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THE STATE JUSTICE INSTITUTE ACT OF 1980

JULY 1 (legislative day, JUNE 12), 1980.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2387]

The Committee on the Judiciary, to which was referred the bill (S. 2387) 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 1980, S. 2387

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 Jurisprudence and Governmental Relations, Senate Judiciary Committee, Oct. 18, 1979, p. 2.

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.

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.[3]

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." [4]

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.

S. 2387 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.

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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 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.

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

[S. 2387, 96th Cong., 2d sess.]

II. TEXT OF THE BILL

A BILL To aid State and local governments in strengthening and improving their judicial systems through the creation of a State Justice Institute

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "State Justice Institute Act of 1980".

FINDINGS AND PURPOSE

SEC. 2. (a) 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;

(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, comprehen-

sive 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.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "Institute" means the State Justice Institute;

(2) "Board" means the Board of Directors of the Institute;

(3) "Director" means the Executive Director of the Institute;

(4) "Governor" means the Chief Executive Officer of a State;

(5) "recipient" means any grantee, contractor, or recipient of financial assistance under this Act;

(6) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States; and

(7) "Supreme Court" means the highest appellate court within a State unless, for the purposes of this Act,

a constitutionally or legislatively established judicial council acts in place of that court.

ESTABLISHMENT OF INSTITUTE; DUTIES

SEC. 4. (a) There is established in the District of Columbia a private nonprofit corporation which shall be known as the State Justice Institute. The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States. To the extent consistent with the provisions of this Act, the Institute shall exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (except for section 1005(a) of title 29 of the District of Columbia Code).

(b) The Institute shall—

(1) direct a national program of assistance designed to assure each person ready access to a fair and effective system of justice by providing funds to—

(A) State courts;

(B) national organizations which support and are supported by State courts; and

(C) any other nonprofit organization that will support and achieve the purposes of this Act;

(2) foster coordination and cooperation with the Federal judiciary in areas of mutual concern;

(3) make recommendations concerning the proper allocation of responsibility between the State and Federal court systems;

(4) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

(5) encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

(c) The Institute shall not duplicate functions adequately performed by existing nonproft organizations and shall promote, on the part of agencies of State judicial administration, responsibility for success and effectiveness of State court improvement programs supported by Federal funding.

(d) The Institute shall maintain its principal offices in the District of Columbia and shall maintain therein a designated agent to accept service of process for the Institute. Notice to or service upon the agent shall be deemed notice to or service upon the Institute.

(e) The Institute, and any program assisted by the Institute, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of the Internal Revenue Code of 1954 and as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code. If such treatments are conferred in accordance with the provi-

sions of such Code, the Institute, and programs assisted by the Institute, shall be subject to all provisions of such Code relevant to the conduct of organizations exempt from taxation.

(f) The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, guidelines, and instructions under this Act, and it shall publish in the Federal Register, at least thirty days prior to their effective date, all rules, regulations, guidelines, and instructions.

BOARD OF DIRECTORS

SEC. 5. (a) (1) The Institute shall be supervised by a Board of Directors, consisting of eleven voting members to be appointed by the President, by and with the advice and consent of the Senate. The Board shall have both judicial and nonjudicial members, and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the administration of justice.

(2) The Board shall consist of—

(A) six judges, to be appointed in the manner provided in paragraph (3);

(B) one State court administrator, to be appointed in the manner provided in paragraph (3); and

(C) four public members, no more than two of whom shall be of the same political party, to be appointed in the manner provided in paragraph (4).

(3) The President shall appoint six judges and one State court administrator from a list of candidates submitted by the Conferences of Chief Justices. The Conference of Chief Justices shall submit a list of at least fourteen individuals, including judges and State court administrators, whom the conference considers best qualified to serve on the Board. Prior to consulting with or submitting a list to the President, the Conference of Chief Justices shall obtain and consider the recommendations of all interested organizations and individuals concerned with the administration of justice and the objectives of this Act.

