ORGANIZATION, BUDGETING AND FUNDING OF THE DISTRICT OF COLUMBIA'S LOCAL COURTS

Prepared for the
Council on Court Excellence

By: Peter R. Kolker
June 18, 2007

As with many other aspects of the District's governmental structure, the mechanism for funding the District of Columbia's local court system, the D. C. Court of Appeals and the Superior Court of the District of Columbia, reflects the unique and complex character of the District. The means and method of budgeting for and funding these vital functions has evolved over the years, reflecting the maturation of the District from its pre-Home Rule days to the present. This process has also reflected the growing pains and financial crises that have affected the District as well as the unusual symbiosis and tension between the District and the Federal Government. It is also the product of the limitations imposed on the District's restricted taxing authority, which results in a dependency on the federal government for the ordinary functions of a local government.

The current budget system ensures a high, but not complete, degree of independence for the District's judiciary and provides for a relatively stable funding source, but it also limits the options the District's legislative and executive branches have to allocate resources among programs by taking the Courts' budget out of the equation. As the process has evolved, the local judiciary has become the financial protectorate of the federal rather than District government, since the Courts apply directly to Congress for funds and are subject only to Congress' budget decisions. The annual bill for the Courts' operations and capital budget approaches $350 Million, all currently sought from and paid by the federal government. In addition, there are substantial expenditures required to support other justice-related agencies, such as the Pretrial Services Agency, the Public Defender Service and the U.S. Attorney's Office. Because the District's Homre Rule charter precludes the imposition of a commuter tax and because real estate tax cannot be imposed on the substantial federal and embassy property located in the District, a change in the budgeting process or the organization of the Courts and related agencies could not

be realistically considered independent of a proposal to replace the substantial income contribution now made by the federal government as a direct expenditure. The starting point for an analysis of the current budget process is an understanding of how the D.C. court system evolved and was funded from the pre-Home Rule days to the present.

I. HISTORY

A. The Court Reorganization Act of 1970.

Both court reorganization and home rule came to the District in the early 1970's. Prior to 1970, the District's "special relationship" with the federal government relegated to the local court system, then known as the District of Columbia Court of Appeals and the District of Columbia Court of General Sessions, jurisdiction of only minor criminal matters (misdemeanors) and a limited range of civil disputes, not unlike the jurisdiction found in the lowest level of state courts.[1] Remarkably, all felonies – including common law crimes such as murder, robbery, rape, burglary and the like – were prosecuted in the United States District Court (along with federal offenses). That court also had jurisdiction over such classically local matters as probate administration and divorce as well as more important civil disputes, even those cases which would not qualify for jurisdiction in federal courts outside the District. Appellate review of these trial court decisions reposed in the U. S. Court of Appeals for the District of Columbia Circuit – the Circuit Court sometimes referred to as second in importance only to the U. S. Supreme Court because of its review of many federal administrative agency and legislative decisions.

By contrast, by the late 1960's, the D.C. Court of General Sessions was the venue for prosecution of misdemeanors, juvenile offenses and landlord-tenant as well as small claims matters. Appellate review of these decisions was vested first in the D.C. Court of Appeals.

[1] See, *e.g.*, the jurisdiction of the district courts in Maryland, which is limited to minor criminal matters, landlord-tenant disputes and civil disputes subject to a modest dollar limit. (Maryland, Courts & Judicial Procedure § 4-101 *et seq.*)

However, the United States Court of Appeals for the D.C. Circuit had discretionary review over the D.C. Court of Appeals decisions, so that even in local matters, decisions of the U.S. Court of Appeals predominated over those of the D.C. Court of Appeals. Bar admissions and disciplinary proceedings were also controlled by the federal rather than the local courts. The fiscal burdens of these two systems generally followed the subject matter jurisdiction, with a significant portion of the federal court expenses paid out of the District's budget. The administration of justice under this arrangement was unsatisfactory on a number of levels. First, by the late 1960's the court system was staggering under the weight of the caseload and was also encountering administrative problems. A court management study commissioned by the Senate's Committee on the District of Columbia, as it was then designated, noted that the length of time to dispose of serious criminal cases was increasing in both the federal and local courts, and civil case dispositions were also becoming more prolonged.[2]

