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STATE JUSTICE INSTITUTE ACT OF 1979

HEARINGS

BEFORE THE

SUBCOMMITTEE ON JURISPRUDENCE AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST AND SECOND SESSIONS

ON

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STATE JUSTICE INSTITUTE ACT OF 1979

THURSDAY, OCTOBER 18, 1979

U.S. SENATE,
SUBCOMMITTEE ON JURISPRUDENCE
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9 a.m. on Thursday, October 18, 1979, room 5110, Dirksen Senate Office Building, Washington, D.C., Senator Howell Heflin (chairman of the subcommittee) presiding.

Present: Senator Heflin.

Also present: Arthur B. Briskman, chief counsel; John Saxon, assistant counsel; Doug Jones, staff counsel; Linda Ashley, clerk, and Patricia Gant, secretary; and Michael Remington, counsel, House Judiciary Committee.

Senator HEFLIN. We have two distinguished Senators from Virginia and if everybody else would come forward that would be on the panel, particularly Chief Justice I'Anson, since the Virginians here want to put their stamp of approval on you.

Senator Byrd, do you want to go ahead since Chief Justice I'Anson of Virginia is here and is the chairman of the Conference of Chief Justices and will be the lead witness? If you and Senator Warner would like to make statements of introduction, we would be delighted to hear from you.

STATEMENTS OF SENATORS HARRY F. BYRD AND JOHN F. WARNER, OF VIRGINIA

Senator BYRD. Thank you, Mr. Chairman. I am delighted to join with my colleague, Senator Warner, in welcoming Chief Justice Lawrence I'Anson to this committee meeting this morning and to introduce him to this committee. I know that he needs no introduction to the distinguished chairman of this committee who himself was a distinguished chief justice of the Supreme Court of the great State of Alabama.

We, in Virginia, are very proud of Chief Justice I'Anson and we are very proud of our State supreme court. We regard it as one of the best, one of the ablest, and one of the most dedicated of any in the United States.

I am pleased to see my friend, Chief Justice I'Anson in the Capital this morning and commend him to this fine committee.

Senator WARNER. Mr. Chairman, there is little I can add to the

distinguished senior Senator's introduction other than to say that I cannot approach this with total objectivity, since the chief justice rendered me my oath of office as U.S. Senator and I have come to know him as the most respected member of the Virginia Bar so I urge you to take his testimony as gospel.

Senator HEFLIN. Well, I am glad to know that we have a confession of the lack of objectivity. [Laughter.]

I have noticed it on only one or two rare instances, mostly in remarks being made by the Senator about some of the interns in my office. He made some remarks one time when we had a group of Alabama girls that came up here as interns and he had a lot complimentary to say about that so I kidded him about it.

Thank you gentlemen, we appreciate your being here.

Mr. I'ANSON. May I say at this time, thank you, Senator Byrd, and Senator Warner. I am deeply honored by your presence and introduction here this morning.

OPENING STATEMENT OF SENATOR HEFLIN

Senator HEFLIN. Today, we begin hearings on a proposed State Justice Institute Act. The quality of justice in the United States is largely determined by the quality of justice in our State courts. For that reason, our consideration of this legislation is one of the most important undertakings of the Judiciary Committee in recent years.

State courts share with the Federal courts the awesome responsibility for enforcing the rights and duties of the Constitution and the laws of the United States. Our expectations of State courts and the burdens we have placed upon them have increased significantly in recent years. For example, efforts to maintain the high quality of justice in Federal courts have led to an increasing tendency to divert cases to State courts; the enactment of much recent congressional legislation, and heightened awareness throughout the country generally in consumer, environmental, health, safety, and civil rights areas have placed new demands on our State courts to redress grievances and insure justice for all Americans; the Federal Speedy Trial Act has forced both criminal and civil cases to State courts; and the decisions of the U.S. Supreme Court have placed increased responsibility on State court procedures.

We do not look unfavorably on the occurrence of any of these events, nor do our State courts shirk from the discharge of their constitutional duties. But it is perhaps 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 power fails, good government is at an end."

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: Education and training programs for judges and other court personnel; sound management systems; procedures and facilities to provide and maintain qualified judges and other court

personnel; better mechanisms for planning, budgeting, and accounting; sound procedures for managing and monitoring caseloads; improved programs for increasing access to justice; and programs to increase citizen involvement and guarantee greater judicial accountability.

Pursuant to these goals, we have convened these hearings to investigate the need for, and feasibility of, assistance to State courts in the form of a State Justice Institute. Such an institute, consistent with the doctrines of federalism and separation of powers, could assure strong and effective State courts, and thereby improve the quality of justice available to the American people.

We are fortunate to welcome today as our first witnesses six distinguished members of the bench and bar whose collective experience covers many decades and whose knowledge and expertise regarding State courts and judicial administration is both unquestioned and unparalleled.

We will hear first from Chief Justice Lawrence W. I'Anson of the Supreme Court of Virginia, chairman of the Conference of Chief Justices, and also the president of the National Center for State Courts.

We welcome all of you and look forward to hearing your valuable comments.

Chief Justice I'Anson?

STATEMENT OF CHIEF JUSTICE LAWRENCE W. I'ANSON, SUPREME COURT OF VIRGINIA

Mr. I'ANSON. Thank you, Mr. Chairman. My colleagues and I are honored to appear before you as witnesses at this initial hearing on the State Justice Institute for 1979. We believe this hearing will mark the beginning of an era in which improvements and reforms of State court systems will be recognized as a need so fundamental as to place it among our highest national priorities and concerns.

Since the full text of my statement supporting the enactment of the State Justice Institute Act has been filed with the committee, I will not repeat what has been written.

We have with us today five other witnesses who participated in preparing the documents of the chief justices' task force report on a State Court Improvement Act which is the basis of the act and to which our attention is directed this morning. They are Prof. Frank Remington of the University of Wisconsin Law School, a consultant to the task force committee who volunteered his valuable time to his work—Professor Remington will be the first witness—following Professor Remington will be Mr. Ralph Kelps of San Francisco who for many years has been State administrator for the California courts, one of the Nation's largest and finest judicial systems. In this capacity, he was intimately familiar with the LEAA program as it involved the courts.

Last year, in his present capacity as a consultant on court administration, he conducted a study of federalism and assistance to State courts, 1969–78, for the Department of Justice's Office for Improvements in the Administration of Justice. Like Professor Remington, he insisted on serving the task force without compensation. Mr. Kleps

will be followed by the Honorable Robert J. Sheran, chief justice of the Supreme Court of Minnesota, chairman of our Committee on State Federal Relations, who has been our very eloquent and effective voice in Washington for the past 3 years.

I think it fair to say that it was his work to prepare the way for the task force effort and he, of course, contributed significantly to the effort itself. Chief Justice Sheran also has been directly involved in the LEAA program in Minnesota and has long been concerned with the issues involved in Federal programs affecting State courts.

William H. Adkins II, court administrator of Maryland and president-elect of the Conference of Court Administrators, will follow Chief Justice Sheran.

The last speaker will be the chairman of our task force, the Honorable Robert F. Utter, chief justice of the Supreme Court of Washington who gave so freely of his time and many talents over the past year. The work could not have been completed in so short a time without his firm and steady guidance and we are greatly indebted to him.

[The prepared statement of Chief Justice I'Anson follows:]

PREPARED STATEMENT OF CHIEF JUSTICE LAWRENCE W. I'ANSON

Mr. Chairman and members of the subcommittee, my colleagues and I are honored to be the witnesses at this initial hearing on the State Justice Institute Act of 1979 for we believe that our presence here will be noted by judicial historians as an event of more than passing significance. Indeed, we believe it will mark the beginning of an era in which improvement and reform of state court systems will be recognized as a need so fundamental as to place it among our highest national priorities and concerns.

That the Conference of Chief Justices should be here on this mission would been unthinkable only 8 or 10 years ago. Yet we come before you today in support of proposed Federal legislation approved by the conference without dissent. State court officials, as you well know, have moved from widespread opposition to involvement in any Federal funding program to a general recognition of the need for a Federal role if it respects the separation of powers and the independence of State courts in our Federal system. I might note, Mr. Chairman, that the remarkable results you achieved with the assistance of Federal funds in modernizing the judicial system of Alabama when you served as chief justice contributed significantly to developments affecting this historic change of position.

Other developments and considerations bringing us here today are discussed in detail in the report of the task force on a State Court Improvement Act which we trust will be printed in full in the hearing record. They also will be developed in further detail in the statements of my colleagues.

I will only note for now that we have come to our current position primarily as a result of our experiences, both good and bad, with the Law Enforcement Assistance Administration which administers the only Federal funding program impacting directly and significantly on State court systems. The legislation now before us need not change the relationship between LEAA and the courts, particularly at the State and local levels where courts will continue to participate in the formula grant program for improvement of the criminal justice system. But it may suggest the need for some modification of LEAA's national discretionary program as it involves State and local courts.

There are two principal reasons why the conference feels it important that a new relationship between State courts and the Federal executive and legislative branches be structured independently of LEAA. The first involves those violations of the separation of powers doctrine and the principles of federalism inherent in an arrangement whereby a Federal executive department, in this instance the Department of Justice, is in a position to influence by funding decisions programs undertaken by or in behalf of State and local courts. Not only does the Federal executive determine the types of programs to be funded but selects the courts or other agencies to receive the funds. Second, the basic decisions are made with little or no input from knowledgeable judicial officials at the State and

local levels and without effective policy guidance from the Congress. Third, LEAA's focus on criminal justice makes it difficult at best for courts to undertake the kinds of broadly based improvements that must be undertaken if the total justice system, criminal as well as civil, is to function as it should. In most of our courts, including the Federal, the criminal and civil functions are inseparable. Improvements sought on the criminal side necessarily involve consideration of the civil side.

Present Federal policy, then, treats State courts as "components" of a "criminal justice system" conceived of primarily as an activity of the executive branch of Government. It does not treat the judiciary for what it is under the Federal and all State constitutions, an independent branch of government charged with the responsibility of adjudicating all types of disputes between individual citizens and between individuals and the State. 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. It is our hope, Mr. Chairman, that this issue will be prominent among those discussed by the Congress in its consideration of this legislation and that we will have a firm declaration of Federal policy supporting the underlying constitutional principle.

Before introducing my colleagues for a more detailed discussion, I will note that the Conference of Chief Justices did not have cause to involve itself in Federal legislative and administrative matters until after creation of the Law Enforcement Assistance Administration in 1968. We did not create a committee to consider such Federal issues until 1971 when our experience under the LEAA Act, which was drafted without input from the judiciary, gave cause for serious concerns. We did propose amendments, as you know, to the act in 1976 which, while not adopted as proposed, resulted in new provisions recognizing for the first time a judicial role in administration of LEAA's block grant funds at the State and local levels. However, there were no comparable provisions for judicial input into LEAA's national discretionary program and the separation of powers issues remained unresolved. We again attempted to deal with them in our recommendations to the President's Reorganization Project for Justice System Improvement and in our testimony on the LEAA reauthorization legislation now nearing final passage.

When it became apparent that the new legislation would not resolve our concerns we decided to create a task force to seek a new approach. The conference authorized this effort at its annual meeting in August 1978 and the incoming chairman, Chief Justice James Duke Cameron of Arizona, made it the priority effort of his administration. He immediately selected the task force members and placed them under the very able direction of Chief Justice Robert F. Utter of Washington. He also served as an active member of the task force, attending all meetings, and participating in the drafting of the report. He continues to be an effective member of our implementation program and we are greatly indebted to him for his support.

Our task force report, Mr. Chairman, reflects a series of policy positions developed by the conference since its initial resolution on the LEAA program in 1972. These were summarized in the two 1978 resolutions that set the stage for the task force effort and are enclosed along with other recent and related policy statements which we also would ask to be included in the record. They show the long road we have travelled to arrive here today.

We also would like the record to reflect recent statements endorsing the task force report which were adopted by the Appellate Judges Conference and the Council of the American Bar Association's Division of Judicial Administration. These groups are, of course, broadly representative of the trial and appellate bench.

I also should emphasize that the task force effort was not restricted to State court administrators and chief justices but involved members reflecting views of the broad spectrum of interests involved. They were Mr. C. A. Carson III of Phoenix, Ariz., who was chairman of the Judicial Administration Division of the American Bar Association, and Mr. John S. Clark of Petoskey, Mich., chairman of the Coordinating Council of National Court Organizations. Others taking part in our deliberations included John C. McNulty of Minneapolis, Minn.,

chairman of the board of the American Judicature Society who attended a task force meeting in Kansas City where drafts of the report and supporting legislation were considered.

I will close by noting that the State Justice Institute we have proposed would not, in fact, be a new Federal program necessarily involving new or additional funding. Rather, it would make more efficient and effective an existing Federal program. The institute would be a small agency with a modest budget. It would provide funds for research and development programs with national application or which would be beyond the resources of any given judicial system. It would not fund or subsidize ongoing State court operations. But it 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.

The first of my colleagues to develop these and other points will be Prof. Frank Remington of the University of Wisconsin Law School. Professor Remington, to name but a few of the roles that have earned him an enviable national reputation in the law, is a member of the Standing Committee on Criminal Rules of the Judicial Conference of the United States and previously served as reporter for the Advisory Committee on the Federal Rules of Criminal Procedures. We were fortunate to enlist him as an advisor to our task force and owe him a great debt for the time and effort he graciously volunteered.

Following Professor Remington will be Mr. Ralph Kleps of San Francisco who was for many years State administrator for the California courts, one of the Nation's largest and finest judicial systems. In this capacity he was intimately familiar with the LEAA program as it involved courts. Last year, in his present capacity as a consultant on court administration, he conducted a study on "Federalism and Assistance to State Courts—1969–1978" for the Department of Justice's Office for Improvements in the Administration of Justice. Like Professor Remington, he insisted on serving the task force without compensation.

Mr. Kleps will be followed by the Honorable Robert J. Sheran, Chief Justice of the Supreme Court of Minnesota, chairman of our Committee on Federal-State Relations who has been our very eloquent and effective voice in Washington for the past 3 years. I think it fair to say that it was his work which prepared the way for the task force effort and he; of course, contributed significantly to the effort itself. Chief Justice Sheran also has been directly involved in the LEAA program in Minnesota and has long been concerned with the issues involved in Federal programs affecting State courts.

The next speaker will be William H. Adkins, II, State court administrator of Maryland, who is chairman-elect of the Conference of State Court Administrators and chairman of their committee on Federal-State relations. He also served as a member of the task force and brought to it his broadly based knowledge of State court issues and their present relationship to existing Federal funding programs.

The last speaker will be the chairman of our task force, the Honorable Robert F. Utter, Chief Justice of the Supreme Court of Washington, who gave so freely of his time and many talents over the past year that we are in a position to appear here today. The work could not have been completed in so short a time without his firm and steady guidance and we are greatly indebted to him.

Mr. I'ANSON. It is now my pleasure to present Professor Remington.

Professor REMINGTON. Thank you, Chief Justice I'Anson and Senator Heflin.

STATEMENT OF PROF. FRANK J. REMINGTON, UNIVERSITY OF WISCONSIN LAW SCHOOL, TASK FORCE COMMITTEE CONSULTANT

Professor REMINGTON. When I was first contacted about 1 year ago and asked to assist in the preparation of a proposal for Federal financial assistance for State judicial systems, I was very hesitant to become involved for a couple of reasons. First, I felt not sufficiently well informed with respect to the merits of this question, and second, I was

skeptical whether a persuasive case would ever be made in connection with Federal financial assistance for State judicial systems.

Over the course of the past year under the tutelage of others sitting at this table I have become better informed with respect to the merits and I have been completely persuaded that there is, in fact, a principle basis for Federal financial assistance for some aspects of State courts.

I became convinced that to say that there is an important Federal interest in the quality of justice furnished by State courts is to assert the obvious. There is nothing more important to a democratic society than confidence by its citizens that they will receive a high quality of justice in State court as well as Federal. It is particularly true and particularly difficult to achieve in a highly diverse society such as ours with diverse ethnic and racial groups.

Important as our health, education, and good environment, all the recipients of Federal financial support, they are no more essential to a nation than to have all citizens confident that they can find fairness and justice and proper concern for constitutional principles in the State courts where 98 percent of the cases are handled. This reason alone would justify Federal financial assistance to State courts where such assistance can contribute significantly to the quality of justice. But there are other reasons also, some of which have been mentioned by Senator Heflin in his opening remarks.

Actions at the Federal level have, in recent times, significantly increased the burden of State courts and significantly increased the direct Federal interest in the effectiveness of State judicial systems. These actions have been of three general sorts: First, the Congress has increasingly relied on State courts to implement congressional legislation. A nationwide 55-mile-per-hour speed limit is illustrative of a large number of additional illustrations which could be cited, some of which were cited by Senator Heflin in his opening remarks.

Second. Federal executive agencies, such as the Department of Justice, and Federal courts have diverted an increasing number of matters to State courts in order to maintain the small, high quality character of the Federal justice system.

The Federal Government used to prosecute interstate auto theft. It no longer does so; the trend is toward increased reliance on State contributions and is increasing in volume. Federal courts have decided not any longer to review State fourth amendment decisions where the State has given a full and fair hearing. A very recent count indicates that as many as 41 State courts have held that the State court has jurisdiction to hear cases brought under 42 U.S.C. 1983. the Federal Civil Rights Act. I anticipate that there will be increased reliance on State courts in 1983 cases where the decision of the State courts will be res judicata and the question of the adherence to the Federal constitutional standards cannot be relitigated in Federal courts.

Third, Federal courts impose increasing procedural due process requirements on State courts in both criminal and civil cases. There was a time in my memory when States viewed this as unwarranted Federal interference in State judicial systems. It is my view today that there is a greater willingness on the part of State courts to accept these procedural due process requirements and it seems to me that there is an obvious Federal interest in assuring that the process and implementation at the State level is knowledgeable and is effective.

Senator HEFLIN. Professor Remington, let me dwell on that. I haven't seen any studies, but my knowledge having been on the judiciary and then returned to the practice of law and having become involved in the assigned counsel system of representing the poor, since the enlargement of due process procedures have taken place on the courts, pleas of guilty or anything else, I had one time an occasion—someone estimated that that has probably increased judicial manpower requirements between 10 and 15 percent in the State courts. We are all certainly in agreement; I don't think anybody would want to change and do away with any of the procedural due process requirements that we now have. For example, to take a plea of guilty formerly lasted probably in the neighborhood of 3 to 4 minutes just in going through the procedure in the trial court. Now, with all of the various procedural due process requirements, a plea of guilty, if properly conducted as most State courts do, can take from 30 minutes to 1 hour. I think this has increased a substantial amount of judicial man-hours in regard to work. If you have 10 to 15 percent—if you have in the neighborhood of 100 trial judges in a State, it may well have brought about an increase of 10 to 15 judges. Looking at it in a more exaggerated state, the corresponding supportive personnel that goes along—court reporters, and some judges have secretarys—would be a substantial increase on the financial burden of the State.

Do you have any comments in regard to this as to the increased requirement that are placed upon the State judicial systems as a result of U.S. Supreme Court decisions, due process procedures, which we need and want, but which also create an additional cost to the State?

Dr. REMINGTON. I agree with that, Senator. I don't think there is any question about it and I think the plea of guilty procedure is probably the best illustration. It not only requires extra time, and therefore, extra judicial resources, but it is more difficult to do and requires a great deal more in the way of judicial education to understand the very complex requirements of that kind of procedure. These increased requirements have been imposed, not only by courts, but during the last session the House Judiciary Committee added to the requirement of rule 11 by providing that the judge can put the person under oath in taking the plea and must warn the person of the fact that if a false statement is made under oath that that person can be proceeded against for perjury. That issue has complicated, as part of rule 11, the State court procedure and Federal court procedure, and the experience has been, under *Boykin* v. *Alabama* and the *McCarthy* case, that the increased requirement, both judicial and legislative, through rule 11 on the Federal courts, has been applied by the 14th amendment to State courts. I would anticipate that State courts will be required, if they are going to proceed against individuals who make false statements as part of the guilty plea process, to conform to the new and increased requirements of rule 11; all of which, as you indicate, may be for the good, but all of which take increased time, increased resources, and put increased burdens on State systems to insure that trial judges—often in remote rural areas—are kept informed of these developments so that they can apply them and not have to face post conviction attacks, and have to redo their cases after convictions have been set aside.

Senator, others will speak to whether Federal financial assistance

can be put to good use by State judicial systems and as to whether undesirable Federal control over State judiciaries can be protected against. Assuming that the funds will be used effectively, as I believe they will, and assuming that an undesirable degree of Federal control can be avoided, as I believe it can, I believe it is evident that a Federal financial commitment to the quality of justice in the State courts is in the Nation's interest and is an appropriate function of Federal Government.

Senator HEFLIN. Let me address for a moment the issue of taking an appeal in indigent cases. The requirement, for example, for an indigent to have a transcript and lawyers fees. Very recently in my State they had a case in which the U.S. Supreme Court didn't grant cert on but which raised the question that lawyers were enslaved in the representation of the indigent because the fees they were paid were so low, and really, they are very low. I think some of the examples that are on appeal in Alabama that the court reporter made somewhere in the neighborhood of seven or eight times in regard to what the lawyer did. You don't always think about the additional cost that is incurred because of this, but court reporters—just the transcripts alone—maybe Mr. Kleps and Mr. Adkins would have some idea of what the cost of this has been, as an additional cost on the States.

Professor REMINGTON. I think that work at the State judicial level can help reduce those costs if that work is made possible. At the latest convention of the Conference of Chief Justices, I noted that a resolution was passed urging the so-called unified postconviction motion so instead of having to do it twice, once on appeal and once on a postconviction habeas, the suggestion on the part of State courts is that all of that might have been done in a single hearing and the costs will not have to be doubled and it seems to me that this is an illustration of where constructive procedural changes can be made, given adequate resources to work those through, which will make it possible to achieve the new requirements and to do so more efficiently.

Senator HEFLIN. We also happen to have Professor Remington's son here who is a counsel for the House of Representatives, and we would like to welcome you. Do you have any questions? Would you like to ask "Teacher" something? [Laughter.]

MICHAEL REMINGTON. No, thank you.

Senator HEFLIN. Who is the next witness?

All right, Mr. Ralph Kleps?

STATEMENT OF RALPH N. KLEPS, STATE ADMINISTRATOR, CALIFORNIA COURTS

Mr. KLEPS. Mr. Chairman, I have a long-standing interest in national efforts to improve State government. It goes back further, as a matter of fact, than I like to recall. In the 1950's I was legislative counsel in California and worked with the Council of State Governments and I soon learned that legislators, through the National Legislative Conference, and Governors, through the Governors Conference, had powerful instruments to assist in the continuing improvement of their operations.

When I was chairman of the National Legislative Conference, I got real insight into this but when I became administrative director of the

California courts in 1961, my first exposure to the judicial side of this was attending a conference of chief justices in San Francisco, at which about 30 States were represented by their chief justices or someone assigned by the chief justice from their supreme court and there might have been as many as 25 court administrators two-thirds of them local in nature and only a few at the State level. There was no continuous effort between these annual sessions. There was no staffing, and there was no continuing project for improvement and it was pretty obvious that the judicial branch of State government was a neglected area. In fact, I thought that as I looked at what was happening in other branches of State government, the judiciary was about 25 years behind times.

That changed and it changed because of the application of funding in aid of State court systems. The concept, of course, comes from the 1967 President's Commission on Law Enforcement and the Administration of Justice. They weren't really thinking about courts and the only reference, as a matter of fact, to court programs were training and educational programs. The 1968 Omnibus Crime Control Act didn't even mention courts. They concentrated exclusively on law enforcement and corrections and, for that reason, I think they placed the enforcement and administration of that program in the Department of Justice.

Court programs were implemented by a few grants here and there, approved by administrators of the programs and, of course, the study which was done I was able to do about a year or so ago, for the U.S. Department of Justice came up with what everyone now accepts; that LEAA managed over that 10-year period to put about 5 percent of its allocations into court programs, thinking of court programs specifically. That percentage is said to be increasing. Courts have used other, Federal funding programs, some revenue sharing money, some CETA money, but the only other program the Federal Government has specifically aimed at court improvement is the Highway Safety Administration's traffic program. But those funds have been very limited, amounting to something like $27 million over 10 years.

So LEAA's several divisions—there are Adjudication Divisons, National Institute and Research, their Information Statistics Division—have been the primary Federal agencies over the past 10 or 11 years in funding court improvements.

As I say, that wasn't an intended result, I think, when that law was passed. It worked out that way over time and the initial experience of the States was a frustrating one. Significant improvement came about in any number of States, but serious difficulties came out of the fact that administration and supervision was vested exclusively in the executive branches of both Federal and State government and as we all know, we who went through that period, that judicial participation in planning projects and allocating funds was frequently minimal and often nonexistent and that is even true, in many instances, where it was a court program.

In 1976, the LEAA reauthorization legislation addressed these problems and it was done largely at the instance of the Conference of Chief Justices and other judicial improvement organizations in the country. Provision was made for judicial planning agencies in the States and for a more adequate share of grants to be devoted to State

courts and all of that has led to better relations and to better court programs and despite the operating difficulties that have taken many different forms in different States, the principal motivating factor—in my opinion—for the very impressive changes that have taken place in State court systems over the past 10 years is the Federal assistance, even though minimal, that has been provided in this way.

So you have come to the question, I think, of why a State Justice Institute Act? The reason for a State Justice Institute Act in the minds of the people who are working on this bill in the States is that the structure of the existing programs was designed without any thought as to the proper relationships between Federal executive agencies and State judicial agencies. Executive priorities, regulations and executive interpretations have been drafted for State judicial systems in seeming disregard of the fundamentals of separation of powers and judicial independence.

Largely as a result of the 1976 legislation, existing State judicial agencies or the newly created judicial planning agencies have begun to function pretty effectively in laying out long-range programs for State court improvement. The State Justice Institute Act is an effort to create a national level judicial agency which is of a similar design. It will provide a national judicial institution to work with State judicial institutions in a coordinated effort. It can build on the LEAA experience but will make sure that any Federal support provided is administered in the best possible way to produce continuous State court improvements. It can furnish a sound basis of support for the several national organizations that have been successful in providing support services for State court systems, in training, research and technical assistance. I think this act will constitute Congress recognition of the basics of judicial independence and the separation of powers in its efforts to promote State court improvement.

This needed effort comes at a time when the burdens and the volume of State cases continue to increase dramatically and when the Federal court system must rely even more heavily on State systems. It is not too much to say that the ability of both Federal and State court systems to meet the demands of the future may well depend upon the early passage of legislation of this nature.

Senator HEFLIN. I see Mr. Pete Velde has joined us. Mr. Velde is counsel on the Judiciary Committee for Senator Robert Dole of Kansas and, as most of you know, is the former administrator of LEAA. Won't you join us up here, Pete? We have Mr. Ken Feinberg of Senator Kennedy's staff and I would like any of you to feel free to ask any questions that you might like to of any of the witnesses that are here.

Mr. Kleps, we have, of course, the problem that I am sure a lot of people are going to ask and that is to what extent would a State justice institute avoid duplicative and overlapping efforts by various Federal funding sources and what are the advantages to be derived from handling a State justice institute as opposed to present Federal funding through existing agencies?

Mr. KLEPS. I am sure each member of the panel that is testifying would want to respond to that question. My view of it is that the U.S. Department of Justice, as a law enforcement agency, is not the ideal agency to structure programs for the improvement of State courts. Its interests are specific and tailored to the law enforcement field.

I do not view this Justice Institute Act as interfering with the programs of the Department of Justice or the Law Enforcement Assistance Administration. I think the bloc grant programs for the States need not be dealt with. I think what we are talking about is a permanent, continuing Federal structure which can do a coordinated judicial planning effort and I think the funds which are directly allocated by the Federal Government ought to go through such a planning structure.

Senator HEFLIN. You indicated that State bloc grant funds, as you envision the State Justice Institute, would not get into that type of activity.

Mr. KLEPS. I don't feel that it would.

Senator HEFLIN. Is it basically an approach of having as we know in LEAA a discretionary program which is at a national level?

Mr. KLEPS. Yes.

[The background summary of Mr. Kleps' testimony follows:]

SUMMARY OF TESTIMONY BY RALPH N. KLEPS

1. QUALIFICATIONS

Legislative counsel of California (1950–61), and first administrative director of the California courts (1961–77).

Adviser to Conference of Chief Justices' Task Force on State Federal Relations (1978–79); author, "Federalism and Assistance to State Court Systems—1969 to 1978," U.S. Department of Justice—Justice Research Program, Washington, D.C. (1978).

2. BACKGROUND OF EXISTING FEDERAL IMPROVEMENT PROGRAMS FOR STATE COURTS

The concept of Federal support for improving the States' administration of justice goes back to the work of the President's Commission on Law Enforcement and the Administration of Justice in 1967. In its report, however, the only court programs that were specifically envisioned by the Commission were judicial training and education grants.

The resulting 1968 Omnibus Crime Control and Safe Streets Act concentrated exclusively on the law enforcement and corrections aspect of the report, and placed its administration in the Department of Justice (LEAA). Court programs were not specifically mentioned in the act, but the program administrators did approve a small number of court projects as time went by.

The Department of Justice (LEAA) allocated about 5 percent of its grant funds (about $300 million) for State court improvement over a 10-year period, and that percentage is said to be increasing. Courts have used other Federal programs (revenue sharing, CETA, and so forth), but the only other one specifically aimed at court improvement is the Highway Safety Administration's traffic court program. Highway funds for this purpose have been limited, however, amounting to some $27 million over 10 years. Thus, LEAA's several divisions (Adjudication, National Institute, Information and Statistics, and so forth) have been the primary Federal agencies involved in funding State court improvements.

3. EXPERIENCE UNDER EXISTING PROGRAMS

The initial experience of State court systems with Federal court assistance programs was frustrating even though significant improvements resulted in many States. Difficulties arose from the fact that administration and supervision was vested exclusively in the executive branches of Federal and State government. Judicial participation in planning projects and allocating funds was frequently minimal and often nonexistent.

The 1976 LEAA reauthorization legislation addressed these problems at the request of the Conference of Chief Justices and other judicial improvement organizations. Provision for judicial planning agencies in the States, and for a more adequate share of the grants to be devoted to State courts, led to better relations and to better court programs.

Despite operating difficulties that took many different forms in the different

States, the principal motivating factor for the very impressive changes in State court systems over the past 10 years is the Federal assistance that has been provided.

4. WHY A STATE JUSTICE INSTITUTE ACT?

The structure of the existing Federal program for State court improvement was designed without any thought as to the proper relationships between Federal executive agencies and State judicial agencies. Executive priorities, regulations and interpretations have been drafted for State judicial systems in seeming disregard of the fundamentals of separation of powers and judicial independence.

Largely as a result of the LEAA reauthorization legislation in 1976, existing State judicial agencies or newly created judicial planning agencies have begun to function effectively in laying out long-range programs for State court improvement. The State Justice Institute Act is an effort to create a national-level judicial agency of similar design. It will provide a national judicial institution to work with State judicial institutions in a coordinated effort. It will build on the LEAA experience but will make sure that any Federal support that is provided will be administered in the best possible way to produce continued State court improvement. It will furnish a sound basis of support for the several national organizations that have been successful in providing support services for State court systems, in training, research and technical assistance.

This act will constitute Congress' recognition of the basics of judicial independence and the separation of powers in its efforts to aid State court improvement. This needed effort comes at a time when the burdens and the volume of State cases continue to increase drastically and when the Federal court system must rely even more heavily on State systems. It is not too much to say that the ability of both Federal and State court systems to meet the demands of the future may depend upon the early passage of this kind of legislation by Congress.

Mr. I'ANSON. Our next speaker will be Chief Justsice Sheran, of the State Court of Minnesota.

STATEMENT OF CHIEF JUSTICE ROBERT J. SHERAN, SUPREME COURT OF MINNESOTA

Mr. SHERAN. I consider myself privileged to be among the witnesses appearing before this subcommittee of the Senate Judiciary Committee today, under the leadership of Chief Justice I'Anson, the chairman of the Conference of Chief Justices and one of the great leaders in the effort to improve the administration of justice of the States.

I cannot escape the feeling that to appear before this subcommittee, which is chaired by Senator Howell Heflin of Alabama, to speak on State-Federal relations bearing on the judicial system is the classic case of carrying coals to Newcastle because as we all know, Senator Heflin was formerly the Chief Justice of Alabama, chairman of the Conference of Chief Justices, chairman of the State-Federal Relations Committee of that Conference, and the person who provided the initial leadership in analyzing and dealing with the problems with which we are today concerned.

The background from which I am privileged to make this statement in support of the State Justice Institute Act of 1979 includes 3 years of service as chairman of the State Planning Agency for the State of Minnesota, which was established to implement the Safe Streets Act of 1968 as well as service as chief justice of the State of Minnesota since 1973.

I think that many of the concerns with respect to the present

structuring of Federal assistance for State court systems derives from my firsthand experience in dealing with these problems as chairman of that State planning agency.

It is important, I think, to begin with the fact that remarkable improvements in the administration of justice through State court systems were made possible by Federal grants through the Law Enforcement Assistance Administration. It is my personal conviction that State court systems would have floundered in the face of the massive increases in litigation in recent years were it not for these improvements which this aid made possible.

Even so, the experience of the past 10 years has caused to surface basic conceptual difficulties undergirding the Safe Streets Act which makes this form of Federal cooperation less effective than it could and should be.

To begin with, the Safe Streets Act was designed as a Federal effort to assist States to combat crime. It conceived of the process of investigation and apprenhension, of trial and adjudication, of corrections and imprisonment as necessary and undifferentiated components of an inseparable process by which crime is controlled without intrusion upon the rights of citizens.

In doing so, the separate and sometimes conflicting responsibilities of the executive and judicial branches of Government, important at the State level as well as at the Federal level, were obscured. The tendency of this subordination of the principle of separation of powers is to weaken the judicial function as a check on the executive department's performance in the detection of and punishment for criminal behavior.

Second, at the State level, the judiciary was placed in competition with executive branch agencies, police, and corrections, for a fixed amount of Federal support. The judiciary, by reason of the necessary limitation on its actions in the political arena, was not willing or able to compete effectively, particularly when final decision as to allocations of funds were made by a commissions dominated by executive branch appointees.

The fact that this difficulty was ameliorated by the 1976 amendments making possible the establishment of judicial planning agencies having substantial authority in the allocation of funds for judicial improvements, demonstrates, in my judgment, the initial weakness of concept.

Next, at the Federal level, policy is set by an executive branch agency—the LEAA—lodged in the Department of Justsice. Although the experience of State judiciaries with the administration of the LEAA has been most cordial, this has been due, I believe, more to the individuals involved, than to the soundness of the underlying concept.

It is anomalous and unwise for the Department of Justice, as part of the executive branch of the Federal Government, to exercise authority significantly affecting State judicial systems of a kind, and to a degree, which Congress does not countenance with respect to the Federal judiciary.

Finally, in State judicial systems, the exercise of civil and criminal jurisdiction are functionally inseparable. It is not possible to limit

efforts to improve State judicial systems to that part of it which is involved with the trial of criminal cases.

Conversely, any improvement in the methods by which civil cases are handled elevates our capacity to deal effectively with criminal offenses. Any effort to give a speedy trial in criminal cases increases the need to improve overall efficiency of the system so that civil cases can be accommodated as well. 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.

The basic theoretical difficulties which we have experienced in obtaining Federal support through the LEAA will be resolved by the State Justice Institute Act of 1979. On the State level, judicial systems are separated from executive branch agencies as they should be. On the Federal level, the implementation of congressional policy is based in a governmental entity not a part of the Department of Justice. Whatever Federal resources are available for assistance in improving State judicial systems will be determined by the Congress itself.

These significant changes will make it possible to achieve better results with the same funds without the weakening of State judicial systems which could come from disregard of conventional principles of authority allocation.

Mr. FEINBERG. Judge, let me ask you a couple of questions. Why, in light of the panel's unanimity that LEAA has performed valuable service to the State judiciary, don't we simply amend that statute? The statute is now up for reauthorization this year; why don't we simply sit down and amend the LEAA statute itself to take into account the neglected need for State judiciaries? Why do we need an entirely separate mechanism? Why can't we go the way we did, much further, perhaps, but basically, the way we went in 1976 with those LEAA amendments? Maybe even money for State judiciaries?

Mr. SHERAN. In my judgment, Mr. Feinberg, to follow that course, it might meet the short-term requirements of State judicial systems and entities which serve those systems, but, the long-range needs of State judicial systems would not be well served by that because we would continue to have a situation where, at the State level, a significant measure of involvement would exist as between executive department functions—police and corrections—and the judiciary. But the ultimate decision as to the allocation of resources on the State level would take place in the executive dominated agency, the State planning agency—by whatever term it is called. Now, if the statement is made that we can solve that problem by in effect pulling the judiciary out of the system at the State end of the thing, by establishing judicial planning agencies or committees, my response to that is that by suggesting that as a solution to the problem, you advance a strong argument in favor of complete separation from top to bottom because that methodology assumes the necessity of the separation in the first instance at the State level.

It is not possible to extricate policy determinations with respect to State judicial systems from the executive branch of the Federal Government within the context of the LEAA as it is presently structured. There is no practical possibility with the LEAA continuing, that it will be lodged anywhere except in the Department of Justice or some

other executive agency. We are back to the basic concern which troubles all of us; that is, for an executive agency, on the Federal level, the Department of Justice in which the LEAA is lodged, exercising a measure of direction that influences State court systems, which is simply not permissible. These are the Federal court systems. That is why the Congress, as a matter of long-range policy, has set up a separate entity to deal with the relationship between the Congress and the Federal courts. For precisely the same reason, there should be set up a separate Federal entity, not a part of the Department of Justice, to deal with the problem of State courts.

One final point in that regard, Mr. Feinberg, and I would like to emphasize it in response to your question. It is important in my judgment that whatever the Congress proposes to do, in discharge of the recognized responsibility for the improvement of the administration of justice in the States, it should be done by the Congress. The amount of resources to be allocated to this function should be determined by the Congress and, in my judgment, the amount is not so important as that the Congress determine it and that the judiciary and the States not be placed in a position of competing with executive agencies for an amount of money which Congress has appropriated in gross to the entire program.

It is a practical fact, which 3 years of experience as chairman of the State planning agency has imprinted firmly on my mind, that this kind of competition between the judiciary, between the police, between corrections, is not serving a useful purpose, to put the situation as mildly as I can.

If the Congress determines that it wants to respond to its obligation to improve the administration of justice in the States by appropriating a fixed amount of Federal funds for this purpose, let that fund be allocated precisely for the functions that we are talking about, without competition and debate with respect to it.

I think these reasons are not only sound theoretically, but significantly they are imperative practically. That is the reasoning that underlies the task force report.

Mr. FEINBERG. Let me ask some quick further questions to follow up on this.

Why shouldn't the police or the corrections people come in with the same objection to the current LEAA program and offer a task force report dealing not with the judiciary but the police, or corrections, or district attorney, or probation? How do you answer the claim that others will make that they should be treated the way that you are requesting the State judiciary be treated?

Mr. SHERAN. I have no answer for that, Mr. Feinberg, other than the answer that is embodied in both the Federal and State constitutions which divides the authority, the exercise by Government, between three separate and distinct branches, the executive, the judicial, and the legislative. Police and corrections are part of the executive branch. The necessities of their making accommodations in terms of funding of their programs through the office of the Governor is accepted, as a customary method of doing things.

But when you bring into that picture the court systems, now what you have done is to mix up in one bag the judicial department of Government and the executive department of Government and in so doing,

you tend to obscure the lines of distinction that must be maintained between those departments.

The separation of powers doctrine must be observed and, more importantly, the reasons for the separation of powers doctrine must be adequately fulfilled. To be sure that the judiciary must cooperate with executive branch agencies and with the legislature, but it also must maintain a certain measure of independence, if you will, of remoteness, if you will, so that it can perform its basic function of independently emphasizing the importance of the rights of the individual in the process of the detection, apprehension, and punishment for criminal behavior. That is right to the heart of what we are talking about.

Mr. FEINBERG. But, my final question is how is it possible? How do we strike the balance, Judge, if we separate out the judiciary under this bill? How do we assure that the criminal justice system, which runs together in one system—judges, district attorneys, police, corrections, that is what the system is all about—how do we be sure that we are not going to lose that type of coordination in promoting communication input in a true system of criminal justice if the judiciary, which is at the heart of the system, is separated out when it comes to Federal funding treatment?

Mr. SHERAN. Well, in essence, useful cooperation between the branches of Government is that they manage to maintain independence and engage in the kind of cooperative efforts that independent posture permits. That is something that is involving the exercise of the greatest political and governmental talents that we can apply to it. But we don't solve the problem by eliminating the difference that exists between these branches of Government. We solve it by developing methods of cooperation short of putting executive and judicial department agencies into the same compound as it relates to funding its court.

I cannot help but repeat that I think, Mr. Feinberg, that these questions that you have put to me go directly to the heart of what we are talking about. The answer must be that the reason that you distinguish between the judicial branch of Government and the police and corrections, which are part of the executive branch of the Government, is because the Founders of our country made that distinction in the Federal Constitution, a distinction which was repeated over and over again in the constitutions of several States as they joined the Union.

Senator HEFLIN. Mr. Velde, do you have some questions?

Mr. VELDE. Thank you, Mr. Chairman. May I say at the outset, first of all, I am very pleased to see some old friends and acquaintances here and recall the happy years in working with them. Also, I want to express, Mr. Chairman, that Mr. Dole regrets that he is not able to be here this morning, but he does have some rather heavy responsibilities with the windfall tax legislation and he could just not get away from it, but he wanted me to express his interest to you on the work of this subcommittee on this paraicular bill and I think you will find that the minority is willing to work out whatever can be worked out by way of a constructive solution to the problems that are being identified here this morning. Mr. Chairman, just two or three very brief questions.

First, Chief Justice Sheran, you indicated that for 3 years you served as chairman of the Minnesota State Planning Agency Supervisory

Commission. I believe through the years that several of your brethren have served in similar capacities, specifically in the State of Louisiana where the chief justice there served in a similar capacity. I also recall that other chief justices refused to participate in the planning process, I believe, primarily out of concerns over the possible violation of the concept of independence of the judiciary. What was your experience in serving in this capacity?

Mr. SHERAN. I probably should have noted, Mr. Velde, that during the time that I was serving as chairman of our State planning agency, I was in private practice. For a period of 4 years between my service as associate justice on the supreme court, I returned to the court as chief justice. I was in private practice and it was during that period of time that I served as chairman of the State planning agency, so I didn't have the problem. When I returned to the court as chief justice, I felt the concerns that you have expressed to the point that I resigned the chairmanship. It poses a problem, I think.

Mr. VELDE. Although I believe the chief justice of Louisiana did serve in that capacity and I believe a former chief justice of the State of North Carolina absolutely refused to take any LEAA funds or to allow any of his judges or court administrators to participate in any of the planning activities or any other participation in the LEAA program, it seems to me that there were some difficult problems, conceptual difficulties that were answered in one way in certain States and in another way, the opposite answer, in other States.

Mr. SHERAN. I think that is correct. I am not sure precisely in what States members of the supreme courts have served as members or chairmen of the State planning agencies, but there is a difficult conceptual problem and different chief justices and supreme court judges have had different responses to it.

Mr. VELDE. Would the creation or establishment of a State justice institute serve to insulate or protect the State judiciary from, apparently, some of the perceived difficulties that at least some of the State courts have felt through the years by participating in the LEAA program?

Mr. SHERAN. Yes. And for the reasons that I have mentioned before, that if at the State level you have eliminated the kind of competition for a common quantity of funds as between the police and corrections, the executive department agencies on the other hand, judiciary on the other, and if you let the policy determinations as to the deployment of the funds that are made available to the State judicial systems be made by people whose primary concern is with the State judicial system, you have solved it on the State level.

If on the Federal level, you establish an entity with membership appointed by the President of the United States but drawn from a group of people whose exclusive concern or at least primary concern is with the improvement of State judicial systems, you have solved it on the Federal level. In my judgment, you have made it possible to achieve better results with the same quantity of resources, yet more results out of the same allocation of Federal support and you are able to do that. You are able to be cost effective in a way consistent with basic constitutional principles which underlie the kind of difficulties that we have experienced during the past 10 years, notwith-

standing what has been a very cordial personal relationship between the authority of the LEAA on the one hand and the people responsible for the State court system on the other.

Mr. VELDE. What do you conceive, Mr. Chief Justice, of the role on participation of prosecution and defense in the State justice institute. Would there be any, and if there is——

Mr. SHERAN. In my own conception of the matter, the prosecution and defense functions should not be a part of or considered in the same vein with the adjudicatory functions of the court.

In my own experience in the State of Minnesota, we are meticulous about keeping a line of separation between the judgmentmaking function of a court system and the charging function of the prosecution. We are very careful to avoid any kind of a situation where our court system undertakes to manage or control or unduly influences the processes by which defense services are made available to the people who come before our courts to stand subject to our judgments. The reason we do that is because the give and take of the advocacy process is not, in my judgment, at least, well served if judges become one day prosecutors by sort of osmosis and another day defense counsel by osmosis.