(4) In addition to those members appointed under paragraph (3), the President shall appoint four members from the public sector to serve on the Board.

(5) The President shall appoint the members under this subsection within sixty days from the date of enactment of this Act.

(b) (1) Except as provided in paragraph (2), the term of each voting member of the Board shall be three years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(2) Five of the members first appointed by the President shall serve for a term of two years. Any member appointed to serve for an unexpired term arising by virtue of the death.

disability, retirement, or resignation of a member shall be appointed only for such unexpired term, but shall be eligible for reappointment.

(3) The term of initial members shall commence from the date of the first meeting of the Board, and the term of each member other than an initial member shall commence from the date of termination of the preceding term.

(c) No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(d) Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(e) The members of the Board shall not, by reason of such membership, be considered officers or employees of the United States.

(f) Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the membership present and voting.

(g) The Board shall select from among the voting members of the Board a chairman, the first of whom shall serve for a term of three years. Thereafter, the Board shall annually elect a chairman from among its voting members.

(h) A member of the Board may be removed by a vote of seven members for malfeasance in office, persistent neglect of, or inability to discharge duties, or for any offense involving moral turpitude, but for no other cause.

(i) Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the chairman, acting at his own discretion or pursuant to the petition of any seven members.

(j) All meetings of the Board, any executive committee of the Board, and any council established in connection with this Act, shall be open and subject to the requirements and provisions of section 552b of title 5, United States Code, relating to open meetings.

(k) In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish such policies and develop such programs for the Institute as will further achievement of its purpose and performance of its functions;

(2) establish policy and funding priorities and issue rules, regulations, guidelines, and instructions pursuant to such priorities;

(3) appoint and fix the duties of the Executive Director of the Institute, who shall serve at the pleasure of the Board and shall be a nonvoting ex officio member of the Board;

(4) present to other Government departments, agencies, and instrumentalities whose programs or activities

relate to the administration of justice in the State judiciaries of the United States, the recommendations of the Institute for the improvement of such programs or activities;

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; and

(6) award grants and enter into cooperative agreements or contracts pursuant to section 7(a).

OFFICERS AND EMPLOYEES

SEC. 6. (a)(1) The Director, subject to general policies established by the Board, shall supervise the activities of persons employed by the Institute and may appoint and remove such employees as he determines necessary to carry out the purposes of the Institute. The Director shall be responsible for the executive and administrative operations of the Institute, and shall perform such duties as are delegated to such Director by the Board and the Institute.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Institute, or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this Act.

(b) Officers and employees of the Institute shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5, United States Code.

(c)(1) Except as otherwise specifically provided in this Act, the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) This Act does not limit the authority of the Office of Management and Budget to review and submit comments upon the Institute's annual budget request at the time it is transmitted to the Congress.

(d)(1) Except as provided in paragraph (2), officers and employees of the Institute shall not be considered officers or employees of the United States.

(2) Officers and employees of the Institute shall be considered officers and employees of the United States solely for the purposes of the following provisions of title 5, United States Code: Subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Institute shall make contributions under the provisions referred to in this subsection at the same rates applicable to agencies of the Federal Government.

(e) The Institute and its officers and employees shall be subject to the provisions of section 552 of title 5, United States Code, relating to freedom of information.

