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98TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 98-685

STATE JUSTICE INSTITUTE ACT OF 1983

APRIL 12, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 4145]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4145) to aid State and local governments in strengthening and improving their judicial systems through the creation of a State Justice Institute, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

This legislation authorizes the creation of a State Justice Institute to administer a national program for the improvement of state court systems. In keeping with the doctrines of federalism and separation of powers between the three branches of government, the Institute would be an independent federally-chartered corporation accountable to Congress for its general authority but under the direction of state judicial officials as to specific programs, priorities and operating policies.

The goal of the legislation is to assist states in developing judicial systems that are more accessible, efficient and just (1) by bringing minimal national and financial resources to bear on problems that affect state courts nationally, but are beyond the resources of individual states, and (2) by providing a mechanism by which the Congress can appropriately consider the role of state courts when legislating on issues impacting on both the federal and state judicial systems.

The legislation is premised on the belief that improvement in the quality of justice administered by the states is not only a goal of fundamental importance in itself but will contribute significantly to important federal objectives including a reduced rate of growth in the caseload of the federal judicial system.

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In pursuit of these goals, the legislation authorizes the expenditure of $20 million in fiscal year 1985, $25 million in fiscal year 1986, and $25 million in fiscal year 1987.

BACKGROUND

State courts not only process virtually all the cases in our state-federal judicial system [1] but under the supremacy clause [2] share with the federal courts responsibility for protecting the rights of all citizens under the Constitution and laws of the United States.

State courts, of course, existed before the federal courts; and the federal Constitution, in explicitly providing for only the United States Supreme Court, anticipated that state courts would be the courts of original jurisdiction for federal as well as state law questions. State courts, in fact, did hear federal question cases for the first 100 years of our national life. It was not until the Judiciary Act of 1875 that these cases were moved to the federal courts.[3]

But despite the continuing growth of the federal system, state courts remain the courts "that touch our citizens most intimately and much more frequently" and it is from "personal experiences as litigants, jurors, witnesses or spectators that the vast majority of our populace makes its judgment as to the strengths and weaknesses [and] . . . the very fairness of our judicial system." [4]

Historically, then, our state and federal judicial systems have been closely related and there is every reason to believe this relationship will continue. One modern scholar, for instance, believes the administration of justice "is increasingly becoming an undivided whole, a seamless web," [5] because of the increasing overlapping of jurisdictions between courts of the states and courts of the Union. A state court judge has observed that the "... futures of state and federal judiciaries are inextricable." [6] Reiterating these views, a Justice of the United

[1] Data compiled by the National Center for State Courts indicates that 98.8 percent of current cases are handled in state courts. This figure is cited by Nora Blair, statistician for the Center's National Court Statistics Project, in a memorandum dated Apr. 16, 1979, on file at the Center's headquarters in Williamsburg, Va.

[2] The supremacy clause (Article VI, clause 2) of the United States Constitution provides:

> This Constitution and the laws of the United States which shall be made in pursuance thereof: and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

It also should be noted that in their oaths of office, state judges, as well as federal, are sworn to support the Constitution of the United States.

[3] The Judiciary Act of 1875 is presently codified at 28 U.S.C. § 1331. From a more detailed explanation, *see* statement by Chief Justice Robert J. Sheran (Minnesota) before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice on "State of the Judiciary and Access to Justice," 95th Cong., 1st Sess. (1977) at 187. It also should be noted that all Article III Federal Courts are courts of limited jurisdiction and that state courts are the only courts of general jurisdiction. *See* statement of Chief Judge Theodore R. Newman, Jr., District of Columbia Court of Appeals, at hearings of the Senate Judiciary Subcommittee on Jurisprudence and Governmental Relations on the "State Justice Institute Act," 96th Cong., 2d Sess. (1980) [hereinafter referred to as the Senate Hearings].

[4] Statement of Chief Justice Lawrence H. Cooke (New York) before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice on the "State Justice Institute/Annual Message of the Chief Justice (1980)," 96th Cong., 2d Sess. (1980) at 54–55 [hereinafter referred to as House Hearings (1980)].

[5] *Id.* at 22 (statement of Professor Daniel J. Meador).

[6] Statement of Justice Robert F. Utter (Washington) before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice on the State Justice Institute Act of 1983, 98th Congress, 1st Sess. (1983) at 52 [hereinafter referred to as House Hearings (1983)].

States Supreme Court has noted: "state courts no less than federal are and ought to be the guardians of our liberties." [7] In view of this fact, the failings of the state judiciaries at any level cannot be separated from the concerns with justice at the Federal level.[8]

In 1979 this point was made convincingly by a special Task Force of the Conference of (State) Chief Justices. "The fact that the courts in this country are set up as two separate systems," the Task Force found, "does not mean that federal interest is lacking in the quality of justice delivered by state courts, any more than local control of medicine and education indicates a lack of federal interest in their quality." [9]

Noting that decisions of the United States Supreme Court have increasingly directed the conduct of state civil and criminal proceedings, and that the federal government in most civil cases is "completely dependent upon state judges to implement fundamental federal policies," the Task Force concluded that "the federal government has an interest in ensuring that state judges are able adequately to apply the United States Constitution and Congressional enactments when called upon to do so." [10]

This is true, as the Task Force noted, whether federal issues before a state judge arise under the supremacy clause or under concurrent state-federal jurisdiction that results from Congressional enactment.[11]

In addition to their obligations under the supremacy clause and concurrent jurisdiction, the Task Force also pointed to the important role state courts play in the achievement of a broad range of federal objectives that arise because state legislation or administrative rules are required to implement federal law.

Such objectives, to cite a few, include the 55 mile per hour speed limit, employment opportunity, clean air standards, aid to dependent children, nuclear power plant siting and school lunch programs.

