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# Written Reference Services Policies for Public Patrons in Public Law School Libraries

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*Public law school libraries are often the only or one of the few sources of legal information that the general public can access for free or low-cost. One of the main methods for a member of the general public to obtain the information is by using the help of reference or research services at the public law school law library. However, given the use of the library by the public law school community, a member of the general public is often guided to a written reference services policy. This paper explores what is contained in those reference services policies and suggests recommendations for future studies and methods to improve them for the general public.*

## Introduction

One of the perennial problems in the realm of law librarianship is helping the public find legal information. Particularly for people who can only make it to a public law school library, because in certain locations, it is the only nearby source of legal information. With the current trend in budgets and increasing costs in legal materials, the problem is becoming amplified because the focus for many public law schools is on their own community over the rest of the public patrons. The public law school law library's focus on the public law school community is not a completely negative one. All law school libraries, public or private, depend on the law school's existence to serve it. In addition, most public law school libraries often struggle between being open to the public and being an academic law library, which can cause problems.<sup>1</sup> The most

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<sup>1</sup> See, for example, LAURIE SELWYN & VIRGINIA ELDRIDGE, *PUBLIC LAW LIBRARIANSHIP: OBJECTIVES, CHALLENGES, AND SOLUTIONS* 58 (2013). ("Because the academic library's primary mission is to support the academic curriculum and the library's staff is so attuned to the needs and demands of their primary clientele, the scholar, these two configurations (The model of law library under the American Association of Law Schools and yet still has public access and support), make it easy for the general public to be overlooked or . . . under-served.").

common approach is to ignore this fact and treat the public law school libraries like the rest of the academic law libraries.

The general purpose for all academic law libraries is to support a “law school’s teaching, scholarship, research, and service programs.”<sup>2</sup> Private law schools and their libraries have an easier time with this purpose because its administration can decide if the general public can use their law library. The majority of public law school libraries, however, must juggle this purpose and help the public patrons as much as they can.

While many discussions are on how to improve access to justice for the public in these current times, the focus of this paper is to take a few steps back and examine the public law school written policies about reference services. The reference policies are or should extend from the public law school’s mission.<sup>3</sup> In addition, these reference policies also reflect the library’s management style towards the public patron in terms of service and tone. In the larger scheme of the public law school library domain, the reference services policy is connected to the access policy and the mission statement for the public law library because without public access or a declared mission to serve the public, there would not be much need for a public reference services policy. Finally, reference services policies reflect the tension between the practice of helping the public patrons and the theory behind helping them.

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<sup>2</sup> ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017-2018* 41 (2017).

<sup>3</sup> See, for example, CAROLYN M. MULAC, *FUNDAMENTALS OF REFERENCE* 96 (2012). (“They [reference policies] are not so much rulebooks, however, as they are outlines of services and their parameters (i.e., what services will be provided, who will provide them, to whom will they be provided.”).

Examining the reference services policies from the public law school library is important because it gives a baseline to how these institutions are currently handling the relationship between the public law school library and the external community along with achieving parts of its mission statement. In addition, this examination is to see if these policies still work in the current climate of digital information and increase in litigious activity. In addition, many places are placing graduate students at the reference desk.<sup>4</sup> Thus examining these policies will also help the newer workers because a written reference services policy can give a standard to both the worker and the patron<sup>5</sup>. Also, a reference librarian in a public law school library can have conflicting guidelines when assisting a patron due to the professional demands of knowing how to find legal information, but not stepping too far into giving legal advice.<sup>6</sup>

For this paper, the first step is the examination of these written policies, the second step is the common thread that these policies share, and the third step is suggesting future research studies and recommendations to possibly improve these policies.

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<sup>4</sup> *Library Staff Assistance*, UNIV. OF ILL. COLL. OF LAW LIBRARY, <https://law.illinois.edu/academics/library/library-staff-assistance/> (last visited July 24, 2018). (“Reference services are provided by reference librarians and library graduate assistants.”).

<sup>5</sup> Mulac, *supra* note 3, at 90. (“A reference policy is a systematic way to describe services offered and a reminder of the philosophy and goals that inform and support them.”).

<sup>6</sup> See Paul Jerome McLaughlin, *Wanting to Do More but Bound to Do Less: A Law Librarian’s Dilemma*, 56 REFERENCE LIBRARIAN at 119 (2015). (“When asked by members of the public to assist them in finding legal information, law librarians find themselves in an uncomfortable position, given their status as both librarians and legal professionals.”).

The general reference services policy that most of the public law schools share contain the following pattern: (1) a mission statement about the service that a public law school library will provide, (2) an explanation of what a reference law librarian in the public law library may or may not do to help the public patron, (3) an explanation of the difference between legal research and legal information, and (4) a following-up about requesting general help services. Some of the differences lie in what communication methods that the public patron decides to use when he or she contacting the public law school library.

In addition, the reference services policy on the public end may not contain many other details that are on the larger, internal document. One version is the public version that many of the public law school libraries display on their websites that could come from a larger document and the second version is the larger, internal document that can also include other pieces such as the reference collection, a mission statement, etc. Sometimes, the second version is not available or perhaps it may not exist in certain cases.<sup>7</sup>

Most of the public law schools allow physical visiting and some even encourage it. For other forms of reference services, however, variation exists among the public law school libraries. Some allow public patrons to contact reference services by e-mail, while others restrict electronic communication. This paper examines each of these policies to find what common threads relate to reference services and the restrictions. Depending

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<sup>7</sup> I think a future study on this issue has merit, but this statement is from my general examination of what I could find on this topic and various conversations over time.

on the public law school library, some of them had their reference policies in direct places on their public websites, but others had their “complete” policy in different places on the website. In addition, most of the public law schools have their electronic communication policy on a separate site from their general reference policies.

### **Terminology.**

- Public Law School

While particular public schools have moved to a public/private or “quasi-privatizing” model<sup>8</sup>, the establishment of the public law school came about as public schools added law schools or law departments in the nineteenth century.<sup>9</sup> Currently, the American Bar Association (ABA) under its Section of Legal Education and Admissions to the Bar list eighty-five approved and provisionally approved public law schools. The rest of the ABA approved law schools are considered private schools, which usually means that they did not receive state funding at the time of being established.

- General Public

The general public, for this paper, are those who are generally do not fall under the category of being connected to a law school either as a student or faculty, or

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<sup>8</sup> Dennis Bender, *The Changing Paradigm in Public Legal Education*, 8 LOY. J. PUB. INT. L. 1, 4 (2006). (University of Michigan and University of Virginia have a quasi-privatization system of funding); Scott Hamilton Dewey, *Growing Pains: The History of the UCLA Law Library, 1949-2000*, 108 Law Libr. J. 217, 236 (2016).

<sup>9</sup> Connie Lenz, *The Public Mission of the Public Law School Library*, 105 LAW LIB. J. 31, 37 (2013). (History of development regarding the public law school).

alumnus/ae or as member of a bar.<sup>10</sup> For the purposes of this paper, I am not considering prisoners as a member of the general public.

- Reference

For this paper, the general definition for reference will be from the Reference and User Services Association (RUSA), a division of the American Library Association (ALA), which contains two parts. The first part is a “reference transaction,” which is “[an] information consultation[...] in which library staff recommend, interpret, evaluate, and/or use information resources to help others to meet particular information needs.”<sup>11</sup> However, this definition does not include teaching classes or other assistance regarding “locations, schedules, equipment, supplies or policy statements.”<sup>12</sup> The second part is “reference work”, which “includes reference transactions and other activities that include the creation, management, and assessment of information or research resources, tools, and services.”<sup>13</sup>

- Virtual Reference

For this paper, the general definition for virtual reference is from RUSA. The definition for virtual reference is “reference service initiated electronically for which patrons employ technology to communicate with public services staff without being

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<sup>10</sup> See Cameron Allen, *Whom We Shall Serve: Secondary Patrons of the University Law School Library*, 66 LAW. LIBR. J. 160, 168-171 (1973) for a list of general public members including high school students and undergraduates.

<sup>11</sup> Reference & User Servs. Ass’n, *Definitions of Reference*, AM. LIBR. ASS’N, <http://www.ala.org/rusa/guidelines/definitionsreference>, (last visited July 24, 2018). [hereinafter Reference & User Servs. Ass’n, Reference].