GRANTS AND CONTRACTS

SEC. 7. (a) The Institute is authorized to award grants and enter into cooperative agreements or contracts, in a manner consistent with subsection (b), in order to—

(1) conduct research, demonstrations, or special projects pertaining to the purposes described in this Act, and provide technical assistance and training in support of tests, demonstrations, and special projects;

(2) serve as a clearinghouse and information center, where not otherwise adequately provided, for the preparation, publication, and dissemination of information regarding State judicial systems;

(3) participate in joint projects with other agencies, including the Federal Judicial Center, with respect to the purposes of this Act;

(4) evaluate, when appropriate, the programs and projects carried out under this Act to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have met or failed to meet the purposes and policies of this Act;

(5) encourage and assist in the furtherance of judicial education;

(6) encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

(7) be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

(b) The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

(1) The Institute shall give priority to grants, coopative agreements, or contracts with—

(A) State and local courts and their agencies,

(B) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and

(C) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

(2) The Institute may, if the objective can better be served thereby, award grants or enter into cooperative agreements or contracts with—

(A) other nonprofit organizations with expertise in judicial administration;

(B) institutions of higher education;

(C) individuals, partnerships, firms, or corporations; and

(D) private agencies with expertise in judicial administration.

(3) Upon application by an appropriate Federal, State or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of Federal, State, or local government other than a court.

(4) Each application for funding by a State or local court shall be approved by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(c) Funds available pursuant to grants, cooperative agreements, or contracts awarded under this section may be used—

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) to conduct research on alternative means for using nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(4) to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds;

(5) to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;

(6) to support State court planning and budgeting staffs and too provide technical assistance in resource allocation and service forecasting techniques;

(7) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(8) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and effect the work of courts;

(9) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and

evaluate experimental programs for reducing case processing time;

(10) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve their functioning;

(11) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with their operation, to devise alternative approaches to better reconcile the requirements of due process with the needs for swift and certain justice, and to test their utility;

(12) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(13) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(14) to test and evaluate experimental approaches to providing increased citizen access too justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

(15) to carry out such other programs, consistent with the purposes of this Act, as may be deemed appropriate by the Institute.

(d) The Institute shall incorporate in any grant, cooperative agreement, or contract awarded under this section in which a state or local judicial system is the recipient, the requirement that the recipient provide a match, from private or public sources, equal to twenty-five percent of the total cost of such grant, cooperative agreement, or contract, except that such 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 of Directors.

(e) The Institute shall monitor and evaluate, or provide for independent evaluations of, programs supported in whole or in part under this Act to insure that the provisions of this Act, the bylaws of the Institute, and the applicable rules, regulations, and guidelines promulgated pursuant to this Act, are carried out.

(f) The Institute shall provide for an independent study of the financial and technical assistance programs under this Act.

LIMITATIONS ON GRANTS AND CONTRACTS

SEC. 8. (a) With respect to grants or contracts made under this Act, the Institute shall—

(1) insure that no funds made available to recipients by the Institute shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative body, or any State proposal by initiative petition, unless a governmental agency, legislative body, a committee, or a member thereof—

(A) requests personnel of the recipients to testify, draft, or review measures or to make representations to such agency, body, committee, or member; or

(B) is considering a measure directly affecting the activities under this Act of the recipient or the Institute;

(2) insure all personnel engaged in grant or contract assistance activities supported in whole or part by the Institute refrain, while so engaged, from any partisan political activity; and

(3) insure that every grantee, contractor, person, or entity receiving financial assistance under this Act which files with the Institute a timely application for refunding is provided interim funding necessary to maintain its current level of activities until—

(A) the application for refunding has been approved and funds pursuant thereto received; or

(B) the application for refunding has been finally denied in accordance with section 8 of this Act.

(b) No funds made available by the Institute under this Act, either by grant or contract, may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

(c) The authorization to enter into contracts or any other obligation under this Act shall be effective for fiscal year 1981 and any succeeding fiscal year only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

(d) To insure that funds made available under this Act are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used—

(1) to supplant State or local funds currently supporting a program or actiivty; or

(2) to construct court facilities or structures, except to remodel existing facilities to demonstate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

RESTRICTIONS ON ACTIVITIES OF THE INSTITUTE

SEC. 9. (a) The Institute shall not—

(1) participate in litigation unless the Institute or a recipient of the Institute is a party, and shall not participate on behalf of any client other than itself;

(2) interfere with the independent nature of any state judicial system nor allow 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 this Act; or

(3) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that personnel of the Institute may testify or make other appropriate communication—

(A) when formally requested to do so by a legislative body, committee, or a member thereof;

(B) in connection with legislation or appropriations directly affecting the activities of the Institute; or

(C) in connection with legislation or appropriations dealing with improvements in the State judiciary, consistent with the provisions of this Act.

