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STATE JUSTICE INSTITUTE ACT OF 1984

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

REPORT

[To accompany S. 384]

The Committee on the Judiciary, to which was referred the bill (S. 384) 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.

I. PURPOSE

An explosion of litigation has virtually clogged all levels of our federal court system, including the United States Supreme Court. This swelling litigation has come in the face of increased realiance on the judicial system to resolve a vast array of increasingly complex disputes. State courts share with federal courts the awesome responsibility of enforcing the rights and the duties of the Constitution and the laws of the United States.[1]

Both state and federal judicial leaders are aware of the urgent need for relief. Chief Justice Warren E. Burger warned that our judicial systems, both state and federal, may literally break down before the end of this century unless we find solutions to problems posed by the massive increases in caseloads in recent years.[2]

Today, state courts handle over 96 percent of all the cases tried in the United States.[3] It is, therefore, quite apparent that the quality of

[1] *Court Improvements Act of 1983: Hearings on S. 645 Before the Subcomm. on Courts of the Senate Comm. on the Judiciary*, 98th Cong., 1st Sess. 1-2 (1983) (statement of Senator Howell Heflin, Ranking Minority Member of the Subcommittee on Courts). [hereinafter referred to as *Senate Hearings* (1983).]

[2] *Id.* at 176 (statement of Chief Justice Lawrence H. Cooke, State of New York on Behalf of the Conference of Chief Justices and Conference of State Court Administrators, Albany, N.Y.)

[3] 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.)

justice in the United States is largely determined by the quality of justice in our state courts. State courts remain the courts that touch our citizens most intimately and most frequently and it is their experiences in state courts as litigants, jurors, witnesses, or spectators that the vast majority of our citizens make their judgments as to the strengths, weakenesses, and fairness of our judicial system.[4]

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

The State Justice Institute legislation is premised on the belief that improvement in the quality of justice administered by the states is not only a goal of fundamental importance in itself, but is essential to attainment of important national objectives, including a reduced rate of growth in the caseload of the federal courts and the preservation of the historic role of state judiciaries in our federal system.[5]

There have been major changes in the mission of courts and judges in both the federal and state systems over the last few decades. Earlier in this century, many questioned 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. There is little doubt that judges have a duty to ensure 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.[6]

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. It is appropriate for the federal government to provide financial and technical assistance to state courts to ensure 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 power fails, government is at an end." [7]

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

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[4] *State Justice Institute Act of 1981: Hearings on S. 537 Before the Subcomm. on Courts of the Senate Comm. on the Judiciary*, 97th Cong., 1st Sess. 361 (1981) (statement of Justice Robert F. Utter, former Chief Justice of the Supreme Court of Washington, Chairman of the Conference of Chief Justices' Committee to Establish a State Judicial Institute.

[5] *Senate Hearings* (1983), *supra* note 1, at 176–177 (statement of Chief Judge Lawrence H. Cooke).

[6] Testimony of Maurice Rosenberg, Assistant Attorney General, Office of Improvements in the Administration of Justice, United States Department of Justice, before the Subcomm. on Jurisprudence and Governmental Relations, Senate Judiciary Comm., November 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.

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

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 greater judicial accountability.

S. 384 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. The Institute would provide funds for necessary efforts that cannot be funded by individual states, including national programs with broad application to all, or numerous States.

Such an Institute could assure strong and effective state courts, and thereby improve the quality of justice available to the American people.

This point was eloquently stated by the Chief Justice of the United States, Warren E. Burger:

> Should our people ever lose confidence in their state courts, not only will our federal courts become more and more overburdened, but a pervasive lack of confidence in all courts will develop. All courts, federal and state, rely upon public trust and public confidence. Their integrity is the key to their validity.[8]

The fact that the State Justice Institute Act has been unanimously endorsed by the Conference of Chief Justices, which is composed of the highest judicial officers of the 55 states and territories and the District of Columbia, attests to its conformity with the requirements for judicial independence. This fact was underscored in House testimony during the 96th Congress by Senator Howell Heflin of Alabama who said the Act "offers a clear congressional recognition of the separation of powers principle in the function of state governments and the Constitutional requirement of an independent judiciary which is essential for any program of federal assistance. As a former State Supreme Court Justice, I know full well the importance of an independent judiciary and I could not support legislation which infringes on that independence in any way." [9]

II. History of the Legislation

The concept of federal financial support for state court systems had its origin in the 1967 Report of the President's Commission on Law Enforcement and Administration of Justice.[10] 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

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[8] Hearings before the House Judiciary *Subcomm. on Courts, Civil Liberties and the Administration of Justice on the State Justice Institute Act of 1983*, 98th Cong., 1st Sess. 52 (1983).