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

physically present.”<sup>14</sup> The forms of communication include “chat, videoconferencing, Voice-over-IP, co-browsing, e-mail, instant messaging, and text [SMS].”<sup>15</sup> Co-browsing is short for collaborative browsing, which is the use of software for synchronous navigation of a particular website and Voice-over-IP is the general term for using voice over an ip data network along with web conferencing, which is odd given that RUSA covers videoconferencing and a regular voice call over a land line would not be considered virtual reference.

- Unauthorized Practice of Law

The issue of “Unauthorized Practice of Law” (UPL) is a common one in the role of reference and virtual reference services in public law libraries. The majority of reference service policies often refer to this issue as a limit to reference services. For this paper, UPL, in the most general sense, is “the practice of law by a person, typically a nonlawyer, who has not been licensed or admitted to practice law in a given jurisdiction.”<sup>16</sup> Some common factors for UPL within the reference librarian context include giving legal advice over legal information and providing instructions on how to fill out forms.

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<sup>14</sup> Reference & User Servs. Ass’n, *Guidelines for Implementing and Maintaining Virtual Reference Services*, Am. Libr. Ass’n, (June 13, 2017), [http://www.ala.org/rusa/sites/ala.org.rusa/files/content/resources/guidelines/GuidelinesVirtualReference\\_2017.pdf](http://www.ala.org/rusa/sites/ala.org.rusa/files/content/resources/guidelines/GuidelinesVirtualReference_2017.pdf) [hereinafter Reference & User Servs. Ass’n, Guidelines].

<sup>15</sup> *Id.*

<sup>16</sup> Unauthorized Practice of Law, BLACK’S LAW DICTIONARY (10th ed., 2014).

The problem with the general definition for UPL is that each state often has different professional rulings for what practicing law means.<sup>17</sup> Many articles and books have been written about this topic, which is often a reoccurring problem.<sup>18</sup> Within a written reference services policy for both reference and virtual reference policies, UPL is what could be defined as an “externally imposed policy.” An externally imposed policy is an external policy that effects the public law school law library, but stems from outside of it and places an obligation onto it.<sup>19</sup>

- Legal Research

The broadest definition of legal research is “the finding and assembling of authorities that bear on a question of law.”<sup>20</sup> One of the main issues here is that the “bearing on a question of law” is where interpretation and legal advice can come into play. Once again, the problem for many public patrons and reference librarians is the line where assisting in the patron’s legal research becomes performing the actual act of legal research. Certain libraries have developed methods to help determine the difference between assisting in legal research and actually performing it for the person. One of the most common errors is switching from giving a book

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<sup>17</sup> See Am. Bar Ass’n Standing Comm. on Client Prot., *2015 Survey of Unlicensed Practice of Law Committees in the United States*, AM. BAR ASS’N, (Sept. 2015), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2015\\_upl\\_report\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2015_upl_report_final.authcheckdam.pdf).

<sup>18</sup> Some of the earliest newsletter articles about unauthorized practice of law date from the 1920s. See, for example, *Activities of State Bar Associations*, 8 ABA J., Feb. 1922 at 122.

<sup>19</sup> ROBERT D. STUEART & JOHN TAYLOR EASTLICK, *LIBRARY MANAGEMENT* 40 (1977).

<sup>20</sup> Legal Research, *BLACK’S LAW DICTIONARY* (10th ed., 2014).

about the subject matter that contains general information and samples that do not apply to any particular situation to telling a patron that he or she needs to use a particular form. Sometimes this happens indirectly when trying to provide ideal reference service to the patron.

- Policy

For the purposes of this paper, a general definition of a policy is a statement (verbal, written, implied, etc.) that helps direct the staff's decisions and how to handle the work processes to reach those decisions.<sup>21</sup> Examples of policies include the access policy, which controls who can and cannot come into a library as a whole.<sup>22</sup>

### **Methodology/Literature Review**

Several steps were required for this literature review. First, an overview of the literature regarding the role of reference policies in academic libraries and any particular mention for public law school libraries had to be done. The next step was surveying documents mentioning governmental law libraries because these types of law libraries are also involved with serving public patrons. The third and final step was examining the different reference services policies from the public law schools in both physical and virtual reference service. One classic term for reference services policies within both law librarianship and librarianship as a whole that kept reoccurring was

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<sup>21</sup> G. EDWARD EVANS & CAMILA A. ALIRE, *MANAGEMENT BASICS FOR INFORMATION PROFESSIONALS* 97 (3rd ed. 2013); STUEART & EASTLICK, *supra*, note 19, at 38.

<sup>22</sup> EVANS & ALIRE, *supra* note 21, at 97.

the phrase “information service policies.”<sup>23</sup> However, some articles about reference librarians in academic law libraries and their interactions with secondary patrons i.e. public patrons also contained notes about written policy. Outside of the law librarianship sector, there has been a collection of articles regarding written reference policies in the academic library and then moving forward into the law library.

*The Relationship Between the Academic Reference Librarian and the Public Patron*

One of the earliest articles about reference services to secondary patrons is entitled *The Duty of the Librarian of a University Law Library towards the Library's Patrons* by A.H.R. Fraser in 1911.<sup>24</sup> Fraser's attitude towards the general public in the university law library is that “[t]he librarian must always remember that his library enjoys many benefits from the public” and should “. . . direct them to the . . . books where their queries may be answered . . .”<sup>25</sup> Another article entitled *Whom We Shall Serve: Secondary Patrons of the University Law School Library* by Cameron Allen from 1973 continues the discussion regarding the role of public patrons in the public law school.<sup>26</sup> In this article, Allen examines the role of the secondary patron outside of the law school community through a general survey. While he does not necessary state to exclude anyone from the

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<sup>23</sup> See, for example, RASD Mgmt. of Reference Servs. Comm, *Information Services Policy Manual: An Outline*, 34 RQ 165 (1994).

<sup>24</sup> A.H.R. Fraser, *The Duty of the Librarian of a University Law Library towards the Library's Patrons*, 4 LAW LIBR. J. 5 (1911).

<sup>25</sup> *Id.* at 6.

<sup>26</sup> Allen, *supra* note 10, at 160.

law library, his main focus is that the primary audience of the law school such as faculty and students comes first and then the general public.<sup>27</sup>

#### The Examinations of Written Reference Services Policies in Law Libraries

Although the discussion regarding written reference policies were going around in academic law libraries during the 1970s<sup>28</sup>, in 1990, the American Association of Law Libraries (AALL) Legal Information Services to the Public Special Interest Section drafted a model policy for public law libraries and what they called “legal information service policy” which is equivalent to a written reference services policy.<sup>29</sup> One of the model policy statements that still has relevance today is the following: “The library is contractually precluded from furnishing access to most computerized legal research information sources free of charge to an individual not directly associated with the institution.”<sup>30</sup>

In 1996, the AALL State, Court and County Law Libraries Special Interest Section created standards that stated that each county law library to have a written reference policy so that “the information and assistance provided to their users is appropriate to the situation.”<sup>31</sup> Otherwise, the model policy is a barebone version that other libraries

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<sup>27</sup> *Id.* at 167.

<sup>28</sup> See, for example, Mary Jo Lynch, *Toward a Definition of Service: Academic Library Reference Policy Statements*, 11 RQ 222 (1972).

<sup>29</sup> Kathy Garner, *Lawyer-Librarians in Public Law Schools: The Ethical Conundrums of Pro Bono Activities*, 84 LAW LIBR. J. 31, 63-64 app. (1992). (Quoting *Model Policies on Legal Information Service*, LISP NEWSL., Mar. 1990, at 6).

<sup>30</sup> *Id.* at 64.

<sup>31</sup> *County Law Library Standards*, 88 LAW LIB. J. 637, 641 (1996).

have followed over time.<sup>32</sup> Outside of the law library field, guidebooks and articles regarding reference service policies have been written, but mostly focus on model policies rather than reasons behind those policies.

As for virtual reference services policies, an earlier survey was done in 2001 by Scott Childs entitled *Survey on Electronic Reference*. In this survey, Childs found that the amount of e-mail and other virtual reference was performed more by county, state, and court law libraries than academic libraries and that few written policies regarding this media were around at this time.<sup>33</sup> In addition, Childs includes an e-mail reference account policy from Louisiana State which demonstrates some of the restrictions that are common place today such as “[i]t is important NOT to become too engaged in responding to e-mail reference questions for inquiries that are not from our primary patrons (law faculty, students, and staff) or that are beyond our resources (which may include staff time)”.<sup>34</sup> In 2007, Courtney Selby, in the article entitled “The Evolution of the Reference Interview” stated that “[i]t is clear that academic, public, and firm law libraries are using virtual reference services, but the provision of those services seems to be isolated.<sup>35</sup> In addition, Selby states that other libraries were using RUSA’s guidelines called *Guidelines for Implementing and Maintaining Virtual Reference Services*, which were

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<sup>32</sup> One issue is that what could be called a reference policy is actually a notice that is posted in person and on the website. The point is that a written notice cannot be part of the written reference services policy, but that the notice should not be the only thing that is presented to the public patrons.