(b) (1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assests of the Institute shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Institute nor any recipient shall contribute or make available Institute funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) The Institute shall not contribute or make available Institute funds or program personnel or equipment for use in advocating or opposing any ballot measure, initiative, or referendum, except those dealing with improvement of the State judiciary, consistent with the purposes of this Act.

(c) Officers and employees of the Institute or of recipients shall not at any time intentionally identify the Institute or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

SPECIAL PROCEDURES

SEC. 10. The Institute shall prescribe procedures to insure that—

(1) financial assistance under this Act shall not be suspended unless the grantee, contractor, person, or en-

tity receiving financial assistance under this Act has been given reasonable notice and opportunity to show cause why such actions should not be taken; and

(2) financial assistance under this Act shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor, person, or entity receiving financial assistance under this Act has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Institute to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Institute in accordance with procedures established in regulations promulgated by the Institute.

PRESIDENTIAL COORDINATION

SEC. 11. The President may, to the extent not inconsistent with any other applicable law, direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its functions under this Act.

RECORDS AND REPORTS

SEC. 12. (a) The Institute is authorized to 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.

(b) The Institute is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.

(c) Copies of all reports pertinent to the evaluation, inspection, or monitoring of any grantee, contractor, person, or entity receiving financial assistance under this Act shall be submitted on a timely basis to such grantee, contractor, or person or entity, and shall be maintained in the principal office of the Institute for a period of at least five years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish.

(d) Non-Federal funds received by the Institute, and funds received for projects funded in part by the Institute or by any recipient from a source other than the Institute, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

AUDITS

SEC. 13. (a) (1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Institute.

(b) (1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations 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.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, and other papers or property for a longer period under section 117(b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67(b)).

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

(c) (1) The Institute shall conduct, or require each grantee, contractor, person, or entity receiving financial assistance under this Act to provide for, an annual fiscal audit. The report

of each such audit shall be maintained for a period of at least five years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public inspection during regular business hours, at the principal office of the Institute.

SEC. 14. There are authorized to be appropriated for fiscal year 1982 such sums as may be necessary to carry out the provisions of this Act.

III. 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.[5] 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,[6] which created the Law Enforcement Assistance Administration (LEAA). Since its inception through 1978, LEAA provided some $6.6 billion in assistance to the states.[7]

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.[8] 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.[9]

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[10] contained several provisions designed to increase participation of the

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[5] "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).

[6] 42 U.S.C. 3701 (Pub. L. No. 90–351).

[7] "Task Force Report," p. 28.

[8] 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.

[9] Ibid.

[10] 42 U.S.C. 3701, et seq. (Pub. L. 94–503).

judiciary in the LEAA program. Likewise, the Justice System Improvement Act of 1979,[11] 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 have received only a small percentage of the LEAA funds that have been allocated.[12]

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.[13] 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.[14] 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.[15] 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.[16] 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 to 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 state 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

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[11] 42 U.S.C. 3701, Note (Pub. L. 96–157).

[12] 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).

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

[14] Ibid., p. 1.

[15] 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. Danecke; Chief Justice Joe R. Greenhill; Chief Justice Albert W. Barney; Chief Justice Bruce F. Bellfuss; 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.

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

for further action. On June 24, 1980, the Committee on the Judiciary met, considered S. 2387, and ordered it reported as amended.

IV. 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." [17]

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, which reflects a fundamental belief held by the Farmers 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.[18]

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 quality of justice in state courts," as the first of the findings of S. 2387 asserts.[19] 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

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[17] *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 without 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).

