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THE STATE JUSTICE INSTITUTE ACT OF 1981

JULY 31 (legislative day, JULY 8), 1981.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 537]

The Committee on the Judiciary, to which was referred the bill (S. 537) 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, reports favorably thereon with amendments and recommends that the bill as amended do pass.

STATE JUSTICE INSTITUTE ACT OF 1981, S. 537

I. PURPOSE

State courts share with Federal courts the awesome responsibility for enforcing the rights and duties of the Constitution and laws of the United States. Our expectations of State courts, and the burdens we have placed upon them, have increased significantly in recent years. Decisions of the United States Supreme Court, the enactment of wide-reaching legislation by the Congress, and the diversion of cases from the Federal courts, for example, have all taken their toll on State courts dockets and the workload of State judges and courts personnel.[1]

[1] Statement of Senator Howell Heflin, hearings held before the Subcommittee on Courts, Senate Judiciary Committee, May 18, 1981, p. 1. (It should be noted that at the hearing on S. 537 on May 18, 1981, the hearings from the 96th Congress on a similar bill (S. 2387) were incorporated into the record by reference.)

Today, State courts handle over ninety-six percent of all the cases tried in the United States.[2] It is, therefore, quite apparent that the quality of justice in the United States is largely determined by the quality of justice in our State courts. State courts remain the courts that touch our citizens most intimately and most frequently and it is their experiences in State courts as litigants, jurors, witnesses, or spectators that the vast majority of our citizens make their judgments as the strengths, weaknesses, and fairness of our judicial system.[3]

Moreover, there have been major changes in the mission of courts and judges, both in the State and Federal systems, over the last few decades. For instance, earlier in this century there was much argument as to whether judges' functions included an obligation to see that cases in their courts moved toward disposition in a regular and efficient manner. Today, however, problems of administration have taken their place alongside problems of adjudication as legitimate responsibilities of judges. Nearly everyone has come to acknowledge that judges have a duty to insure that their cases do not simply languish on the docket, but instead are moved to a conclusion with as much dispatch and economy of time and effort as practicable.[4]

We do not look with disfavor on the occurrence of any of these events, nor do our State courts shirk from the discharge of their constitutional duties. But it is appropriate for the Federal Government to provide financial and technical assistance to State courts to insure that they remain strong and effective in a time when their workloads are increasing as a result of Federal policies and decisions.

As the late Tom Clark, Associate Justice of the Supreme Court, once wrote, "Courts sit to determine cases on stormy as well as calm days. We must, therefore, build them on solid ground, for if the judicial powers fails, government is at an end." [5]

If we are to build our State courts on "solid ground," if we are to have State courts which are accessible, efficient, and just, we must have the following: structures, facilities, and procedures to provide and maintain qualified judges and other court personnel; educational and training programs for judges and other court personnel; sound management systems; better mechanisms for planning, budgeting and accounting; sound procedures for managing and monitoring caseloads; improved programs for increasing access to justice; programs to increase citizen involvement and guaranteed greater judicial accountability.

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[2] See the "Report to the Conference of Chief Justices" (hereinafter referred to as the Task Force Report), from the Task Force on a State Court Improvement Act of the Conference of Chief Justices, August 1979, p. 5. (The report also cites a memorandum from Nora Blair of the National Center for State Courts to Francis J. Taillefer, Project Director, National Courts Statistics Project, which suggests that 98.8 percent of current cases are handled in state courts.)

[3] Testimony of Justice Robert F. Utter, former Chief Justice of the Supreme Court of Washington, Chairman of the Task Force of the State Justice Institute Act of the Conference of Chief Justices, before the Subcommittee on Courts, Senate Judiciary Committee, May 18, 1981, pp. 4.

[4] Testimony of Maurice Rosenberg, Assistant Attorney General, Office of Improvements in the Administration of Justice, United States Department of Justice, before the Subcommittee on Jurisprudence and Governmental Relations, Senate Judiciary Committee, Nov. 19, 1979, pp. 50, 51. It should be noted that Mr. Rosenberg did not testify as a representative of the Justice Department nor the Office that he heads. Rather, his testimony reflects his personal beliefs and opinions based on his experience in court management.

[5] Clark, "Colorado at Judicial Crossroads," 50 Judicature 118 (December 1966).

S. 537 would be a major step toward the achievement of these goals. It creates a State Justice Institute to aid State and local governments in strengthening and improving their judicial systems. Such an institute—consistent with the doctrines of federalism and separation of powers that are essential to an independent judiciary—could assure strong and effective State courts, and thereby improve the quality of justice available to the American people.