<sup>33</sup>SCOTT CHILDS, *SURVEY ON ELECTRONIC REFERENCE* 7 (2001).

<sup>34</sup> *Id.* at 54.

<sup>35</sup>Courtney Selby, *The Evolution of the Reference Interview*, 26 *LEGAL REFERENCE SERVICES Q.* 35, 44 (2007).

adapted in 2004, for their virtual reference services policy.<sup>36</sup> The issue with virtual reference policies is that many public law schools limit this service to their respective law school community.

Also in 2007, Luis Acosta and Anna Cherry, in their article entitled “Reference Services in Courts and Governmental Settings,” examined the role of the virtual services expanding in the governmental law libraries.<sup>37</sup> Although, they do not address virtual references policies directly, they indirectly bring up a point for virtual reference policies. The point that they bring up is that “patrons sometimes fail to appreciate . . . that copyright law and database licensing contracts may legally constrain librarians from downloading or scanning some materials for electronic delivery to patrons.”<sup>38</sup>

### **The Reference Policy: An Overview**

A written reference services policy often contains the following five features: (1) A statement of purpose; (2) The structure of the reference department; (3) What services are offered from the reference desk and the purpose of offering these particular services; (4) The evaluation of the reference personnel; and (5) the reference collection policy.<sup>39</sup> For the focus of this paper, however, the important piece to examine are how the public law school librarians are offering their services to the public patron.

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<sup>36</sup> *Id.* at 43. However, the RUSA updated the *Guidelines for Implementing and Maintaining Virtual References Services* in 2017. See [Reference & User Servs. Ass’n, Guidelines](#), *supra* note 14.

<sup>37</sup> Luis Acosta & Anna Cherry, *Reference Services in Courts and Governmental Settings*, 26 LEGAL REFERENCES SERVICES Q. 113 (2007).

<sup>38</sup> *Id.* at 123.

<sup>39</sup> MULAC, *supra* note 3, at 91-94. (Quoting *Information Services Policy Manual: An Outline*, *supra* note 20).

One issue is that not all the public law schools make this information publicly available through their websites or if it is available, then it is in different locations on the webpage. One other issue is that when the focus on reference is on the students and faculty of the public law school, then the public could be left out of the picture<sup>40</sup>. This choice makes sense because sometimes the cost of materials for students and faculty will take precedence over the cost of materials for the public patrons, particularly in the cost of maintaining particular print collections.<sup>41</sup>

The services that the public law school law library often provides includes the in-person reference help, non-physical help (telephone, e-mail, chat, etc.), and sometimes document delivery.<sup>42</sup> Not all these services are constant among the public law schools, but even one school that does not allow physical access to its materials still provides the

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<sup>40</sup> See *Ask a Question*, UNIV. OF MO. SCH. OF LAW LIBRARY, <https://law.missouri.edu/library/about/question.php> (last visited July 24, 2018). (“**Librarians cannot give legal advice nor quote from legal materials. We will not engage in lengthy research but are happy to assist you with the materials and/or contacts that will be most helpful in doing your own research**”). And also *Law Library Use Policies*, UNIV. OF MO. SCH. OF LAW LIBRARY, <https://law.missouri.edu/library/about/policies.html> (last visited July 24, 2018). (“The Law Library's primary mission is to support the teaching and research activities of the MU School of Law. The collection is also available to the University community, attorneys, and other persons who have a need for legal materials. Due to limited seating, non-law students may not use the Law Library except when doing legal research.”).

<sup>41</sup> Even though legal publishers often have agreements with law libraries in what are called “LMAs” (Library Maintenance Agreements) in which they agree not to cancel a particular collection over a period of years in exchange for a reduced rate of price increase in that timeframe, the general cost for a particular print source such as the American Law Reports can go for tens of thousands of dollars.

<sup>42</sup> See *Reference Services - University of South Dakota Attorney, Alumni, and Public Services User Guide*, UNIV. OF S.D. SCH. OF LAW LIBRARY (May 23, 2018, 3:16 PM), <http://libguides.law.usd.edu/c.php?g=744235&p=5329101>.

document delivery service to the public.<sup>43</sup> Another aspect that many public law school law libraries are including in the written reference services policies are examples of what the reference staff can and cannot do. Some examples of what can be done include strategies for legal research and how to use the libraries' systems<sup>44</sup> and examples of what cannot be done include giving legal advice, recommending particular attorneys, and filling out forms.<sup>45</sup>

Another aspect is also the links to many websites that either provide self-help to a public patron or research guides that the individual library institution has put together for helping the patrons.<sup>46</sup> These research guides and website recommendations often contain general disclaimers that they are for legal information only.<sup>47</sup>

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<sup>43</sup> See *Information for Visitors – Services – Request*, UCLA SCH. OF LAW LIBRARY, <https://law.ucla.edu/library/information-for-visitors/services/request/> (last visited July 24, 2018). (“The Law Library offers document delivery services for a fee to the general public. Visit the [UCLAW Express](#) web page or call (310) 825-9317 for more information on fees and registration. The UCLA Library system also offers a [document delivery service for non-UCLA users](#).”).

<sup>44</sup> See *Access, Services, and Use of the Law Library for the General Public*, UH SCH. OF LAW LIBRARY, <https://library.law.hawaii.edu/public-patron-services/#access> (last visited July 24, 2018).

<sup>45</sup> See *Public Services*, RUTGERS SCH. OF LAW LIBRARY, <http://library.law.rutgers.edu/public-services#public> (last visited July 24, 2018). (“Reference librarians cannot provide patrons with legal advice, help patrons make decisions regarding legal rights and liabilities, assist patrons with preparing legal papers, or perform in-depth research for patrons. Reference librarians cannot interpret statutes, cases, or other legal materials for patrons.”).

<sup>46</sup> See Susana Camargo-Pohl, *Legal Forms*, RUTGERS SCH. OF LAW LIBRARY (Feb. 21, 2018, 12:18 PM), <http://libguides.law.rutgers.edu/c.php?g=812625>.

<sup>47</sup> See *Law Library Web Disclaimer - Akron Law Library Guides*, UNIV. OF AKRON SCH. OF LAW LIBRARY, <http://law.uakron.libguides.com/?b=g&d=a> (last visited July 24, 2018). (“All information provided on The University of Akron School of Law Library (“School of Law Library”) web site and attached pages is intended for general public and educational use only and should not be regarded or taken as legal advice that would be

## The Extremes

If all the public law school libraries were placed together on a continuum from the least amount of reference services that they provide to the public patron to the highest amount of reference services that they could provide to the public patron, then these two sets of public law school libraries would be the extremes. On the one hand, one set of public law school libraries restricts public access to the public law school library's physical collection excluding the U.S. Federal Depository Library materials, if they are a member of the program. On the other hand, another set of public law school libraries extend their reference services as much as realistically possible to the public because they are created from a partnership between a government law library, such as a state or county law library, and a public law school library.

The idea of a public law school library that does not allow the general public to use the law collection or is actually a hybrid of a government law library and a public law school library is something that comes as a surprise to some people and not as a surprise to other people. But these types of public law libraries often sneak below the radar. The reason that these public law school libraries are considered rare is that many sources assume that public law school libraries allow the public access to their resources

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provided by an attorney to his or her client. Certain links on this site lead to servers maintained by individuals or organizations over whom the School of Law Library has no control. Those links, when provided, are available to help users identify and locate other Internet resources that may be of interest. The School of Law Library makes no representations or warranties regarding the accuracy or any other aspect of the information located on such servers.").

as public institutions<sup>48</sup> or that academic law libraries are separate from governmental law libraries.

*Public Law School Libraries Without Public Access to Law Collection*

Contrary to popular thought, even though the majority of public law school law libraries allow the general public to visit their physical space to use their law collection, a few schools do not allow the general public access to the physical space for their law collection. Six of these public law schools are University of California, Hastings College of Law (UC Hastings)<sup>49</sup>, University of California, Los Angeles, School of Law (UCLA School of Law)<sup>50</sup>, University of California, Irvine School of Law (UCI School of Law)<sup>51</sup>,

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<sup>48</sup> See, for example, ANTHONY AYCOCK, *THE ACCIDENTAL LAW LIBRARIAN* 12 (2013). (“Any library attached to a state-funded law school must be open to the public . . .”).

