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The Unbundling of Legal Services and its Implications for Law Librarianship

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Submitted to

Professor Penny A. Hazelton

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This paper addresses the role of law libraries with respect to online sites that give free or low-cost legal advice. In this paper, I will argue that the gap in

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access to legal services for the lower and middle class needs addressing, and that the public law librarian's role in facilitating access to justice can be improved by helping pro se patrons access the growing number of free or nominal cost online legal advice resources. The rise in online legal advice sites comes with concerns from the legal profession regarding the possible ethical duties and responsibilities of giving legal advice in a new medium, and the role of the law librarian in referring people to these services is constrained by the values of law librarian's professional ethics. These concerns are valid and warrant serious consideration, yet they are only beginning to be addressed by the profession. I will argue that as the ethical concerns stemming from the proliferation of online legal advice sites are addressed, regulated, and managed by the legal profession, public law librarians should not ignore their presence but embrace their potential role in facilitating access to the information available to patrons in a new technological medium.

Part 1 discusses the current gap in access to justice for both low and middle class people, and describes the rise of legal advice sites like Avvo and Legal Zoom that fill an unmet need in legal services for the public. Part 2 describes the legal profession's responses and concerns about online legal advice and legal services sites, specifically regarding the issues that arise in professional ethics. Part 3 discusses how the professional ethics and values of the law librarianship profession are affected by the "unbundling" of legal services, and Part 4 makes a recommendation about how law libraries should respond to these free legal advice sites given the standards.

D) THE GROWING GAP IN ACCESS TO LEGAL INFORMATION, AND HOW ONLINE LEGAL ADVICE WEBSITES ARE FILLING IT.

The inability to access legal advice and guidance when it's needed is a serious problem for many in the United States. The gap in access is not merely a problem for those in poverty. With increasing costs of legal information, many middle class people cannot afford the high cost of legal representation. This growing gap is also a burden on the courts, where the self-represented may require extra assistance from court staff, delay proceedings, and stifle the efficiency of the courts.¹ A number of national and state legal needs studies have documented the needs of both low and moderate-income people, finding that a minority of people who need legal assistance actually receive it.² In 2010, the

¹ See e.g., Jonathan Lippman, *Equal Justice at Risk: Confronting the Crisis in Civil Legal Services*, 15 N.Y.U. J. Legis. & Pub. Pol'y 247, 248 (2012)

² See e.g., The Legal Aid Safety Net, available at <http://www.ltf.org/docs/legalneeds.pdf> (16.4% of low-income households who need legal assistance actually receive it); See e.g., Conference of Chief Justices, Resolution 11 in Support of Increased Funding for Legal Services Corporation (Aug. 2009), available at http://www.courts.wa.gov/programs_orgs/pos_bja/COSCA%20Res%201%20Legal%20Services%20Corporation.pdf, ("the number of individuals in need of legal services has

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ABA conducted a survey of judges, and found not only an increase in civil cases filed generally, but an observed increase in the number of unrepresented parties to civil cases.³

The problem is further compounded by recent decreases in funding for legal services for the poor,⁴ making it difficult for legal aid organizations to stretch their limited resources and accommodate the large numbers of people who could benefit. Strict requirements are put in place to determine which individuals are eligible for help, limiting eligibility to those with very low incomes and few, if any, assets. Those whose incomes are low enough that they clearly do qualify are sometimes not even aware that such services exist.⁵ Further, many working and middle class individuals and families fall into a twilight zone of being too poor to afford legal help despite an income that makes them ineligible for legal aid programs aimed at the poor.⁶

To address this gap, some states have implemented mandatory pro bono requirements for admissions to the state bar.⁷ Yet, this is unlikely to serve a

dramatically risen due, in part, to increased unemployment, foreclosures, debt problems, and difficulties accessing medical care as a result of the current financial crisis ...”).

³ *Id.*, at 2.

⁴ Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 *Loy. L.A. L. Rev.* 869, 911 (2009) (relying on Legal Servs. Corp., *Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low-Income Americans* 1-13 (2009), available at http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf. (Surveys find that between two-fifths and three-quarters of the needs of middle-income individuals are unaddressed, with most finding at least half.))

⁵ See e.g., Task Force on Civil Equal Justice Funding, Washington State Supreme Court, *The Washington State Civil Legal Needs Study* 36 (Sept. 2003), available at <http://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf> (less than 40% of respondents were aware of the availability of free legal services for people who cannot afford a lawyer); ABA Consortium on Legal Services and the Public, *Legal Needs, and Civil Justice: A Survey of Americans*, Major Findings from the Comprehensive Legal Needs Study (1994), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf> (1994) (only 50% of low-income respondents are aware of free legal aid).

⁶ John T. Broderick, Jr. & Ronald M. George, *A Nation of Do-It-Yourself Lawyers*, *N.Y. TIMES*, Jan. 2, 2010, at A21 (“An increasing number of civil cases go forward without lawyers. Litigants who cannot afford a lawyer, and either do not qualify for legal aid or are unable to have a lawyer assigned to them because of dwindling budgets, are on their own—pro se. What’s more, they’re often on their own in cases involving life-altering situations like divorce, child custody and loss of shelter.”).

⁷ See New York Bar Association requirements for Admission, at <http://www.nycourts.gov/attorneys/probono/baradmissionreqs.shtml> (last accessed May 12, 2013).

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sufficient means to closing the gap, especially since the requirements may allow for a very broad definition of “pro bono,” thus limiting the effect of the requirement on the legal service areas with the greatest need.⁸ Further, no state currently requires pro bono hours to be completed; the requirements are merely aspirational.⁹ In the few states where voluntary pro bono hours are tracked, approximately 30% of lawyers are participating in pro bono programs. Of those pro bono hours that are reported, only half of the hours are of benefit to individuals with limited financial means.¹⁰ Relying on either mandatory pro bono service prior to bar admission, or aspirational pro bono service for bar members, is an unwise strategy for closing the justice gap for poor and middle-class individuals.

Removing the barriers to accessing legal services for those who need it is important for more than the individual who directly needs legal assistance. When large numbers of people are forced to represent themselves in legal matters, the balance of justice in society is severely unbalanced.¹¹ An empirical study in 2005 of the United States and the United Kingdom found that a party’s odds of winning a civil case are increased by 75% when the party is represented by a lawyer.¹² This statistic is not surprising to many, and highlights the need for additional support for facilitating access to legal assistance.

When a low income or middle income person cannot access legal services, they may handle their legal matters by themselves. Regardless of whether the individual ends up representing themselves in a litigation process or not, they often start out doing legal research at a law library. Armed with a cursory understanding of their legal issue, they may direct pro se questions to law libraries with hopes that a reference librarian can offer them assistance only to find

⁸ Daniel Wiessner and Joseph Ax, “NY pro bono rule could spur fewer hours than envisioned,” Reuters Legal News (October 15, 2012), available at http://newsandinsight.thomsonreuters.com/Legal/News/2012/10_-_October/NY_pro_bono_rule_could_spur_fewer_hours_than_envisioned/ (last accessed May 20, 2013).

⁹ See James Podgers, *Magic Number New York's New Rule Requires Bar Applicants to Perform 50 Hours of Pro Bono Work*, ABA J., March 2013, at 22, 23

¹⁰ See Laurel A. Rigertas, Stratification of the Legal Profession: A Debate in Need of a Public Forum, 2012 Prof. Law. 79, 81 (2012) (urging greater exploration of stratification of the legal profession--by training and licensing professionals other than lawyers to provide legal help--as a way to increase access to legal services).