Not surprisingly, this arrangement was unsatisfactory to everyone, including the District's citizens, who possessed only limited influence over its own courts, having no institutional input into the selection of judges or the administration of justice. At the same time, many federal judges chafed at having to resolve local disputes which their colleagues in other districts would never have touched. The local judiciary also objected to being side-lined by the limits to and review of the local courts' jurisdiction by the federal appeals court. Finally, Congress was displeased with the arrangement as well, partly because the increasing backlog in the disposition of criminal cases was thought to undermine the deterrent effect of criminal law and partly because the U.S. Court of Appeals bench of the late 1960's was of a particularly liberal character which resulted in decisions that, while path-breaking, went contrary to the more

[2] Court Management Study to the Judicial Council of the District of Columbia for the Use of the Committee on the District of Columbia, U.S. Senate, May 1970, (the report of the "Ellison Commission"), pp 41-43.

conservative bent of Congress [3] and also because of an ever increasing backlog of criminal cases which the federal court seemed unable to resolve in a timely manner.

These concerns set the stage for the passage of the 1970 D.C. Court Reform and Criminal Procedure Act[4] which established the District of Columbia Court system as we know it today: a typically pyramidal structure with the District of Columbia Court of Appeals at the apex functioning as the highest court reviewing matters of a local nature. These decisions were (and are) subject to review only by the United States Supreme Court in the same manner as the decisions of the highest court of a state are subject to review. Similarly, the local trial level court, the Superior Court of the District of Columbia, received greatly expanded jurisdiction over those actions typically comprising the bread-and-butter of a state trial court system: common law felonies, misdemeanors, juvenile proceedings and civil cases falling outside the subject matter jurisdiction of a federal court elsewhere in the nation. The transition from the pre-1970 system to the current system was gradual and was completed by 1973.

The 1970 court reorganization established an unusual method of governance for the courts: the development of a Joint Committee on Judicial Administration[5] (the "Joint Committee"), comprised of the chief judges of the D.C. Court of Appeals and the Superior Court plus one associate judge from the Court of Appeals and two from the Superior Court – a system weighted in favor of the trial court. Independence from the executive and legislative branches of the District's government – as constituted both before and after home rule – was a hallmark of this arrangement. From then until now, it has been the responsibility of the Joint Committee to

---

[3] Examples of such revolutionary decisions, which had their origins in peculiarly local cases, included decisions of the U.S. Court of Appeals for the D. C. Circuit in both criminal and civil law areas. Because the opinions of the U.S. Court of Appeals for the D.C. Circuit were regarded as co-equal with those of the other circuit courts, these decisions resolving local disputes had an impact well beyond the borders of the District of Columbia.

[4] 84 Stat. 476, Pub L. 91-358, codified as D.C. Code § 11-501, *et. Seq.*

[5] See, D.C. Code § 11-1701

obtain the budget proposals from each of the component courts – the Court of Appeals, the Superior Court and the "Court System" (administrative elements of the court including court reporters, interpreters and clerical personnel) – and to integrate them into a single budget for the Courts. The individual budgets are submitted to the Joint Committee which may adjust a component budget only if agreed by four-fifths of the Joint Committee. Once developed, the Joint Committee's aggregate budget is submitted to the decision maker for consideration and approval. Even though the reviewer of the budget has changed (as detailed below) adjustment of the budget by the District's executive or legislative branches has never been permitted. By empowering the Joint Committee to develop the courts' budget, the District's executive and legislative control over this branch of government was deliberately restrained. Concomitantly, the independence of the budgetary independence of the court system has been maximized.

This major realignment of jurisdiction resulted in a vast expansion of the local court system, such that the local trial bench (formerly, the Court of General Sessions) increased from about 12 judges prior to court reorganization to nearly 40 by the end of the transition in 1973. By 2006, the specified complement of trial judges had increased to 59,[6] including the chief judge, the associates judges as well as the judges of the Family Court[7]. The D.C. Court of Appeals consists of a chief judge and eight associate judges. All of the District's judges are currently appointed by the President to 15-year terms. Presidential appointment is more of an historical articfact than a constitutional requirement, however: the constitutional grant of authority to establish and oversee the District, set out in Article I § 17 of the Constitution, does not require Presidential (or even federal) appointment of local judges, though it has been the tradition for at least the past half-century that the President has done so. Thus, the District's

---

6 D.C. Code § 11-903.

7 See, p. 5, infra, regarding the formation of the Family Court.

local judges are properly thought of and referred to as presidentially appointed "Article I judges", [8] a feature some think enhances the prestige of the local bench.