It is the preservation of the independence of the system that makes possible the most just results in the process and that, really, is what underlies what we are undertaking to present.

Mr. VELDE. It would probably not be feasible or desirable to expand the charter of the Legal Services Corporation to include the broader mission to assist the courts, as I guess its efforts are primarily focused toward the defense function now.

Mr. SHERAN. I don't think that our committee has addressed itself specifically to the question which you just now put, but my spontaneous reaction is that that would be a very unwise course at the moment.

Mr. VELDE. Sir, do you have any estimate of the dollar resources that might be required by way of an authorization to support the work of the Institute?

Mr. SHERAN. I notice that in the bill, as presently prepared, it contemplates first year funding at the $20 million level, second year funding at the $40 million level, third year funding at $60 million, and thereafter, at such level as should appear to the Congress appropriate.

While I mention these figures, and I am now here speaking more personally I think, perhaps, than for the task force, but I think it is less important at what level the Congress funds this concept than it is that the concept be understood and employed. We all realize that the concern of the Congress in dealing with Federal resources formulating a Federal budget is consistent with efforts to control inflationary trends. We understand it, but are sympathetic with it. So my response to your question is that while these figures are used in the bill and while they seem to be consistent with what the pattern has been in the past, in my judgment, and I think this is shared fairly generally by the other chief justices, the significant thing is not so much the level of funding, but the methodology by which the funding is made available to the State court system by joint efforts to improve the process.

Mr. VELDE. I take it then, sir, that the conference has not developed

an estimate of the shortfall between available resources, either State or Federal and what might be needed to really make significant improvements in reforms. Is there a set of projections, long-range plans of what really might be additionally required to move out as you would like to?

Mr. SHERAN. Nothing quite so precise as that, I would say, Mr. Velde, although Chief Justice Utter may have some views on that when it comes his turn to speak. But the question being raised requires that I emphasize the fact that the Federal funds made available for State court systems should never be considered as Federal funds made available for the essential maintenance of State court systems. That is, and in my judgment always will be, a State court responsibility.

The funds made available through LEAA were to make it possible for State court systems to have an added implemental resource to introduce educational programs for the improvement of the administration of the State judicial systems so that a relatively small increment to the total expended on the State judicial systems, but applied effectively wherein and as needed, brought about results that greatly improved the system far beyond in terms of dollars the amount of expenses. Correctly and in the appropriate place as supplemental to and implementary of the support which State legislatures give State court systems to carry out their essential functions and in my judgment, that should be the policy of the future.

Mr. VELDE. Would it be analogous, perhaps, to the situation in 1968 when Congress was trying to set authorization levels for the LEAA program initially, and I believe the authorization figures for the first 2 years were $100 million and $300 million and those numbers were quite arbitrarily drawn up? The rationale was that whatever the needs of State and local criminal justice systems at the time, they were far in excess of those numbers, so they were conservative and the money could be well spent.

Mr. SHERAN. I think so.

Mr. VELDE. These numbers, $20, $40, $60 kind of fall in the same general——

Mr. SHERAN. I think so, but with this admonition. I think it is important as we move ahead on what I hope to be the adoption of the legislation that we keep in mind that the role of the Federal Government should be to supplement the basic responsibilities of the States to provide for their State court systems and to do it in ways that are specified in the bill as an increment to this basic support by the State in an effort to elevate the functioning of State court system and improve our capacity to deal with the constant increase in caseloads for which the Federal Government, through its legislation, and the Federal courts, for their decisions, have, in part, brought about.

Mr. VELDE. I take it then, sir, that these figures certainly don't contemplate any permanent reliance on this program on the part of the States to support operational budgets, salaries, and fixed items of expenses.

Mr. SHERAN. In my judgment, the essentials of a State court system, and I am not prepared to define precisely what would be encompassed by the word essential, but essential to the State court system, should be provided for by the State legislature. I would conceive that the Federal contributions to the effort as being one where the Federal

Government, in recognition of the fact that the administration of justice is entire, that the States are constantly increasing their share of the total load of resolution of disputes and controversy. But this comes about as a byproduct of action at the Federal level. I would see this as a method of implementing—adding to the budgets—funds available to the State court systems, so that they can be elevated and improved and brought beyond performance of the essential functions which the States should provide, in my view and I think that is the tone of the bill as it is presently drafted.

[The prepared statement of Judge Sheran follows:]

PREPARED STATEMENT OF CHIEF JUSTICE ROBERT J. SHERAN

The background from which I am privileged to make this statement in support of the State Justice Institute Act of 1979 includes 3 years of service as chairman of the State Planning Agency for the State of Minnesota which was established to implement the Safe Streets Act of 1968 as well as service as chief justice of the State of Minnesota since 1973.

We begin with the fact that remarkable improvments in the administration of justice through State court systems were made possible by Federal grants through the Law Enforcement Assistance Administration. It is my personal conviction that State court systems wolud have floundered in the face of the massive increases in litigation in recent years were it not for these improvements.

Even so, the experience of the past 10 years has surfaced basic conceptual difficulties undergirding the Safe Streets Act which makes this form of Federal cooperation less effective than it could and should be.

To begin with, the Safe Streets Act was designed as a Federal effort to assist States to combat crime. It conceived of the process of investigation and apprehension, of trial and adjudication, of corrections and imprisonment as the necessary and undifferentiated components of an inseparable process by which crime is controlled without intrusion upon the rights of citizens. In doing so, the separate and sometimes conflicting responsibilities of the executive and judicial branches of Government (important at the State level as well as at the Federal level) were obscured. The tendency of this subordination of the principle of separation of powers is to weaken the judicial function as a check on the executive department's performance in the detection of and punishment for criminal behavior.

Secondly, at the State level the judiciary was placed in competition with executive branch agencies (police and corrections) for a fixed amount of Federal support. The judiciary, by reason of the necessary limitations on its actions in the political arena, was not willing or able to compete effectively, particularly when final decision as to allocation of funds was made by a commission dominated by executive branch appointees. The fact that this difficulty was ameliorated by the 1976 amendments making possible the establishment of judicial planning agencies having substantial authority in the allocation of funds for judicial improvements demonstrates, in my judgment, the initial weakness of concept.

Next, at the Federal level policy is set by an executive branch agency (the LEAA) lodged in the Department of Justice. Although the experience of State judiciaries with the administration of the LEAA has been most cordial, this has been due, I believe, more to the individuals involved than to the soundness of underlying concept. It is anomalous and unwise for the Department of Justice, a part of the executive branch of the Federal Government, to exercise authority significantly affecting State judicial systems of a kind and to a degree which Congress does not countenance with respect to the Federal judiciary.

Finally, in State judicial systems the exercise of civil and criminal jurisdiction are functionally inseparable. It is not possible to limit efforts to improve State judicial systems to that part of it which is involved with the trial of criminal cases. Conversely, any improvement in the methods by which civil cases are handled elevates our capacity to deal effectively with criminal offenses. Any effort to give a speedy trial in criminal cases increases the need to improve the overall efficiency of the system so that civil cases can be accommodated as well. 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.

The basic theoretical difficulties which we have experienced in obtaining Federal support through the LEAA will be resolved by the State Justice Institute Act of 1979. On the State level, judicial systems are separated from executive branch agencies as they should be. On the Federal level, the implementation of congressional policy is based in a governmental entity not a part of the Department of Justice. Whatever Federal resources are available for assistance in improving State judicial systems will be determined by the Congress itself. These significant changes will make it possible to achieve better results with the same funds without weakening of State judicial systems which could come from disregard of conventional principles of authority allocation.

Senator HEFLIN. While we are on this, let me make a comment. and then ask a question. In regards to this, there was some interesting testimony in the debate of the LEAA authorization bill this year. Some of the opponents of LEAA are supporters of a substantial cut of the LEAA appropriations. They used the argument that LEAA was not really providing much of anything to the States and they used the figure of the total overall cost of law enforcement and the judicial systems. What the State paid and LEAA's contribution was only 3 percent of the total figure of all of that.

My reply on the debate on the floor was that if, and I was very much in support of LEAA, if only 3 percent Federal money was involved in the total system—and that had been a great catalyst for improvement—really, in my judgment, I challenged anyone to point to any other program that could show that by use of just 3 percent of the total money involved that it had brought about the improvement that the LEAA program had brought about. You go into issues like health education and the Federal part of the total amount that is spent there far exceeds any 3 percent. I wanted to mention that in relationship to this bill and the State judicial system and the function of that and the cost and overall figures. I don't think that what you are speaking about here is any large sum of money and would supplant any Federal operation of the judicial system or the total cost but this is sort of seed money for innovative programs and for improvement, sort of a little bit of the needed icing on the cake.

Now, I believe Mr. Velde asked some questions about the reluctance of some judicial systems over the period of time to accept Federal money. What is the experience, Chief Justice Sheran, if you know, as to this. Aren't all the systems now accepting and involved in the LEAA program?

Maybe Mr. Adkins or someone might care to address this.

Mr. ADKINS. Mr. Chairman, I just conferred with Mr. Kleps who is much wiser about these things and we believe that there is only one State now that is not accepting LEAA money and that is Idaho.

Senator HEFLIN. State of Idaho? Other than that, you think that all the others are accepting it. I think it could be a fear of the Federal Government; there was a speech made one time that a Federal eagle might be screaming over the clouds and that, therefore, was the great reluctance.

Now, this brings up and is related to what our testimony is here and I think, perhaps, it might be appropriate that it be in this part of the record and I will ask this to Professor Remington. There has been some mention by Chief Justice Sheran or Mr. Velde, one or the other, about

the Legal Service Corporation. It is my understanding that the rationale for the mechanism that the Legal Service Corporation now operates on and which Congress decreed, was based on a somewhat similar fear that we are faced with here a desire to have a separate body; a desire to prevent the Department of Justice from controlling that; a desire to prevent certain State executive branch functions from controlling the Legal Service Corporation; and a mechanism was set up by which it would be the corporation; the directors would be Presidential appointments confirmed by the Senate.

Professor Remington, I am sure you studied this. Would you tell us a little bit about the history of the Legal Service Corporation and why it was organized in such a manner as it was to give it independence and the relationship of this proposed act to the mechanism of the Legal Service Corporation.

Judge REMINGTON. Senator, I'm not sure I'm the expert on that and others may want to qualify what I have to say, but it is my understanding that the two proposals are very comparable. One could have asked of the Congress at the time the National Legal Service Corporation was set up the same question that was asked here this morning. Why should that not be part of LEAA? I take it the answer that would have been given then would be the same as given this morning and that is twofold.

One, there is a need, if there is to be adequate representation, for counsel and programs furnishing counsel to have a certain measure of independence in order to adequately serve the needs of the client and, certainly, the legal profession has recognized that for a long time.

Second, the fact that LEAA is, as has been pointed out, committed to the very important objective of improving the criminal justice system, doesn't leave a lot of room for programs that are designed to assist the poor and the elderly in understanding their rights under Social Security. Conceptually, the two things do not fit together. I think the same point has been made here and I think that is granting the importance of improving the criminal justice system and the courts playing a constructive role in that.

It is a gross oversimplification of the work of courts just as it is a gross oversimplification of the legal assistance needs of the Nation. To equate those with the criminal law, they are broader. It is important for the judges to be effective in the criminal justice system but judges, as you know, Senator, from your own experience, do things that have nothing to do with the criminal justice system. I think it is the view of this group that if State judicial systems are to serve effectively the needs of those who want to resort to the courts to get justice, they are going to have to have the opportunity to do it, not only in the criminal law segment, also in, perhaps in many ways more importantly, in what we, as lawyers, have called the civil law aspects of the system.

I will try to be brief—one illustration. One of the major parts of the work of Federal courts today, the so-called 1983 cases, one judge in the middle district of Pennsylvania, Judge Malcolm Muir kept a time sheet and found that he was spending 47 percent of his time on 1983 cases—many of those involving out-of-state institutions located in his district. One would say, and that ought to be an appropriate concern of LEAA, both the Federal system and the States, and the

objective ought to be, as it is presently, to have State courts assume greater responsibility for disputes arising in State institutions. I think that is an appropriate objective.

The problem is that 1983 litigation is in theory civil and it is only part of a broader problem of people who come into court without lawyers, the so-called pro se litigation. I think that those who have looked at that issue are satisfied that a solution to it, an overall solution, cannot be made within the criminal justice system.

One ought to look at it across the board. We have other situations where people come in who are unrepresented and that if procedures are to be developed to make States more effective in handling this category of cases, it really can't be done as part of LEAA.

I think it is no criticism of LEAA to say that the affording of counsel through the National Legal Service Corporation or the affording of more effective judicial services through a national justice institute can better be done if they are done separately because they deal with issues that are not involved in the criminal justice system and, therefore, have not been the traditional concern of LEAA.

Senator HEFLIN. Mr. Remington, do you have a question that you would like to ask Chief Justice Sheran on this subject?

Mr. MICHAEL REMINGTON. I have one question concerning the board of directors which is to have input in directing funds to the States. Have you thought about making the composition of that board of directors not so heavily weighted in favor of State court representatives?

Mr. SHERAN. My recollection of the bill as it is currently formulated is that it provides a board of directors of 11, of whom one is to be a State court administrator; 4 are to be selected from the public generally; and 6 are to be judges, named by the President of the United States from a group of nominees proposed by the Congress of Chief Justices. I don't think that modifications of this allocation of directors as between these three groups should ever be permitted to become an impediment to the progress of the bill, but it does seem to me that what has been proposed here is certainly a reasonable beginning.

The important thing, it seems to me, is that the policies to be followed by your State Justice Institute should be reflective of the experiences and needs in a significant way of the people in the State who are responsible for the administration of the State court system. In general, to a significant degree at least, that would be the chief justices or the supreme courts.

But to say this is not to say that the policies should be exclusively those that are generated by the chief justices or the supreme court, because as we all know, the trial judges in several States are in the frontlines of the business of delivering justice to the people. Their judgment, their advice, is sought by chief justices and court administrators in every State and it would be anticipated that their abilities and resources would be tapped in bringing together the board of 11 or whatever it is going to be who are going to be appointed by the President to fix policy from the Federal end of things.

I would be very hopeful that understandings would be reached as between the appellate courts and the chief justices and the State court trial judges that would give all of them assurance and con-

fidence that their views would be solicited and relied upon in developing this entity.

Mr. MICHAEL REMINGTON. Would you have any problem with having ex officio, nonvoting, members on the board such as the president of the Legal Services Corporation, the head of LEAA, or the dean of the National Judicial College—people with expertise in this general area?

Mr. SHERAN. I hadn't directed my thinking to that specifically, but I have a general feeling that it is always useful to have people serving on boards in the ex officio capacity who would bring to any judgment points of view and perspectives that are relevant to the problems or decisions. The identity of who that should be or the segments of the total system that should be specifically favored if that is a proper word by being made ex officio members, I think that should be left for discussion and deliberation. I would certainly accede to the principle that it is advisable to bring as many points of view and minds together in your policymaking board or entity that can be done consistent with the necessity of getting beyond discussion and debate to decision.

Mr. MICHAEL REMINGTON. Senator, I thank you for the opportunity to be here. Since my father is not under oath, I don't think I will ask him any questions!

Senator HEFLIN. OK.

Chief Justice I'Anson, do you want to go head with the other witnesses?

Mr. I'ANSON. All right, sir.

Senator HEFLIN. Who do you want to testify next?

Mr. I'ANSON. Mr. Adkins.

Senator HEFLIN. All right, sir.

STATEMENT OF WILLIAM H. ADKINS, II, CHAIRMAN-ELECT, CONFERENCE OF STATE COURT ADMINISTRATORS

Mr. ADKINS. Mr. Chairman, it is a privilege to be here this morning as chairman-elect of the Conference of State Court Administrators——

Senator HEFLIN. Please continue. I have to step out one moment but I will be right back. Go ahead.

Mr. ADKINS [continuing]. And to voice COSCA's support of the State Justice Institute Act of 1979.

In my prepared statement, I covered to some extent the ground that has already been covered by Mr. Kleps and Chief Justice Sheran. In the interest of brevity, let me try to avoid repetition and highlight a few particular points that seem particularly important from the point of view of a State court administrator.

Just by way of summary, I think that there are two problems that have troubled us about LEAA over the past. I join with what others have said about the benefits that have been unquestionably derived from LEAA. But LEAA, from the very beginning, has focused on law enforcement. It has been executive branch-dominated because of that law enforcement orientation and this has clearly produced a number of problems for the court system so far as funding and so far as the major programs that LEAA has worked on.

The State planning agencies, obviously, have reflected the executive branch domination. In Maryland, in fact, it wasn't until 1973 that the chief judge of our court of appeals or his designee was even authorized to sit on our State planning agency.

The other difficulty that has occurred with LEAA has been the lack of recognition that court systems are not criminal justice agencies—they have to do with civil as well as criminal matters. It is quite understandable that being a Federal agency it is coming basically from the direction of law enforcement. We would emphasize that side of courts. But courts do not lend themselves to that sort of splitting up of their functions. The civil and criminal aspects of courts are part of an inseparable whole.

In Maryland, all of our courts except a few in Baltimore City exercise both civil and criminal jurisdiction. The judges, administrators, clerks, and other supporting staff simply cannot be divided into criminal and civil divisions nor can the workload of the courts since what affects the smooth functioning and administration of the criminal side also bears upon the functioning of the civil side and vice versa.

Some years ago, Mr. Chairman, we were involved in a lengthy controversy with LEAA over funding certain training for clerks of courts and their staffs because the clerks exercise civil as well as criminal functions and because the proposed training program recognized this. Other States have had similar difficulties and problems derived from the civil/criminal dichotomy, which is so easy to apply in law enforcement, but so impossible to apply to courts. Let me digress, Mr. Chairman, just a second from the matter at hand to point out with respect to the LEAA current reauthorization legislation. The Senate bill, S. 241, which takes, very wisely and properly, takes account of the fact that you cannot separate the civil and criminal functions of courts; it therefore recognizes that there should be some funding of courts even though there may be civil elements involved. Mr. Chairman, the House bill, H.R. 261, takes the opposite view it deliberately eliminates the civil funding from the court system. If that bill passed in that form, should that bill be enacted, it strikes me that that might mean the elimination of courts from LEAA all together.

Certainly the language in the House bill dealing with the National Institute of Justice is very strong and I think would prevent the National Institute of Justice from having anything to do with civil matters whatsoever. I think there would be a similar problem with the Bureau of Justice Statistics, as conceived in the House bill. On behalf of COSCA, I would state our very strong hope that when the two bills go to conference, the Senate version will prevail because I think most serious consequences will ensue if the House version prevailed in that regard.

Back to the situation at hand, Mr. Chairman, I think this illustrates that despite the improvement made in the LEAA program, particularly by the 1976 reauthorization legislation with which you had so much to do with in your former capacity, this kind of difficulty is still with us. There still is the civil/criminal dichotomy and there still exist the battles and the concerns and the difficulties in obtaining funding for court programs which look to the administration of justice as opposed to the administration only of a criminal justice system.

LEAA quite understandably and, perhaps, quite properly, concentrates on criminal justice. From the view of State court systems, however, what is needed is a Federal funding mechanism that recognizes the indivisible nature of justice and that fact that it cannot be divided into neat compartments labeled criminal and civil. As the State Justice Institute Act of 1979 finds, "there is a significant Federal interest in maintaining strong and effective State courts * * *" and Professor Remington has pointed out in detail what that interest is.

The State Justice Institute contemplated by the act would give this Federal interest tangible form by establishing a board of directors knowledgeable about and sensitive to the needs of the State courts and the constitutional restraints under which these courts must operate. In so doing, I think, Mr. Chairman, the act would, indeed, accomplish the purpose set forth in subsection (c): that of the encouragement of "strong and effective State courts through a funding mechanism, consistent with the doctrine of separation of power and federalism, thereby" improving "the quality of justice available to the American people."

To put it another way, the LEAA funding mechanisms and policies concentrate on crime control. Courts have a part to play in this effort, but they also have a broader role: the administration of justice in both civil and criminal contexts, including the enforcement of the requirements of the Constitution and the laws of the United States. This broader responsibility is recognized and would be effectively advanced by the State Justice Institute Act of 1979.

For these reasons, Mr. Chairman, the Conference of State Court Administrators enthusiastically supports this proposal.

[The prepared statement of Mr. Adkins follows:]

PREPARED STATEMENT OF WILLIAM H. ADKINS II

Mr. Chairman and members of the subcommittee, my name is William H. Adkins, II, State Court Administrator of Maryland. I appear before you as chairman-elect of the Conference of State Court Administrators as well as chairman of the Conference's Standing Committee on Intergovernmental/Interorganization Relations. It is a privilege to be here today and to state COSCA's support of the State Justice Institute Act of 1979.

The Conference of State Court Administrators consists of the principal court administrative officer in each of the 50 States as well as in the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands. At the Conference's 25th Annual Meeting in Flagstaff, Ariz., last summer, it endorsed in principle the Report of the State-Federal Relations Task Force of the Conference of Chief Justices, a report that proposed the creation of a State Justice Institute; a proposal now embodied in the bill before the subcommittee. A copy of COSCA's supporting resolution is attached to this statement.

Why have court administrators joined chief justices and others in urging the creation of a State Justice Institute? Other witnesses here today have discussed or will discuss some of the numerous reasons for such support. In order to avoid repetition, I should like to concentrate on one aspect of the matter: the problems for State courts that have arisen in the past because of the funding mechanisms presently operated through the Law Enforcement Assistance Administration.

Let me say at the outset that I do not intend to disparage LEAA. As Ralph Kleps and others have pointed out LEAA funding has provided benefits for many State court systems, not infrequently encouraging the implementation of innovative programs that would have been difficult to undertake by means of State appropriations. Nevertheless, LEAA has posed some problems for courts, and some of these have been of a systematic nature, caused by the structure and functioning of LEAA itself.

When LEAA was established, about a decade ago, there was little emphasis

on courts. Attention was focused on police and to some lesser degree on corrections. The criminal justice system was looked upon as largely a part of the executive branch of Government. State Governors appointed members of the State planning agencies. Plans largely related to and funds were distributed mainly to law enforcement agencies. And the State planning agencies themselves were largely dominated by personnel of the executive branch. Indeed, in Maryland, it was not until 1973 that the Chief Judge of our Court of Appeals or his designee was even authorized to sit on our State planning agency.

This situation produced relatively little funding for State courts and it also produced a degree of lack of understanding of the needs of State courts and of the constraints imposed upon them as well as upon the other branches of government by the doctrine of separation of powers. The judiciary was often thought of as a subsystem of something called the criminal justice system. It was not recognized that the judiciary constitutes a separate branch of Government, nor was it recognized that in most States, for many purposes, and particularly in areas of administration, the civil and criminal aspects of courts are part of an inseparable whole.

In Maryland, for example, all of our courts except certain ones in Baltimore City exercise both civil and criminal jurisdiction. The judges, administrators, clerks, and other supporting staff simply cannot be divided into neat criminal and civil divisions, nor can the workload of the courts, since what affects the smooth functioning and administration of the criminal side also bears upon the functioning of the civil side, and vice versa. Yet some years ago, we were involved in an extensive controversy with LEAA over funding certain training for clerks of court and their staffs, because the clerks exercise civil as well as criminal functions and because the proposed training program recognized this. Other States have had similar difficulties, and problems derived from the civil/criminal dichotomy, which is so easy to apply in law enforcement, but so impossible to apply to courts, still exist; contrast S. 241, which takes a pragmatic and desirable approach to this matter with the House of Representatives' version of the 1979 Reauthorization Act.

Another rather dramatic example is found in the LEAA Security and Privacy Regulations proposed in February 1976. These Federal executive branch regulations would have imposed upon State court systems requirements regarding control of court records that simply disregarded the concept of separation of powers as well as valid needs of court systems with respect to their own maintenance of and access to criminal case histories for judicial purposes.

To be sure, things have improved with respect to LEAA. We eventually won our battle about funding the clerks' training program; the original security/privacy regulations were substantially modified; the proportion of funding going to courts has increased in recent years. The LEAA Reauthorization Act of 1976 which you, Mr. Chairman, were active in supporting, greatly improved the position of the State court systems, through the establishment of judicial planning committees, requiring increased judiciary membership on State planning agencies, and in other ways. But despite these real advances, difficulties still remain.

The Law Enforcement Assistance Administration is still itself an executive branch agency, operating with the perspectives of that branch of Government. It is still in the main an agency that empathizes most with law enforcement bodies, and that tends to view courts only in light of their interaction with other portions of the "criminal justice system." And these views are quite faithfully reflected on the several State planning agencies.

In short, the LEAA, quite understandably and perhaps quite properly, concentrates on criminal justice. But from the viewpoint of the State court systems, what is needed is a Federal funding mechanism that recognizes the indivisible nature of justice and the fact that it cannot be divided into neat compartments labeled "criminal" and "civil." As the State Justice Institute Act of 1979 finds, "there is a significant Federal interest in maintaining strong and effective State courts * * *." The State Justice Institute contemplated by the act would give this Federal interest tangible form by establishing an organization directly funded by the Congress and supervised by a board of directors knowledgeable about and sensitive to the needs of the State courts and the constitutional restraints under which these courts must operate. In so doing, the act would indeed accomplish the purpose set forth in subsection (c): that of the encouragement of "strong and effective [state] courts through a funding mechanism, consistent with the doctrine of separation of powers and Federalism for * * * thereby" improving "the quality of justice available to the American people."

To put it another way, the LEAA funding mechanisms and policies concentrate on crime control. Courts have a part to play in this effort, but they also have a broader role: the administration of justice in both civil and criminal contexts, including the enforcement of "the requirements of the Constitution and laws of the United States." This broader responsibility is recognized and would be effectively advanced by the State Justice Act of 1979.

The Conference of State Court Administrators goes on record as supporting enthusiastically the State Justice Institute Act of 1979.

Attachment.

RESOLUTION II

STATE JUSTICE INSTITUTE

Whereas, in 1978 both the Conference of State Court Administrators and the Conference of Chief Justices recognized the need for establishing improved policies and mechanisms for federal funding of projects for the improvement of justice in the several states; and

Whereas, among the principles recognized as important in this regard were minimal executive branch control, substantial State court participation and responsibility, funding of both civil and criminal justice functions, and allocation of funds to appropriate national court supporting agencies; and

Whereas, a joint State Federal Relations Task Force of the Conference of State Court Administrators and the Conference of Chief Justices has recommended the creation, by Federal legislation of a State Justice Institute, in order to implement the principles identified in 1978, and to improve Federal funding policies and mechanisms with respect to State courts;

Now, therefore, be it resolved, That the Conference of State Court Administrators endorses in principle the Report of the State Federal Relations Task Force of the Conference of Chief Justices, and the Conference of State Administrators (May 1979); supports the creation of the State Justice Institute recommended by that Report; and directs the executive committee of the Conference, or a Conference Committee designated by the executive committee, to work with the Conference of Chief Justices for the establishment of the Institute.

Adopted at the 25th annual meeting in Flagstaff, Ariz., August 8, 1979.

Mr. I'ANSON. Mr. Chairman, would it be appropriate for us to ask for about a 10-minute recess?

Senator HEFLIN. Yes, sir. I think so. That might be helpful to me.

[Recess taken.]

Senator HEFLIN. Mr. Utter?

STATEMENT OF CHIEF JUSTICE ROBERT F. UTTER, SUPREME COURT OF WASHINGTON

Mr. UTTER. Mr. Chairman, I am in the position of being the cleanup hitter and having someone else having cleared the bases. I appreciate what those who have preceded me have said, and particularly appreciate the honor of appearing before this subcommittee and before the chairman with whom I have had the pleasure of dealing in other circumstances on other occasions.

My formal remarks have been submitted to you and I will not repeat many of the things that are there. I am aware that your time is short. There are some things, though, that I would like to emphasize.

I think the first is to simply emphasize that we, in State courts, understand that there are many things that we are not doing that need to be done in order to maintain the confidence of the people of this country that we serve. Polls that have been taken, studies taken by such firms as prestigious as Yankelovich, Kelly, & White, indicate a number of things that we know we need to do better. The public concerns for State courts—in a recent study they did center on filling

the three basic aspects of society's concern for protection in society, the quality and fairness and quality performance by court personnel have not been met in State courts. We are mindful of that and we want to do a better job.

I think it is important to say that we are not just sitting back and saying help us and then we will do a better job. There are a number of areas where State courts have taken the initiative to make change. One of these that I have been proudest of in our own State—and I know exists in other States—has been the adoption, without legislative action, of sentencing guidelines for State courts. In our own State, our superior court trial judges spent approximately 1 year on a program where all criminal offenses were studied by State superior court judges, sentencing ranges were established, and agreements reached by those judges—all the superior court judges of our courts of general trial jurisdiction—that if they entered sentences outside the sentencing guidelines that have been established and published publicly, that they must state reasons either for exceeding or going below those guidelines.

A stringent code of judicial ethics has been adopted under the guidance of State supreme courts in all States in this Nation. Continuing legal education has been stressed by State courts in the difficult—and you know how difficult an area this is—procedures for removal and discipline of judges in State courts. State courts have been leaders in establishing that kind of accountability to the public.

State courts are insisting that all judges be carefully selected and well trained. They are working on methods to improve their court administrative skills. With all of this, though, we still know that there are many, many areas, where we need to do a better job. I set these down in my testimony; that is a matter of record with this subcommittee.

In trying to do this job, we continue to seek ways in which we can do it better and that is why we are here today. The conference is aware of the need to focus responsibility on how State court systems can better perform their jobs and I suppose if I have a theme for my remarks to this subcommittee today, it is simply that of focusing accountability for doing a better job than State courts currently do.

The establishment of a separate federally created institute brings to focus the great responsibility borne by State courts for the delivery of justice. It emphasizes that States are looked to as responsible for the quality of justice delivered in their jurisdiction. The act speaks to this by placing the responsibility for naming the majority of names submitted to the President with the advice and consent of this body, to make up the board of directors of the Institute, on the State chief justices. The conference, of course, is mindful of its responsibility to those constituent groups that make up the judiciary in each State of this country.

We are aware of the need to make those nominated to the board represented by these groups, but the focus of responsibility recognizes in fact how State courts are administratively structured with the chief justices accountable to all of those in the States, and reserves accountability to those who have final responsibility in our States.

Accountability, of course, is not just a State problem. President Carter, in asking for a review of Federal programs for the improve-

ment of our Nation's Federal justice system in 1977, noted the major problem in the Federal system was that no single Federal agency or department is responsible for working to improve the overall system.

This gap in accountability, he added:

> May explain in part why the Federal Government has never fully defined its own role in this area, much less developed a strategy for fulfilling it.

The chief justices of each State serve as the head of their respective judical systems; we are held directly accountable by our fellow judges and the electorate for the quality of services rendered in our States. There can be no passing of the blame to someone else, no claim of diffusion of responsibility. We are both visible and accountable.

The Conference of Chief Justices has shown itself capable of politically courageous and unpopular action in the performance of its duties. In recent years, we have approved the use of cameras in courtrooms, and television of State court proceedings, contrary to the vote of the American Bar Association. We have supported the acceptance of cases formerly accepted under the diversity jurisdiction of Federal courts, a position that is not popular for us, either nationally or locally. We have stressed the need for continual stern measures for effective discipline and removal of judges in our States who are not adequately performing their jobs.

With this as a background, we stand ready to take whatever steps are necessary to improve justice in our States.

We are here to examine in a spirit of cooperation and recognition the need for mutual action, whether a method can be devised so we can work together to achieve a better justice system in our courts. In attempting to see if joint action can be mutually helpful, we have a number of concerns.

The first has been one, of course, that the other speakers have addressed; the need to preserve both the need for federalism and separation of powers, which encourage States to be responsible for solving their own problems.

The second concern is to find how change can be most effectively made in State court systems. A third is to see how national programs serving the State judiciary can best be encouraged and supported and, finally, we wish to assure accountability to the Federal Government for funds expended in support of State court efforts.

I believe change in State judicial systems can best be made by focusing responsibilities on the States directly. Having done that, States can then be encouraged to coordinate and prioritize projects and programs as well as serve as incubators for projects to be later established nationally.

My youngest child is now 14 and in the ninth grade—a great year. I am sure he will survive, I am not sure I will. The idea of making changes in his actions, through direct parental edict is something I abandoned a long time ago. I set the general standards; I have a few rules that I insist on, but real change now comes from the example and guidance of his fellow schoolmates. Fortunately, they are good people and I think we are going to make it. My observation, of course, applies to how change occurs in State courts, as well. If the States have a part in establishing policies that apply to them and can see other State jurisdictions successfully experimenting, the impetus for change is great and resistance is minimized.

This act establishes a structure that involves State courts directly in planning and prioritizing programs that affect them. I believe that this is an important first step.

National programs serving State courts have been an important source of encouragement, stimulation and assistance. The National Center for State Courts, the National College for the Judiciary and the American Judicature Society are just a few of those that have had a long and successful history of service.

This bill would channel the prioritizing of Federal assistance for these programs through the agencies they serve, the State courts. It emphasizes the accountability of those who provide services to their vendees. Decisions can be made on a realistic appraisal of the need and merit of services rendered.

The line of accountability is clear under this legislation. The State Justice Institute must deal directly with the appropriate legislative body for appropriations and can be the single source, I think most importantly, of information on how all State justice-related programs are progressive. As the focal point of State justice concerns, the institute will be able to foster coordination and cooperation with the Federal judiciary in areas of mutual concern. It will, as well, be able to make recommendations concerning the proper allocation of responsibility between the Federal and State court systems.

It is equally important to state what this act does not do. It specifically prohibits the use of funds for purposes other than the supplementation and improvement of the operation of State courts. Funds may not be used to support basic court services, supplant State or local funds currently supporting a program or activity, or be used to construct facilities. The Institute may not participate in litigation or undertake the passage or defeat of legislation. Its personnel may not testify in Congress except when requested to or except when dealing with their own appropriation.

The Institute may not in any way advocate or oppose any ballot measure except those dealing specifically with the judiciary. Institute funds may not be made available to support or encourage training programs for the nonjudicial public policies of political activities.

Mr. Chairman, there are so many things that we have to express our gratitude for to you and the subcommittee that you chair that to do so would extend far beyond your time to hear them today. I would like to address just a few comments to those answers raised before me and get into the questions asked.

I think that one of the things that I would like to emphasize regarding the current LEAA program is that this bill, as I understand it, does not envision that State courts will not participate in programs funded through full block grants, but rather, that the program would supplant the current national discretionary grant program. It is currently funded through LEAA. The reason for our concern about this is that State courts do not have input into those funds. The input in planning, the input in national direction of how those funds are spent and that, of course, is a reflection of the separation of powers problems that Justice Sheran has commented on, and Mr. Adkins and Mr. Kleps, of course, as well.

The question was asked by Mr. Remington about ex officio members of the board. We are concerned about that and feel that it is an excel-

lent idea. At our annual meeting in Flagstaff, Chief Justice Burger expressed a similar interest in whether we would have ex officio members. My recollection is he expressed an interest if we did in being one himself. That concept, I feel, is an excellent one and illustrative of the type of benefit the focus of responsibility for State court planning can bring.

Mr. Chairman, this concludes my remarks. I wish to thank you and the members of this subcommittee for the opportunity to speak on behalf of legislation which I believe provides a positive step forward for delivery of justice to all who appear in the State courts.

[The prepared statement of Judge Utter follows:]

PREPARED STATEMENT OF CHIEF JUSTICE ROBERT F. UTTER

Mr. Chairman and members of the subcommittee, as representatives of States, you share with us a concern for the delivery of justice to those who look to State courts for resolution of their disputes. These range from the smallest civil complaint in small claims court and traffic complaints in municipal court, to civil and criminal litigation as complex as that found in any court system in this country.

The promise of justice is so basic that the Declaration of Independence affirmed all in this country are created equal and endowed equally with the inalienable rights of life, liberty, and the pursuit of happiness. This expectation for justice in all aspects of life continues to be fundamental. Over 98 percent of those involved in litigation in this country seek justice in State courts.

A recent study of the public knowledge and hopes for State courts by Yankelovich, Skelly, and White, presents many challenges to those of us in State courts if we are to adequately serve the public and meet their expectations. The study produced six major conclusions. These were:

1. That there is a profound difference in view between the general public and community leaders on the one hand, and judges and lawyers on the other hand, with respect to what the courts do and should do in our society.

2. That general public and community leaders are dissatisfied with the performance of courts, and their concept of whether justice is available in this country stems from State court experiences, and rank courts lower than many other major American institutions.

3. The general public's knowledge of and direct experience with courts is low.

4. Those having knowledge and experience with courts have the greatest dissatisfaction and criticism.

5. In spite of the limited knowledge and dissatisfaction, the interest of the general public in courts is high and there is impressive support for reform and improvement.

6. The attitudes of the general public on crime and punishment are far less simplistic than previously thought and supports major efforts toward improvement.

The public concern about courts stems from the feelings that three basic expectations of protection of society, equality and fairness, and quality performance by court personnel have not been fulfilled.

This study, completed last year, and other continuing inquiries generated by State court leaders, have heightened our concern about our ability to fulfill both our own and the public's expectations for the delivery of justice in State courts.

As judges we recognize the prime responsibility for improving the performance of the courts rests with us. This does not mean we do not welcome help from the media, schools and the bar, but that we look primarily to ourselves for the answers.

We have accepted this challenge in many areas. State courts have made great efforts to address the areas of concern over the lack of existence of equality and fairness, protection of society, and quality performance by court personnel.

Many States have adopted, without legislative action, sentencing guidelines to eliminate many of the unexplained variations in sentencing. The purpose for this is not only to better protect the public, but to give a base for building public

confidence in sentencing procedures. These guidelines require judges to state their reasons if they either exceed or fall below standards previously agreed and publicly announced which are established by other judges on a statewide basis.

A stringent code of judicial ethics proposed by the American Bar Association has been voluntarily adopted in almost every State.

Continuing legal education for judges and court-related personnel is generally available and is provided not only through local programs but also through such national institutions as The National Judicial College in Reno, Nev.

Procedures for removal and discipline of State court judges have been provided, replacing ineffectual impeachment, in all but two States in the country. The major impetus for this has come from state court judges.

State courts are insisting that all judges be carefully selected and well trained.

The employment of modern methods of court administration have become commonplace and the Institute of Court Management has been established to provide the necessary training for those involved in this work.

The States have welcomed the assistance of the National Center for State Courts, an organization founded at the urging of Chief Justce Burger and nurtured by the State court contributions, the chief justices, their administrators, and by Federal assistance as well. We have also appreciated other organizations, national in scope, concerned with the well-being and growth of the judiciary, such as the American Judicature Society.

With all of this, however, those who work in and with State courts recognize we must show greater improvement if we are to meet the expectations of the public, and our own, for a better system of justice.

Effective access to a forum where disputes can be resolved is essential if justice is to be more than just a luxury for the wealthy.

Adequate representation is necessary to assure that every person's case is presented with the skill necessary to obtain a fair hearing.

Language barriers, geographical obstacles, psychological intimidation, and procedural traps exist which often make delivery of justice to all a hollow promise.

Courts must be more sensitive to the problem of compelling members of the public to submit matters to the courts which often do not involve real disputes requiring exercise of judicial discretion. The challenge is to provide less complex and expensive processes and still retain the availability of our traditional court services for the disposition of more complex disputes. We should experiment extensively, where appropriate, with use of lay members as dispute resolvers in mediation, arbitration and conciliation, as alternate methods of dispute resolution.

We should insure that community service as a witness as both a comprehensible and convenient process. Too often courts have adopted the view that witnesses exist for the convenience of the legal process. The judiciary should take the lead to insure that victims, especially the elderly, the very young, and those subjected to violence, are treated with special care and concern throughout the entire process.

Jury service should be spread widely among community members and the burdens of such service minimized as much as possible.

If courts are to deserve the confidence of the entire nation we must demystify our process and welcome citizen input in such areas as governance of lawyers and judicial discipline, criminal justice advisory committees, and other areas where a lay perspective would assist in rendering better and more comprehensible service.

An effective grievance procedure should be established as well, perhaps outside the formal system, in the form of a judicial ombudsman who would offer a perspective on procedural obstructions to those of us who participate in the system.

Courts must provide effective administrative structures to handle those matters in the court system efficiently and effectively. Training for personnel is essential to not only improve skills but to build, motivate, and instill a sense of unity.

Trial court management is essential to control the pace and flow of cases through the system. Early management of cases is helpful so disposition is prompt and efforts to settle are sincere. In criminal matters, courts need ef-

fective information systems to insure cases may be tried speedily and administered effectively.

Courts need to establish and adhere to performance standards at a local or statewide level and use goals and objectives as measurement tools to meet these performance expectations.

The judiciary must recognize it is our responsibility to establish and maintain effective organizations and procedures. By accepting and implementing this responsibility, we can help maintain the integrity and respect for the judiciary. We believe the bill before you directly addresses these concerns.

The establishment of a separate, federally created Institute brings to focus the great responsibility borne by State courts for delivery of justice. It emphasizes that the States are looked to as responsible for the quality of justice in their own jurisdiction.

By placing the responsibility for naming the majority of the names submitted to the President, with the advice and consent of the Senate, to make up the board of directors for the Institute, the bill focuses responsibility. The conference, of course, is mindful of its responsibility to those constituent groups that make up the various parts of the judiciary and in turn are responsible to the chief justices in their respective States. The conference is aware of the need to make those nominated to the board representative of these groups. This focus of responsibility recognizes, in fact, how State court systems are administratively structured and preserves accountability to those who have the final responsibility in their States.

Accountability, of course, is not just a State problem. President Carter, in asking for a review of Federal programs for improvement of the Nation's justice system in 1977, noted a major problem in the present Federal system was that "no single Federal agency or department is responsible for working to improve the overall system. This gap in accountability", he added, "may explain in part why the Federal Government has never fully defined its own role in this area, much less developed a strategy for fulfilling it."

We appreciate and welcome the opportunity to be of assistance to the members of this committee in attempting to address their needs. The chief justices of each State serve as the head of their respective judicial systems. We are held directly accountable by our fellow judges and the electorate for the quality of judicial services in our States. There can be no passing of the blame to someone else, no claim of diffusion of responsibility. We are both visible and accountable.

The Conference of Chief Justices has shown itself capable of courageous and politically unpopular action to further the course of justice. In recent years, we have approved cameras in courtrooms, and television coverage of State court proceedings, contrary to the vote of the bar. The conference has continually stressed the need for effective and stern measures of judicial discipline and removal for judges who are not performing their functions adequately. The conference has, as well, in an attempt to assist Federal courts, urged that diversity jurisdiction be abolished in Federal courts and that responsibility for these cases be given to their own courts. Needless to say, this has not been a politically popular position for the chief justices, either nationally or locally. We stand ready to take whatever steps are necessary to improve justice in our States.

We are here today to examine, in a spirit of cooperation and in recognition of the need for mutual action, whether a method can be devised by which we can work together to achieve a better justice system in our State courts. In attempting to see if joint action can be mutually helpful, we have a number of concerns.

The first has been one the other speakers have directly addressed. This is the need to preserve the integrity of the doctrine of separation of powers and the principle of federalism, which encourages States to be responsible for solving their own problems.

Our second concern is to find how change can most effectively be made in State judicial systems. A third is how national programs serving the State judiciary can best be encouraged and supported, and finally we wish to assure accountability can be preserved to the Federal Government for Federal funds expended in support of State court efforts. I believe change in State judicial systems can best be achieved by focusing responsibility on the States directly. Having done this, States can then be encouraged to coordinate and prioritize projects and programs as well as serve as incubators for projects to be later established nationally.

My youngest child is now in the ninth grade, a freshman in high school. The idea of making changes in his actions, through direct parental edcit is some-

thing with which I have had minimal success. We have set the general standards as parents and have some basic rules, but real change now comes from the example and actions of his fellow schoolmates with indirect guidance, at best, from his parents.

My observation, of course, applies to change in State courts as well. If the States have a part in establishing policies that apply to them and can see other State jurisdictions successfully experimenting, the impetus for change is great and resistance is minimized. This act establishes a structure that involves State courts directly in planning and prioritizing programs that affect them. I believe that is an important first step.

National programs serving State courts have been an important source of encouragement, stimulation, and assistance. The National Center for State Courts, The National College for the Judiciary, and the American Judicature Society are just a few of those that have had a long and successful history of service.

This bill would channel the prioritizing of Federal assistance for these programs through the agencies they serve, the State courts. This emphasizes the accountability of those who provide services, to their vendees. Decisions can be made on a realistic appraisal of the need and merit of services rendered.

The line of accountability is clear under this legislation. The State Justice Institute must deal directly with the appropriate legislative body for appropriations and can be the single source for information on how all State justice-related projects are progressing. As the focal point for State justice concerns, the Institute will also be able to foster coordination and cooperation with the Federal judiciary in areas of mutual concern. It will, as well, be able to make recommendations concerning the proper allocation of responsibility between the Federal and State court systems.