<sup>49</sup> *Library Access* – UC HASTINGS COLL. OF LAW LIBRARY (Sept. 12, 2012), <http://library.uchastings.edu/about/policies/access.php>. (“The Library is not open to members of the general public, except where there is demonstrated need to access U.S. Government Documents acquired by the Law Library through its membership in the Federal Depository Program.”). This policy is a direct copy of UCLA’s policy, which was done for unconfirmed reasons. One topic to explore that is outside this paper’s scope is the role of these policies as part of a school’s history.

<sup>50</sup> *Information for Visitors – Access to the Law Library*, UCLA SCH. OF LAW LIBRARY, <https://law.ucla.edu/library/information-for-visitors/access-policy/access-policy/> (last visited July 24, 2018).

(“The Library is not open to the general public except that members of the general public may have access to United States government documents acquired by the Law Library through its membership in the Federal Depository Library Program.”). In developing this policy, one of the underlying factors for this decision was that the law school could not continue serving its primary patrons and the larger school community along with maintaining a proper standing with the ABA. See Sarah Reis, *Are You a Member of the Law School Community: Access Policies at Academic Law Libraries and Access to Justice*, 109 *LAW LIBR. J.* 269, 279 (2017).

<sup>51</sup> *Using the Law Library*, UCI SCH. OF LAW LIBRARY, <http://www.law.uci.edu/library/about/using-the-library.html> (last visited July 24, 2018). (“**Members of the public** generally do not have access to the library”).

Temple University Beasley School of Law (Temple Law)<sup>52</sup>, George Mason University Antonin Scalia Law School (Antonin Scalia Law School)<sup>53</sup>, and the City University of New York School of Law (CUNY School of Law).<sup>54</sup> As for the written reference services policies, each of these schools have limited to nonexistent reference policies on their websites because many reference services policies are directed towards the public patron, which is a limited concern with these schools.

One of the reference services policies that is left comes from Antonin Scalia Law School, which states “[p]lease note that although the reference librarians are happy to assist users who need information, a reference librarian will not research or interpret

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<sup>52</sup> *Access Policy*, TEMPLE UNIV. BEASLEY SCH. OF LAW LIBRARY, <https://www.law.temple.edu/library/policies/access/> (last visited July 24, 2018) (“Only persons with valid identification in the following categories are permitted to enter the building to use the law library: Law faculty and law students from other law schools, attorneys with bar identification, students from colleges other than Temple with a letter of permission from Temple Law Library, and U.S. Depository Collection researchers following a reference interview with a professional library staff member.” Note that for this paper, I am not including physical access to FDLP materials.).

<sup>53</sup> *Library Services and Collection – Access Policy*, GEORGE MASON UNIV. ANTONIN SCALIA LAW SCH. LIBRARY, <https://www.law.gmu.edu/library/services/> (last visited July 24, 2018). (“The library is not open to the public. The library has created the following guide to help members of the public with legal assistance: [Legal Assistance to the Public](#). In addition, a number of other libraries in the area have legal research materials (both print and online) and are open to the general public. A [list of area law libraries](#) that are open to the public is available on this web site and at the Circulation Desk.”).

<sup>54</sup> *Visitor Information*, CUNY SCH. OF LAW LIBRARY, <http://www.law.cuny.edu/library/visitor.html> (last visited July 24, 2018). (“Access to the CUNY Law Library is limited. . . . Note: The Law Library is no longer a member of the U.S. Federal Depository Library Program.”). Although “limited” in this case means only those connected with the CUNY School of Law community. The note about dropping out of the FDLP program is an interesting highlight.

the law for any patron.”<sup>55</sup> Here, the Antonin Scalia Law School Library is giving the general notice about unauthorized practice of law to the general George Mason University community that has been granted access. But, the policy does not specify what the law school library will do besides be “happy to assist,” which is not a concrete guideline.

Some of these schools still aid the general public in other ways such as document delivery, chat reference, and e-mail.<sup>56</sup> And a few of these schools offer a list of other public law libraries in the area.<sup>57</sup> However, these services to the public patron are limited when compared to other public law school libraries in the United States.

Should there still be a written policy for reference services outside physical access? Yes. In this case, a written reference services policy should be posted so that the members of the general public would have a better sense on how to utilize these

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<sup>55</sup> *Library Services and Collection – Reference*, GEORGE MASON UNIV. ANTONIN SCALIA LAW SCH., [https://www.law.gmu.edu/library/services/#Reference\\_10](https://www.law.gmu.edu/library/services/#Reference_10) (last visited July 24, 2018).

<sup>56</sup> For example, UCLA School of Law offers document delivery services to the general public and accepts phone call questions. UC Hastings allows general public to ask questions on chat reference, but for limited needs. See *Reference Chat*, UC HASTINGS COLL. OF LAW LIBRARY, <http://library.uchastings.edu/about/policies/reference-chat.php> (last visited July 24, 2018). (“UC Hastings Chat Reference is available to take questions during *Reference Desk* hours. This service is intended primarily for UC Hastings students, faculty, and staff. If you are not affiliated with UC Hastings, we will reply to your inquiry only if it relates to a resource unique to the Law Library.”).

<sup>57</sup> For example, See *Southern California Libraries*, UCI SCH. OF LAW LIBRARY, [http://www.law.uci.edu/library/visitors/socal\\_libraries.html](http://www.law.uci.edu/library/visitors/socal_libraries.html) (last visited July 24, 2018); *Visitor Information*, *supra* note 51. (“Helpful information regarding Public Access Court Law Libraries can be found at the Unified New York State Court System Libraries page.”); *Library Services and Collection – Access Policy*, *supra* note 50.

services that these public law school libraries still offer.<sup>58</sup> Here a written reference services policy is still important because make clear to a member of the general public that the information is also for informational purposes and does not create a legal relationship. In addition, the general warning against the unauthorized practice of law would still apply even though it is not explicitly stated because the unauthorized practice of law does not examine what status the actors are as public patrons or not, but just if the reference act as performed could be considered practice of law. As for the role of virtual reference service and its policy and procedures, a written virtual references service policy should still be formulated because it could happen that a public patron attempts to use the service over the suggestions not to do so.

#### *Government/Public Law School Library Hybrid*

Another type of public law school library is the partnership of a government law library and academic law library. Unlike the public law school libraries with less access for public patrons, these public law school libraries are expanding their public mission by partnering with governmental law libraries. Two examples for this type of library come from the Idaho State Law Library, which is in a partnership between the University of Idaho School of Law and the Idaho Supreme Court and the University of

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<sup>58</sup> Of course, one problem is figuring out how to phrase a legal issue into a question so that these services can be used more effectively. The general solution would appear to be to use the document delivery services, but that is contingent on knowledge about which document to request. In addition, there is an attempt to grant more public access to the databases from the main campus at UCLA. See Reis, *supra* note 50, at 275.

Arkansas Little Rock Bowen School of Law, which runs the Pulaski County Law Library.<sup>59</sup>

The policy for the University of Arkansas Little Rock Bowen School of Law/Pulaski County Law Library is intriguing in that it does offer the reference services for the law school community such as faculty services,<sup>60</sup> but its reference policy for the general public is more b than other public law school libraries. The general policy is that “[r]eference librarians are available to answer basic questions and to help you locate materials. . . . While librarians are prohibited from giving legal advice or interpreting legal materials, other types of assistance are available.”<sup>61</sup>

The Idaho State Law Library and University of Idaho College of Law partnership is unique because the two places are kept separate in terms of websites and listings

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<sup>59</sup> *About Us*, IDAHO STATE LAW LIBRARY, [https://isll.idaho.gov/?page\\_id=16](https://isll.idaho.gov/?page_id=16) (last visited July 24, 2018) and *University of Arkansas Little Rock Bowen School of Law/Pulaski County Law Library*, ARK. STATE LIBRARY, <https://www.library.arkansas.gov/facilities/details/university-of-arkansas-at-little-rock-pulaski-county-law-library> (last visited July 24, 2018). One another library that shares this hybrid combination is the partnership between Duquesne University School of Law, a private law school, and the public county law library for Allegheny County, Pennsylvania. I did not include this school in this analysis since the paper’s focus is on the public law school libraries and not private libraries that are open to the public. Although, having a survey of private law schools that allow public access into their law libraries would be helpful in the future. As an interesting side note, they have a completely different staff between the law library portion and the county law library portion except for the associate dean, who is the director for both libraries.