[9] Statement of Senator Howell Heflin Before the House Judiciary *Subcomm. on Courts, Civil Liberties, and the Administration of Justice on the State Justice Institute*, 96th Cong., 2d Sess. 13 (1980).

[10] "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).

correctional problems in the 1968 Omnibus Crime Control and Safe Streets Act,[11] which created the Law Enforcement Assistance Administration (LEAA). From its inception through 1978, LEAA provided approximately $6.6 billion in assistance to the states.[12]

As Thomas J. Madden then General Counsel, Office of Justice Assistance, Research and Statistics, United States Department of Justice, testified at hearings on S. 2387,[13] there was a very low rate of participation by state courts during the early years of LEAA.[14] Mr. Madden gave three primary reasons for the lack of participation by state courts. First, early LEAA authorization legislation made no explicit reference 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.[15]

Eventually, the role of state courts became recognized as an essential element in the administration of criminal justice which resulted in dramatic adjustments in the LEAA program, and which allowed greater involvement by the judiciary. The Crime Control Act of 1976 [16] contained several provisions designed to increase participation of the judiciary in the LEAA program. Likewise, the Justice System Improvement Act of 1979,[17] building upon the strengths of the LEAA program, reauthorized and restructured the Justice Department's assistance program for state and local law enforcement and criminal justice improvement. LEAA was the initial and primary source of federal funds going to state court systems, even though judicial programs received only a small percentage of the LEAA funds that were allocated.[18]

While LEAA provided valuable assistance in many ways, state court systems remained concerned about a federal judicial assistance program administered by executive agencies of federal and state governments.[19] 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 several states without sacrifice of the inde-

[11] 42 U.S.C. 3701 (Pub. L. No. 90–351).
[12] "Task Force Report," p. 28.
[13] S. 2387 was the State Justice Institute Act of 1980, introduced by Senator Howell Heflin on March 5, 1980.
[14] 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.
[15] *Id.*
[16] 42 U.S.C. 3701, *et seq.* (Pub. L. 94–503).
[17] 42 U.S.C. 3701, Note (Pub. L. 97–157).
[18] 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).
[19] "Task Force Report," p. 2.

pendence of state judicial systems." [20] 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.[21] 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 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.[22] Specifically, the Subcommittee heard testimony concerning the need for and feasibiity 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 and was referred subsequenty 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 for further action. On June 24, 1980, the Committee on the Judiciary met, considered S. 2387, and ordered it reported after adopting two important amendments proposed by Senator Strom Thurmond. S. 2387 passed the Senate unanimously by voice vote on July 21, 1980.[23]

On February 24, 1981, Senator Heflin introduced S. 537, the State Justice Institute Act of 1981. The bill was referred to the Committee on the Judiciary, and subsequently was referred to the Subcommittee on Courts. The Subcommittee held a hearing on S. 537 on May 18, 1981. S. 537 was essentially identical to S. 2387, with a few exceptions.

First, S. 537 appropriated specific sums for funding the State Justice Institute.

Second, the bill included a provision, recommended by the House Judiciary Subcommittee that the Institute be incorporated in the District of Columbia or "in any other state" as opposed to the District of Columbia only.

Third, it was the view of the Committee that the findings and purpose section of S. 2387 be reprinted in the report to accompany S. 537, but not be made part of the bill itself. S. 537 passed the Senate, once again, unanimously by voice vote on August 10, 1982.[24]

Senator Heflin introduced S. 384, the State Justice Institute Act, on February 2, 1983. The bill was referred to the Committee on the

[20] *Id.*, p. 1.

[21] Other members of the Task Force were: Chief Justice James Duke Cameron; Chief Justice William S. Richardson; Chief Justice Robert C. Murphy; Chief Justice Robert J. Sheran; Chief Justice Neville Patterson; Chief Justice John B. McManus, Jr.; Chief Justice Arno H. Denecke; Chief Justice Joe R. Greenhill; Chief Justice Albert W. Barney; Chief Justice Bruce F. Bellfuss; Mr. Walter J. Kane; Mr. Roy O. Gulley; Honorable Arthur J. Simpson, Jr.; Mr. William H. Adkins II; Mr. C. A. Carson III; Mr. John S. Clark.