II. HISTORY OF THE LEGISLATION

The concept of Federal financial support for State court systems had its origin in the 1967 Report of the President's Commission on Law Enforcement and Administration of Justice.[6] That report, however, placed the primary emphasis for 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 emphasis on law enforcement and correctional problems in the 1968 Omnibus Crime Control and Safe Streets Act,[7] which created the Law Enforcement Assistance Administration (LEAA). Since its inception through 1978, LEAA provided some $6.6 billion in assistance to the States.[8]

As Thomas J. Madden, General Counsel, Office of Justice Assistance, Research, and Statistics, United States Department of Justice, testified at hearings on S. 2387, there was a very low rate of participation by State courts during the early years of LEAA.[9] Mr. Madden gave three primary reasons as the basis for the lack of participation by State courts. First, early LEAA authorization legislation made few explicit references to courts, concentrating instead on the police and corrections aspect of the criminal justice system. Second, Congress gave little attention to the role of courts in the criminal justice system. Finally, the Separation of Powers doctrine limited active involvement by State courts in what was essentially a State executive branch planning program.[10]

Recently, the role of State courts has been recognized as an essential element in the administration of criminal justice, resulting in dramatic adjustments in the LEAA program which have allowed greater involvement by the judiciary. The Crime Control Act of 1976 [11] contained several provisions designed to increase participation of the judiciary in the LEAA program. Likewise, the Justice System Improvement Act of 1979,[12] building upon the strengths of the LEAA program, reauthorized and restructed the Justice Department's assistance program for State and local law enforcement and criminal justice improvement. LEAA has thus been the primary source of Federal funds going to State court systems, even though judicial programs

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[6] "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).
[7] 42 U.S.C. 3701 (Pub. L. No. 90–351).
[8] "Task Force Report," p. 28.
[9] Statement of Thomas J. Madden, General Counsel, Office of Justice Assistance, Research and Statistics, United States Department of Justice, hearings before the Subcommittee on Jurisprudence and Governmental Relations, Senate Committee on the Judiciary, Mar. 19, 1980, p. 96.
[10] Ibid.
[11] 42 U.S.C. 3701, et seq. (Pub. L. 94–503).
[12] 42 U.S.C. 3701, Note (Pub. L. 96–157).

have received only a small percentage of the LEAA funds that have been allocated.[13]

While LEAA has provided valuable assistance in many ways, State court systems have remained concerned about a Federal judicial assistance program administered by executive agencies of Federal and State governments.[14] As a result, in August 1978, the Conference of Chief Justices of the United States adopted a resolution authorizing a task force to "recommend innovative changes in the relations between State courts and the Federal Government and find ways to improve the administration of justice in the several States without sacrifice of the independence of State judicial systems.[15] That task force, the Task Force on a State Court Improvement Act, was headed by the Honorable Robert F. Utter, Chief Justice of the State of Washington.[16] The report of the task force (hereinafter referred to as the Task Force Report) was submitted to the Conference of Chief Justices in August 1979, and became the framework from which the State Justice Institute and S. 2387 evolved.

Senator Howell Heflin, as Chairman of the Subcommittee on Jurisprudence and Governmental Relations, held two days of hearings, which focused on the findings and report of the Task Force.[17] Specifically, the Subcommittee heard testimony as to the need for and feasibility of establishing a State Justice Institute. On March 5, 1980, Senator Heflin introduced S. 2387, the State Justice Institute Act of 1980. The bill was referred to the Committee on the Judiciary, which referred it to the Subcommittee on Jurisprudence and Governmental Relations. The Subcommittee held an additional day of hearings on March 19, 1980.

A total of twelve witnesses testified on S. 2387, including representatives of States judiciaries, State court administrators, the Conference of Chief Justices, the Federal Judicial Center, the National Center for State courts, and the Department of Justice. On May 15, 1980, the Subcommittee agreed unanimously to report the bill to the full Committee for further action. On June 24, 1980, the Committee on the Judiciary met, considered S. 2387, and ordered it reported after adopting two important amendments proposed by Senator Strom Thurmond.

On February 24, 1981, Senator Heflin introduced S. 537, the State Justice Institute Act of 1981. The bill was referred to the Committee

[13] The "Task Force Report," at p. 29, indicates that about 5 percent of the LEAA funds have been used for the improvement of State courts systems. It should be noted that this figure is limited to court programs specifically excluding programs designed for prosecutors, defenders, and general law reform.

Other sources of Federal funds going to State courts 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), and research grants from the National Science Foundation. See "Alternative Sources for Financial and Technical Assistance for State Court Systems," National Center for State Courts (Northeastern Reg. Off. 1977).

[14] "Task Force Report," p. 2.

[15] Ibid., p. 1.

[16] Other members of the Task Force were: Chief Justice James Duke Cameron; Chief Justice William S. Richardson; Chief Judge Robert C. Murphy; Chief Justice Robert J. Sheran; Chief Justice Neville Patterson; Chief Justice John B. McManus, Jr.; Chief Justice Arno H. Denecke; 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.

[17] The hearings were held on Oct. 18 and Nov. 19, 1979.

on the Judiciary, which referred it to the Subcommittee on Courts. The Subcommittee held hearings on S. 537 on May 18, 1981.

S. 537 is essentially identical to S. 2387, with a few exceptions.

First, S. 537 appropriates specific sums in order to implement the State Justice Institute.

Second, the Committee adopted a recommendation by the House Judiciary Subcommittee that the Institute be incorporated in the District of Columbia or "in any other State" as opposed to the District of Columbia only.

Third, it was the view of the Committee that the findings and purpose section of S. 2387 be reprinted in the report to accompany S. 537 but not be made part of the bill itself.

III. STATEMENT

A. The Federal interest

Any statement that addresses the issue of Federal funding for State court systems must begin with a discussion of whether a substantial Federal interest is involved. More specifically, such a discussion should center around whether the Federal Government has a direct interest in the quality of justice that is dispensed in State courts.