It is important to state what this act does not do. It specifically prohibits the use of funds for purposes other than the supplementation and improvement of the operation of State courts. Funds may not be used to support basic court services, supplant State or local funds currently supporting a program or activity, or be used to construct new facilities or pay judicial salaries.

The Institute may not participate in litigation or undertake the passage or defeat of legislation. Its personnel may not testify in Congress except when requested to or except when dealing with their own appropriation. The Institute may not in any way advocate or oppose any ballot measure except those dealing specifically with the state judiciary. Institute funds may not be made available to support or encourage training programs for nonjudicial public policies or political activities.

Mr. Chairman, I wish to thank you and the members of this committee for the opportunity to speak on behalf of legislation which I believe provides a positive step forward for the delivery of justice to all in State courts.

Senator HEFLIN. There is, naturally, among a lot of people, concern with any Federal program about its control of State activities and State programs. Sometimes there is a realization that that is necessary. I think universally I have never heard of any idea that other than through the normal appellate process and the decisions of the Federal courts, which are binding on the State courts that that be the type of control if there be any. We know that the State courts have to follow the decisions of the U.S. Supreme Court, and there are other courts other than the U.S. Supreme Court that can overrule decisions that have been made by State courts.

But this question of federalism is a real one. I would appreciate it if some of you, either you, Chief Justice Utter, or others would address themselves to the issue of federalism and, in particular, does Federal assistance to State courts through a federally created and federally funded institute further advance or undermine federalism as we know it? I would like someone to give us some thoughts on this.

Mr. I'ANSON. Chief Justice Sheran, would you respond to that?

Mr. SHERAN. I think that the comments that I am going to make in response to that question, Mr. Chairman, while representing my per-

sonal views on the matter, are a distillation of views that I have heard other chief justices and other members of the task force express. I think I can, with some confidence say that my views are shared by a significant number of those that have been involved in the process.

The thinking begins with the idea that Government services are best rendered if that governmental entity closest to the people and first able to perform the functions, does so. As applied to judicial service, we are of one mind that the vast bulk of judicial services must be applied, directed, and managed at a State level. In that connection we have in mind that the best statistics we can get indicate that 95 percent of the disputes and controversies occurring between the people of this country are resolved in State courts. So we start from the proposition that it is imperative that the management of State court systems be under the direction and control of that State entity charged with the responsibility for the administration of court systems in the States.

The second proposition I think on which we have substantial consensus is that nothing should be done which would intrude upon the responsibility and authority of the appropriate people in the several States of being in charge of the operation and management of State judicial systems. I think it to be true that were we to come to a point where there would be a choice between accepting Federal cooperation and assistance, and maintaining the integrity and independence of State judicial systems—if we had to chose between the two—we would not be interested in soliciting Federal cooperation.

The third point is that our experiences teaches us that it is not necessary to make that kind of choice. The Federal Government has a legitimate interest in providing support and assistance to State court systems and doing it in a way in which the Federal Government does not impose upon State court systems Federal attitudes as to what that State court system should or should not achieve.

Our final point, however, is that well-intentioned and well-informed people provided with the necessary data and facts as to what needs to be done to improve State court systems so we can meet the challenges of the times will, in all probability, arrive at a general consensus as to what should be done, which, in the course of time, will have a level of uniformity, or at least comparability from State to State.

So, in the end, you have an improvement of the State judicial systems around the Nation following certain patterns and modes not because it is imposed from Washington, but because State court systems working collectively with the aid and cooperation of the Federal Government will, in the course of time, arrive at consensus as to things that need best be done. Many of those things, which need to be done, cannot be done effectively except on a national basis. For example, we have all come to realize that the expansion of the concept of due process of laws applies to the operation of State court systems, but State court judges must become well informed as to the decisions of the U.S. Supreme Court bearing on the trial of criminal cases, for example, or commitment proceedings.

The educational facilities that are needed to provide the education that these developments call for, if they are to function at the highest level of efficiency, need to be an institution of national scope. That is why the National College for the Judiciary at Reno was established

and why its educational capacities are made available to State judges throughout the country.

Again, developments of recent years have made it clear if the State court systems are to function effectively, they need some central, national body to be of service to the State judicial systems of the several States. That is how it came about that the National Center for State Courts which is presently located in the State of Virginia and of which the chairman of our conference is currently the leader, came into existence.

Providing the services to the States that tend to develop a unified view as to what is best for the system as a whole, the net result of this, then, is that you do achieve a certain uniformity of educational process, a certain uniformity of procedure, aided and made possible by Federal support in an imaginative and innovative way, but without any attempt on the part of the Federal Government to impose the Federal views on the States.

Now, the question may occur: Is this a practical possibility? Do things work this way? The only answer I can give to that, Mr. Chairman, is that my experience in dealing with the Federal funding of programs for the State of Minnesota through the LEAA has been that, except for certain problems that arise out of this intermixture that we are talking about, that it works that way. If we can take now the final step to separate out on the State level the judicial role from the executive role on the Federal level, to separate out the policymaking body for the judicial support and maintenance from the Department of Justice, I think that we can achieve very good results; that it will be consistent with the proper character of federalism as I understand it, and I believe that it is something that all parties concerned will be able to work with in a constructive way.

Mr. I'ANSON. Mr. Chairman, Mr. Kleps has written an article on that very subject.

Mr. KLEPS. I think, Senator, that question is crucial to the need for establishing a State justice institute so long as the Federal support in aid of the State court improvements goes through a Federal executive agency, the possibility of regulations, standards and guidelines that originate in a nonjudicial setting is always a threat to the State court systems. In several of our States, we have had examples of the executive branch at the State level in implementing this Federal program imposing that kind of domination or attempted domination on the use of funds at the State level.

There has always been a fear that the regulationmaking propensities of the executive branch at the Federal level would get into it. Pete Velde will remember the standards and goals projects was always under the shadow that this might be the Federal direction to the States as to how they had to conduct themselves in order to participate. It did not work out that way, but the threat was always there.

I think that the establishment of a Federal structure like this Justice Institute Act contemplates will be the answer. The other answer is the one you gave earlier, that the amount of money that is contemplated for this program is at a level that does not permit that sort of thing. It is not a sufficiently massive Federal operation so as to threaten the judiciaries of the States. It is developmental, it is innovative, it sup-

ports the kind of assistance concept that I think the States can accept and will profit from.

Senator HEFLIN. Would someone address the issue of federalism in relationship to the Institute? The act that is being proposed in the task force report calls for an independent chartered Federal corporation with its directors coming primarily from the State judiciary systems. What is its relationship to the concept of federalism?

Mr. UTTER. Mr. Chairman, I harken back to Chief Justice Sheran's remarks about the need to preserve those who are, in effect, the majorities of the directors of the Institute to those who are closest to the responsibility for achieving the goals of that Institute. I believe the preservation of the recommendation that the President made for appointment for a majority of the board of directors to that Institute preserves those very things that Chief Justice Sheran commented about.

If it were not for that, I would see the Institute as a direct threat, but I don't see it because of the wisdom of your staff, and those who drafted the bill in including that provision in it.

This thing of accountability that I attempted to make the theme of my remarks again rings true through the structure of the State Justice Institute. It places the responsibility for recommending those who will control its actions with those who are going to be accountable, both to the Institute and ultimately to Congress for the way those funds are spent, for the prioritization, for the supervision of the programs. So I believe, Mr. Chairman, that the concerns that you expressed are adequately addressed by those features.

Senator HEFLIN. Well, as I see the Institute concept, the corporation has many aspects which are designed to give independence to the State judiciary as part of the concept of federalism, One is its independence; it is not under any other agency, not under Department of Justice as LEAA is. It is, in effect, separate. The membership where it comes from—plus the fact that you have the proposal, I believe, is that the terms be staggered and that the terms be long, 6 years, which really transcend a party's administration. Of course they can be re-elected. But in the event that the public did not relect a party, the directors would not be, in effect, controlled unless a President was reelected.

This brings up, I suppose, the term of 6 years. Is that the proposal: a 6-year term for the directors after the initial term? Is that sufficiently long along with the staggered terms to give it the additional independence embodied in the concept of staggered term and lengthy terms, terms beyond the 4-year term that a President has? Is that adequate in your opinion?

Mr. UTTER. It is in my opinion, Senator, and I believe the bill also provides for two terms, no more than two terms for those who serve which further addresses itself to your concern, and I trust meets those concerns.

Senator HEFLIN. Professor Remington, under the staggered basis and terms, you have probably dealt with this more than any of us. How long would it take for a change in administrations to take affect and their appointments to be controlling, how many years would that normally be in the absence of considerations of resignations, deaths, vacancies and things of that sort?

Judge REMINGTON. I wish my mathematics were better than it is. I

am not sure of my judgment on that, but it does seem to me that it would afford adequate protection against any effort in the short run to control the membership of the board and I believe in the draft that I saw there were limitations on the public members. The language indicated, as I recall, that there were three, now four, public members no two of whom could be of the same political party, no more than two, and public members would serve, I think, as an additional safeguard against the kind of worry that might otherwise be expressed and it seems to me that there are other ways, in addition to length of terms, of controlling against the undesirable nomination that your question suggests.

But I would think that others here might want to speak to this that 6 years would be an adequate safeguard.

Mr. ADKINS. Mr. Chairman, the mechanism of nominations by the chief justice seems to me is another aspect that should protect against changes of administration and possible takeovers by one administration or another.

Senator HEFLIN. The concept of the separate agency under no other control of an agency, the fact that it has corporate powers with directors to give it that power, the staggered terms, the fact that the President is required to appoint from a list that has been submitted from judicial systems, all of those add up to give it independence and to follow the concept of the federalism approach. Any other ideas involved in this could be entered into the record as to a point because many people have already asked me about it, Members of the Senate with whom I have had some discussions about it. This seems to be a point that they are interested in and I would like to have a full record on this.

Also you have the problem of the independence of the judiciary at the State level and that, of course, depends on how each State is organized. We have had a lot of testimony today pertaining to the matter of the judicial planning commissions—the separation of the powers between the executive and the judicial branch at the State level and I think that has probably been adequately addressed which, of course, gives it further independence. The fact that it is a Federal independent corporation and goes directly in being with the judges does not have any requirement that it has to go through the Governor or that there be any board appointed at the State level by a Governor. Do you see a need for a State counterpart as this develops for the State Justice Institute at the State level?

Say, for example, if LEAA were to cease to exist, which I hope does not occur and there are some prospects toward the future that it may regain some of its strength, but if it didn't, how would you envision the State mechanism for dealing with a system that comes from the State Justice Institute Act?

Mr. ADKINS. Mr. Chairman may I respond to that?

It seems to me that if this were the Maryland perspective, there would be no need to duplicate the SPA structure to implement the State Justice Institute concept. Even if LEAA went out of business and all of that were gone, almost all the States now have set up some kind of a planning operation whether it is the JPC, that the 1976 reauthorization legislation contemplated, or whether it is some other

kind of planning mechanism. It seems to me that those planning operations with each judicial branch within each State could operate in conjunction with the State Justice Institute without a requirement of a sort of judicial branch SPA to work with the Institute.

Senator HEFLIN. Well, in some States, as Mr. Kleps knows in California, you have a judicial counsel that operates; otherwise, in many instances, the unified court systems have a planning agency that obviously would be set up with a unified court system to operate in that manner. I suppose that maybe some consideration could be given to some language that could be asserted in the bill in this event; I don't believe that is covered at the present time in the bill. Just say, for example, that LEAA ceased to exist, I don't think there is any provision in the bill at the present time that takes care of that or how that would function.

Mr. I'ANSON. Mr. Kleps has a comment to make.

Mr. KLEPS. Mr. Chairman, the judicial planning committee idea with which you are thoroughly familiar has worked out far better, I think, and has been expanded far more than any of us originally dreamed. I recently attended an organizational meeting of a judicial counsel in Nevada that grew out of its judicial planning committee and was created by order of the supreme court. That is a State that was far behind other States in even getting any structure going for its administration, but that has happened in many States.

It seems to me that the experience of the States with judicial planning committees will carry on and that the creation of a national institute will put at the Federal level the kind of advanced planning and advanced thinking that is looked to by the States and that the States will, through established agencies like judicial counsels or judicial planning committees, carry on that function at the State level.

The other thing is that we found, when we created a judicial planning committee in California which we did very early and by statute, that once the agency was in existence, anybody who was going to deal with judicial programs or projects would coordinate with it. I think that is what will happen with a nationally established State justice institute, that the State planning going on within the courts systems can do it so I think it will tie together without any need to create a local structure as part of the Federal legislation.

Mr. I'ANSON. Mr. Chairman, are there any other questions?

Mr. VELDE. Mr. Chairman, I would like to briefly return to some comments that were made earlier which are relevant to the forthcoming conference on the LEAA legislation which hopefully will occur sometime next week, and that is the role of the civil side of the justice system and the LEAA program.

I recall quite well the interpretation that LEAA placed on its authority in reference to an application from the State of Maryland 2 years ago now for a project that involved civil dimensions of the system there, as well as criminal and, perhaps, Mr. Adkins can comment on this further. As I recall, at the time LEAA took a somewhat generous view of its authority to the extent that if there was a significant criminal side involvement in a project—not necessarily the dominant one, but a significant one—then LEAA would not look beyond the

benefits, whether compartmentalized between the criminal and civil side.

Mr. ADKINS. Mr. Velde is quite right, Mr. Chairman. In that particular instance, LEAA did take a rather liberal view of the fact that, despite the fact that there was a civil component, there was a criminal one as well and the project was funded. This is illustrative, I think, of the evolution and learning process that has occurred at LEAA. As time went on, LEAA has realized more and more about the indivisible nature of the State court system. You still hear, once in a while, the cry that this is purely civil, or largely civil, and can we fund it and sometimes you have to get opinions of counsel and go to Washington to get that resolved.

But what I think this illustrates, Mr. Chairman, again is my concern about H.R. 261. It seems to me that if that bill passes with the language that is now in it, it is going to make it, perhaps, impossible for LEAA to continue its efforts to look with some liberality and some broad construction on the present funding situation. It seems to me that it is a highly serious matter and might stop the process of evolution that has occurred so far and, again, make impossible the funding of many State court projects because they would have a substantial civil component.

Mr. VELDE. Well, as far as the real life administration of the State and local courts in many instances, and probably in most, it is really impossible to make a meaningful distinction.

Mr. ADKINS. I couldn't agree with you more.

Mr. VELDE. If you are going to have a jury reform project, that certainly applies civilly, as well as criminally, try to improve court reporting, try to modernize information systems and to introduce automation, all those apply equally on both sides.

Mr. ADKINS. Absolutely.

Senator HEFLIN. Mr. Remington, do you have a question?

Mr. MICHAEL REMINGTON. I have a brief question, which in no way represents the views of the House of Representatives. If civil justice is put back in LEAA, doesn't it strike you as reducing the chances of likelihood of passage of the legislation we are speaking of this morning? In other words, is there an overlap or contradiction between the two pieces of legislation?

Mr. ADKINS. I don't think so because it seems to me that even though you retain the civil aspects, the limited civil funding that is available under LEAA, especially under S. 241, there is room for operation, both of the State Justice Institute, and the Law Enforcement Assistance Administration. As has been expressed by others here this morning, it seems to me that the State Justice Institute would operate mainly in the area now that is the discretionary grant area whereas LEAA might well continue to operate in the block grant area. I would hope that there would still be some mechanism whereby courts do participate with other elements of the criminal justice system, but that is not all; you have to have another, broader approach to the overall problems of the courts.

Senator HEFLIN. Thank you. I know that during Mr. Velde's time as Administrator of LEAA, there was very much of an understanding between the interrelationship of the civil and criminal courts and

that it is almost an impossibility to divorce them. Mr. Remington, we hope that you will carry that missionary message back to the House. [Laughter.]

Senator HEFLIN. If there are no other remarks, we can adjourn this meeting. Thank you. We appreciate such distinguished people coming.

Mr. I'ANSON. Mr. Chairman, before we adjourn, may I express my appreciation to you for granting us this hearing here today and also Mr. Velde, Mr. Feinberg and my friend, who represents Representative Kastenmeier of the House side. Thank you all so much.

[Whereupon at 12:08 p.m., the hearing was adjourned.]

STATE JUSTICE INSTITUTE ACT OF 1979

MONDAY, NOVEMBER 19, 1979

U.S. SENATE,
SUBCOMMITTEE ON JURISPRUDENCE
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., November 19, 1979, in room 5110, Dirksen Senate Office Building, Hon. Howell Heflin (chairman of the subcommittee) presiding.

Present: Senators Heflin and Simpson.

OPENING STATEMENT OF SENATOR HEFLIN

Senator HEFLIN. This hearing will come to order.

Today this subcommittee resumes hearings on a proposesd State Justice Institute Act. As I indicated on the opening day of testimony on this proposal, the quality of justice in the United States is largely determined by the quality of justice in our State courts. In fact, we heard testimony that it is in the State courts that 98 percent of all cases are tried. If, then, the overwhelming majority of our citizens turn to the State courts for the protection of their constitutional rights and the redress of their grievances, then our consideration of legislation to assist State courts is one of the most important undertakings of the Judiciary Committee in recent years.

The burden placed on our State courts has increased significantly in recent years. Decisions of the U.S. Supreme Court, the enactment of wide-reaching social legislation by the Congress, and the diversion of cases from the Federal courts, for example, have taken their toll on State court dockets and the workload of State judges and court personnel.

As a result, we are investigating whether it is appropriate, and, if so, by what means, for the Federal Government to provide financial and technical assistance to State courts to help alleviate some of the problems which these actions at the Federal level have caused.

The committee has already heard compelling testimony on the need for a State Justice Institute from a panel of distinguished members of the bench and bar representing, among other groups, the Judicial Conference of the United States, the Conference of Chief Justices, and the Conference of State Court Administrators.

We are fortunate to hear today from the Honorable Maurice Rosenberg, Assistant Attorney General, Office for Improvements in the Administration of Justice, U.S. Department of Justice; Mr. Edward B.

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McConnell, executive director of the National Center for State Courts; Mr. Leo Levin, director of the Federal Judicial Center; and the Honorable Janie Shores, associate justice, Supreme Court of Alabama. All of our panelists have distinguished themselves in their respective fields of law and the administration of justice. We welcome each of you, and look forward to hearing your valuable comments.

Professor Rosenberg, if you would, we'd appreciate it if you would begin.

STATEMENT OF PROF. MAURICE ROSENBERG, ASSISTANT ATTORNEY GENERAL, OFFICE FOR IMPROVEMENT, DEPARTMENT OF JUSTICE

Professor ROSENBERG. Mr. Chairman, thank you very much for the opportunity to be here and to discuss with you this very important proposal for a State Justice Institute.

I'm going to be speaking here on my own behalf only, and not as a representative of the Department of Justice or the Office for Improvements in the Administration of Justice. I should say that the proposal has not had time to have a sufficient airing in the Department because it's moving along, as you know, at the same time that many other proposals and items of legislation are moving along that affect matters that are interwoven with the proposal for a State Justice Institute. As a result, I'm going to express only my own views.

I have a background in connection with this matter that emboldens me to offer these thoughts. The background goes back more years than I care to recall. I believe that I came into the field of judicial administration about 1955. Since then, I have seen the field of judicial administration move from a sort of backroom subject of discussion among eggheads—and very few eggheads at that—and a few judges who were out in front of the rest, to a first-line subject of importance in the delivery of justice to the people of this country. The rise of judicial administration as a legitimate respectable, and necessary aspect of the work of judges is one of the phenomenons of the last generation. It has placed judicial administration alongside adjudication as a respectable first-line activity of judges.

Another tendency has developed at the same time that is important for the discussion that we're having this morning, that it is that judicial education has come of age. We have come to recognize the importance of education of judges, that is, if orienting them to their work soon after they come to the bench, and of informing them later of what they ought to know concerning new developments in the law, better techniques for carrying out their responsibilities, and a better appreciation for some of the broader streams that are flowing in the fields of law and judicial administration. All these matters have come to the fore also in the last generation.

The States have moved unevenly in entering the field of judicial administration and in their interest in education for judges. Some States are well-financed, well-supported and have high morale in these respects, and they have moved forward very rapidly. Other States lag. They lag in respect to their interest in judicial administration, the resources that they have to devote to research and development in the field, and also in what they are able to do about providing their new

judges with opportunities for orientation and for refresher courses or new-developments courses for judges who have been on the bench for a time. These factors make it very difficult to bring the lagging States into line with the States that are in the forefront.

I say they make it difficult. What I mean is that when the States move unevenly—we were searching for a metaphor, and the only one that's occurred to us to far, although I think we can improve on it as time goes by—is a bunch of jumping frogs. Now we've got 51 jumping frogs out there, and some of them are jumping rapidly toward the finish line. Those are the States that are in the forefront of modernization and improvement in these fields. Then there are States that are jumping sideways, and some of them seem almost to be jumping backwards in these respects.

When groups of the type that I call good justice groups sit down and wonder how we can improve judicial administration and judicial education in this country, we face difficulties when we try to deal with 51 separate sovereignties. I don't suppose that the Conference of Chief Justices can assert very much influence or be very effective in persuading laggard State X or State Y to improve. The chief justices will have no special power to persuade the legislatures of those States to move into the modern age in these matters. That is, there is not in existence today any good forum into which the people who have thought about this problem in nationwide terms can take their case and be confident it will get legislative attention. However, once Congress takes an interest in it, the Conference of Chief Justices and other groups that are either national in their organization or national in their interest, can come to Congress and make a much better case before that body because it is charged with concern for the entire national system.

As you rightly say, Mr. Chairman, the quality of justice in this country is largely a function of the quality of justice at the State court level. The State courts handle 95 to 98 percent of the cases that come to trial in the courts. So at least in the access to justice field, we can say that as the States go, so goes the Nation. That it seems to me, is one of the factors that gives Congress a particular interest.

Congress itself has not been laggard about vindicating that interest. Over the course of the past decade, the estimates are that somewhere between $225 million and $325 million has been awarded by Congress through LEAA to projects that are called court funding projects. The meaning of that term varies a great deal. As LEAA uses the term, I believe it is an acceptable and respectable definition of how much of the national fisc has found its way to improving the State courts. The results of that investment have not been trivial. I think that it has made a big impression on the level of justice in the State court systems and in the level of appreciation for judicial administration activities and judicial education activities. The National Center for State Courts, for example, has been funded in large part—in very great part as I understand—by grants that have come from LEAA.

When Congress has already invested one-quarter of a billion dollars or more in this problem over the last 10 years, it may seem unnecessary to talk about the Federal interest in the question. In the statement which I have prepared and submitted, however, and which I am not trying to recapitulate here, I have set forth what I regard

to be the five or six elements of Federal interest in this matter and have shown the need in this area for Federal funds. I can't rehearse here those arguments or those factors that seem to me to point very clearly to a proper basis for the Congress to act in this matter.

I would only conclude what I want to say on this point by noting that there are several advantages to moving from the situation as it now exists, that is funding of the courts through LEAA, to funding the State courts in the respect we're discussing. There are advantages in funding judicial education, research, and development in the States through a concept, through a mechanism, such as the State Justice Institute Act proposes.

First, you avoid a number of problems that otherwise exist. You do not have the fear of Federal domination. If, although the money comes from the Federal Government, State judges and other functionaries nominated by the Conference of Chief Judges and otherwise nominated are then named by the President to serve on a board, these State functionaries have a role in setting policy and in determining priorities for the Institute.

You respect the separation of powers concept if you create a State Justice Institute. I think that is terribly important. That is, it is not a good idea, essentially, for an executive branch agency to be the exclusive or nearly exclusive source of funding for an Institute which is to provide resources for upgrading the State courts.

Further, the Institute is valuable in allowing an opportunity for judges and others from many States to come together and to learn from one another. It's been my observation over the years that some of the biggest strides forward in the field of judicial administration are made when judges from many States, some in the forefront of affirmative and positive movements in improvements, come together with judges from other States, some of which are in the middle and some of which are in the rear ranks. When these people exchange ideas, they can help each other—and they do.

So I think there is an advantage in creating a mechanism which is essentially in the third branch, or which is dominated by third branch people, which isn't dependent upon an executive branch agency, which allows for State contributions in the sense of ideas and policymaking, and finally, which avoids the difficult problem of what is criminal and what is civil in State justice administration. The present arrangement, through LEAA, because of its pedigree and the Crime Control Act, requires a heavy emphasis on criminal justice as the touchstone for entree into the area of judicial administration. It requires that funds not be given exclusively for civil justice matters. I think that has been a vexing disadvantage of the arrangements that have existed over the past 10 or 12 years.

With those disadvantages behind us, and with the advantages that are promised by the State Justice Institute proposal, I think we will be in a position to build on the experience that we've gotten over the past decade through the good work LEAA has brought about with its help, and we'll be able to go forward.

Now there are a few things about the bill that I would like to comment on just briefly in passing, and then I will have concluded my remarks. One is that there seems not to be a single title to the bill. If

you'll look at page 45 of the version that I have, in the first paragraph the bill is titled the "State Justice Institute Act of 1979." Then, on page 66, it's referred to as the "State Justice Improvement Act of 1979."

Second, the question arises as to who is to select the nominees from the public sector. It seems clear from what is said on page 49 that the Conference of Chief Justices is to select names to be submitted to the President, and that additional nominees are to be made by the Conference of State Court Administrators. Then it says in the last line of page 49 that three of the nominees are to come from the public sector. I'm not clear who is to select them. I believe that the bill itself should specify that.

On page 56, in the third line, there is a discussion of what is forbidden to recipients of aid through the State Justice Institute, and it is said that the funds may not be used to undertake to influence the passage or defeat of any legislation by the Congress, or by any State or local legislative body. Then an exception is carved as to personnel of the Institute, and that exception is spelled out in the succeeding two clauses. It is not clear whether personnel refers only to employees and staff of the Institute, or whether it also refers to directors of the Institute, and I think that should be clarified.

There is an overlap between the coverage of this proposed act and the Dispute Resolution Act, which is moving forward in the Congress. I believe that this overlap, if it is intentional, should be specified as intentional. But if it's unintentional, then perhaps the overlap can be cured.

I have called attention in my prepared statement to an ambiguity concerning how much politics is too much politics. I won't recapitulate the matter here except to say that sections 105 and 106 of the draft bill that I have seen may go too far in both directions. That is, they may go too far in excluding recipients of Institute funds from activity that may be first amendment protected political activity on the one side. Then on the other side they may allow too much political activity. But that's spelled out in my statement.

Finally, I think that it's dangerous to permit use of the funds for bricks and mortar, even though the draft bill limits this to demonstration uses of bricks and mortar, such as for new architectural designs for courthouses and the like. One reason I am concerned about this is because I foresee arguments—and they will not be pleasant arguments—about whether a demonstration project is really going to provide a useful and creative design or just demonstrate the ingenuity of the people who have asked for the funds. I think it would be better to keep bricks and mortar and other normal operating expenses of the court outside the range of what the Institute can award in the way of funding to the State court system.

Mr. Chairman, I am prepared to answer questions to the best of my ability.

Senator HEFLIN. Thank you, sir. Of course, there have been some instances where counties are extremely fragmented, and courthouses or judicial buildings have become terribly deteriorated. In some counties, tax bases, because they are a unit, there is some feeling that they would never be able to really restore their courthouses. I have been in some courthouses in some very small counties that, because

of a very low tax base, or because there is a very small population, there could be some assistance there. I think generally what you are stating is true, but in some instances such as those I have pointed out we might consider some form of assistance.

One of the factors in the study that was made by LEAA on the issue of separation of powers, Judge Pennington of Kentucky made an effort to point out the poor facilities that courts had. In one instance he pointed out that there was no bathroom in one courthouse, and they had to go across the street to a service station to use the bathroom. If you excluded such aid entirely, there would be some instances where through some matching approach it could be that it would eliminate some real problems.

I think you have hit the nail on the head when you point out what has happened in the past regarding the recognition that the Federal Government owes an obligation to the system to improve the quality of justice. I think your remarks were very succinct about the separation of powers and other things you pointed out. We appreciate them very much.

[The prepared statement of Mr. Rosenberg follows:]

PREPARED STATEMENT OF MAURICE ROSENBERG

Mr. Chairman and members of the subcommittee, thank you for the opportunity of appearing here today to discuss the draft State Justice Institute Act of 1979. I understand that consideration of this proposal is in a very preliminary state and my comments will address it in that posture. The views I express will be personal neither the Department nor the Office I head has taken a position on the proposal. Before assuming my duties at the Department of Justice, at the invitation of the task force of the Conference of Chief Justices, I studied the proposal as it was then written and offered the group my views. These were, and I remain, definitely favorable to the Institute plan. In the circumstances, I shall ask you to regard my statement as one made on my own behalf and as in no way committing either the Office for Improvements in the Administration of Justice or any other Division or Office of the Department.

The concept that this bill embodies is a development that many of us in the judicial administration profession have long awaited. It represents a constructive step in the evolution of sound State-Federal cooperative efforts to improve the administration of justice. We recognize that these hearings and further study may show that some of the bill's provisions require refinement or modification, but we are confident its basic approach is correct.

Before addressing the merits of the bill, I must express a reservation based on financial considerations that will come as no surprise. As you know, any new spending program is bound to meet strong opposition because of its potential budget-unbalancing and inflationary effects, and this opposition will overwhelm whatever favorable estimate the program achieves on its merits. For that reason, and because of other recent legislative developments that promise financial support for research in improving access to justice, there are questions as to the timeliness of the present proposal. These comments will not attempt to respond to those questions, but will consider the Institute idea on its substantive merits.

The main issues I shall discuss are: (1) Whether there is a sufficient Federal interest in the administration of justice in State courts to warrant creating an entity of the kind and for the purpose proposed; (2) whether the proposed Institute meets the basic need; and (3) what modifications in the bill's provisions should be considered. Before turning to those matters, I must offer a few observations for the sake of putting the problem before us in context.

Basically, we are considering here a proposal to create a structure that will enhance the capacity of State courts for research and development in order to improve the administration of justice. That is a new kind of objective for court systems. It reflects the fact that in the past few decades there has been a major change in the mission of courts and judges, both in the State and the Federal systems. For one thing, problems of administration have taken their place along-

side problems of adjudication as main responsibilities of the judges. Earlier in this century there was much argument over whether judges had any obligation to see that the cases in their courts moved toward disposition in a regular and efficient way. That argument is now foreclosed. Nearly everyone has come to acknowledge that the filing of a case in court raises a duty on the part of the judges to assure that the case does not simply languish on the docket, but that it moves to a conclusion with as much dispatch and economy of time and effort as practicable.

A second noteworthy change in the last 20 years has been the rise of judicial education as a serious pursuit. State judges by the thousands have attended intensive offerings on subjects of importance to their work at the National Judicial College, the American Academy of Judicial Education, or at other institutions. In addition, many States have set up programs to provide judges orientation or refresher courses. Through the Federal Judicial Center in Washington, Federal judges also have an opportunity to attend judicial seminars, either for orientation or on specially selected problems of particular interest and importance.

To improve their operating methods and their educational offerings, State judges need to learn from research and evaluation of present methods and procedures. One might suppose that the State judges would receive the needed resources for these activities from their State budgets. The problem is that State legislatures are erratically thrifty when it comes to appropriating funds for research and development in judicial administration or for the orientation or continuing eduaction of judges on the bench.

In a few States, such as California, New York and Michigan, resources have been provided in reasonable amount; but most of the States lag far behind. The great advantage of Federal funding of these activities is that it provides a central forum and a sharp focus for those who seek funds to support research and development in the State courts. It is my impression that when the "good justice" groups, as we might call them, have a chance to concentrate their arguments on a single legislative body—here, the Congress—they elicit more positive responses than they would on turning to individual State legislatures. Whatever the reasons or dynamics, the fact seems clearly to be that Congress is more accessible and more forthcoming than State legislatures in the matter of providing resources for the improvement of State court justice through research and development. This is not something new. It is quite clear that for more than a decade Federal funds have been important to State courts in permitting innovation and improvements and in assisting the States in their continuing efforts to upgrade the quality of justice accorded litigants.

In the spring of 1978, the Office of Improvements in the Administration of Justice commissioned a survey of the States to obtain an estimate of the total amount of Federal funding reaching State courts over the preceding decade—since the establishment of the Law Enforcement Assistance Administration. Ralph Kleps, former administrative director of the California courts, made a 31-state survey and estimated that during the 10-year period, LEAA had spent $229 million in aid of the State courts. This estimate must be treated with a degree of caution. The same is true of another estimate, which has been provided by LEAA itself. The latter estimate concluded that under the best definition of the term "courts funding" the amount of assistance would come to about 6 percent of all block grants made by LEAA, for a total during the decade of some $325 million. Whether the accurate figure for Federal funding of State courts is the higher or the lower of the two estimates, or some other figure of a similar order of magnitude, the fact is that Federal aid to State courts has been on a significant scale for a number of years, averaging about $25 million to $35 million annually. Clearly, the State Justice Institute Act will not be departing radically from existing practice in providing substantial Federal funds to aid the State courts. This leads to the question: Is there a sufficient Federal interest to warrant Congress' authorizing support for State courts and for disbursing funds in the manner proposed? In my opinion, there plainly is.

I

There clearly is a Federal interest in the quality of justice dispensed by State courts. From this arises a Federal concern that the State courts have sufficient resources to carry on essential research and development in improving the administration of justice. The Federal interest stems from a combination of factors.

First, there is the fact 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 in the bill asserts. State courts deal with about 95 percent of the litigated disputes in which the people of this country become involved. Overwhelmingly, the public impression of justice is molded by their contacts with State courts whether as litigants, as jurors, as witnesses, or as spectators. Also overwhelmingly the level at which State courts perform determines whether Americans in fact have access to justice through the courts. Unquestionably, the Federal Government has a deep concern in these matters. If the citizens turn cynical about the prospects of obtaining justice from the courts, they will have little confidence in other institutions in the society.

Second, State courts are literally essential to the due execution of Federal laws. As a practical matter, when it comes to enforcing Federal constitutional and statutory limitations on State action under the supremacy principle, State courts are virtually the tribunals of final resort. The reason is well known: the Supreme Court of the United States is utterly unable to accept for review the multitudes of State judgments in which Federal questions of this kind are raised. We know without rehearsing the statistics that the Supreme Court can take only a minuscule percentage of State court appeals and applications seeking its review; and even that tiny fraction has been dwindling as the years pass.

Third, achievement of many important congressional policy objectives is dependent to a significant extent upon the ability of the State courts to aid in implementing the legislation Congress has enacted. A leading example is the 55 mile-per-hour speed limit which Congress has proclaimed, but has left to the State authorities, including the courts, to carry into effect.

Fourth, assistance to State courts is actually an investment in the well-being of the Federal judicial system, or so it should be viewed. If the work of the State courts is of poor quality and results in denial of Federal rights, the Federal courts are obliged to review the States' judicial performance, a task that detracts from time available to the Federal courts to decide cases that are distinctly and uniquely Federal. As the level of State judicial performance goes up, we can expect the burden of Federal review to lighten.

Diversity of citizenship litigation offers another example. When the Federal Government helps improve State courts, it bolsters confidence in them and thereby encourages litigants to select State courts for the adjudication of matters which they might otherwise have brought into the Federal courts even though the State interest predominates.

Further, the Federal judicial system will frequently reap benefits from the lessons learned from experiments and programs conducted by State courts with Federal funds. In serving as laboratories for the development and testing of innovations in the justice system, the State courts are serving in the highest tradition of our Federal structure of Government. The States have provided important lessons in many areas of judicial administration, including programs for merit selection of judges, judicial tenure plans, new technologies for prerecording of trial evidence on video tape, computer-assisted transcription processes, et cetera. In many respects the State systems have forged ahead of the Federal judiciary and are serving as ground breakers. Through the proposed Institute, Federal funds can supply the State courts with the resources necessary to conduct tests, demonstrations and experiments that will result in feeding important information into the Federal judicial system.

II

Basically, the proposed State Justice Institute promises to meet the need for a mechanism for distribution of the Federal funds without generating the difficulties that inhere in other structures. These difficulties include concern over Federal domination of State courts, blurring separation-of-power lines and sapping local initiative and responsibility.

It takes nothing away from the important contributions the LEAA program has made to the quality of our State court systems to observe that its activities have ofen sparked controversies. These were unavoidable, given the nature of LEAA as a Federal executive branch agency, attempting to function in an orderly way while exercising flexible discretionary powers and dealing with judicial officers who possess no more than the normal quotient of tolerance for bureaucratic regulations. These problems were compounded by the limitation in LEAA's authorizing legislation which required it to distinguish between problems of civil and criminal justice, ignoring the fact that the two systems are closely

intertwined. The statutory requirement that LEAA funds should go only to the criminal justice system forced the agency to make artificial distinctions in deciding what aspects of the State court's operations it was permissible to support. Instead, the focus should have been on the total concerns of the courts, the LEAA experience has been a constructive first step. The time has now come to take additional steps and the proposed State Justice Institute is one that goes in the right direction.

The planned Institute has the potential to reduce many of the fears that have been expressed regarding Federal funding of State courts. By creating this alternative to LEAA as the administrator of discretionary grants for court improvements, the act wisely allows funding decisions for those purposes to be made by representatives of State judiciaries and the public instead of by Federal executive officials. It takes a useful step to end the anomaly of having a law enforcement agency deeply involved in controlling money for State courts. This should lessen fear of improper control of State judiciary policies and activities. In my view, the act correctly accords greater respect to the principle of separation of powers and to the independent character of the judiciary as a distinct branch of State government. The proposal also recognizes that there should not be a lumping together of the criminal justice functions of the executive and judicial branches; and it ends the attempt to draw arbitrary lines between the civil and criminal responsibilities of the state courts.

Another constructive feature of the act is the fact that the board of directors of the Institute is to be appointed by a process that should assure ample representation from State judiciaries. Some of those appointed will probably come from States that lag behind in regard to modernizing and improving their court systems. When judges from these States find themselves rubbing elbows with judges from States with up-to-date views of judicial administration and judicial training, the educational effect will be significant. The exposure ought to heighten the backward States' awareness of the possibilities of improved performance through better administration and education. It has been my observation that when judges from across the country come together in a common cause, all of them learn in important respects from the exchange of ideas and approaches. The Institute should give great impetus to the sharing, testing and exchange of the most useful ideas state judges have developed in the judicial administration and education fields.

III

While the proposed legislation is basically constructive, a few specific provisions of the act warrant further consideration. For instance, the draft proposal speaks of the need to develop alternative mechanisms for the resolution of disputes. (§§ 101(b)(9)(1), 101(f)(1)(n)) We strongly support that goal. As you know, the Senate has already passed the Dispute Resolution Act, S. 423, and the House is moving toward final floor action on a companion measure. That act will establish a grant program in the Department of Justice specifically to assist States, local governments and nonprofit organizations in the development of alternative forums for dispute resolution. The Congress will doubtless wish to examine the provisions of the present bill to avoid undesirable duplication.

The question of how much political activity is too much and how much is insufficient arises in two provisions of the act. Although it is right to keep the Institute removed from political activity, the propostl goes too far toward this goal in at least one instance. Section 106(a)(2) states that "the Institute shall insure [that] 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." Beyond the fact that this provision seeks to limit rights of poliical expression rather severely, one must be concerned about the impact of this limitation on elected officials who are associated with recipients. On its face, the proscription would seem to apply to a judge or court clerk who has to engage in partisan political activity to run for reelection to office. This it should not do, and plainer language should be chosen to clarify the point.

On the other hand, I question the wisdom of allowing Institute funds to be spent to advocate or oppose "ballot measures, initiatives, or referendums," even with the restriction that they must deal "with the improvement of the state judiciary consisent with the purposes of this ac." (§ 105(d)(4)) Such measures can present highly partisan issues and could involve the Institute in taking sides in partisan political controversies.

It seems imprudent to allow Institute funds to be used for bricks and mortar,

for well-known reasons. The risk is too great even when the use is limited—as the bill provides—"to remodel[ing] existing facilities to demonstrate new architectural or technological techniques." (§ 105(f)(2)(b)) This exception may, so-to-speak, open the door for construction programs in the name of demonstrating architectural innovations. I fear that, at best, the exception would put too high a premium on finding clever ways around the ban on use of the funds for basic operating costs of state courts; at worst. it would generate unseemly, wasteful disputes.

While other technical modifications may be necessary, one major matter for clarification relates to the scope of the Institute's operations. It is unclear from the proposal whether its ultimate aim is to have the Institute assume reponsibility for distributing all Federal funding to State courts or whether the goal is to develop a system in which it will share this responsibility with Federal agencies. Clearly, the range of activities that the Institute will be able to undertake will depend on the level at which it is funded. That level, however, may be determined in part by whether its funds will be substituted for those distributed under other Federal programs or whether its funding will be in addition to the funding of other agencies assisting state courts. The proposal is drafted in such a way that the Institute could manage a budget of either $1 million or $100 million per year.

CONCLUSION

For more than a decade, the Federal Government has been giving State courts substantial financial support to encourage them to pay greater attention to the rising art of judicial administration. The proposal to commit this function to a State Justice Institute is basically sound. It builds on the successes of past efforts to assist State courts and avoids many difficulties. With relatively few refinements, the bill will be a major advance in the evolution of enlightened Federal-State cooperation in the field of improved judicial administration. I am hopeful that needed changes will be made and that continuing study and consideration will produce an even better proposal.

If you or other members of the subcommittee have any questions, I shall do my best to respond.

Senator HEFLIN. Senator Simpson, do you have some questions you want to ask?

Senator SIMPSON. Not really, Mr. Chairman, but I do want to say how pleased I am to serve as the ranking minority members of this particular subcommittee with Senator Heflin, whom I have found to be a very bright, knowledgeable, and able person, who likes to get right in the middle of things, and I enjoy that active participation. I regret that I have not been more active on this subcommittee, but Senator, I think you would agree that matters are a little different than when we were practicing law, just some very short time ago, since both of us were elected in November 1978. I have found a great press of business involved in the nuclear arena and the Veterans' Affairs Committee, and will now be turning some attention to this subcommittee because I think it's important, and I especially think this State Justice Institute area is one which we should pursue since, indeed, most of the people are first exposed, and often only exposed, to the State courts, and not to any Federal hierarchy or the Supreme Court. So, I know it will be an area where we will be considering a great many priorities in this subcommittee, and it's good to see that the chairman has designated this as one. I hope to participate as much as I possibly can. I look forward to the pleasure of working with him, and as I say, I have come to recognize his abilities, and I hope we can have a productive relationship as chairman and ranking minority member. I'm very pleased to be associated with him, and think he's a most productive jurist and legislator.

That's all I have at this time, Mr. Chairman, other than to say that

this is an important job, because I, too, practiced law in a small State, but we had a great many important distinctions to clarify in the local court system. I understand the chairman spent a great deal of his time revising that system in his home State of Alabama and I think it's very important. Thank you.

Senator HEFLIN. Thank you, Senator Simpson. Mr. Levin, I believe we will go with you next.

STATEMENT OF A. LEO LEVIN, DIRECTOR, FEDERAL JUDICIAL CENTER

Mr. LEVIN. Thank you, Mr. Chairman. I am honored to be here. If I might open on a personal note, I count it a matter of great personal pleasure and privilege to appear for the first time before this new subcommittee so fittingly under the chairmanship of one who has already distinguished himself by many achievements in this area.

As I noted in my statement, because of the way the Federal Judicial Center operates, I speak only for myself, but speaking for myself and through my submitted statement, I am so pleased to come and testify wholeheartedly in favor of the basic proposal we have here in this bill.

Let me say that I take it as axiomatic, certainly at this stage of the hearing, that the national interest in the administration of justice on the State level is clear. I think it may be useful if I were, briefly, to simply indicate the experience that I perceive the Federal Judicial Center has had as an enterprise devoted to similar interests, albeit on the Federal level. Utilizing that experience, I can sketch out some of the potential that I see inherent in the enactment of this bill for a State Justice Institute.

Briefly, I would mention just three areas; I won't try to cover the whole operation of the center. First, what we call our innovations and systems development is responsible for data processing innovations for the Federal courts, the use of computers and modern management techniques for the Federal judicial system. I know there has been some substantial State experience in the area. I would only say that our experience so far, at both the trial and appellate level is just beginning, and makes it perfectly clear that this is, I might stress in large volume courts, an indispensable tool, particularly as the courts have imposed on them, either by rule or by statutes in speedy trial acts, additional time constraints. In complicated appellate courts, the very notion of what motions have been entered, for one example of the status of things that can be better monitored, and we thus view it as exceedingly worthwhile. We are beginning now to achieve the level where—and this has just been in the past month—it will no longer be necessary to maintain in the normal way a paper docket but rather take data off the electronic system, reproduce it by microfiche at regular intervals and on demand. We can thus begin to see a program operating effectively, efficiently, more accurate than paper. I consider this really worthwhile research.