¹¹ Rebecca L. Sandefur, *Effects of Representation on Trial and Hearing Outcomes in Two Common Law Countries* 4-5 (July 7, 2005) (unpublished manuscript, Paper presented at the Annual Meetings of the Research Committee on the Sociology of Law of the International Sociological Association, Paris, July 2005), available at <http://www.reds.msh-paris.fr/communication/docs/sandefur.pdf>.

¹² *Id.*, at 15

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frustration in the reference librarian's professional limitations on interpreting the law for them.¹³

In recent decades, a number of scholars and commentators have argued that innovations in technology will transform legal practice.¹⁴ Legal services are being provided more and more on the internet, tapping into this unmet need. The availability of information on the internet, in the form of websites, blogs, forums, and chat rooms, has made it much easier for users to find information on their own.¹⁵ There has also been a sharp increase in do-it-yourself legal documents such as leases, wills, and business contracts. The sources available on the internet are often seen as more convenient, and many resources are written for lay people, avoiding the confusing legalese and academic focus of some legal resources.¹⁶

Some scholars also argue that unbundling of legal services will give more Americans access to affordable legal assistance.¹⁷ Unbundled legal services involve an agreement between a lawyer and client that limits the scope of the lawyer's involvement in a lawsuit or other legal action. The limited service saves the client money, but also limits the responsibility of the lawyer.¹⁸ So, a lawyer may limit his representation to helping a client fill out a form, or answer limited questions about how an individual might proceed pro se in a civil case. A person inclined to use these unbundled services may also find the ease and efficiency of doing so online appealing, and thus sites like Legalzoom may be particularly attractive to some pro se patrons.

Although there is still a gap in access to technology, the majority of people have access to the internet. Overall, 81% of American adults use the internet.

¹³ Paul D. Healey, *In Search of the Delicate Balance: Legal and Ethical Questions in Assisting the Pro Se Patron*, 90 Law Libr. J. 129, 131 (1998)

¹⁴ See Richard L. Marcus, *The Impact of Computers on the Legal Profession: Evolution or Revolution?*, 102 NW. U. L. Rev. 1827, 1843 (2008); Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 780 (2010); Ronald W. Staudt, *All the Wild Possibilities: Technology That Attacks Barriers to Access to Justice*, 42 LOY. L.A. L. REV. 1117, 1122 (2009).

¹⁵ Linda C. Smith, *Reference Services*, Encyclopedia of Library and Information Science (3d ed. Taylor & Francis NY), at 4485, published on-line 09 Dec. 2009 (relying on K.A. Cassell, *Reference and Information Services in the 21st Century: An Introduction*, 2d Ed.; Neal-Schuman Publishers: New York, 2009)

¹⁶ *Id.*

¹⁷ Rachel Brill & Rochelle Sparko, *Limited Legal Services and Conflicts of Interest: Unbundling in the Public Interest*, 16 Geo. J. Legal Ethics 553 (2003)

¹⁸ New York State, Bar Association. "Report and Recommendations on "Unbundled" Legal Services". Commission on Providing Access to Legal Services for Middle Income Consumers. Retrieved 16 August 2011.

Low-income individuals may have less access to the internet, but the rates of access are still quite high.¹⁹

Figure 1²⁰

Demographics of Internet Users

% of American adults within each group who use the internet

All adults ages 18+		81%
a	Men (n=1,054)	80
b	Women (n=1,207)	82
Race/ethnicity		
a	White, Non-Hispanic (n=1,632)	84 ^{b^c}
b	Black, Non-Hispanic (n=249)	73
c	Hispanic (n=211)	74
Age		
a	18-29 (n=335)	94 ^{bcd}
b	30-49 (n=585)	89 ^{cd}
c	50-64 (n=689)	77 ^d
d	65+ (n=610)	54
Education attainment		
a	No high school diploma (n=209)	51
b	High school grad (n=662)	74 ^a
c	Some College (n=598)	89 ^{ab}
d	College + (n=770)	95 ^{abc}
Household income		
a	Less than \$30,000/yr (n=645)	67
b	\$30,000-\$49,999 (n=396)	86 ^a
c	\$50,000-\$74,999 (n=316)	90 ^a
d	\$75,000+ (n=515)	98 ^{abc}

Source: Pew Internet Post-Election Survey, November 14 – December 09, 2012. N=2,261 adults ages 18+. Interviews were conducted in English and Spanish and on landline and cell phones. Margin of error is +/- 2.3 percentage points for results based on all adults.

Note: Columns marked with a superscript letter (^a) or another letter indicate a statistically significant difference between that row and the row designated by that superscript letter. Statistical significance is determined inside the specific section covering each demographic trait.

There are existing efforts to close the gaps in access to the internet. For example, the Washington State Access to Justice Technology Project is working on developing and maintaining a system of public computers in libraries,

¹⁹ Demographics of Internet Users, Pew Research Ctr., [http://www.pewinternet.org/trend-data-\(adults\)/whos-online.aspx](http://www.pewinternet.org/trend-data-(adults)/whos-online.aspx) (last visited April 7, 2013) (summarizing findings of a survey conducted between July 16 and August 7, 2012).

²⁰ *Id.*

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courthouses, community centers, non-profit organizations, and low-income housing complexes.²¹ Increasing access to computers equipped with internet capabilities is only one part of the solution; users must also have the skills to use them properly. A component of the Washington State project includes significant computer skills training so users can be better equipped to utilize the online resources—such as legal aid offices, courts, and government services—that improve their access to justice.²² People with low to middle incomes use the internet, and the number of people who do is growing.

Direct access to information and legal documents is a good thing, but information alone, especially legal information, is never a complete substitute for understanding and interpretation. There is still abundant need for legal counseling and problem-solving assistance. Interpretations of the law and standards applicable to a pro se client's issues are ever-evolving. Thus, without some mechanism for vetting legal information available on the internet, the potential to be woefully misguided is very high for a pro se litigant. Nonetheless, the internet is scarcely regulated, and the number of sites meeting the information needs of individuals is increasing.

Online legal advice websites come in several forms, including offering legal advice for a particular legal situation, counseling, and assistance with legal

²¹ Access to Justice Technology Principles, Washington Courts, http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=am&set=ATJ&ruleid=amatj02principles (last visited Aug. 27, 2012). (Washington State Access to Justice Technology Principles define access to justice as including “the meaningful opportunity, directly or through other persons: (1) to assert a claim or defense and to create, enforce, modify, or discharge a legal obligation in any forum; (2) to acquire the procedural or other information necessary (a) to assert a claim or defense, or (b) to create, enforce, modify, or discharge an obligation in any forum, or (c) to otherwise improve the likelihood of a just result; (3) to participate in the conduct of proceedings as witness or juror; and (4) to acquire information about the activities of courts or other dispute resolution bodies. Furthermore, access to justice requires a just process, which includes, among other things, timeliness and affordability. A just process also has ‘transparency,’ which means that the system allows the public to see not just the outside but through to the inside of the justice system, its rules and standards, procedures and processes, and its other operational characteristics and patterns so as to evaluate all aspects of its operations, particularly its fairness, effectiveness, and efficiency.”)