Under the Constitution of the United States, State courts share with Federal courts the awesome responsibility of enforcing the Constitution and the laws made pursuant thereto. In this regard, it should be noted that the objective of applying the Fourteenth Amendment of the United States Constitution to the States has been, in the words of Mr. Justice Cardozo, to preserve those principles "of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." [18]

Under our Federal system of government, the judiciary of this country is bifurcated into both State and Federal systems. This does not mean, however, that the Federal interest in maintaining the quality of justice delivered to the citizens of this country involves a form of justice dispensed by Federal courts only. On the contrary, there are no Federal courts required by the United States Constitution other than the Supreme Court. This reflects a fundamental belief held by the Framers that State courts could adequately handle all cases brought to them whether the issues were of primary concern to the States or to the Federal Government.[19]

Indeed today, as has been stated previously, State courts deal with approximately ninety-six percent of the litigated disputes in which the people of this country become involved, leaving little doubt that "the quality of justice in the nation is largely determined by the qual-

[18] *Palko* v. *Connecticut*, 320 U.S. 319, 58 S. Ct. 149 (1937). More recent decisions of the United States Supreme Court have held that the federal guarantee against being deprived of one's "liberty" without "due process of law" is, in many instances, dependent upon whether state law recognizes that its citizens have a liberty interest. Thus whether a citizen has a liberty interest in not being transferred from one correctional or mental health institution to another is dependent upon whether the state recognizes a right not to be transferred wihout reason. Task Force Report, p. 7, n. 5, see e.g., *Meachum* v. *Fano*, 427 U.S. 215 (1976) ; *Montagne* v. *Haymes*, 427 U.S. 236 (1976).

[19] "Task Force Report," p. 9, citing Redish and Muench, "Adjudication of Federal Causes of Action in State Court," 75 Mich. L. Rev. 311 n. 3 (1976) : "(T)he Madisonian Compromise of Article III . . . permitted but did not require the congressional creation of lower Federal courts. In reaching this result, the Framers assumed that if Congress chose not to create lower Federal courts, the state courts could serve as trial forums in Federal cases."

ity of justice in State courts," as the first of the findings of S. 2387 asserted.[20] From this evolves a clear and compelling Federal interest in assuring that the public maintains a high level of confidence in the Judiciary. As Mr. Maurice Rosenberg testified:

> Overwhelmingly, the public impression of justice is molded by their [sic] contacts with State courts, whether as litigants, as jurors, as witnesses, or as spectators. Also overwhelmingly, the level at which State courts perform determines whether Americans in fact have access to justice through the courts. Unquestionably, the Federal Government has a deep concern in these matters. If the citizens turn cynical about the prospects of obtaining justice from the courts, they will have little confidence in other institutions in the society.[21]

There is also a Federal interest in insuring the quality of justice in State courts due to the fact that State courts sit in judgment of Federal as well as State issues. The Supremacy Clause 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; anything in the Constitution of Laws of any State to the contrary notwithstanding." [22] State judges are thus required to consider whether a State statute or regulation is in conflict with the United States Constitution or with a Federal statute or regulation which preempts State law. Likewise, State courts are obligated to apply Federal law in situations which do not involve State law at all. As the Supreme Court held in *Claflin* v. *Houseman*, 93 U.S. 130 (1876), State courts can hear and decide cases which are strictly Federal if there is concurrent State and Federal jurisdiction: "If exclusive jurisdiction be neither express nor implied, the State courts have concurrent jurisdiction whenever, by their own Constitution, they are competent to take it." [23]

Although there are some categories of Federal legislation in which there is exclusive Federal jurisdiction,[24] most Congressional enactments have concurrent State and Federal jurisdictions. In this regard, two important things should be noted. First once the time limit for removal of a case brought in State court to the Federal court has passed, the State court is free from supervision or interference by the Federal courts. In such cases, the only review is by appeal or certiorari to the Supreme Court.[25] Second, the Supreme Court of the United States is incapable of reviewing the thousands of State court judgments in which Federal questions are raised. Given that the processes of appeal and certiorari to the United States Supreme Court are the only meaningful methods of Federal review of State court judgments. State courts are thus, as a practical matter, virtually tribunals of final

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[20] S. 2387, sec. 2(a)(1).
[21] Testimony of Maurice Rosenberg, Nov. 19, 1979, p. 52.
[22] United States Constitution, Article VI.
[23] 93 U.S. 130, 136 (1876).
[24] Categories in which Federal jurisdiction is exclusive include inter alia, bankruptcy, patent and copyright cases, Federal criminal cases, Securities Exchange Act cases, Natural Gas Act cases, and antitrust cases.
[25] The exception is with habeas corpus cases, in which lower Federal courts may review the validity, under the Constitution and laws of the United States, of a State criminal conviction, but only if the person convicted is "in custody."

resort. The implementation of fundamental Federal policies is therefore largely dependent upon State judiciaries.

In recent years, the three branches of the Federal Government have contributed significantly to the Federal interests involved in maintaining the quality of State courts in the delivery of justice to the American people. For instance, important Congressional policy objectives are often dependent upon the ability of State courts to aid in the implementation and enforcing of such legislation. As an inducement for States to pass legislation or adopt administrative rules which will further Congressional policy objectives. Congress frequently imposes conditions on Federal spending. The fifty-five mile an hour speed limit (induced by a condition on the spending of highway money), eligibility standards for aid to families with dependent children, nuclear powerplant siting, and school lunch programs are all examples of federally induced State legislation. Other Congressional enactments, such as the Speedy Trial Act,[26] have resulted in increased efforts to divert cases to State courts.