[18] "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."

[19] S. 2387, sec. 2(a)(1).

> 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.[20]

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 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." [21] 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." [22]

Although there are some categories of federal legislation to which there is exclusive federal jurisdiction,[23] most Congressional enactments have concurrent state and federal jurisdictions. In this regard, two important things should be kept in mind. 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.[24] 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 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 interest 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

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[20] Testimony of Maurice Rosenberg, Nov. 19, 1979, p. 52.
[21] United States Constitution, Article VI.
[22] 93 U.S. 130, 136 (1876).
[23] Categories in which there is exclusive Federal jurisdiction include inter alia, bankruptcy, patent and copyright cases, Federal criminal cases, Securities Exchange Act cases, Natural Gas Act cases, and antitrust cases.
[24] 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."

limit (induced by a condition on the spending of highway money), eligibility standards for aid to families with dependent children, nuclear power plant siting, and school lunch programs are all examples of federally induced state legislation. Other Congressional enactments, such as the Speedy Trial Act,[25] have resulted in increased efforts to divert cases to state courts. In this regard, it should be noted that federal jurisdiction in diversity cases, which is probably the most important type of concurrent jurisdiction, has come under increasing criticism and stands a chance of being abolished or limited in the near future, leaving such cases to be handled in state courts. Legislation to this effect passed the House of Representatives[26] in the ninety-fifth Congress, but failed in the Senate. Similar bills, however, are currently pending in the ninety-sixth Congress.[27]

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 matters that more properly are of higher priority by the federal government, such as large scale white collar crime cases.[28] This policy is carried forth in legislation currently pending to consolidate federal criminal laws into a single title of the United States Code.[29]

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 high level of justice dispensed by federal courts.[30] On the other hand, decisions of the Supreme Court have also increased the procedural due process protections guaranteed to citizens in criminal,[31] civil,[32] juvenile,[33] and mental health [34] proceedings. The result of these

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[25] 18 U.S.C. 3161, et seq.

[26] See H.R. 9622, 95th Cong., 2d sess. (passed the House of Representatives by a vote of 266 to 133, Feb. 28, 1978).

[27] H.R. 130, and H.R. 2202, is currently pending in the House Judiciary Committee. S. 679 is currently pending in the Senate Judiciary Committee.

[28] See the address of 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 the Attorney General 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.

[29] S. 1722 and H.R. 6915.

[30] 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.

[31] Federal due process requirements have had a very substantial impact on 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 on Jurisprudence and Governmental Relations, Senate Judiciary Committee, Oct. 18, 1979, p. 8.

[32] 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.

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

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

decisions has been an increase in the number of cases handled by state 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 the 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.[35]

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[35] 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).

The quality of justice guaranteed to all persons has indeed been a cornerstone of American society.[36] It is thus without question that the 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 has benefitted from substantial federal contributions.[37] 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.[38] 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.[39]

State court systems have received substantial benefits from the use of LEAA funds. Many states have been able to implement important structural and organizional 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 sytems.[40] 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 sytems would have foundered in the face of the massive increases in litigation in recent years." [41] Despite the achievements made possible by the use of LEAA funds, however, substantial conceptual and practical difficulties with this form of federal assistance have rendered the program less effective than it could and should be.

To begin with, there are inherent separation of powers problems in administering LEAA funds to state courts. These separation of powers problems evolved primarily for two reasons.

[36] 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.

[37] 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.

[38] 42 U.S.C. 3701 (Pub. L. No. 90–351).

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

[40] Task Force Report, p. 35.

[41] 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.

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 the programs by or in behalf of state and local courts.[42] 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.[43] 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.[44]

It was not until the 1976 LEAA reauthorization that provisions were made for state judicial planning committees, thus giving clear Congressional recognition to the role of state court systems in the scheme of LEAA programs. Even then, however, there was both confusion and controversy surrounding the inclusion of prosecutors and defenders in the LEAA concept of state judicial planning committees, which was not resolved until the LEAA General Counsel issued an opinion that excluded prosecutorial and defense services, which were covered under other LEAA categories, from the definition of "court projects." [45]

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[42] 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.