²² Laurence H. Tribe, Senior Counselor for Access to Justice, Dep't of Justice, Address at the National Telecommunications and Information Administration Announcement of Broadband Grant Recipients (Sept. 16, 2010), at <http://www.justice.gov/atj/opa/pr/speeches/2010/atj-speech-100916.html> (last accessed May 12, 2013).

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documents.²³ A lawyer may answer questions directly for an individual representing himself pro se. Or a lawyer may help the individual prepare legal documents for himself while offering advice on his legal situation.²⁴ One popular site, RocketLawyer²⁵, offers unbundled legal services to visitors. Users can use an online tool to compute their “Legal Health Score,” from which RocketLawyer then recommends specific legal services. The site also allows users to fill out online legal forms, which are then reviewed by local attorneys to make it compatible with the laws of the user’s state.²⁶

Other online services offer more fact-specific services, and are well-suited to those with specific legal questions. Avvo²⁷ and LawPivot²⁸ both offer a free “Ask a Lawyer” consultation services. Visitors to the Avvo website²⁹ can post a question and wait for a participating lawyer to respond at no cost. Questions might include: “What rights does a father who was never married to the child's mother have for custody?” or “What if the judgment creditor does not respond to an order to return levied money?” Answers to questions are posted by topic for other visitors to browse. LawPivot³⁰ is similar to Avvo, except that it charges \$29 to ask a question concerning a personal issue and \$49 for a business issue. The service links the website visitor to one or more local attorneys from among more than two thousand participating attorneys, from whom the visitor can ask unlimited follow up questions at no additional cost.

LegalZoom³¹ is the quintessential DIY legal document creation site. Visitors can create basic legal documents such as incorporation papers, simple wills, uncontested divorces, and trademark registrations. Using an online questionnaire, customers can build “an effective legal document” step-by-step, generally in under fifteen minutes. Under its business model, a customer who wants a simple will can choose either the “Standard,” “Gold,” or “Premium” service. Each of these choices includes the “LegalZoom Peace of Mind Review,”

²³ See Resources, Standing Committee on Delivery of Legal Services, http://www.americanbar.org/groups/delivery_legal_services/resources.html (last visited July 29, 2012).

²⁴ *Id.*

²⁵ RocketLawyer, <http://www.rocketlawyer.com/> (last visited April 8, 2013);

²⁶ *Id.*

²⁷ Ask a Lawyer, Avvo, http://www.avvo.com/ask-a-lawyer?ref=header_navbar (last visited April 8, 2013).

²⁸ LawPivot, <http://www.lawpivot.com/> (last visited April 8, 2013).

²⁹ Avvo, <http://www.avvo.com> (last visited April 8, 2013).

³⁰ LawPivot, <https://www.lawpivot.com/accounts/register/company/question/> (last visited April 8, 2013).

³¹ LegalZoom <http://www.legalzoom.com/attorneys-lawyers/legal-plans.html> (last visited February 26, 2013)

which not only provides “hundreds of automated checks,” but also careful review by “document specialists”.³²

II) ONLINE LEGAL ADVICE SITES RAISE ETHICAL CONCERNS IN THE LEGAL PROFESSION WITH IMPLICATIONS FOR LAW LIBRARIANSHIP

These methods of delivering professional services have “profound implications for the practice of law in the twenty-first century.”³³ Many have recognized the enormous potential for online legal advice sites to provide services to the growing number of people who are unable to afford legal services otherwise.³⁴ The phenomenon cannot be ignored, despite the sometimes complicated ethical concerns it may present. Because it possesses such a high potential for closing the justice gap in the United States, careful examination of the ethical concerns presented by its use in the legal profession is warranted.

Online legal advice, while obviously useful to many in an underserved population, presents legal and ethical problems that are concomitant with the positive aspects of the phenomenon. The interpretations and practical effects of regulations and duties found in professional ethics codes and the laws are sometimes ambiguous even in a standard lawyer-client relationship in the context of a large or small law firm or solo practice. The practice is increasingly becoming a thorn in the side of those charged with managing the professional standards of the legal profession. “[T]he specter of lawyers casually typing out off-the-cuff responses to questions posed by strangers and posting them online for all the world to see must be the stuff of a bar regulator's nightmares.”³⁵

Questions regarding the ethical issues involved in the practice of online legal advice have been raised, but not yet completely answered. For example, does the practice of online legal advice, where a lawyer directly answers a specific individual’s legal questions, create a professional relationship such that the professional duties inherent in attorney-client relationships must be fulfilled? Is it acceptable for legal professionals to practice in areas, or jurisdictions, where they have no expertise? In response to these questions, some states are fighting online legal information services with lawsuits charging unauthorized practice of law, with many resulting in settlements where the website agrees to limit the services offered in exchange for being allowed to continue business as usual.³⁶

³² *Id.*

³³ Catherine J. Lanctot, *Attorney-Client Relationships in Cyberspace: The Peril and the Promise*, 49 *Duke L.J.* 147, 156 (1999).

³⁴ *Id.*

³⁵ *Id.*

³⁶ See Stephanie Rabiner, *LegalZoom Sued by Alabama Bar Group for Unauthorized Practice*, FindLaw for Legal Prof. (last accessed March 20 2013), <http://blogs.findlaw.com/strategist/2011/07/legalzoom-sued-by-alabama-bar-group-for->

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However, many argue that changes in the delivery of legal services, specifically the dismantling of the bar's monopoly on the communication of legal services, presents a tremendous opportunity in closing the justice gap.³⁷ Increased costs of legal services, advances in technology, and the inability of state bar association's to successfully satisfy unmet legal needs have given rise to a reassessment of the opposition against an absolute bar against non-lawyer legal practice.³⁸

Changes in the way the bar views the unauthorized practice of law has implications for law librarianship, because it would weaken the bar's monopoly on the communication of legal information.³⁹ First, it would free law librarians from the concern of being charged with the "unauthorized practice of law" when they share legal information. Second, it would allow law librarians to efficiently disseminate legal information to unrepresented and under-represented people, because it would eliminate the need for case specific legal information to be vetted by attorneys before being passed along to legal consumers. This would effectively allow a law librarian to refer a library patron to any legal information source that would be useful to the patron so long as the referral was consistent with the professional ethics of law librarianship.

Thus, an examination of the ethical issues that stem from the use of online legal advice for the legal professional generally bears on the extent to which law librarians should rely on online legal advice websites as viable legal resources for their patrons. If the unbundling of legal services in an online context is consistent with the duties of professional responsibility in the legal profession, the next step

unauthorized-practice.html; Debra Cassens Weiss, *LegalZoom Can Continue to Offer Documents in Missouri Under Proposed Settlement*, A.B.A. J. (last accessed March 20 2013), http://www.abajournal.com/news/article/legalzoom_can_continue_to_offer_documents_in_missouri_under_proposed_settle/; Debra Cassens Weiss, *Wash. AG's Settlement with LegalZoom Bars Fee Comparisons Absent Disclosure*, A.B.A. J. (Sept. 21, 2010, 8:06 AM), http://www.abajournal.com/news/article/wash._ags_settlement_with_legalzoom_bars_fee_comparisons_absent_disclosure/.