In addition to this full-time judiciary, there is a varying number of senior judges who work part-time and who are compensated on a per diem basis, up to the maximum that could be earned by a full-time judge, taking into account the retirement annuity received by the senior judge. There are also 25 "magistrate judges" in the District's system, who assist with pre-trial proceedings in the criminal, civil and Family Court components of the Superior Court and have limited jurisdiction. They are neither presidential appointees nor are they provided a 15-year appointment, as are the Superior Court and D.C. Court of Appeals judges.

Since 1970, compensation of D.C. Court of Appeals judges has been pegged to the same level as the compensation of judges of the federal circuit courts of appeal,[9] and the compensation of Superior Court judges is set as the same as that of the judges of the federal district courts[10]. This salary relationship is vital to the recruitment and retention of the local judiciary who are, with this linkage, assured of some modicum of steady compensation and of automatic salary increases whenver federal judicial salaries are raised.

One modification to the judicial structure occurred in 2002, when Congress again flexed its unique jurisdictional muscles over District of Columbia local affairs by creating the Family Court[11]. The Family Court is akin to a subsidiary of the Superior Court, with judges appointed in the same manner as Superior Court judges. The Family Court's budget is a part of the Superior Court budget, and it is housed in the same courthouse, but its judges are, in practice, assigned only to family-law matters, such as juvenile delinquency, divorce, neglect and guardianship

---

8 D.C. Code §§ 11-1501; 11-703..
9 D.C. Code § 11-703(b).
10 D.C. Code § 11-904(b).
11 P.L. 107-114 (January 8, 2002).

cases. That Congress intervened in the District's judicial affairs to create this specialized court serves as a reminder that the final word on jurisdictional realignments or changes affecting the District's citizen remains on Capitol Hill. Indeed, the D.C. Code *precludes* the District from modifying its court organization or jurisdiction, reserving those functions to Congress,.[12] and as the Family Court legislation attests, Congress can and will intervene in a purely local matter such as this when it is of a mind to do so.

Court reorganization also assured that support personnel in the local court system – judicial staffs, probation officers, pretrial release personnel, clerical and administrative personnel, for example – increased in tandem with increases in the judiciary so that the local courts now employ some 1,200 persons[13]. Marshals used by the court to keep order remain part of the U.S. Marshals' office under the United States Department of Justice and are not included within that number; nor is the District-related cost of the Marshals' service reflected in the Courts' budget.

The advent of a modern, local court system required a new court building to house the D.C. Court of Appeals, the Superior Court and the myriad functions transferred by this jurisdictional change. Concomitantly, the financial burden of the local court system grew apace, including not only the salaries, benefits (including unfunded pension obligations) and administrative expenses which had previously been a part of the federal court budget, but also the expenses of the criminal justice act (compensating private attorneys for defending indigent criminal defendants), the D.C. Public Defender Service, the Pretrial Services Agency and the probation office – to name several of the justice agencies where additional personnel are a part of the judicial machinery. At the same time, the capital costs of the new physical plant and its

---

[12] D.C. Code § 1-206.02.

[13] District of Columbia Courts 2005 Annual Report , page 9.

operations also increased dramatically compared to the pre-1970 period. By the time the transition to the local court system had been completed, the entire burden of the judicial system for adjustment of local disputes had shifted to the District of Columbia and the financial obligation likewise shifted to its budget. At the same time, the District's share of expenses relating to the operations of the U. S. District Court for the District of Columbia diminished reciprocally.