The executive branch of government has likewise established certain policies and guidelines that have resulted in increased State court dockets. In particular, the Department of Justice has requested State authorities to assume additional responsibility for the prosecution of some criminal matters now handled in Federal court, allowing Federal prosecutors to concentrate on other matters, such as large scale white collar crime cases.[27]

Perhaps the most significant increase of the responsibilities of State courts has come from the judicial branch of the Federal Government through decisions of the Supreme Court of the United States. On the one hand, many decisions have diverted cases to State courts in an effort to relieve the congestion on Federal Court dockets, thus maintaining the level of justice dispensed by Federal courts.[28] On the other hand, decisions of the Supreme Court have also increased the procedural due process protections guaranteed to citizens in criminal,[29] civil,[30] juvenile,[31] and mental health [32] proceedings. The result of these decisions has been an increase in the number of cases handled by State

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[26] 18 U.S.C. 3161, et seq.

[27] See the address of then Attorney General Griffin Bell to the midwinter meeting of the conference of State Court Chief Justices. It should be pointed out that in this address he also stated that he felt it appropriate for the Federal Government to share the increased financial burden that will be placed on the States as a result of this policy.

[28] For example see, *inter alia*, the following: *Stone* v. *Powell*, 428 U.S. 465 (1976), in which the court held that Fourth Amendment issues cannot be raised by Federal habeaus Corpus if the individual involved has had a full and fair hearing in the State; *Younger* v. *Harris*, 401 U.S. 37 (1971), and *Huffman* v. *Pursul, Ltd.*, 420 U.S. 592 (1975), which limited the authority of Federal courts to intervene in criminal or civil cases pending in State courts; and *Meachum* v. *Fano*, 427 U.S. 215 (1976), and *Montagne* v. *Haymes*, 427 U.S. 236 (1976), which held that Federal due process protections are often available only if there is a liberty interest involved which has been created by State law.

[29] Federal due process requirements have had a very substantial impact in State criminal procedures. The best illustration of this impact stems from the increased requirements for taking a valid guilty plea. These requirements have not only increased the amount of court time needed to take a valid guilty plea, but have also made it important that State courts develop adequate guilty plea procedures and that State court judges be better informed as to the procedural requirements than was formerly necessary. See statement of Senator Howell Heflin and response of Professor Frank Remington, Professor of Law, University of Wisconsin School of Law, at hearing before the Subcommittee in Jurisprudence and Governmental Relations, Senate Judiciary Committee. Oct. 18, 1979, p. 8.

[30] See Inter alia, *Fuentes* v. *Florida*, 407 U.S. 67 (1972) where the court held that a citizen cannot be deprived of a property interest created by State law without notice, a hearing, and other procedural due process safeguards; and *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), where the court held that State welfare benefits cannot be cancelled without a hearing and other due process protections.

[31] See inter alia. *In Re Gault*, 387 U.S. 1 (1967).

[32] See inter alia. *Wyatt* v. *Stickney*, 344 F. Supp. 373, 344 F. Supp. 387, 503 F. 2d 1305.

judiciaries as well as an increase in the procedural complexity of State court litigation requiring the development of new safeguards, more efficient procedures, and a much more intensive program of continuing education for members of the State judiciary.

The tremendous impact of Supreme Court decisions on State judiciaries was probably best described by Mr. Justice Brennan in the following statement:

> In recent years, however, another variety of Federal law—that fundamental law protecting all of us from the use of governmental powers in ways inconsistent with American conceptions of human liberty—has dramatically altered the grist of the State courts. Over the past two decades, decisions of the Supreme Court of the United States have returned to the fundamental promises wrought by the blood of those who fought our War between the States, promises which were thereafter embodied in our fourteenth amendment—that the citizens of all our States are also and no less citizens of our United States, that this birthright guarantees our Federal constitutional liberties against encroachment by governmental action at any level of our Federal system, and that each of us is entitled to due process of law and the equal protection of the laws from our State governments no less than from our national one. Although courts do not today substitute their personal economic beliefs for the judgments of our democratically elected legislatures, Supreme Court decisions under the fourteenth amendment have significantly affected virtually every other area, civil and criminal, of State action. And while these decisions have been accompanied by the enforcement of Federal rights by Federal courts, they have significantly altered the work of State court judges as well. This is both necessary and desirable under our Federal system—State courts no less than Federal are and ought to be guardians of our liberties * * *
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> Every believer in our concept of federalism, and I am a devout believer, must salute this development in our State courts * * *
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> * * * [T]he very premise of the cases that foreclose Federal remedies constitutes a clear call to State courts to step into the breach. With the Federal locus of our double protections weakened, our liberties cannot survive if the States betray the trust the Court has put in them. And if that trust is, for the Court, strong enough to override the risk that some States may not live up to it, how much more strongly should we trust State courts whose manifest purpose is to expand constitutional protections. With Federal scrutiny diminished, State courts must respond by increasing their own.[33]

The quality of justice guaranteed to all persons has indeed been a cornerstone of American society.[34] It is thus without question that the

[33] Task Force Report, p. 26, citing Brennan, "State Constitutions and the Protections of Individual Rights," 90 Harv. L. Rev. 489, 490–91, 502–03 (1977).