³⁷ Alex J. Hurder, *Non-lawyer Legal Assistance and Access to Justice*, 67 *Fordham L. Rev.* 2241 (1999); Derek A. Denckla, *Non-lawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 *Fordham L. Rev.* 2581 (1999); Deborah L. Rhode, *Meet Needs with Non-lawyers: It is Time to Accept Lay Practitioners--and Regulate Them*, A.B.A. J., Jan. 1996, at 104; Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to Non-lawyer Practice*, 1 *J. Inst. Study Legal Ethics* 197 (1996)

³⁸ See Standing Comm. on Lawyers' Responsibility for Client Prot., ABA, 1994 Survey and Related Materials on the Unauthorized Practice of Law/Non-lawyer Practice, at xv-xx (1996)

³⁹ See Mary Helen McNeal, *Having One Oar or Being Without a Boat: Reflections on the Fordham Recommendations on Limited Legal Assistance*, 67 *FORDHAM L. REV.* 2617 (1999).

in determining whether law librarians should refer patrons to free online legal advice sites.

A) ONLINE LEGAL ADVICE OFTEN INVOLVES MULTI-JURISDICTIONAL PRACTICE, PRESENTING THE POSSIBILITY OF UNAUTHORIZED PRACTICE OF LAW FOR THE PARTICIPATING LAWYERS.

Lawyers are generally only authorized to practice law in the jurisdictions in which they are admitted to the bar. The state judiciary typically grants a license to practice only in the state where the judiciary's requirements have been met by the state bar examiner's requirements.⁴⁰ Thus some communications over the internet between a lawyer in one state and an individual in another state may give rise to liability for the unauthorized practice of law.⁴¹ Some states allow for exceptions to the limitation, such as appearing *pro hac vice*⁴² for a limited appearance in another state.⁴³ But such an exception typically requires permission in advance of the appearance, and is only intended for use in a particular legal situation.⁴⁴

Disciplinary action may be taken against a lawyer who violates rules pertaining to the unauthorized practice of law.⁴⁵ Rule 6 of the American Bar Association (ABA) Model Rules for Lawyer Disciplinary Enforcement states, "any lawyer not admitted in this state who practices law or renders or offers to render any legal services in this state is subject to the disciplinary jurisdiction of this court and the board."⁴⁶ Commentary to Rule 6 states that, "[a]dmission to practice triggers the jurisdiction of the disciplinary authority, regardless of the location of the lawyer, the place where the act occurred, or whether the lawyer is qualified to practice."⁴⁷ Generally, the states adopt the ethics rules disseminated by the ABA, however, most states modify these rules to fit the needs of their state.

⁴⁰ MODEL RULES OF PROF'L CONDUCT R. 5.5 (ABA Commission on Multijurisdictional Practice Report to the House of Delegates 2002).

⁴¹ Louise L. Hill, *Lawyer Communications on the Internet: Beginning the Millennium with Disparate Standards*, 75 Wash. L. Rev. 785, 851 (2000).

⁴² Latin for "this time only," the phrase refers to the application of an out-of-state lawyer to appear in court for a particular trial, even though he/she is not licensed to practice in the state where the trial is being held.

⁴³ *See Leis v. Flynt*, 439 U.S. 438, 442 (1979) ("With the permission of the court, lawyers are sometimes permitted to represent clients in jurisdictions where they are not admitted to practice.").

⁴⁴ *Id.*

⁴⁵ *See Lanctot*, supra Note 32, at 160.

⁴⁶ Model Rules for Lawyer Disciplinary Enforcement R. 6(A), at http://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_6.html (last accessed May 12, 2013).

⁴⁷ *Id.*

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In regard to the provisions on lawyer communications, only nine states' are identical to those in the ABA Model Rules.⁴⁸

Since the different states regulate the lawyers within their jurisdiction separately, problems of giving legal advice online across jurisdictional lines result.⁴⁹ Often lawyers are not licensed in a jurisdiction where the user with a legal question resides.⁵⁰ Some commentators have argued that because the problems that arise with lawyers giving advice using the Internet are unique, the response necessary to manage them should be unique, as well. "The a-jurisdictional uniqueness of the Internet calls into question whether traditional legal ethics rules should apply to the Internet. Assuming such rules are applicable, disparate standards implemented by the states make it difficult, if not impossible, for lawyers to comply with the rules of multiple jurisdictions."⁵¹

In 2002, The Model Rules were adapted to address some of these concerns, adding rules related to what entails practice outside of one's jurisdiction, how this practice should be regulated, or what would be the punishment of violating the rule.⁵² The addition of Model Rule 5.5 created a liberalized

⁴⁸ Louise L. Hill, *Lawyer Communications on the Internet: Beginning the Millennium with Disparate Standards*, 75 Wash. L. Rev. 785, 814 (2000)

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See Hill, *Supra* Note 47 at 802.

⁵² American Bar Association, Model Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law, at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_5_unauthorized_practice_of_law_multijurisdictional_practice_of_law.html, (last accessed May 12, 2013)

The Rule reads, in its entirety:

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

- (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.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
 - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
 - (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or

approach for multistate practice.⁵³ The new model rule authorizes a lawyer who is not admitted in the state, but is licensed elsewhere, to perform legal services so long as those services are “reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.”⁵⁴ The new rule is nonetheless limited. Subsection (d) of the Rule grants the ability to practice in another state if the legal service is for an employer, private or otherwise, because the employer-employee arrangement does not threaten state interests that arise from the unlicensed practice of law.⁵⁵ Yet there is no explicit mention of the lawyering via email and bulletin board that was well-underway by 2002 in the revised Model Rules. It is still up to the states to respond to the new model rule, and even 11 years later, the issue remains to be settled, although debate continues.⁵⁶

the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal or other law of this jurisdiction., ABA Model Rules Of Professional Conduct (2002).

⁵³ *Id.*

⁵⁴ *Id.*; See also, Robert M. Bastress & Joseph D. Harbaugh, *Taking the Lawyer's Craft into Virtual Space: Computer-Mediated Interviewing, Counseling, and Negotiating*, 10 *Clinical L. Rev.* 115, 149-50 (2003)

⁵⁵ ABA Model Rules Of Professional Conduct (2002), Rule 5.5(4)(d).

⁵⁶ See e.g., Michael W. Loudenslager, *E-Lawyering, the ABA's Current Choice of Ethics Law Rule & the Dormant Commerce Clause: Why the Dormant Commerce Clause Invalidates Model Rule 8.5(b)(2) When Applied to Attorney Internet Representations of Clients*, 15 *Wm. & Mary Bill Rts. J.* 587 (2006). (Arguing that the Dormant Commerce Clause obviates the need for ABA Model Rule 8.5(b), which regulated choice of ethics rules in multijurisdictional practice. The dormant commerce clause prohibits a state from regulating activity that does not occur or have a significant effect in its physical boundaries. Since it is not clear that the state in which the lawyer is located has a significant enough interest, under a dormant commerce clause analysis, to prohibit, or even regulate, this type of representation in most situations, it is argued that states should remove language from their ethics rules that results in the application of the ethics regime of the attorney's home jurisdiction. This would allow for the application of the ethics rules of the jurisdiction where the client is physically located when the most significant effect from the representation is felt in the client's home jurisdiction.)

