

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON THE LAW LIBRARY OF CONGRESS

TOWARD A NATIONAL LAW LIBRARY

PRELIMINARY DISCUSSION

AUGUST, 2001

INTRODUCTION

During June, 2001, the Standing Committee on the Law Library of Congress proposed to the ABA Board of Governors a plan believed to be of long-term benefit to the American public, business and industry, the legal profession, the Government of the United States and the ABA.

Specifically, the Standing Committee requested authorization to confer with appropriate individuals within and beyond the ABA, regarding the creation of a National Law Library* (“NLL”) in Washington, D.C. The proposal flowed from ABA House of Delegates Resolutions adopted over several years, most recently in 1992. Grave circumstances now confronting the Law Library of Congress (“LLC”) also prompted the Standing Committee’s request.

Responding unanimously, on August 3, 2001, the ABA Board of Governors granted that authorization.

As envisioned by the Committee, the NLL would be a joint effort of the United States Congress, the American Bar Association and other accountable sponsoring organizations. It would house all current staff and facilities of the LLC, and continue LLC’s current missions. New missions would expand library, research and conference services to the Bar, to the States of the Union, to business, to non-profit organizations, to universities and law schools, to international bodies and to the public. Suitable funding and management structures for the NLL would be explored. To be practical, any such proposals would respect the continuing interest of the Library of Congress (“LC”) and Congressional oversight and appropriating bodies.

* This Preliminary Discussion employs the designation *National Law Library* in accordance with previous usage by the ABA House of Delegates. Alternative names are also appropriate. One is the time-honored *Law Library of Congress*. Others proposed include *National Library of Law* and *National Law Center*.

THE GROWING IMPASSE

LLC is in harm's way and its future is in doubt. Services and facilities have declined precipitously over the last decade to the lowest level since the ABA Standing Committee was created in 1932. LLC's leadership is committed and resourceful. However, LLC's management and budgets are controlled by LC staff whose professional interest and sympathy are apparent, but whose priorities are elsewhere.

LLC's present budgets and staffing can hardly sustain the library's principal mission: service to Congress. Moreover, its service to the legal profession has been sharply reduced and its outreach hampered. And although the LLC is the *de facto* national law library, public access is limited or virtually *nil*, with non-governmental service hours curtailed for lack of staff. In addition, LLC cannot meet the growing demand for foreign and international materials that constitute an important flourishing area of legal and commercial interest.

Today, LLC's 2.5 million volumes are stacked alongside 1.0 million disparate unbound documents that are not processed for immediate access because of insufficient staff. Under existing manpower authorizations, the present backlog of documents could not be processed until the end of 2003. Such cataloging is performed by LC's Library Services at speeds far below the unforgiving margin of currency demanded for legal research. Elsewhere within LC where proper staffing is available, processing is accomplished at a much faster rate, even in collections where speed is not imperative. Under LC's current division of labor, the expected time required for LLC to index and clear a single document for access by researchers is one year – compared with one day to one week in law libraries whose leadership is represented on the Standing Committee.

Moreover, LLC lacks proper storage facilities for its 65,000 rare books, a collection of exceptional value that has been without a curator for at least five years. This is a consequence of LC budget practices extending back for a period of more than twenty years. In such circumstances, LLC risks transformation from a living research institution to an archive or museum.

Despite the fact that LLC's volumes represent 12.5% of LC's total collection, it receives no more than 3% of the LC budget. LLC's book-purchasing power has been seriously curtailed because budget increases have not kept pace with rising costs. Consequently, for example, subscriptions to 2000 foreign law monographs covering many major U.S. trading nations have been cancelled, along with most U.S. Commerce Clearing House ("CCH") titles, including the tax reporters of all 50 States. LLC cannot add any new subscriptions without canceling existing subscriptions, placing LLC behind many academic libraries as a comprehensive modern collection. The same budget imbalances have raised LLC's "NOS" ("Not On Shelf") rate to an unacceptable 21%, three times the NOS rate in LC's general collection.

LLC's staff positions have actually decreased by 19% since 1994, while LLC studies prepared for Congress have increased 198% during the same period. The highest number of Congressional inquiries are in regard to nations speaking Spanish, Portuguese and English. LLC staff most qualified in the legal regimes of those nations has been reduced by 29%. Critical loss of legal specialists has also been experienced for French-speaking jurisdictions. Such staff losses foreclose primary legal research in foreign, international and comparative law, and impair selection of foreign law materials. 44% of LLC's highly valued legal staff will be eligible to retire in the next three years. A succession plan to deal with these retirements (including mentoring) has not yet been funded by Congress.

The National Academy of Science recently cited LLC's respected Global Legal Information Network ("GLIN") as among LC digital programs warranting encouragement. Nevertheless, the Academy acknowledged that GLIN is under-funded. (*A Digital Strategy for the Library of Congress.*) GLIN's standards for reliability ("truly official, undeniably current, and complete") are representative of LLC's timely quest to keep up with fast-moving globalization in commerce and in the practice of law. However, GLIN has been hampered by denial of LLC's requests for routine Information Technology maintenance and upgrades. A recent major Congressional appropriation for digital enhancement of LC's collection was not shared with LLC, slowing LLC's transition from paper to digital resources.