B. The 1973 Home Rule Act and the Courts' Budget

The shift of jurisdiction represented a major increase to the empowerment of local citizens over the dispute resolution matters important to them, but full self-determination for the District was – and still is - a long way off. The next important event with a significant impact on the court budgeting process was the enactment in 1973 of the District of Columbia Home Rule Act[14]. The shift to a governmental structure according more responsibility to the citizens and their representatives on the District of Columbia Council provided the occasion for unifying the budgeting process to team up the courts' budget with the budget for other District agencies and operations. However, whereas the state model of a pyramidal judiciary with a high court reviewable only by the Supreme Court was replicated in the jurisdictional aspect of D.C. court reorganization, the anomalies of the District's situation did not lend itself to a budgeting process in the District to parallel that used in the 50 states. Unlike the states, which are responsible for financing all of their routine executive, legislative and judicial functions from tax revenue, the special circumstances affecting the District – the statutory prohibition on commuter taxation coupled with the non-taxability of land occupied by the federal government, foreign embassies or the myriad non-profit organizations drawn to the seat of national government - currently prevents

[14] District of Columbia Self-Government and Governmental Reorganization Act of 1973 (P.L. 93-198, 87 Stat. 774)

the District from achieving economic self-sufficiency. Thus, the budgeting process cannot replicate that of a self-sufficient state. Unless and until the District's ability to generate revenue in ways that are not currently available to it should change the District must look to the federal government for financial support, with its often unwanted twin: federal control. With this revenue structure in mind, the budgeting and funding process was bound to take a different tack.

II. THE BUDGETING PROCESS FROM 1970 - PRESENT

A. Up to 1995

From the 1970 court reorganization act forward, the mechanism for budgeting and funding of the courts has been nearly independent of the executive and legislative budgeting. Thus, beginning in 1970, a structure was put in place to maximize the independence of the judiciary. The budget for the Courts is required to be developed by the Joint Committee rather than the Mayor. When Congress enacted the District's Home Rule Act in 1973, one of its objectives was to restrict the capacity of both the D.C. Council and the Mayor to affect the budget prepared and submitted by the Joint Committee.[15] To accomplish this goal, Section 445 of the Home Rule Act specified that the Joint Committee must prepare and submit to the Mayor an annual and multi-year budget including both an operational and a capital improvement component. The Mayor is charged with forwarding this budget without alteration to the D.C. Council, though the Mayor may comment on its provisions. Similarly, § 445 of the Home Rule Act requires the D.C. Council to submit to the President (via the Office of Management and Budget), for ultimate submission to Congress the budget of the court system as presented by the Joint Committee although the Council may also comment upon or make recommendations respecting the budget. However, § 445 provides that the Council "shall have no authority under

[15] This is not the only instance in which Congress restricted by statute the power of the D.C. Council with respect to the administration of justice; the Council may not legislate in respect to criminal law matters, nor may it amend the jurisdiction granted to the D.C. Courts. D.C. Code § 1-206.02

this Act to revise" the Joint Committee's budget.[16] Thus, under the Home Rule Act, Congress alone has the power to increase, decrease or internally modify the Court's budget by shifting funds among the courts. In this respect, the budgeting process for the Courts differs markedly from that in effect in the 50 states which, in many cases, have the capacity to adjust the budget of any branch of government. Instead the budgeting process more closely resembles that applicable to the U.S. Courts: a separate budget is prepared by the Administrative Office of the Courts and submitted to Congress.[17]

It is worth noting that while neither the Council nor the Mayor may modify the budget submitted by the Joint Committee because of the restrictions outlined above, both bodies have frequently submitted comments to Congress suggesting that the Courts' budget is excessive. One study, undertaken in 1983, demonstrated that in each year from 1972 – 1980, the recommendations conveyed by the Mayor to Congress suggested a lower budget amount than that requested by the Joint Committee.[18] Resources have not enabled a study of more recent trends, but it is to be expected that the Mayor or the Council might attempt to increase the budget funds made available by Congress to special programs by encouraging a reduction in the Courts' budget. How this natural instinct would be manifest if the Council or the Mayor had the authority to modify the Courts' budget, now currently denied them, is a matter for speculation.

Upon receipt of the District's budget, Congress considered the Court budget at the same time as it considered other budget requests by the District. Congress had the authority to accept or modify (up or down) the Court's budget. Dating back prior to Home Rule and continuing up to 1997, funding of the District's budget included a payment by Congress known as the "federal

---

[16] P.L. 93-198, 87 Stat. 774, § 445.