[22] *State Justice Institute Act of 1979: Hearings Before the Subcomm. on Jurisprudence and Governmental Relations of The Senate Comm. on the Judiciary*, 96th Cong., 1st and 2d Sess.'s (1979) and (1980) [Hereinafter referred to as the Senate Hearings (1979).]

[23] *See* 126 Cong. Rec. S9443–S9446 (daily ed., July 21, 1980). *See also* S. Rep. No. 96–843, 96th Cong., 2d Sess. (1980).

[24] *See* 128 Cong. Rec. 10109 (daily ed., Aug. 10, 1982).

Judiciary and was referred subsequently to the Subcommittee on Courts. As part of an extensive hearing on problems facing our federal judiciary, testimony was received supporting the State Justice Institute Act.[25]

On June 29, 1983, the Subcommittee on Courts approved the bill with an amendment favorably for consideration by the full Committee. On that same date, the Subcommittee also approved for the full Committee's consideration, S. 645, the Courts Improvements Act of 1983, which was introduced by Senator Robert Dole, with Senators Strom Thurmond and Howell Heflin as original cosponsors. The Subcommittee incorporated provisions of S. 384 into S. 645 as Title IV. There has been no further action on S. 645.

The Committee on the Judiciary ordered S. 384 to be reported favorably with amendments, on April 12, 1984.

HOUSE ACTION ON STATE JUSTICE INSTITUTE LEGISLATION

Legislation to create a State Justice Institute was also introduced in the House of Representatives in 1980.[26] The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice held hearings [27] in the 96th Congress, and favorably reported the Senate bill, S. 2387, with amendments. However, the legislation did not achieve final enactment because of a lack of time. Similarly, during the 97th Congress, legislation to create a State Justice Institute passed the Senate but eluded passage by the House due to the shortness of time at the end of the Session.[28]

The legislation was reintroduced at the beginning of the 98th Congress in the form of H.R. 3403. A bipartisan and geographically diverse group of forty-two Members cosponsored the bill.

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

Further statements have been received by the National Center for State Courts, the Institute of Court Management, the National Judicial College, the National Association of Trial Court Administrators, the National Association of Women Judges, and the National Association of Juvenile Court Judges.

On July 13, 1983, the Subcommittee approved H.R. 3403, as amended by voice vote. The amendment, offered by Chairman Kasten-

[25] *See Senate Hearings, 1983, supra* note 1, at 176–194. Witnesses who presented testimony on State Justice Institute included: Chief Justice Lawrence H. Cooke, State of New York, on behalf of the Conference of Chief Justices and Conference of State Court Administrators, Albany, N.Y.; and Justice Robert F. Utter, Supreme Court of the State of Washington, and Chairman, Committee on State Justice Institute Act, Olympia, Wash.

[26] H.R. 6709 was introduced by Representative Kastenmeier on March 5, 1980.

[27] *See Hearings Before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice on the "State Justice Institute/Annual Message of the Chief Justice"*. 96th Cong., 2d Sess. (1980).

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

meier, cured several drafting problems that were identified during the hearing process and in the 97th Congress.

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

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

III. Statement

A. THE FEDERAL INTEREST

Any statement that considers federal funding for state court systems must begin with a discussion of whether a substantial federal interest is involved. More specifically whether the federal government has a direct interest in the quality of justice that is dispensed in state courts must be addressed.

Under the Constitution of the United States, state courts share with federal courts the awesome responsibility of enforcing the Constitution and the laws of this Nation. 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." [29]

Under our federal system, the judiciary is bifurcated into both state and federal systems. This does not mean, however, that the federal interest in maintaining the quality of justice only involves the form of justice dispensed by federal courts. The United States Constitution does not require any federal courts, except the Supreme Court. This reflects a fundamental belief of the Framers that the 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.[30]

Today, as has been stated previously, State courts handle approximately ninety-six per cent 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." [31] There is a clear and compelling Federal interest in ensuring 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,

[29] *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 is 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).

[30] "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."

[31] *The Findings and Purpose* section of S. 2387, the State Justice Institute Act of 1980.

> the level at which State courts perform determines whether Americans in fact have access to justice through the courts. Unquestionably, the Federal Government has a deep concern in these matters. If the citizens turn cynical about the prospects of obtaining justice from the courts, they will have little confidence in other institutions in the society.[32]

There is also a compelling Federal interest in the quality of justice rendered by State courts because State courts consider both Federal and State issues.