The work of the National Center for State Courts is very well known, and we have been the beneficiaries of some of their efforts and we maintain some fairly close contacts, so we hope they perhaps have been in some ways the beneficiary of ours. I think automatic data

processing work has already demonstrated the importance of research for the continuing development of judicial administration.

What of research on court and case management procedures? If I were to go back to the first really classic experimental study it was by Professor Rosenberg, on compulsory pretrial in New Jersey. It revealed the importance of evaluating a new technique, and saying, "Does it really work," and if it does, "What does it accomplish?", "What are the byproducts that we are concerned about?" This type of research, I think, is terribly important and we've demonstrated it on the Federal side, on the appellate level, in the second circuit, and we are now working in the seventh circuit, as well as in trial courts with respect to certain other new innovations. I think such research is an indispensable tool. I speak of the kind of work where you take 3,000 cases, 7,000 docketed entries, 6 different courts, and you begin to say, "What kinds of patterns are developed here and what can we learn so that an individual judge can adjust what he's doing to some new method which seems to be producing better pay dirt for the interests of the litigants?" Always, I stress, we focus on that. I think that's been demonstrated.

Finally, I shall say a word on educational programs. It seems totally clear to us, from the reports of the judges, for example, not only as they conclude a seminar program or orientation session for new judges, but as we talk to them 3 years thereafter, 5 years thereafter, they continue to endorse it as an indispensable, exceedingly valuable tool. And this goes as well for a lot of other personnel in the judicial system. I won't elaborate on similar reactions of the clerks, deputy clerks, circuit executives, but in our judgment, the programs are exceedingly valuable. They ought to be expanded. Many of the State systems have similar experiences. What we are talking about here is making programs available for everyone, and conceivably some interstate kind of experience as well.

Let me conclude briefly by suggesting two kinds of areas where we could hopefully have the Federal Judicial Center working together with the State justice institute. First, there are cooperative ventures in areas of State-Federal relationships. I can see areas, such as with prison petitions, for example, that involve our interest in working together because the problems are common and some of the litigation is in one system, some in another system. Beyond that, there is the business of sharing experiences on common problem. We've done that already, beneficially, but it has been a kind of informal allocation division of responsibility, and that had to do with computer-aided stenographic transcriptions. We've done it in some other research areas. But I see out of this bill the potential for a tremendously increased cooperative approach to the benefit of all.

Briefly, Mr. Chairman, these are what I see as some of the potential benefits. I have elaborated on a number of these things in my statement and it would be my pleasure to attempt to respond to any question which you may have.

Senator HEFLIN. One of the great nationwide needs in the State judicial system is orientation and educational programs to help new judges become acquainted with their new duties. Some States have developed such systems, basically modeled after the Federal Judicial

Center. Out of curiosity, let's take a new district judge following his confirmation—when do they come to the Federal Judicial Center for their orientation and educational program, and what does it entail from the viewpoint of number of days and basic approaches?

Mr. LEVIN. Mr. Chairman, the answer to that would be dependent, in large measure, on the volume of new judges, and the incidence of the appointment dates and the confirmation dates. Prior to the omnibus bill, it was not unusual to have a new judges' orientation seminar only once a year. Obviously, the incidence of when the judge began on his new duties would be an important thing. Our preference is, and what we are trying to do now, although the volume has increased, is bring them to the center after they have been on the bench for 2 or 3 or 4 months so they have some real feel for the problems. However, because that's quite a bit of time, we have developed, just this past year, what we call an in-court orientation program, developed by a committee of judges from our board. It has a checklist, and suggestions to the chief judge of the court and to the individual judge who is just coming aboard saying, "These are the things you ought to check out, such as how to take a guilty plea," and suggest that they ought to sit on trials with other judges. Then they come to us when the next available program will be held. Our last one was just last week. The one before that was in June. Our next one we are hoping will be in January. So now with the volume we have it's really frequent.

They come in on a Sunday afternoon. They have an opportunity to get to know each other a little bit—so that they are comfortable in a give-and-take—on Sunday evening, and then they will have 6 days of work. There will be a full day of such subjects as evidence, there is an important half-day on sentencing—what the Parole Commission does, what it means when a judge enters a certain sentence, that the Parole Commission may do. There will be substantial attention devoted to case management, what the responsibility is of the judge in taking the initiative, what difference does it make. There will be sessions in addition on problems of civil trial or civil cases or criminal cases, use of the jury, things of this sort, an exchange of techniques. This is typically the gist of what we will do during these 5½ very full days, really a 6-day program.

[The prepared statement of Mr. Levin follows:]

PREPARED STATEMENT OF A. LEO LEVIN

Mr. Chairman, my name is A. Leo Levin. I am the Director of the Federal Judicial Center, and I am pleased to accept your invitation to discuss with you the proposal for a State Justice Institute. On a personal level, these hearings afford me the genuine pleasure of appearing before a new subcommittee chaired by a recognized leader—first as a chief justice and now as a Senator—in the effort to improve our State courts' ability to adminster justice effectively and fairly.

I am obligated to record at the outset that my comments today do not represent any official position of the Federal Judicial Center or of the Federal judicial system. The Center speaks on matters of policy only through its board, and, of course, as you are aware, the Judicial Conference of the United States is responsible for the legislative recommendations of the Federal judiciary.

I

I accept, virtually as an axiom, that there is a strong Federal interest in the quality of justice administered in the State courts. The quality of life in our

society is permeated at every turn by the quality of justice dispensed in our courts, which in terms of the frequency of direct contact is predominantly in State courts. This point bears emphasis: in terms of numbers alone, whether we speak of case loads, litigants, judges or courts, the States dwarf the Federal judicial system. Moreover, this is as it should be, and, on the basis of every reliable predictor we have, this is the way it will continue to be. Thus, the national interest in assuring not only that justice is in fact done, but that it perceived as being done, in State as well as Federal tribunals, can hardly be less than the national interest in the quality of education or health care, and the Utter report is entirely persuasive on this point.

In addition, it is good to remind ourselves that it was not until 1875 that the Congress vested n Federal trial courts general jurisdiction over cases arising under Federal law; State courts were relied upon to provide the forum for the vindication of Federal rights. Our federalism, as we know it, rests in large measure on the judicial systems of the several States.

There may be, perhaps, in the minds of some, questions concerning the utility of continuing education programs for judges and for other supporting personnel, of the utility of automated data processing for courts, of the utility and cost effectiveness of research concerning courts and their procedures. On these questions, the experience of the Federal Judicial Center may be helpful and for that reason I thought to sketch that experience as it relates to the major functions of the proposed State Justice Institute.

II

I turn first to use of computers—more technically, the development of automatic data processing capabilities and systems innovations—to improve the functioning of the courts. When Congress created the Center, it was aware of the technological revolution that was, in 1967, only beginning to be seen in the State courts, and to a lesser degree in the Federal courts. Consequently, the Congress directed the Center to "study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States," and, as prescribed by statute, each of the Center's annual reports includes detailed discussion of the results of this work.

Pursuant to this mandate, the Center has developed a range of computer applications for court and case management, and they are in various stages of development.

The applications in the most advanced state of pilot operation are a criminal case management system, and an index system. The latter allows quick categorization of the docket of a court, or a judge, in terms of parties, data filed, and the like. It is a simple, but exceedingly useful application. The criminal case management system is far more complex, but it provides ready access to a great deal of information useful in implementing a Speedy Trial Act or rule.

A case management system for appellate courts is being tested, preliminarily, in two courts, and a civil case management system is in an early development stage. On the other hand, an automated system for the Federal courts' Central Violations Bureaus, which handle the citations and fine payments for the half-million annual petty offenses in Federal courts, is in operation in four courts with a heavy Federal presence and can be expanded. We are only beginning the planning for a massive probation management information system.

The Center also responds to specific needs for automated support. For example, what we term CALEN-9 was developed by our research division to help the heavily burdened ninth circuit arrange cases for panels, implementing policies developed by the judges themselves.

These details on the Federal system are relevant to your interest in State court improvements because they suggest the benefit of sustained financial support over the long term in developing, testing, modifying, and refining the terribly complex automated procedures necessary to serve the courts. The results are seen, however, in the ability of the system to help the judges, not so much for their own sake, but to help them in serving the litigants. And the judges themselves have been generous in their assessment of the value of these applications.

I am aware, of course, of the work done by the National Center for State Courts in the field of automation, and that done by individual courts. However, to the degree the Federal Judicial Center's experience can be helpful and avoid

duplicative developmental work, we should be pleased to be of assistance to the State courts, subject of course to the provisions of whatever legislation is enacted and subject to the resources provided us by the Congress.

Implicit in the bill providing for the creation of a State Justice Institute is the recognition of the potential value of research for achieving more effective justice. There is ample support for this emphasis in the work of the National Center for State Courts and of other agencies devoted to judicial administration, such as the Institute of Judicial Administration and the American Judicature Society. That careful research has been beneficial to the courts is hardly surprising, for the high priority regularly accorded to research and development by industry shows how important, indeed how indispensable, it is for any organization constantly to study alternatives to present methods, to seek out more efficient use of resources, and, if we think of a mediated settlement as different in kind from a judgment following adjudication, to consider new end products.

The experience of the Federal Judicial Center lends further support to the importance of continuing research. The Congress, in creating the Center, listed research first among our functions and it is our considered judgment that the emphasis was not misplaced. The Center's research has included rigorous empirical studies—such as our study of sentencing disparity at the request of the judges of the second circuit, and our more recent analysis of discovery practices in Federal courts. Other research has been less quantitative, and based instead on firsthand observation and assessment of the topic of study. A recently published analysis of the impact of the Circuit Executive Act provides an example. The important point to stress is that the ability of the Center's research to make a significant contribution has stemmed in large measure from the fact that it is sustained and continuing.

One hopes that the end product of a research effort will include suggestions for improvement. This bill, too, speaks of the search for innovations designed to achieve effective justice, more speedily and at less cost. Innovations do, in fact, sometimes result from such studies, but creativity is not a commodity readily available on requisition. If, however, as has been suggested, genius is 99 percent perspiration and only 1 percent inspiration, it is important to continue the effort to illumine the problems that the courts face and to probe constantly for changes that may prove effective, to innovate and, of central importance, to evaluate the results of each such effort.

Of all the changes in judicial administration in the recent decades, perhaps the most dramatic has been the programs of education for judges and for supporting personnel. The quantum of education available has increased dramatically, and, perhaps even more striking has been the increased receptivity of judges and others to these programs. Given the work of the National Judicial College and the Institute for Court Management, and the programs developed by numerous State court systems, it would be presumptuous to think that the Federal Judicial Center's programs should provide the model.

Again, however, the possibilities of cooperation and of sharing new experiences remains, all the more so because technological innovations, combined with the increased costs of transportation, give us compelling reason to look for innovative new techniques to complement the traditional onsite seminar. The Judicial Center is making increasing and substantial use of its media services library to provide audio and video tapes of seminar lectures, and of special presentations. We shall soon be testing what for us is a new type of national seminar, in which the participants remain in their home cities, but see and hear speakers at a distant location; there will be a built-in capabillty for questions and answers over transcontinental hook-ups, all as part of the same program. We are not alone in the endeavor to take advantage of these new technological developments and we would welcome the opportunity to explore how best to use them for our respective judicial systems.

III

A State Justice Institute holds promise for increased attention to problems that are not confined by the boundaries of the State or Federal judicial systems. Firm Federal financial assistance to allow sustained research and development by State courts and by national State court agencies is necessary for serious attention to problems of federalism, and problems shared by State and Federal courts.

The Federal Judicial Center enjoys close contact with the National Center for State Courts. We have supported the attendance of Federal court administrative personnel at the Institute for Court Management. The educational needs of the Federal judges and other personnel are often somewhat unique and specific, but to the degree possible, we have cooperated with the National Judicial College in Reno.

I am convinced, however, that there is potential for greater cooperation on research and development, and I base that conviction on several developments in the past in which Federal Judicial Center research has benefitted from—and, I think, has benefitted—parallel research on State court problems.

The Center's Prisoner Civil Rights Committee, chaired by Judge Ruggero J. Aldisert of the Court of Appeals for the Third Circuit (and a former State trial judge), has published two tentative reports on recommended procedures in handling conditions-of-confinement cases, and has published a massive compendium on the law of prisoners' civil rights. While the committee's work has been most specifically directed to the Federal judiciary, the Center's major constituency, the committee is well aware of the important role of the State courts in handling such cases, and takes note of this fact in its reports. The committee operates on the premise that resolution of the mass of prisoners' civil rights cases is a joint duty of the Federal and State courts.

The benefits of cooperative research on common State-Federal problems of judicial administration are anticipated by this proposal, and there are some examples already of such benefits. The Federal Judicial Center and the National Center for State Courts have recently published important reports on the factors that effect expeditious case management. While published independently, both reports have benefitted from informal contacts between the respective project staffs. Several years ago both Centers were interested in studying the costs and benefits of computer-aided transcription, and through staff contact, an informal division of responsibility was observed that achieved economies for both organizations and increased the total knowledge about computer-aided transcription emerging from both projects. More recently, as you may know, the Chief Justice appointed a committee of Federal judges to study the use of juries in protracted cases. That committee, chaired by Judge Alvin B. Rubin of the fifth circuit, and with staff assistance from the Center's research division, has been in contact with the Conference of Chief Justices and Conference of State Court Administrators, and with the national Center as secretariat to those organizations, to achieve the benefits of cooperative analysis.

This brief statement has attempted to be suggestive rather than exhaustive. I would be derelict if I did not emphasize the great potential for good which I believe inheres in this proposal to expand and to refocus the support of the Federal Government for the delivery of justice to all of our citizens, whatever the court in which the causes are adjudicated.

Mr. Chairman, I have been honored to be allowed to present these views and I would be pleased to try to respond to any questions.

Senator HEFLIN. Mr. Remington, who represents the House of Representatives, and has been very active in the formulation of thoughts that have gone into drafts of the State Justice Institute Act, is here. Do you have some questions you would like to ask Mr. Levin or Mr. Rosenberg? We'd be happy to hear from you.

Mr. REMINGTON. Thank you. First of all, it's an honor to be on the dias with Senator Heflin. Professor Rosenberg, you mentioned there is an overlap with the Dispute Resolution Act. What is the extent of this overlap? Is it a contradiction? Or do they complement each other?

Professor ROSENBERG. It's not a contradiction, Mr. Remington. I think if we will read the statement of findings and purposes, you will find reference to alternative means of resolving disputes. That search for alternative means is one of the objects of the State Justice Institute and its funding. What I'm suggesting is that, as you know very well, that is the centerpiece of the Dispute Resolutions Act, which you had so much of an effective hand in formulating and moving along,

and I think that what should be done is to determine whether it is desirable to have both funding from the State Justice Institute and from the entities that are created by the Dispute Resolution Act. If duplication is desired, it is there, but I'm not sure that it is desired, or desirable.

Mr. REMINGTON. Thank you.

Professor ROSENBERG. Excuse me, if I can just call your attention to page 48, it says in subsection 2 that "the Institute should not duplicate functions adequately performed by existing organizations." So that I think the act itself would speak against giving the Institute a function that's already being discharged by some other entity with regard to this matter of alternatives to courts in resolving disputes. I believe that admonition in the act fits.

Mr. REMINGTON. Thank you, Senator.

Senator HEFLIN. I believe there are so many other needs in the State court systems that I think under the State Justice Institute Act, we could eliminate the alternative dispute determination program right now. Of course, they are dealing with matters that are not in the courts. Are the three different pilot programs going on, and they are really not diverting from the courts. It's a matter of approach to settling disputes in the neighborhood. Atlanta's the one you hear the most about to date. If that's a problem—do you consider it a real problem, or do you think it ought to just be clarified as to that issue?

Professor ROSENBERG. I believe it should be clarified. The provision which I had specific reference to is on page 48, and its subsection 1. In listing under the heading, "Findings," the purposes of the Institute and its funding programs, subdivision 1, refers to innovative programs for increasing access to justice by reducing the cost of litigation, and these are the words I am referring to: "by developing alternative mechanisms and techniques for resolving disputes." Now, I believe that there is overlap between the implication of that phrase and the purposes and the whole object of the Dispute Resolution Act. There should be a clarification of the interrelationship, at the least.

Mr. REMINGTON. I might add that the Dispute Resolution Act, which will reach the floor of the House in February at the start of the second session, does make funding available to State courts specifically. That program will be placed in the Department of Justice. Would the executive branch have any problem with a cooperative arrangement such as that mentioned by Professor Levin with the Federal Judicial Center?

Professor ROSENBERG. I conceive that there would not be any problem with a cooperative arrangement.

STATEMENT OF EDWARD B. McCONNELL, EXECUTIVE DIRECTOR, NATIONAL CENTER FOR STATE COURTS

Senator HEFLIN. All right, Mr. Edward McConnell, Director, National Center for State Courts, we're delighted to hear from you at this time.

Mr. MCCONNELL. I appreciate the opportunity to appear before this subcommittee to testify with regards to the proposed State Justice Institute Act of 1979. Being an inarticulate administrator rather than

an articulate professor like my predecessors, and to avoid being one of Professor Rosenberg's jumping frogs, I will, with your indulgence, read some of my material.

Tensely and tritely stated, today in too many courts justice is too long delayed, is too expensive, and often is never concluded. Unfortunately, this is so even after the substantial progress that has been made in the past 10 years, much of it with the help of Federal funds made available under the Law Enforcement Assistance Act. A great deal, obviously, remains to be done if courts are to be readily accessible to all persons at reasonable costs, if they are to dispose of matters fairly and impartially yet expeditiously, and if the participants in the public are to understand the judicial process and have confidence in it.

Many today are inclined to by cynical, particularly about the capabilities of the Government and its officials. Yet as one who has worked for and with State Government for over 30 years—Professor Rosenberg is a mere neophyte in this field, having entered it in 1955—I have a high regard for public officials. Those that I have known, almost without exception, are conscientious and sincerely interested in providing the public with the service it deserves and demands, but often is unwilling to pay for. From my experience, this is especially true of judges, court administrators, and other court personnel.

The main problem is not their lack of desire to improve, although perhaps it once was. The problem is that all too often they either do not know how to bring about improvements, or if they know, they do not have the resources to put their knowledge into practice. Generally speaking, the technical know-how and the money needed to bring about changes for the better have just not been there. Meanwhile, the flood of new laws, new lawyers, and more people, and an increasingly complex and congested and litigious society constantly pressure to change things for the worse.

Aided by the expertise of the National Center for State Courts and other organizations, and by supplemental Federal funds for research, development, and implementation, the State courts in recent years have made a good start: One: In improving their administrative structure and organization. Two: In developing needed management systems and skills, including the use of modern technology to which Professor Levin referred. Three: In utilizing the social science disciplines to study court problems, to devise solutions, and to test out and evaluate those solutions. Four: In developing the information base or statistics, if you will, on the courts so essential if one is to know what is going on and to be able to do anything about it. Five: In effectuating the political changes necessary to implement many court improvement programs.

Much, of course, remains to be done. But we can feel some confidence that the tools are now available to the courts, if they have the money to pay for them, for analyzing problems and ferreting out answers. There are some old problems that still need solutions, while there are known solutions that still need to be implemented in the Nation's courts. Moreover, new problems are constantly arising to demand attention, most of them resulting from actions of those outside

the courts, and many of them by actions of the Federal Government itself.

The justification for the Federal Government providing financial assistance for State courts is amply set forth in the May 1979 report of the Conference of Chief Justices Task Force on a State Court Improvement Act, of which Chief Justice Robert F. Hutter of the State of Washington was the chairman. The task force report likewise amply demonstrates the need to have a vehicle which is consistent with the principles of federalism, the separation of powers, and the integrity of the judicial branch of Government. Such is the proposed State Justice Institute, through which to channel Federal funds for improvement of State courts.

I am sure that others who have already testified or will testify before this subcommittee will give adequate attention to these most important subjects. Accordingly, I would like to concentrate by testimony today on the role that the National Center for State Courts would play in carrying out the purposes of the proposed State Justice Institute Act.

The Federal Judicial Center was established by the Congress in 1967 and quickly demonstrated its value to the Federal court system as a resource for research, problem-solving and technical advice. It was not surprising, therefore, that in 1971, at the first National Conference of the Judiciary, it was proposed by the Chief Justice of the United States that a comparable center be created to serve the court systems of the 50 States. The proposal met with overwhelming approval and in July 1971, the National Center for State Courts was formally incorporated as a nonprofit organization by a committee of the Conference of Chief Justices, chaired by then Chief Justice James S. Holden of Vermont, now a Federal district court judge.

The National Center is as close to a State counterpart of the Federal Judicial Center as it was politically possible to create. It is controlled by a council of State court representatives, with one representative being appointed by the highest court of each State. The council in turn elects a board of directors composed of judges from all levels of the State judiciary to establish policy and direct the operation of the center staff. That staff, possessing the wide range of skills and experience needed to address the problems of the State courts is located at a headquarters office in Williamsburg, Va., at regional offices in Massachusetts, Georgia, Minnesota, and California, and at project offices in Colorado and Washington, D.C.

In the 8 years of its existence, the National Center, like its counterpart the Federal Judicial Center, has become an indispensable adjunct of the courts. That this is so is amply demonstrated by repeated actions of the Conference of Chief Justices, an organization as its name indicates composed of the highest judicial officer of each of the 50 States. In a resolution adopted at its annual meeting in 1974, the Conference stated:

Whereas the National Center for State Courts is a court assistance organization governed by the courts of the 50 States, and has rendered valuable assistance in court improvement to various members of the Conference and to the State court systems which they represent, be it

Resolved as follows:

(1) The Law Enforcement Assistance Administration is urged to continue its

funding support to the National Center for State Courts so that it can increase its assistance and service to State court systems,

(2) State judicial, legislative and executive branches are called upon to increase State financial support for the Center so that it can increase its assistance to the State courts and can remain as an independent organization dedicated to service of State court systems, and

(3) The Special Committee on Federal Funding of the Conference of Chief Justices is authorized to develop proposals for long-term federal funding support for the Center to supplement state judicial funding.

At its annual meeting in 1976, recognizing the increasingly important part the National Center was playing in its efforts to assist State courts to bring about needed improvement, the Conference of State Justices designated the National Center as its secretariat. The center was similarly designated by other State groups, today serving as secretariat for eight of the most significant national court organizations.

In 1977, at its annual meeting, the Conference of Chief Justices adopted a report with an implementing recommendation which stated in part:

The National Center offers a key mechanism by which Federal funds can appropriately be used to assist State courts, providing resources far beyond the means of any individual State, or under present court budgets the State court systems collectively. We strongly favor a direct congressional appropriation toward support of the National Center for State Courts similar to the support provided for the Federal Judicial Center.

Attorney General Griffin B. Bell made just such a proposal in his address that year to the conference. And at its 1979 midyear meeting, the Conference of Chief Justices adopted a resolution stating in part:

Whereas, the National Center was created and is directed by the state courts, and is performing indispensable and continuing functions essential for much needed improvements in the State court systems,

Now therefore be it resolved, That the Conference of Chief Justices hereby declares to the Congress and the Administration that the Conference's highest priority in the area of LEAA reauthorization and refunding is:

(1) That the needs of the National Center, especially for funding of its ongoing essential State support services and its national and state research and demonstration programs be recognized by the Congress;

(2) That provision for their continuance be provided for by the Congress, and

(3) That the Congress clearly expresses its endorsement of the unique role of the National Center in state court reform and of the need of the National Center to continue its vital role with adequate Federal funding by LEAA or its successor agency at not less than the level it currently receives.

In keeping with the foregoing statements of the Conference of Chief Justices, the May 1979 report of the Conference's Task Force on a State Court Improvement Act, which report was approved for implementation by the conference at its 1979 annual meeting, recommended the enactment by Congress of legislation establishing a State Justice Institute and specifically included in the draft legislation attached to the report provision that the Institute

* * * shall give priority to grants, cooperative agreements, or contracts with: (i) State and local courts and their agencies, and (ii) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State government.

The latter designation currently is applicable only to the National Center for State Courts. The legislation recommended in this report serves as a basis for the State Justice Institute Act of 1979, which is the subject matter of today's hearing.

It should be pointed out that the States have indicated the value they place on continued existence of the National Center, not only by recommending its support with Federal funds, but each of the 50 States has supported the center with legislatively appropriated funds included as a part of their State judicial budgets. But just as the State court systems themselves have not always received appropriated funds sufficient for their purposes, and are in need of Federal funding assistance, so the State appropriations for the support of the National Center fall short of being sufficient to maintain its essential services.

It is for these reasons that the Conference of Chief Justices has recommended Federal funding assistance for the National Center as a priority under its proposed State Justice Institute Act. In this regard, it is important to note that the National Center for State Courts is presently addressing, or has addressed, all of the requirements for strong and effective State courts enumerated in the proposed act, and has done work for and been of assistance to State courts in all of the subject matter areas specified in the proposed act, and for which the proposed State Justice Institute would be authorized to award grants or to enter into cooperative agreements or contracts.

As previously mentioned, the National Center does not work exclusively for the Conference of Chief Justices, nor that matter only for appellate courts. It provides expert services and engages in court improvement projects for appellate and trial courts in every State, for courts at every level of State government—State, district, circuit, county, and municipal—and for courts having every type of subject matter jurisdiction, civil, criminal, family, juvenile, small claims, and traffic.

Moreover, the National Center, in addition to working directly with the Conference of Chief Justices and its committees, which represent the top judicial leadership of the State judiciary, also is actively engaged in serving and carrying out significant court improvement projects, with the Conference of State Court Administrators, with organizations of trial judges, such as the National Conference of Metropolitan Courts, trial court administrators, court clerks, and court planners, as well as with groups such as the Committee on Implementation of Standards of Judicial Administration of the American Bar Association's Judicial Administration Division.

I can emphasize here that although the Conference of Chief Justices has designated the National Center for State Courts as its highest priority, and that such a priority is provided for in its proposed legislation, that legislation does not exclude any other organization working in the area of court improvements from receiving support from the State Justice Institute. Indeed, provision for such support, when the objectives of the act can be better served thereby, are specially provided for. Again the National Center is in the position analogous to the Federal Judicial Center. While the Federal Judicial Center is the prime agency for providing support for the Federal courts, it is not the only agency which receives Federal funds to carry out projects aimed at the improvement of the Federal courts.

In summary, there are good reasons why the Federal Government should be interested in assisting financially in the improvement and maintenance of a high quality of justice as it is administered by the

State courts which handle 98.8 percent of all court litigation. There are good reasons why the proposed State Justice Institute is the best possible vehicle for providing such Federal funding assistance for State courts. And as I have pointed out at some length, there are good reasons why the proposed State Justice Institute Act of 1979 specifically provides the funding priority for the National Center for State Courts, the only organization created by, controlled by, and devoted exclusively to serving the courts of every State as they struggle to meet the challenges of providing justice in modern day America.

With the aid that an adequately funded State Justice Institute would provide for the improvement of State courts throughout the Nation, there can be every expectation that the day will be materially accelerated when all persons in all States will have courts readily accessible to them and at costs they can afford, when their disputes will be finally resolved fairly and expeditiously, and when the courts will operate openly and be fully accountable to the public, and it in turn will have renewed confidence in the administration of justice.

I would be pleased to answer any questions you may have.

Senator HEFLIN. Mr. McConnell, I think you know from your observation of judges that they fiercely guard their independence, and under any concept of a Federal assistance program would be the issue of any possible Federal control. Now, in reviewing this State Justice Institute Act, do you foresee any possible sacrifice of the necessary independence of the State justice systems, and what do you see as safeguards that are in the act to prevent that? Further, do you have any suggestions of language that will insure that independence from Federal control?

Mr. MCCONNELL. Mr. Chairman, preliminarily I might say that I think there has been a considerable change in attitude on the part of the States courts with regard to Federal funding participation in their operations. It was perhaps 15 years ago when Senator Tydings first introduced legislation that would have provided for such Federal funding assistance and it met with considerable opposition from those within the State courts because of the fears of Federal intervention and problems with regard to the separation of powers.

Since that time, there has been a substantial change, I believe, in the attitude of those in the State courts. First of all, for the past 10 years or so, they have had some concrete experience with the Law Enforcement Assistance Administration. Notwithstanding the problems that exist within that legislation, which the State courts have called to the attention of the Congress, I think they have found that it is possible for Federal funding assistance to be provided to State courts without interfering in their control of their operations and their independence.

In this proposed act, of course, it ought to be recognized that it is a proposal of the State chief justices themselves, so that they obviously feel in making such a proposal that the vehicle that they have recommended would not be a problem for them. It is established as an independent corporation outside the Department of Justice, so that you don't have the problems of the executive versus the judicial branch. It specifically provides that a majority of the board would be nominated, appointed from among State court officials, judges, and admin-

istrators, nominated by the State courts. The funding would be supplemental to the funding provided by the State legislatures. In their discussion, the task force repeatedly emphasized that Federal funding should be supplemental funding, that the prime responsibility for the State courts lay with the State legislatures, and accordingly, they do not contemplate that judges' salaries, their physical facilities, would be provided by this legislation, but that it would provide the supplemental or fringe funding that is so important for experimentation, for demonstration, for research and innovation.

Senator HEFLIN. In the structure of an independent corporation, which would have a board of directors, a large majority of which would be State judges, in your thinking, is this sufficient to insure that there not be, as one justice said one time, a screaming Federal eagle over the courts of the various States? You think that this idea of an independent Government corporation in which the large majority of the directors would actually be State judges or court administrators or officials dealing with the State is sufficient to protect the State court system from any Federal control?

Mr. MCCONNELL. Sir, well, it's not perhaps ideal because I think that if the State courts could have an ideal system they would have one that was fully controlled by the State courts. But, within what is possible, this I think is a satisfactory solution. It is one which the chief justices themselves feel would provide the necessary protection. It would provide the Justice Institute with a State orientation in determining what programs they were going to fund, in determining what their priorities would be. And then, of course, being supplementary funding, there is always the capability of independence through a State declining to accept any funds, or participate in a program. And that, of course, is their ultimate protection, and, as you know, under the Law Enforcement Assistance Administration occasionally a State judicial system has taken that approach.

Senator HEFLIN. Do you see this program overlapping with LEAA, or contradictory of LEAA? How do you see its relationship with LEAA?

Mr. MCCONNELL. I see it as complementary to LEAA. The prime emphasis in the Law Enforcement Assistance Administration Act is on criminal justice. Although it has been broadened to include the courts, they are not the primary target of that legislation. So the Law Enforcement Assistance Administration could continue its programs, and the State Justice Institute, insofar as the courts are concerned, would supplement and complement the work of the LEAA in the law enforcement field.

Senator HEFLIN. Mr. Remington, do you have any questions?

Mr. REMINGTON. I have no questions at this time, thank you.

STATEMENT OF JANIE SHORES, ASSOCIATE JUSTICE, SUPREME COURT OF ALABAMA

Senator HEFLIN. It is my pleasure at this time to call upon Justice Janie Shores of the Supreme Court of Alabama, a former colleague of mine. In moving from the Alabama Supreme Court to the U.S. Senate, I've had a transition of reading material. Now I have volumes and reams upon reams of paper that come across my desk pertaining to proposed legislation, people's thoughts, dear colleague letters, and

others things, and I sadly miss reading the proposed opinions that Justice Shores would draft and bring to conference, which were rarely ever changed. I might say that the brilliance of thought and the clarity of language prevalent in her opinions, I find sadly lacking in the reams and reams of written materials that now cross my desk. So I'm pleased to have you before us, Justice Shores, and we'd be delighted to hear from you.

Justice SHORES. I'm delighted to be here, Mr. Chairman.

If it is appropriate, and maybe it is, as Professor Rosenberg said, to equate the 51 State systems to jumping frogs, Alabama may be the No. 1 frog thanks to your efforts. But even so, a great deal remains to be done, and I have a personal interest in particular aspects of it, obviously. It seems to be conceded all around that it's inevitable that the States will be handling an increased caseload, particularly with respect to civil litigation.

I know statistics would show in Alabama, and I suspect it's true throughout the Nation, that court jurisdiction is concurrent in civil cases. Most lawyers are bringing those cases in State court. Very little civil litigation is taking place right now in Federal courts.

That being the case, and there being a demonstrated ability on the part of the State judiciary to handle Federal questions, constitutional questions, I think it's entirely appropriate that the Congress address itself to that effort. In my particular instance as an active member of a State judiciary, there seems to be very, very little organized intercourse between State judges, from State to State. That may be a poor choice of words, but other than the judicial administration division of the ABA which represents a very small number of State judges, I know of nothing comparable to the Federal Center conferences, which are compulsory and held every year. I think that would be a valuable aid to those of us who are in that business.

The most critical need I see on a day-to-day basis is the lack of any kind of advance means for utilizing technical advances that obviously are available in business and in other departments of Government. We continue to be concerned with transcripts of trials which are reproduced by typewriter and then physically delivered to us, a system that's more attuned to 1879 than 1979. I think there's no reason in the world why we couldn't utilize a more efficient method.

In connection with Professor Levin's concern about the possible need to restrict the use of any Federal money for physical facilities, I suspect that there are courthouses all over this country which, if electronic data processing equipment were made available for research and other things, there wouldn't be a physical facility in which to house them. I'm sure it wasn't envisioned that it would be only courthouses under the auspices of this act, but clearly I think it should contemplate the use of something so as advanced technology becomes available in the delivery of justice, there would be some place to house it.

I think it is a healthy thing to have gone beyond the point of debating whether the Congress should have an interest at all in the delivery of justice in the country. It seems to me self-demonstrating if 96 percent, or whatever, of litigation takes place in State courts, then the national Government just can't ignore that fact. Thank you for having me here.

Senator HEFLIN. You mentioned the idea of having, for example, a regional meeting of judges similar to, say, the Fifth Circuit Judicial

Conference, where the interchange of ideas, thoughts, has been very helpful as a form of continuing education. You envision that this institute could arrange to finance such a conference, whereas it would be an impossibility for the States. You'd have to have, say if you had southern States within the fifth circuit, you'd almost have to have seven or eight different appropriations coming from legislatures if the State were to finance it, or else authority to concentrate that to be able to finance such a program. You see that under this type of program this would be very helpful.

Justice SHORES. Yes; it would, and I just don't think it's feasible to expect it to happen from seven different legislatures with seven different plans.

Senator HEFLIN. That would certainly be a fringe benefit that would be very helpful. I think maybe there have been some LEAA programs where they had—I know one time we had a southern conference—as far as I know that was the only one on a regional basis that I've heard of in the United States; it was in Biloxi about 3 or 4 years ago. But I could imagine that would be of immense benefit because the problems facing appellate judges today on many issues, for example, capital punishment and the same is true for trial judges—while they vary, there is a similarity of proceedings that is required by decisions of the U.S. Supreme Court. I think that's an excellent illustration of how the State Justice Institute could act. I believe there have been conferences with the National Center for State Courts, and then you have annual meetings of your council of State court representatives, but it's not broken down into divisions where appellate judges and the trial judges would get together from various States.

Mr. Remington, do you have any questions you would like to ask Justice Shores or any of the members of the panel?

Mr. REMINGTON. I do have one question for Justice Shores. The theory goes that the screaming eagle, or the Federal flag, always follows the dollar. To have an act which mandates State court improvements, is there a danger that that, in and of itself, will be an encroachment on State sovereignty? Are you satisfied, having read this proposed act, that the States will not be encroached upon?

Justice SHORES. As Mr. McConnell said, obviously the greatest assurance that there would be no encroachment would be if there were no Federal involvement at all. I think we've sort of gone beyond that. We appreciate that we just can't have a system of federalism without some involvement in an area this enormous.

I think the establishment of an independent board making policy decisions, as I read it, as to what would be the guidelines, standards, what must be met to receive these funds, is about as good as you can get and achieve the purpose.

Mr. REMINGTON. Thank you.

Justice SHORES. I had one question that Professor Levin mentioned, I think, the provision in the proposed act that would restrict political activities expressly, except for a specific, it just occurred to me, what would be wrong with the Institute supporting or opposing legislation if the effect of it was perceived to be an interference with, on the one hand, the State judiciaries, or promotive of it on the other? I just don't know that it's necessary to preclude all political activity. It might happen that some legislation might be proposed that would enhance the purposes of this act.

Senator HEFLIN. Well, of course, the Legal Services Corporation

was organized to give them independence so their lawyers wouldn't feel any pressure from any agency and they could represent their clients fully. There is no restriction, in effect, on their lobbying as to legislation. There is developing a good deal of criticism of the Legal Services Corporation, however, in that some lawyers are spending more time lobbying for or against bills, and that was not the intent. That, of course, is a matter that has got to be studied and I'm sure when it comes up again, we'll do it. It's a hard line of demarcation. Your suggestion would be that as it relates to the independence of the State judiciaries; that's worth exploring and seeing thoughts of people on.

Mr. McConnell, do you have any thoughts on it?

Mr. McCONNELL. No, sir; it seems to me, Mr. Chairman, that the act would permit legitimate activity in support of court improvement programs that require legislative action, because the specific restrictions are on the personnel of the Institute. It would ordinarily not be people employed by the Institute who would be appearing before State legislatures. Moreover, Institute personnel would not be precluded from testifying on the request of a legislative body with regard to matters affecting the administration of justice. So to the extent that political activity was necessary, and it frequently is necessary in the States to bring about improvements, that would adequately be handled, not by the people who are funded by the Institute directly or indirectly, but by the court officials, bar association leaders, and citizens in the State who had a direct interest in the programs that were being presented to the State legislature, or local legislature. So I don't see any problem with the act as it is.

Senator HEFLIN. There is perhaps an analogy to the Canons of Judicial Ethics that limit judges' activities dealing with legislation. They allow them to deal with those matters designed to improve the administration of justice.

Mr. Rosenberg, do you have any thoughts on this? You have previously expressed some on it.

Mr. ROSENBERG. Yes; I don't have any problem at all with the provision that Mr. McConnell referred to. Not only can personnel of the Institute testify at the request of a legislative body on appropriate matters, but also one of the specific exceptions to the ban on testifying or taking part and influencing the passage or defeat of legislation, is in connection with legislation or appropriations directly affecting the activities of the Institute. So that as far as the Institute's own activities are concerned, and I suppose that means the areas of funding in which the Institute engages, there is no ban on activity by personnel of the Institute.

The problem I have on the political side is the restriction which appears on page 60. It says that the Institute, in making grants and contracts, shall insure that all personnel engaged in grant or contract assistance activitv, supported in whole or part by the Institute, refrain while so engaged from any partisan political activity. Now I see the virtue of a provision like that, but it neglects the fact that some of the judges or clerks who will be recipients, indirectly at least, of the grants from the Institute or contract with it, may have to run for reelection, and then they have to do so along partisan political lines. Although I don't especially favor their having to do that, on the contrary I don't think they should be penalized from accepting contracts or awards from the Institute, if they happen to be in States that require that they run for reelection along partisan political lines.

Senator HEFLIN. Mr. Levin, do you have any thoughts on that?

Mr. LEVIN. Yes; I think I'm in the position, Mr. Chairman, of agreeing with both of the preceding speakers. I think it would be highly desirable to write in the kinds of exceptions to which you referred earlier which we have in connection with judges, the "Code of Professional Responsibility," and make it very explicit that those which relate to judicial administration, improvement of the courts, and so on is excepted. I also think that probably the last point Professor Rosenberg just made, probably there should be an exception for running for judicial office, and here, too, other activities that are directly related to the improvement of justice. I think if it's done that way it would take care of all the problems involved.

Senator HEFLIN. Would any of the witnesses like to respond to the testimony of any other witness, or regarding any issue that has been raised? Mr. McConnell?

Mr. MCCONNELL. Mr. Chairman, there are two things that I would like to comment on that I haven't previously, and they both are suggested by Professor Levin's statement.

The one area where the National Center is not fully analogous to the Federal Judicial Center is in the area of education. He mentioned in his remarks that education is an area that is extremely important and one of the best ways of bringing about improvements and spreading ideas, hopefully the best ideas. The Federal Judicial Center has been very active in that area. The National Center, while it has done some work of an educational nature, it is not our area of concentration, because there exists another organization that concentrates primarily in that field, and that is the National College for the Judiciary in Nevada. If there is one change that I would suggest in the act, it is that in the priorities that are designated, a provision be made that that organization also receive some priorities so that their work would receive the recognition it deserves.

The other subject I would like to comment on is a matter that Professor Levin also referred to, that is, cooperative ventures between the State and Federal courts. This specifically is provided for in this proposed act. At the present time there is a good deal of cooperation that goes on because the respective staffs of the Federal Judicial Center and the National Center and other organizations that have comparable expertise often participate in a consultative way in each other's projects, and, as experts, keep themselves apprised of what is going on in the field in the Federal or State courts, as the case may be.

But it is very difficult to have joint efforts because of the difference in sources of funds and the different objectives. LEAA projects, for example, do not permit working in the Federal courts. I think under this act you would be able to develop not only more cooperative projects, but have an efficiency in some of the areas that he has referred to, particularly in the area of technology and many of the procedural areas where the problems are the same, and probably the solutions are similar.

Senator HEFLIN. Are there any other comments of any of the witnesses on anything that has been raised, or not raised? That covers a pretty broad subject. Well, if not, then we'll conclude this hearing at this time.

[Whereupon, the subcommittee adjourned, subject to the call of the Chair.]

STATE JUSTICE INSTITUTE ACT OF 1980

WEDNESDAY, MARCH 19, 1980

U.S. SENATE,
SUBCOMMITTEE ON JURISPRUDENCE
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:36 a.m., in room 5110 of the Dirksen Senate Office Building, Senator Howell T. Heflin presiding.

Present: Senator Heflin.

Also present: Arthur B. Briskman, subcommittee chief counsel, and Richard Velde, minority counsel; Ken Feinberg, counsel; Eric Hultman, counsel to Senator Thurmond, and Michael Remington, counsel, House Judiciary Committee.

OPENING STATEMENT OF SENATOR HEFLIN

Senator HEFLIN. Today this subcommittee resumes hearings on the proposed State Justice Institute. This is the third hearing to be held on the subject, the first two having been held last fall.

In the first two hearings, we received compelling testimony on the need for such an institute to provide financial and technical assistance to the various State court systems throughout the United States. Based on this testimony, as well as the recommendations from various organizations, I introduced the State Justice Institute Act of 1980, Senate bill 2387, for the establishment of such an institute.

I am glad that this legislation has broad-based support on both sides of the aisle. The reason for providing financial assistance to State courts is basically twofold. The first has to do with the changing role of judges generally. Earlier in this century, there was much argument as to whether or not a judge's function included an obligation to see that cases in their courts moved toward disposition in a regular and an efficient manner. Today, however, problems of administration have taken their place alongside problems of adjudication as primary responsibilities of judges. Everyone has come to acknowledge that today's judges have a duty to insure that their cases do not simply languish on the vine, but instead move to a conclusion with as much dispatch and economy of time and effort as practicable.

This along with a heightened interest in continuing legal education generally have resulted in thousands of judges attending intensified orientation and refresher courses offered by such organizations as the National Judicial College and the American Academy of Judicial Education.

Second, State courts have become the primary focal point of justice in the United States. Our expectation of State courts and the burdens

we have placed upon them through congressional as well as court actions have increased significantly in recent years. Today, State courts decide approximately 98 percent of all law suits tried. I asked Mr. Briskman about this and he said that figure was taken from testimony that had been given in previous hearings. When you stop and think about it, it is a most unusual figure in regard to where the litigation is in the judicial system of this Nation.

It is thus appropriate 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. In this regard, it should be noted that present Federal policy has allowed state court systems to receive Federal funds through the Law Enforcement Assistance Administration. I think it is wise to note that the people of America are interested in seeing that the Federal Government assist in providing the quality of justice just as well as they are providing quality in health plans and health programs and in education.

There are, however, inherent separation-of-powers problems when a Federal executive agency is allowed to designate the programs State courts ought to follow by directly providing Federal assistance. LEAA places primary emphasis on the Nation's crime problem. It was only through administrative interpretation and later by congressional enactment that State courts have been able to receive Federal support under the banner of improvement in the administration of criminal justice in the States.

This overlooks the fact, however, that in most courts the criminal and civil functions are inseparable. As a result, it has been difficult for courts to undertake the kind of broadly based improvements that must be undertaken if the total justice system, criminal as well as civil, is to function as it should.

Today, Federal assistance to State courts faces yet another obstacle. With our country facing the severest economic crisis since the Depression, the Congress and the administration must find ways to decrease Federal spending and balance the Federal budget. Recent newspaper accounts suggest that the President is considering reducing the Justice Department's 1981 budget by as much as $165 million. As Attorney General Civiletti testified before the Judiciary Committee last week, if such a budget reduction occurs, much of it will have to come from the grant program of LEAA.

While I am for balancing the Federal budget, I cannot agree that LEAA should be emasculated. In my judgment, the LEAA program has been a tremendous benefit and has had a tremendous impact on this Nation and should be continued. But I am afraid that LEAA is in trouble.