[17] 31 U.S.C. § 1105(b)

[18] Report of the District of Columbia court System Study Committee of the District of Columbia Bar, prepared for the Subcommittee on Governmental Efficiency and the District of Columbia (the "Horsky Committee"), April 1983, S. Rpt. 98-34, page 101.

payment". This sum, which varied annually, was to be used by the District along with revenues raised by its own taxing program to fund the functions of government. Although Congress fixed a budget amount for the Courts, it did not directly fund that amount. Instead, in the pre-1997 era, Congress provided the courts with a portion of the federal payment, calculated as a percentage of the District's approved budget, to the courts. For FY 1997, for example, the federal payment represented 14% of the approved budget.[19] While the Courts received that amount from the federal payment, the balance of the courts' budget was dependent upon tax revenues raised and administered by the District. Thus, approval of the Court's budget by Congress was the first, but by no means the last, step in the process of funding the Court system,[20] and if the District failed to generate sufficient revenues to fund the balance, the Courts would (and did) come up short of the budget approved for it.

B. 1995: The Financial Control Board

In the mid 1990's the District's financial picture took a turn for the worse, and the District appeared headed for a possible bankruptcy. To avert such a catastrophic event and to limit the extent of support which the federal government would be called upon to provide to the District, Congress enacted the District of Columbia Financial Responsibility and Management Assistance Act of 1995,[21] creating what was commonly referred to as the "Financial Control Board". With the advent of the Financial Control Board, all portions of the District's budget, including that relating to the courts, was reviewed and approved by the Financial Control Board. The Joint Committee took the position that the Financial Control Board was precluded from modifying the budget prepared by the Joint Committee but it was unclear whether that limitation

[19] Congressional Research Report 97-653, District of Columbia Revitalization: The President's Plan for the Court System, June 19, 1997 (hereafter, "the CRS Report"), page CRS-5.
[20] *Ibid.,*
[21] P.L. 104-8, 109 Stat. 97.

actually applied to the Financial Control Board. In any event, the Courts' budget continued to be separately formulated, presented and administered.

C. The 1997 Revitalization Act

By 1997, the District's financial house had still not come to order in the view of Congress which demanded that additional responsibilities be transferred from the Mayor and the Council to the Financial Control Board. To accomplish this shift, Congress passed the 1997 Revitalization Act,[22] which also terminated the federal payment to the District of Columbia. In lieu of a payment, financial support was provided to the District by the assumption of certain previously locally supported functions by the federal government. Because the elimination of the federal payment represented a loss of approximately $600 Million in revenue by the District, the 1997 Revitalization Act shifted at least an equal value of District functions to the federal government. First and foremost was the federal takeover of the Lorton Reformatory, the District's prison facility, which was viewed with concern on Capitol Hill. To round out and develop an offset to the revenue reduction caused by the terminated federal payment, the District's obligations for its court system were also assumed by the federal government, as were the budget burdens of certain other agencies, *e.g.*, the District of Columbia Public Defender Service, Pretrial Services agency and Defender Services (local Criminal Justice Act payments for appointed counsel). Pension liabilities and other benefits affecting court personnel were also assumed by the federal government.

Although the transition from local to federal control provided a source of greater financial security to the District, the change was accompanied by many personnel problems as long-time court employees found their pensions and other benefits were sharply reduced as a result of the change. Thus, the transition in funding source was not easy, and a lesson is

[22] P.L. 105-33, National Capital Revitalization and Self-Government Improvement Act of 1997, August 5, 1997.

embedded in that experience which must be considered if a future change in funding is to be considered.

D, The May 9, 1997 Memorandum of Understanding

In anticipation of the passage of the 1997 Revitalization Act, negotiations were undertaken between the Mayor, the D.C. Council and the White House concerning a variety of changes affecting the administration of justice, including but not limited to arrangements for funding the DC Court system.[23] A Memorandum of Understanding between the D. C. Council and the White House approved a shift of responsibility for funding the D.C. Courts to the federal government. As had been the practice since 1970, the 1997 Revitalization Act maintained the practice of having a unified courts budget prepared by the Joint Committee and submitted to the Mayor and the D.C. Council for review and comment, but not alteration. However, since 1997 the budget has been submitted directly to the U.S. Office of Management and Budget ("OMB") for transmission to Congress, not as a part of the D.C. budget but as the budget of a separate governmental entity. Congress, of course, remains free to modify the budget as it desires. Once approved, the budget is funded directly by Congress to a special account in the United States Treasury established for this purpose.[24] Through this technique, the budgets of various agencies, including those of the D.C. Courts, the Pretrial Services Agency and the Public Defender Service were transferred to federal control, so that salary, benefits and other administrative burdens relating to the operation of the local courts are provided under the aegis of the federal government, rather than that of the D.C. Government. Significantly, by the 1997 Revitalization Act, the federal government also assumed the burden of the unfunded pension liabilities for the District, estimated at that time to exceed $4.8 Billion, a portion of which applied to District of

[23] The CRS Report, pp. CRS-7 *et seq*.