[34] It should be noted that the "establishment of Justice" was the second of six objectives listed by the Framers in the Preamble to the Constitution.

Federal Government has a substantial interest in maintaining the quality of justice at all levels of the judiciary. It therefore logically follows that there is also a substantial Federal interest in maintaining the quality of State courts. Certainly the Federal interest in the quality of State courts is at least as much as the Federal interest in the quality of health care and the quality of the educational system, both of which have benefited from substantial Federal contributions.[35] While Federal assistance to State courts should never replace the basic financial support given them by State legislatures, Federal financial contributions administered in a manner that respects the independent nature of the judiciary can provide a "margin of excellence" that would significantly improve the quality of justice received by citizens affected by State courts.

B. The experience of State courts with Federal financial assistance

Federal funds have, in fact, been channelled to State courts over the last decade, primarily through the Law Enforcement Assistance Administration. LEAA was created by the Omnibus Crime Control and Safe Streets Act,[36] and has been administered by the Department of Justice. Since LEAA was created twelve years ago, approximately $256 million from LEAA discretionary funds and approximately $344 million from LEAA Formula Funds (formerly Block Grant Funds) have been allocated for State court improvements.[37] However, because of budgetary cutbacks in the LEAA program, Federal funding to State courts have, for all intents and purposes, been discontinued.

State court systems have received substantial benefits from the use of LEAA funds. Many States have been able to implement important structural and organizational changes in their judiciaries. Likewise, numerous educational programs, including judicial colleges in several States, have been established. Reflecting on this record of accomplishment, the Task Force noted that "any review of the past ten years must conclude that LEAA has been the single most powerful impetus for improvement in State court systems.[38] Echoing these sentiments, the Honorable Robert J. Sheran, Chief Justice of the State of Minnesota, and Chairman of the Conference of Chief Justice's Committee on Federal-State Relations, testified that "remarkable improvements were made possible" by LEAA grants, and that had it not been for these improvements "State court systems would have foundered in the face of the massive increases in litigation in recent years." [39] Despite the achievements made possible by the use of LEAA funds, however, substantial conceptual and practical difficulties with this form of Federal assistance rendered the program less effective than it could or should have been.

First, there are serious difficulties with an arrangement whereby a department of the Federal executive branch, in this case, the Department of Justice, is in a position to influence by its funding decisions

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[35] For illustrations of the federal interest in the education, see *inter alia*, 20 U.S.C., secs. 351 and 1221e and 34 U.S.C., sec. 1501. For illustrations of the federal interest in the quality of health care, see generally title 42 of the United States Code.

[36] 42 U.S.C. 3701 (Pub. L. No. 90–351).

[37] Testimony of Thomas Madden, Mar. 19, 1980, p. 99.

[38] Task Force Report, p. 35.

[39] Testimony, Chief Justice Robert J. Sheran, at hearings held before the Subcommittee on Jurisprudence and Governmental Relations, Senate Judiciary Committee, Oct. 18, 1979, p. 21.

the programs by or in behalf of State and local courts.[40] This is particularly noteworthy in light of the fact that, because of the delicate separation of powers problems, control of the efforts of all Federal courts was removed from the Department of Justice and placed independently in the judicial branch of the Federal Government.[41] Certainly, the same threat to judicial independence exists in an arrangement, such as with LEAA, whereby an executive department determines both the type of programs to receive financial assistance and the specific courts or agencies to receive the funds.

Second, separation of powers problems arose within individual States because of the requirement that LEAA block grants to the States be administered by State planning agencies designated or established by the Governors of each State. The degree of success of any State court programs was thus directly related to the degree of cooperation received from executive branch planning agencies. As the Task Force stated:

> Reports from those States having strong judicial representation on the State planning agencies reflect general satisfaction with the quality of the funding support accorded judicial projects. Other States experienced paper representation rather than having a real voice in the program, and still others had no voice at all. The availability of Federal dollars for State court improvement often became more promise than reality and the price of competition, compromise and concensus has become too great for some. Indeed, even in those States where the judicial leadership has exercised its power effectively, there arose a growing concern about the propriety of an executive branch agency dictating the goals to be attained by a State's judicial agencies.[42]

The separation of powers problems and the threat to judicial independence are most evident when it is recognized that in all instances State courts must compete with executive agencies for any funds they are to receive. As the Task Force observed: "Whether viewed in terms of the block grant program administered through the States or the discretionary grant program run from Washington, the need for judicial competition with executive agencies in the LEAA programs has created practical and policy problems of immense proportions."[43]

State courts have had an additional problem in seeking LEAA funds because of the fact that the "Safe Streets Act" was designed as an effort to assist States in combating crime. With its emphasis on law enforcement and corrections, LEAA recognized—first by administrative interpretation and later by Congressional enactment—a program of Federal support to State courts only under the theory that State courts are a component of the criminal justice system.[44] This

[40] Testimony, Hon. Lawrence I'Anson, Chief Justice of the State of Virginia, at hearings held before the Subcommittee on Jurisprudence and Governmental Relations, Senate Judiciary Committee, Oct. 18, 1979, p. 4.

[41] Testimony of Justice Sheran, Mar. 19, 1980, p. 100.

[42] Task Force Report, p. 30.

[43] Task Force Report, p. 30. Testimony to this effect was also heard throughout the hearings on S. 2387. See specifically, the testimony of Chief Justice Sheran, Oct. 18, 1979, pp. 21, 22.