We must not jeopardize the quality of justice that Americans receive in our State court systems because of the important Federal interests involved. We must not let a lack of funds impair the ability of State courts to improve the quality of justice that they dispense.

The concept of a State Justice Institute has been endorsed by such organizations as the Conference of Chief Justices, the Appellate Judges Conference, the Council of the American Bar Association Division of Judicial Administration. Also, the State Justice Institute Act was introduced in the Houses by the Honorable Robert W. Kastenmeier, chairman of the House Subcommittee on the Courts. He was

joined by a bipartisan group of cosponsors including Congressman Peter Rodino, the chairman of the House Judiciary Committee and the Honorable Caldwell Butler of Virginia.

It is in this light that we open today's hearings. We are fortunate to have several distinguished witnesses who will testify.

Gentlemen, I want to thank you for being here today and we look forward to your comments.

I would like to introduce at this time—I think everyone generally knows him—Chief Judge Theodore R. Newman, Jr., of the District of Columbia Court of Appeals. Judge Newman is an Alabamian originally and we are proud of him in Alabama. He is also the president-elect of the National Center for State Courts.

Judge Newman, we would be delighted to hear from you at this time.

STATEMENT OF CHIEF JUDGE THEODORE R. NEWMAN, JR., DISTRICT OF COLUMBIA COURT OF APPEALS

Judge NEWMAN. Thank you very much, Mr. Chairman. I would like to acknowledge also the presence with me today of the court executive of the District of Columbia court system, Larry Polansky, who is appearing as an observer on behalf of the Conference of State Court Administrators.

Mr. Chairman, I am pleased to be asked to present my views on the State Justice Institute Act of 1980 for I share the views of the distinguished judges and scholars who have preceded me, and some of those who I know will follow me, specifically Chief Justice Sheran and Chief Justice Utter, as witnesses in these hearings and who see the act as an important landmark in the history of our Federal system and in our continuing quest for a more perfect system of justice.

The act proposes a reasoned and balanced approach to the important and complex issues involved in establishing an appropriate Federal role in relation to State court systems. Most significantly, it will provide the means for focusing national attention, and the national expectations that implies, on one of our most neglected concerns as a great and diverse Nation; that is the quality of justice administered at the State and local levels. These courts, which now include those in the District of Columbia, handle 98 percent of the matters which bring our citizens into the judicial process and it is in these courts that the great mass of our citizens make their judgments on the quality of justice our society provides. I note in passing that these courts of the State are the only courts of general jurisdiction. Our article III Federal courts are all courts of limited jurisdiction. They are, indeed, the people's courts and, if they are not perceived as providing justice, the consequences are severe and endless and include heavy and unnecessary burdens on the Federal justice system.

Second, the act strikes a delicate but proper balance between functions and responsibilities that are national in nature, and thus appropriately Federal, and those which must remain securely in State control. Thus, it is true to the principles of federalism, but equally important, it is true to the doctrine of separation of powers. These are not theoretical or philosophical issues of concern only to judges and legal scholars, they are at the heart of the problems and must be resolved if we are to develop and sustain the national resources and pro-

grams that can be the most effective in improving the judicial institutions and processes which necessarily function under greatly differing circumstances in thousands of locations.

The dimensions of our State justice systems are vast from any perspective. It is axiomatic that decisions made by them are among the most important affecting the lives of our citizens, few if any of whom escape involvement with the courts at any one or more critical points in their lives. Geographically, the systems involve the District of Columbia along with 54 States and territories stretching from Puerto Rico and the Virgin Islands in the South Atlantic northward across the continent to Alaska and then to Guam and American Samoa in the Western Pacific. They include more than 17,000 trials and appellate courts with upward of 25,000 judges and some 150,000 clerks, administrators, and other support personnel. Their costs run into the hundreds of millions of dollars annually.

Yet, as large and as vital as the total system is, it is among the most neglected of government functions in many areas and has been one of the last great enterprises, public or private, to adapt to the modern world. One aspect of the problem, as cited by Edward B. McConnell, director of the National Center for State Courts, is not that the courts have been badly managed or mismanaged, but that they have not been managed at all. Fortunately, this condition is changing, thanks to the work of the National Center among others, itself only 9 years old, and other national organizations which have begun operating in recent years, notably the Institute for Court Management in Denver and the National Judicial College in Reno, Nev.

These highly regarded agencies are not only bringing national perspectives and expectations to bear on the problems of our State and local courts but are providing the absolutely essential national resources needed to help solve them. I cannot emphasize too much the importance of national resources and perspectives if we are to deal with our problems in the most efficient and effective manner, as you know from your own experience in modernizing the judicial system of Alabama, Mr. Chairman, and as a native of that State, one of the finest jobs that that State has ever had done to make its government more efficient. You know how difficult and tenacious the problems can be, and the critical role that national resources can play in helping to correct them. We want our State courts to be free and independent, of course. We want them to reflect, as they must, what is special in their own historic development and the needs of the people they serve. But they also have much in common, including the unifying obligation to enforce the laws and the Constitution of the United States. This means that we have at bottom only one judicial system, despite 55 separate jurisdictions—56 if we count the article III Federals. There is then an overwhelming national interest in the quality of justice administered by our State and local courts and, in my view, a national obligation to assist with the kinds of national programs that are needed, but are beyond the resources of individual State court systems, and for which, under our Federal system, the National Government is the only governmental authority competent to act.

I am happy to say it has been acting, although initially by accident and, therefore, in something less than the ideal manner. Congress, as you know, did not specifically include courts in the initial legislation

creating the Law Enforcement Assistance Administration in 1969, but it quickly became apparent that the judiciary could not be ignored if there was to be an effective national effort to help State and local governments deal with crime and improve the criminal justice system.

However it came about, Federal funding through LEAA has been the major source of funds for innovative court reform efforts and for the national organizations sparking this reform at the State and local levels.

In the view of one knowledgeable student of court administration, LEAA has been the single most powerful impetus for improvement in State court systems in the last 10 years. Other witnesses have described it length the many problems involved in the present LEAA program as it involves State courts and I will not repeat that discussion here—particularly not, Mr. Chairman, given your role in obtaining the judiciary amendment to LEAA several years ago. But I should note that LEAA's discretionary program made it possible for leaders of the national judiciary to come together at Williamsburg, Va., in 1971, at the historic First National Conference on the Judiciary. It was this conference that issued the call for creation of a national center serving State courts and, of course, LEAA funding made it possible for the National Center to begin its work and has helped it progress to the important position it holds today as the primary research and technical assistance arm of the State court systems. It has become a truly national resource filling a vital national role. A brief discussion of only two of the many national-scope projects now underway at the center will illustrate the point.

Mr. Chairman, I will skip over that part of the statement because having read the statement of Tom Madden, General Counsel of LEAA, who will be testifying shortly, I see that he deals with at least one of those projects himself, and I am sure there has been other testimony with respect to that.

Those two projects to which I was going to make reference deal with certain national-scope projects funded by LEAA that the National Center for State Courts has played an instrumental role in implementing. It is clear that the national-scope projects are important and are making a major contribution to work essential to improvement of State court systems.

But it is the onsite work of the center's five regional offices that provides a critical nexus that makes it possible to effectively define the problems in need of national attention and to bring national resources to bear on them in the operations of the courts themselves. They provide the day-to-day contacts and practical experience that make the center what it was designed to be, an extension of, and a national resource of, State and local courts.

In addition, the center provides secretariat support to 8—soon to be 10—court organizations including the Conference of Chief Justices and the Conference of State Court Administrators. Its specialized library, research and information service, and publications program provide a unique national resource serving all courts and court-related institutions.

The National Center, where I am proud, Mr. Chairman, to follow in your giant footsteps as vice chairman and chairman-elect, is thus developing the skills and knowledge necessary to do for the vast and

complex system of State courts what the Federal Judicial Center is doing for the 11 circuit and 92 district courts of the Federal system. And it is working to bring the same margin of excellence to those systems that is the general rule for the Federal courts. The Federal Judicial Center, of course, can deal with problems of the Federal courts on a multijurisdictional bases that is beyond the capacity of individual circuit or district courts. Its national resources and perspectives have proven their value even though the Federal courts are part of a single and fully integrated judicial system. The much larger and more complex States court systems obviously require this kind of assistance and coordination and they likewise require it on a continuing basis.

In summary, the National Center works under the direction of State court systems to act as a focal point for judicial reform. Indeed, the National Center is presently considering modification of its governing structure to reemphasize its role as an arm of the State court systems of the Nation. It serves as a catalyst for setting and implementing standards of fair and expeditious judicial administration and help to determine and disseminate solutions to the problems of State judicial systems. It provides the means for reinvesting in all States and profits gained from judicial advances in any State.

It is essential, Mr. Chairman, that the National Center, like the Federal Judicial Center, have secure resources of funding that will permit it to plan and function on a long-term basis and maintain a professional staff of the highest quality. It is for this reason that we fully share the concern you expressed about the budgetary constraints and their impact on the present LEAA discretionary and block grant funding.

In this regard, we are pleased to report that, having had some inkling in advance several years of these types of matters, the Center is continuing to develop funding from private and State court sources to implement its program. In 1979, for example, funds from Federal sources amounted to only 55.7 percent of total revenues of $7,153,338. This compares to a Federal share of 62.7 percent in 1978, when revenues totaled $5,662,497.

In closing, I will note that the National Center for State Courts was established as a nonprofit organization because that is the only structure suited to its role as a national organization of the State court systems. It is the nature of our Federal system that such an agency could be neither State nor Federal. Yet it is obvious that the Center serves both State and national needs. As presently organized, the Center's administration and policy are firmly under control of officials of the State judiciaries. And as I said, consideration is presently being given to revising the structure to emphasize that even more greatly.

This is essential if it is to be an agency serving State judicial needs. But it is equally clear that the center serves vital national purposes that merit and require national support. Many of its present national efforts are threatened by uncertain funding from LEAA and are far less efficient and effective because of the short-term annual grant basis on which they are planned and funded. So its work, Mr. Chairman, best illustrates the kinds of programs the State Justice Institute can be expected to promote under a rational, long-term program reflecting national objectives subject to congressional input and oversight as

well as the needs of the courts as perceived by State and local judiciaries.

The State Justice Institute will not only provide a constitutionally correct mechanism for providing Federal assistance to State justice systems, but it will do so in a far more efficient and effective manner than the present hodgepodge of uncoordinated programs. I recommend its creation to you as the single most important step the Congress can take to improve the quality of justice in our land.

I would like to thank you, Mr. Chairman, for the opportunity to testify and I am available for any questions.

Senator HEFLIN. Thank you, Judge Newman. We appreciate your testimony and your entire statement will be entered and made a part of the record. You skipped some of it so I think the whole statement should be there.

[The prepared statement of Judge Newman follows:]

PREPARED STATEMENT OF CHIEF JUDGE THEODORE R. NEWMAN, JR.

I am pleased to be asked to present my views on the State Justice Institute Act of 1980 for I share the views of the distinguished judges and scholars who have preceded me as witnesses in these hearings and who see the act as an important landmark in the history of our Federal system and in our continuing quest for a more perfect system of justice.

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the Institute for Court Management in Denver and the National Judicial College in Reno, Nev. These highly regarded agencies are not only bringing national perspectives and expectations to bear on the problems of our State and local courts but are providing the absolutely essential national resources needed to help us solve them. I cannot emphasize too much the importance of national resources and perspectives if we are to deal with our problems in the most efficient and effective manner. You know from your own experience in modernizing the judicial system of Alabama, Mr. Chairman, how difficult and tenacious the problems can be, and the critical role that national resources can play in helping to correct them. We want our State courts to be free and independent, of course. We want them to reflect, as they must, what is special in their own historic development and the needs of the people they serve. But they also have much in common, including the unifying obligation to enforce the laws and the Constitution of the United States. This means that we have at bottom only one judicial system, despite 55 separate jurisdictions; 56 if we count the article III Federal's. There is then an overwhelming national interest in the quality of justice administered by our State and local courts and, in my view, a national obligation to assist with the kinds of national programs that are needed, but are beyond the resources of individual State court systems, and for which, under our Federal system, the National Government is the only governmental authority competent to act.

I am happy to say it has been acting, although initially by accident and, therefore, in something less than the ideal manner. Congress, as you know, did not specifically include courts in the initial legislation creating the Law Enforcement Assistance Administration in 1969 but it quickly became apparent that the judiciary could not be ignored if there was to be an effective national effort to help State and local governments deal with crime and improve the criminal justice process. However it came about, Federal funding through LEAA has been the major source of funds for innovative court reform efforts and for the national organizations sparking this reform at the State and local levels.

In the view of one knowledgeable student of court administration LEAA has been "the single most powerful impetus for improvement in State court systems" in the past 10 years. Other witnesses have described at length the many problems involved in the present LEAA program as it involves State courts and I will not repeat that discussion here. But I should note that LEAA's discretionary program made it possible for leaders of the Nation's judiciary to come together at Williamsburg, Va., in 1971 at the historic First National Conference on the Judiciary. It was this conference that issued the call for creation of a national center serving State courts and, of course, LEAA funding made it possible for the National Center to begin its work and has helped it progress to the important position it holds today as the primary research and technical assistance arm of the State court systems. It has become a truly national resource filling a vital national role. A brief discussion of only two of the many national scope projects now underway at the center will illustrate the point.

As remarkable as it may seem, there has not been available to scholars, court administrators or Government policymakers a single source of reliable data on the operation of State court systems. No one could say with accuracy how many cases were handled by the States as a whole, what has been the pattern of growth or change in the caseload, and no one could make reliable comparisons, for instance, as to the efficiency of one State system as compared to any other because the data, even when available, were incompatible. Indeed, data from different courts within the same State often have been collected in such a manner as to make impossible comparative analysis of individual court needs or performance.

Reliable data, of course, are the first requisite of effective management and essential to such rudimentary tasks as accurate budget projections, assignment of judicial resources, and evaluation of their performance. Such statistics are available to Federal courts and provide the basis for effective management by circuit councils and the Administrative Office of the United States Courts, and for research and evaluation by the Federal Judicial Center.

Now, thanks to long-range projects underway at the National Center for State Courts in cooperation with the Conference of State Court Administrators, the Center is developing the ongoing capability to gather, analyze, and disseminate reliable statistics on caseload, organization, and operation of State courts. To improve the accuracy and reliability of reported statistical information, the project publishes comprehensive annual reports on State court caseloads, which are based on existing State-produced reports, and has devel-

oped a State Court Model Annual Report and a State Court Model Statistical Dictionary. These recommend procedures to follow in developing consistent and useful annual reports and suggest a classification structure to use in reporting caseload data. The project also provides answers to information requests and onsite technical assistance to court administrators. Thus, it clearly fills an important national need while providing significant returns in terms of improved management and policymaking at the State and local levels.

A related national scope effort being conducted in cooperation with the Conference of State Court Administrators is the State Judicial Information System project which is developing operational statewide information systems to provide court administrators with timely, accurate, and complete court caseload and resource information. Together with the statistics project this effort will for the first time provide the basis for a uniform system of data that will make it possible for scholars and court administrators and policymakers to analyze the data on a national basis and make accurate comparisons between systems. It will help tell us what works and what doesn't work.

During the past year five documents were released including a state-of-the-art report on existing or planned information systems in the courts of all 50 States, the District of Columbia and the four territories. A cost-benefit methodology for evaluating information systems, and a long-range plan to guide future development and implementation also were published. In addition, documents were released on the adaptability of related information systems to the needs of judicial information. These included the software of the PROMIS computer system for prosecutors and the Offender-Based Transaction Statistics and Computerized Criminal History data-collections programs. The project also began work on identifying and documenting information on automated systems, subsystems, or modules that may be transferable from one State to another. This project, which also provides onsite technical assistance and an annual national educational program, will lead to the creation at the center of a central clearinghouse of technical assistance and information to insure the long-term development and improvement of information systems in all State courts. It too is filling an important national need that benefits courts throughout the Nation. Other examples could be cited at length. There are, for instance, comparable national scope projects dealing with the structure and operation of juvenile courts, State court financing, trial court delay, uses of technology to speed court proceedings and reduce costs, improved jury utilization and management, sentencing guidelines, and alternatives to incarceration.

It is clear that the national scope projects are important and are making a major contribution to work essential to improvement of State court systems. But it is the onsite work of the center's five regional offices that provides the critical nexus that makes it possible to effectively define the problems in need of national attention and to bring national resources to bear on them in the operations of the courts themselves. They provide the day-to-day contacts and practical experience that make the center what it was designed to be, an extension of, and a national resource of, State and local courts.

In addition, the center provides secretariat support to 8 (soon to be 10) court organizations including the Conference of Chief Justices and the Conference of State Court Administrators. Its specialized library, research and information service, and publications program provide a unique national resource serving all courts and court-related institutions.

The National Center, which I am proud to serve as vice-president, is then developing the skills and knowledge necessary to do for the vast and complex system of State courts what the Federal Judicial Center is doing for the 11 circuit and 92 district courts of the Federal system. And it is working to bring the same margin of excellence to these systems that is the general rule for the Federal courts. The FJC, of course, can deal with problems of the Federal courts on a multijurisdictional basis that is beyond the capacity of individual circuit or district courts. Its national resources and perspective have proven their value even though the Federal courts are part of a single and fully integrated judicial system. The much larger and more complex State court systems obviously require this kind of assistance and coordination and they likewise require it on a continuing basis.

In summary the National Center works under the direction of State court systems to act as a focal point for judicial reform. It serves as a catalyst for setting and implementing standards of fair and expeditious judicial administration and helps to determine and disseminate solutions to the problems of

State judicial systems. It provides the means for reinvesting in all States the profits gained from judicial advance in any State.

It is essential, Mr. Chairman, that the National Center, like the FJC, have secure sources of funding that will permit it to plan and function on a long-term basis and maintain a professional staff of the highest quality.

In this regard, we are pleased to report that the center is continuing to develop funding from private and State court sources to implement its program. In 1979, for example, funds from Federal sources accounted for only 55.7 per cent of total revenues of $7,153,338. This compares to a Federal share of 62.7 per cent in 1978 when revenues totaled $5,662,497.

In closing I will note that the National Center for State Courts was established as a nonprofit organization because that is the only structure suited to its role as a national organization of the State court systems. It is in the nature of our Federal system that such an agency could be neither State nor Federal. Yet it is obvious that the center serves both State and national needs. As presently organized, the center's administration and policy are firmly under control of officials of the State judiciaries. That is essential if it is to be an agency serving State judicial needs. But it is equally clear that the center serves vital national purposes that merit and require national support. Many of its present national efforts are threatened by uncertain funding from LEAA and are made far less effective because of the short-term annual grant basis on which they are planned and funded. So its work, Mr. Chairman, best illustrates the kinds of programs the State Justice Institute can be expected to promote under a rational, long-term program reflecting national objectives subject to congressional input and oversight as well as the needs of the courts as perceived by State and local judiciaries.

The State Justice Institute will not only provide a constitutionally correct mechanism for providing Federal assistance to State judicial systems but it will do so in a far more efficient and effective manner than the present hodgepodge of uncoordinated programs. I recommend its creation to you as the single most important step the Congress can take to improve the quality of justice in our land.

Senator HEFLIN. We run these hearings in this subcommittee informally and we have Mike Remington, who is staff director of the House Subcommittee on Courts of the House Judiciary Committee. We are delighted to have you, Mr. Remington, here with us today. Do you have some questions you would like to ask?

Mr. REMINGTON. Not at this time, other than to agree and to thank Judge Newman for his excellent testimony.

Senator HEFLIN. We have some other staff people who should feel free to ask any questions. Mr. Velde or Mr. Feinberg, if you would like to, we would be glad to have any questions from you, or any other staff people who have any questions.

Thank you, Judge Newman. We appreciate your testimony.

I think our next witnesses are from LEAA, Jim Swain and Tom Madden. If they will come forward, we will be delighted to hear from them. Mr. Madden is the General Counsel of LEAA and I have had the pleasure of knowing him for a number of years, and working with him. I consider him one of the most intelligent and most knowledgeable lawyers in the whole field of government. Sometimes his testimony and judgment may differ from mine, but I have a great respect for his ability. Jim Swain is the Chairman of the Courts Division of LEAA. He has been a great supporter of the State court systems and, in my judgment, is responsible for substantial improvements in the State court systems. So, Jim, we are delighted to see you.

Mr. Madden, I believe you have some prepared testimony which will be entered into the record and we would be delighted to hear from you on anything you would like to state.

STATEMENT OF THOMAS MADDEN, GENERAL COUNSEL, LEAA, ACCOMPANIED BY JIM SWAIN, CHAIRMAN, COURTS DIVISION, LEAA

Mr. MADDEN. Thank you, Senator. Thank you for your very kind comments. It has always been a pleasure for me to work with you over the years, both as a chief justice in Alabama and as a Senator here. I think that we have had a few disagreements on judgment, but I don't think that on principles we have essentially disagreed. I certainly support your efforts to improve the State judiciary. I think it is extremely important.

It is my pleasure to appear before your subcommittee today. In my testimony, I would like to briefly provide some background information which may assist you in your consideration of the legislation as well as to highlight some of the efforts of LEAA, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Justice Assistance, Research, and Statistics, to assist State and local government to improve the State and local judicial systems.

There is no doubt that as crime rates have increased in the country public dissatisfaction with the criminal justice system and public cynicism has grown. The National Advisory Commission on Criminal Justice Standards and Goals in 1973, in its task force on courts, noted that while components of the system have been criticized, it is becoming apparent, as the Nation's crime consciousness grows, that the role of the court in crime control is becoming the center of controversy.

The task force further commented that the court system in the United States is in serious difficulty; the existing system has too many defendants to handle efficiently and effectively; backlogs are enormous; workloads are increasing; and the entire court system is underfinanced. These conclusions, I feel, are still valid today.

As you know, the Justice System Improvement Act of 1979, reauthorized and restructured the Justice Department's assistance program for State and local law enforcement and criminal justice improvement. The act built upon many of the strengths of LEAA, and I might note parenthetically, as a result of the act, I have now become the General Counsel of the Office of Justice Assistance, Research, and Statistics which provides overall support for LEAA, NIJ, and BJS.

Senator HEFLIN. But you still get the same enjoyment?

Mr. MADDEN. That is still there, the enjoyment. The title changed but the job hasn't except possibly to make matters a little more difficult in trying to coordinate to include new units.

The Justice System Improvement Act still keeps LEAA as the principal funding mechanism of the Federal Government to strengthen and improve State and local court systems. The National Institute of Justice will do research, evaluations and administration programs in the court area and the Bureau of Justice Statistics will carry out statistical functions that will support court efforts.

Both the National Institute of Justice and the Bureau of Justice Statistics have some added responsibilities in the Federal area to do some research on Federal justice systems, particularly as they might impact on State and local systems, and to collect Federal law statistics such as uniform crime reports that are now being collected by the FBI.

At the inception of the LEAA program, as Judge Newman noted,

there was a very low rate of participation by courts. This occurred for many reasons. For example, there was little attention, by the Congress, to the role of courts in the criminal justice system in the initial legislation establishing LEAA. The early authorization legislation made few explicit references to courts. LEAA itself concentrated much of its early program development efforts on police and corrections, and not courts. Additionally, because of the separation of powers doctrine at the local and State level, active involvement by the State courts was discouraged. The LEAA program was viewed as essentially a State executive branch planning function.

The Crime Control Act of 1976 contained numerous amendments designed to increase the participation of the judiciary in the LEAA program. These amendments were in large part the direct result of your personal efforts, Mr. Chairman, and of your colleagues, in the court system. Prior to the enactment of the 1976 amendments, numerous representatives of the judiciary, including yourself, testified at hearings and expressed strong concern about the lack of court involvement in the LEAA program.

Many references were made to the study done under the leadership of John Irving, then Dean of Seton Hall Law School. This landmark study was financed by LEAA and performed by American University. It was initiated at LEAA's direction after you and other representatives of the Conference of Chief Justices expressed concern to LEAA about the involvement of courts in the LEAA program. The Irving study provided important recommendations for increasing court planning efforts with LEAA funds. It was a most valuable resource to Congress when it considered the Crime Control Act of 1976.

The 1976 amendments adopted by Congress, which essentially remained intact in the most recent legislation, the Justice System Improvement Act, can be grouped into three categories:

(1) Judicial representation on the supervisory boards of State planning agencies, now the criminal justice councils, was mandated and was made a specific condition to the receipt of funds by the States;

(2) Judicial planning committees were authorized to be established, now called judicial coordinating committees; and

(3) There was a strong requirement for provision of an adequate share of funds for courts.

Today, at least 37 States have created judicial coordinating committees, and a National Council for Judicial Planning has been formed. As a result of your efforts and the work of your associates of the bench and the bar, LEAA has dramatically adjusted over the last 12 years its efforts to effectuate a greater involvement of the judiciary, an involvement reflected both in funds allocated to courts and in the determination of how these funds should be applied.

My testimony outlined a number of past efforts by LEAA and some future planned efforts in the national area, such as our court delay reduction program and our fundamental court improvement program. I won't make any further reference to those. It will just be part of the testimony that has been submitted for the record.

Over the years, entire State court systems have been revamped completely with LEAA assistance. Most notably, in Alabama under your efforts, Mr. Chairman, and in Kentucky, Missouri, Massachusetts,

Kansas, North Dakota, and Iowa. The National Center for State Courts now provides assistance on a daily basis nationwide, whereas it was only the hope of judicial reformers 10 years ago. Technical assistance without direct cost is now available to every court in need and is a valuable asset. Judicial training is available as never before, and contributing, I feel, to the quality of justice. A substantial reduction in court delay at both the trial and appellate level may now be possible as a result of new information about the causes of court delay. A variety of new techniques that have been developed and implemented under the direction of Jim Swain through LEAA technical assistance, discretionary grant programs and through some State efforts developed with the help of the National Center for State Courts.

Early returns on some of our court delay projects are beginning to give promise that the next decade may witness dramatic improvement in our State courts, improvements which will put the State courts on a sound and enduring basis with a quality of justice delivery in which all citizens can take pride.

In conclusion, Mr. Chairman, the proposed State Justice Institute Act of 1980 demonstrates your concern, and that of your cosponsors by requiring an adequate funding mechanism for the State courts of this country. The administration shares this concern. However, we do not think that the Federal Government should finance the institute at issue here. Substantial Federal assistance has been given to courts and further financial assistance at this time of severe budgetary constraint could impact upon other disciplines within the Federal justice system. If the State courts feel that a pressing need does exist for the services to be provided by the institute, the administration must urge them to look to the States to fund these activities. The administration is therefore unable to support a new Federal program at this time of fiscal constraint.

Thank you, Mr. Chairman. I would be pleased to respond to question.

Senator HEFLIN. Thank you, Mr. Madden. Mr. Velde is here with us today also. I used to have to go up against you sometimes. But it is a delight to have Mr. Velde with us here today. I want him to feel free to ask any questions he would like as well as any other staff people who are here.

Of course, your testimony is centered on the idea that we are now in an era of moving toward balancing the budget by cutting down on Federal expenditures. In this regard, I suppose that the degree of your opposition would depend on the amount of Federal funds that might be involved. That is, I suppose your opposition would be a lot stronger if there were a lot of money involved than it would be if it were a smaller amount of money involved in this. I imagine that you are not in a position to answer that.

We have seen some indications in the newspaper that the President is considering a cut in the Justice Department budget of up to $165 million. If, in fact, this is the case, how much do you expect to be cut in the LEAA appropriation?

Mr. MADDEN. The President, to my knowledge, has not made any final decision regarding the LEAA budget. LEAA has been asked for comments, and the President is weighing different priorities, consulting with State and local governments, asking them for priorities, and consulting the U.S. Congress. The projected budget cuts could mean

a total elimination in 1981 of the formula, discretionary and national priority grant programs of LEAA.

Senator HEFLIN. Those would be the discretionary programs?

Mr. MADDEN. It could be the formula grants which replace block grants. There would be no new funding for that. It would be an impossibility. There would be no funding for discretionary at all, no funding for national priority, which is one of the new programs that was created by the legislation and which is in the nature of a discretionary grant program. There would be no funding for community anticrime. That would be a worst case situation given the figure you have provided.

The only official statement is that the President, in a press release on Monday, March 14, indicated that there would be substantial cuts in the LEAA program.

Senator HEFLIN. You have given us the worst that you anticipate. Do you have a judgment of what will occur?

Mr. MADDEN. I am afraid I don't.

Senator HEFLIN. There is a figure in the statement of Attorney General Civiletti of $165 million in the Department of Justice, and that most of this would come from LEAA, which I would assume mean, if he says most, would mean more than 50 percent. This would put it in the category of close to $90 million or $85 million. If that were our figure, what would you anticipate, say the President's recommendation comes up to a figure of a $90 million cut, where do you anticipate those cuts would occur in LEAA?

Mr. MADDEN. I think it is important to put that $165 million in context. I did not see the Attorney General's testimony, but I have seen the $165 million figure. That generally refers to what we call outlays, as apposed to budget authority, outlays being actual expenditures in a given fiscal year. In order to achieve a reduction in outlays of that nature, the actual new budget authority has to be decreased by many times that figurfe, because many of our outlays come from grants made in prior fiscal years that are already obligated, on which LEAA can have no effect. So in order to reduce outlays, you would have to reduce new grants.

In the block grant program, for example, outlays are only incurred at about a 20-percent rate in the first fiscal year. So you have to make a much larger decrease in budget authority to arrive at a reduced outlay. I must emphasize that the final decision hasn't been made regarding actual figures. A lot of people have expressed concern about the cuts in LEAA and CETA and revenue sharing and a whole host of other programs, as we have seen from the newspaper.

It could mean a major reduction, or as I say, a worst case situation, elimination of the block grant program and the discretionary grant program and the national priority grant program. Those are the only large budget areas that we have. When you look at the rest of the program areas, the outlays are very small. The present budget calls for $571 million for LEAA, and almost $400 million of that $571 million, I think actually $370 million, was in the formula discretionary, national priority grant area. The rest are much smaller, such as the small research fund. I am using relative terms. There is approximately $25 million for research, $20 million for statistics, and $12 million for the public safety offices program. We have about 20 different budget

categories. In order to make a large cut, though, you have to go after the formula, discretionary, national priority grant programs. Those are the large areas.

Senator HEFLIN. If that national discretionary program has no outlays in fiscal 1981, does that mean that no money would be going to institutions like the National Judicial College, American Academy of Judicial Education, the National Center for State Courts, and any other national program dealing with courts and dealing with other elements of the LEAA program? Would that happen?

Mr. MADDEN. I would say not any money, because again, No. 1, until we know what the cuts are, we can't speculate on that. In addition, LEAA will carry over into 1981, unobligated funds. We carry over in any given year as much as $70 million to $100 million in unobligated funds and in funds that revert back to us from the States. That has been the pattern over the last couple of years. So there will be some of those funds that would be available for continuations of programs.

Now, when I say we carry over that much, a lot of that is in targeted areas that we can't really move into court programs. But there will be some funds that will be carried over in our discretionary and national priority programs. Then we would have to decide what priorities to establish, but they would be greatly reduced.

Senator HEFLIN. But if you were to cut out the national discretionary fund program, in effect, for a fiscal year, while you have your budget authority and that sorty of thing, it would eventually mean a year in which there would be no money, whether that year be in the precise months of a calendar year, but it would——

Mr. MADDEN. If the worst possible case occurred——

Senator HEFLIN. You mean in the national discretionary fund?

Mr. MADDEN. In LEAA. I don't think that is going to happen, but you have a range from no cuts up to a total lack of funding in 1981.

Senator HEFLIN. Are the proposed cuts from the President's previously proposed 1981 budget or are they proposed from the present appropriation to LEAA?

Mr. MADDEN. I would assume, and again, I am speculating because I really don't have the information. I would assume that we are talking about 1981, the President's proposed budget for 1981. As to what the actual figures would be, I think that we will know within the next few weeks, but we don't know now.

Senator HEFLIN. In other words, if there is $165 million that is being proposed to be cut from the Department of Justice, there has to be a base that you cut from. Is that base, as you understand it, from the President's proposed 1981 budget or is it from the budget that exists at the present time for 1980?

Mr. MADDEN. It could be from both. I just don't know at this point. If it was from 1980, it would have to be done by a rescission action, since the 1980 funds have already been appropriated. Congress would have to approve it if it was a rescission action. In effect, under rescission, one of the Houses would have to disapprove the rescission action.

Senator HEFLIN. Assuming that it is from the President's proposed 1981 budget, there was an increase to allow somewhat for inflation and other matters, what $75 million——

Mr. MADDEN. $84 million increase.

Senator HEFLIN. $84 million increase.

Mr. MADDEN. That's right. The President, when he proposed his 1981 budget, recognizing the inflation factor, and the new formula in the Justice Systems Improvement Act, recommended an $84 million increase in the funding. That $84 million increase, if enacted, would allow the new formulas to go into effect under the Justice Systems Improvement Act. These are the formulas that provide additional funds to some 15 or 16 States that have higher than average crime rates or higher than average criminal justice expenditures. The new discussions are based, as the President indicated in his speech, on the change in the economic picture that has occurred so rapidly in the last couple of months, since that budget was put together.

Senator HEFLIN. If the base from which the cuts are to be made is the President's proposed 1981 budget, which had $84 million more in it, and assuming that there would be a cut of around $90 million out of LEAA, then it would almost be back to where you were in 1980, if you could allocate it on the same sort of basis. You have the new law with new allocations, and new variables that are involved in it.

Am I also correct that the discretionary fund for 1981 was reduced to 10 percent where it had been a higher percentage?

Mr. MADDEN. In the Crime Control Act of 1976, the act provided that of the total amount allocated for the part C block grant area, 85 percent of it would go for block grants, and 15 percent would go for discretionary grants. It also provided in the part E corrections area, that 50 percent would go out on a formula basis and 50 percent on a discretionary basis. The new legislation combines part E and part C together for three grant programs, basically, part D, part E, and part F. The part D formula would have 80 percent going to the States on a formula basis, 10 percent on national priority, and 10 percent on discretionary. It is difficult to compare the two. Fifteen percent of the part C was titled discretionary grants, and now the new title is called the part F discretionary grant, which is 10 percent of the total for D, E, and F. But you have to look at both the old C and E programs and the new D, E, and F programs together.

Senator HEFLIN. As I understand from your testimony, your prepared testimony, your opposition to this legislation is due to the Federal appropriations at this time to the State Justice Institute. Do I correctly assume that this means that you are not expressing opposition to the concept of the State Justice Institute Act?

Mr. MADDEN. What I would like to say is given the fiscal constraints today, that we do not feel that we can support the legislation. I would like to stick to what I said in the prepared statement.

Senator HEFLIN. I don't want to put words in your mouth.

Mr. MADDEN. I would prefer to stick to the statement that I made on that issue.

Senator HEFLIN. Mr. Velde, do you want to ask some questions?

Mr. VELDE. Thank you, Mr. Chairman.

Senator HEFLIN. You had your lawyer there a few years ago when you asked questions.

Mr. VELDE. That is really the basis of my first question, Mr. Chairman.

I assume, Mr. Madden, that you are representing OMB, LEAA because of the rather delicate position of the political appointees of these various groups. Although there are acting administrators and

acting directors, I believe they are subject to a confirmation hearing this afternoon. So, discretion being the better part of valor to say, pass the buck to a career employee.

I would assume, Mr. Madden, that the comments you made with respect to funding levels for courts and for the various programs for the balance of this fiscal year and next fiscal year would be subject to final decision by the President and OMB as to what these levels will be recommended to Congress. And I would assume, also, that they would be subject to ratification of the political leadership once they are in place.

Mr. MADDEN. Absolutely. The President has submitted his budget for 1981. The President, if he proposed cuts in programs, must submit a budget amendment to the Congress. That budget amendment would then go before the various appropriations committees.

However, the discussions on budget cuts have been ongoing with the leadership in the House and Senate with the appropriations people, as I understand it, and with the budget committees. The Budget Committee in the House, even now I believe, is marking up their projections and their ceiling level. They will be discussing over the next few days LEAA and other similar programs in the Justice accounts.

Mr. VELDE. Mr. Madden, when you refer to the President's budget for fiscal 1981 and the requested increase, isn't it correct to say that this is really a restoration of cuts that have already been made in the LEAA program previously?

Mr. MADDEN. The President did propose a larger budget for fiscal year 1980 than the Congress appropriated. The President's budget for fiscal year 1980 was in the neighborhood of the 1981 budget level. But the Congress eliminated approximately $100 million in new budget authority in voting the 1980 appropriation for LEAA. It is an increase of 84 million that the President has requested for 1981, but it is also at a level very similar to the one which was requested by the President in 1980, but not approved by the Congress.

Mr. VELDE. Still a cut from the preceding 2 fiscal years, or actually several, not just 2.

Mr. MADDEN. I believe that is correct.

Mr. VELDE. Mr. Madden, I wonder would you care to contrast the funding level, perhaps Mr. Swain also, of the LEAA courts program in the past 2 or 3 years, with particular reference to the core grants to support such functions as the National Center for State Courts, and the funding level of the National Institute of Corrections? I just also wonder whether or not the National Institute of Corrections budget for fiscal 1980 or 1981 figures in any of these cuts?

Mr. MADDEN. In determining the cuts, whatever the cuts would be in 1981, the Justice Department and OMB are looking at the entire Justice Department budget: the budget for litigation division; the various bureaus; and the National Institute of Corrections, which is the only other grant program of more than a few million dollars in the Justice Department. They are looking at all of those in determining how to arrive at appropriate levels of funding to get to a balanced budget.

Mr. VELDE. Do you have any information that the National Institute of Corrections would have to take any cuts?

Mr. MADDEN. I don't have any information on that issue. We have

been asked to comment, and we have made recommendations. Decisions are now being made in consultation with the Justice Management Division and the office of the Attorney General. They are looking at the various economic considerations that the President must take into account to arrive at a balanced budget.

The White House and OMB have been consulting extensively with State and local officials to determine their views on the various budget cuts that might be proposed to determine how they will impact on State and local governments. They are building that into the decision-making process.

Mr. VELDE. Just one other question, Mr. Chairman. One of the arguments that has been put forward in opposition to the pending bill is the existence of the National Institute of Justice. I just wonder, do you have any impression as to the ratio of funding of the National Institute of Justice's resources for the Federal system and for Federal court questions as opposed to State and local, or is it premature?

Mr. MADDEN. I don't think we have a projection. I would say it would be very small.

We don't project any major new changes in the direction of the National Institute of Justice toward researching the Federal area. There are funds available for looking at Federal judicial problems through the Administrative Office of the U.S. Courts, the Federal Judicial Center and the Office for the Improvements of the Administration of Justice, the Federal research program within the Justice Department.

Mr. VELDE. You have no indication yet of what percentage of NIJ's resources would go toward this Federal question?

Mr. MADDEN. No; I don't have any indication, but I think that the legislation makes it clear that that is not to be a significant effort by the National Institute of Justice. We are conscious of that legislative mandate.

Mr. VELDE. Just one more, Mr. Chairman. Would it be fair to draw an analogy between the funding continuities of the NIC actions and this proposed agency, if you are interested in providing support for groups like the National Center for State Courts and these other ones which Mr. Swain's program has supported in the past?

Mr. MADDEN. As I understand it, LEAA funding for these kinds of things, to be charitable, is shriveling somewhat.

The National Institute of Corrections does provide a mechanism to provide some continuing support for training programs and technical assistance to State correctional systems. It is a modest program. I believe it is about——

Mr. VELDE. $10 million a year.

Mr. MADDEN. Yes; about $10 million a year. They do not have the same constraints that LEAA has as far as providing continuing funding. LEAA, through its legislation, is constrained to provide funding for a limited period of time, not an ongoing support function.

There have been some changes in the Justice System Improvement Act to take into account funding of organizations such as the National Center for State Courts. There is provision in the discretionary grant program now that would allow us to fund organizations like the National Center for State Courts on a continuing, long-term basis.

Mr. SWAIN. The changes, Mr. Velde, in the funding that is going

to the National Center for State Courts out of national discretionary money is not so much to the overall volume as to the nature. For example, the core funding has been dropping off and we have had agreement with the leadership of the center to attempt to use these declining funds directly to support programs such as the national discretionary programs that the center helps with on court delay reduction.

The level of funding remains fairly close and consistent with the overall drop in the LEAA funding. There is a reduction in the core funding to the National Center for State Courts.

Mr. MADDEN. Senator, I will return to the question you were asking me before. I was referring to my testimony. I think what I was trying to say, by referring to the last paragraph, is that we are very concerned about fiscal issues at this point in time. The President is trying to arrive at a balanced budget. The testimony makes strong reference to our concern about starting a new program now, at a period of fiscal restraint. That is what we tried to emphasize in the last paragraph.

Senator HEFLIN. Looking around brings back memories of 1976 National Centers here. Chief Justice Sheran took a great part in it and another leading actor in it was Mr. Feinberg of this committee. He is here. Mr. Feinberg, if you have some questions, we would be glad to hear them.

Mr. FEINBERG. Thank you very much, Mr. Chairman. I am pleased to be here today, representing some of the forces enormously interested in the program. I am also very pleased to be here to ask questions of Tom Madden and Jim Swain, of course.

I don't think there is anybody in Washington or in the country who knows more about the program than Tom, or who has been more helpful to Senator Kennedy over the years than Tom Madden. He is trying to make the program an effective one.

Let me start off, Tom, by asking you this. You give the hypothetical worst case: scrapping the program. Isn't it fair to say that even under the best of circumstances, not the worst, but the best, that it is likely that there will be a substantial cut in the block grant, national discretionary grant, and national priority grant programs?

Mr. MADDEN. I think that it is not unfair to say this. The President did announce in a press release on the 14th, that there would be substantial cuts in the LEAA program. If you are talking about substantial cuts, you have to look to the priority, discretionary, and formula grant programs because those are the areas where the greatest amount of funding is concentrated within the LEAA, NIJ, and BJS budgets.

Mr. FEINBERG. That, of course, is before Congress has its will in terms of the budget cuts. We read in the paper that Congress may even go beyond the President in proposing cuts.

Isn't is possible, if not likely, that no matter what the President sends up for LEAA, the administration will not likely oppose with great vigor further efforts at cutting the program at the congressional level, if past history is any indication of this?

Mr. MADDEN. I don't think that I can comment on that except to say that the President rose to say that he supports his budget and would urge whatever he sends up to Congress to be supported as well.

Mr. FEINBERG. Let us suppose that there will be a substantial cut,

whether it be a combination of the President's new proposal coupled with congressional action. Isn't it clear to you, as the foremost student of the LEAA program, that any appreciable cuts whatsoever in the block grant program literally forces everybody with an interest in the program to take a whole other look at how the program will effectively function in the future?

Mr. MADDEN. I would say that if the President, after this consultation process and looking at the economic considerations, decides that these cuts are warranted and if Congress agrees with him, it may require reevaluation and redirection of the program.

Mr. FEINBERG. If the 50 percent cut in block grant funds occurs, I think you and I and a lot of other people would agree that it is back to the drawing board in terms of the future of the program, and what we are going to do with a very modest amount of money.

Mr. MADDEN. That may be a possibility. I think that depends on a lot of factors, including projections beyond 1981 for the future of the program, and the availability of funds to be carried over from 1980 into 1981.

Mr. FEINBERG. Are you suggesting that maybe things will get rosier down the road instead of bleaker?

Mr. MADDEN. I don't think I have suggested that.

Mr. FEINBERG. Let me ask you this now. If the program is effectively—and this is all hypothetical as you say because we don't exactly know yet what the President is likely to do. If the program does end up being substantially cut, the block grant, discretionary grant program, then it seems to Senator Kennedy and, I think, to a lot of people that the 1979, 1980 LEAA reform bill, that the President signed into law, will be changed. What really is going to be required is a whole other look at a much more modest program in the future.

The reason I have spent some time, Mr. Chairman, talking about this is because it seems to me that there are two major arguments that can be leveled against the chairman's bill. Both of which, I think are going to be moot in a few more weeks. Argument No. 1 is the argument you make, Tom. That is that in this time of fiscal restraint, we can't be concerned and we can't emphasize new programing. My answer to that, I think is in the time of fiscal restraint, there is no old program. That really is the second point that I think should be made, that really, I think there has been a feeling on the part of some that this bill, and this idea of a State Justice Institute, is in a certain sense duplicitous. Because if you have an ongoing LEAA program under the very capable leadership of you and Jim Swain and others down at LEAA, there is an argument at least that can be made, whether one believes it or not, that we are just piling a duplicitous program on top of an existing one and aren't we better off just streamlining or improving the existing program.

But, if fiscal restraint compels a major cutback in LEAA funds, in effect the end of the program as we know it, aren't both of those arguments really moot, since the question is really where do we go from here rather than what do we have in place?

Mr. MADDEN. You have to revisit the issue. You have to look at this issue again. The fiscal constraint is going to be with us as a major factor for some time to come, as I see the situation. And, again, I am speculating at this point. From everything that we have seen, there

is very serious concern about the budget and the need to balance the budget. I don't see those concerns ending in 1981 and things changing in 1982. So the fiscal constraint will be with us for some time to come.

