Access to Legal Materials," 6 *Legal Reference Services Quarterly* 181 (1986). The author discusses the issue of providing legal information to the public and offers an analysis of materials available to do so, both from a theoretical and a practical standpoint.

Gloria Grant Roberson, "Legal Research and the Democratic Process," 40 *Reference Librarian* n63-71 (1993). The author argues effectively that the public's right to know and need to know means nonlaw librarians must play a key role in providing legal/governmental information to all. Bibliography.

Clearinghouse

LISP's clearinghouse contains a large variety of sample materials submitted by AALL committees, law libraries and other organizations interested in making legal information more available to all. Included are bibliographies, such as "Self-Help Law Sampler 1986-1991," by Madeline Hebert and Helgard Bloemeke Baier; program and workshop handouts; library guides; and books. Much of the material is available on a loan basis. For a copy of the clearinghouse annotated bibliography, write to Elizabeth K. Schneider, Texas Tech University Law Library, 1802 Hartford, Lubbock, Tex. 79409-0004.

LISP Newsletter

The quarterly publication of the Legal Information Service to the Public Special Interest Section of AALL publicizes activities of LISP, other AALL units and individual libraries in getting legal information to the public. The newsletter contains bibliographies, research guides and reports on effective programs and outreach. Subscription is free for those who are members of LISP; the cost is now only \$5 a year (but subject to change) for others. Write to Franklin A. Weston, LISP Newsletter Editor, University of San Diego Legal Research Center, 5998 Alcala Park, San Diego, Calif. 92110.

Web Sites

A selection of sites that provide legal information for the general public (although many also have sections meant for attorneys).

ABA Legal Help Center <<http://grover.abanet.org/public/home.html>> This site maintained by the American Bar Association Division for Legal Services offers a directory of programs for those who can't or don't want to use traditional legal assistance and a catalog of legal-education materials in laypeople's language. There is also information on finding a lawyer.

LawInfo <<http://LawInfo.com/self.help.html>> The Self-Help Forum here has a FAQ (frequently-asked-questions site) of general legal questions and a section providing information on selected legal topics.

The 'lectric Law Library <<http://www.lectlaw.com/>> This site has an informal approach to legal information, with sections such as the Reference Room (primary law), the News Room (current governmental and legal issues), and the Forms Room. The Laypeople's Law Lounge includes information on consumer, employment, investment and other legal issues, as well as government benefits.

Legal dot Net: Dear Esquire <<http://www.legal.net/esquire.htm>> This is a forum where people can ask attorneys questions about general legal options (not specifics). However, "The response to Dear Esquire has been so overwhelming that it has become impossible for the small staff of attorneys ... to handle the volume." Dear Esquire is recruiting more attorneys, however.

Nolo Press Self-Help Law Center <<http://www.gnn.com/gnn/bus/nolo/index.html>> Nolo Press is the leading publisher of self-help law books in the country. The Nolo Press homepage includes articles about legal issues such as landlord/tenant, small claims court, immigration and intellectual property.

Seamless Web <<http://seamless.com/>> For attorneys and laypeople. "The Commons" contains writings on law-related topics, and "The Shingle" features homepages of lawyers (who often provide useful introductory information) and legal service providers.

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violation of shrinkwrap license as a result of their downloading the listings featured on the Pro CD product and then placing the data onto the Internet. Both parties filed **Motions for Summary Judgment** and Chief District Court Judge Crabb of the Western District of Wisconsin ruled in favor of the defendants, finding that:

1. The defendants did not infringe on the copyrighted software when they downloaded the data to their own hard drive for the purpose of making that data available on the Internet in that the telephone listings are

"uncopyrightable." This ruling was based not on the idea that all telephone numbers are uncopyrightable but that plaintiff's arrangement of the listings lacked "the minimal creativity necessary to garner copyright protection."

2. The users were not bound by the "shrinkwrap license" included with the software because the defendants were not allowed to bargain or dispute the user agreement, much less review the same before purchase, as it is **INSIDE** (emphasis added) the package box. Therefore, they were not able to assent to the terms of the license.

3. The State of Wisconsin breach of contract and misappropriation claims alleged by the plaintiff were preempted by the Copy-

right Act.

4. The Wisconsin State Computer Crimes Act claim as to the defendants was also preempted by the Copyright Act.

These latter two claims were preempted for identical reasons, i.e. because telephone listings fall under the subject matter of copyright and because plaintiff's actual purpose in making such claims was to prohibit the copying and distribution that it could not prevent under federal law.

Another interesting opinion. Your thoughts? I wonder if in the future we will all have to actually read and sign a "shrinkwrap license" before purchasing new software.