<sup>60</sup> See *Reference Service and Research Support – Faculty Research Services*, UALR BOWEN SCH. OF LAW/ PULASKI CTY. LAW LIBRARY, <https://ualr.edu/lawlibrary/faculty-services/reference-service-and-research-support/> (last visited July 24, 2018).

<sup>61</sup> *Public Reference Service*, UALR BOWEN SCH. OF LAW/ PULASKI CTY. LAW LIBRARY, <https://ualr.edu/lawlibrary/general-public-services/reference-service-public/> (last visited July 24, 2018).

unlike the University of Arkansas with the Pulaski County Law Library.<sup>62</sup> The Idaho State Law Library reference policy states that “reference librarians are available to help locate and use print materials, online resources, and interpret legal citations”.<sup>63</sup> The reference policy for public patrons for University of Idaho College of Law Library in Moscow, Idaho (the first location before this partnership for the Idaho State Law Library) currently does not seem to exist. But, it does appear that one issue is how the prioritizing between the law school community and the public patrons will occur moving forward with this partnership given how the project has only come to full force over the last few years.<sup>64</sup>

Given how the University of Arkansas Little Rock Bowen School of Law does have additional reference services in addition to reference services for the general

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<sup>62</sup> See *Law Library Services in Moscow & Boise*, UNIV. OF IDAHO COLL. OF LAW LIBRARY, <https://www.uidaho.edu/law/library> (last visited July 24, 2018). (“The College of Law oversees the management of the [Idaho State Law Library].”).

<sup>63</sup> *Services – Our Collection & Reference Services*, IDAHO STATE LAW LIBRARY, [https://isll.idaho.gov/?page\\_id=161](https://isll.idaho.gov/?page_id=161) (last visited July 24, 2018).

<sup>64</sup> See *Idaho Law and Justice Learning Center*, Univ. of Idaho Coll. of Law, <https://www.uidaho.edu/law/news/features/2015/idaho-law-and-justice-learning-center> (last visited July 24, 2018). (“In October 2010, the Idaho Department of Administration designated the building as the future home of the Idaho Law and Justice Learning Center. Infrastructure remodeling work was completed in 2014.”). And *Idaho Law and Justice Center Open for Class on Monday, Aug. 24*, Univ. of Idaho Coll. of Law (Aug. 19, 2015), <https://www.lib.uidaho.edu/digital/uinews/item/idaho-law-and-justice-learning-center-open-for-classes-monday-aug-24.html>. (“The University of Idaho College of Law’s new Boise facility, the Idaho Law and Justice Learning Center (ILJTC), will open to students on Monday, Aug.24.”). On the other hand, the University of Arkansas Little Rock/Pulaski County Law Library began around 1965 with the formation of the night program extension of the University of Arkansas School of Law in Fayetteville. See Lynn Foster, *Memorial: Ruth Huskey Brunson*, 87 LAW LIBR. J. 634 (1995). (“It [the library at University of Arkansas Little Rock] was, and still is unique in being the only combined academic and county law library in the United States.”).

public, a similar set-up may or may not work for the University of Idaho College of Law. The reason is that the Idaho State Law Library's mission started under a statute that occurred before the partnership between the law school and the state library.<sup>65</sup> The problem, however, is that state law libraries have traditionally been constructed for the public patron over the academic patron. This breakdown of the traditional division between academic and governmental public law libraries brings out the issue of how the interaction between the public patrons and the students for reference services will dictate how the library will function as a whole. A strong written reference policy could help navigate this merger into something that becomes beneficial for all parties. The reason here is that the policy would be a buffer between the interests of the academic side and the public side.

### **Putting It All Together**

In order to achieve a better understanding of how the public law school law libraries are putting together their written reference services policies, it is important to judge on the matter of particular parameters: (1) The patrons, both primary and secondary, (2) the limits for reference service for the patrons, (3) the order of service between physical to telephone to other forms of virtual communication, and (4) the issues of privacy.<sup>66</sup> And for virtual reference, the particular parameters to examine are

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<sup>65</sup> *About Us*, *supra* note 59. ("The Idaho State Law Library was established in 1869 under an Idaho Territorial Statute that included \$500 appropriation for the purchase of law books.").

<sup>66</sup> These parameters are adapted from Carol A. Watson, *Reference Services in a Law Library*, in *LAW LIBRARIANSHIP IN THE DIGITAL AGE* 235, 237 (Ellyssa Kroski ed. 2014).

the following: (1) the frequency for responses, (2) the types of questions that will be answered, and (3) how to deal with difficult users.<sup>67</sup>

*Written Reference Policies for In-Person Visits and Telephone Calls*

The first parameter of which patrons will be served seems easy to answer at first. The main reason is that all the public law school law libraries perform legal research assistance to public patrons even though some public law school libraries restrict themselves more than other libraries. These written policies often cover in-person and telephone call reference services. The choice in language in the written policy regarding these services can make even the smallest difference. In this case, two different cases of language such as “[r]eference services are available to . . . the general public”<sup>68</sup> and “[r]eference librarians are available to assist in locating books and providing research tips”<sup>69</sup> to language such as “this library is primary for the use of College of Law students, faculty, and staff”<sup>70</sup> create a different impression to the public patron. This difference is subtle, but the word “primary” reinforces the difference in patron status with each reference patron transaction and leaving out the word “primary” allows for more inclusion for the public patrons.

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<sup>67</sup> *Id.* at 238. The additional notes to a virtual reference policy can also apply to in-person reference service as well including notifying which databases are not granted access due to licensing restrictions.

<sup>68</sup> *Reference Policy*, UNIV. OF BALT. SCH. OF LAW LIBRARY, <http://law.ubalt.edu/library/information/policies.cfm> (last visited July 24, 2018).

<sup>69</sup> *Services for Public*, UC DAVIS SCH. OF LAW LIBRARY, <https://law.ucdavis.edu/library/services/public.html> (last visited July 24, 2018).

<sup>70</sup> *About the Law Library*, UNT DALLAS COLL. OF LAW LIBRARY (Jun. 19, 2018), <http://libguides.lawschool.untsystem.edu/About>.

The second parameter regarding the limits of reference services to the public patrons is the core split between the students, faculty, and staff as the primary patrons and the general public as the secondary patrons. In the majority of written reference services policies for the public law school law libraries, the limitations are presented as a series of negative statements. Some of the more common limitations include not providing legal advice<sup>71</sup>, not preparing forms or other legal documents<sup>72</sup>, and not making recommendations about particular attorneys nor referring anyone to a particular attorney.<sup>73</sup> In addition, the reference services that are offered by telephone are even more limited than the in-person services even though all public law school law libraries offer telephone service. For example, the reference policy for the University of Illinois College of Law Library states “[w]hile you are welcome to contact us via telephone, our service over the phone is limited.”<sup>74</sup> Besides not having the print materials readily available, one main limitation with telephone service is that reference librarians often will not “read definitions or sections from legal materials over the phone.”<sup>75</sup>

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<sup>71</sup> See *Library Policies – Reference*, RUTGERS SCH. OF LAW LIBRARY, <http://library.law.rutgers.edu/library-policies#reference> (last visited July 24, 2018).

<sup>72</sup> See *Access, Services, and Use of the Law Library for the General Public*, *supra* note 41. (“The Law Library staff are not permitted to . . . compile bibliographies or legislative histories.”).

<sup>73</sup> See *Policies*, UNIV. OF TENN. COLL. OF LAW LIBRARY, <https://law.utk.edu/library/policies/> (last visited July 24, 2018). (“Librarians may not . . . [m]ake referrals to or recommendations of specific attorneys.”)[hereinafter U.Tenn. Policies].

<sup>74</sup> *Library Staff Assistance*, *supra* note 4.

<sup>75</sup> *Id.*

These limitations fall under the general framework of unauthorized or unlawful practice of law (UPL). The general limitation of UPL is uncomfortable to many reference librarians in all libraries because what jurisdictions consider the practice of law depends often on each individual state and the bodies of power within the state itself.<sup>76</sup> One common fear among law librarians is the penalty that can come being charged with UPL.<sup>77</sup> While not as common, another aspect that is similar to the issue of reference librarians in the public law school libraries being asked for legal advice is the issue of law school students or professors being asked for legal advice. For example, Georgia State University College of Law's Library reference policy states that "[s]tudents and professors at the College of Law are not able to give legal advice or case assistance to the public."<sup>78</sup> Here is an example of a reference policy point that is more about the patron's conduct<sup>79</sup>, but placed within the sphere of reference services.