B) ONLINE LEGAL ADVICE MAY GIVE RISE TO AN ATTORNEY-CLIENT RELATIONSHIP, CREATING ETHICAL DUTIES OF CONFIDENTIALITY AND CREATING LIABILITY FOR LEGAL MALPRACTICE.

Since online legal services websites often involve specific legal advice, it may create the existence of an attorney-client relationship, yet the sites examined above do not explicitly create an attorney-client contract. Courts generally hold that, in the absence of an explicit contract, an attorney-client relationship can be implied by the conduct of the parties.⁵⁷

An implied attorney-client relationship arises when a person “seeks and receives legal advice from an attorney in circumstances in which a reasonable person would rely on that advice.”⁵⁸ Several courts have held that an implied attorney-client relationship arises when a lawyer is aware of a person's reliance on him to provide legal services and fails to inform that person that he is not providing such services.⁵⁹ An attorney-client relationship may be established even if the lawyer is not paid or may fail to arise despite payment.⁶⁰

Over twenty years ago, a 1st Circuit court held that, “[t]o imply an attorney-client relationship ... the law requires more than an individual's subjective, unspoken belief that the person with whom he is dealing, who happens to be a lawyer, has become his lawyer.”⁶¹ This holding has largely defined the attorney-client relationship since. Thus, a casual conversation between two individuals, one who happens to be a lawyer, does not create an attorney-client relationship. A lawyer may, for example, answer “a casual, general question about the law, for instance in a purely social setting, without a client-lawyer relationship arising.”⁶² This holding represents one side of the boundary of the creation of a professional duty, but at what point does the duty arise?

Giving legal advice has been viewed as the foundation of the attorney-client relationship and regulators have viewed lawyers giving advice about specific legal issues, regardless of the medium in which these responses are given

⁵⁷ See e.g., *Randolph v. Resolution Trust Corp.*, 995 F.2d 611, 615 (5th Cir. 1993); *Sheinkopf v. Stone*, 927 F.2d 1259, 1264 (1st Cir. 1991); *Anoka*, 773 F. Supp. at 166 n. 11.

⁵⁸ *Anoka Orthopaedic Associates, P.A. v. Mutschler*, 773 F. Supp. 158, 166 (D. Minn. 1991)

⁵⁹ See e.g., *Randolph* 995 F.2d at 615; *Sheinkopf v. Stone*, 927 F.2d 1259, 1264 (1st Cir. 1991); *Anoka* 773 F. Supp. at 166 n. 11.

⁶⁰ *Id.*

⁶¹ *Sheinkopf v. Stone*, 927 F.2d 1259, 1265 (1st Cir. 1991).

⁶² *Id.*

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to constitute an attorney-client relationship.⁶³ For nearly a century, regulators of the standards of the legal profession have issued guidelines about the giving of specific legal advice in many contexts, such as call-in shows or advice columns in newspapers.⁶⁴ The distinguishing feature in these regulations has been between the issuance of general legal knowledge, which has been viewed as not giving rise to legal and professional duties, and the giving of specific legal advice pursuant to an individual's specific legal situation, which has been regarded as creating ethical obligations to the individual receiving the advice.⁶⁵

This distinction is important for understanding the current state of the views of the obligations of lawyers in the context of online advice. The *Restatement (Third) of the Law Governing Lawyers* outlines the circumstances in which a relationship between a lawyer and client can be formed.⁶⁶

A relationship of client and lawyer arises when:

(1) A person manifests to a lawyer the person's intent that the lawyer provides legal services for the person; and either
(a) the lawyer manifests to the person consent to do so; or
(b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services.⁶⁷

In an online context, the standard above would suggest an attorney-client relationship is formed when a legal question is asked and answered on a legal advice website. When a specific question is posted on one of these sites, the client is likely manifesting intent to have a lawyer provide him with legal advice.⁶⁸ The lawyer can then, if he chooses, manifest consent to provide such advice by either posting or sending a message to the client expressly stating consent to form an attorney-client relationship, or by initiating performance.⁶⁹ The implication for

⁶³ *Id.* at 199; see also *In re Blake*, 17 N.Y.S.2d 496 (Sup. Ct. 1939) (holding that radio show the "Good Will Court" which attempted to solve real life legal issues of listeners, was not ethically acceptable (even with a disclaimer against reliance)).

⁶⁴ See *Lanctot*, *supra* note 32, at 156.

⁶⁵ *Id.*

⁶⁶ Restatement (Third) of Law Governing Law. § 26 (2000)

⁶⁷ *Id.*

⁶⁸ See e.g., *Lanctot*, *Supra* Note 32, at 161; see also *Togstad v. Vessely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980) (holding that a request for legal advice about the merits of a particular claim may readily suffice to begin the process of forming an attorney-client relationship).

⁶⁹ See *Lanctot*, *Supra* Note 32, at 161; Case law further supports this interpretation. In *In re Johore*, a bankruptcy court held that a request for legal advice might be found even when the exchange between the lawyer and client was brief. *In re Johore Inv. Co. (U.S.A.), Inc.*, 49 B.R. 710, 714 (Bankr. D. Haw. 1985) rev'd, 157 B.R. 671 (D. Haw. 1985); Additionally, in *Green v. Montgomery County*, a request for legal advice was

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law librarianship is that if an attorney-client relationship exists when an attorney offers online legal advice, professional liability falls in the hands of the attorney offering advice via an online, website not on a reference librarian referring a patron to unbundled legal services online.⁷⁰

C) DESPITE THE ABOVE NOTED CONCERNS, THE WHOLESALEREJECTION OF NON-LAWYER PRACTICE IS UNFOUNDED.

Yet even in the case of a law librarian directly offering some form of unbundled legal services to a patron, the concern over liability is largely unfounded, and would be obviated by the loosening of bar associations' hold on limiting the practice of non-lawyers. As noted above, the ABA has made changes to the Model Rules to allow for some multijurisdictional practice. Yet it continues to oppose the expansion of non-lawyer practice generally.⁷¹ Some scholars have noted that the opposition is explained by the self-interest of the bar in restricting competition.⁷² As Professor Rhode points out in, *Professionalism in Perspective: Alternative Approaches to Non-lawyer Practice*,⁷³ “[n]o professional group, no matter how well-intentioned, can make disinterested assessments of the public welfare on an issue where its status and livelihood are so directly implicated.”⁷⁴

This concern over the status and livelihood of members of the bar has given rise to claims that allowing non-lawyer practice of law would be detrimental to the profession and possibly the public interest. As in the case of the self-interested bar's opposition, other claims that non-lawyer practice is

found regardless of the fact that the attorney and putative client never actually met in person. *Green v. Montgomery County, Ala.*, 784 F. Supp. 841, 844 (M.D. Ala. 1992). One court has gone so far as to determine that “whether one seeks *legal information or* legal advice from an attorney, the attorney is being consulted for his or her professional, legal expertise,” and a formal relationship therefore exists: *Foulke v. Knuck*, 784 P.2d 723, 726 (Ariz. Ct. App. 1989)

⁷⁰ Bruce Ching, *Attorney Referral, Negligence, and Vicarious Liability*, 33 S. Ill. U. L.J. 217, 233 (2009); see e.g., *Windsor Metal Fabrications, Ltd. v. Scott & Schechtman*, 286 A.D.2d 732, 730 N.Y.S.2d 341 (2d Dep't 2001) (was not a lawyer at the time of the alleged misconduct).