The Supremacy Clause of the United States Constitution provides:

> This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.[33]

State judges, therefore, must consider whether a state statute or regulation conflicts 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. As the Supreme Court held in *Clafin* 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." [34]

Although there are some categories of federal legislation giving exclusive jurisdiction to the federal courts,[35] most Congressional statutes grant concurrent jurisdiction to state and federal courts. This grant of concurrent jurisdiction has two important results.

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.[36]

Second, because it is impossible for the Supreme Court of the United States to review the thousands of state court judgments in which federal questions are raised, and because the only meaningful methods of federal review of state court judgments are appeal and certiorari, state courts, as a practical matter, are virtually tribunals of final report. The implementation of fundamental federal policies is therefore largely dependent upon state judiciaries.

The obligations of state courts, however, are not limited to cases arising under the supremacy clause or cases that arise because of con-

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[32] *Senate Hearings* (1979), *supra* note 22, at 52. (Testimony of Maurice Rosenberg, Assistant Attorney General, Office of Improvements, Department of Justice).

[33] United States Constitution, Article VI.

[34] 93 U.S. 130, 136 (1876).

[35] Categories in which Federal jurisdiction is exclusive include inter alia, bankruptcy, patent and copyright cases, Federal criminal cases, Securities Exchange Act cases, Natural Gas Act cases, and antitrust cases.

[36] 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."

current jurisdiction. Each branch of the federal government in recent years has contributed significantly to the federal interests involved in maintaining the quality of justice rendered by state courts.

The participation of state courts has been increased by recently-enacted federal legislation. Congress has recognized the important role state courts play in achieving a broad range of federal policy objectives because state legislation or administrative rules are required to implement federal law. Examples of this legislation include, the 55-mile per hour speed limit, aid to dependent children, nuclear power plant siting and school lunch programs.

Federal policy is also dependent upon the ability of state courts to implement and enforce federal law.[37]

In addition, there is an increasing number of federal criminal cases being diverted to state courts because of pressures placed on federal district courts by the Speedy Trial Act.[38] These factors, considered together, demonstrate the increasing burden being placed upon the state courts.

The executive branch of government has likewise established certain policies and guidelines that have resulted in increased state court dockets. In particular, the Department of Justice has requested that state authorities assume additional responsibility for the prosecution of some criminal matters now handled in federal court, allowing federal prosecutors to concentrate on other matters, such as large scale white collar crime cases.[39]

Perhaps the most significant increase in 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.

The Supreme Court has diverted many cases to state courts in an effort to relieve the congestion on federal court dockets and to maintain the level of justice dispensed by federal courts.[40] At the same time, the Supreme Court has increased the procedural due process protections guaranteed to citizens in criminal,[41] civil,[42] juvenile[43] and mental health[44] proceedings. This has resulted in an increase in the number

[37] *See* "Task Force Report", *supra* note 3, at pp. 151–2.

[38] 18 U.S.C. 3161, *et seq.*

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

[40] 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 habeas 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.

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

[42] *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.

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

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

of cases handled by state judiciaries, as well as an increase in the procedural complexity of state court litigation. The increased burdens being placed upon state judiciaries mandate the development of new safeguards, more efficient procedures, and a much more intensive program of continuing education for judges and court personnel.

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

> In recent years, however, another variety of Federal law—that fundamental law protecting all of us from the use of governmental powers in ways inconsistent with American conceptions of human liberty—has dramatically altered the grist of the State courts. Over the past two decades, decisions of the Supreme Court of the United States have returned to the fundamental promises wrought by the blood of those who fought our War between the States, promises which were thereafter embodied in our fourteenth amendment—that the citizens of all our States are also and no less citizens of our United States, that this birthright guarantees our Federal constitutional liberties against encroachment by governmental action at any level of our Federal system, and that each of us is entitled to due process of law and the equal protection of the laws from our State governments no less than from our national one. Although courts do not today substitute their personal economic beliefs for the judgments of our democratically elected legislatures, Supreme Court decisions under the fourteenth amendment have significantly affected virtually every other area, civil and criminal, of State action. And while these decisions have been accompanied by the enforcement of federal rights by federal courts, they have significantly altered the work of state court judges as well. This is both necessary and desirable under our federal system—state courts no less than federal are and ought to be guardians of our liberties * * *
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> Every believer in our concept of federalism, and I am a devout believer, must salute this development in our state courts * * *
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> * * * [T]he very premise of the cases that foreclose federal remedies constitutes a clear call to state courts to step into the breach. With the federal locus of our double protections weakened, our liberties cannot survive if the states betray the trust the Court has put in them. And if that trust is, for the Court, strong enough to override the risk that some states may not live up to it, how much more strongly should we trust state courts whose manifest purpose is to expand constitutional protections. With federal scrutiny diminished, state courts must respond by increasing their own.[45]

