



CHAMBERS OF
EDWARD D RE
CHIEF JUDGE

UNITED STATES COURT OF INTERNATIONAL TRADE
ONE FEDERAL PLAZA
NEW YORK, N.Y. 10007

August 23, 1990

Dear Chairman Kastenmeier:

Thank you for inviting me, in your letter dated August 8, 1990, to submit a written statement for the hearing record relating to the Federal Courts Study Committee Implementation Act of 1990, H.R. 5381. Since, as you note in your letter, the bill includes provisions specifically relating to this court, I particularly appreciate the opportunity to submit these comments pertaining to those two provisions.

Section 106, Budget Estimates of Courts, appearing at page 4 of the bill, will eliminate the statutory provision that authorizes this court and the Court of Appeals for the Federal Circuit to approve their respective annual requests for appropriations. As you know, under present law, these two courts submit, and substantiate, their appropriations requests directly to the Appropriations Committees of the Congress. If enacted, the bill will require these two courts to submit their appropriations requests to the Judicial Conference of the United States for approval instead of to the Appropriations Committees.

Presumably, this provision emanates from the recommendation of the Federal Courts Study Committee, which appears at page 162 of the Federal Courts Study Committee Report: "Congress should require that the budgets for the Court of Appeals for the Federal Circuit and the Court of International Trade be submitted as part of the overall federal judicial budget request."

As you may recall, Mr. Chairman, as recently as 1981, as part of its consideration of the bill that became the Federal Courts Improvement Act, Congress "revisited" this issue and affirmed its desire to continue the separate budget status for the courts of nationwide jurisdiction, such as this court and the Court of Appeals for the Federal Circuit.

This recommendation of the Federal Courts Study Committee is inconsistent with the rationale of another recommendation,

appearing at page 161, of the Federal Courts Study Committee Report, that urges the Administrative Office to continue its "budget decentralization program and pilot studies regarding further decentralization of budgeting, procurement, and other administrative functions." According to the Federal Courts Study Committee, ". . . delegating much of this budget authority [that now resides with the Director of the Administrative Office] to the courts--'decentralization'--is in the best interest of the entire Judiciary."

Several courts, with the approval of the Judicial Conference, now are participating in a pilot budget decentralization project that is intended to test the benefits of expanding the role of individual courts in the financial resources management of local operating budgets. This court, and the Court of Appeals for the Federal Circuit, for many years have been "decentralized" in managing the financial resources appropriated to them by the Congress.

In testimony before the Senate Appropriations Committee the reasons supporting the Judicial Conference's approval of decentralized budget authority were explained by Judge Richard S. Arnold, Chairman of the Budget Committee for the Judicial Conference, as follows:

"Mr. Chairman, when Judge Meskill appeared before you last February, he informed the Committee that the Judiciary was undertaking a pilot budget decentralization project in five courts (Second Circuit Court of Appeals, New York Southern, Washington Western, California Northern, and Arizona). This project is intended to test the benefits of expanding the role of the courts in the management of local operating budgets. With the major exception of the salaries of judges and their staffs, the decentralization project encompasses the majority of the operating expenses of the courts. Fiscal year 1988, the first year of the project, was considered experimental, because the courts were undertaking and implementing a new program. This project will continue over the next 2 years, and an ongoing evaluation will address the benefits and pitfalls of the program and the practicality of expanding budget decentralization to all courts. So far, the participating courts are quite happy with these new procedures. We have found that, not only are the needs of the users better met by allowing reprogramming at the local level, but in the first year these courts actually came in below budget estimates."

More recently, and more specifically, the Budget Committee of the Judicial Conference, in a letter dated January 29, 1990 to the Federal Courts Study Committee from Judge Richard S. Arnold, Chairman of the Budget Committee, commented upon this recommendation of the Federal Courts Study Committee as follows:

"The recommendation that the separate budget status of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade be discontinued has not, to our knowledge, ever been considered by any committee of the Judicial Conference, and certainly has not been considered by this Committee. The Budget Committee is unanimously of the opinion that this recommendation should be deleted. The present system is working well, the courts mentioned are efficiently operated, and there has never been any conflict in budget presentation between those courts and the rest of the Judiciary." (emphasis added)

Of course, I concur completely with the unanimous position of the Budget Committee that the present system is working well. May I also respectfully call to your attention, and emphasize, the fact that there is nothing in the Federal Courts Study Committee Report to indicate that the present system is not working well. Since the best predictor of future performance is past accomplishments, one must ask why a system that demonstrably has worked well should be changed.

Based upon my many years of experience in government, both as an agency head and as chief judge of this court, I am confident that the present system of statutory "decentralization," for the courts with nationwide jurisdiction, works well. Therefore, I respectfully recommend that your Committee should not change that system unless and until it is presented with facts sufficient to demonstrate that the change would be an improvement.

Another provision of the bill, Section 205, Qualification of Chief Judge of Court of International Trade, appearing at page 34 of the bill, will repeal the present provisions of law, that provide for designation of the chief judge of this court by the President, and will substitute new procedures that will establish for this court the same modified seniority system of chief judge selection as was established in 1982 for the courts of appeals and district courts (28 U.S.C. §§ 45 and 136). This provision is consistent with another recommendation of the Federal Courts Study Committee, appearing at page 152 of its Report. In support of its recommendation that Congress should

not change the current method of chief judge selection for the courts of appeals and district courts, the Committee noted that the modified seniority system for chief judge selection "is not faultless, but it operates well in practice and is preferable to any other method."

I can think of no reason why the same modified seniority system for selection of chief judge of this court would not work equally well for this court in place of the present system which provides that the President is to select and designate the chief judge of this court.

Again, Mr. Chairman, personally and on behalf of the court, I want to thank you for providing this opportunity to comment upon your proposed bill to implement certain proposals of the Federal Courts Study Committee. Of course, I should be pleased to provide any additional information you may request.

Cordially,



Edward D. Re
Chief Judge

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