In these fields, too, the Task Force observed, federal policy is dependent upon the ability of state courts to effectively apply federal law.[12] The Task Force also pointed to the increasing number of federal criminal cases being diverted to state courts because of pressures placed on federal district courts by the Speedy Trial Act as well as

[7] Brennan, State Constitution and The Protection of Individual Rights, 98 HARV. L. REV. 489 (1977).

[8] *Id.* at 29. *See also* Senate Hearings, *supra* note 3, at 7 (statement of Prof. Frank J. Remington).

[9] *See* "Report from the Task Force on a State Court Improvement Act" to the Conference of Chief Justices, May 1979, hereinafter referred to as the Task Force Report. The Report is printed in the Senate Hearings, *supra* note 3, at 135, and in the House Hearings (1980), *supra* note 4, at 205.

[10] *Id.*

[11] In developing this point, the Task Force stated in part: "Except in habeas corpus cases, low federal courts do not generally have the power to review the actions of state courts. The only way to review a state court's decision involving a preemption question or involving a federal constitutionality question is by appeal or certiorari to the United States Supreme Court. If certiorari is denied, as it is in the vast majority of cases, there is no federal review. And review by appeal is in practice very little different from certiorari. Thus, in the vast majority of civil cases decided by state courts involving a federal constitutional question or one of federal preemption, there is no meaningful review by any federal court and the federal government is therefore completely dependent upon state judges to implement fundamental federal politics."

The Task Force also noted that state courts have an obligation to apply federal law in situations which do not involve state law at all. "This is true," the Task Force states, "with respect to Congressional legislation whenever there is concurrent state and federal jurisdiction." *See* discussion on these points in the Task Force report, Senate Hearings, *supra* note 3, at 146–51.

[12] *Id.*, pp. 151–2.

efforts to limit federal enforcement to specific categories of major crimes.[13]

Although these observations may have been considered somewhat novel when made in 1979, experiences since then have confirmed their validity.

At least two legislative proposals—both of a significant nature and both with prospects of being enacted into law—point to the delicate balance found between state and federal courts.

The first is the proposed Product Liability Act which was endorsed by the Senate Commerce Committee late in the 97th Congress. The bill sets forth a federal statute in the field of product liability law, thereby eliminating the tort laws of the states in this area. Judicial review of the federal law would, however, be left to the courts of the various states. The proposal would not create any new federal question jurisdiction. The Conference of Chief Justices has observed that the proposed Products Liability Act ". . . represents a major federal intrusion into state legal and judicial affairs with unknown consequences of vast potential for the federal system." [14]

A second bill is the Armed Career Criminal Act, which would authorize federal prosecution and trial of an armed felon facing a third charge of robbery or burglary in the state courts. If it had not been for the President's pocket veto of the omnibus crime bill, which included the proposal, it would have become law during the 97th Congress.

Both of these bills, by proposing federal solutions to complex civil and criminal issues in the state courts, show how inextricably mixed are the federal and state interests involved here.

Creation of a State Justice Institute would assist state courts in meeting their increasing obligations under both state and federal law by providing funds for necessary efforts that cannot be funded by individual states, such as national programs with broad application to all, or numerous, states. These include national clearinghouse, technical assistance, education research and training that provide the most cost-effective basis for developing and sharing expertise and experience on a broad range of efforts essential to the modernization of state court systems. Because courts, particularly in states with unified systems, are becoming big business, these include adoption and maintenance of sound management systems with efficient mechanisms for planning, budgeting and accounting, the use of modern technology for the managing and monitoring of caseloads, and the development of reliable statistical data.

Assistance also would be provided to state systems seeking means to improve methods for the selection and retention of qualified judges, to conduct educational and training programs for judges and judicial personnel,[15] to reduce legal costs while improving citizen access to the judicial process, to increase citizen involvement in dispute resolution, to guarantee greater judicial accountability, and to structurally reorganize outdated judicial systems.

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[13] *Id.*, pp. 157–9.

[14] House Hearings (1983), *supra* note 6, at 52.

[15] In congressional testimony, the Chief Justice of the State of Virginia observed that ". . . judicial education is one of the most pressing needs of the day." *See* House Hearings (1983), *supra* note 6, at 55 (statement of Harry L. Carrico).

While reliable data on the caseloads of state court systems has not been available historically,[16] it is clear these systems have been subjected to the same complex of forces that have led to burgeoning caseloads in the federal courts. State caseloads have become so burdensome, in fact, as to threaten a breakdown of the judicial systems in major metropolitan areas.

The problems facing state systems are varied and long-standing. They involve structural and managerial shortcomings as well as qualitative factors in the performance of the basic judicial functions. But as various as the problems may be, they tend to be shared by state courts throughout the nation and are amenable to a solution through shared national resources if made available on a continuing basis. An importnt start at providing continuing services has been made by the National Center for State Courts, a nonprofit organization headquartered in Williamsburg, Virginia and operating out of regional offices throughout the country. But the work of the Center is now threatened due to the end of funding for the Law Enforcement Assistance Administration which has been the Center's principal source of financial support.[17]

The work of the highly respected National Judiciary College, a nonprofit educational institution, located in Reno, Nevada, is similarly threatened. There is an important goal of improving the delivery and quality of judicial education. A representative of the American Bar Association told the subcommittee: "It is an antiquated notion that one may simply don a judicial robe, often equipped with only law school training and limited experience in the practice of law, to become a competent judge." [18] The work of the College—which has issued over 12,000 certificates to judges of every state in the nation—has had a significant impact on the delivery of justice at the state level.

The making available of federal funds through the State Justice Institute to such entities as the National Center and the Judicial College, as well as other nonprofit entities, could be a rewarding investment for the federal government. Such funding is, of course, not mandated by the proposed legislation and, it goes without saying, that such funding must occur only within the legislative strictures of the State Justice Institute Act.