The quality of justice guaranteed to all persons has been a cornerstone of American society.[46] There is little doubt that the federal

[45] "Task Force Report," p. 26, *citing* Brennan, "State Constitutions and the Protections of Individual Rights," 90 Harv. L. Rev. 489, 490–91, 502–3 (1977).

[46] 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.

government has a substantial interest in maintaining the quality of justice at all levels of the judiciary, both state and federal. Certainly the federal interest in the quality of state courts is at least as much as the federal interest in the quality of health care and the quality of the educational system, both of which have benefited from substantial federal contributions.[47] While federal assistance to state courts should never replace the basic financial support provided 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 channeled to state courts over the last decade, primarily through the Law Enforcement Assistance Administration (LEAA). LEAA was created by the Omnibus Crime Control and Safe Streets Act,[48] and was administered by the Department of Justice.

During the existence of LEAA, approximately $256 million from LEAA discretionary funds and approximately $344 million from LEAA Formula Funds (formerly block grant funds) were allocated for state court improvements.[49] However, with the abolition of the LEAA program, federal funding to state courts has, in all practicality, been discontinued.

State court systems received substantial benefits from the use of LEAA funds. Many states were able to implement important structural and organizational changes in their judiciaries. Likewise, numerous educational programs, including judicial colleges in several states, were 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 courts." [50] Echoing these sentiments, the Honorable Robert J. Sheran, Chief Justice of the State of Minnesota, and Chairman of the Conference of Chief Justice's Committee on Federal-State Relations, testified that "remarkable improvements were made possible" by LEAA grants, and that had it not been for these improvements "state court systems would have floundered in the face of the massive increases in litigation in recent years." [51] Despite the achievements made possible by the use of LEAA funds, however, substantial conceptual and practical difficulties with this form of federal assistance rendered the program less effective than it could or should have been.

First, there were serious difficulties with an arrangement, whereby a department of the federal executive branch, in this case, the Department of Justice, was in a position to influence, by funding decisions, programs undertaken by or on behalf of state and local courts.[52] This

[47] 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.

[48] 42 U.S.C. 3701 (Pub. L. No. 90–351).

[49] *See Senate Hearings 1979, supra,* note 22, at 99. (Testimony of Thomas Madden, March 19, 1980).

[50] "Task Force Report." p. 35.

[51] *See id.* at 21. (Testimony of Chief Justice Robert J. Sheran, October 18, 1979).

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

was particularly ironic because in the federal government, in an attempt to maintain the delicate balance of separation of powers, the control of federal funding to improve the federal courts was removed from the Department of Justice and placed independently in the judicial branch of the federal government.[53] Certainly, the same threat to judicial independence existed in an arrangement between LEAA and the states, whereby an executive department determined both the type of programs to receive financial assistance and the specific courts or agencies which would 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 program 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 consensus 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.[54]

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." [55]

State courts had an additional problem in seeking LEAA funds because of the fact that the "Safe Streets Act" was designed as an effort to assist states in combating crime. With its emphasis on law enforcement and corrections, LEAA recognized—first by administrative interpretation and later by Congressional enactment—a program of federal support to state courts only under the theory that state courts were a component of the criminal justice system.[56] This conceptual treatment of state courts resulted in two problems.

