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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."

ne 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) <u>The Quality of Justice in the Nation is Largely Determined by the Quality of Justice in State Courts</u>.

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:[17]

> [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, patent[19] 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 govenment. 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, and antitrust[21] 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

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[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 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 n' 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] Brennan, "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.

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[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]

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[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

(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; 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.

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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END