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<sup>76</sup> See Quintin Johnstone, *Unauthorized Practice of Law and the Power of State Courts: Difficult Problems and Their Resolution*, 39 WILLAMETTE L. REV. 795, 795 (2003). ("This [The area of unauthorized practice of law] is predominantly a field of state law.").

<sup>77</sup> For example, In California, the penalty for unauthorized practice of law the first time is either one year in a county jail or a \$1,000 fee or both in addition for other charges that may come about. CAL. BUS. & PROF. CODE § 6126 (LexisNexis, 2018). In addition to the fear from the charges, another fear is related to not upholding the ethical considerations of the law librarianship profession. See, for example, *AALL Ethical Principles - Service*, Am. Ass'n of Law Libraries (approved Apr. 5, 1999), <https://www.aallnet.org/about-us/what-we-do/policies/public-policies/aall-ethical-principles/>. ("We acknowledge the limits on service imposed by our institutions and by the duty to avoid the unauthorized practice of law.").

<sup>78</sup> *Reference*, GA. STATE UNIV. COLL. OF LAW LIBRARY, <https://lawlibrary.gsu.edu/how-do-i/reference/> (last visited July 24, 2018).

<sup>79</sup> See, for example, *Library Policies – Disruptive Patrons*, UNIV. OF BALT. SCH. OF LAW LIBRARY, <https://law.ubalt.edu/library/information/policies.cfm> (last visited July 24, 2018). (Disruptive behaviors include "requests for legal advice from other patrons".).

Other policy points about patron's conduct within the sphere of reference services are not directly written down, but include not absconding with the reference materials or being rude to the reference staff. For many in the legal profession, the fact that unauthorized practice of law along with professional responsibility apply to law students and law professors as well as the reference librarians is almost axiomatic. For a general member of the public, however, the fact that these laws apply to law students and law professors could be surprising because if the law student is working towards his or her law degree and the law professor already has one, then they should have permission to give legal advice. For that reason, the addition of the statement about law professors and law students into the written reference policy even though it could also go into the public law school law library's code of conduct.<sup>80</sup>

In addition, the reference services depend on the resource allocation from the law school itself. If the general public, as patrons, are not on the same priority level with the law school community, as patrons, then the restrictions on the services are also harder to overcome as demand from the law school community increases over time.<sup>81</sup> Many of the public law school libraries work through this problem by providing

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<sup>80</sup> *Id.*

<sup>81</sup> See Lenz, *supra* note 9, at 49. ("Given the increased demands from their faculty and students, public academic law libraries must curtail some of the services historically available to external constituencies.").

research guides to general legal searching and specialized subjects e.g. copyright law, but anything more often becomes a strain on the law library's resources.<sup>82</sup>

The third parameter is addressing the order of priority between physical visits to the reference desk and the other forms of communication such as telephone, chat, or e-mail. Many reference services policies here did not specify directly, but one could assume that a public patron in person takes precedence over someone on the telephone or the e-mail. For example, the policy for Florida State University College of Law Research Center states that "[r]eference priority is given to those who are physically present in the Research Center."<sup>83</sup> The importance of making this parameter clear is that it notifies the public patrons on which methods of communication are more important for receiving service and what questions to have in mind. The questions in person could be more in-depth than the questions asked through e-mail or telephone service.<sup>84</sup> Without a formalized policy, the standards of service could vary from librarian to librarian in the same institution.

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<sup>82</sup> *Id.*. ("Similarly, libraries may stop devoting time to creating research guides targeted to members of the public and restrict their attention solely to guides closely tailored to the curriculum.").

<sup>83</sup> *Service Policy for Non-College of Law Patrons*, FLA. STATE UNIV. COLL. OF LAW RESEARCH CTR., <http://www.law.fsu.edu/docs/default-source/research-center-documents/public-patrons-policy.pdf?sfvrsn=1> (last visited July 24, 2018); see also *Ask A Librarian*, UC HASTINGS COLL. OF LAW, <https://library.uchastings.edu/services/ask-a-librarian/index.php> (last visited July 24, 2018). ("Questions asked in person at the Reference Desk have priority over questions asked through Chat.").

<sup>84</sup> See *Library Resources for Members of the Public – Our Research Services*, UNIV. OF WASH. SCH. OF LAW LIBRARY (July 20, 2018), <https://guides.lib.uw.edu/law/public#s-lg-box-16247932>. ("For similar reasons, it is our policy not to read legal materials over the phone or email the text of legal resources via our Ask Us service.").

The fourth parameter of privacy is important in regards to the mission of the public law school law library<sup>85</sup>, but few reference policies in the public law school libraries address privacy directly in the reference services policy. However, the three states of Arkansas, New York, and Ohio do address the role of privacy in regards to reference questions in a library.<sup>86</sup> With the collection of digital data building up in one's daily life, the fact that many public law school law libraries are silent in this matter in regards to reference services is one that needs to be worked on.<sup>87</sup>In one way, the fact that many reference services policies do not directly address the role of privacy directly

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<sup>85</sup> See *Library Policies*, RUTGERS SCH. OF LAW LIBRARY, <http://library.law.rutgers.edu/library-policies> (last visited July 24, 2018). ("Protecting patron privacy and confidentiality is an integral part of the mission of the Law Library.").

<sup>86</sup> Christine Ford, *Pro Se Patrons in the Law Library: The Case for Privacy in the Digital Age* 1, 37-38 app. A (May 23, 2017) (unpublished M.S. thesis, Univ. of Wash.), <https://depts.washington.edu/uwlawlib/wordpress/wp-content/uploads/2018/01/Ford2017.pdf>. Here, the three states of Arkansas, ARK. CODE ANN. § 13-2-701(1) (West 2018), (" 'Confidential library records' means documents or information in any format retained in a library that identifies a patron as having requested, used, or obtained specific materials, including, but not limited to . . . reference queries"), New York, N.Y. C.P.L.R. 4509 (McKinney 2018), ("Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to . . . reference queries . . ." and Ohio, OHIO REV. CODE ANN. § 149.432(2)(c) (LexisNexis, 2018), (" 'Library record' means a record in any form that is maintained by a library and that contains . . . [i]nformation that is provided by an individual to assist a library staff member to answer a specific question or provide information on a particular subject." have laws that protect directly the privacy for reference questions. The fact that these statutes are not directly mentioned in the policies for the public law school libraries in these states is still a mystery to me. Note, however, *Privacy Policy*, Univ. of Wash. Sch. of Law Library, <https://lib.law.uw.edu/dir/webprivacy.html> (approved Mar. 24, 2002). ("We protect the privacy of all library users including . . . questions asked.").

<sup>87</sup> See *AALL Ethical Principles – Service*, *supra* note 74. ("We uphold a duty to our clientele to develop service policies that respect confidentiality and privacy.").

makes sense because the privacy protections for the library should indirectly refer to the reference services policy. The problem, however, is that many privacy protections protect the records of library usage such as circulation records and e-mails to the reference service within certain boundaries and usually the in-person reference interview is not recorded or written down except for the transaction record.

#### *Virtual Reference Policies*

As for the virtual reference services policy, many of the public law school libraries do not address what are essential parts for those policies such as privacy and the restrictions on e-mail reference such as the response time and information that will be provided in this format.<sup>88</sup> The number of public school libraries that offer e-mail or even chat reference to public patrons is much smaller than the number of public law school libraries that allow physical access to their reference services.<sup>89</sup> One reason why e-mail and chat reference services are limited for the general public is that these services are time consuming and could take too much time away from the public law school's primary community. In addition, many public law school libraries have small reference staffs. Most of the chat reference services are primary for the public law school

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<sup>88</sup> An ideal example of a chat reference policy that I have seen is from University of Georgia School of Law Library because it covers who can use this feature and the privacy concerns regarding it as well. See *Chat Reference Policy*, UNIV. OF GA. SCH. OF LAW LIBRARY, <http://law.uga.edu/chat-reference-policy> (last visited July 24, 2018).

<sup>89</sup> For example, public law school libraries that have public e-mail reference include Arizona State School of Law and University of Washington School of Law. As for chat reference, currently 15% of the public law school libraries offer this service to the public including University of Baltimore Law School and Georgia State University College of Law.

community, so the privacy laws most likely covering the public law school law library are part of the entire law school. However, public law school libraries may keep some of the chat transcript data for educational purposes.