First, current federal funding policy did not accord state judiciaries their proper place within our scheme of federalism. State courts are

[53] Testimony of Justice Sheran, March 19, 1980, p. 100.
[54] "Task Force Report," p. 30.
[55] 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.
[56] It should be noted that despite the obvious fact that courts are an essential component of the criminal justice system, court programs were not specially provided for in the original LEAA enactment.

independent branches of the state government charged with the responsibility of adjudicating various types of disputes between individuals and the state. Unfortunately, within the framework of LEAA-administered assistance, state courts were considered "components" of a "criminal justice system" conceived of as primarily an activity of the executive branch of the government.[57] But as Chief Justice I'Anson testified:

> Courts are not "components" of a criminal justice system but, in their criminal functions, stand as an independent third force between the police and 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.[58]

Second, funding courts only under the guise that they were components of the criminal justice system completely disregarded the fact that, in state judicial systems, the exercise of civil and criminal functions were and are inseparable. Any improvements involving the criminal functions of courts necessarily involved consideration of the civil functions. LEAA's focus on criminal justice thus made it difficult for courts to undertake broadly based improvements which would best serve the total justice system, criminal as well as civil.[59] The problem was best stated by Chief Justice Sheran: "Efforts to separate criminal and civil jurisprudence in State court systems to comply with LEAA directives emphasizing measures to control crime lead to strained and unnecessary improvisations which are not cost effective." [60]

C. Findings and purpose [61]

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

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[57] Testimony of Chief Justice I'Anson, October 18, 1979, p. 5.
[58] *Id.*
[59] *Id.*
[60] Testimony of Chief Justice Sheran, October 18, 1979. pp. 21–2.
[61] *Findings and Purpose* section of S. 2387, the State Justice Institute Act of 1980, introduced by Senator Howell Heflin on March 5, 1980.

(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 eduation 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 acccurately the future demands for judicial services;

(F) sound management systems which take advantage of modern business technology, including records management procedures, data processing, comprehensive personnel systems, efficicent 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 mechcanism, consistent with doctrines of separation of powers and federalism, and thereby to improve the quality of justice available to the American people.

D. S. 384 AND THE STATE JUSTICE INSTITUTE

S. 384 recognizes the substantial federal interest in seeking to maintain the quality of justice in state courts. More importantly, however, the bill also recognizes the problems caused in the past with federal assistance to state courts, and attempts to avoid the difficulties that plagued previous assistance programs, while relying on their successes.

This legislation creates a private, nonprofit corporation known as the State Justice Institute. The purpose of the Institute, as stated in this report, is to further the development and adoption of improved

judicial administration in state courts in the United States. To accomplish this, the Institute shall, among other things, direct a national program of assistance by providing funds to state courts, national organizations which support and are supported by state courts, and other nonprofit organizations 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 rule and regulations pursuant to such policies and priorities, awarding grants and entering into cooperative agreements to provide funds to state court systems, as well as other duties consistent with its supervisory function.

A clear Congressional recognition of the principles of federalism in the functioning of state governments and the Constitutional requirement of an independent judiciary are essential for any successful program of federal assistance. Therefore, S. 384 provides that funding decisions for court improvements be made through the independent State Justice Institute by a board of directors that is composed primarily of representatives of state judiciaries. Six judges and one state court administrator will serve on the board along with four members from the public. The President shall appoint the judges and court administrator from a list of at least fourteen individuals submitted by the Conference of Chief Justices. Thus, any fear of executive branch control over the use of federal funds is eliminated under S. 384.

A board of directors composed of representatives of state judiciaries also provides an important mechanism for establishing priorities for state court programs that are to receive federal funds. Supervision by a board of directors possessing a first-hand, working knowledge of state judiciaries, permits the State Justice Institute to set orders and policies for the distribution of federal funds to state court systems based upon established judicial priorities and needs. 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. 384 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 ensure strong and effective courts, S. 384 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 priority basis rather than a system of priorities established separately by various federal agencies. This will allow proven programs to be shared

among the states and will allow a more effective use of federal funds. But creation of the Institute is not intended to preclude funding of state court programs by other federal agencies when such programs are part of or necessary to activities of that agency or to its overall mission. Such court programs would include those associated with the analysis of state and local criminal justice activities by the Bureau of Justice Statistics and the National Institute of Justice, as well as the child support enforcement programs of the Department of Health and Human Services and the research activities of the National Science Foundation and the Federal Judicial Center.

S. 384 authorizes the State Justice Institute to award grants and enter into cooperative agreements or contracts in order to promote research and demonstration programs, provide for a clearinghouse and information service, evaluate the impact of programs carried out under this Act, encourage and assist in the furtherance of judicial education, and be responsible for the certification of national programs that are intended to aid and improve state judicial systems. The act specifies a variety of programs that will be eligible for assistance from the Institute, including those proposing alternatives to current methods of resolving disputes, court planning and budgeting, court management, the use of nonjudicial personnel in court decisionmaking, procedures for the selection and removal of judges and other court personnel, education and training programs for judges and other court personnel, and studies of court rules and procedures. By authorizing the Institute to provide financial assistance to state courts "to assure each person ready access to a fair and effective system of justice," the Act reflects the Committee's intention of not making distinctions between the civil, criminal and juvenile functions of courts regarding the use of funds. Courts will thus be able to undertake the kinds of programs that will have a beneficial impact on the judiciary as a whole, rather than couching them as primarily intended to improve only the criminal justice system.