In his testimony at House hearings on the State Justice Institute Act, former Assistant U.S. Attorney General Daniel J. Meador cited a Department of Justice study indicating that state courts had received some 225 to 325 million dollars from the Law Enforcement Assistance Administration between 1968 and 1978 for major improvement projects. Without this federal funding, he said, "most of the significant

[16] It is only in recent years that reliable national totals on state court caseloads have begun to be available through the National Court Statistics Project cited in *supra* note 1.

[17] This point was recently confirmed by Senate Majority Whip Ted Stevens who, in offering an amendment to the 1984 Commerce, Justice, and State, and the Judiciary Appropriations bill (H.R. 3222) to provide a $2,500,000 justice assistance grant to the National Center observed:

> At a time when our State court systems are facing substantially increased demands on their facilities and resources, the National Center for State Courts has shown itself to be a vital force in assisting all our States in coping with these demands. It is essential to the court systems in every State that the National Center for State Courts be allowed to continue its work.

See 139 CONG. REC. S14427 (daily ed., Oct. 21, 1983). Senator Stevens' amendment passed. In the 1984 Commerce, Justice, and State and the Judiciary Appropriations bill (H.R. 3222), the Senate also allocated funds to the National Judicial College.

[18] House Hearings (1983), *supra* note 6, at 80 (statement of Jack Etheridge).

improvements in the state courts throughout the country would not have taken place." [19]

In view of this past federal support, Professor Meador added, creation of the proposed State Justice Institute "does not represent any new or radical departure from already established federal-state relationships. The State Justice Institute—far from incorporating any new concepts or creating any new federal monetary program—would simply represent an improved, sounder, and more efficient means of providing fiscal support to the efforts of state judiciaries to bring about improvements and to stay abreast of ever-changing conditions in society." [20]

"From a historical perspective," he added, "the creation of such an entity would be a natural next step in the evolution of the state courts' relationship to the federal government." [21]

State courts would not be the only beneficiaries of creation of a State Justice Institute. Benefits also would flow to the federal judicial system." [22]

The "traffic" of ideas about court management, procedural reform and judicial administration can and should be directed from one court system to another. "Ideas developed in one should, in theory, naturally flow to the other." [23] Due to the fact that state judges are more numerous and that these judges derive their authority and jurisdiction from fifty state constitutions which are not uniform, state courts are often more flexible and innovative than their federal counterparts.[24] The state courts act as a laboratory for experiments that might be later replicated, if the results initially are successful, to the federal courts. All that is needed is an effective communication device, such as the State Justice Institute.

The relationship between state and federal courts has always been complementary, and not adversial. This relationship, as noted above, is deeply imbedded in the Constitution which not only made federal law binding on state courts but left the adjudication of federal question cases to the existing state court systems. This continuing and growing interdependence, now including federal adjudication of state law questions under diversity of citizenship jurisdiction, should not be the basis for one system adding to the burden of the other. Weaknesses in state courts are often translated in terms of increased federal court case filings. As eloquently stated by the Chief Justice of the United States, Warren E. Burger:

> Should our people ever lose confidence in their state courts, not only will our federal courts become more and more overburdened, but a pervasive lack of confidence in all courts will develop. All courts, federal and state, rely upon public trust and public confidence. Their integrity is the key to their validity.[25]

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[19] *See* House Hearings (1980), *supra* note 4, at 21.
[20] *Id.* at 20–21.
[21] *Id.* at 20.
[22] *See* House Hearings (1983), *supra* note 6, at 63 (statement of Honorable Elmo J. Hunter).
[23] *Id.* at 70 (statement of Honorable Warren E. Burger).
[24] *Id.*
[25] *Id.* at 68.

In short, any improvement to a state court helps not only to inspire public trust and confidence in government as a whole, but also to reduce the workload burdens on the federal courts.

HISTORY OF THE LEGISLATION

The 1967 Report of the President's Commission on Law Enforcement and Administration of Justice [26] gave birth to the concept of federal budgetary support for state court systems. That report specifically emphasized federal assistance to the states in the areas of law enforcement and corrections, thereby placing the administration of such a program within the United States Department of Justice. Congress carried forth the report's emphasis on law enforcement and correctional problems by enacting the 1968 Omnibus Crime Control and Safe Streets Act, which created the Law Enforcement Assistance Administration (LEAA). Since its short decade of life (1969 to 1978), LEAA provided some $6.6 billion in assistance to the states.[27]

But the Act did not initially provide specific authority for the funding of judicial programs and this oversight was not corrected until Congress amended the Act in 1976 to provide a statutory basis for judicial participation in LEAA's block grant program. These amendments were designed to help deal with problems raised by the Conference of Chief Justices. The judiciary's complaints were stated in a series of resolutions adopted by the Conference of Chief Justices.[28]

In general, these resolutions made the point that federal funding for state court programs presented a special set of issues that should be dealt with outside the framework of support for the executive branch components of the criminal justice system. In particular, they protested control by executive branch agencies at both the state and federal levels of funds allocated to judicial projects; the difficulty in obtaining funds for projects that involved the civil as well as criminal functions of the courts; and the small percentage of LEAA's block grant funds allocated to judicial programs.

These problems and related issues of concern to state judiciaries have been under discussion for the past seven years before subcommittees of the House Judiciary Committee. Spokesmen for the Conference of Chief Justices testified on the issues in 1976 and 1979 at hearings on reauthorization bills for LEAA and in the 1977 hearings on diversity jurisdiction and Access to Justice.

When efforts to obtain appropriate amendments to the LEAA act failed, the Conference, in August 1978, appointed its Task Force on a State Court Improvement Act to make recommendations by which federal funding of efforts to improve the administration of justice in

[26] "The Challenge of Crime in a Free Society," report by the President's Commission on Law Enforcement and Administration of Justice, Washington, D.C. (1967).