⁷¹ See Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to Non-lawyer Practice*, 22 N.Y.U. Rev. L. & Soc. Change 701 (1996)

⁷² *Id.*, at 202.

⁷³ *Id.*, at 211.

⁷⁴ *Id.*, at 203.

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detrimental to the public welfare are largely unfounded.⁷⁵ A few scholars have analyzed the putative harm caused by non-lawyers, and found that such harm to both the profession and the public is minimal.⁷⁶ For instance, one study conducted in five states over a period of sixty-one years determined that only eight percent of the prosecutions brought against those practicing law illegally alleged specific harm.⁷⁷ The prohibitions are likely unjustified in their current form. Although improper conduct of lay practitioners is a potential threat to the public⁷⁸, this threat is no greater than that posed by the conduct of the practicing bar.⁷⁹

The bar's unjustified opposition to non-lawyer practice has two main consequences. First, and most importantly, the opposition by the bar to non-lawyer practice results in an inexcusable increase in unmet legal needs.⁸⁰ Second, because the bar continues to oppose non-lawyer practice while remaining unable to meet existing legal needs, the bar's opposition to non-lawyer practice contributes to the public's negative perception of the legal profession.⁸¹ This negative perception of the legal profession is further exacerbated where non-

⁷⁵ Marcus J. Lock, *Increasing Access to Justice: Expanding the Role of Non-lawyers in the Delivery of Legal Services to Low-Income Coloradans*, 72 U. Colo. L. Rev. 459, 505 (2001)

⁷⁵ *Id.*, (relying on Standing Comm. on Lawyers' Responsibility for Client Prot., ABA, 1994 Survey and Related Materials on the Unauthorized Practice of Law/Non-lawyer Practice, at xv-xx (1996)).

⁷⁶ *Id.*

⁷⁷ *See Id.* (Other studies have produced similar results); *See also* Ralph C. Cavanagh & Deborah L. Rhode, Project, *The Unauthorized Practice of Law & Pro Se Divorce: An Empirical Analysis*, 86 Yale L.J. 104 (1976). The study determined that many clients were paying attorneys substantial sums to complete simple tasks which could readily be done by non-lawyers. *See id.*, at 137-53. Moreover, the error rate for form preparation between attorneys and non-attorneys was about the same. *See id.* In essence, the study concluded that unauthorized practice prohibitions were largely unjustified. *See id.*

⁷⁸ Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to Non-lawyer Practice*, 1 J. Inst. Study Legal Ethics 197 (1996)

⁷⁹ Marcus J. Lock, *Increasing Access to Justice: Expanding the Role of Non-lawyers in the Delivery of Legal Services to Low-Income Coloradans*, 72 U. Colo. L. Rev. 459, 505 (2001)

⁷⁹ *Id.*, (relying on Rhode, at 210 "The only comparative research to date on these practitioners, in contexts such as pro se divorce and agency proceedings, finds that non-lawyer specialists perform about as effectively as lawyers. Moreover, in the only reported survey on consumer satisfaction, lay practitioners rate higher than attorneys.")

⁸⁰ *See* Rhode, *supra* note 78, at 207.

⁸¹ Debra Baker, *Is This Woman a Threat to Lawyers?: A Resurgence in Unauthorized Practice Complaints is Raising Questions about Whether the Court of Public Opinion Will Judge Lawyers as Guardians of the Common Good or Protectors of Their Own Turf*, A.B.A. J., June 1999, at 54

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lawyer practice prohibitions are upheld in the face of consumer demand.⁸² Yet the main difference when lay practitioners provide basic legal services is that they are not subject to disciplinary codes. Thus, the appropriate solution to such a threat is not prohibition, but regulation.⁸³

The new Washington state Limited License Legal Technician (LLLT) program, which went into effect on Sept. 1 2012, is a good example of how regulation of non-lawyers can be used to meet society's unmet legal needs.⁸⁴ Under the program, technicians work independently and help clients with tasks including, for example, selecting and completing court forms and advising them regarding timelines. Yet a limited license legal technician cannot represent a client in court. Paula Littlewood, executive director of the Washington State Bar Association, cites consumer protection as one of the "highest ideals" of the LLLT program. She also cited figures indicating that 85 percent of indigent clients and families of moderate means are not being served.⁸⁵

III) THE PROFESSIONAL ETHICS AND VALUES OF THE LAW LIBRARIANSHIP PROFESSION CREATE CONFLICTING ETHICAL DUTIES TO PRO SE PATRONS.

The rise of legal information available on the internet generally requires a change in the way librarians think about reference services and how to meet their users' information needs.⁸⁶ Many library patrons, particularly those with pro se needs, turn to the internet to find the information they need, and law librarians are rightly directing them to websites that contain helpful information. With the addition of online legal advice websites, librarians should consider recommending patrons to their use.

⁸² *See Id.*

⁸³ Marcus J. Lock, *Increasing Access to Justice: Expanding the Role of Non-lawyers in the Delivery of Legal Services to Low-Income Coloradans*, 72 U. Colo. L. Rev. 459, 505 (2001)

⁸³ *Id.*, (relying on Rhode, *supra* note 78, "Professor Rhode argues that overly-broad unauthorized practice rules coupled with strong consumer demand for low cost legal services results in unregulated lay practice. *See id.* at 208. Thus, not only are abuses more frequent than in a regulated profession, but when such abuses occur, victims lack adequate redress."

⁸⁴ See Washington Limited Practice Rule for Licensed Legal Technicians, WA R ADMIS APR 28, available at

<http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>

⁸⁵ Amy Yarbrough, *Limited-practice license idea faces challenging path*, California Bar Journal (May 2013), last access May 25, 2013, available at

<http://www.calbarjournal.com/May2013/TopHeadlines/TH1.aspx>

⁸⁶ Linda C. Smith, Reference Services, *Encyclopedia of Library and Information Science* (3d ed. Taylor & Francis NY), at p. 4486, published on-line Dec. 2009 (relying on K.A. Cassell, Reference and Information Services in the 21st Century: An Introduction, 2d Ed.; Neal-Schuman Publishers: New York, 2009)

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With respect to offering legal help to pro se patrons, Law Librarians adhere to ethical guidelines set out by the American Association of Law Libraries which limit the scope of assistance. Some of the issues that arise involve the potential for the unauthorized practice of law and issues of liability in referring patrons to external legal sources. However, given the growing gap in affordable access to legal services, whether these concerns would actively prohibit a reference law librarian from referring a pro se user to an online legal advice site warrants careful examination. The core values of public law librarianship include access to legal information, as well as a duty to refrain from giving unauthorized legal advice.⁸⁷ That duty may constrain facilitation of access, but I would argue that public law librarians have an affirmative ethical duty to eliminate any unnecessary barriers to legal information wherever possible.

The current American Association of Law Libraries (AALL) Code of Ethics⁸⁸ was drafted by the AALL Ethics Committee in 1999.⁸⁹ The preamble of the Code states the underlying values of the profession:

When individuals have ready access to legal information, they can participate fully in the affairs of their government. By collecting, organizing, preserving, and retrieving legal information, the members of the American Association of Law Libraries enable people to make this ideal of democracy a reality. Legal information professionals have an obligation to satisfy the needs, to promote the interests and to respect the values of their clientele [. . .]