In a rare victory during a Senate budget hearing in 2000, it was recommended that LLC's budget become a single line item to be separated from the general budget of LC as had been done for the Congressional Research Service. However, that transition has not been accomplished by LC financial planners, and no firm action date is predicted. The current Law Librarian of Congress, Rubens Medina, has proceeded with admirable diligence, but with limited power. LLC, as the smallest service unit of LC, simply does not have the negotiating position to compete for shared funds within LC. Recent ABA Standing Committee efforts produced encouraging prospects in the Senate and the House of Representatives for future budget planning. At best, however, those welcome actions may temporarily halt further decline. They will neither restore nor expand LLC services.

PRIOR ABA CONSIDERATION

Chaired by the late Sidney S. Sachs of Washington, D.C., and later by Hon. Charles “Mac” Mathias, the ABA Standing Committee reported to the House of Delegates in 1992 on the desirability and potential contributions of a NLL:

“A National Law Library would be a center for the effective delivery of legal information to the nation. Included would be collections (legal literature), bibliographic control, networking and research services. It would serve the Congress, state legislatures, federal, state and local government agencies, federal, state and local courts, law schools, state and county law libraries, law firms, business organizations, associations and the public. Its potential can be measured by the remarkable accomplishments of the National Library of Medicine and its support of research and development in the field of medicine and public health.”

Responding, the House of Delegates in 1992 adopted the following Resolution supporting the creation of a NLL:

“BE IT RESOLVED, That the Library of Congress continue to be arranged in two departments, a general library and a law library, and that any reorganization of the Library of Congress not change the status of the Law Library as a Department, or in fact or appearance alter the status, autonomy or function of the Law Library of the Library of Congress.

“BE IT FURTHER RESOLVED, That the American Bar Association encourages and supports the creation by an enactment of the United States Congress of a National Law Library as an independent, separate entity; that such National Law Library include the present Law Library of the Library of Congress; that the mission of the National Law Library be to serve Congress and the legal profession and to improve the nation’s access to legal information.”

The House of Delegates had initially adopted the first RESOLVED clause above in 1979. That action was taken in response to contemporary efforts within LC to dissolve LLC as an independent department and to integrate its collection into LC’s department of social science.

The House of Delegates had initially adopted the second RESOLVED clause above in 1981. The ABA at that time had expressed support for the creation of a National Law Library comparable to the National Library of Medicine. It was noted then that government libraries serving other professions had overcome management inattention by achieving independent budgeting status. Those libraries included the national libraries of Medicine, Agriculture and Education.

IMPLICATIONS OF A NATIONAL LAW LIBRARY IN WASHINGTON

While conditions within LLC have declined since 1992, the needs of the Congress, the legal profession and the public for reliable legal information, readily available and promptly delivered, have grown. So has the Bar's opportunity for leadership.

Regarding needs of the public:

Service to individuals – NLL can restore public access. It can restore library hours curtailed within LLC during the last decade. It can restore and assign personnel responsive to public inquiry, whether on Library premises or by electronic means; expand the content of the public web site to broaden access to material, including unique and historic material; and, offer research and reference guides to U.S., foreign and international law.

Service to the business community – NLL can expand the content of LLC's present public web site to meet business needs; expand GLIN to service multinational business requirements, and forge alliances with business to upgrade GLIN for service at higher levels for all participants; and offer tailored research projects and implement document delivery on a fee basis.

Regarding the needs of the profession:

Foreign and International Law - Congressional staffs, private attorneys, corporate counsel and academic libraries now rely on LLC as the lead source of foreign, international and comparative law in the United States. Globalization of commerce, enactment of statutes with foreign implications, and the spread of American law firms into other nations have enhanced those requirements. That aspect of the profession will be adversely affected by failure to sustain or improve LLC's unique capabilities in this area. Of particular importance is expansion of LLC's International Law Alerts to General Counsels of multinational companies, banks, airlines, etc. Also possible through a NLL would be generic research products requested by law firms and practitioners, including products made possible by joint research with multinational firms; creation of products tailored to individual requests, on a fee-for-service basis; and expansion of GLIN, including through associate memberships for firms and practitioners.

Digitalization - LLC tries to keep pace or lead in the growing digital exchange of legal information for all sectors of the bar, academia and the public. It has been a major supplier in the field. Failure to sustain that role will either curtail resources for the profession, or raise the price of access for lawyers who rely on them nearly universally in the United States. Digital access improves the availability of legal information and enhances currency and reliability. It is truly rare for digitized material to be "Not On Shelf".