[44] It should be noted that despite the obvious fact that courts are an essential component of the criminal justice system, court programs were not specially provided for in the original LEAA enactment.

conceptual treatment of State courts resulted in two problems.

First, current Federal funding policy does not accord State judiciaries their proper place within our scheme of federalism. State courts are independent branches of State government charged with the responsibility of adjudicating various types of disputes between individuals and the State. Unfortunately, within the framework of LEAA-administered assistance, State courts have been seen as components of a criminal justice system conceived of primarily as an activity of the executive branch of government. But as Chief Justice I'Anson testified:

> Courts are not "components" of a criminal justice system but, in the criminal functions, stand as an independent third force between the police and the prosecutor on one side and the accused on the other. This is not to say that the judiciary cannot or should not cooperate with the executive branch in seeking improvements in criminal justice. Judges obviously do and should. But they should do so under conditions respecting the separation of powers.[45]

Second, funding courts only under the guise that they are compoments of the criminal justice system completely disregards the fact that in State judicial systems, the exercise of civil and criminal functions are inseparable. Any court improvements sought for the criminal functions of courts necessarily involve consideration of the civil functions as well. LEAA's focus on criminal justice has thus made it difficult for courts to undertake broadly based improvements which would best serve the total justice system, criminal as well as civil.[46] The problem was best stated by Chief Justice Sheran: "Efforts to separate criminal and civil jurisprudence in State court systems to comply with LEAA directives emphasizing measures to control crime lead to strained and unnecessary improvisations which are not cost effective."[47]

C. Findings and purpose

The Congress finds and declares that:

(1) the quality of justice in the Nation is largely determined by the quality of justice in State courts;

(2) State courts share with the Federal courts the general responsibility for enforcing the requirements of the Constitution and laws of the United States;

(3) in the Federal-State partnership of delivery of justice, the participation of the State courts has been increased by recently enacted Federal legislation;

(4) the maintenance of a high quality of justice in Federal courts has led to increasing efforts to divert cases to State courts;

(5) the Federal Speedy Trial Act has diverted criminal and civil cases to State courts;

(6) an increased responsibility has been placed on State court procedures by the Supreme Court of the United States;

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[45] Testimony of Chief Justice I'Anson, Oct. 18, 1979, p. 5.
[46] Ibid.
[47] Testimony of Chief Justice Sheran, Oct. 18, 1979, pp. 21, 22.

(7) consequently, there is a significant Federal interest in maintaining strong and effective State courts; and

(8) strong and effective State courts are those which produce understandable, accessible, efficient, and equal justice, which requires—

(A) qualified judges and other court personnel;

(B) high quality education and training programs for judges and other court personnel;

(C) appropriate use of qualified nonjudicial personnel to assist in court decisionmaking;

(D) structures and procedures which promote communication and coordination among courts and judges and maximize the efficient use of judges and court facilities;

(E) resource planning and budgeting which allocate current resources in the most efficient manner and forecast accurately the future demands for judicial services;

(F) sound management systems which take advantage of modern business technology, including records management procedures, data processing, comprehensive personnel systems, efficient juror utilization and management techniques, and advanced means for recording and transcribing court proceedings;

(G) uniform statistics on caseloads, dispositions, and other court-related processes on which to base day-to-day management decisions and long-range planning;

(H) sound procedures for managing caseloads and individual cases to assure the speediest possible resolution of litigation;

(I) programs which encourage the highest performance of judges and courts to improve their functioning, to insure their accountability to the public, and to facilitate the removal of personnel who are unable to perform satisfactorily;

(J) rules and procedures which reconcile the requirements of due process with the need for speedy and certain justice;

(K) responsiveness to the need for citizen involvement in court activities through educating citizens to the role and functions of courts, and improving the treatment of witnesses, victims, and jurors; and

(L) innovative programs for increasing access to justice by reducing the cost of litigation and by developing alternative mechanisms and techniques for resolving disputes.

(b) It is the purpose of this Act to assist the State courts and organizations which support them to obtain the requirements specified in subsection (a)(9) for strong and effective courts through a funding mechanism, consistent with doctrines of separation of powers and federalism, and thereby to improve the quality of justice available to the American people.

D. S. 537 and the State Justice Institute

S. 537 recognizes the substantial Federal interest in seeking to maintain the quality of justice in State courts. More importantly, however, the bill also recognizes the past difficulties that have arisen with Fed-

eral assistance to State courts and attempts to correct them. The concept of a State Justice Institute builds on the successes of past efforts to assist State courts while attempting to avoid the difficulties that have plagued previous assistance.

This legislation creates a private nonprofit corporation known as the State Justice Institute. The purpose of the Institute, as stated in this report, 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.

The Committee feels that a clear Congressional recognition of the separation of powers principle in the function of State governments and the Constitutional requirement of an independent judiciary is essential for any successful program of Federal assistance. Therefore, S. 537 provides that funding decisions for court improvements be 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. Thus, any fear of executive branch control over the use of Federal funds does not exist under S. 537.

A Board of Directors composed of representatives of State judiciaries also provides an important mechanism for establishing priorities for State court programs that are to receive Federal funds. By being supervised by a Board of Directors possessing a first hand, working knowledge of State judiciaries, the State Justice Institute will be able to set orders 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 as are delegated by the Board.