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

[44] Task Force Report, p. 30.

[45] Opinion of LEAA General Counsel (July 24, 1978), cited in the Task Force Report, p. 33, n. 61.

It should also be noted that courts unable to receive local or State funds administered under LEAA's block grant funding system could by-pass State guidelines by obtaining direct funding from Washington through the LEAA discretionary grant program. There was, in fact, virtually no State judicial input in the use of discretionary funds, thus tending to undermine the effectiveness of a State's judicial planning process. Task Force Report, pp. 33 and 34.

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." [46]

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 has 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.[47] This conceptual treatment of state courts has itself 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 states 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 before this Subcommittee:

> 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.[48]

Second, funding courts only under the guise that they are components 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.[49] 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

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[46] 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.

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

[48] Testimony of Chief Justice I'Anson, Oct. 18, 1979, p. 5.

[49] Ibid.

lead to strained and unnecessary improvisations which are not cost effective." [50]

Finally, is should be noted that, as with all federal assistance programs, the continued success of LEAA is not guaranteed. This is particularly true at the present time. Our country is arguably facing the severest economic crisis since the Depression, prompting Congress and the Administration to seek ways to decrease federal spending and balance the federal budget. If the Justice Department's budget is reduced as has been discussed, much of the reduction will likely come from the grant program of LEAA. As a result, given that courts receive only a small share of LEAA funds to start with, federal funding to state courts would, for all intents and purposes, be discontinued. In this regard, it is imperative that the Congress not let a lack of funds impair the ability of state courts to maintain and improve the quality of justice that they dispense.

C. S. 2387 and the State Justice Institute

S. 2387 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 federal 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 non-profit 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." [51] 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 non-profit 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. 2387 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

[50] Testimony of Chief Justice Sheran, Oct. 18, 1979, pp. 21, 22.
[51] S. 2387, sec. 4(c).

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. 2387.

A Board of Directors composed of representatives of state judiciaries also provides an important mechanism for prioritizing 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 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 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. 2387 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. 2387 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. Proven programs would thus be spread to more and more states and a more effective use of federal funds will result.

S. 2387 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 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. 2387 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. 2387 will create a much more favorably 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, S. 2387 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 SJI. The research activities of the Institute for Judicial Administration and the American Judicature Society also illustrate the kind of assistance needed by many states.

Two amendments proposed by Senator Thurmond were adopted during full Committee consideration of the bill. His first amendment added specific language to insure that the Institute does not in any way interfere with the independent nature of the state courts. The amendment also prohibits Institute money from being used for the funding of regular judicial and administrative activities other than pursuant to the terms of a grant, cooperative agreement, or contract with the Institute, consistent with the requirements of this Act. The purpose of this addition is to reflect the Committee's intent that the Institute is not to provide basic financial support for state courts. Funding for regular judicial and administrative activities may only be given in the context of a specific contract or agreement, the purpose of which is to improve a state or local judicial system. The Committee would also like to make it clear that the Institute and a state or local judicial entity may not enter into an agreement or contract simply to provide financial assistance rather than to fund a specific program, project, or study to improve that judicial entity.

The second Thurmond amendment added a requirement that the state or local judicial systems receiving funds administered by the Institute provide a matching amount equal to twenty-five percent of the total cost of the particular program or project. The amendment further provides that in exceptionally rare circumstances this requirement may be waived upon approval of the chief justice of the highest court of the state and a majority of the Board. This amendment reflects the Committee's belief that state and local systems be required to assume some responsibility for programs designed for their benefit. It is further contemplated that the waiver provision be utilized only in very rare circumstances.

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 spotlight 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.

