

AMERICAN ASSOCIATION OF LAW LIBRARIES

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February 4, 2003

Task Force on the Model Definition of the Practice of Law
c/o Arthur Garwin, Esq.
American Bar Association
Center for Professional Responsibility
541 North Fairbanks Court
Chicago, IL 60611

Dear Mr. Garwin and Members of the Task Force:

I am writing today on behalf of the American Association of Law Libraries (AALL) to express our concerns about the proposed definition of the practice of law as published at http://www.abanet.org/cpr/model_def_definition.html. AALL is an organization of 5,000 members who work to meet the information needs of legislators and judges, law students and faculty, and the general public. Our members work in Court and legislative libraries, academic law libraries, and in public law libraries, where they work among other things, to help *pro se* patrons and other members of the public with their questions about the law. They are careful, however, to avoid anything that might be construed as the practice of law, and they frequently refer such patrons to legal counsel for further consideration of their specific case.

AALL learned about the new ABA proposal only recently through an article in the *New York Times* ("U.S. Opposes Proposal to Limit Who May Give Legal Advice," By Adam Liptak, published at <http://www.nytimes.com/2003/02/03/national/03LAW.html?ex=1045241960&ei=1>.) Although we understand that there will be a hearing at the ABA mid-year meeting in Seattle, we will not be able to be present to testify. We would, however, like to offer these comments in lieu of testimony and hope that they might be useful in your deliberations.

Like many of the other commentators, AALL is concerned that the proposal now before the ABA is overbroad and anti-competitive and rather than protecting the public, as is its aim, could actually have serious negative consequences by hindering members of the public from obtaining the legal information they need.

Law Librarians play a key role in making legal information available to both the practicing Bar and to members of the public who have a need for such information. They have always been concerned about maintaining the balance between helping their users obtain the information they need while, nonetheless, avoiding the practice of law. AALL's Ethical Principles, approved by our membership as recently as April 1999, state in relevant part:

We acknowledge the limits on service imposed by our institutions and by the duty to avoid the unauthorized practice of law. (See 2002 - 2003 AALL Directory and Handbook at 416.)

Nonetheless, when pro se users come to a law library to find information relevant to their case, they generally have little or no knowledge of legal sources and how they work. Often they just want to do a little background reading on their own before consulting with counsel; sometimes they wish to pursue the case on their own, as is their right. Typically then, they come to the reference desk to ask a law librarian for assistance. The librarian will assist the user in selecting a source within the library, suggesting appropriate search terms, helping with the selection of an appropriate topic, and identifying potential forms for the user. In assisting our users in this way, we are helping them to find what they need on their own, but we stay clear of actually giving any legal advice. Despite the importance and seeming neutrality of these functions, AALL is worried that because of the breadth of the proposal now before the ABA, some or all of these activities could be construed as the practice of law under Sections (c) (1) and (2) of the draft. To the contrary, we believe that they further sound principles of social justice by making information about the law available to everyone who cares to learn.

We have noted that the American Bar Association Commission on Nonlawyer Practice has stated that "[i]nformal help with legal problems, coming from neighbors, friends, co_workers, religious advisors, teachers, social workers, law librarians and others who have had experience handling a similar legal problem or who are considered to be reliable sources of information, has not generally been considered unauthorized practice." ("Nonlawyer Activity in Law_Related Situations: A Report with Recommendations" (Chicago: American Bar Association, 1995 at 35).)

While the American Association of Law Libraries understands the need to protect the public from the unauthorized practice of law, we also respect the needs of our citizens to have access to legal information. We believe that an overly broad approach to unauthorized practice could have serious negative consequences by preventing members of the public from obtaining the information they need.

We recommend that you include in the document language similar to that cited above from the ABA Commission on Nonlawyer Practice. Such an explicit exclusion would have the effect of recognizing the roles that these other professions play while preserving the rights of the public to the best quality legal representation.

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As you continue to work on this interesting issue, AALL would like to offer to work with you to develop a definition that protects the interests of the public in getting expert legal help while also allowing members of the public access to the information they need. Please feel free to call on me at the Georgetown Law Library at any time at 202-662-9161.

Sincerely,

Robert L. Oakley
Washington Affairs Representative
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