Mr. FEINBERG. Isn't there something to be said then, for a new look at what the chairman proposed back in 1975 to Senator Kennedy, which at that time, Senator Kennedy was absolutely opposed to. But if we are talking about fiscal restraint and a much smaller dollar for LEAA, isn't there something to be said for another look at some form of categorical funding on a very, very modest basis for courts, corrections, police?

The block program is dead, it seems to me, with the cut.

Mr. MADDEN. It may not be. We just have to see what they are. I would really rather not speculate.

Mr. FEINBERG. Let me speculate, then, you don't have to. If you cut 50 percent of $297 million, and when Congress gets through, let's say there is only $100 million, if that, in the LEAA program. If you would agree with me, I think that if that is the hypothetical, then block grant funding makes no sense whatsoever.

Mr. MADDEN. It may be that you have to reevaluate the block grant program.

Mr. FEINBERG. Then the question is what do we do with a very small amount of available money, assuming we can convince anybody to fund, even on a small basis. Isn't there then—wouldn't it be an interesting endeavor, let's put it that way, to divide that small amount up into $40 million for courts, $40 million for police, $40 million in corrections, and try, in a modest way, to decide how to deliver that type of limited budget?

Mr. MADDEN. There are many different options along those lines. I am not sure how the State and local governments would react to that type of categorization of the program.

Mr. FEINBERG. There is more than those few categories. What I am getting at, of course, here, is that, as you know, the State Justice Institute concept seems to take on added significance, in my mind, if it is used not as a duplicitous way to supplement LEAA and Jim Swain, but as a substitute that may be what we ought to be beginning to think of. You, myself, and Pete Velde and many other people spent hours with that with both the 1976 amendments and the most recent LEAA reform bill. Maybe what we will find ourselves doing is putting our heads together and coming up with a way that the State Justice Institute will be used in coordination with the scaled-down Jim Swain operation to distribute $30 million, $40 million, which will be all there will be to distribute to the courts, in a categorical way in 1981, 1982, 1983. Isn't that worth thinking about in terms of an alternative to a very unfortunate situation that we find ourselves in?

Mr. MADDEN. I think that is certainly an alternative that should be considered. But, again, it just depends on many different factors, including what final decisions are made with respect to the LEAA budget, both by the President, OMB, and the Congress, ultimately.

Mr. FEINBERG. This whole line of argument is based upon the supposition that funds, whether it be as a result of the President's action or as a result of congressional action, are so depleted that it is either come up with a new vehicle for distributing limited funds, Govern-

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ment funds, or just give up after 13 years of trying this program, and letting everything that was developed in those 13 years sort of fall by the wayside. I know that Senator Kennedy feels very strongly that that would be extremely unfortunate.

What I am really thinking about, here, is developing or beginning to develop—no one has a firmer mind in this area than you do—some alternative ways, using the State Justice Institute as the vehicle, for categorizing $100 million instead of the $800 million that we had in Mr. Ford's 1975 administration, and distribute the categorical money, using Jim Swain's scaled-down operation and the State Justice Institute in some sort of tandem. I suppose the police and the corrections people, to name just two, will also want to develop some sort of delivery system. But I am reminded that in 1968, when the act was first passed, the police had a delivery system in place. Courts and corrections suffered because of that.

In 1980, it seems that, thanks to Senator Heflin, the courts may very well have a delivery system in place. I am just wondering, I am curious how you feel about the whole possibility of a new alternative.

Mr. MADDEN. I would say this. I think we have to wait and see what decisions are made.

The LEAA program is a very broad program supporting everything from community anticrime groups at the forefront of crime prevention, to police, courts, corrections, prosecutions, defense and probation programs. There is a wide range of criminal justice functions that are supported within the LEAA budget.

Any cuts in the budget would have to be evaluated against the support for that whole range of criminal justice functions.

Mr. FEINBERG. Really, all I am saying, is that it is a contradiction in terms, perhaps, to talk any longer about a broad range program when you are talking about a budget that may be 300 percent or 500 percent less than what it was 5 years ago.

I think that all I am really saying is that it may be that the best thing that ever happened to the notion of a State Justice Institute is a recognition on the part of the Congress that the current LEAA program is no longer viable and that there has to be an alternative which will not be duplicitous, but which will be an alternative.

Mr. MADDEN. It may be, but as I say. I think in looking at it, you have to take the whole equation of LEAA programs into account, from community anticrime through police and corrections. Each of which can make cases that they have pressing needs.

Mr. FEINBERG. All right, thank you. If I know LEAA, I would be willing to bet a few dollars that you, Pete Velde, myself, Art Briskman, and Mike Remington ought to get ready to sit down and begin to plan the future of a new program. As you say, it remains to be seen what will actually happen.

Thank you, Mr. Chairman.

Senator HEFLIN. Mr. Remington, you have a question?

Mr. REMINGTON. I have a few questions.

Do you think that the President and his advisers, in deciding upon budget cuts, have been consulting with State and local officials? Do you know that they have been consulting with State and local judicial officials?

One of the reasons for this program is that the feeling of the State

judicial system is that they generally go unconsulted when it comes to budgeting of money. That's why I ask that question.

Mr. MADDEN. I am not part of the process. I am basically telling you what we have seen from the newspapers, what we have seen in our discussions with Justice Department officials, and from State officials that are calling us and telling us that this consultation process is going on.

I know the chief justices did send some telegrams to the President urging the support for the LEAA program, as I am sure telegrams have gone in from groups in the CETA area and from revenue sharing and a host of other program areas. So those views are there and are being evaluated. The President has some very tough decisions to make in balancing this budget. He will take into account, I would assume all the different inputs and arrive at what he feels is the best decision, given the national priorities as he sees them.

Mr. REMINGTON. Thank you.

Mr. VELDE. Thank you, Mr. Chairman.

I believe, Mr. Madden, next week the Judiciary Committee is going to begin hearings on the Juvenile Justice Act.

Mr. MADDEN. Yes; there are hearings going on today, right now, in the House. Judge Renfrew is testifying on the juvenile justice reauthorization this morning.

Mr. VELDE. One of the things that will be considered in those hearings is the future of the Juvenile Justice Institute. As far as I know, the administration stand on the bill, which was submitted last year and so far has not been introduced, but you may know Senator Dole introduced a bill similar to what we understand the administration's bill is or was, yesterday.

Would you care to comment as to what the administration will look at in terms of the juvenile justice reauthorization and extension in light of the budget situation?

Mr. MADDEN. Judge Renfrew is testifying essentially in support of the bill that was submitted by the administration last year, as a result of efforts made by Judge Wald's task force.

Judge Renfrew will be commenting favorably on some of the provisions in Congressman Andrews' bill for the juvenile justice reauthorization, making some additional recommendations, include a provision that juveniles be removed from adult detention facilities within 5 years and placed in totally juvenile detention facilities or some other type of program.

The juvenile justice authorization hinges on the continuing viability of the State planning agency structure. The juvenile justice program is administered by the State planning agencies, now the criminal justice councils. Although there is money in the Juvenile Justice Act for administrative costs involved with the juvenile justice program, the costs are not enough to cover the full expenses of administering the juvenile justice program. The juvenile justice program, for example, has to draw on planners, evaluators, accountants, financial people, and civil rights specialists, that are funded from the formula grant program of the State Justice Improvement Act. So if there are some extension cuts, there will be serious effects on the Juvenile Justice Act in that context.

But at this point, we are standing behind the administration bill and the Justice Systems Improvement Act.

[The prepared statement of Mr. Madden follows:]

PREPARED STATEMENT OF THOMAS J. MADDEN

It is my pleasure, Mr. Chairman, to appear today before the Subcommittee on Jurisprudence and Governmental Relations in connection with hearings on the proposed State Justice Institute Act. In my statement today, I would like to provide some background information which may assist in your consideration of this legislation as well as discuss the efforts of the Law Enforcement Assistance Administration, the National Institute of Justice, the Bureau of Justice Statistics and the Office of Justice Assistance, Research, and Statistics to assist State and local governments to improve State and local judicial systems.

There is no doubt that as crime rates in this country have increased, public dissatisfaction with the criminal justice system has grown. The National Advisory Commission on Criminal Justice Standards and Goals Task Force on Courts noted some years ago that "While all components of the system have been criticized, it is becoming apparent that, as the Nation's crime consciousness grows, the role of the courts in crime control is becoming the center of controversy." The task force further commented that the court system in the United States is in serious difficulty; the existing system has too many defendants to handle effectively and efficiently; backlogs are enormous; workloads are increasing; and the entire court system is underfinanced.

As you know, the Justice System Improvement Act of 1979, enacted on December 27, 1979, reauthorized and restructured the Justice Department's assistance program for State and local law enforcement and criminal justice improvement. The act built upon the strengths of the Law Enforcement Assistance Administration program.

LEAA remains the principal funding mechanism of the Federal Government to strengthen and improve law enforcement and criminal justice at the State and local level. The National Institute of Justic (NIJ) supports basic and applied research into justice issues. Programs are evaluated and their impact on the quality of justice is assessed by NIJ. Demonstration programs are funded to test the effectiveness of different approaches to law enforcement and criminal and civil justice problems. A wide range of information is available for dissemination to interested individuals and organizations. The Bureau of Justice Statistics (BJS) provides a variety of statistical services for the criminal justice community. It recommends standards for the generation of data, analyzes and disseminates statistics and provides for the security and privacy of criminal justice statistics. It aids State and local governments in the development of data bases and the information and communication systems needed to improve the effectiveness of the criminal justice system.

At the inception of the LEAA program there was a low rate of participation by courts for a number of reasons. There was, for example, little attention by the Congress to the role of courts in the criminal justice system. Early LEAA authorization legislation made few explicit references to courts and LEAA concentrated much of its early program development efforts on police and corrections, not on courts. Additionally, because of the separation of powers doctrine, active involvement by State courts in what was essentially a State executive branch planning program was limited.

The Crime Control Act of 1976 contained numerous amendments designed to increase the participation of the judiciary in the LEAA program. These amendments were in large part the direct result of the personal efforts of the chairman of this subcommittee. Prior to enactment of the amendments, numerous representatives of the judiciary testified at hearings and expressed concern about the lack of court involvement in the LEAA program. Many references were made to study done under the leadership of John F. X. Irving, then dean of Seton Hall Law School. This landmark study was financed by LEAA through American University and was initiated at LEAA's direction after representatives of the Conference of Chief Justices expressed concern to LEAA about the involvement of courts in the LEAA program. The Irving study provided important recommendations for increasing court planning efforts with LEAA funds. The study was a most valuable resource to Congress when it considered the Crime Control Act of 1976 and to LEAA in administering the program.

The 1976 amendments adopted by Congress which directly affected the judiciary can be grouped into theree categories: (1) judicial representation on the supervisory boards of State Planning Agencies, (2) judicial planning committees, and (3) provision of an adequate share of funds for courts. All of these

provisions remained intact when the Justice System Improvement Act became law last December.

Today, at least 37 States have created judicial coordinating committees (formerly judicial planning committees), and a National Council for Judicial Planning has been formed. As a result of your efforts, Mr. Chairman, and the work of your associates of the bench and bar, the LEAA program has been dramatically adjusted over its 12-year history to effectuate a greater involvement of the judiciary, an involvement reflected both in funds allotted and in the determination of how those funds should be applied.

The Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, and the Bureau of Justice Statistics announced the fiscal year 1980 national priority and discretionary programs in the Federal Register on February 15, 1980. Several programs outlined in the announcement are aimed exclusively at improving court systems:

(1) The court delay reduction program has two primary objectives: (a) To demonstrate methods of reducing criminal and civil court case backlog and processing time while maintaining standards of fairness and due process; and (b) to demonstrate mediation alternatives to court processing for minor disputes. $1.3 million has been allocated for this program.

(2) The fundamental court improvement program supports state-level efforts to analyze and develop significant alternatives to the present organization, management, and structure of State court systems or State indigent defense delivery systems. Some assistance may be available for organizational studies, strategy development, public education, and implementation associated with statewide defense or court reform. The general program objective is to improve the operations, financing, and services of statewide court or indigent defense systems. A total of $2.5 million has been allocated for this program.

(3) The juror utilization and management program is a 2-year effort designed to achieve permanent improvements in State trial court jury systems through the planned application of specific, proven techniques of juror utilization and management. The basic objectives are equity, savings, and satisfaction. Equity is achieved through better representation of the community on the jury and wider sharing of the burden of jury service. Savings to jurors, to the court, and to the community will result from the application of program techniques for efficient selection and use of jurors and improved management. Satisfaction with the experience of jury duty will result from the more effective use of jurors. Increased community satisfaction with the justice system should result from the respect for the juror built into the program. The development of a permanent capacity at the State level to upgrade and maintain the quality of jury systems within the State is a major objective of the program. While emphasis is placed on statewide programs, local individual courts which can demonstrate statewide impact through implementation of the program are also eligible. This program has been allocated $1.3 million.

The State judicial information systems program (SJIS) was initiated by LEAA in 1973 to promote the development of State judicial information systems for improving the administrative functions of the courts and to provide the court generated data elements of other LEAA-funded systems (Offender-Based Transaction Statistics and the Computerized Criminal History file). The data gathered through SJIS is essential for effective management of the courts and the development of a comprehensive state-level criminal justice information system for tracking criminal offenders through the entire justice process and reporting final dispositions.

Initially, this program was administered by SEARCH Group, Inc. (SGI). Later, it was decided to use the services of the National Center for State Courts (NCSC) to direct future phases of the SJIA project because of NCSC's role as a nationally recognized focal point for State court improvements. NCSC is expanding SJIS participation to all States that are members of the Conference of State Court Administrators and providing technical assistance and systems technology transfer to States developing SJIS. Included in activities undertaken are update of the SJIS state-of-the-art report, guidelines for systems transfer, documentation of model systems for transfer, technical assistance to States developing SJIS and a Users' Group Conference. The approximate amount of funds awarded for the SJIS Program are:

Project coordination (SGI/NCSC)	$2,300,000
20 States (individual SJIS grants)	7,600,000
Total	9,900,000

There are programs not exclusively designed to improve courts alone, but certainly have a positive effect. Since LEAA first announced the PROMIS program in 1972, $4.5 million has been obligated for software development and transfer assistance to State and local criminal justice agencies. As of today, there are 37 operational PROMIS systems, 71 in transfer and 88 in the planning phase.

Developed originally for the prosecutor, the system was first transferred to Cobb County, Georgia, where it was found applicable to the administration of the court as well as the office of the prosecutor. Over the years, PROMIS has been implemented in a slightly different manner in each jurisdiction, depending upon local policies and initiative. In some jurisdictions the system is controlled by the prosecutor, in some by the court administrator, in others by a committee of diverse criminal justice officials; it is not always called PROMIS.

The system is currently used in trial courts and appellate courts; it is being expanded to include jail inmate accounting, normally the province of the sheriffs, and on-line booking, usually performed by the police.

Because PROMIS is very flexible, it is readily adaptable to case tracking of any sort. Its use promotes the interchange of information among various elements of the criminal justice systems in accordance with the policies of the officials concerned. Approximately one quarter of the $4.5 million effort has gone exclusively to courts as opposed to prosecutors and others.

Similarly, the comprehensive data systems program benefits courts throughout the country. This program is designed to create statistical analysis capabilities for criminal justice. Of course, courts play an important role in the program. $4.5 million has been allocated for this program.

LEAA's Office of Juvenile Justice and Delinquency Prevention, created in 1974, has provided the impetus for dramatic improvement in the juvenile adjudication process. OJJDP initiatives have had a major impact in such areas as juvenile code reform, diversion, restitution, training for juvenile and family court judges, and advocacy.

LEAA, OJARS, BJS, and NIJ have other programs which affect courts in varying degrees, however, time does not allow a detailed description of each. If the subcommittee wishes additional data regarding these programs, I will be pleased to submit it at a later date.

In sponsoring research on the criminal adjudication process, the National Institute of Justice supports studies of the overall court process, defense and prosecution functions, law reform, and alternatives to traditional adjudication. NIJ has two long-range priorities in the area of courts: Pretrial process (delay reduction and consistency) and sentencing. Solicitations for fiscal year 1980 include such topics as: Pre-Indictment Practices and Policies; Analysis of the Role of Bail Bondsmen; Intrastate Sentencing Variation; The Use of Fines as a Criminal Sanction; and Comparative Research on State Court Organization.

LEAA annually provides over a million dollars for organizational assistance to six court training institutions. Limited and general jurisdiction judges receive instruction from the National College of the State Judiciary (Reno) and the American Academy of Judicial Education. Juvenile judges are trained at the National Juvenile Judge College at Reno. Appellate judges are trained at the Institute for Judicial Administration and the ABA Conference of Appellate Judges. Court administrators as well as administrative judges receive instruction at the Institute for Court Management. Annually, these institutions instruct 3,000 judges and 600 court administration personnel, many of whom individually receive travel and per diem reimbursement from State formula funds to offset the cost of their attendance. The contribution that such large-scale instruction makes to the quality of justice in this country's State courts is difficult to calculate. Nonetheless, many court leaders attest to the major impact judicial education has made in the operation of courts in their States and individuals readily assert that the training has had a pronounced benefit for them.

In addition to training funds awarded by LEAA. NIJ has sponsored regional workshops and field tests throughout the country since 1973. Examples of some of the workshops include:

Juror usage and management.—23 regional workshops with approximately 950 participants;

Improved lower court case handling.—5 workshops with approximately 400 participants; and

Developing sentencing guidelines.—18 workshops with approximately 800 participants.

In order to be brief, I have outlined the efforts of LEAA, NIJ, BJS and OJARS in the area of courts. Over the years, entire State court systems have been com-

pletely revamped with LEAA assistance in Alabama, Kentucky, Missouri, Massachusetts, Kansas, North Dakota, and Iowa. The National Center for State Courts provides assistance on a daily basis nationwide, whereas it was only a hope of judicial reformers just a few years ago. Technical assistance without direct cost is now available to every court in need and is a valuable asset. Judicial training is readily available as never before, contributing especially to the quality of justice being delivered in State courts. A substantial reduction in court delay at both the trial and appellate level may now be possible as a result of new information about its causes and a variety of new techniques to combat those causes developed with LEAA funds.

Early returns on projects just beginning give promise that the next decade may witness dramatic improvement in our State courts, improvements which will put them on a sound and enduring basis with a quality of justice delivery in which all citizens can take pride.

With regard to Federal funding of State and local courts, it is extremely difficult to obtain accurate data because many projects that directly relate to the courts may have other components relating to such areas as corrections or enforcement. Eliminating all defense and prosecution services, our information system indicates that as many as 1,200 projects may have been funded with over $256 million in LEAA discretionary funds. In fiscal year 1968, one project was funded with $5,100. In fiscal year 1978, 194 projects were funded with over $52 million.

With regard to formula funds (formerly block grant funds) awarded to the States, where the States and localities select the individual projects, the following information was obtained, again using a narrow definition of courts. Over 13,100 projects have been funded with over $344 million in formula funds since fiscal year 1969. It should be noted that this data is based on reports submitted by the States. I have additional data with me and will be happy to submit it if you wish.

The proposed "State Justice Institute Act of 1980" demonstrates your concern, Mr. Chairman, and that of your cosponsors regarding an adequate funding mechanism for the State court systems of this country. The administration shares this concern, but we do not think that the Federal Government should finance the Institute at issue here. As outlined by my testimony today, substantial Federal assistance has been given to State courts and further Federal assistance at this time of severe budgetary constraint could impact upon other disciplines within the Federal justice system. If the State courts feel that a pressing need does exist for the services to be provided by the Institute, we would urge them to look to the States to fund these activities. We therefore are unable to support a new Federal program at this time of fiscal constraint.

Senator HEFLIN. Do any other staff members have questions?

Thank you. You may want to stick around, we would be delighted if you would. You may want to make some statements as to what Chief Justice Utter or Chief Justice Sheran have to state.

Mr. MADDEN. Senator, unfortunately, I have to get back to help Mr. Dogin and Mr. Broome prepare for their confirmation hearing scheduled for this afternoon. I would be glad to answer any additional questions you have if they could be in writing.

Senator HEFLIN. We will submit them in writing to you.

We will take a 5-minute recess right now.

[A short recess was taken.]

Senator HEFLIN. This is Chief Justice Sheran and Chief Justice Utter. I understand you don't have prepared statements, but if you come to the witness table, we can have some discussion.

Any statement you might want to make you might want to do it at the end, or you might want to do it at the front.

We are pleased to have Chief Justice Utter who is the chairman of the conference of the Chief Justices' task force on the matter of Federal participation in the State justice system. You all did a remarkable job with Prof. Frank Remington. I think the statement you have made showing the rationale for the creation of a State Justice Institute Act were excellent.

We are also pleased to have Chief Justice Robert Sheran here, the chief justice of Minnesota and the chairman-elect of the National Conference of Chief Justices. If I remember right, Bob, you served several years as the chairman of the Crime Commission of Minnesota, the Minnesota counterpart of LEAA.

Chief Justice Utter, of course, is the chief justice of the State of Washington.

If you would like to make statements—whatever you would like to do—we would be delighted to have whichever one of you would like to go first.

STATEMENT OF CHIEF JUSTICE ROBERT J. SHERAN, SUPREME COURT OF MINNESOTA

Justice SHERAN. I have just a few very general comments, Mr. Chairman. Then I think Chief Justice Utter and I would be glad to respond to any questions you or other persons here at this hearing might have.

I have had the opportunity to appear before this committee previously to discuss the general subject with which we are today concerned. I have emphasized the fact that the Federal recognition of its obligation for improvement of State court systems, as recognized through the mechanics of LEAA, suffered from two basic essential difficulties.

One of these difficulties was a failure to recognize that the responsibility of the judiciary, the State judiciary specifically, as a separate and independent branch of Government, cannot be mixed together without problems ensuing, with functions of the executive departments of the Government in the form of corrections and police.

Apart from this, there were inherent problems creating serious difficulties when the allocation of funds for the improvement of State court systems at the Federal level was lodged in an executive department agency, the Department of Justice. This fact is particularly noteworthy when we realize that in the Federal Government the control of Federal funding of Federal court efforts for improvement was taken out of the Department of Justice and placed independently in the judicial branch.

We have repeatedly emphasized that in spite of these inherent difficulties in the LEAA concept, insofar as funding the State courts is concerned, the State courts were greatly benefited by the funds that were made available through the LEAA because, in significant part, of the personal characteristics of the people in the LEAA who did so much notwithstanding these inherent difficulties.

Since that time, a dramatic change has occurred in the overall picture as it relates to the Federal Government assuming legitimate obligations with respect to the funding of efforts to improve State court systems.

One is that the task force of the Conference of Chief Justices, under the leadership of Chief Justice Utter of Washington, has put together in the task force report the rationale of a different approach to the discharge of the Federal obligation for the support of State court systems.

The other is the current fiscal crisis as it relates to LEAA, which, it is predicted, will result in the elimination of a considerable part of the funding that the LEAA previously has had at its disposal.

Those two developments in combination, in my mind at least, make it not only conceptually clear, but pragmatically necessary, that the move be made from the effort to deal with the problem in an imperfect conceptual mechanism to dealing with the problems through the State Justice Institute, which, in my judgment, meets the conceptual difficulties that we previously had experienced.

The result of it, I suggest, will not be to add to the fiscal burdens of the Federal Government at a time when the effort is to reduce them, but will instead make it possible to achieve the same overall objectives with less Federal funds, to have a higher cost-benefit relationship between the Federal funds expended and the results achieved than could ever have been obtained were we to have followed old patterns.

I would agree completely with the thought that the enactment of the State Justice Institute Act, as it has been submitted to the Congress, will serve a twofold purpose. It will correct past conceptual difficulties in the legislative pattern with which we were dealing with the problem. Second, it will be possible to obtain the same results with significantly less Federal funds.

In my view of things, the amount of Federal funds made available for this purpose is really not at all important. The important thing is that whatever Federal funds are available for this purpose be used in the most effective way and in the way most consistent with generally accepted principles of State-Federal relations, allocation of authority between independent branches of Government.

The reason that the amount of funds involved is not the important factor can, I think, be pretty well illustrated if I could use some figures with which I am intimately familiar. These figures are characteristic of the State of Minnesota where I am the chief justice.

We estimate that the expenditures in the State of Minnesota for our judicial system approximate $50 million a year. We are not certain of those figures because part of the funding is by the counties, local units of government, part by the State. Until recent years, no determined effort was made to find out precisely what the cost was of carrying out the process. But we use $50 million in our best judgment.

The amount of Federal funds made available through LEAA have never been more than 2 percent of that total. Federal funds shouldn't be any substantial part of the underlying cost of operating the system. It should continue to be primarily a State responsibility.

If it should be 1 percent or 2 percent is immaterial. The point is that these Federal funds make it possible to achieve through the improvement of State court systems what is described in the task force report as the margin of excellence.

What is done with the Federal funds or what has been done is to do, with the materials that the State provides in the State court system, what an architect does with the materials that are made available for the purposes of constructing a building, to give it purpose, plan, design, motivation, incentive, to move State court systems from an era where the concerns were largely provincial and local, to a recognition that in this country the fabric of justice is entire. And that the concern for the improvement of justice is both State and Federal. That is consistent with the traditions of our country, the basic responsibility for the operation of State court systems should remain with the States. The principal obligation for providing the funds should, as it has been

in the past, be with the States. But that the Federal Government, in recognition of the additional responsibilities that have been imposed on State court systems by governmental developments which are outlined in the task force report, should provide the means by which the personnel, the facilities that we have in the States now, can be used to the highest level of efficiency and effectiveness in the State and national interest.

I believe that the developments insofar as the Federal budget is concerned, that we know about, really accentuates the need and the importance of the State Justice Institute Act and, from my point of view, confirm and reinforce the reasons that we have in the past advanced in support of this proposed legislation.

Those would be the only comments that I would care to add to what I have made before, Mr. Chairman. Mr. Utter and I plan to respond to your questions, of course.

Senator HEFLIN. We will hear anything you would like to state, Chief Judge Utter.

STATEMENT OF CHIEF JUSTICE ROBERT F. UTTER, SUPREME COURT OF WASHINGTON

Justice UTTER. Senator, I would like again to express my personal delight at the opportunity to appear here, at your longtime interest, and the interest of the staff. You have the staff who are gathered on this bench around you. The problems of the judiciary have long been evident.

You have said really most of what can be said in your introductory remarks. In addition to what Justice Sheran has said, I think there are three reasons why the State Justice Institute offers a better way to do what we are doing now.

The first is that it is a concept that is both constitutionally and conceptually correct. You touched on the constitutional problems. For those in this area who have not been judges, those are hard problems to appreciate, but they are very real. The old honored concept of separation of powers really is at the heart of each branch of Government being able to work well with the other.

I think that if there had to be a fatal flaw in the current way the Federal Government deals with State courts, that is it. It is just simply a process that is not constitutionally correct, no matter how well intentioned. No one has ever questioned the intention.

The concept is also correct. That simply is that you have the people who are concerned about doing a better job in their States taking over the responsibility for setting priorities, for setting goals, and then stimulating each other to do it. It is not a case of the States asking the Federal Government to do more for us. We say simply we want to do more for ourselves. Give us the tools to do it for the margin of excellence, as Chief Justice Sheran says. Then stand back and give us room.

Now, in saying that, we want to press the concept of giving us room, I think the State Justice Institute, on the other hand, emphasizes accountability, a greater accountability than the current structures can now give, because all of the programs that would deal with State courts would be focused in a single federally created agency that the States would be responsible for. There is at least one-time-a-year, both

fiscal and programmatical, accounting that would be available to this body for the charge and the funds that were made available to that institute.

Third, I think that the State Justice Institute is more effective because it coordinates, as a unified, national structure, State judicial programs in a way no one else can now do it. The National Center for State Courts is a superb organization, but they are simply another private organization, like the National College for the Judicial, and several other private national organizations. They can't be more equal than the others. You need one focal group that, in effect, is just that, more equal. The State Justice Institute is that Federal chartered corporation that would be that group. It would be able to prioritize Federal assistance to the agencies that national groups serve, the State courts. It would emphasize the accountability of those who provide service. Decisions could be made on a more realistic basis than merely services rendered.

I am very privileged this morning to hear in this time of national budget crises, those of you who deal with the problem, speak a bit as to how you see this concept fitting into an effective and efficient way to deal with those problems. I would be excited if the State Justice Institute could, in fact, be a part of that. I have been a judge now for 20 years, in the trial and appellate bench of our State. I have been since the start of the national LEAA program dedicated to making that program work. I would hate to be a part of seeing at least those 13 years of effort be wasted.

The concepts I have seen suggested today, some of them spoken by you, Senator, some by Mr. Feinberg, some by others, seem to me to offer a way to preserve that 13 years of effort in a way that may be different structurally, but still would work. That is an exciting thing for me to simply be a part of this morning.

I think the reason why that approach may be sound is that in a time of crisis, budgetary or otherwise, we want to firm up those existing structures that we have. State courts are certainly existing structures already in place with a firm tradition of service and a commitment to excellence, in serving not only the people of their States, but their Federal Government as well. They have done this by, I think, encouraging the passage of your bill and the bill now filed in the House as well.

I think that we can accomplish the goals that you strive for and the other witnesses have as well today.

Thank you for the privilege of being here.

Senator HEFLIN. Thank you.

Chief Justice Sheran, I was interested in your remarks about how you felt on a competitive basis between LEAA and a future State Justice Institute Act program, that it would be more cost efficient. I would appreciate it if you would elaborate a little bit more on that and tell us the reasons why it would be more cost efficient, to go into some details on that.

Justice SHERAN. I start from the principle that the dollars extended for the improvement of State court systems will be best expended if they are used for purposes which the people in the States responsible for the performance of system regard as being of the highest level for priority attention. Stated more simply, I think that the chief justice of a State or the judicial planning committee of that

State, if it is a State that functions through a judicial planning committee, is in a better position to judge what is needed to make that system work effectively than either a State planning agency, which is the decisionmaking functionary at the State level under the present system, or a department of the Attorney General's office in Washington, which is the decisionmaking entity viewing the matter from the Federal level.

From the Federal level under the bill, the implementary decision would be made by a board of directors that would consist of judges and State court administrators and representatives of the public, appointed by the President, but in significant part, upon recommendation of the chief justices of the States who, in most States, are the people responsible for the efficient functioning of the system.

So at both levels, you have the priorities fixed, the needs assessed, by the people who are chartered under State law with the responsibility of making the system work effectively.

It seems to me that to state that, is to demonstrate that the dollars used are going to be used with greater effectiveness.

Senator HEFLIN. Did I interpret that part of this would be that—to say it as a medical doctor—the diagnosis of the ills of a State court system would be made from an evaluation of the overall State justice system there, with some restraint, goals, or guidelines, from the Federal body that determines some of these overall issues? You are now limited in your diagnosis of the ills of a State court system, or its needs by having to focus largely on the criminal justice aspect. You have an overall matter of where criminal and civil equity in all phases of the justice system would be diagnosed at a State level in order to make it healthier. Therefore, in looking at the overall situation, the diagnosis of how you would use something like 2 percent of the overall judicial budget where it would be the most help, would make the funding system more cost efficient.

Justice SHERAN. I think so, or to use an analogy that was borne out in my own background, if I am trying to make the most effective use of fertilizer on a farm, the person who knows where that fertilizer ought to go is the fellow responsible for running the farm. In that kind of a situation, there is always some committee made up of people who do not have experience in farming.

That is actually what it was before the 1976 amendments. You went before a State planning agency, where the members had no knowledge of the needs of the court system. For the analogy, they had no knowledge of farming or the needs of that farm. But they decide where the fertilizer is going to be placed and that was not very good judgment. Yet that is the way the old system worked.

That has been modified, of course, by the 1976 amendments, which put into place the judicial planning committees. What the State Justice Institute Act does is institutionalize the correct idea, which the judicial planning committees tried to accomplish in a less than entire way. The feature of this aspect of the matter that I think is important is this. Everybody realizes that you improve State court systems by addressing the problems of the systems on a statewide basis. What you are trying to get away from is dependency, in the States, of local courts to be concerned exclusively with local problems, without realizing the necessity of having a plan so that justice in the State is, as far as possible, uniform throughout the State.

If everybody agrees that that is the way you deal with State judicial problems most efficiently, isn't it obvious that you are going to be less cost effective if you move around the people in the States that are responsible for the improvement of the system and deal, as to a certain extent is true under the present act, with the local agencies whose concerns are not statewide concerns?

The best you could hope for is that you create a time-consuming, money-consuming kind of conflict between the local coordinating agencies and your State planning agencies. That is the best you could hope for. The point is that you are going to get better results with the same amount of money if you place the responsibility on a State level. In that entity, the State is charged with the responsibility of making that system work effectively; the entity is responsible for the deployment of 98 percent of the total cost of making the system run. It is going to work better from a Federal point of view if the Congress lays out some broad policy that gives them to a Federal entity to implement which is made up of a board of directors that come out of a background that is judicially oriented, rather than having comparable decisions made from the executive department of the Federal Government, as is presently the case.

In that regard, I would like to emphasize again, there is no question but that men like the witnesses who appeared here this morning, people of remarkable skill and ability, have done great things for the improvement of State court systems. But I am suggesting that that is more attributable to their personal capacities than to the structuring of the law that we are presently operating under.

Senator HEFLIN. Chief Justice Utter, I have been asked many times since I have been in the Senate, by friends, "Which do you like best, the Senate or the judiciary." I usually reply that both have attractive features, and that I enjoyed being a judge and I enjoy being a Senator. Then some people ask me what is the major difference. I have replied that I think, primarily, the major difference is that as a judge I had the benefit of some isolation, whereas as a representative person making decisions in Congress, I am subject to a great deal of arm twisting by special groups and special people. I think that is the way it should be. I think, of course, insulation can be carried too far. Some people get completely isolated. Rather than maybe using the word isolation, insulation means protection. In the context of the judiciary and the ethics of the bar association and lawyers, you don't arm twist judges.

In the judiciary, there is danger of a lack of insulation structurally in the type of program that we are talking about, one of Federal control. You need an insulation in the judiciary from Federal control. Second, you need an insulation, in a program such as this, from the executive branch of State government. Our people are not familiar with and have not said that there is that need, because there are many things in State government, legislators that appropriate money, Governors, and people involved that have litigation in courts. I think it is essential that there be a form of insulation, moral and also structural.

Of course, there is the insulation at their local units of governments, as it would apply to local units of the judiciary. In looking at this bill, which largely is the brainchild of yourself, Prof. Frank Remington, and others that have worked on it, it seems to me that you have provided that necessary insulation without isolation for the judiciary and for the program.

You have a program of insulation and protection from Federal controls in that you have an independent board of directors composed of State judges, State court administrators, and, in effect, people who are interested in the State, who will not be under Federal control. It is somewhat similar to the legal services concept as it grew up to provide that an administration wouldn't have any Federal control over it. You are, under the separation of powers, given insulation protection from your State government's executive branch staff and similarly, under this concept, from the local units of government. They, in effect, do not pass on or are not involved as to the local use. Rather it would be the judiciary State board.

So, just offhand, my—rather than ask him the question—I am just articulating some thoughts that have come to me without a lot of thought. The use of the word insulation rather than isolation is important because I think you have to be cognizant of the needs of a criminal justice system—an overall system. You have to be cognizant and not isolated from the needs of a society that is changing and moving. I think basically the judicial branch has been really more responsive over the years to changing concepts, such as in civil rights and other matters that have grown up, than maybe the Congress or the executive branch of the Government has.

As you foresee this—maybe—does this system give you the needed protection that the judiciary should have from first, Federal control; second, from State executive control, and third, from local units of government control?

Justice UTTER. I feel comfortable with it, Senator. I would feel uncomfortable if it did not provide for accountability. I think it does do that. I welcome accountability. I think that sharpens our focus and our mandate.

You have touched on the area where accountability ends and simply doing the job gets started. I think those areas are amply provided for in the bill.

You have had the experience, I know, of drafting by committee. We submitted this bill first to our own committee and then all 50 chief justices of the States. They had an ample opportunity to look at it and criticize it. I think I can speak for them when I say they feel satisfied as well that the protection they need, the isolation they need, and yet the creative tension that they need with the other branches is maintained as well.

I appreciate your comments. You do understand the bill well. It is what we hoped could be provided.

Senator HEFLIN. Mr. Velde?

Mr. VELDE. Thank you, Mr. Chairman. Just one question.

Chief Justice Sheran, I understand that this bill is patterned after the organizational structure of the Legal Services Corporation. Its structure, in fact, is almost identical.

You have indicated that the relationship between the State courts and the various kinds of LEAA assistance, either State or Federal, have not been—I think your words were—constitutionally correct.

If it were not for the individuals involved, perhaps there could have been some difficulty. I guess the implication is, then, based on your support for this bill that the organizational structure of the Legal Services Corporation would be more to your liking. And yet,

as I recall, I believe the Legal Services Corporation, in its assistance to State and local—what would you call them?—activists, has been used to mount rather significant attacks on State and local, not just systems, but institutions of Government.

I guess my bottom line is that even with this structure, which seems to provide constitutional protection, there might still be a possibility of abuse. There might still be efforts to dominate and control or tie strings to the Federal systems, to try to impose contemporary notions of what is good on State and local court systems.

I don't mean to make a speech, but I would like your observations and your experiences with the Legal Services Corporation.

Justice SHERAN. I am not prepared to speak from experience with respect to the Legal Services Corporation, but I think I am prepared to address myself to the broader question of whether the acceptance of Federal funds carries with it the hazard that some individual or groups of individuals in the Federal Government will undertake to influence inordinately State judicial policies.

I think that in dealing with a matter of this kind, we have to recognize as a fact that whenever a State court system accepts funds from any source, whether it be the State legislature or the Federal Congress, there are problems which arise concerning where the responsibility and direction of the system will end up.

My point is that it is not simply limited to the dependence of State court systems—even in a minor part—on Federal funds. The very fact that one is dependent on funding, on someone else, creates some problems, a loss of independence.

In the long run, the only certain way of avoiding that dependence, to the extent that it is improper or inordinate or unwise, depends upon the capacity of the judicial department of governments, both State and Federal, to discipline themselves never to accept funds either from the State legislature or from the Federal Government which in any way impinge upon the independence of that branch of Government.

I believe that it would be possible to accept Federal funds, in limited amounts, without impinging upon the independence of State court systems for a number of reasons.

One of them is that under the State Justice Insitute Act as it is presently formulated, the decisions as to where the funds would be applied would be placed in that entity in the State that is responsible under the Constitution for the operation of the judicial system.

In our State, it is the office of the chief justice, which responsibility is carried out by the formulation of a judicial planning committee, which is made up of people from all spectrums of the community with knowledge of what the needs of the system are and the capacity of analyzing and learning.

So I think that is a very significant safeguard on the State level and a better one than the present system where the ultimate decision is made by the State planning agency, with which you are intimately familiar, on which the judiciary has representation under the act as presently amended, but which is really controlled, dominated, by people who do not profess to have knowledge of the traditions, the needs, and the essential characteristics of the judicial system.

Now on the Federal level, to be sure, it is assumed that the Congress

in making funds available for the improvement of State court systems would indicate some broad objectives, which the Congress feels would be in the public interest to have carried out. But the refinement of those broad objectives and the implementation of them under this proposed bill would be in a little corporation the board of directors of which would be made up of predominantly judges and State court administrators designated by the Conference of Chief Justices.

I now have to ask myself the question of whether I believe that the chief justices of the several States acting through the conference are determined and prepared and disciplined not to permit the supplemental funds that would come through the State Justice Institute Act to reward responsibilities to a State system of which they are a part.

The only answer that I can give to that is that I have observed the operation of the Conference of Chief Justices now over a period of approximately 15 years, for almost seven of which I have been a chief justice myself. And I know that it is a consensus view among the chief justices that to accept funds either from the Federal Congress or the State legislatures on terms that impinge upon the independence of the judiciary is altogether unacceptable.

I am confident that that is a uniform attitude, and given a choice between accepting the funds and maintaining independence, there would be a simple choice—independence would be preserved.

I am reassured in my confidence in this by the fact that the task force report, which is a part of the files of this committee, represents not only the views of the committee that worked on it over quite a period of time and which was made up of chief justices from throughout the country and State court administrators, but it is a consensus judgment of the chief justices of all of the states, who are now meeting twice a year and concerning themselves with the serious aspects of judicial administration in troubled times.

You don't get consensus judgments from this group with respect to a bill of this kind unless they are certain—based on their experience—that their independence, which they prize above all things else, will be preserved.

So, in summary then, I say that both on conceptual grounds, by comparing the State Justice Institute Act to the LEAA as it presently functions, and on the grounds that a person gets instinctively from dealing with the people involved, I am satisfied that, while there is always a danger whenever funds are involved of an erosion of responsibility, which I think has to be frankly recognized, I don't see that as sufficiently a concern to dissuade one from moving ahead with what I can see to be a useful and constructive course of action.

Mr. VELDE. Thank you, Mr. Sheran.

Senator HEFLIN. Mr. Hultman, do you have any questions?

Mr. HULTMAN. I appreciate your hospitality, Mr. Chairman. Senator Thurmond, whom I represent, is not on this subcommittee but, as with all the activities of the subcommittees on the Judiciary Committee, he follows them very closely, and particularly anything that Judge Heflin is involved in Senator Thurmond is very interested in and follows it.

Last fall, Senator Thurmond attended a conference down at Williamsburg. I wasn't there myself; you may have attended yourselves. The presentation that was made then to Senator Thurmond with

regard to the State Justice Institute Act left him with some questions, and I would like, if I may, to pose some of them to you so that the record might reflect your views on these questions for his benefit and for all the members of the committee.

I think the issue of independence has been addressed both by the chairman and yourselves very well, and that is a question which the Senator might have. Your last comments, I believe, may be reassuring to him.

I think the question that Senator Thurmond might pose to you is this: would a State justice institute duplicate the services and research now being provided by the National Center for State Courts and which would be expected to be provided, perhaps, under the National Institute of Justice?

Mr. Chief Justice Utter might respond to that. I guess if you took sections 2 and 7 of the bill before the committee and perhaps set them up side by side—the mandate or charter of the National Center for State Courts—that might answer the question. I wonder if you might respond to that?

Justice UTTER. The committee addressed that problem specifically and it was a very unanimous conclusion that this State Justice Institute should not be an operating agency. In other words, they should simply prioritize grants and serve as a coordinating body for the State courts to set priorities. It is not their intention or vision that they would have an operating staff that would do any of the functions that the National Center for State Courts does.

I think that as long as there is a private judicial corporation throughout the country, whether it is American Judicature Society, National Center for State Courts, or National College for the Judiciary that can perform the functions that the State Justice Institute would prioritize, that the State Justice Institute would have no desire to duplicate their work at all.

Senator HEFLIN. I had the same question. I was talking, Mr. Hultman, what was your question?

Mr. HULTMAN. Well, I think the question that came to Senator Thurmond's mind initially was that would this State justice institute duplicate the services and research activities of the National Center for State Courts and National Institute of Justice? In other words, would there be a duplication of research and prioritizing——

Justice UTTER. It is an excellent question. The National Center for State Courts doesn't prioritize, and that is where this would be different.

They are a service organization. We would hope the State Justice Institute would prioritize and the service organizations would then perform the services in accordance with those priorities. There should be no duplication. We would not intentionally have any.

Mr. HULTMAN. What if we would put the think tank in Boulder or Denver, and leave the practical decisionmakers in the corporation of the State Justice Institute? Is that the distinction, that the kind of activities of the National Center for State Courts is the innovative, broad study kinds of activities that may present alternative approaches to State court improvement?

But the State—the Institute, in fact, would perhaps meet as a col-

legial body and make practical decisions as to maybe what ideas come out of the National Center for State Courts—what might be the most feasible and workable. Is that the distinction?

Justice UTTER. I think that is a fair statement. We haven't phrased it that way, but I think it is a fair statement of how we would see it operate.

Justice SHERAN. I would agree with that and would add these observations: that the National Center for State Courts has the physical facilities, the trained personnel and the competence to put into effect and carry out programs in line with priorities that should be determined by people in the field who have the responsibility of making the system work.

Under the State Justice Institute Act, that would come about because the board of directors would determine where the priorities are, what kind of efforts should come first in the particular States affected, the business of implementing those priorities, of doing the thinking and the research and making the recommendations to achieve those priorities. That in the future would be with the National Center for State Courts as it has been in the past.

Frankly, as one who believes very strongly that the National Center for State Courts has been a great asset to us in the States, I am very much concerned—right now—that the cutting of the budget of the Department of Justice indiscriminately may jeopardize the future existence of the National Center for State Courts. It may in a sense wash out in greater or less degree because of its involvement in a process over which we in the judicial system have so little control. To me that doesn't seem altogether reasonable.