[27] *See* "Federal Law Enforcement Assistance: Alternative Approaches," Congressional Budget Office (April 1978), p. 34. Other federal sources of assistance to state courts are outlined in "Alternative Sources for Financial and Technical Assistance for State Court Systems," National Center for State Courts (Northeastern Reg. Off. 1977). They include: traffic court grants from the National Highway Safety Administration, grants under the Department of Labor's CETA program, capital improvement grants under the Department of Commerce's Economic Development Administration, grants under the Department of HEW's National Institutes, personnel development grants under the Intergovernmental Personnel Act (U.S. Civil Service Commission), research grants from the National Science Foundation, etc.

[28] The more recent of these resolutions are in the Senate Hearings, *supra* note 3, at p. 127.

the several States can be accomplished without sacrifice of the independence of State judicial systems." [29]

In due course, the Task Force reported a series of recommendations back to the Conference of Chief Justices. To be precise, the report of the Task Force was submitted to the Conference in August 1979 and was unanimously approved. The report became the framework from which legislative proposals to create a State Justice Institute evolved.

Thus, the legislation was developed by state judicial officials themselves to deal with the problems they perceived in their existing relationship with the federal government. It is in no respect a federal initiative to be imposed on state courts. Rather, it was designed by state judges and court administrators to deal specifically with violations of the separation of powers inherent in the now extinct LEAA program; to encourage improvement of courts on a system-wide basis, in a manner consistent with their interrelated civil and criminal functions; and to protect the independence of state courts to the fullest extent possible.

The fact that the State Justice Institute Act has been unanimously endorsed by the Conference of Chief Justices, which is composed of the highest judicial officers of the 55 states and territories and the District of Columbia, attests to its conformity with the requirements for judicial independence. This fact was underscored in House testimony during the 96th Congress by Senator Howell Heflin of Alabama who said the Act "offers a clear congressional recognition of the separation of powers principle in the function of state governments and the Constitutional requirement of an independent judiciary which is essential for any program of federal assistance. As a former State Supreme Court Justice, I know full well the importance of an independent judiciary and I could not support legislation which infringes on that independence in any way." [30]

Within a short time of its birth, legislation to create a State Justice Institute was introduced in both the House and Senate. The Senate held a total of three days of hearings during 1979 and 1980.[31] Amendatory improvements were made in the Senate Judiciary Committee (and Subcommittee on Jurisprudence and Governmental Relations). Under the leadership of Senator Howell Heflin—the bill's chief sponsor and floor manager—the legislation passed the Senate in the waning days of the 96th Congress.[32] Although the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice held hearings [33] and favorably reported the Senate bill with amendments, time ran out and the legislation did not achieve final enactment.

[29] *See* Senate Hearings, *supra* note 3, at 129; *see also* House Hearings (1980), *supra* note 4, at 207. The Task Force was headed by the Honorable Robert F. Utter (Chief Justice of the State of Washington). Other members were: Chief Justice James Duke Cameron; Chief Justice William S. Richardson; Chief Justice Robert C. Murphy; Chief Justice Robert J. Sheran; Chief Justice Neville Patterson; Chief Justice John B. McManus, Jr.; Chief Justice Arno H. Danecke; Chief Justice Joe R. Greenhill; Chief Justice Albert W. Barney; Chief Justice Bruce F. Beilfuss; Mr. Walter J. Kane; Mr. Roy O. Gulley; Hon. Arthur J. Simpson, Jr.; Mr. William H. Adkins II; Mr. C. A. Carson III; Mr. John S. Clark.

[30] *Supra* note 4, at 13.

[31] *See* Senate Hearings, *supra* note 3.

[32] S. 2387, 96th Cong., 2d Sess., passed the Senate unanimously by voice vote on July 21, 1980. *See* 126 Cong. Rec. S9443–S9446 (daily ed., July 21, 1980). *See* also S. Rep. No. 96–843, 96th Cong., 2d Sess. (1980).

[33] *See* House Hearings (1980), *supra* note 4. *See* also H.R. 6709 and S. 2387, 96th Cong., 2d Sess.

Similarly, during the 97th Congress, legislation to create a State Justice Institute passed the Senate but eluded passage by the House due to the lack of time at the end of the Congress.[34]

98TH CONGRESS

The legislation was reintroduced at the beginning of the 98th Congress in the form of H.R. 3403. A bipartisan and geographically diverse group of forty-two Members cosponsored the bill: Mr. Kastenmeier (for himself, Mr. Rodino, Mr. Mazzzoli, Mr. Fish, Mr. Moorhead, Mr. Kindness, Mr. Frank, Mr. Crockett, Mr. Hughes, Mr. Glickman, Mr. Hyde, Mrs. Schroeder, Mr. Sawyer, Mr. Synar, Mr. Sam B. Hall, Jr., Mr. Akaka, Mr. Lowry of Washington, Mr. Won Pat, Mr. Solarz, Mr. Edgar, Mr. Lehman of Florida, Mr. Stokes, Mr. Sunia, Mr. Leland, Mr. AuCoin, Mr. Oberstar, Mr. Pritchard, Mr. Feighan, Mr. Bonker, Mr. Mitchell, Mr. Hertel of Michigan, Mr. Simon, Mr. Bevill, Mr. Gonzalez, Mr. Smith of Florida, Mr. Franklin, Mr. Morrison of Washington, Mr. Reid, Mr. Hammerschmidt, Mr. Weiss, Mr. Morrison of Connecticut, and Mrs. Vucanovich).