Discretionary Federal funds that are available to achieve the kind of assistance to State courts that is contemplated by S. 537 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, S. 537 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 precedence in the use of Federal funds will allow State court systems to receive Federal assistance based on a coordinated basis rather than established separately by various Federal agencies. Proven programs would thus be spread to more and more States and a more effective use of Federal funds will result.

S. 537 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 nonjudicial personnel in court decisionmaking, procedures for the selection and removal of judges and other court personnel, education and training 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 "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.

Equally important, because of the Federal recognition of the separate and independent nature of State judiciaries, S. 537 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, S. 537 will create a much more favorably climate for the exercise of the judiciary's 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, S. 537 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 would 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.

In sum, the State Justice Institute would provide funds for research and development programs with national application which would be beyond the resources of any single judicial system. It would build on the LEAA 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 Committee'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 spotlgiht problems and shortcomings of our State judiciaries, provide national resources to assist in correcting them, and make the appropriate State judicial officials responsible for their solution. Even though Federal assistance to State courts would be modest compared to the basis 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.

IV. SECTION-BY-SECTION ANALYSIS

Section 1—Short Title

This Act may be cited as the "State Justice Institute of 1981."

Section 2—Definitions

Section 2 contains the definition of various terms used throughout the Act.

Section 3—Establishment of Institute; duties

This section establishes the State Justice Institute as a private nonprofit corporation to provide improvements in State court systems in a manner consistent with the doctrines of federalism and the separation-of-powers. The Institute is authorized to provide funds to State courts and national organizations working directly in conjunction with State courts to improve the administration of justice, as well as other nonprofit organizations working in the field of judicial administration. The Institute also is assigned a liaison role with the Federal judiciary, particularly as to jurisdictional issues, and is authorized to promote training and education programs for judges and court personnel. The Institute is specifically barred from duplicating functions adequately being performed by existing nonprofit organizations such as the National Center for State Courts and the National Judicial College.

Section 4—Board of Directors

This section provides for an eleven-member Board of Directors to direct and supervise all activities of the Institute. The Board will

establish policy and funding priorities, approve all project grants, and appoint and fix the duties of the Executive Director. The Board will make recommendations on matters in need of special study and coordinate activities of the Institute with those of other governmental agencies.

The Board will consist of six 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 after consultation with organizations and individuals concerned with the administration of justice in the States. Four nonjudicial public members will be appointed directly by the President. All members will be selected subject to the advice and consent of the Senate. They must represent a variety of backgrounds reflecting experience in the administration of justice. It is expected the judicial members will be representative of trial as well as appellate courts and rural and urban jurisdictions. The Board will select a Chairman from its own voting membership and will serve without compensation.

Section 5—Officers and employees

This section authorizes the Executive Director to conduct the executive and administrative operations of the Institute under policy set by the Board. It provides that the Institute shall not be considered an instrumentality of the Federal Government but permits the Office of Management and Budget to review and comment on its annual budget request to Congress. It also provides that 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

This section establishes the Institute's funding authority and outlines the types of programs it can support. It provides that the Institute will, to the maximum extent possible, conduct its operations through the courts themselves or the national court-related organizations established to provide research, demonstration, technical assistance, education, and training programs. Thus, it assure that the Institute will be a small developmental and coordinating agency rather than a large operating agency with its own in-house capabilities. The Institute is authorized to award grants and enter into cooperative agreements or contracts with State and local courts and their agencies, national nonprofit organizations controlled by and operating in conjunction with State court systems, and 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 if they would better serve the objectives of the act. 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. Such funds may be used for fourteen specific types of programs including those which would propose alternatives to current 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 decisionmaking; 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 court 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 provide for monitoring and evaluation of its operations and of programs funded by it.

Finally, this section requires that any State or local judicial system receiving funds administered through 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, however, 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 fund is not used 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.

Section 8—Restrictions on activities of the Institute

This section bars the Institute itself from participation in any litigation unless the Institute or a grant recipient is a party. This section also bars any lobbying activity unless the Institute is formally requested to present its views by the legislature involved, 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.

Further, this section specifically prohibits the Institute from interfering with the independent nature of State judicial systems and from allowing sums to be used for the funding of regular judicial and administrative activities of any State judicial system other than pursuant to the terms of any grant, cooperative agreement, or contract with the Institute, consistent with the requirements of the Act.

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. It 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 1983, $30,000,000 for fiscal year 1984, and $40,000,000 for fiscal year 1985.

Section 14—Effective date

This section states that the provisions of this Act shall take effect on October 1, 1981.

V. COMMITTEE ACTION

On June 22, 1981, the Subcommittee on Courts agreed unanimously to report S. 537 to the full Committee for further action after adopting an amendment. The amendment changed the authorization under section 13 from $20,000,000 for fiscal year 1982, $30,000,000 for fiscal year 1983, and $40,000,000 for fiscal year 1984 to $20,000,000 for fiscal year 1983, $30,000,000 for fiscal year 1984, and $40,000,000 for fiscal year 1985. On July 21, 1981, the Committee on the Judiciary met, considered S. 537, and ordered it reported as amended.