These underlying values are expressed in practical terms in the code's aspirational guidelines.⁹⁰ With respect to service to patrons, the code promotes three aspirations pertinent to the issue:

- 1. We promote open and effective access to legal and related information.*
- 2. We provide zealous service using the most appropriate resources and implementing programs consistent with our institution's mission and goals.*
- 3. We acknowledge the limits on service imposed by our institutions and by the duty to avoid the unauthorized practice of law.⁹¹*

⁸⁷ AALL Code of Ethics, available at http://www.aallnet.org/main-menu/Publications/spectrum/Archives/Vol-2/pub_sp9711/pub-sp9711-ethics.pdf

⁸⁸ *Id.*

⁸⁹ AALL Ethical Principles, at <http://www.aallnet.org/main-menu/Leadership Governance/policies/PublicPolicies/policy-ethics.html> (last accessed May 18, 2013).

⁹⁰ *Id.*

⁹¹ *Id.*

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Taken together, these aspirational statements would suggest an affirmative duty of a public law librarian to promote any access to the law that is not limited by the risk of unauthorized practice of law (or by the constraints of the goals and mission of the institution itself). Thus, if it is ethical to refer patrons to other sources of legal help, such as lawhelp.org, 211, legal aid society, etc., it should be similarly ethical to refer patrons to any other source of legal help so long as that source is itself ethically run. Whether a law librarian chooses to refer a patron to a source of unbundled online legal services is largely determined not by the concern about unauthorized practice of law, but rather on whether the referral is consistent with the mission and policies of the individual law library in question, and whether the librarian thinks the site is authoritative, useful, and not fraudulent.

Yet there is a potential conflict between the stated aspirations and principles of the law librarian profession and the practical interests of individual law librarians. There is an express value to facilitate wide access to legal information. The American Association of Law Libraries strives to facilitate the “open and effective access to legal and related information,”⁹² and maintains that “the availability of legal information to all people is a necessary requirement for a just and democratic society.”⁹³ Many law librarians, however, work for organizations that have conflicting interests with this principle. For example, a law firm that profits from existing restrictions on entry into the profession may benefit from the local bar association’s control over the legal marketplace. Similarly, law school libraries may have an interest in being protected from competition.⁹⁴ Many law librarians therefore have some stake in the current state of the legal marketplace.⁹⁵

IV) RECOMMENDATION:

Given the serious nature of unmet legal needs in the United States, and the sizable barriers to legal information for the public, changes in the views of non-lawyer practice, multijurisdictional practice, and reforms in legal education are needed to provide adequate legal assistance of low-income and middle-income

⁹² *Reforming the Legal Profession: Implications for Law Librarianship*, 94 Law Libr. J. 121, 131 (2002) (relying on Am. Ass'n of Law Libraries., *Ethical Principles* (1999), reprinted in AALL Directory & Handbook 2001-2002, at 412, 412 (41st ed. 2001), available at http://www.aallnet.org/about/policy_ethics.asp.)

⁹³ *Id.*, (relying on Am. Ass'n of Law Libraries, AALL 2000-2005 Strategic Plan: Leadership for the 21st Century: New Realities, Changing Roles (2000), reprinted in AALL Directory & Handbook 2001-2002, at 429, 429 (41st ed. 2001), available at http://www.aallnet.org/about/strategic_plan.asp#mission.)

⁹⁴ *Id.*, (relying on ABA Standards, *supra* note 15, at 59-63 (standards 601-606 cover library and information resources)).

⁹⁵ *Id.*, (relying on Bob Berring, *Thinkable Thoughts: Show Us the Money!*, Law Libr. New Millennium, Fall 2000, at 2-3.)

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individuals.⁹⁶ Although the legal profession has historically underutilized non-lawyers in making progress to meet the legal service needs of low-income and moderate income individuals, increases in litigation costs, and an inability for the bar to close the access to justice gap by making use of aspirational pro bono guidelines has forced the American Bar Association to reevaluate its staunch opposition to non-lawyer practice.⁹⁷

These factors indicate a continuing trend toward the inevitable expansion and acceptance of non-lawyer practice, which will ultimately have consequences and present opportunities for law librarianship.⁹⁸ The potential benefits of overhauling the rules around non-lawyer practice and expanding the role of non-lawyers in providing legal service include an increased number of professionals who can devote time and resources to satisfying the legal services needs of individuals, especially in cases that may fail to attract the attention of established attorneys and law firms.⁹⁹ Non-lawyer practice would consequently not only increase the availability of legal services to individuals who cannot afford it, but also make it easier to afford, since individuals could purchase a la carte unbundled legal services.¹⁰⁰ Lay practitioners, law librarians, and law students are primed to fill this currently vacant niche in the delivery of legal services; the first step

⁹⁶ Marcus J. Lock, *Increasing Access to Justice: Expanding the Role of Non-lawyers in the Delivery of Legal Services to Low-Income Coloradans*, 72 U. Colo. L. Rev. 459, 505 (2001)(citing *Hackin v. Arizona*, 389 U.S. 143 (1967) (Douglas, J., dissenting) (dissent discussing the role of non-lawyer practice of law and the access to justice gap); *See also*, Report of the Working Group on the Use of Non-lawyers, 67 Fordham L. Rev. 1813 (1999); Alex J. Hurder, *Non-lawyer Legal Assistance and Access to Justice*, 67 Fordham L. Rev. 2241 (1999); Derek A. Denckla, *Non-lawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 Fordham L. Rev. 2581 (1999); Deborah L. Rhode, *Meet Needs with Non-lawyers: It is Time to Accept Lay Practitioners--and Regulate Them*, A.B.A. J., Jan. 1996, at 104 ; Kathleen Eleanor Justice, *There Goes the Monopoly: The California Proposal to Allow Non-lawyers to Practice Law*, 44 Vand. L. Rev. 179 (1991)).

⁹⁷ *See* Standing Comm. on Lawyers' Responsibility for Client Prot., ABA, 1994 Survey and Related Materials on the Unauthorized Practice of Law/Non-lawyer Practice, at xv-xx (1996); *See* Knake, Renee Newman, *Democratizing Legal Education* (March 27, 2013). Connecticut Law Review, Vol. 45, No. 4, 2013, Forthcoming; MSU Legal Studies Research Paper No. 11-07. Available at SSRN: <http://ssrn.com/abstract=2240689>

⁹⁸ *See generally, Id.*

⁹⁹ *See* Marcus J. Lock, *Increasing Access to Justice: Expanding the Role of Non-lawyers in the Delivery of Legal Services to Low-Income Coloradans*, 72 U. Colo. L. Rev. 459, 505 (2001); *See* Knake, *Democratizing the Delivery of Legal Services*, *supra* note 1, at 32–33 (“It is simply not economically feasible for a traditional law firm to market and deliver en masse representation to the general public for routine wills, child custody, divorce, mortgage foreclosure, standard contracts, small business needs, immigration, bankruptcy, housing disputes, and other basic matters.”).

¹⁰⁰ *See* Rhode, *Professionalism in Perspective*, *supra* note 85 at 210.