V. SECTION-BY-SECTION ANALYSIS

Section 1—Short Title

This Act may be cited as the "State Justice Institute Act of 1980."

Section 2—Findings and purpose

This section contains the findings and declarations of Congress regarding the federal interest in maintaining the quality of justice dispensed by state courts, the programs necessary for state courts to deliver a high quality of justice, and the need for federal assistance to state courts to aid in carrying out such programs.

Section 2 also states the purpose of S. 2387, which is "to assist the state courts and organizations which support them to obtain the requirements . . . 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."

Section 3—Definitions

Section 3 contains the definition of various terms used throughout the Act.

Section 4—Establishment of Institute; duties

This section establishes the State Justice Institute as a private nonprofit corporation in the District of Columbia to promote 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 administra-

tion of justice, as well as other non-profit 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 non-profit organizations such as the National Center for State Courts and the National Judicial College.

Section 5—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 non-judicial 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 6—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 7—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 for them. 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. The Institute is authorized to award grants and enter into cooperative agreements or contracts on a first priority with state and local courts

and their agencies, national non-profit organizations controlled by and operating in conjunction with state court systems, and national non-profit 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 and other agencies as well as 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 non-judicial 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, through an amendment offered by Senator Thurmond 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 8—Limitations on grants and contracts

This section requires the Institute to insure that its fund are 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 9—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 and 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, through an amendment offered by Senator Thurmond, this section specifically prohibits the Institute from interferring 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 10—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 11—Presidential coordination

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

Section 12—Records and reports

This section authorizes the Institute to prescribe and require of funding recipients such records as are necessary to insure 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 13—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 14—Authorization

This section provides that there are authorized to be appropriated for fiscal year 1982 such sums as may be necessary to carry out the provisions of this Act.

VI. REGULATORY IMPACT STATEMENT

In compliance with Paragraph 5, Rule XXIX, 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.

VII. CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 1, 1980.

Hon. EDWARD M. KENNEDY,
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 reviewed S. 2387, the State Justice Institute Act of 1980, as ordered reported by the Senate Committee on the Judiciary, June 24, 1980.

The bill establishes a nonprofit corporation, the State Justice Institute, to administer a system of grants and contracts to aid State and local governments in strengthening and improving their judicial systems. The Institute is headed by an 11-member Board of Directors, appointed by the President, and an Executive Director. It is estimated that the basic cost of establishing the Institute, the Board of Directors and the Office of the Executive Director will be about $200,000 per year, including personnel, travel and overhead costs. Any further administrative costs and the costs of contract and grant awards are impossible to determine until the scope of the program is more specifically defined.

Sincerely,

ALICE M. RIVLIN, *Director.*

ADDITIONAL VIEWS OF SENATOR THURMOND

The state courts in this nation are, without doubt, the cornerstone on which our system of justice is based. As the Committee Report explains, the state courts handle over ninety-six percent of all cases tried in the United States. In light of the obvious importance of the state judicial systems, no one could argue against efforts to correct serious problems in those systems and to make needed improvements. The key issue, and the source of my concerns regarding the State Justice Institute Act, is who should be primarily responsible for identifying and resolving these problems—particularly who should be financially responsible. The states have, in my opinion, the *primary* responsibility to adequately maintain and to improve their own judicial systems. I would prefer therefore that the states bear all of the financial burden involved, not only because I believe that it is their basic responsibility, but also because the independence of the state judiciaries is more adequately protected.

I would have to concede, however, that there is *some* Federal interest involved in maintaining and improving the quality of justice in the state courts. State courts are, after all, charged with the responsibility of interpreting and enforcing not only their own state laws, but also the Constitution and laws of the United States. As the Committee Report points out, there are thousands of state court cases in which Federal issues are raised which will never by reviewed by the United States Supreme Court. Lack of direct review of these cases makes it imperative to maintain a very high quality of performance in the state courts. Aside from the fact that state court judges routinely rule on Federal issues, the Federal government also has some obligation to assist the state judiciaries because actions by the former have added significantly to the workload of the latter. Decisions by the United States Supreme Court, as well as the passage of numerous pieces of legislation by Congress, have added to the burdens and responsibilities placed on the state courts.