A hearing was held on July 13, 1983, during which testimony was received from the Conference of Chief Justices, Justice Robert F. Utter (Supreme Court of Washington) and Chief Justice Harry L. Carrico (Supreme Court of Virginia), and the American Bar Association (Judge Jack Etheridge). Written statements were received by Congressman Les AuCoin, Chief Justice Warren E. Burger, and Judge Elmo B. Hunter (in behalf of the Judicial Conference of the United States).

Further statements have been received by the National Center for State Courts, the Institute of Court Management, the National Judicial College, the National Association of Trial Court Administrators, the National Association of Women Judges, and the National Association of Juvenile Court Judges. No opposition to the legislation has been expressed.

Although the United States Department of Justice opposed (largely for budgetary reasons) the legislation during the 97th Congress,[35] it has not conveyed any such statement of opposition during the 98th Congress.

On July 13, 1983, the subcommittee—a quorum of Members being present—approved the bill (H.R. 3403), as amended, by voice vote. The amendment, offered by Chairman Kastenmeier, cured several drafting problems that were identified during the hearing process and the 97th Congress. Most changes were of a technical or clarifying nature.

First, the responsibility of the State Justice Institute to study the jurisdiction of the State and Federal courts and to make recommendations thereon was deleted. This duty was not essential to the establishment of the Institute, and if Congress deems appropriate such a study, it could be assigned to a National Study Commission appointed solely

[34] S. 537, 97th Cong., passed the Senate—once again unanimously by voice vote—on Aug. 10, 1982. See 128 Cong. Rec. 10109 (daily ed., Aug. 10, 1982). *See* also H.R. 2407, 97th Cong., 1st Sess.

[35] *See* House Hearings (1983), *supra* note 6, at 261 (statement of Jonathan C Rose).

for that purpose. Second, the amendment redrafted the section of the bill relating to the President's appointment of the Board. As drafted, H.R. 3403 only provided a mechanism for the initial appointments. The bill did not provide guidance to the President on how to fill vacancies. The amendment cured this drafting omission. Third, the amendment clarified that State Supreme Court approval of an application for funding must be "consistent with State law." Fourth, the amendment extended the section relating to lobbying to "constitutional amendments" and any referendum at the State level. Fifth, the amendment made a technical change in the bill's reference to the "Accounting and Auditing Act of 1950" which was recently recodified in title 31, United States Code. Last, the amendment conformed the bill to requirements in the Budget Act.

The bill, as amended, was reported in the form of a clean bill. On October 18, 1983, H.R. 4145 was introduced; once again, forty-two Members cosponsored the bill.

On February 28, 1984, the full committee considered H.R. 4145, and after general debate, ordered the bill reported favorably by voice vote.

STATEMENT

H.R. 4145 recognizes the substantial federal interest in seeking to maintain the quality of justice in state courts. The bill also recognizes the past difficulties that have arisen with federal assistance to state courts and attempts to correct them.

To do so, this legislation creates a private nonprofit corporation known as the State Justice Institute. The stated purpose of the Institute is "to further the development and adoption of improved judicial administration in state courts in the United States." To accomplish this the Institute shall, among other things, direct a national program of assistance by providing funds to state courts, national organizations which support and are supported by state courts, and any other nonprofit organization that will support and achieve the purposes of this legislation.

The Institute shall be supervised by a board of directors, consisting of eleven voting members. The board of directors is charged with the responsibility of establishing the policies and funding priorities of the Institute, issuing rules and regulations pursuant to such policies and priorities, awarding grants and entering into cooperative agreements to provide funds to state court systems, as well as other duties consistent with its supervisory function.

A clear Congressional recognition of the principles of federalism in the functioning of state governments and the Constitutional requirement of an independent judiciary is essential for any successful program of federal assistance. Therefore, H.R. 4145 provides that funding decisions for court improvements are made through the independent State Justice Institute by a board of directors that is composed primarily of representatives of state judiciaries. Six judges and one state court administrator will serve on the board along with four members from the public. The President shall appoint the judges and court administrator from a list of at least fourteen individuals submitted by the Conference of Chief Justices. The President may reject

such list and request submission of another list.[36] Prior to communicating with the President, the conference shall solicit and seriously consider the recommendations of all interested organizations and individuals concerned with improving the delivery of justice at the state level. Thus, the legislation respects the fine line between federal executive branch autonomy in the appointment process and the independence of the judicial branch at the state level.

Because its board of directors possess a working knowledge of state judiciaries, the State Justice Institute will be able to set priorities and policies for the distribution of federal funds to state court systems based upon established judicial priorities and needs rather than upon assumed needs as perceived by federal or state executive agencies. Decisions by the board will thus be made after a realistic appraisal of the need and merit of services rendered.

The executive and administrative operations of the Institute shall be performed by an executive director. The executive director is to be appointed by the board of directors and shall serve at the pleasure of the board. The director shall also perform such duties are are delegated by the board.

Discretionary federal funds that are available to achieve the kind of assistance to state courts that is contemplated by H.R. 4145 are presently administered by a variety of bureaus and subdivisions of the federal government. By giving the State Justice Institute the authority to award grants and enter into cooperative agreements or contracts to insure strong and effective state courts, the bill reflects the Committee's desire to avoid duplicative and overlapping efforts by the various federal funding sources by providing a clear route of access for state court planners. The responsibility of the State Justice Institute to establish priorities in the use of federal funds will allow state court systems to receive federal assistance based on a coordinated high priority basis rather than a basis of priorities established separately by various federal agencies. A more effective and consistent use of federal funds will result.