Equally important, because of the federal recognition of the separate and independent nature of state judiciaries, S. 384 will create a more favorable climate for the exercise of the judiciaries' proper role in planning and administering federal expenditures for their respective state court systems.

While state and local courts will be the principal recipients of assistance under this Act, S. 384 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 nattional resources and perspectives to bear on matters of critical concern to all state court systems and their activities could receive continuing support from the State Justice Institute. The research activities of the Institute for Judicial Administration and the American Judicature Society also illustrates the kind of assistance needed by many states.

In sum, the State Justice Institute will provide funds for research and development programs with national application which are beyond the resources of any single state judicial system. It will build on the LEAA experience, but will ensure that any federal support is ad-

ministered in the best and most efficient way possible to produce continued state court improvement. The State Justice Institute will 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 will not fund or subsidize ongoing state court operations, but rather, will focus on 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 will be modest compared to the basic financial support given by state legislatures, federal financial contributions through the State Justice Institute can provide a "margin of excellence," and thus improve significantly the quality of justice received by citizens of every state.

IV. Section-by-Section Analysis

Section 1—Short Title

This Act may be cited as the "State Justice Institute of 1984."

Section 2—Definitions

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

Section 3—Establishment of Institute; duties

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

Section 4—Board of Directors

This section provides for an eleven-member Board of Directors to direct and supervise all activities of the Institute. The Board will establish policy and funding priorities, approve all project grants, and appoint and fix the duties of the Executive Director. The Board will make recommendations on matters in need of special study and coordinate activities of the Institute with those of other governmental agencies.

The Board will consist of six judges and one state court administrator appointed by the President from a list of at least fourteen candi-

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

Section 5—Officers and employees

This section authorizes the Executive Director to conduct the executive and administrative operations of the Institute under policy set by the Board. It provides that the Institute shall not be considered an instrumentality of the federal government, but permits the Office of Management and Budget to review and comment on its annual budget request to Congress. It also provides that officers and employees of the Institute are not to be considered employees of the United States except for determination of fringe benefits provided for under Title 5, United States Code, and for freedom of information requirements under Section 552 of Title 5.

Section 6—Grants and contracts

This section establishes the Institute's funding authority and outlines the types of programs it may support. It provides that the Institute will, to the maximum extent possible, conduct its operations through the courts themselves or the national court-related organizations established to provide research, demonstration, technical assistance, education and training programs. Thus, it assures that the Institute will be a small development and coordinating agency rather than a large operating agency with its own in-house capabilities. The Institute is authorized to award grants and enter into cooperative agreements or contracts with state and local courts and their agencies, national nonprofit organizations controlled by and operating in conjunction with state court systems, and national nonprofit organizations for the education and training of judges and court personnel.

Funds also may be provided for projects conducted by institutions of higher education, individuals, private businesses and other public or private organizations if they will better serve the objectives of the Act. In keeping with the doctrine of separation of powers and the need for judicial accountability, each state's supreme court, or its designated agency or council, must approve all applications for funding by individual courts of the state and must receive, administer and be accountable for project funds awarded to courts or their agencies by the Institute.

The Institute is authorized to provide funds for joint projects with the Federal Judicial Center as well as other agencies for research, demonstrations, education, training, technical assistance, and 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 satis-

faction 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 the use of nonjudicial personnel in court decisionmaking; procedures for the selection and removal of judges and other court personnel; court organization and financing; court planning and budgeting; court management; the uses of new technology in record keeping, data processing, and reporting and transcribing court proceedings; juror utilization and management; collection and analysis of statistical data and other information on the work of the courts; causes of trial and appellate court delay; methods for measuring the performance of judges and courts; and studies of court rules and procedures, discovery devices and evidentiary standards. The section also requires the Institute to provide for monitoring and evaluation of its operations and of programs funded by it.

