



AMERICAN BAR ASSOCIATION

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Statement of the

HONORABLE WILLIAM ORTON

on behalf of the

AMERICAN BAR ASSOCIATION

submitted to the

SUBCOMMITTEE ON THE LEGISLATIVE BRANCH

COMMITTEE ON APPROPRIATIONS

of the

UNITED STATES HOUSE OF REPRESENTATIVES

on the subject of

THE LAW LIBRARY OF CONGRESS

May 7, 2008

Madam Chairwoman, Ranking Member Latham, Members of the Subcommittee:

I am Bill Orton, former member of the U.S. House of Representatives from 1991 through 1997, and I currently serve as a member of the American Bar Association Standing Committee on the Law Library of Congress. At the request of ABA President William H. Neukom, I appear before you today on behalf of the Association's 413,000 members to deliver testimony on special funding issues facing both the Library and Law Library of Congress. Thank you for the opportunity to appear before you today, and I am happy to answer any questions at the conclusion of my statement.

As you may know, the Library of Congress was founded in 1800 as a resource for Members of Congress. It has since grown into an unparalleled public institution of staggering proportion, housing more than 130 million items in 90 collections, including books, periodicals, film, and audio recordings, in 470 languages. In 1832, a law was enacted further recognizing the special status and role of the Library's law collection, calling for its separation from the rest of the library, and thus creating the Law Department of the Library of Congress. The Law Library of Congress has since become the world's largest such repository, including more than 2.3 million legal volumes and periodicals. The magnitude of these priceless collections renders their value to our nation and the world, as well as the challenges to their daily administration, unique.

In 1932, in recognition of the vital importance of the Law Library of Congress to the administration of justice and the rule of law, the ABA formed a permanent committee to serve as the voice of the legal profession concerning the Law Library's ongoing development and effective operation. Because of its residence within the Library of Congress system, and the interrelationship among various Library collections, the American Bar Association supports the full and robust funding of both the Library and Law Library of Congress. It is with this commitment in mind that I convey to you both our deep appreciation for the support that the Library and the Law Library receive each year, as well as criticism for the relative cuts these grand institutions have endured. Such shortages do not merely represent the loss of new or special projects. Even just the inability to fill certain core positions can undermine the libraries' daily operations and the aspirational mission on which each was formed.

As it relates to the Law Library of Congress, this difference between what is required and what is received affects not only the Members of Congress, but also the Law Library's fast-growing list of clientele. The Law Library of Congress has been thought to serve the branches of state and federal government; the legal profession; universities and law schools; corporate law departments; and the general public. Today, with its massive collection and the launch of auspicious initiatives such as the Global Legal Information Network (GLIN), comprised of laws and other legal information from contributing nations, the Law Library of Congress is recognized as the ultimate source of international trade law and an anchor for the rule of law, worldwide.

As American corporations have discovered, the Law Library of Congress has become the "mother lode" of reliable information on foreign and comparative law. It is precisely those fields to which a growing number of lawyers – government and private – are turning to support American enterprise abroad, as well as foreign investment here at home. New business establishment, labor laws, and transportation rules are in the specialized knowledge of selected

Law Library staff, a staff whose looming succession can best be implemented with assured budget sums at hand. Such resources, however, also serve to support the cultural status of the Rule of Law. When Afghanistan was liberated from Taliban rule, it was the Law Library of Congress that located and provided to the Afghani people a preserved copy of their constitution and laws. Other collections within the larger Library of Congress further promote global stability and security. For example, it was in the social studies collection that the only known copy of the autobiography of Osama bin Laden was found.

Yet, despite these impressive accounts, the Library of Congress still must engage in an unenviable priority-setting process with no one department receiving the funding it truly needs, including the Law Library. Over the past 30 years, the ABA has on five occasions adopted formal resolutions intended to help protect the integrity of the Law Library in the face of some budget-saving proposals. The first such resolution, adopted by the ABA House of Delegates in 1979, countered an effort by the Library of Congress's Director of Library Services to terminate the Law Library of Congress as its own department and make it a mere subdivision under another. The result was a letter from the chair of the Oversight Committee, reminding that the status and location of the Law Library were decisions reserved for the United States Congress, alone. Another ABA proposal in 1992 advanced by former Congressman Charles "Mac" Mathias, then chair of our Standing Committee, proposed transforming it into an independent National Law Library as a means, in part, of protecting it from an effort to make it part of the social studies collection. It is out of this historic context that our protectionism of the Law Library has grown – not as a self-serving proposition of the organized bar but in defense of its institutional mission.

That said, we hold the current Librarian of Congress, Dr. James Billington, in very high regard. Under his inspirational leadership, the Library of Congress has not only entered but moved to the forefront of the digital age, increasing the access and relevance of the Library collection to all. As with other portions of the Library collection, he has been a supporter of the Law Library to the extent his available funding allows. Consequently, we are not now advocating for an independent National Law Library. Nevertheless, we believe that one way we can best serve the interest and efforts of the Librarian and Law Librarian of Congress is by supporting a greater transparency in the appropriations process, promoting greater accountability of the Congress's commitment to each of the libraries' success. We believe one particular means of doing this would further provide a necessary mechanism for attracting private source funding from those whom the Law Library serves. I will return to this in a moment.