H.R. 4145 authorizes the State Justice Institute to award grants and enter into cooperative agreements or contracts in order to, among other things, conduct research and demonstrations, serve as a clearinghouse and information center, evaluate the impact of programs carried out under this act, encourage and assist in the furtherance of judicial education, and to be responsible for the certification of national programs that are intended to aid and improve state judicial systems. The act specifies a variety of programs that will be eligible for assistance from the Institute including those proposing alternatives to current methods of resolving disputes, court planning and budgeting, court management, the use of non-judicial personnel in court decisionmaking, procedures for the selection and removal of judges and other court personnel, education and planning programs for judges and other court personnel, and studies of court rules and procedures. By authorizing the Institute to provide financial assistance to state courts

[36] This provision, changed from bills introduced in previous Congresses, is designed to remove constitutional doubts about compelling the President to appoint persons whom he considered unsuitable for the position. *See* letter from Hon. Robert A. McConnell to Hon. Peter W. Rodino, Jr. (July 29, 1981), footnote 17, reprinted at House Hearings (1983), *supra* note 6, at 254, 259–60.

"to assure each person ready access to a fair and effective system of justice," the Act reflects the Committee's intention of not making distinctions between the civil, criminal and juvenile functions of courts regarding the use of funds. Courts will thus be able to undertake the kinds of programs that will have a beneficial impact on the judiciary as a whole, rather than couching them as primarily intended to improve only the criminal justice system.[37]

Equally important, because of the federal recognition of the separate and independent nature of state judiciaries, H.R. 4145 removes the competition between state judiciaries and state executive agencies for federal assistance. By directing a national program of assistance specifically for the improvement of state courts, and by providing for judicial input into funding decisions, H.R. 4145 will create a much more favorable climate for the exercise of the judiciaries' proper role in planning and administering any expenditures in their respective state court systems.

It is important to recognize that, while state and local courts will be the principal recipients of assistance under this Act, H.R. 4145 also recognizes the contributions made by existing national organizations that serve state judicial systems, notably the general support activities of the National Center for State Courts, and the educational programs of the National Judicial College and the Institute for Court Management. These organizations have been extremely important in bringing national resources and perspectives to bear on matters of critical concern to all state court systems and their activities could receive continuing support from the State Justice Institute. The research activities of the Institute for Judicial Administration and the American Judicature Society also illustrate the kind of assistance needed by many states. At the same time, it should be noted that the State Justice Institute would not duplicate the role of any national organizations that presently serve state judicial systems. These organizations are private in nature; they do not presently possess and are not soliciting the broad functions of the State Justice Institute. In short, their relationship with the State Justice Institute will be complementary rather than competitive.

In sum, the State Justice Institute would provide funds for research and development programs with national application which would be beyond the resource of any single judicial system. It would build on previous experience, but would insure that any federal support is administered in the best and most efficient way possible to produce continued state court improvement. The State Justice Institute would furnish a sound basis of support for the national organizations that have been successful in providing support services, training, research and technical assistance for state court systems. By establishing a mechanism such as the State Justice Institute to provide financial assistance to the state courts, it is not the commission's intent to suggest that primary responsibility for maintenance and improvement of state courts does not remain with the states themselves. The State Justice Institute would not fund or subsidize ongoing state court operations, but rather would spotlight problems and shortcomings of our state

[37] The Committee made a similar decision in the Dispute Resolution Act, Pub. Law 96–190, 94 Stat. 25 (1980). *See* H. Rept. No. 96–492 (Part II), *reprinted at* [1980] U.S. Code Cong. & Adm. News 24.

judiciaries, provide national resources to assist in correcting them, and make the appropriate state judicial officials responsible for their solution. Because it would work through responsible officials of the state courts themselves, the Institute would stimulate and support court improvement without creating a large administrative bureaucracy or an in-house professional staff. Even though federal assistance to state courts would be modest compared to the basic financial support given them by state legislatures, federal financial contribution through the State Justice Institute can provide a "margin of excellence," and thus improve significantly the quality of justice received by citizens who are affected by state courts.

In addition to its court improvement efforts, the Institute would fill a critical void by representing state courts in future national policy decisions that will affect the nation's total justice system. This role was discussed in the House hearings by Chief Justice Robert F. Utter of Washington who said the Institute:

> Could appropriately attend to the broad collective interests of state judiciaries as these become involved with federal interests under our dual system of state and federal courts. The most obvious of these are jurisdictional issues including federal jurisdiction in diversity of citizenship cases. But there are developing issues, not readily perceived, which we feel will require a national response by state courts if we are to retain our proper role relative to the federal system.[38]

A similar view has been expressed by Chief Justice Warren E. Burger in a letter to Chairman Peter W. Rodino, Jr., of the House Judiciary Committee. Chief Justice Burger wrote, ". . . creation of a State Justice Institute is an appropriate way in which to assist state courts and simultaneously strengthen the doctrine of federalism." [39] Enactment of the legislation, he added, "Can only enhance and promote constructive coordination between our state and federal court systems." [40]

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

The short title is the "State Justice Institute Act of 1983.

Section 2. Definitions

This section defines terms used in the Act.

Section 3. Establishment of Institute; Duties

The State Justice Institute is established as a private nonprofit corporation to promote development and adoption of improved methods of judicial administration by state court systems in order to strengthen and preserve the role of state courts in our dual state-federal judicial system. The private, nonprofit organizational structure was chosen to assure administration of the Institute in a manner respecting (1) the

[38] *See* House Hearings (1980), *supra* note 4, at 43.
[39] *See* House Hearings (1983), *supra* note 6, at 72.
[40] *Id.*

separation of powers doctrine, and (2) the independence of state courts within the federal system. The Institute may, by decision of its Board of Directors, decide the state in which it will be incorporated. The Institute is conferred a specific mandate. First, it is authorized to provide funds to state courts, national organizations working directly in conjunction with state courts to improve the administration of Justice, as well as to other nonprofit organizations working in the field of judicial administration. The Institute's goal is to attempt to ". . . assure each person ready access to a fair and effective system of justice." Second, the Institute is authorized to cooperate with the federal judiciary on matters of mutual concern including the allocation of jurisdiction between the state and federal systems. Third, the Institute is asked to promote recognition of the importance of the separation of powers doctrine to an independent judiciary. Fourth, and last, the Institute is authorized to promote training and education programs for judges and court personnel but is specifically barred from duplicating functions adequately being performed by existing nonprofit organizations such as the National Center for State Courts, the National Judicial College, the Institute for Court Management, or any other nonprofit organization (including universities).