For the first parameter regarding response times for public patron e-mail often seems to be 24 to 48 hours.<sup>90</sup> Given how the public library reference staff is busy in maintaining help for students, faculty, and the general public, the turnaround time for public e-mail makes a lot of sense. It can be hard for those patrons who are emotionally invested into their information need to wait that long, but a quicker response could take more resources away from the public law school library.

For the second parameter of responses of questions over e-mail or chat, the public law school libraries are often more restrictive in answering particular questions<sup>91</sup> than questions asked on in-person visits. Most of the questions that public law school law libraries are willing to answer on chat or e-mail are often more “ready reference” questions i.e. the questions about particular resources in stock or other places to find legal information such as public/county law libraries or research guides.<sup>92</sup> As stated before, this restriction is often due to preventing circumstances that one could perceive

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<sup>90</sup> See *Library Resources for Members of the Public – Our Research Services*, *supra* note 81.

<sup>91</sup> See *Chat Reference Policy*, *supra* note 88. (“The Chat Reference Service is designed to assist library users with brief research questions, such as how to find information on a particular topic using the library’s online catalog or electronic resources. . . . More complex questions, such as those requiring in-depth knowledge of a subject or resource, may require the librarian to suggest an alternative method of communication, such as an in-person reference appointment.”).

<sup>92</sup> See Reis, *supra* note 50, at 286. (“These type of questions [questions about landlord/tenant law or child custody, etc.] are answered by pointing these patrons to resources where they can find the answers themselves.”).

as unauthorized or unlawful practice of law due to either establishing a relationship through giving the statute over e-mail as interpreting the law or breaching another state's law in addition to licensing and copyright law.

One method around this problem is for all public law school libraries to offer a document delivery service to the public because if the patron requests the material directly, then the library is helping the patron with gathering legal information.<sup>93</sup> One issue with this suggestion is that the time and cost to run such a document delivery service would be too expensive and prohibited to the public law school library's staff. Yet, one way around this issue could be to form a interlibrary loan agreement with other law libraries in a geographic area.<sup>94</sup>

The majority of virtual reference service policies published publicly are limited on how difficult patrons will be treated. All the public law school law libraries have codes of conduct, but virtual conduct is harder to define and yet easier to ignore. The reason that digital behavior is easier to ignore is that librarians can choose to ignore or block the problematic patrons after giving a warning or two to them. The problem, however, is that particular issues such as unauthorized practice of law are much more

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<sup>93</sup> Schools that offer this service include the University of Washington School of Law and UCLA School of Law.

<sup>94</sup> But see Lenz, *supra* note 9, at 51. Lenz brings up the fact that “[a]cademic law libraries . . . generally will not borrow from other libraries to fulfill the needs of the . . . public.” If a new interlibrary loan agreement were to be established for helping public patrons, then more studies would have to be done to find a viable method to begin and maintain it.

different to generalize besides the command not to do it and its usual examples of reference librarians not having permission to fill out forms or give legal advice.<sup>95</sup>

### **Issue Spotting and Recommendations**

Nevertheless, there are still many issues that still require future work for developing written reference services policies both for in-person and virtual reference service policies. These issues cover the range of clauses that should be added into a written reference services policy to making the information easier to find overall.

First, the examination of written reference policies is often overlooked or not touched upon for many years.<sup>96</sup> One factor for this problem can stem from the change of administration in the public law school library from a new dean or director. One path of research is to examine why these changes often have a deep impact on the public law school library's administration as a whole. Even though the deans and the directors have various amounts of power depending on the institution, the wide amount of discrepancy is too much for supporting transitions in the reference policy. One easier implementation is to keep continued records of the reference policy over time and review them on a tighter scale such as yearly or even bi-monthly.<sup>97</sup>

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<sup>95</sup> See, for example, Joan Allen-Hart, *Legal Reference vs. Legal Advice*, in *LOCATING THE LAW: A HANDBOOK FOR NON-LAW LIBRARIANS* 46, 49 chart (June Kim & S. Cal. Ass'n of Law Libraries eds., 5th rev. ed. 2011).

<sup>96</sup> Laura Barnes, *A Quick Reference Guide to Developing Library Policies and Procedures*, UNIV. OF ILL. LIBRARY (Aug. 15, 2017), <https://guides.library.illinois.edu/writing-library-policies>.

<sup>97</sup> One personal example is the updating of the collection policy from University of Washington School of Law Library. Here, the committee took a large document with multiple parts that had limited review and made a newer smaller version with more review.

Second, while many public law school libraries are making websites that are designed more towards the public in mind, one issue that the written reference services policies are on different parts of the website. For public patrons to understand the majority of a public law school law library's reference services policy, they must first look at the website portion for the general public, but then they may have to return to a policy page, which may or may not contain the reference services policy or find the policy under a general "library services" page. Research should be done on how to prevent this issue.<sup>98</sup> One possible solution is for the written reference service policy for the public to include the virtual reference policy on the same page along with the standards for collection in the reference section and other services such as document delivery, interlibrary loan, and privacy.<sup>99</sup> In addition, citations regarding the statutes, regulations, or other case law within particular passages, such as unauthorized practice of law, should also be added to the written reference services policy for both the physical and virtual reference services policy.<sup>100</sup> For many public patrons, even if

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<sup>98</sup> One article that covers this area is Artie Berns & Corrine Vogel, *Tell It to the World (Wide Web): Promulgating Academic Law Library Pro Se Patron Policy via the Internet*, AALL SPECTRUM, Apr. 2015, at 29, 34. Note here that the use of "pro se patron" means the general public patron and not just those who are legally researching for a court case. But, I think more in-depth studies on user design would be useful to the library community.

<sup>99</sup> The question about document delivery and interlibrary loan being part of reference services could be discussed, but for the purpose of this paper, I am placing them within the category of reference services. Although, it is the case in some libraries for the interlibrary loan requests to go through its own department. See Michael M. Reynolds, *Interlibrary Loan: A Reference Service*, 12 LIBR. TRENDS 425 (1964).

<sup>100</sup> See, for example, U.Tenn. Policies, *supra* note 70. Of course, having these citations are harder in states where the law regarding this matter is only case law or bar association rules.

sample questions or service options are shown in a written reference service policy, often do not understand the concept of unauthorized practice of law at first.

By making this information more accessible to the public user, it establishes the expectation of reference service that he or she will receive in the public law school library. As for the public law school library, by making this information more accessible publicly, the public law library would generate a sense of goodwill because transparency can create trust under certain circumstances. An issue with this suggestion, however, is that the page could be too long for the public patrons to read in a single setting.<sup>101</sup>

In addition, public patrons reading the policy could see the addition of citations as a negative because they could interpret the addition of citations as the public law school library wanting to distance itself. Of course, the struggle between being friendly and yet not being held for a relationship in which legal services were practiced is often hard to manage.<sup>102</sup> In certain states, it is not enough to state that any information given does not establish a legal relationship, but that the actions as well must reflect that

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<sup>101</sup> From personal experience, I have seen some public law school libraries that have maintained this balance between too little and too much information on a single page. See, for example, *Reference Services Policy*, UNIV. OF WIS. LAW LIBRARY, <http://library.law.wisc.edu/about/policies/reference.html> (last visited July 24, 2018) and *Library Services for Guests/Alumni*, UNIV. OF CONN. SCH. OF LAW LIBRARY, <https://library.law.uconn.edu/guest-alumni-services-research-support/reference-assistance/> (last visited July 24, 2018).

<sup>102</sup> See Paul Jr. McLaughlin, *Leveraging Academic Law Libraries to Expand Access to Justice*, 109 LAW LIBR. J. 445, 452 (2017). (“Scholars disagree as to what constitutes an appropriate range of services that law librarians can offer to public patrons.”).

point. In creating this distance in the interaction with a public patron, the action itself helps prevent the charge of practicing law.<sup>103</sup>

One easier way to handle this problem in a written reference services policy than having to explain the stance in person during a reference interview is for more public law school libraries to include reasons or “justifications” for why the policy is constructed as such in the written policy. One example is from a model made by the Southern California Association of Law Libraries that states “[p]lease do not think that our staff is being uncooperative when they suggest that you interpret the materials you read for yourself and make your own decisions as to how the material you have read applies to your legal problem.”<sup>104</sup> This language is helpful to both the reference librarian and the public patron because it sets forth the level of expectation and service that the reference librarian will provide to the public patron even under the circumstances. Some public law school law libraries have these reasons, but more written reference policies should include them.

One future concern is that public patrons under particular circumstances are too stressed out for cogent thought, but how could a written reference services policy help

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<sup>103</sup> See, for example, *In re Rose*, 314 B.R. 663, 707 (Bankr. E.D. Tenn. 2004). (Here, the fact that the legal advice was on informational packets is still considered giving legal advice even if not spoken out loud or stating that they are not practicing law.