We are sensitive to the fact that the appropriations process can represent for many a zero-sum shell game, taking from the right hand what it gives to the left. Over the years, however, the Librarian of Congress has leveraged synergies among the collections and staff in adapting to funding and resource challenges. This also means that if one of the contributing departments of the Library must absorb a cut, it will have a disproportionately adverse impact on the Library's overall operation. Accordingly, we urge you to refrain from an analysis that equates supporting one department to the detriment of the others since this would effectively punish the Library of Congress for its stretch for efficiency at a time when Congress is too often called upon to provide enhanced funding to more poorly-managed endeavors. Unlike other requests for support, we are not calling for the enrichment of the Law Library of Congress at the expense of other projects

and programs under your review. We are advocating for the restoration of what has been taken from it over time, and to equip it to fully serve the function for which it was created 175 years ago.

Consider, for example, that despite an ongoing commitment from the Librarian of Congress to dedicate surplus funds to reduce the Law Library's backlog in cataloguing and classification, nearly one-third of the Law Library's volumes remained uncatalogued, accessible only to select Law Library staff. Save for special funds made available by the Congress a few years ago, the Law Library would still be without adequate resources to fully implement the model K classification system, a system it helped develop and which serves as the standard for law libraries nationwide. In harsh reality, there have been moments when qualified observers feared the Law Library was at risk of becoming a museum. We agree with the observation of Dr. Rubens Medina, Law Librarian of Congress, that "[t]he law demands an unforgiving margin of currency." Contrast that statement with the dilemma, until very recently, in which the Law Library's periodicals and loose-leaf subscriptions – which provide the most current analysis and status of the laws – were as much as one year out of date. Standard law library practice entails delay of no more than one week, preferably three days. In this way, our world class institution may operate as only a second-class law library.

There are other consequences, as well. Turnover in Law Library senior staff – especially experts in foreign law – has meant a drop in the efficiency of operation as new staff is trained and this is presuming ample funding has been provided to fill all vacated positions. Accompanying this, a loss of institutional knowledge of the collection impedes proper classification. Further, the escalating cost of acquisition for new volumes and scholarly periodicals, and preservation of older ones, is slowly putting those critical materials beyond the Law Library's reach or protection. Given the state of the current collection, it would seem that even the cost-effective move to broader digitization of the Law Library's collection would require greater resources than it can currently afford.

One remedy would be to fully fund the Library of Congress. Until that happens, reliable solutions for funding both the Library of Congress and the Law Library of Congress at appropriate levels have proven elusive. While we would prefer a simpler solution than legislation, we believe following years of deliberation that the most practical albeit imperfect means of providing the required transparency and accountability to improve matters was advanced by Senator Ted Stevens, i.e., to create, and require for the future, an independent line item and budget authority for the Law Library of Congress in the federal budget of the Library of Congress. That way Congress would have a clearer understanding of the relationship between funding provided and the operational status of the Law Library, as well as provide greater public transparency as to the federal commitment to both the Library's and the Law Library's success.

Accordingly, we have been working with Representative Zoe Lofgren on legislation that would propose just such an approach, as well as additional measures to bring the Law Library collection current and enhance the level of services it is able to provide. For example, one matter under Representative Lofgren's consideration arose from our appearance before the Committee on House Administration in October 2007. Following our testimony at that time, Committee members inquired whether the bar was willing to help with the funding challenges facing the

Law Library of Congress, to which we responded emphatically yes. Consequently, the congresswoman is considering language to authorize a private-public foundation to support the Law Library's ongoing projects. We do want to be clear that these deliberations have included consultation with the staff of the Library of Congress who oppose the budget line item and authority for the Law Library. We remain committed to exploring with them other creative solutions to these issues. However, for the reasons I have stated and until such an alternative is advanced, we ask for your support of these efforts including support for the private public partnership as it may develop and grow.

We further seek your support for one additional request: a special appropriation to the Law Library. We understand that the Herculean task of bringing the collection current would require a comparatively modest \$3.5 million to cover the necessary staff and other resources. Of course, we would ask that you support this request but without imposing a damaging offset to what we understand to be an already-stretched Library of Congress budget. The backlog within the Law Library is the product of difficult funding decisions each year, and it would be unfortunate if the funding problems were merely displaced to another important collection.

We believe it is important to emphasize that we also have been willing to explore non-financial contributions to these efforts. During a productive meeting with the Librarian of Congress and key members of his staff in January of this year, we discussed our mutual interest in organizing volunteers, such as from law firms and law libraries, who would each donate months of their time to aid with the catalogue and classification backlog at the Law Library. We had received warm support from the community as we presented this concept. However, in a subsequent conversation with Library staff, we learned that this effort was likely insufficient given the need for highly-trained professionals experienced in the catalogue and classification of foreign language law materials in their native tongue. Given the nature of the work, we understand this project would require the commitment of three full-time employees for a period of at least several years. While we will continue to explore opportunities for providing support to this critical project from within the legal community, it is untenable that the nation's Law Library operates below what the law's currency requires. Accordingly, we urge you to support the additional \$3.5 million to begin these efforts as soon as possible.

Supporting the Law Library in these ways can help achieve stability for GLIN, too. An element of Dr. Billington's powerful initiatives for information's digital future, GLIN is a searchable digital database comprised of laws and legal materials from a growing list of more than 30 member nations and has been well understood by Members of Congress to be a way of monitoring government solutions in other lands. Targeted in recent years was GLIN's transition to a private foundation, funded by its growing number of member nations or authorized national and international bodies. However, GLIN's accelerated growth has made such transition impractical for the time being. Continued funding beyond the minimum required to maintain the network has been sought in order to safely cross that bridge without losing momentum. We would ask that you support any such requests when presented.

I thank you for your consideration of our concerns and proposed solutions. I respectfully request that this formal statement be made part of the hearing record and I look forward to answering any questions you may have.