Section 4. Board of Directors

All activities of the Institute will be under the direction of an 11-member Board of Directors appointed by the President and confirmed by the Senate. The Board will establish policy and funding priorities, approve all project grants, and appoint and fix the duties of the Executive Director who will serve at its discretion. The Board will make recommendations on matters in need of special study and coordinate activities of the Institute with those of other government agencies.

To assure that the Institute's programs will be responsive to the most urgent needs of the courts the Board will consist of six state judges and one state court administrator appointed by the President from a list of at least fourteen candidates submitted by the Conference of Chief Justices. The Conference, composed of the highest judicial officers of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, and the Virgin Islands, must consult with organizations and individuals concerned with the administration of justice in the states before making its recommendations to the President. The President may reject a panel of candidates submitted to him and request another list of qualified individuals from the Conference. A similar procedure is provided for filling vacancies on the Board. Four nonjudicial public members of the Board will be appointed directly by the President from among individuals representing various fields of experience in the administration of justice. It is the Committee's view that the judicial members will be representative of trial as well as appellate courts and rural and urban jurisdictions, and that the public members will be selected on a bipartisan basis.

The Board will select a Chairman from its own voting membership and will serve without compensation. The initial Board will be the incorporators of the Institute and determine its location. The Board is given specific authority to communicate its views on matters affecting state courts to all government departments, agencies, and instrumen-

talities whose activities may affect the operation of state court systems. All meetings of the Board (or any subgrouping of the Board or any council established by the Board), subject to the provisions of 5 U.S.C. § 552b, shall be open to the public. Regular meetings of the Board shall be held quarterly, and special meetings can be held from time to time by call of the chair or pursuant to petition of seven members.

Section 5. Officers and Employees

The Executive Director is authorized, subject to policies set by the Board, to conduct the executive supervisory and administrative operations of the Institute. Political tests or qualifications shall not be used in selecting, appointing, or promoting, or taking any other personnel action with respect to employees of the Institute, or in selecting or monitoring any grantees receiving financial assistance from the Institute. The Institute shall not be considered a department, agency or instrumentality of the federal government but the Office of Management and Budget may review and comment on its annual budget request to Congress. Officers and employees of the Institute are not to be considered employees of the United States except for determination of fringe benefits provided for under Title 5, United States Code, and for freedom of information requirements under Section 552 of Title 5.

Section 6. Grants and Contracts

The Institute is authorized to award grants and enter into cooperative agreements or contracts on a priority basis with, (1) state and local courts and their agencies, (2) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of state governments, and (3) national nonprofit organizations for the education and training of judges and court personnel. Funds also can be provided for projects conducted by institutions of higher education, individuals, private businesses and other public or private organizations (including bar associations) if they would better serve the objectives of the act. These funding priorities assure that the Institute will work primarily through the courts themselves and the national court-related organizations established to provide research, demonstration, technical assistance, education, and training programs meeting the demonstrated needs of state judiciaries as operating agencies. Thus, it assures that the Institute will be a small developmental and coordinating agency rather than a large operating agency with its own in-house capabilities.

In keeping with the doctrine of separation of powers and the need for judicial accountability, each state's Supreme Court, or its designated agency or council, must approve all applications for funding by individual courts of the state and must receive, administer and be accountable for project funds awarded to courts or their agencies by the Institute.

The Institute is authorized to provide funds for joint projects with the Federal Judicial Center as well as other agencies for research, demonstration, education, training, technical assistance, clearinghouse, and evaluation programs. Funds may be used for fourteen specific types of programs including those which would propose nonjudicial

methods for resolving disputes; measure public satisfaction with court processes in order to improve court performance; and test and evaluate new procedures to reduce the cost of litigation. Other eligible programs would include those involving the use of nonjudicial personnel in court decision making; procedures for the selection and removal of judges and other court personnel; court organization and financing; court planning and budgeting; court management; the uses of new technology in record keeping, data processing, and reporting and transcribing court proceedings; juror utilization and management; collection and analysis of statistical data and other information on the work of the courts; causes of trial and appellate delay; methods for measuring the performance of judges and courts; and studies of court rules and procedures, discovery devices and evidentiary standards.

The section also requires the Institute to monitor and evaluate its operations and the programs funded by it. Furthermore, the Institute shall provide for an independent study of the financial and technical assistance programs under the act. Such evaluation coupled with the independent study will provide the Committee with information necessary to satisfy its continuing oversight responsibilities.

Finally, section 6 requires that any state or local judicial system receiving funds from the Institute provide a matching amount equal to twenty-five percent of the total cost of the particular program or project. This requirement may be waived in exceptionally rare circumstances upon the approval of the chief justice of the highest court of the state and a majority of the Board.

Section 7. Limitations on grants and contracts

This section requires the Institute to insure that its funds are not used by recipients to support partisan political activity or to influence executive or legislative policy making at any level of government unless the Institute or fund recipient is responding to a specific request or the measure under consideration would directly affect activities under the act of the recipient or the Institute. There is a specific ban on the use of Institute funds to supplant state or local funds currently supporting a program or activity, routine operations of the courts or to build new court facilities or structures. Existing facilities may be remodeled only to demonstrate new architectural or technological techniques or to temporarily house personnel involved in demonstration or experimental programs. Due to the limited funding of the Institute, it is the view of the Committee that very little money will ever be used for any remodeling endeavors.