<sup>104</sup> Allen-Hart, *supra* note 95, at 52. See also *Our Policy on Legal Research and Legal Advice*, UNIV. OF FLA. LEVIN COLL. OF LAW LIBRARY, <https://www.law.ufl.edu/library/using-the-library/visitors/research-assistance-policies-for-visitors> (last visited July 24, 2018). (“Why do we have this policy? . . .”).

with the problem?<sup>105</sup> A future study would be useful in figuring out how to construct language in a written reference policy that conveys the limitations of the reference services for public patrons, but also helps the stressed-out public patron before the reference interview. A stressed-out public patron in a reference interview can make the reference interview more challenging for both the public patron and the reference librarian.

In addition to the problem of having the policy often be too long for a single public patron to read, oftentimes, many public patrons may be approaching English as a second language, which can make understanding written reference services policies hard to read as well. One reason is that even a question that a native English speaker could consider incomprehensible due to the legal language adds an even additional layer of difficulty for explaining reference services. The majority of policies are written in English<sup>106</sup>, which does make sense because the perception is that the highest majority of public patrons using public law school libraries understand English. More studies are required to determine if this perception is factually true, but even if the perception is factually false, one suggestion is to formulate the policy into multiple languages or at least attempt this translation.<sup>107</sup> Some may argue that the written reference policy

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<sup>105</sup> See, for example, Acosta & Cherry, *supra* note 37, at 122. (“Self-represented litigants require more assistance . . . not only because they lack the legal knowledge and research skills that come from law school training and experience, but also they lack the emotional distance from their problems that an advocate has.”).

<sup>106</sup> Well, the University of Puerto Rico School of Law Library’s policy is in Spanish.

<sup>107</sup> From personal experience, I have seen research guides in both English and Spanish, but never written reference policies besides the written reference services policy for the University of Puerto Rico School of Law Library.

should be in the language that most of the reference staff understand, but in making the written reference policy more public facing, the public patron should be able to read and comprehend it to the best of his or her ability at the time.

In addition to separate languages, many of the policies do not directly state how people with disabilities could be helped.<sup>108</sup> Many of the telephone policies state that laws or statutes would not be read over the telephone, but what if the person is using the telephone due to being blind? I think that a future study on making law materials more accessible to these kinds of conditions and having a clause about them would make a stronger written reference services policy. One reason is that public patrons come for help with all sorts of difficulties that require making an extra effort to help and a written reference services policy addressing this issue could bring both the reference services librarian and the public patron to a newer level of understanding.

The third issue is that many of the written reference policies often have been copied from former written reference policies or other models. The practice of taking from other written reference policies is useful and often encouraged. One good place for model reference service policies are the public law libraries because they have been working within the public sphere.<sup>109</sup> The problem, however, is that there are particular

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<sup>108</sup> One example of a public law school library that does address the issues of disabilities and services within it is University of Texas at Austin School of Law. See *Library Policies – Resources for Disabled Patrons*, UNIV. OF TEX. AT AUSTIN SCH. OF LAW LIBRARY (Jun. 14, 2018), <https://tarlton.law.utexas.edu/policies#s-lg-box-8335649>.

<sup>109</sup> See, for example, *Reference Services*, ALAMEDA CTY. LAW LIBRARY, <http://www.co.alameda.ca.us/law/refservices/index.htm> (last visited July 24, 2018) and *Legal Information Service*, PUB. LAW LIBRARY OF KING CTY.,

passages in older written reference service policies such as telephone reference, e-mail reference, and restriction of databases due to licensing could still be as relevant today as they were in the past and yet are left out from the public website. A survey among the public law school libraries, however, should be conducted for determining if these passages still have relevancy. The case is still out there that not having a precise written e-mail or telephone reference policy, or even not raising the point of restricted databases could be effective. The main reasons are that telephone and e-mail communication style have changed over the years, so constructing an e-mail to fit what many reference librarians would like can be a challenge at times.<sup>110</sup>

While at least half or more of the public law schools are offering e-mail communication to the public, the majority of those schools do not have distinct policies except the usual line about no legal advice and restrictions to ready reference problems. Chat reference, for public patrons, is still limited to a few law schools at this time, so when the time comes for a chat reference policy, one model should be the one from University of Georgia Law School Library.<sup>111</sup>

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<http://www.pllkc.org/wp/contact-us/policies/legal-information-service/> (last visited July 24, 2018).

<sup>110</sup> See, for example, Md. State Law Library Comm., *Guidelines for E-mail Reference Service at the Maryland State Law Library*, MD. STATE LAW LIBRARY, <https://www.lawlib.state.md.us/aboutus/policies/EmailReferenceGuidelinesMSLL.pdf> (last visited July 24, 2018). Here, the Maryland State Law Library sets out a model reference policy for e-mail that covers the basics such as format, time to respond to the request, content of the e-mail message, and how to handle the request for privacy reasons.

<sup>111</sup> *Chat Reference Policy*, *supra* note 88.

The reason is that the University of Georgia Law School Library's chat reference policy covers the type of questions that the public patrons can ask and addresses privacy issues. For example, for type of questions, the policy states "[c]hat reference is designed to assist users with brief questions."<sup>112</sup> These are the ready reference type questions such as where can I find the case reporters in the law library or where can I find out more about how to read legal citations.. For the privacy issues, the policy states that the library cannot "guarantee the confidentiality of files, electronic mail, or other information transmitted electronically", but they do "respect[...] the privacy of users."<sup>113</sup> The statement is not only upfront, but it covers the situation nicely by putting the user on notice without being too confrontational.

The fourth issue is the role of licenses in restricting the reference librarian from helping the public patron. Often times, not only is the public patron excluded from using a particular electronic database, but the reference librarian is restricted from using that particular electronic database to help the public patron as well. One idea for written reference policies is to expand the clause regarding the restrictions of electronic databases to include this fact as well. Certain public law school libraries have stated this fact up front, but all public law school libraries should state this fact in their written reference services policies.<sup>114</sup>

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> See, for example, *Public Patrons: About the Law Library*, TEX. TECH UNIV. SCH. OF LAW LIBRARY (July 9, 2018), <http://libguides.law.ttu.edu/publicpatrons/about>. ("However, some of the Law Library's online resources (e.g. Westlaw, LexisNexis) are available only to Texas Tech Law Students and Faculty Members."); *UW Law Only Databases*, UNIV. OF

The reasoning is that public patrons often think that the reference librarians can still use these databases such as Westlaw or Lexis Advance for helping them even if they do not have access to them and then seem annoyed when the situation is explained to them. If, however, the information is presented up front, then the reference transaction could start on a more equal footing. Another idea is to construct a page for the databases that the public patrons could use while visiting the public law school's library and place that list into the visitor's service page.<sup>115</sup>

### **Conclusion**

The attempt of this paper is to explore the written reference services policies of public law school law libraries that are approved by the ABA. The main reason for this paper is for figuring out what public patrons could expect from visiting one of these libraries or decided to use virtual reference services at one of the public law school libraries. In addition, a public law school library's written reference service policy is a multifaceted view of the real and the ideal situations of a public law school library because it determines what ideal service should be offered to the public patron and also addresses the reality of the situation before them. Even though not all public law school library policies shared the same reference services to public patrons, they all share common threads such as the warning to not provide legal advice to the public

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WASH. SCH. OF LAW LIBRARY, <https://lib.law.uw.edu/> (last visited July 24, 2018). ("UW Law Only: Bloomberg Law, LexisNexis, Westlaw.").

<sup>115</sup> The University of Washington School of Law Library website does have the databases that the public patrons can use on the front page, but my idea is for a separate page with all the electronic databases that a public patron could access while he or she was the public law school law library.

patrons and to demonstrate legal research principles to empower public patrons. In addition, some public law school libraries provided justifications for this policy along with examples for public patrons to follow when they needed help.

Rather than attempt to justify ways to figure out how to make a standardized policy that could fit everyone, this paper focused on issues and possible future studies and solutions to these issues such as (1) making sure that written policies reflected the current situation at the public law school law library; (2) making sure that both the physical and virtual reference policies were available on the same page with language that the majority of public patrons could read; (3) making sure that the models of written reference service policies could conform to the particular public law school library at hand even though many public law libraries have policies that the public law school libraries could model; and (4) confronting the restrictions on databases due to the licensing through more open notification about the licenses.

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