Would it not be better to let the judgment calls supplementing congressional enactments be made by people who are working in the judicial system every day of their lives so that an institution like the National Center for State Courts that was conceived in 1971 and has become so important to all of us would not be washed out with the spring housecleaning for lack of discriminating judgments. We get away from that if we go into a program of the kind that the conference is recommending here.

I would like to add this too in view of Senator Thurmond's concern about the matter of the independence of the States. I happen to feel very strongly on that point and share that concern. At the same time, I think that we have to feed into the process a recognition that under article VI of the Constitution, State courts are responsible for the enforcement and execution of Federal laws. When I took my oath of chief justice of the Supreme Court of Minnesota, it was not limited to upholding the constitution of the State of Minnesota or the laws of the State. Specifically included is my obligation to uphold the Federal constitution and the Federal laws, which as article VI says are the supreme law of the land. And more than that, the responsibility for the operation of State court systems is and should be with the States.

There are no fixed lines of demarcation at State boundaries that says one kind of justice here and another kind of justice there. As we become increasingly more mobile, more increasingly exposed to the same sources of information through the media, and other things such as that there becomes increasingly a need to have a Federal perspective

on the problems that occur in our courts. There is scarcely any kind of litigation any more that doesn't have both a State law and a Federal law aspect to it. So it is appropriate that the Congress should concern itself with the broad objectives of justice in terms of the entire picture. The administration of the system—that is, where we put the emphasis—should be with the States as it always has been traditionally.

Bear in mind that under the U.S. Constitution, while provision is made for the U.S. Supreme Court, there is no constitutional provision for any other part of the Federal court system.

The emphasis has always been on State court systems. They handle more than 90 percent of cases and controversies in the country. So the administration should be on a State basis, but it is entirely appropriate for the Congress to consider long-term objectives as to what we in this country of the United States want to achieve, so far as the overall administration of justice is concerned.

And I am going to say before the Justice Institute Act that was impossible. I don't see that as being an inappropriate encroachment upon the independence of State judiciaries, and if the Conference of Chief Justices thought it was, they would never have submitted the task force report in the first place.

This is not to say that we couldn't be in error, but that task force report represents a pretty careful judgment on a pretty broadly based group of people.

Mr. HULTMAN. Mr. Chairman, let me correct the record. I do know better. The National Center for State Courts is not in Colorado any more; I believe it has a nice new facility in Williamsburg. So let the record reflect that.

One additional question, Mr. Chief Justice Sheran, and I will quit.

According to Judge Newman's testimony earlier today, he indicated that 55.7 percent of the National Center for State Courts' budget in 1979 came from non-Federal sources. Is there any chance that either private or State funding support may be a viable alternative for this State Justice Institute particularly in light of the testimony that we have had earlier today in regard to budget and vulnerability of the LEAA or DOJ's budget?

Is there a possibility, in effect, of the State Justice Institute drawing not only private funds but additional State legislative dollars?

Now you indicated in your State that 2 percent of the total $50 million budget came from Federal sources. Is there any opportunity for this institute to perhaps attract additional non-Federal dollars?

Justice SHERAN. I think it would be extremely difficult to look to the States for the funding of a national program of this kind for a number of reasons.

I am using percentage figures that I generate in the State of Minnesota. I don't know whether they apply across the board or not, but they wouldn't be that far off.

The position of the State legislature is that they have in the past and in the future are willing to carry 98 percent—95 percent, whatever—of the burden of operating a State court system, and that given the fact that so much of the work that is done in the State courts is the result of the developments occurring in the Congress, the executive department of the Federal Government, the decisions of the U.S.

Supreme Court, particularly in the criminal field, that add to those responsibilities, it is a matter of fairness. It is only appropriate that the Federal Government should assume some at least symbolic measure of the financial responsibility given the fact that so much of the work in the State court system is attributable to action at the Federal level.

The second thing to keep in mind in the increased demand upon State court systems is comparable to the increased demand being made upon the Federal court system so that we have in State court systems an increase in litigation coming through the State court systems that figures out roughly to 7 percent per year.

So the State courts have to look forward to the responsibility of increasing State allocations for the improvement of State court systems because of the inflation factor, because of the increased demand for services and things of that kind, no matter what else is done.

Now the third aspect of the matter that I think argues very forcefully for the Federal Government assuming in some amount—whatever that amount is, to me that is not the important thing—a portion of this responsibility is because by the nature of things what we are dealing with here is an effort to improve, upgrade, increase the capacity of State court systems in the belief that it is in the national interest that this should be done.

The degree of that interest varies from State to State and to try to work out a formula by which the States share that obligation, which is national in character, as amongst themselves creates the kind of practical difficulties that all of us who have been involved in the political process know about very well. It is the same difficulty that the Council of State Governments has in allocating the burden of maintaining a relatively modest budget in order to provide those kinds of services to all the States. It is difficult to accomplish.

As for obtaining it from private sources, I think that is unwise for two reasons. For one reason, private foundations, for example, do not find efforts along these lines to be of sufficent interest to provide funds in the amounts that are needed to get the job done effectively.

The second thing is that I have some pretty serious reservations as to whether it is desirable from an overall constitutional, political point of view for people who speak for the branch of Government—the chief justice, for example—to ever be in a position where you are dependent upon private sources for the funding of governmental responsibilities.

I think it is very, very fragile ground to get on and surely in my judgment it is unwise to ever become dependent upon that.

So all those things in combination suggest to me that the wisdom in the national interest of the Federal Government taking some part of this process—I would like to emphasize again, and I think that I pretty well speak the mind of at least the chief justices with whom I have talked—the major concern is not to obtain funds to carry out the essentials of State jurisprudence. State legislatures—that is their responsibility—they will do that. What we are concerned about is a relatively small percentage of the total that will make it possible to carry out developments and improvements that will increase the capacity of the system to work effectively.

I think that as an expression of Federal recognition of the kind of a load that State courts are carrying attributable to Federal action, it just ought to be done as a matter of fairness. The level at which it is done in a time of fiscal crisis that is not the important thing; the point is the principle of the thing that we are dealing with here. If that is accepted, the rest of it will take care of itself, in my judgment.

Mr. HULTMAN. Thank you, Mr. Chief Justice.

Senator HEFLIN. It's practically impossible to raise that money locally or at the State. From a practical viewpoint, I know that National Center has had exceptionally difficult times trying to raise money from State legislatures and things of that sort involved there.

Mr. Remington, do you have some questions?

Mr. REMINGTON. No. I would like to thank you for an excellent hearing. All the questions I had previously formulated have been asked and answered by the witnesses.

Senator HEFLIN. I might make one statement about the legal service comparisons Mr. Velde raised. I think you have to look at the distinction in the purpose of the Legal Services Corporation and the purpose of a State Justice Institute. The Legal Services Corporation's thrust is to provide advocacy. The State Justice Institute would be to bring about improvements in the methodology of disputes resolution. I believe that the danger of abuse is so much more prevalent in a legal service whose main purpose is to provide advocacy, such as the Legal Services Corporation, than it is in a State Justice Institute where the main thrust is disputes resolutions.

Also, I think there is a difference too in that the activism that is criticized by some people of the Legal Services Corporation originates at a local level and moves to a national level. The fear of any type of Federal control would be originating at a Federal level and moving to a local level. So I think there are some distinctions with regard to that that we might bring out.

Well, I think it's been a good hearing. Are there any questions anybody else would like to ask? If not, then I will conclude this hearing and thank you very much for coming and being with us.

[Whereupon at 12:10 p.m., on March 19, 1980, the subcommittee hearing was adjourned.]

APPENDIX

Report of the Executive Council of the Conference of Chief Justices

In

Response to the Department of Justice Study Group Report on the

Law Enforcement Assistance Administration

August 1977

The Conference of Chief Justices appreciates the opportunity to comment on the Report to the Attorney General of the Department of Justice Study Group on Restructuring the Justice Department's Program of Assistance to State and Local Governments for Crime Control and Criminal Justice System Improvement.

We understand that Congressional proposals are still in the planning stage and anticipate the opportunity to study and comment on such proposals as they are submitted in draft form, as well as subsequent proposals from the Department of Justice.

We support the thrust of the major recommendations in the present Study Group report and in particular applaud (1) the new focus on improving and strengthening the elements of the criminal justice system rather than on "reducing crime"; (2) the emphasis on improved management and coordination functions; and (3) the call for assured minimum funding of court programs.

Long Term Needs

Our principal concern is that the report, with its focus on criminal justice, does not address the long-term needs of our nation's total justice system. From the judiciary's point-of-view, criminal and civil justice are inextricable. A broader focus is needed if state courts are to play their fundamental role in improving the administration of justice, including the criminal and juvenile components, and assume a major share of the burden now carried by the federal courts.

We do not feel that the Study Group has adequately addressed the need for a basic national policy on improvement of the total justice system and

creation of the appropriate national institutions and procedures by which this policy could be implemented in keeping with the constitutional principles of federalism and the separation of powers.

There is a proper federal role in improving the justice system but it must be performed in a manner that respects the identity and independence of state courts. Federal funding must be looked upon as a means of adding strength to state judicial systems and not as a method of extending federal authority to areas better managed on a state or local basis. The Department of Justice should not be in a position, through funding decisions or otherwise, to set policies for the independent judiciaries of the states.

Discretionary Funds

The Conference of Chief Justices also is concerned that the Study Group report does not provide for continuation of national discretionary funds to provide basic support for the National Center for State Courts, the research and development arm of the state judiciaries, and for other court support organizations such as the National College of the State Judiciary. In our view, these institutions are essential to implementation of national policy for improving the administration of justice. The National Center offers a key mechanism by which federal funds can appropriately be used to assist state courts, providing resources far beyond the means of any individual state or, under present court budgets, the state court system collectively. We strongly favor a direct Congressional appropriation towards the support of the National Center for State Courts similar to the support provided for the Federal Judicial Center.[1]

[1]Such a suggestion was made by Attorney General Griffin Bell in his address to the Conference of Chief Justices on August 2, 1977, at their annual meeting in Minneapolis, Minnesota.

National Models

We are further concerned with the Study Group recommendations for national program models. Individual states often have problems not susceptible to solution on the national level. Nor would programs for their solution, however necessary for the state involved, be appropriate for national replication. Emphasis should be on supporting solutions deemed desirable by the responsible state judicial officials and such programs should not be penalized by denying them "incentive" funding.

State Court Funding

Another basic concern of the Conference of Chief Justices is that the direct funding approach, even with minimum funding assured to the courts, could result in thousands of poorly conceived or ineffectual projects at the local court level that could do little more than add personnel or pick-up routine costs. Court systems operate under state statutes and rules that place responsibility for change at the state level. Federal funding should be provided in a manner that encourages the responsible court officials to implement constructive programs meeting the priority needs of state-wide judicial systems. It also should encourage the desirable national trend toward unification both as to administration and funding of state court systems.

Special Circumstances

Federal funding of court programs presents a special set of issues that should be dealt with outside the framework of support for the executive branch components of the criminal justice system. In addition to the concerns expressed above, we base this position on the following facts:

1. Courts are the function of the independent judicial branch of state government and are not functions within the executive branch's criminal justice system. They stand between the accused and defender on one side and the police, prosecutorial and correctional officials on the other. Protection of the judiciary's independence is essential under the separation of power provisions of each state constitution.

2. Unlike most police, prosecutorial and correctional agencies, state and local courts are part of a state-wide system with lines of administrative and rule making authority running from the state level (Supreme Court-Judicial Council) to trial courts at the county and municipal levels.

3. Criminal and juvenile proceedings are not isolated functions which can or should be treated independently of the total justice system.

4. The judicial branch traditionally has been underfunded at the state and local levels and does not have sufficient capacity for new program development or to adequately fund national institutions essential to judicial improvement and reform.

Recommendations of CCJ

Given these facts and concerns, the Conference of Chief Justices makes the following recommendations with reference to the Study Group report:

1. The judicial branch should receive at the state level as directly as possible an adequate share of approximately 30 percent of each state's direct formula funds or an equivalent sum in national discretionary grants.

2. The National Center for State Courts, as previously indicated, should receive a direct Congressional appropriation toward its support similar to the financial support provided for the Federal Judicial Center.

3. The highest court or judicial council should have state-wide authority for initiating, administering, and disbursing funds for programs improving the state-wide justice system. All of the Study Group's arguments against fragmentation and for coordination support this approach as do all recent studies which point to the state-level approach as providing the highest potential for demonstrable improvements in state judicial systems.

4. Federal funds should not be limited to programs for criminal and juvenile justice in such a manner as to prevent needed improvement in the overall judicial system. This will be even more true if state courts are to assume a larger share of the caseload relative to the federal judicial system.

5. Provision should be made for a national discretionary fund to help support national institutions of the state court systems that cannot be adequately funded through state judicial budgets.

6. Further action should be taken to enunciate a federal policy for improvement of the nation's total justice system and plan for creation of an appropriate agency to direct and fund programs to implement that policy.

Specific Comments on Study Group Report

In light of these recommendations the Conference of Chief Justices has these comments on the general and specific recommendations of the Study Group:

General Policy Recommendations

1. We support the refocusing of the national research and development role with the understanding that this role, as it applies to the courts, not be limited to the criminal justice system but address the needs of each state's total justice system.

2. We support the shift to direct formula grants with the understanding that the judiciary receive approximately 30 percent of each state's allocation; that the judiciary's funds be administered at the state level, and that state courts themselves, rather than the Department of Justice, determine which programs best suit their individual needs.

3. We agree that there should be a "Federal government response to the problems of crime and the inefficient administration of justice." Federal funding under LEAA has been essential to the development of effective national institutions of the state judiciaries as well as major programs for improvement of individual state court systems. Funds for these programs would not have been provided by state or local legislative bodies which traditionally have kept the judiciary on limited budgets. Nor is their reason to believe that such funds will be made available in the future from state and local sources.

4. We agree that the two major strategic components of the federal role should involve (1) development of national priorities and program strategies and (2) the provision of financial assistance to state and local governments. But we believe these statements should be amended to recognize the unique position of the judicial branch in the criminal justice system, i.e., to recognize the courts as a separate branch of government and not a "component" of the criminal justice system. Implicit in this recognition would be other elements of the CCJ positions stated above, i.e., the need for involvement of non-federal organizations such as the National Center for State Courts in formulating and implementing national policy for improvement of the entire justice system; the need for allocating a specific percentage of funds to the judicial branch; and the need for state level direction of court program development and funding.

5. We concur in general with the Study Group's basic conclusions on the unwieldiness of present LEAA administrative procedures. However, we support state-wide planning for the judicial branch of government which, as noted above, differs significantly in its administrative and rule-making structure from executive branch criminal justice agencies. The problems encountered by the present executive branch state planning agencies develop principally out of factors involving differing state and local responsibilities for the criminal justice system and the separation of powers. These considerations either do not apply or do not apply with equal force in comprehensive planning for the

judicial branch alone which can and should plan for all judicial branch programs, not just those financed by federal funds.

Specific Recommendations

1. We approve Recommendation No. 1 as conditioned by the CCJ policy statements above, i.e., principally to ask that the refocused national research and development role recognize the needs of the total justice system, not just criminal justice, and that state court systems and their national organizations play a major role in initiating programs for the judicial branch.

2. We qualifiedly approve Recommendation No. 2 provided the demonstration programs for the judicial branch are not limited to those initiated or developed at the federal level which could amount to federally established priorities for the needs of individual states court systems. (We qualifiedly approve the Study Group's second general recommendation (page 14) on direct assistance to state and local governments provided, as previously indicated, that the assistance include an appropriate share for judicial systems, administered at the state level, and that national program models are not limited to those developed by the federal funding agency.)

3. We approve Recommendation No. 3 but with the understanding that federal financial assistance to the judicial branch not be limited to criminal justice programs but support improvement of the entire state court system.

4. We qualifiedly approve Recommendation No. 4 provided an equitable percentage of the funds is received by the state court systems.

5. We qualifiedly approve Recommendation No. 5 provided federal funding assistance, for reasons previously mentioned, is not limited to nationally developed programs or even to locally developed programs warranting national implementation. Many locally developed programs may not warrant national implementation but offer excellent solutions to local problems, since all states are not alike, nor even are all courts within a state alike and amenable to only national solutions.

6. We strongly approve Recommendation No. 6. The courts must have an identified or minimum level of support that adequately recognizes their needs, their key role in the state justice system, and the fact that they are generally inadequately funded by the states.

7. We approve Recommendation No. 7 with the understanding that the responsible judicial authorities provide coordination with the judicial branch and between the judicial branch and executive branch criminal justice agencies.

8. We qualifiedly approve Recommendation No. 8 because we perceive difficulties in arriving at an effective definition of what constitutes an "improvement" and how the provision is to be monitored or enforced. Such procedures could make this option satisfactory or undesirable. Certainly the judicial branch, rather than the general government, should be responsible for determining what constitutes an "improvement" in programs of the judicial branch.

ANNUAL MEETING - August 1977

RESOLUTION - I

BE IT RESOLVED that the Conference of Chief Justices approve the recommendations of the Committee of Federal-State Relations concerning the following principles:

(1) Every citizen should have access to our court system as the ultimate forum for the resolution of unavoidable disputes and the protector of his constitutional rights.

(2) The demand for access to our court systems in this country can be expected to increase significantly in the years ahead--a demand which will be implemented by plans for prepaid legal insurance and other methods of making legal services more generally available.

(3) Efforts to divert, where appropriate, the processes of dispute resolution from the federal and state court systems through devices such as arbitration are to be encouraged and accelerated, but such diversion is only a partial answer to the problem.

(4) Notwithstanding reasonable expectations of dispute diversion, it can be anticipated that our federal court system will continue to be overburdened unless increased recognition is given to the role of state courts.

(5) Our state court systems are able and willing to provide needed relief to the federal court system in

such areas as:

(A) Adequate review of state court criminal proceedings to assure that federally defined constitutional rights have been fully protected;

(B) Increased participation in the resolution of federal-question cases;

(C) The assumption of all or part of the diversity jurisdiction presently exercised by the federal courts.

(6) National funding to the states should include procedures and allocations to assure that the state court systems receive an equitable share of the funds without prejudice to the independence of the judiciary.

(7) Increased communication between congressional committees considering legislation affecting state courts and such entities as the Conference of Chief Justices will be useful.

ANNUAL MEETING - August 1978

RESOLUTION II

BE IT RESOLVED by the Conference of Chief Justices of the United States, at the 30th Annual Meeting held in Burlington, Vermont, on August 2 1978, that the following principles should be applied in any efforts to study, analyze, and achieve policies and mechanisms for federal funding of projects for the improvement of justice in the several States:

(1) The amount of federal funds to be allocated for improvement of state judicial systems should be fixed by the United States Congress itself.

(2) The Congress itself should specify the national-interest purposes and objectives for which the federal funds should be expended. These congressionally defined purposes and objectives should be sufficiently broad to permit each of the states to fund programs for judicial improvement suited specifically to the unique requirements of the particular state.

(3) An autonomous federal agency should be designated by the Congress to administer the programs, with significant representation from state court systems included.

(4) The federal funds appropriated for the improvement of the administration of state court systems should be allocated for this purpose in each of the states by that entity responsible under state law for the administration of the courts.

(5) The use of federal funds for the improvement of state judicial administration should not be directed exclusively at criminal justice or juvenile justice; should not be limited by the

requirement of matching funds; and should not be conditioned upon state agreements of assurances for future financial support. However, tight limitations upon expenditures for "administrative overhead" would be appropriate.

(6) The Congress should specify that some part of the funds appropriated for the improvement of state court systems should be used to support research, service, and education by an institution or institutions functioning nationally as a resource available to the courts of all of the states, for example, the NCSC. In this connection, careful consideration must be given to the desirability of separating policy decisions with respect to long-range research from the immediacies of action programs.

(7) Safeguards must be provided to assure that the national objectives justifying the use of federal funds for the improvement of state court systems will be achieved without loss of state responsibility for an authority over state courts.

ANNUAL MEETING - August 1978

RESOLUTION III

BE IT RESOLVED by the Conference of Chief Justices of the United States, at the 30th Annual Meeting held in Burlington, Vermont on the 2nd day of August 1978 as follows:

That a national task force, commissioned to study the relation between the Federal Government and the Governments of the several States in providing forums for dispute resolution, is needed; and

That such a task force should be authorized to study and analyze the problems of allocation of jurisdiction as between State and Federal Courts in order to avoid duplication and intrusion; and

That such task force should study and analyze methods by which federal funding of efforts to improve the administration of justice in the several States can be accomplished without sacrifice of the independence of State judicial systems; and

That the Conference of Chief Justices is ready and willing to cooperate in the development and implementation of such a task force; and

That the Executive Council of the Conference of Chief Justices is therefore authorized and directed to take such measures as may be necessary to bring about the creation of such a task force to carry out the research, study, and analysis heretofore outlined and to make recommendations for future action on the part of this Conference and other affected entities.

ANNUAL MEETING - August 1978

RESOLUTION IV

WHEREAS, the President and Attorney General of the United States have recommended to the Congress of the United States the enactment of legislation for restructuring the Law Enforcement Assistance Administration in an effort to achieve economy in administration without loss of the effective employment of federal funds in a national effort to control crime; and

WHEREAS, S. 3270 and its companion, H.R. 13397, have been submitted to the United States Congress for its consideration; and

WHEREAS, these bills embrace the principle that the improvement of state court systems, both civil and criminal, is a necessary part of the process of crime control; and

WHEREAS, the proposed legislation recognizes that the ultimate responsibility for the allocation of federal funds for the improvement of state court systems should be shared by that legal entity in each of the several States which is charged with the responsibility and supervision of such court systems;

WHEREAS, the proposed legislation as introduced would appear to limit to three years federal funding of basic costs of the national research and service organizations of the state courts, the National Center for State Courts, and thereby severely curtail the effectiveness of the Center and its court service role,

WHEREAS, Statewide unification and state assumption of funding are reforms central to improvement of state court systems;

WHEREAS, the long-term resolution of problems involving the availability of federal funds for the improvement of the administration of justice in the States required further study and analysis;

ANNUAL MEETING - August 1978

NOW THEREFORE, BE IT RESOLVED that the Conference of Chief Justices of the United States, at the Annual Meeting held in Burlington, Vermont on August 2, 1978, does, with the exceptions noted below, hereby endorse and approve those provisions of the proposed legislation which pertain to federal assistance of state court systems as an acceptable method of dealing with these problems until such time as permanent policies and mechanisms for federal assistance of state court systems are established.

EXCEPTION 1: The legislation should provide for continued federal funding of basic costs of the National Center for State Courts.

EXCEPTION 2: The legislation should not impede the desirable movement toward court unification and state funding by including provisions which might be construed to permit local units of government to expend funds for court programs which do not meet statewide priorities set by the highest court of each state or its designee.

Adopted at the Thirtieth Annual Meeting held in Burlington, Vermont, August 2, 1978.

MID-YEAR MEETING - February 1978

RESOLUTION 3

CITIZEN DISPUTE RESOLUTION ACT

WHEREAS, the Conference of Chief Justices recognizes the need for additional dispute resolution programs and resources if each citizen is to be provided a just remedy within the law for all legitimate grievances, and,

WHEREAS, the just resolution of many grievances can be accomplished through improved mediation and arbitration procedures; and,

WHEREAS, S.957 as amended (No. 1623) would create a national resource center and provide funds to assist courts, states, localities and non-governmental organizations in developing new mechanisms for the "effective, fair, inexpensive and expeditious resolutions of dispute."

NOW THEREFORE, BE IT RESOLVED that the Conference of Chief Justices endorses the principle of federally funded technical assistance and demonstration programs designed to improve dispute resolution mechanisms, but with the understanding that such federally financed programs recognize the constitutional responsibilities of the judicial branch of state government in the resolution of citizen disputes; and that federally financed programs, at the national, state and local levels, be conducted in keeping with the doctrines of separation of powers and state sovereignty.

ADOPTED in New Orleans on February 10, 1978.

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[illegible] 3

LEAA

WHEREAS, the Conference of Chief Justices is informed of proposed changes in federal legislation effecting the funding of programs for the improvement of state court systems,

BE IT RESOLVED, that the following principles should be respected in this process:

(1) State judicial systems are and should be a separate and co-equal branch of state government the independence and integrity of which must be preserved.

(2) The federal entity given responsibility for establishing policies relating to the funding of state court systems should include significant representation from such systems.

(3) The cohesion of criminal and civil proceedings in judicial systems and the necessity of state wide rather than local judicial policy formulation be recognized.

(4) National institutions serving state courts such as the National Center for State Courts must be assured of adequate financial support.

ADOPTED in New Orleans on February 10, 1978.

Conclusion

We believe the Study Group should give further consideration to the formulation of a federal policy on improvement of the total justice system and to the structuring of federal programs that can achieve national goals for the delivery of justice while being true to the constitutional principles of federalism and the separation of powers.

The preservation and the independence of state judicial systems are the imperatives which must undergird all joint efforts to deal with problems relating to the effective administration of justice and access to the courts.

Respectfully submitted,

C. William O'Neill, Ohio, Chairman
James Duke Cameron, Arizona, Vice-Chairman
Lawrence W. I'Anson, Virginia, Sr. Vice Chairman
Jay A. Rabinowitz, Alaska, Deputy Chairman
Ralph J. Erickstad, North Dakota
Harold R. Fatzer, Kansas
William H.D. Fones, Tennessee
Daniel L. Herrmann, Delaware
Charles S. House, Connecticut
Joe W. Sanders, Louisiana
Robert J. Sheran, Minnesota

ROBERT F. UTTER
CHIEF JUSTICE

The Supreme Court
State of Washington

TEMPLE OF JUSTICE
OLYMPIA, WASHINGTON
98504
(206) 753 5070

The Conference of Chief Justices and Conference of State Court Administrators Task Force for a State Justice System Improvement Act submits the following as its report to the Conference of Chief Justices. Starting in September, 1978, six meetings have been held to develop and refine the materials submitted. We were assisted by Professor Frank Remington and Mr. Ralph Kleps who are advisors to the Task Force, as well as authors of much of this material, Professor Maurice Rosenberg who has assisted the committee, and Mr. Harry Swegle and the staff of the National Center for State Courts.

Task Force members are: Chairman, Chief Justice Robert F. Utter; Chief Justice James Duke Cameron; Chief Justice William S. Richardson; Chief Judge Robert C. Murphy; Chief Justice Robert J. Sheran; Chief Justice Neville Patterson; Chief Justice John B. McManus, Jr.; Chief Justice Arno H. Denecke; Chief Justice Joe R. Greenhill; Chief Justice Albert W. Barney; Chief Justice Bruce F. Beilfuss; Mr. Walter J. Kane; Mr. Roy O. Gulley; Hon. Arthur J. Simpson, Jr.; Mr. William H. Adkins II; Mr. C. A. Carson III; Mr. John S. Clark.

REPORT TO THE CONFERENCE OF CHIEF JUSTICES

from the

TASK FORCE ON A STATE COURT IMPROVEMENT ACT

I.

Background of Report

The work of this Task Force derives from a resolution adopted by the Conference of Chief Justices at its August 1978 meeting. The committee's charge is 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.

The authorizing resolution also referred to the need for a study of the allocation of jurisdiction between state and federal courts, and it was accompanied by two other resolutions that commented on the basic principles that should guide Congress in any federal effort to improve the administration of justice in the states and on the then-pending legislation designed to

reorganize the Law Enforcement Assistance Administration.[1]

These resolutions, together with one adopted at the same time by the Conference of State Court Administrators,[2] reflect a long-standing concern of state court systems about federal judicial assistance programs, particularly as they are administered by the executive agencies of federal and state governments. That concern developed not only from the experience of other segments of society with the conditions and restrictions that accompany federal assistance, but from the history of the judicial assistance programs of the Law Enforcement Assistance Administration since 1968.[3] State courts were concerned, as well, with their ability to meet the expectation of all citizens that justice be available to everyone.

This report is designed to state the views of the Task Force on the fundamental issues involved, and it is submitted for the consideration of the Conference of Chief Justices and that of others concerned with state court systems. The report does not

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[1] See, Statement of Chief Justice James Duke Cameron, Chairman of the Conference of Chief Justices, before the Senate Judiciary Committee's Subcommittee on Criminal Laws and Procedure, August 23, 1978. (Attached as Exhibit 1 to this report.)

[2] Resolution attached as Exhibit 2.

[3] That history is summarized in Kleps, "Survey Report on Federalism and Assistance to State Courts - 1969 to 1978," U.S. Department of Justice, Office for Improvements in the Administration of Justice (1978); Haynes, "Judicial Planning: The Special Study Team Report Two Years Later," American University (1977); Haynes, Lawson, Lehner, Richards and Short, "Analysis of LEAA Block Grants," American University (1976); and Irving, Haynes and Pennington, "Report of Special Study Team," American Univ. (1975).

deal with the 1979 legislation that will be needed to reauthorize LEAA's operations. That assignment is the specific responsibility of the Conference's Committee on Federal-State Relations under the chairmanship of Chief Justice Robert J. Sheran of Minnesota, who is also a member of this Task Force. If any of the principles recommended in his report can be adapted by this committee for use in the 1979 reauthorization discussions affecting LEAA, that would be desirable but this Task Force report is intended to serve a far broader, long-range purpose. It is hoped that the report will lead to a "State Court Improvement Act of 1979" that will be introduced in the next Congress and will furnish a sound basis for the continuing relationships between the federal government and the state court systems.

The Task Force has held five meetings since the August resolutions of the Conference of Chief Justices, an organizing meeting in Minneapolis and work sessions in Denver, Chicago, Kansas City, and Washington, D.C. Its work has been supported by a generous grant from West Publishing Company, by donated time from knowledgeable experts in the field and by staff assistance from the National Center for State Courts.[4] Chief Justice James Duke Cameron of Arizona, the Chairman of the Conference, has served as a member of the committee and has testified concerning its work before a

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[4] West Publishing Company made a grant of $20,000 in aid of the Task Force's work. Time was volunteered in an advisory capacity by Professor Frank J. Remington of the University of Wisconsin Law School and by Ralph N. Kleps, Counselor on Law and Court Management (former Administrative Director of the California Courts).

subcommittee of the U.S. Senate's Judiciary Committee. Finally, discussions have been had with congressional committee staff concerning the history and background of Congress' prior considerations of the issues involved in this report.

II.

The Federal Interest in the Quality of Justice in the State Courts.

The federal government, and the Congress in particular, has a very direct interest in the quality of justice in state courts. This is because:

(1) There is at least as much federal interest in the quality of justice as there is, for example, in the quality of health care and in the quality of the educational system. Indeed, the achievement of fair and equal as well as effective justice has always been thought of as an essential characteristic of American society. Whether a high quality of justice is made available to the American people depends largely upon the state courts which handle over 96 percent of the cases filed in any given year in this country.[5]

(2) A high degree of coordination is needed between federal and state courts in the administration of justice because state courts share with federal courts, under the Constitution,

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[5] A memorandum from Nora Blair of the National Center for State Courts to Francis J. Taillefer, Project Director, and National Courts Statistics Project (dated April 16, 1979 on file at National Center for State Courts) indicates that 98.8 percent of current cases are handled in state courts. See also Sheran and Isaacman, State Cases Belong in State Courts, 12 Creighton L. Rev. 1 (1978); and Meador, The Federal Government and the State Courts, Robert H. Jackson Lecture, National College of the State Judiciary (Oct. 14, 1977): "Our system is still structured on the basic premise that the state courts are the primary forums for deciding the controversies which arise in the great mass of day-to-day dealings among citizens."

the obligation to enforce the Constitution of the United States and the laws made in pursuance thereof.

(3) The achievement of important congressional policy objectives is dependent, to a significant extent, upon the ability of state courts to effectively implement the legislation enacted by the Congress. An increasing amount of regulatory legislation, such as the 55-mile-an-hour speed limit, is left to state administrative and judicial implementation.

(4) The effort to maintain high quality justice in the federal courts has led to an increasing effort to limit the case load of the federal courts by giving increased responsibility to the state courts.

(5) The congressional desire to achieve prompt justice in the federal courts through the implementation of the Speedy Trial Act of 1974 has resulted in a reduction of the number of criminal and civil cases disposed of in federal court, with a consequent increased criminal and civil case load in the state courts.

(6) The decisions of the United States Supreme Court very greatly increased the procedural due process protections which must be afforded in both criminal and civil cases, thus making it increasingly important that state judiciaries are equipped to implement those decisions if the important United States constitutional interests are to be achieved.

(1) The Quality of Justice in the Nation is Largely Determined by the Quality of Justice in State Courts.

The federal government has an interest in the quality of justice rendered not only by the federal judiciary, but also by

the state judiciary. In applying the fourteenth amendment of the United States Constitution to the states, the objective has been to preserve those principles "of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."[6] Certainly the quality of "justice" concerns the federal government at least as much as does the quality of education and the quality of health care, both of which have received very substantial financial support from the federal government.[7] State educational systems have received support for special programs and in the form of block grants (revenue sharing).[8] State health

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[6] From the opinion of Mr. Justice Cardozo in Palko v. Connecticut, 320 U.S. 319, 58 S. Ct. 149 (1937). 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. See Meachum v. Fano, 427 U.S. 215 (1976); Montagne v. Haymes, 427 U.S. 236 (1976). Thus the "liberty" which Americans cherish so much is increasingly dependent upon the states, especially the state courts.

[7] See Kastenmeier and Remington, Court Reform and Access to Justice--A Legislative Perspective (to be published in the Harvard Journal on Legislation in June, 1979) in which it is asserted: "The overall federal interest in fair and equal justice at the State level is analogous to Federal interest in quality health care at the State level."

[8] There is very substantial federal contribution to the cost of education. For an illustration of the federal interest, see 20 U.S.C. § 1221e creating the National Institute of Education:

> (a)(1) The Congress hereby declares it to be the policy of the United States to provide to every person an equal opportunity to receive an education of high quality regardless of his race, color, religion, sex, national origin, or social class. Although the American educational system has pursued this objective, it has

care systems have received massive federal support for research (National Institutes of Health, Communicable Diseases Center) and for building or improving local hospitals and other facilities.[9]

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not yet attained that objective. Inequalities of opportunity to receive high quality education remain pronounced. To achieve quality will require far more dependable knowledge about the processes of learning and education than now exists or can be expected from present research and experimentation in this field. While the direction of the education system remains primarily the responsibility of State and local governments, the Federal Government has a clear responsibility to provide leadership in the conduct and support of scientific inquiry into the educational process.

See also 34 U.S.C. § 1501 and 20 U.S.C. § 351:

§ 1501.

The Congress hereby affirms that library and information services adequate to meet the needs of the people of the United States are essential to achieve national goals and to utilize most effectively the Nation's educational resources and that the Federal Government will cooperate with State and local governments and public and private agencies in assuring optimum provision of such services.

§ 351. Declaration of policy

(a) It is the purpose of this chapter to assist the States in the extension and improvement of public library services in areas of the States which are without such services or in which such services are inadequate, and with public library construction, and in the improvement of such other State library services as library services for physically handicapped, institutionalized, and disadvantaged persons, in strengthening State library administrative agencies, and in promoting interlibrary cooperation among all types of libraries.

(b) Nothing in this chapter shall be construed to interfere with State and local initiative and responsibility in the conduct of library services. The administration of libraries, the selection of personnel and library books and materials, and, insofar as consistent with the purposes of this chapter, the determination of the best uses of the funds provided under this chapter shall be reserved to the States and their local subdivisions.

[9] There is, for example, substantial federal contribution to heart and lung research, dental research, child health, arthritis research, eye research, mental health, aging, and cancer research. See generally title 42 of the United States Code.

The fact that the courts in this country are set up as two separate systems--state and federal--does not mean that federal interest is lacking in the quality of justice delivered by state courts, any more than local control of medicine and education indicates a lack of federal interest in their quality. The United States Constitution does not require that there be any federal courts other than the Supreme Court. This reflects a belief by the framers of the Constitution that state courts could adequately handle all cases, whether the issues were of primary concern to the states or to the federal government.[10]

Federal financial contribution (even though modest in comparison with the basic financial support given state courts by state legislatures) can provide a "margin of excellence" and thus improve significantly the quality of justice received by citizens who are affected by state courts.[11]

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[10] 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."

[11] See memorandum from Harry Swegle to the Task Force on State-Federal Relations (October 4, 1978; copy on file at National Center for State Courts) at 12-13: "The Task Force concept of legislative objectives could be contained in perhaps six to ten statements on the principal needs of state courts. Whatever the substantive content of these statements, they should reflect:

"primary emphasis on the ends of justice (many current reforms are viewed as ends, when they are, in fact, means);

"preservation of the continuing efforts to strengthen the internal operations of courts;

"more flexibility and innovation in handling the various types of disputes which comprise the business of courts;

(2) State Courts Share the General Responsibility of Enforcing the Requirements of the United States Constitution and Laws of the United States Made in Pursuance Thereof.

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.[12]

The supremacy clause requires a state judge 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

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"an increased emphasis on programs which make courts more responsive to the citizenry."

See Yankelovich, Skelly, and White, "The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers, and Community Leaders," reprinted in State Courts: Blueprint for the Future 5-69 (1978), in which it is said that efficiency in courts is equal, in the public view, to the problem of pollution and the ability of schools to provide a good education and that two-thirds of the public is willing to commit tax dollars to improvement. See also address of Warren E. Burger to the Second National Conference on the Judiciary (March 19, 1978) Williamsburg, Virginia, reprinted in State Courts: Blueprint for the Future 284 (1978), in which the Chief Justice asserts that state courts are closer to the people and can be more innovative than federal courts can be. See also Kastenmeier and Remington, supra, n.7, urging "creation of a national program of assistance to state courts, possibly along the lines of an independent legal services corporation."

[12] United States Constitution Art. VI. See H. Friendly, Federal Jurisdiction: A General View 90-(1973): "[W]e also have state courts, whose judges, like those of the federal courts, must take an oath to support the Constitution and were intended to play an important role."

state law. As a result, the federal government has an interest in ensuring that state judges are able adequately to apply the United States Constitution and congressional enactments when called on to do so.

Except in habeas corpus cases,[13] lower federal courts do not generally have the power to review the actions of state courts. The only way to review a state court's decision involving a pre-emption question or involving a federal constitutionality question

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[13] 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." 28 U.S.C. § 2254. However, the Supreme Court has limited review in Fourth Amendment (search and seizure) cases to the question of whether the state court gave the defendant an opportunity for a full and fair hearing on the constitutional issue. Stone v. Powell, 428 U.S. 465 (1976). In such a situation, the federal court is not permitted to look into the question of whether the state court reached the correct result, and the only possible review of the result is by the United States Supreme Court.

Stone v. Powell may represent a judicial trend in the Supreme Court toward restriction of the inquiry in all habeas corpus cases to the sufficiency of process rather than to the correctness of the result reached by a state court. Even if the Supreme Court does not move further in this direction, Congress might. The Department of Justice has drafted and may present to Congress a proposal for reform of habeas corpus: "By replacing the traditional habeas corpus remedy and focusing federal review on the adequacy of the state hearing rather than correction of the state's determination, this proposal would increase the respect accorded state courts, ease the tension between sovereignties generated by current practice, reintroduce the notion of finality into criminal litigation and avoid the duplicative expenditure of resources which characterize the present system." Memorandum on "Federal Court Review of State Court Convictions and Sentences," dated December 7, 1978, United States Department of Justice, Office for Improvements in the Administration of Justice.

If this trend does continue, whether by judicial or congressional action, it will mean that the federal government will be as dependent on state courts to decide constitutional questions in criminal cases as it already is in civil cases. [See discussion in text.]

is by appeal or certiorari to the United States Supreme Court.[14] If certiorari is denied, as it is in the vast majority of cases, there is no federal review. And review by appeal is in practice very little different from certiorari.[15] Thus, in the vast majority of civil cases decided by state courts involving a federal constitutional question or one of federal preemption, there is no meaningful review by any federal court, and the federal government is therefore completely dependent upon state judges to implement fundamental federal policies.[16]

State courts have an obligation to apply federal law in situations which do not involve state law at all. This is true with respect to congressional legislation whenever there is concurrent

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[14] 28 U.S.C. § 1257 allows appeal to the Supreme Court if a state court upholds a state statute under constitutional challenge. If the state court invalidates a state statute on federal constitutional grounds, on the other hand, review by the Supreme Court is discretionary (by writ of certiorari).

[15] See Comment, "The Precedential Effect of Summary Affirmances and Dismissals for Want of a Substantial Federal Question by the Supreme Court after Hicks v. Miranda and Mandel v. Bradley," 64 Va. L. Rev. 117 (1978).

[16] In a preemption or constitutionality case, a federal court would have jurisdiction to decide the narrow question of whether the state statute was valid if there was over $10,000 in controversy or if the statute dealt with commerce or some other subject for which the $10,000 minimum does not apply. 28 U.S.C. §§ 1337, et seq. The federal court would probably be able to issue only a declaratory judgment, not an injunction. 28 U.S.C. § 1341 and § 2283 (Anti-Injunction Statute). Furthermore, in criminal and "quasi-criminal" cases, a federal court is required to abstain from taking jurisdiction if a state case is pending. Younger v. Harris, 401 U.S. 37 (1971); Huffman v. Pursue, Ltd., 420 U.S. 592 (1975). The dissenters in the latter case felt that the decision was "obviously only the first step toward extending to state civil proceedings generally the holdings of Younger v. Harris. . . ." 420 U.S. at 613. In any case, even a declaratory judgment cannot be considered a "review" of a state court decision.

state and federal jurisdiction:

> [I]f exclusive jurisdiction be neither express nor implied, the state courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it.

Claflin v. Houseman, 93 U.S. 130, 136 (1876).

There are some categories of federal legislation as to which there is exclusive federal jurisdiction.[18] These include bankruptcy,[19] patent and copyright cases, federal criminal cases,[20] Securities

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[17] That state courts could decide strictly federal cases was decided in 1876 in Claflin v. Houseman, 93 U.S. 130 (1876). In two later cases, the Supreme Court held that state courts have an obligation to decide such cases, even if the federal statute is "penal." Mondou v. New York, N.H. & H.R.R., 223 U.S. 1 (1912); Testa v. Katt, 330 U.S. 386 (1947). However, the Court left open the question of whether the state had an obligation to take jurisdiction where the federal policy expressed in the statute was in conflict with state policy:

> It is conceded that this same type of claim arising under Rhode Island law would be enforced by that State's courts. . . . Thus the Rhode Island courts have jurisdiction adequate and appropriate under established local law to adjudicate this action. Under these circumstances the State courts are not free to refuse enforcement of petitioners' claim.
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> 330 U.S. at 394.

And a state court may be relieved of this obligation if its state legislature withdraws jurisdiction from it for a class of cases which includes federal cases, as long as the jurisdictional statute does not discriminate against federal causes of action or against non-citizens of the state. Douglas v. New York, N.H. & H.R.R., 279 U.S. 377 (1929).

[18] See Redish and Muench, Adjudication of Federal Causes of Action in State Court, 75 Mich. L. Rev. 311 (1976); Wright, Law of Federal Courts 26 (1976).

[19] Even in patent cases, there can be an involvement of a state court. If the purported holder of a patent brings an action for the agreed upon price under a contractual agreement and the defendant raises the defense of the invalidity of the patent, the issue must be decided by the state court judge.

[20] But the federal criminal justice system has increasingly left to states the burden of litigation in areas where there is concurrent jurisdiction. Twenty years ago all interstate transportation of stolen automobile cases were prosecuted by the federal government. Today, with rare exceptions, the federal prosecuting officials refuse to bring prosecutions under the Dyer Act, preferring to leave the responsibility in the hands of the states.

Exchange Act and Natural Gas Act cases,[21] and antitrust cases.[22]

A committee of the House of Representatives has recommended that federal courts concentrate on:

> Adjudicating disputes in traditional federal subject matter areas such as copyright, patent, trademarks, commerce, bankruptcy, antitrust and admiralty; rendering speedy criminal justice for those accused of crimes; protecting the basic civil and constitutional liberties of all citizens; and resolving vital and often recently identified rights (and sometimes rights not yet identified by the legislative branch) which relate to welfare, occupational safety, the environment, consumerism, and privacy.[23]

Even in situations where federal courts have traditionally been thought to have exclusive jurisdiction, there are efforts to shift part of the burden of litigation to the state courts, either directly or indirectly.[24]

With respect to most congressional enactments, federal and state courts have concurrent jurisdiction.[25] As a consequence, the

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[21] But see 42 U.S.C. § 3739, Pub. L. 94-503, Title I, § 116 (Oct. 15, 1976), appropriating 10 million dollars annually for distribution to state attorneys general "to improve the antitrust capabilities of such state." 42 U.S.C. § 3739(a). Of the $10,000,000 for prosecution, only $76,000 has been allocated for purposes of assisting the judiciary in adjudication as compared with the balance appropriated for improvement of prosecution. The growth of state antitrust litigation has been substantial. The apparent federal policy is to enable the Department of Justice to concentrate on major mergers or consolidations and leave to the states matters such as a claimed price fixing practice by a group such as real estate agents.