Section 8. Restrictions on activities of the Institute

The Institute is barred from participation in partisan political activities; or in litigation unless the Institute or a recipient is a party. There is also a bar on legislative lobbying unless the Institute is formally requested to present its views by a legislative body, committee, or member thereof; the Institute is directly affected by the legislation; or the legislation deals with improvements in the state judiciary in a manner consistent with the act. These restrictions on lobbying are consistent with the general purposes of the act which limit the Institute

to activities for improvement of the courts. They are not intended to bar the Institute, its officers or recipients, from expressing their views to legislative bodies or other government agencies on matters directly affecting the operations of the state court system.

Section 9. Special procedures

This section requires the Institute to establish procedures for notice and review of any decision to suspend or terminate funding of a project under the Act.

Section 10. Presidential coordination

This section authorizes the President to direct that appropriate support functions of the Federal Government be available to the Institute.

Section 11. Records and reports

This section authorizes the Institute to prescribe and require of funding recipients such records as are necessary to ensure compliance with the terms of the award and the Act.

Copies of all reports pertinent to the evaluation, inspection, or monitoring of any recipient shall be submitted on a timely basis to recipients. These reports shall be maintained in the principal office of the Institute for a period of at least five years and shall be available for public inspection; copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish. Last, this section requires that any non-Federal funds received by the Institute or a recipient be accounted for separately from Federal funds.

Section 12. Audit

This section requires an annual audit of Institute accounts which shall be filed with the General Accounting Office and be available for public inspection. It also provides that the Institute's financial transactions may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States. The Comptroller General will make a report on the audit, together with any recommendations deemed advisable, to the Congress and to the Attorney General. Similar auditing requirements are prescribed for recipients of funds from the Institute.

Section 13. Authorizations

This section authorizes $20,000,000 for fiscal year 1985, $25,000,000 for fiscal year 1986, and $25,000,000 for fiscal year 1987. The monies authorized for 1986 and 1987 are the same to indicate Congressional intent that the State Justice Institute will not be a constantly growing and expanding entity.

Section 14. Effective date

This section states that the provisions of this Act shall take effect on October 1, 1984.

OVERSIGHT FINDINGS

Oversight of the federal judicial system and the administration of justice is the responsibility of the Committee on the Judiciary. To the extent that there is a federal interest, this oversight may extend to the state court systems. During the 96th, 97th and 98th Congresses, the committee, acting through the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, held numerous days of hearings on the need to create a federal entity to administer a national program for the improvement of state court systems.

Pursuant to clause 2(l) (3) (A) of rule XI of the Rules of the House of Representatives, the committee issues the following findings:

It is the view of the committee that creation of a State Justice Institute would assist state courts in meeting their substantial obligations under both state and federal law by providing funds for endeavors that cannot be funded by individual states, or for innovations and improvements in individual state court systems. The committee further feels that state courts would not be the only beneficiaries of creation of an Institute. Benefits would also flow to the federal judicial system. In short, the relationship between state and federal courts—deeply embedded in our Constitution—is a complementary, rather than an adversarial, one. The State Justice Institute will promote that complementary working relationship.

NEW BUDGET AUTHORITY

In regard to clause 2(l) (3) (B) of rule XI of the Rules of the House of Representatives, the bill creates no new budget authority on increased tax expenditures for the Federal judiciary.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l) (4) of rule XI of the Rules of the House of Representatives, the committee feels that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

COST ESTIMATE

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the committee agrees with the cost estimate of the Congressional Budget Office.

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

Pursuant to clause 2(l) (3) (C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate on H.R. 4145 prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., March 15, 1984.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 4145, the State Justice Institute Act of 1983.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

MARCH 15, 1984.

1. Bill number: H.R. 4145.
2. Bill title: State Justice Institute Act of 1983.
3. Bill status: As ordered reported by the House Committee on the Judiciary, February 28, 1984.
4. Bill purpose: H.R. 4145 establishes the State Justice Institute (SJI) as a private nonprofit corporation intended to improve the judicial administration of state courts in the United States. The institute will award grants and contracts to state courts, nonprofit organizations, and other institutions to conduct research or develop improvements in judicial selection procedures, education and training programs for judges and court personnel, and state and local court systems. The activities of the SJI will be directed by an 11 member board of directors, to be appointed by the President. H.R. 4145 becomes effective on October 1, 1984. The bill authorizes the appropriation of $20 million for fiscal year 1985, $25 million for fiscal year 1986, and $25 million for fiscal year 1987.
5. Estimated cost to the Federal Government:

	Millions
Authorization level:	
Fiscal year:	
1984	-----
1985	$20
1986	25
1987	25
1988	-----
1989	-----
Estimated outlays:	
Fiscal year:	
1984	-----
1985	8
1986	23
1987	27
1988	11
1989	1

The costs of this bill fall within budget function 750.

Basis of estimate: The estimate assumes that the bill will be enacted in fiscal year 1984 and that the amounts authorized will be appropriated for each fiscal year. The spending rates assumed for the SJI are based on historical data from similiar programs. For the three years the SJI is authorized by the bill, an estimated $7 million would be spent on the salaries and expenses of the Institute. The remainder of authorized monies would be made available for research, grants, contracts, and cooperative agreements. CBO assumed that the grants and research funded by the SJI would be for a period of three years.

6. Estimated cost to State and local governments: State and local court systems will receive some of the SJI research grants, but it is not possible to estimate how much of the funds they would receive. The grants can be used to supplement or improve court operations, but cannot be used to support basic services.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Lloyd F. Bernard.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

COMMITTEE VOTE

H.R. 4145 was preported by voice vote, a quorum of Members being present.

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