VI. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11, rule XXVI, of the Standing Rules of the Senate, it is hereby stated that the Committee has concluded that the bill will have no direct regulatory impact. The State Justice Institute is merely a funding agency and has been specifically designed to prevent any regulation of the beneficiaries of funds administered

through it. However, the Institute may prescribe the keeping of records with respect to funds provided by grant or contract. Also, the Institute may require such reports as it deems necessary from any grantee, contractor, person, or entity receiving financial assistance under this Act regarding activities carried out pursuant to this Act. Furthermore, the Institute shall conduct, or require, each grantee, contractor, person or entity receiving assistance under this Act to provide for an annual fiscal audit. The accounts of the Institute shall also be audited annually by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is taken.

This Act will not have any affect on the personal privacy of individuals.

VII. COST OF LEGISLATION

In accordance with paragraph 11, rule XXVI of the Standing Rules of the Senate, the Committee offers the Report of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 27, 1981.

HON. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 537, the State Justice Institute Act of 1981.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 537.
2. Bill title: State Justice Institute Act of 1981.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary, July 21, 1981.
4. Bill purpose: The bill establishes the State Justice Institute as a nonprofit corporation intended to improve the administration of State courts in the United States. The Institute would award grants to conduct research into court systems and procedures, judicial selection, and support the education and training of judges and court personnel. The bill requires that in the cases where State or local judicial systems receive grants from the Institute, the recipient must provide an additional amount of moneys equal to 25 percent of the grant. The Institute would be governed by an 11-person Board of Directors appointed by the President for 3-year terms, and an Executive Director. The bill becomes effective on October 1, 1981, though no funds for the Institute are authorized until fiscal year 1983. The bill authorizes $20 million for

fiscal year 1983, $30 million for fiscal year 1984, and $40 million for fiscal year 1985.

5. Cost estimate:

	Millions
Authorization level:	
Fiscal year:	
1982	---
1983	$20
1984	30
1985	40
1986	---
Estimated outlays:	
Fiscal year:	
1982	---
1983	4
1984	25
1985	41
1986	20

The costs of this bill fall within budget function 750.

6. Basis of estimate: The estimate assumes that the amounts authorized in the bill will be appropriated and that they would remain available until expended. In estimating annual outlays, CBO estimated that the Institute would require approximately 35 personnel to administer and monitor grants, and to carry out duties of the Institute. Over the three years the Institute is authorized by the bill, an estimated $9.5 million would be expended on salaries and expenses of the Institute. The balance of the authorized moneys would be made available for grants, contracts, or cooperative agreements. Based on similar judicial grant programs, it was assumed that the grants awarded by the Institute would be for a period of two years.

No funds were authorized for or would be expended in fiscal year 1982.

Outlays for fiscal year 1983 reflects the time required for the hiring of staff, the development of rules and regulations, and the solicitation of initial grant requests. The estimate of outlays for fiscal years 1984, 1985, and 1986 reflects spending patterns experienced by similar judicial grant programs.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Jeffrey W. Nitta.

10. Estimate approved by:

C. G. Nuckols
(For James L. Blum,
Assistant Director for Budget Analysis).

ADDITIONAL VIEWS OF SENATOR CHARLES GRASSLEY

It is not without some reluctance that I oppose the passage of S. 537, and thereby the creation of the State Justice Institute. Senator Heflin and the other supporters of this measure have presented persuasive arguments in support of its creation. In short, it appears to be a good idea. Unfortunately, in these times, good ideas are just not enough to justify creation of a new Federal program.

After years of viewing the Federal treasury as a cornucopia whose bounties were endless, the Congress has apparently, finally, and reluctantly come to recognize the three great truths of new Federal programs. First, they cost money; money we don't have; and money we must borrow, currently at interest rates approaching twenty percent. Every new dollar we authorize today moves us another dollar away from achieving a balanced Federal budget. Having just reported out by a lopsided margin a constitutional amendment to require a balanced budget, this committee should be especially sensitive to that fact, but unfortunately isn't.

Second, new Federal programs always cost less than old Federal programs. Federal programs have a way of growing from tiny acorns into mighty oaks. Authorizations which increase over the years at a rate greater than the rate of inflation is the rule, not the exception. As we can see in S. 537 the authorization for fiscal year 1983 is "only" $20,000,000. That is followed by a 50 percent increase the following year to $30,000,000; and a 33 percent increase for fiscal year 1985 to $40,000,000. One can only guess what the price tag will be for this good idea in 1986, 1987, and beyond.

Third, new Federal programs are always easier to create than to cut. Again, recent experience of the Judiciary Committee exhibits this point very well. Under Budget Reconciliation we were directed to trim $60 million from programs which we authorize. When the Committee met to make those cuts, what resulted was a very stormy three hour session in which every member tried to protect his own pet project. The Committee failed in cutting the requested $60 million. We could only bear to cut $50 million and made up the difference by increasing fees by $10 million. After that experience one would think that the Committee would have given some deliberation as to the advisability of authorizing $80 million in new spending over the next three fiscal years, but that was not to be the case. This bill was reported out in the blink of an eye without consideration of its budgetary impact.

It is for the reasons enumerated above, that I must stand apart from a majority of my colleagues on this Committee and oppose the creation of this new program. Again, I cannot take issue with the arguments presented by Senator Heflin in support of this bill, but I do not view those arguments as dispositive. We cannot create a new program in this Congress without recognition of the economic conse-

quences of our actions. The recognition of those clear consequences—increasing the deficit today, increasing the deficit more tomorrow, and making control of the budget more difficult in the future—requires me to oppose the passage of S. 537.

CHARLES GRASSLEY.

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