[22] 28 U.S.C. § 1334 (bankruptcy), 28 U.S.C. § 1338 (patent and copyright), 18 U.S.C. § 3231 (criminal cases).

[23] H.R. Rep. No. 893, 95th Cong. 2d Sess. (1978).

[24] See notes 16 through 18, supra.

[25] See Hart and Wechsler, The Federal Courts and the Federal System 434-438 (2d ed. 1973).

plaintiff's decision of whether to bring a case in state or federal court is probably based on factors such as the perceived "liberal" or "conservative" tendency of particular state or federal judges, the location of the two courts, the amount of delay in each of the two courts,[26] and the relative cost of federal or state litigation.

If a case is brought in state court and the time limit for removal of a concurrent jurisdiction case to federal court has passed, a state court is as free from supervision or interference by the federal courts in a concurrent jurisdiction case as in the supremacy clause cases already discussed. In other words, the only review is by appeal or certiorari to the Supreme Court. Even the guidance of a federal court declaratory judgment is not available in this situation. Thus many cases which involve rights under

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[26] See Note, Exclusive Jurisdiction of the Federal Courts in Private Civil Actions, 70 Harv. L. Rev. 509, 517 (1957): "[E]ven though concurrent jurisdiction enables the plaintiff to choose the court with the least crowded calendar, there tends to be no significant difference in the extent of congestion between federal and state courts in most areas." Although that may have been true in 1957, today most federal district courts have a much longer delay than does the state court which has concurrent jurisdiction.

There is an important question also of the relative cost of litigation in federal and state courts. This is an issue now being studied by the United States Department of Justice. In 1957 it could be said that "expense will probably be roughly equivalent in federal and state courts." 70 Harv. L. Rev. 509, 517 (1957).

See Aldisert, Judicial Expansion of Federal Jurisdiction: A Federal Judge's Thoughts on Section 1983, Comity and the Federal Caseload, 1973 Law and Social Order 557, in which Judge Aldisert attributes preference for federal courts to the influence of academics and the media, both of which have assumed that the federal judiciary is superior to the state judiciary, a conclusion which Aldisert asserts not to be the case. In any event there seems in the year 1979 to be a definite trend toward state litigation as preferable to litigation in federal court.

federal law are decided by state courts with no guidance or review by any federal court. The federal government has, therefore, an interest in having these cases decided by state judges who are familiar with the law they are applying in such cases and able to apply it correctly.

(3) In the Federal-State Partnership in the Delivery of Justice, the Participation of the State Courts Has Been Increased by Recently Enacted Congressional Legislation.

Congress frequently imposes conditions on federal spending as an inducement for states to pass legislation or to adopt administrative rules which will further congressional policy objectives. An early example was a federal credit of 90 percent on an employer's federal unemployment tax if the state created and the employer used a federally approved unemployment insurance plan.[27] Also, under the Clean Air Act:

> Within nine months after the federal standards were promulgated, each state was required to submit a State Implementation Plan to the agency. The administrator then had four months to approve or disapprove each state plan according to eight criteria set forth in the Act. . . . If a state's plan was

[27] See Steward Machine Co. v. Davis, 301 U.S. 548 (1937). Recently, Congress changed the requirements for approval of an unemployment insurance plan. Now state and local public employees must be covered. By using the spending power instead of the commerce power to achieve this goal, Congress has apparently sidestepped the rule of National League of Cities v. Usery, 426 U.S. 833 (1976). See "Federal Conditions and Federalism Concerns: Constitutionality of the Unemployment Compensation Amendments of 1976," 58 Boston U. L. Rev. 275 (1978).

> found to be in some respect deficient, the administrator had two more months in which to promulgate regulations for that state.[28]

Thus, any clean air legislation passed by the states is undoubtedly heavily influenced by the federal criteria; and litigation arising from state clean air legislation, while not "federal question" litigation, clearly implicates important federal concerns. These cases will be primarily decided by state courts.

There are many other examples of federally induced state legislation: the 55 m.p.h. speed limit (induced by a condition on the spending of highway money),[29] eligibility standards for aid to families with dependent children (AFDC or welfare), nuclear power plant siting, and school lunch programs.[30] In fact, virtually every federal aid program is subject to some condition, and the condition frequently is that a state pass and enforce legislation or regulations of a type prescribed by Congress or by a federal administrative

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[28] 42 U.S.C. §§ 1857-1858a (1970). Comment, "The Clean Air Act: 'Taking a Stick to the States,'" 25 Cleve. State L. Rev. 371, 374 (1976)

[29] The federal interest in the enforcement of the 55 mile per hour speed limit reflects an increasing concern with the national energy problem. To increase the effectiveness of the enforcement program, the federal government has made substantial grants to state enforcement agencies. Inevitably these lead to increased burdens on the state judicial system, but no appropriations are made to cover these costs or to increase the capacity of the state judiciary to implement the federal policy objective.

[30] See Lupu, "Welfare and Federalism: AFDC Eligibility Policies and the Scope of State Discretion," 57 Boston U. L. Rev. 1 (1977); "Nuclear Power Plant Siting: Additional Reductions in State Authority?" 28 Gertrude Brick L. Rev. 439 (1975); "The National School Lunch Act: Statutory Difficulties and the Need for Mandatory Gradual Expansion of State Programs," 125 U. Pa. L. Rev. 415 (1976).

agency. Some litigation usually follows, and state courts thus become involved in the achievement of the federal policy which is involved.

A federal aid program which has a very direct impact on state courts is the AFDC program, which requires the states to determine the paternity of any child on welfare, usually through paternity litigation, and to attempt to make the father pay support, usually by a state contempt of court action or a criminal nonsupport prosecution. The failure to do so results in a loss by the state of federal AFDC money.[31]

(4) The Maintenance of a High Quality of Justice in Federal Courts Has Led to Increasing Efforts to Divert Cases to State Courts.

The high quality of the federal court system must be preserved. It has been long evident that this can be done only by giving state courts major responsibility for the enforcement of a great deal of the federal constitutional, statutory, and administrative law. In 1928 Frankfurter and Landis urged:

> Liquor violations, illicit dealings in narcotics, thefts of interstate freight and automobiles, schemes to defraud essentially local in their operation but involving a minor use of the mails, these and like offenses have brought to the federal courts a volume of business which, to no small degree, endanger their capacity to dispose of distinctively federal litigation and to maintain the quality which has heretofore characterized the United States courts. The burden of vindicating the interests behind this body of recent

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[31] Rinn and Schulman, "Child Support and the New Federal Legislation," Journal of the Kansas Bar Association 105 (Summer 1977).

> litigation should, on the whole, be assumed by the states. At the least, the expedient of entrusting state courts with the enforcement of federal laws of this nature, like state enforcement of the Federal Employers' Liability Act, deserves to be thoroughly canvassed.[32]

More recently, a report on "The Needs of the Federal Courts" said

> The federal courts, however, now face a crisis of overload, a crisis so serious that it threatens the capacity of the federal system to function as it should. This is not a crisis for the courts alone. It is a crisis for litigants who seek justice, for claims of human rights, for the rule of law, and it is therefore a crisis for the nation.[33]

In his address to the 1979 midwinter meeting of the Conference of State Court Chief Justices, Attorney General Bell said that he has instructed United States Attorneys to meet with state prosecutors to see if states will assume additional responsibility for the prosecution of some criminal conduct now prosecuted in federal court. The Attorney General used as an illustration bank robbery, which he urged be handled by the states as they now do other robberies, thus making it possible for the United States Department of Justice to concentrate on matters such as large-scale white-collar crime which, according to the Attorney General, ought to be given high priority by the federal government. The Attorney General

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[32] Frankfurter and Landis, The Business of the Supreme Court 293 (1928). See also The Needs of the Federal Courts, Report of the Department of Justice Committee on Revision of the Federal Judicial System (January, 1977) at 7: "Moreover, a powerful judiciary, as Justice Felix Frankfurter once observed, is necessarily a small judiciary." See also Hearings on the State of the Judiciary and Access to Justice before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary, 95th Cong., 1st Sess. (1977), statement of Judge Shirley Hufstedler at p. 149.

[33] The Needs of the Federal Courts, supra, n.32.

added that he believed it appropriate for the federal government to share the increased financial burden which will be imposed on the states as a result of this latest policy by the Department of Justice.

In Stone v. Powell,[34] the Supreme Court of the United States decided that Fourth Amendment issues cannot be raised by federal habeas corpus if the individual involved has had a full and fair hearing in state court. With respect to the resulting increased state court responsibility, Judge Carl McGowan has recently said:

> The recent judicially created limitations on the circumstances in which that remedy (habeas corpus) may be invoked contemplates that, with few exceptions, state courts are willing and able to afford full protection for these federal rights. . . . To some degree, these developments may contain a self-justifying element: to the extent that they create incentives in the improvement of quality of state court processes of decision, the need for federal supervision should decrease.[35]

Thus the federal government has now more than ever an interest in ensuring that state courts are able to apply the Fourth Amendment in a way which constitutes a "full and fair hearing" and thus avoids the necessity of relitigating the Fourth Amendment question in the federal courts.[36]

There are other illustrations of the trend toward greater reliance on state courts.

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[34] 428 U.S. 465 (1976).

[35] McGowan, "Federal Jurisdiction: Legislative and Judicial Change," 28 Case Western Reserve L. Rev. 517, 537 (1978).

[36] See also Younger v. Harris, 401 U.S. 37 (1971); Huffman v. Pursue, Ltd., 420 U.S. 592 (1975), limiting the authority of the federal courts to intervene in pending criminal or civil cases in state courts.

One illustration is Gertz v. Robert Welch, Inc.,[37] a defamation case which is said to "shift the focal point of one aspect of this struggle (between the law of defamation and the first amendment) from the federal to the state courts."[38]

Also illustrative are Meachum and Montagne,[39] holding that the protections afforded by the federal due process clause are often available only if there is a liberty interest involved which has been created by state law.

During the last session of the Congress, a bill passed the House of Representatives which would require an exhaustion of state administrative remedies before bringing a civil rights action under 42 U.S.C. § 1983 raising a conditions-of-confinement issue. The bill, which has again been approved by the House Judiciary Committee in the current session of the Congress,[40] is designed to give major responsibility to the states to dispose of a maximum number of issues rather than relying, initially at least, on the federal courts.[41]

Federal jurisdiction in civil diversity cases, probably the most important type of concurrent jurisdiction case, has been severely criticized and may be abolished or limited in the near future,

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[37] 418 U.S. 323 (1974).

[38] Collins and Drushal, "The Reaction of the State Courts to Gertz v. Robert Welch, Inc.," 28 Case Western Reserve L. Rev. 306, 343 (1978).

[39] Meachum v. Fano, 427 U.S. 215 (1976); Montagne v. Haymes, 427 U.S. 236 (1976).

[40] H.R. 10, approved by a Judiciary Committee vote of 26 to 2 in March, 1979.

[41] See The Needs of the Federal Courts, supra, n.29 at 15-16.

leaving these cases to the state courts.[42]

In some instances the trend toward greater reliance upon state courts reflects a judgment that the responsibility is properly one for state courts because the interests involved are state rather than federal in nature. This is true of the effort to eliminate federal diversity jurisdiction.[43] In other situations, however, the issues have heretofore been thought of as federal in nature. This is true, for example, of questions of the meaning of the fourth amendment to the United States Constitution and also of the meaning of the "liberty" protected by the federal due process clause. The consequence is a greatly increased federal interest in the quality and quantity of the work of the state courts as a consequence of the increased responsibility of state courts to safeguard fundamental constitutional rights and liberties of the citizens of this country.

(5) The Federal Speedy Trial Act Has Diverted Criminal and Civil Cases to State Courts.

The total impact of the new federal Speedy Trial Act[44] will

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[42] See The Needs of the Federal Courts, supra, n.29 at 13-15. A bill to abolish diversity jurisdiction passed the House but failed in the Senate during the past session. It is almost certain that the same proposal will be reintroduced in both the House and Senate during the current session. See Statement of Robert J. Sheran, Chief Justice of the Supreme Court of Minnesota, Before the Subcommittee on Courts, Civil Liberties and the Administration of Justice on Diversity Jurisdiction and Related Problems (March 1, 1969). See also Sheran and Isaacman, "State Cases Belong in State Courts," 12 Creighton L. Rev. 1 (1978).

[43] See Sheran and Isaacman, "State Cases Belong in State Courts," 12 Creighton L. Rev. 1 (1978).

[44] 18 U.S.C. 3161 et seq.

not be known until it is fully implemented on July 1, 1979. However, already reliable indications are that the existence of the Speedy Trial Act will contribute to the trend toward greater reliance on the state courts for the adjudication of criminal cases and also, in all likelihood, civil cases.

With respect to criminal cases, the number filed in federal courts has decreased since the passage of the Speedy Trial Act.[45] Whether this results from the Speedy Trial Act or from a change in prosecution policy is less clear. Both the Attorney General of the United States and the Director of the Federal Bureau of Investigation have indicated a purpose to concentrate on white collar crime, interstate crime, organized crime, and domestic surveillance of foreign activities, leaving the prosecution of crimes such as bank robbery to the states.[46]

The Attorney General has stated that he believes that the Speedy Trial Act will jeopardize 5,000 pending criminal cases when the act goes into effect on July 1, 1979. To the extent that this is accurate, it will inevitably put additional pressure on federal

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[45] See Report, Speedy Trial Act of 1974 (Administrative Office, U.S. Courts, September 30, 1978).

[46] See Report to the Congress, Comptroller General of the U.S., U.S. Attorneys Do Not Prosecute Many Suspected Violators of Federal Laws (February 27, 1978). The report indicates that 7 of 11 complaints are declined for prosecution and of the declinations 28% which could have been prosecuted federally are referred to the states for prosecution or to a federal agency for administrative action. (See p. 7.) As an illustration of the change in federal priorities, there were 4,888 federal Dyer Act prosecutions in 1967 and only 1,591 in 1975, a reduction of 67.5%. (See p. 15.)

prosecutors to rely increasingly upon state prosecution in order to alleviate the pressure on the federal prosecution and judicial systems.

The effort to comply with the requirements of the Speedy Trial Act also results in an inability of federal courts to give prompt attention to pending civil cases. In some federal districts, all of the time of all of the judges has been devoted to reducing the backlog of criminal cases. This will inevitably produce an incentive to bring the civil cases in state rather than federal court. A member of the Florida Supreme Court, in an address to the midwinter Conference of State Court Chief Justices, said that the backlog in the federal district courts in Florida has resulted in all federal wage and hour litigation being brought in the Florida state courts.

(6) An Increased Responsibility Has Been Placed on State Court Procedures by the United States Supreme Court.

During the past several decades, decisions of the United States Supreme Court have greatly increased the procedural due process protections guaranteed to citizens in criminal,[47] civil,[48]

[47] The impact of federal procedural due process requirements on state criminal procedures has been very substantial. For example, the requirements for taking a valid guilty plea have increased greatly, making it important that state courts develop adequate guilty plea procedures and that state court judges be better informed than formerly was necessary with respect to the procedural requirements for taking a valid guilty plea.

[48] There are increased procedural requirements in the field of civil litigation. For example, in Fuentes v. Florida, 407 U.S. 67 (1972), the Court held that where state law creates a property interest the citizen cannot be deprived of that property interest without notice, a hearing, and the other procedural safeguards of the federal due process clause. And in Goldberg v. Kelly, 397 U.S. 254 (1970), the Court held that state welfare benefits cannot be cancelled without a hearing and other protections afforded by federal due process.

juvenile,[49] and mental health[50] proceedings. The consequence has been to increase the procedural complexity of state court litigation requiring the development of new, more adequate, and more efficient procedures and requiring also a much more intensive program of continuing education for members of the state court judiciary.[51]

Indicative of the tremendous impact of decisions of the Supreme Court is the following statement of Mr. Justice Brennan:

> 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

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[49] The leading such case in the juvenile field is In re Gault, 387 U.S. 1 (1967).

[50] Illustrative is Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972); remand 379 F. Supp. 1376 (E.D. Wis. 1974); remand 413 F. Supp. 1318 (E.D. Wis. 1976). The Lessard case held that the State of Wisconsin must, in order to civilly commit a person as mentally ill: give notice of the factual basis for commitment; hold a hearing within forty-eight hours of initial detention and a later full commitment hearing; base commitment on a finding, beyond a reasonable doubt, of danger to self or others; afford counsel, the privilege against self-incrimination, and other procedural safeguards required in criminal proceedings. As a result, there is increased need for carefully worked out state commitment procedures and improved judicial education to ensure adequate implementation of the new, more complex procedures.

[51] Some of these have been mandated within the past several years by the highest courts of the state. See, e.g., Vermont Rules of Criminal Procedure. See also the registration statistics for the National Judicial College and other such organizations.

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. . . .

Every believer in our concept of federalism, and I am a devout believer, must salute this development in our state courts. . . .

. . . [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.[52]

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[52] Brennen, "State Constitutions and the Protection of Individual Rights," 90 Harv. L. Rev. 489, 490-91, 502-03 (1977).

III.

Fundamental Principles in Designing Federal Support for State Judicial Systems

The development of federal financial support for state court systems is a phenomenon of the past decade. The origin of the concept that federal funding should be provided to aid state courts can be traced to the 1967 Report of the President's Commission on Law Enforcement and Administration of Justice.[53] In that report, it will be noted, the overwhelming emphasis is on the nation's crime problem and on the inability of the states to discharge their obligations to society in a field that the report conceded to be local in nature. Although the Commission envisioned a federal support program for the states "on which several hundred million dollars annually could be profitably spent over the next decade," the only specific court programs that were highlighted dealt with the education and training of judges, court administrators and other support personnel. The basic recommendations affecting court systems dealt with the need for the states themselves to reorganize their judicial systems and to upgrade their procedures.[54]

The 1967 Report's primary emphasis on federal assistance to the states was in the areas of law enforcement and corrections,

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[53] "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).

[54] Id., pp. 284-286, 296-297.

and the administration of the program was therefore to be placed in the United States Department of Justice. It is worth noting in this regard that the Federal courts had long since extricated themselves from the administrative services of the Department of Justice on the principle that the independence of the federal judicial system demanded it.[55] This emphasis on police and correctional problems was carried over into the congressional deliberations that resulted in the 1968 Omnibus Crime Control and Safe Streets Act, the statute under which the Law Enforcement Assistance Administration (LEAA) has provided some $6.6 billion in assistance to the states over the period from 1969 to 1978.[56] Court programs were not specifically provided for in the original LEAA enactment at all, despite the obvious fact that courts play an essential role in the operation of any criminal justice system.

[55] Chandler, H. P., "Some Major Advances in the Federal Judicial System, 1922 - 1947," 31 Federal Rules Decisions 307, 517. The principle of judicial independence was a cornerstone for the 1939 act creating the Administrative Office of the U.S. Courts.

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

By administrative interpretation, and later by congressional enactment, the role of state courts was finally recognized in the program of federal support for improved administration of criminal justice in the states. Judicial programs have remained a minor part of the federal effort, however, and the figure generally agreed upon is that about 5 percent of the LEAA funds have been used for the improvement of state court systems.[57] Notwithstanding the limited nature of federal financial assistance to state courts over the decade, this LEAA experience has been characterized as a "most radical and novel development" that raises fundamental issues concerning the on-going relationship between the federal and state governments insofar as the nation's judicial systems are concerned.[58] Those issues include: The effect of federal funding on the independence of state judiciaries; the possibility of federal restrictions, conditions and standards being applied to state courts; the designing of acceptable means for providing funds to national organizations that support state judicial systems; and the problems arising out of a bureaucratic federal administration of the program through the U. S. Department of Justice.

Given the persuasive reasons that have been stated for

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[57] This figure is limited to court programs specifically, excluding programs designed for prosecutors, defenders and general law reform. See, Haynes, et al., supra note 3 at pp. 20-26; Kleps, supra note 3 at p. 4 and at pp. 88-89.

[58] Meador, "Are we Heading for a Merger of Federal and State Courts," Judges' Journal (Vol. 17, No. 2) Amer. Bar Assn., Chicago (1978) pp. 9, 48-49.

federal financial support to state court systems, how can state goals best be achieved in such a program? The LEAA experience to date has led some states to conclude that the price of federal support is too great, that the results achieved through federal grants do not justify the effort required to obtain them. Others would rewrite the LEAA program entirely in order to establish a wholly new scheme for the delivery of federal dollars to the state judiciaries. Most states, however, would support building on the LEAA experience to fashion a more workable program that can accommodate both state needs and national commitments, a program that will create a balance of state goals and federal funding. The past decade of state court experience with LEAA, of course, is the principal basis upon which such a future program should be designed.

It has been pointed out that no serious thought was given to the inclusion of state courts in the original authorizing legislation for LEAA. More than that, the bureaucratic system designed for implementation of the LEAA program would disturb even those who are the least concerned about judicial independence. Whether viewed in terms of the block grant programs 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.[59]

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[59] See, Irving, et al., supra note 3 at p. 11: "Concern about the erosion of the independent and equal status of the judiciary as an equal branch of government under the present LEAA administrative structure is reaching crisis proportions."

The LEAA program for block grants to the states was required to be administered by state planning agencies designated or established by the Governors of the states. Insofar as state courts are concerned, the successes and failures of this program are often traceable directly to the degree of cooperation from, or the representation of judicial agencies on, these executive branch state planning agencies. 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. The lumping together of "police, courts and corrections" into one large mix called a "criminal justice system" was disturbing to most judges, court administrators and others having responsibility for judicial administration.

At the same time, the LEAA funding of the past decade took place during the emergence of strong organizational and administrative activity aimed at state court system improvement. The simplification of trial and appellate court structures and procedures,

the creation of supporting policy and administrative agencies within the judiciary and the employment of professional court executive officers were phenomena of the years preceding and during the LEAA period. These reform activities were often impaired by executive rules and regulations emanating from Washington and from state houses across the country. Concern has been expressed that the federal controls inherent in the LEAA program could seriously jeopardize not only judicial independence within states but independent state action as well. The experience of the states with the LEAA-sponsored "standards and goals" project was but one example giving rise to such concern.[60]

Aside from the problems generated by federal executive activity, the day-to-day interaction of judges and court administrators with others in the criminal justice community gave additional cause for concern. The ambiguity surrounding LEAA's purposes and the focusing of its attention on increasing expenditures at the local level tended to undermine state court administration despite the many laudable advances made in state court systems with federal funds. Judicial input in the planning and

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[60] National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C. (1973). The commission published seven volumes, including the one on "Courts."

See, Meador, supra note 26 at p. 49: "Only a modest imagination is needed to foresee the development of federal standards for state courts in order for them to be eligible for federal appropriations. . . It would be strange indeed for the state judiciaries to be subject to greater federal authority than are the federal courts. Yet that prospect is not far-fetched and may indeed already be happening under present funding arrangements."

use of federal funds at both state and local levels tended to be minimal. Not until the provision for state judicial planning committees in the 1976 LEAA reauthorization legislation was clear congressional recognition given to the role of state court systems in the planning of LEAA programs. But even the emergence of this recognition was accompanied by confusion and controversy surrounding the inclusion of prosecutors and defenders in the LEAA concept of state judicial planning committees.[61] Nevertheless, with the development of such committees, and with their power to pass judgment on judicial funding decisions at both state and local levels, there appeared for the first time some hope for an informed and coordinated approach to LEAA expenditures for judicial system improvement.

Cutting a wide swath across the state block grant programs, the LEAA discretionary grant program administered from Washington tended to undercut any coordinated programs at the state and local levels under the block grants. A local court unable to fund its program with either local or state funds under the block grant

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[61] See Opinion of LEAA General Counsel (July 24, 1978), reprinted in the 1978 Annual Report of the California Judicial Planning Committee, Attachment S. p.3. This opinion, and similar opinions to other states, finally accepted the definition of "court projects" as excluding prosecutorial and defense services, thus ending a long controversy on the point.

This problem carried over from the LEAA decision to include with "courts" the functions of prosecutors, defenders and law reform. The problems arising from this classification decision have been noted in many of the reports that have analyzed court problems in connection with the present LEAA structure. See Haynes, et al., supra, n.3 at pages 3, 14-15 and 20-26; Irving, et al., supra, n.3 at pages 15-16, 126-131 and Appendix E ("Implications of 'Courts' Definition for LEAA Funding").

funding system could by-pass state guidelines by obtaining direct federal funding from Washington. This kind of activity was often known only after the fact by those most responsible for state judicial system management. There was, in fact, virtually no state judicial system input in the use of discretionary funds administered from Washington. This condition often tended to destroy the effectiveness of a state's judicial planning process and it was sometimes counterproductive to the attainment of priority goals sought to be achieved by state judicial systems.

The LEAA funding programs have also been used to implement federal policies unconnected with the mandate and purpose of the LEAA program. The ability of federal executive officers to attach conditions to the receipt of federal monies has sometimes been used to achieve goals not specifically set forth in the LEAA statute. The "standards and goals" project has already been mentioned, and other examples exist. One is found in the LEAA regulations governing computerized criminal history information systems in the states. The operating requirements and the security and privacy regulations are specifically tied to the acceptance of federal grants for information systems.[62]

Despite all of LEAA's operating and policy problems, it is

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[62] LEAA Regulations Governing Criminal Justice Information Systems (40 Fed. Reg. 22114 (1975); 28 Code of Fed. Regs. Sec. 20.20 (a)). The regulations purported to apply retrospectively, to jurisdictions that had previously accepted federal grants for information systems. In its comprehensive report on LEAA the 20th Century Fund noted that both the standards and goals project and the computerized crime information system project were spontaneously generated from Washington by LEAA officials. See 20th Century Fund, "Law Enforcement: The Federal Role," New York (1976), pp. 67, 73-85.

abundantly clear that substantial benefits have been experienced by many state court systems through the use of federal funds. Structural and organizational changes have taken place in a number of states as a result of funding by LEAA, and demonstration grants have been successful in many instances. Educational programs, including the establishment of judicial colleges in several states, have been widely praised throughout the country as have a number of technical assistance and research grants.[63] One commentator has concluded that "any review of the past 10 years must conclude that LEAA has been the single most powerful impetus for improvement in state court systems."

From this decade of LEAA experience certain elements can be identified as essential in the development of any future program for support to state court systems. Foremost among them is the need for a clear congressional statute recognizing the separation of powers principle in the functioning of state governments and the independence of state judiciaries in the exercise of their judicial powers. This action alone would create a more favorable climate for the exercise of the judiciaries' proper role in planning for expenditures in state court systems amidst the competing executive branch interests. Federal recognition of the

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[63] For a professional criticism of LEAA's research programs, see, National Academy of Sciences, "Understanding Crime: An Evaluation of the National Institute of Law Enforcement and Criminal Justice," Washington, D.C. (1977).

Kleps, supra note 3 at pages 91-92.

separate and independent nature of state judicial systems would do much to allay fears of executive branch control at federal, state and local levels of government. Whether associated with the block grant program or the discretionary funding program, recognition of this independence seems to be absolutely essential for any really successful program of future federal assistance to state court systems.[64]

[64] An example of the kind of legislative finding that recognizes judicial independence as a fundamental consideration in this field is found in the California Legislature's creation of a judicial planning committee in 1973. (Stats. 1973, Ch. 1047.)

> §13830. Membership Appointed by Judicial Council---Legislature's Findings.
>
> There is hereby created in state government a Judicial Criminal Justice Planning Committee of seven members. The Judicial Council shall appoint the members of the committee who shall hold office at its pleasure. In this respect the Legislature finds as follows:
>
> (a) The California court system has a constitutionally established independence under the judicial and separation of power classes of the State Constitution.
>
> (b) The California court system has a statewide structure created under the Constitution, state statutes and state court rules, and the Judicial Council of California is the constitutionally established state agency having responsibility for the operation of that structure.
>
> (c) The California court system will be directly affected by the criminal justice planning that will be done under this title and by the federal grants that will be made to implement that planning.
>
> (d) For effective planning and implementation of court projects it is essential that the executive Office of Criminal Justice Planning have the advice and assistance of a state judicial system planning committee.

A second essential ingredient in future federal programs should build upon the favorable experience of state judicial planning committees under the existing LEAA statute. A logical next step in designing a successful federal funding program would be the creation and staffing of a national institution whose members, or at least a substantial majority of whose members, can represent state court systems. The delegation of responsibility to such a body for the planning of federal expenditures to support state court improvement could be achieved with minimal disruption to the established concepts of federal-state relations, and it would have the maximum support from the state judicial systems which LEAA has never enjoyed. Such a knowledgeable and representative group should be charged with responsibility for establishing priorities and policies for the distribution of federal funds to state court systems based upon their established judicial needs and priorities rather than upon assumed needs as perceived by federal or state executive agencies.

The establishment of this agency would command the respect of both federal authorities and state recipients. A clearly identified national responsibility for such an agency would avoid duplicative and overlapping efforts by the various federal funding sources and would provide a clear route of access for state court planners. Coordination of the agency's efforts with existing judicial planning committees in the states would afford a maximum opportunity for judicial input and, most importantly, would create judicial responsibility for the effectivemess and success of any

state court improvement programs supported by federal funds.

A third principle which should be incorporated into any future program of federal assistance to state courts is that the nationwide organizations that support state judicial systems should be principal recipients for the continuing allocation of the federal funds that are awarded on a discretionary basis directly from Washington. The national organizations mentioned hereafter are only illustrative of the kind of national effort that could well be supported by the continuing allocation of federal funds. The educational programs that are represented by the National Judicial College at Reno and by the Institute for Court Management at Denver represent a category that is extremely important to state judicial systems and that has proved to be of great value. The general support activities of the National Center for State Courts, with its regional offices, technical assistance teams and research programs, illustrate the kind of professional assistance that is desperately needed by many states. Similarly, the technical assistance programs of the American University in Washington have proved to be very helpful in a number of instances. Finally, the research activities of the Institute for Judicial Administration in New York, of the American Judicature Society in Chicago and of a number of academic institutions that have worked in the judicial field deserve continuing support.

The discretionary federal funds that are available for the purposes outlined are administered at the present time by a

variety of bureaus and subdivisions of the federal government. Funds are allocated for priorities that are separately established by these federal agencies, thus making a coordinated approach on a high priority basis almost impossible. The national judicial planning agency referred to above could easily be given the responsibility for establishing priorities in the use of the available funds and for approving the national programs that are organized by federal funding agencies to aid state judicial systems. If this principle were incorporated into future federal programs for assistance to state courts, increased coordination in the application of federal funds would follow, proven programs would be spread to more and more states and a more effective use of federal funds would result.

The Challenge for the Future for State and Local Court Systems

The challenge to state and local courts is to do justice and maintain the confidence and respect of the public. To achieve these goals requires continuing improvement and growth. Attention must be given to the role of courts in the community as well as the internal organization and procedures of the courts.

I. Courts and the Community

Historically, a vast gulf has been perceived by observers between courts and the communities they serve. To bridge this gulf, many legitimate community concerns need to be addressed, without sacrificing the values of equity and efficiency that have guided twentieth century judicial reforms. Effective access to adjudicative forums is essential for all disputants. The provision of adequate representation for all is necessary to insure that courts are not used as instruments of oppression. The existence of language, geographic, psychological, and procedural barriers to justice must be recognized and alleviated. Courts must be sensitive to the problem of compelling members of the public to submit matters to courts which do not involve real disputes requiring exercise of judicial discretion. Less expensive and complex processes must be provided to maintain the availability of courts for their fundamental dispute resolution functions.

Courts should insure that community service as a witness is comprehensible and convenient. The judiciary should insure that victims, especially the elderly, the very young, and those subjected to violence are treated with special care and concern throughout the process. Jury service should be spread widely among

community members and burdens of such service minimized as much as possible.

The justice system should experiment extensively, where appropriate, with the use of lay community members as dispute resolvers in mediation, arbitration and adjudication and with other forms of dispute resolution. The present court system should evolve into a comprehensive justice system by incorporating non-judicial modes of dispute resolution as they prove successful.

Our system of government relies upon independent judges free to render decisions in accord with their own hearing of the facts and reading of the law. On the other hand, the judiciary recognizes that the lay community has a proper role in issues such as personnel selection, courthouse location, and judicial demeanor. To accomplish the delicate balancing between the needs for judicial independence and community involvement, courts may increase the areas where community input is sought without allowing intrusion on the judicial decision-making process. Citizen participation in selection and discipline of judges is appropriate. Citizen input should be received on judicial councils, court advisory committees and other policy making and administrative organs of the court system. The justice system should have effective programs for detecting and responding to citizen grievances and community perceptions about its performance and policy-making authority. Administrative control should be delegated to lay community representatives for at least some nonprofessional dispute resolution forums.

II. Internal Organization and Procedures of the Courts

Courts are complex institutions which vary in size and scope from a single judge sitting without staff to a conglomerate of judges operating in specialized divisions supported by thousands of employees. Internal organization of courts includes everything from the relationship of the courtroom clerk and the trial judge to the budgetary processes through which a state or national court system presents its need to various appropriating authorities. Internal procedures include those which affect the final disposition of cases and those which only support the litigative function. There a number of challenges to state courts to achieve the most effective internal organization and procedures. Administrative structures of state court systems need to be examined to find the most effective way of providing leadership, administrative assistance, and responsiveness.

Judicial selection, training, motivation and discipline are critical subjects for effective court operation. Processes must be devised whereby the best personnel can be selected for the judicial system. Continuing judicial education is essential for judges at all levels. All personnel benefit from a strong training program, not just in sharpening technical skills and sensitivity but in building motivation and reducing a sense of isolation.

Management of trial courts is particularly important for the control of pace and flow of cases through the system. Early management of cases is helpful so that disposition is prompt and efforts to settle are sincere. In criminal matters speedy trial

rules require courts to establish an effective information system and to monitor each case effectively. In order to meet requirements of efficiency in both civil and criminal fields, courts must adhere to some performance standards set at either a local or statewide level and use goals and objectives as well as measurement tools to meet these performance expectations. Judges must maintain effective communication with the bar. The effective processing of cases requires an effective level of communication with lawyers who represent the litigants.

In the final analysis, the judiciary must recognize it is their responsibility to establish and maintain effective organization and procedures. If courts accept this responsibility and have the resources to carry out the responsibility, the respect for and integrity of the judiciary can be maintained.

These are but a few of the challenges facing the state judiciary if they are to remain an effective instrument for the delivery of justice to the American people. State courts can serve a unique role as the incubator for ideas and innovations for the entire justice system. The independence of these courts insures a large measure of diversity and there is both pride and strength in that diversity.

To maintain the independence and diversity of state courts there are limitations on uses to which federal funds would be put by state and local courts. Funds made available to state courts under this act would be used to supplement the basic court systems of the several states. They would not be used to support basic

court services. They would provide for a measure of excellence by supporting research, technical assistance, test and demonstration of new techniques, education and training, and dissemination of new knowledge to the state courts. Funds would not be used to employ more judges or to fund essential, on-going judicial functions. Funds would not be used for construction of court facilities, except to the extent of remodeling existing facilities to demonstrate a new architectural or technological technique, or to provide temporary facilities for new personnel involved in demonstration or experimental programs. Funds would also not be used for payment of judicial salaries. These limitations are required by considerations of federalism and separation of powers as well as considerations of most cost effective uses to which limited federal funds should be put to bring about improvement in, rather than maintenance of, state court functions.

Be it enacted by the Senate and House of Representatives of the United States of America-in-Congress assembled, That this Act may be cited as the "State Justice Institute Act of 1979". It is the declared policy of the Congress to aid state and local governments in strengthening and improving their judicial systems in a manner consistent with the doctrine of separation of powers and federalism.

Sec. 101 (a) Definitions.--As used in this title, the term--

(1) 'Board' means the Board of Directors of the State Justice Institute;

(2) 'Institute' means the Corporation for the State Justice Institute established under this title;

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

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

(5) 'Recipient' means any grantee, contractee, or recipient of financial assistance;

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

(7) 'Supreme Court' means highest appellate court and administrative authority within a State unless legislatively established judicial council supersedes that authority.

Sec. 102(a) There is hereby established in the District of Columbia a private nonprofit corporation, which shall be known as the State Justice Institute, whose purpose it shall be to further the development and adoption of improved judicial administration in the State

Courts of the United States.

(b) Findings.--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 in the 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) it is appropriate for the federal government to provide financial and technical support to the state courts to insure that they remain strong and effective in a time when their workloads are increasing as a result of federal government decisions and policies; and

(9) 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 decision-making;

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

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

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

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

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

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

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

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

and jurors;

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

(c) Purpose.--It is the purpose of the Congress in this Act to assist the state courts, and organizations which support them, to attain the above requirements for strong and effective courts, through a funding mechanism consistent with the doctrines of separation of powers and federalism, and thereby to improve the quality of justice available to the American people. To achieve this purpose the Institute shall

(l) 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; and

(B) National organizations which support and are supported by State courts.

(2) The Institute should not duplicate functions adequately performed by existing organizations and should promote on the part of agencies of state judicial administration, responsibility for success and effectiveness of state courts improvement programs supported by federal funding;

(3) foster coordination and cooperation with the federal judiciary in areas of mutual concern;

(4) make recommendations concerning the proper allocation of responsibility between the state and federal court systems;

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

(6) encourage education for the judiciary through national and state organizations, including universities.

(d) The Institute shall maintain its principal offices in the District of Columbia and shall maintain therein a designated agent to accept services 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 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 provisions 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.

~~GOVERNING BODY~~

Sec. 103(a) The Institute shall be supervised by a Board of Directors (hereinafter referred to in this title as the "Board") consisting of twelve voting members which shall be appointed by the President, by and with the advice and consent of the Senate. From an initial list of candidates submitted to the President (twelve by the Conference of Chief Justices; nine from the Conference of State Court Administrators, named by the Conference of Chief Justices; and three from the public sector), the Board is hereby to be composed of:

(1) Six judges and three court administrators.

(2) Three public members no more than two of whom shall be of the same political party.

(b)(1) The term of office of each voting member of the Board shall be three years, Provided, however, that part (b)(2) of this section shall govern the terms of office of the first members appointed to the Board; and provided further that a 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 consistent with (b)(2) of this title.

(b)(2) 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 initial members shall commence from the date of termination of the preceding term. Five of the members first appointed, as designated by the President at the time of appointment, shall serve for a term of two years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(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 deemed officers or employees of the United States.

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

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

(h) 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.

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

(j) Each member of the Board shall hereby 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.

(k)(1) In its direction and supervision of the activities of the Institute, the Board shall

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

(B) Establish policy and funding priorities;

(C) Appoint and fix the duties of the Executive Director (hereinafter referred to in this title as the "Director") of the Institute, who shall serve at the pleasure of the Board and shall be a nonvoting ex-officio member of such Board;

(D) 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; and

(E) Consider and recommend to both public and private agencies aspects of the operation of the state courts of the United States deemed worthy of special study.

OFFICERS AND EMPLOYEES

Sec. 104(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.

(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, or person or entity receiving financial assistance under this title.

(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 the Title, officers or employees, and the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) Nothing in this title shall be construed as limiting 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) Officers and employees of the Institute shall be considered officers and employees of the Federal Government for 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 at the same rates applicable to agencies of the Federal Government under the provisions referred to in this subsection.

(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).

POWERS, DUTIES, AND LIMITATIONS

Sec. 105(a) To the extent consistent with the provisions of this title, the Institute shall exercise the power 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). The Institute is authorized to award grants and enter into contracts or cooperative agreements in a manner consistent with

section 105(b) of this title in order to

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

(2) ensure the Director of the Institute the authority to make grants and enter into contracts under this title;

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

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

(5) evaluate, where appropriate, the programs and projects carried out under this title 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 title;

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

(7) to 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

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

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Sec. 105(b) To carry out these objectives, the Institute is empowered to award grants or enter into cooperative agreements or contracts as follows:

(1) It shall give priority to grants, cooperative agreements or contracts with:

(i) state and local courts and their agencies, and

(ii) national non-profit organizations controlled by, operating in conjunction with, and serving the judicial branches of state governments.

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

(i) other non-profit organizations with expertise in judicial administration;

(ii) institutions of higher education; and

(iii) other individuals, partnerships, firms, or corporations.

(3) Upon application by an appropriate federal, state or local agency or institution, if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, it 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) Other private agencies with expertise in judicial administration.

(c) The Institute shall not itself -

(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, or

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

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

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

(d)(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 assets 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 measures, initiatives, or referendums, except those dealing with improvement of the state judiciary consistent with the purposes of this act.

(e) 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.

Sec. 105(f) Use of funds.--

(1) Funds available under this section may be used for the following purposes:

(a) 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.

(b) 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;

(c) to conduct research on alternative means for using non-judicial personnel in court decision-making activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(d) to assist state and local courts in meeting requirements of federal law applicable to recipients of federal funds.

(e) 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;

(f) to support state court planning and budgeting staffs and to provide technical assistance in resource allocation and service

forecasting techniques;

(g) 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;

(h) 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;

(i) 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;

(j) 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;

(k) 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;

(l) 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;

(m) 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;

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

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

(2) 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 for the following purposes:

(a) to supplant state or local funds currently supporting a program or activity;

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

(c) to pay judicial salaries.

GRANTS AND CONTRACTS

Sec. 106(a) with respect to grants or contracts in connection with provisions of this title, 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 bodies, or State proposals by initiative petition, except where

(A) a governmental agency, legislative body, a committee, or a member thereof -

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

(ii) is considering a measure directly affecting the activities under this title 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 -

(A) any partisan political activity.

(3) insure that every grantee, contractor, or person or entity receiving financial assistance under this title 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 1010 of this Act.

(b) No funds made available by the Institute under this title, either by grant or contract, may be used

(1) for any of the political activities prohibited in paragraph (2) of subsection (a) of this section;

(2) to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

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

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

RECORDS AND REPORTS

Sec. 107(a) The Institute is authorized to require such reports as it deems necessary from any grantee, contractor, or person or entity receiving financial assistance under this title regarding activities carried out pursuant to this title.

(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, or person or entity receiving financial assistance under this Title 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 subsequent to 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) The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the Federal Register at least 30 days prior to their effective date all its rules, regulations, guidelines, and instructions.

AUDITS

Sec. 108(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; and 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; and 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, 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 he shall deem advisable.

(c)(1) The Institute shall conduct, or require each grantee, contractor, or person or entity receiving financial assistance under this title 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, or 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.

FINANCING

Sec. 109(a) There are authorized to be appropriated for the purpose of carrying out the activities of the Institute $_____ for fiscal year 1980, $_____ for fiscal year 1981, and such sums as may be necessary for fiscal year 1982. There are authorized to be appropriated for the purpose of carrying out the activities of the Institute $_____ for fiscal year 1983, and such sums as may be necessary for each of the two succeeding fiscal years. The first appropriation may be made available to the

Institute at any time after seven or more members of the Board have been appointed and qualified. Appropriations for that purpose shall be made for not more than two fiscal years, and shall be paid to the Institute in annual installments at the beginning of each fiscal year in such amounts as may be specified in Acts of Congress making appropriations.

(b) Funds appropriated pursuant to this section shall remain available until expended.

(c) 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.

(d) It is hereby established that the State's highest court or its designated agency or council will receive, administer, and be accountable for all funds awarded by the Institute for projects conducted by the courts of the States.

SPECIAL LIMITATIONS

Sec. 1010. The Institute shall prescribe procedures to insure that -

(1) financial assistance under this title shall not be suspended unless the grantee, contractor, or person, or entity receiving financial assistance under this title has been given reasonable notice and opportunity to show cause why such actions should not be taken; and

(2) financial assistance under this title 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, or person or entity receiving financial assistance under this title 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.

COORDINATION

Sec. 1011. The President may direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its activities under this title, to the extent not inconsistent with other applicable law.

RIGHT TO REPEAL, ALTER, OR AMEND

Sec. 1012. The right to repeal, alter, or amend this Title at any time is expressly reserved.

SHORT TITLE

Sec. 1013. This Title may be cited as the 'State Justice System Improvement Act.'

INDEPENDENCE OF STATE JUSTICE INSTITUTE

Sec. 1014. Nothing in this Act, except Title _____, and no references to this Act unless such references refer to Title _____ shall be construed to affect the powers and activities of the State Justice Institute.

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II

96TH CONGRESS
2D SESSION

S. 2387

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

IN THE SENATE OF THE UNITED STATES

MARCH 5 (legislative day, JANUARY 3), 1980

Mr. HEFLIN (for himself, Mr. KENNEDY, Mr. DECONCINI, Mr. DOLE, Mr. COCHRAN, and Mr. SIMPSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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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, comprehensive personnel systems, efficient juror utilization and management techniques, and advanced means for recording and transcribing court proceedings;

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

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

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

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

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

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

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

improve the quality of justice available to the American people.

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 nonprofit 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 provisions 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 subsec-

tion 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, cooperative 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.

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(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 to 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 alter-

native 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 to 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 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.

(e) 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 rep-

resentations 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) 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 activity; or

(2) to construct court facilities or structures, except to remodel existing facilities to demonstrate 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; or

(2) 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 assets 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 ac-

tivity 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 entity 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 rec-

ords, 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.

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