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

Section 7—Limitations on grants and contracts

This section requires the Institute to ensure that its funds 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 8—Restrictions on activities of the Institute

This section bars the Institute itself from participation in any litigation unless the Institute or a grant recipient is a party. This section also bars any lobbying activity unless the Institute is formally requested to present its views by the legislature involved, the Institute is directly affected by the legislation, or the legislation deals with improvements in the state judiciary in a manner consistent with the act.

Further, this section specifically prohibits the Institute from 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 9—Special procedures

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

Section 10—Presidential coordination

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

Section 11—Records and reports

This section authorizes the Institute to require from funding recipients such records as are necessary to ensure compliance with the terms of the award and the Act. It requires that any nonfederal funds received by the Institute or a recipient be accounted for separately from federal funds.

Section 12—Audit

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

Section 13—Amendments to other laws

This section amends section 620(b) of Title 28, United States Code.

Section 14—Authorizations

This section authorizes $20,000,000 for fiscal year 1985, $25,000,000 for fiscal year 1986 and $25,000,000 for fiscal year 1987.

Section 15—Effective date

This section states that the provisions of this Act shall take effect upon the date of enactment.

V. Committee Action

On June 29, 1983, the Subcommittee on Courts agreed by voice vote without objection, to report S. 384 to the full Committee for further action, after adopting technical and substantive amendments to the bill. The first substantive amendment changed one of the duties of the Institute and requires the Institute to make recommendations to government agencies concerning programs and activities relating to the administration of justice in state courts. The second substantive amendment changed the authorization under section 14 from $20,000,000 for fiscal year 1984, $25,000,000 for fiscal year 1985, and $25,000,000 for fiscal year 1986, to $20,000,000 for fiscal year 1985, $25,000,000 for fiscal year 1986, and $25,000,000 for fiscal year 1987. On April 12, 1984, the Committee on the Judiciary met, considered S. 384, and ordered it to be reported as amended.

VI. Regulatory Impact Statement

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

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

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

VII. Cost Estimate

In compliance with paragraph 11(a), rule XXVI of the Standing Rules of the Senate, the committee offers the following report of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 26, 1984.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 384, the State Justice Institute Act of 1984.

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

Sincerely,

Rudolph G. Penner, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

April 26, 1984.

1. Bill number: S. 384.
2. Bill title: State Justice Institute Act of 1984.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary, April 12, 1984.
4. Bill purpose: S. 384 establishes the State Justice Institute (SJI) as a private nonprofit corporation intended to improve the judicial administration of state courts in the United States. The Institute will award grants and contracts to state courts, nonprofit organizations, and other institutions to conduct research or develop improvements in judicial selection procedures, education and training programs for judges and court personnel, and state and local court systems. The activities of the SJI will be directed by an 11 member board of directors, to be appointed by the President. The bill's provisions will take effect upon the enactment date of S. 384. The bill authorizes the appropriation of $20 million for fiscal year 1985, $25 million for fiscal year 1986, and $25 million for fiscal year 1987.

5. Estimated cost to the Federal Government:

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

The costs of this bill fall within budget function 750.

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

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

7. Estimate comparison: None.

8. Previous CBO estimate: On March 15, 1984, CBO prepared a cost estimate for H.R. 4145, the State Justice Institute Act of 1983, as ordered reported by the House Committee on the Judiciary, February 28, 1984. The provisions of that bill were similar to those of S. 384, and the estimated budget impacts are identical.

9. Estimate prepared by: Lloyd F. Bernard.

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

VIII. Changes in Existing Law

In compliance with paragraph 12, rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 384, as reported, are shown as follows (new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE ANNOTATED

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

* * * * * * *

PART III—COURT OFFICERS AND EMPLOYEES

CHAPTER 42—FEDERAL JUDICIAL CENTER

§ 620. Federal Judicial Center

(a) There is established within the judicial branch of the Government a Federal Judicial Center, whose purpose it shall be to further the development and adoption of improved judicial administration in the courts of the United States.

(b) The Center shall have the following functions:

(1) to conduct research and study of the operation of the courts of the United States, and to stimulate and coordinate such research and study on the part of other public and private persons and agencies;

(2) to develop and present for consideration by the Judicial Conference of the United States recommendations for improvement of the administration and management of the courts of the United States;

(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government, including, but not limited to, judges, referees, clerks of court, probation officers, and United States commissioners; [and]

(4) insofar as may be consistent with the performance of the other functions set forth in this section, to provide staff, research, and planning assistance to the Judicial Conference of the United States and its [committees.] *committees; and*

(5) Insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice.

○