In addition to recognizing that there is some Federal interest in and obligation to improving state judicial systems, I would also have to acknowledge that there has already been extensive Federal involvement in this area. Over the last decade, a significant amount of Federal money has been funneled into state courts, primarily through the Law Enforcement Assistance Administration. In light of the fact that the Federal government has been giving and probably will continue to give financial assistance to the state judiciaries, I believe it would be preferable to utilize a mechanism such as the State Justice Institute to dispense such funds. The Institute represents a significant improvement over LEAA from a separation of powers standpoint. Also, the structure of the Institute—specifically having a Board of Directors composed of state court judges, administrators, and interested mem-

bers of the public—will probably provide more protection to the independence of the state court systems.

Because of the considerations set forth above and with the acceptance of two Thurmond Amendments during Full Committee consideration, I decided not to oppose this legislation. The primary change which I made in S. 2387 was the addition of a requirement that the state or local judicial systems receiving funds provide a matching amount equal to twenty-five percent of the total cost of a particular program or project. I think it is only fair that state and local systems be required to assume some financial responsibility for programs designed for their benefit. It is imperative, in my opinion to make it clear to *all* state and local governmental entities, as well as those within the judicial branch, that the Federal government cannot and should not foot the *entire* bill for whatever improvement programs or projects state and local governments wish to engage in, no matter how helpful or necessary those programs may be. I am sure that I need not remind my colleagues that we should all be analyzing these assistance programs from a fiscal point of view, keeping in mind that for the first time in a number of years we are attempting to balance the Federal budget. Aside from the need to reduce Federal spending, I believe that state and local financial participation would help to preserve the independence of those judicial entities receiving Institute funds. Having to provide a portion of the funding may also increase interest in the project or program and may stimulate efforts to spend the money wisely and efficiently.

In our discussions concerning the addition of a matching fund requirement to this bill, Senator Heflin expressed the concern that there may be certain very unusual circumstances under which the state or local judicial entity involved may be unable to provide twenty-five percent of the total cost of a needed project or program. Consequently, language was added allowing a waiver of the matching requirement in exceptionally rare circumstances, upon the approval of the chief justice of the highest court of the state and a majority of the Board of Directors. I would like to emphasize that it is both Senator Heflin's and my intent that this waiver provision be utilized only in *very rare* circumstances.

My second amendment accepted during Full Committee of S. 2387 added language to the section of the bill entitled "Restrictions on Activities of the Institute." This language was aimed at protecting the independence of the state judiciaries by straight-forwardly providing that the Institute shall not "interfere with the independent nature of any state judicial system." In addition to this blanket prohibition, this amendment prohibited any sums being used for funding of regular judicial and administrative activities of any judicial system unless such funding were provided pursuant to a contract or agreement, consistent with the requirements of the Act. My purpose in adding this language is to assure that Federal money from the Institute is not used to provide *basic* financial support to the state courts. Whenever Federal money is used to fund regular judicial and administrative activities, such financial assistance should only be given in the context of a specific research program or demonstration project designed to improve state court systems. It should

be absolutely clear that no grant or contract entered into by the Institute and a state or local entity could provide merely for financial assistance to a state court system without such assistance being tied to a specific program or project to improve that system.

As I explained earlier, the inclusion of these changes, particularly the addition of a state and local matching fund requirement, plus the recognition of some legitimate Federal interest in improving state court systems led me to conclude that I could support the State Institute Act of 1980. I would like to thank the distinguished Senator from Alabama for his responsiveness to my concerns regarding this legislation and for his acceptance of my amendments to alleviate these concerns.

STROM THURMOND.

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