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involves making use of online unbundled legal services.¹⁰¹ Since one of the current problems with non-lawyers practice of law stems from the lack of regulation and the inability for members of the public who are harmed by improper behavior of non-lawyers practice to have redress, a regulatory mechanism for non-lawyers practice should be implemented. A regulatory framework to govern non-lawyer practice in a state should be developed within the rules, regulations, and common law of each state.¹⁰²

Several changes in the way legal information is regulated could result in positive outcomes for law librarians' efforts to assist with the problem in access to justice. First, a loosening of the regulations by state bar associations in regulating the dissemination of legal information would free law librarians from concerns over either directly violating the requirements of the state bar, or indirectly contributing to an unethical or harmful situation for the patron in making a referral to an online legal advice website. If state bar associations loosened their grip on restraints of multijurisdictional practice and the unauthorized practice of law, for example, concerns over potential liability in both respects would be lessened. It would also allow for the unbundling of legal services, allowing law librarians to offer discrete and minimal legal services in their capacity as reference librarians. Second, a concomitant shift in legal education would place a greater emphasis on practical skills and would allow law school libraries to play a greater role in legal education and allow students to gain valuable experience offering unbundled legal services to patrons. Perhaps most importantly, the shift in legal information regulation described above would facilitate the stated ideals of the law librarianship profession to promote access to legal information.

Another important change in the regulation of legal information that would ultimately facilitate access to legal information is the unbundling of legal services. "Unbundled" legal services, as discussed in the previous sections, allow discrete tasks short of complete legal representation to be provided legal consumers at lower cost.¹⁰³ One form of such unbundling could come directly from the reference desk, whereby reference librarians could offer limited discrete tasks to the public with practical limitations only being imposed by the available human resources of the particular library. Similarly, the changes in the delivery of legal

¹⁰¹ See generally, Deborah L. Rhode, *Meet Needs with Non-lawyers: It is Time to Accept Lay Practitioners--and Regulate Them*, A.B.A. J., Jan. 1996, at 104 [hereinafter Rhode, *Meet Needs with Non-lawyers*]; Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to Non-lawyer Practice*, 1 J. Inst. Study Legal Ethics 197 (1996).

¹⁰² See, Marcus J. Lock, *Increasing Access to Justice: Expanding the Role of Non-lawyers in the Delivery of Legal Services to Low-Income Coloradans*, 72 U. Colo. L. Rev. 459, 507 (2001)

¹⁰³ Mary Helen McNeal, *Having One Oar or Being Without a Boat: Reflections on the Fordham Recommendations on Limited Legal Assistance*, 67 Fordham L. Rev. 2617 (1999).

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information that have been proposed to loosen the grip of the state bar's monopoly on the communication of legal information would free librarians from the concern of liability for referring patrons to sites that offer legal advice.¹⁰⁴

Another possible innovation of allowing non-lawyer practice and promoting unbundling of legal services stems takes place in the law firm law library. Unbundled legal services could take place in a legal research business separate from law firms, either operating within the law firm's larger business or as an altogether separate entity. Law librarians could also serve a heightened role in firms in this capacity, or could own such a business on their own.¹⁰⁵

Finally, changes in the structure of legal education would also be affected by the loosened restrictions on the bar's regulation of legal information. In *Reforming the Legal Profession: Implications for Law Librarianship*, Deborah Rhode advocates for changes in the educational methods and priorities in law schools, such as shifting the emphasis from doctrinal analysis to practical and interdisciplinary lawyering skills.¹⁰⁶ While the American Bar Association has been addressing the issue of how to incorporate practical skills into legal education,¹⁰⁷ many schools are still struggling to work out how to include practical skills in the curriculum.¹⁰⁸ Rhode sees law librarians playing an increased role in this process if reforms regarding the bar's control over legal information were implemented. Legal research skills are among the types of

¹⁰⁴ See Paul D. Healey, *In Search of the Delicate Balance: Legal and Ethical Questions in Assisting the Pro Se Patron*, 90 *Law Libr. J.* 129, 138-42 (1998) (arguing that engaging in unauthorized practice of law during a reference interaction may be a technical possibility but not a practical one. Healey believes that "no librarian will ever be prosecuted for unauthorized practice of law while engaging in normal reference activities."); See also Bruce Ching, *Attorney Referral, Negligence, and Vicarious Liability*, 33 *S. Ill. U. L.J.* 217, 223 (2009)

("Only a few jurisdictions have considered whether an attorney who refers a case can be liable for the client's loss when the attorney who receives the referral commits malpractice based either on a theory of negligence in giving the referral, or on a theory of vicarious liability.")

¹⁰⁵ See Rhode, *Professionalism in Perspective*, supra note 85 at 210.

¹⁰⁶ Deborah Rhode, *Reforming the Legal Profession: Implications for Law Librarianship*, 94 *Law Libr. J.* 121, 131 (2002); See also, Peter C. Schanck, *Mandatory Advanced Legal Research: A Viable Program for Law Schools?*, 92 *Law Libr. J.* 295, 2000 *Law Libr. J.* 26 (describing adoption of a mandatory advanced legal research requirement for law students at Marquette University).

¹⁰⁷ Yasmin Sokkar Harker, "Information Is Cheap, but Meaning Is Expensive": Building Analytical Skill into Legal Research Instruction, 105 *Law Libr. J.* 79, 98 (2013) (relying on Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, *Legal Education and Professional Development--An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 135 (1992)).

¹⁰⁸ *Id.*, (relying on William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 14 (2007)).

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practical skills that could receive heightened attention were law school curriculum reform to be seriously pursued.¹⁰⁹ Rhode also proposes a liberalization of the law school accreditation process to allow law schools to develop alternative programs in which law schools could, among other things, increase their participation in training non-lawyer professionals about the law.¹¹⁰

While these proposed changes may effect opportunities to close the justice gap and increase the role of previously under-utilized legal resources, the practice of using non-lawyers to disseminate legal information includes several risks to the public that need to be kept in mind. The dissemination of legal information by way of regulated non-lawyer practice is not merely a low-cost *surrogate* for the representation of a lawyer. Non-lawyers may offer excellent, professional unbundled legal services, but they cannot represent an individual in court, directly assist an individual with procuring a court order, or effectively develop legal strategy on behalf of an individual. Failing to be mindful of these limitations may provoke the view that the justice gap is closing more than it actually is. Additionally, while law librarians may be primed to offer effective unbundled legal assistance to library patrons, the limitations currently restraining them from offering legal assistance to patrons would not be *eliminated* but rather loosened. The limitations of non-lawyer practice on closing the justice gap should be recognized and acknowledged as changes are implemented to avoid these risks.

V) CONCLUSION

The gap in access to legal information for low and moderate income individuals continues to warrant addressing. While there may be many potential solutions to help close this gap, the unbundling of legal services in the form of online legal advice and legal services websites may prove to be useful tools in helping people fulfill their legal needs. By making changes in the regulation of legal information generally, including regulating the practice of non-lawyers, law librarians can facilitate access to legal information. If embraced, these changes would also allow law librarians to provide innovative services similar to LegalZoom or Avvo within the confines of the law library. The changes would also provide a context and means for law students, with the guidance of law librarians, to assist in closing the access to justice gap.

¹⁰⁹ Deborah Rhode, *Reforming the Legal Profession: Implications for Law Librarianship*, 94 Law Libr. J. 121, 131 (2002);

¹¹⁰ *Id.* (relying on George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 Cardozo L. Rev. 2091, 2182-84 (1998) (setting forth additional discussion of the impact of the ABA accreditation process on innovation in law school curricula.)