Service to lawyers and legal organizations - In growing numbers, American and foreign lawyers are now required to visit Washington for professional reasons. To their surprise, no law library is readily available to them. There is no local District of Columbia bar library. Because of staffing limitations, LLC's stacks are closed. Few personnel can accommodate visitors, including lawyers; none are admitted after normal business hours. Private parties may not borrow LLC books. The Supreme Court library grants access only in rare cases. University libraries offer only restricted access, with limited borrowing privileges. Smaller facilities are present; most are outside the District of Columbia.

Service to law libraries and schools – NLL can partner with law librarians to create 24/7 collaborative digital references services; extend GLIN associate memberships to law libraries and schools; expand the content of the current public web site to increase access to NLL materials; implement electronic documentary delivery on a fee basis; and, restore stack access to qualified researchers.

Regarding opportunities for the Bar:

Enhance public perception of the legal profession – A visible leadership role in strengthening LLC will demonstrate the Bar's concern for the quality and availability of legal information; and for service to Congress, the legal profession and the public. Individuals are never so clearly heard as when they are overheard. It is right that the public overhear the profession's tangible concern for quality research in domestic, foreign and international laws and precedents, and for access to that resource by people from all walks of life.

Enhance relationships in Congress – Best arrive with a solution, not a complaint. Rarely does an interest group offer to share a responsibility Government hitherto has shouldered alone. NLL can open new channels for continuing communication with Congress, centered on such a shared responsibility.

STRUCTURE

Ideally structured, a NLL would be responsive to contrasting needs. Members of Congress and their staffs want factual data, comparative law and historical accuracy. Normally, LLC's own experts provide that information. The citizen novice, on the other hand, may require patient staff attention. The serving lawyer and law librarian may be working at deadline speed; the peer-review scholar may not. Passive users may be content with relevant bulletins; professionals facing crucial decisions will want hands-on exposure to current law. Most want access to digitized resources.

Thus, the NLL must be structured with flexibility and growth in mind. Existing Federal models vary. The national libraries of Medicine, Education and Agriculture have limited levels of private involvement. None are arms of the LC. All rely virtually entirely on Congressional appropriations. However, the National Library of Medicine is authorized to provide certain services to professionals and the public, for a fee. It does that, on a limited basis. It is also empowered to accept outright or conditional gifts supportive of its services. The National Library of Agriculture is empowered in the same way. Similar authority would be practical for a NLL. LLC is authorized to accept gifts, but solely in support of GLIN, and that, only recently.

The Standing Committee has addressed several alternative forms of shared funding and management. In one, selected Members of Congress, LC officers and independent designees (from the ABA and other supporting bodies) would comprise an independent Board of Regents. Federal appropriations would continue to support full (and improved) service to Congress, public institutions and individual citizens. Private donations would support other services to business, the legal profession, and organizations or members of the public needing *pro bono* assistance.

In another alternative, a new NLL would be maintained as part of LC. Congress and LC have not provided funding to meet service goals addressed here. However, recent routine budgeting discussions with Members of Congress and their staffs showed them to be amenable to, even solicitous of, contributions from the private sector to fund necessary functions of the law library. On the other hand, individual and corporate donors warrant assurance that their additional funding would actually be available to NLL for the delivery of expanded services, and would not merely replace current appropriations supporting minimal service, as is now the case.

Congress is familiar with certain concepts applicable here. The "matching funds" system, for example, might be appropriate and acceptable to both Congress and private sector contributors. Congress could commit to maintaining at least the current levels of appropriations to the Law Library of Congress through a separate line-item budget. In addition, Congress could provide additional funding to acquire or construct new facilities to be matched by private sector contributions. An appropriate matching fund formula would be established for the total targeted funds necessary to relocate and expand the new NLL.

WHAT'S NEXT

Prior to the ABA Board of Governors' approval, the Standing Committee held its inquiry within self-imposed limits. Now the Committee is engaged in wider exploration:

- Defining new or expanded services to Congress, to the Bar and to the public. Discussions are under way with lawyers, law firms, universities and other private and public organizations that would benefit from the services of a NLL and, in advance of that body's creation, from restored and enhanced services of the LLC.
- Exploring ways to broaden Bar and public awareness of LLC and its present and potential services.
- Conducting discussions with Members of Congress and their staffs, members of the Judiciary, and other Federal officials regarding structure, services, governance and financial contribution. Prime on that list is the highly respected leadership of the Library of Congress.
- Enlisting advice and support from interested and qualified professional and business organizations, universities, foundations, associations and individuals regarding the future services, structure, operation, governance and funding of the future NLL.
- Exploring costs required to restore full LLC services; to provide new services contemplated in this Preliminary Discussion; and to enable moderate physical expansion, including preservation of LLC's rare book collection.
- Undertaking preliminary assessment of private funding sources to support a NLL.

Interested individuals and organizations are invited to contact the ABA's Standing Committee on the Law Library of Congress through its Staff Director, Amy Horton-Newell. Ms. Horton-Newell may be reached at the ABA's offices in Washington, D.C.

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