[24] Initial proposals contemplated that the D.C. Court budget would be administered by the Administrative Office of the U.S. Courts in the federal judiciary but this supervisory control was abandoned in the final approach. *Ibid.*

Columbia judges and non-judicial court personnel. With the resources of the federal government, however, comes the potential and occasional reality of interference with local judicial matters: powerful members of Congress have been known to intervene in local cases and have exerted pressure on the budget process when a member has disapproved the outcome of a decision in a particular matter.

III. MAGNITUDE OF THE D.C. COURTS' BUDGET

The D.C. Courts are complex and substantial; consequently, the budget for their operations – including items that do not appear directly in the operational budget – are very considerable. In Fiscal Year ("FY") 2006, the Courts' budget request for operations – including components for the D.C. Court of Appeals, the Superior Court and the "Court System" was for $149.8 Million. Congress appropriated $138.1 Million. In addition, the Courts requested $54 Million for capital improvements and received $44 Million.[25] These figures do not take account of a separate budget submittal for Defense Services (payment for court-appointed counsel for persons charged with crimes or for persons involved in child abuse, neglect and guardianship disputes.). For Fiscal Year 2006, $44 Million additional was appropriated for those purposes. Nor do they take into consideration the value of benefits paid to court personnel or the funding of pension obligations relating to them.

The capital budget for the courts represents a significant burden over and above the operational budget. One component is the renovation of the "Old Courthouse" located at 451 Indiana Avenue, N.W., across from the Moultrie Courthouse. That undertaking will cost in excess of $100 Million. Beyond that, expansion of the Moultrie Courthouse to enable

[25] The courts have embarked on a major capital improvement project, including the renovation of the old courthouse at 451 Indiana Avenue, NW (opposite the Moultrie Courthouse), an addition to and an upgrading of the Moultrie Courthouse to accommodate the Family Court function, and modernizing "Building C" when it is returned to the courts in a few years. These expenditures are budgeted at nearly $180 Million in the Fiscal Year 2008 budget request of the Joint Committee (Summary, pp. 5-6)

completion of the Family Court and modernization of the building, now more than 30 years old, will require another $30 Million. The total capital budget is projected by the Joint Committee at $180 Million and is now in mid-stream.[26]

IV. SUMMARY OF THE CURRENT BUDGETING PROCESS

To sum up, both the operational and capital cost of the D.C. Court system are no longer an obligation of the D.C. Government. The budgeting process operates entirely independently of the budget process for most of the District's other functions.[27] While the Mayor and the D.C. Council are provided with a copy of the budget request when it is submitted to the Office of Management and Budget for ultimate presentation to Congress, they may comment on the budget but may not alter the submission. Congress, of course, makes the ultimate decision on how much of the requested budget will be funded and may take into consideration comments provided by the Mayor and/or the Council.

V. ANALYSIS AND THOUGHTS FOR THE FUTURE

The District's unique budget process provides the courts with many benefits that would not be available to it if a traditional state funding model were utilized. At the same time, the separation of the court budgeting process from the budgeting process relating to executive agencies constrains the Mayor and the Council in their budgetary options by putting beyond the reach of the budget axe the substantial sum paid to or for the benefit of the courts. Moreover, the continuing role of Congress in providing the wherewithal for the courts also means that Congress has the capacity, sometimes exercised, to intervene directly in District judicial affairs.

---

[26] See, Fiscal Year budget request of the Joint Committee (Summary, pp. 5-6) found at http://www.dccourts.gov/reports.

[27] Recently, legislation has been introduced in Congress to relax or eliminate Congressional control over the District's expenditure of its local funds. See., H.R. 733, 110th Congress, 1st Session, introduced by Representative Tom Davis (R. Va.) . If passed, this legislation could significantly alter the method for approval and expenditure of District funds. It would not, however, affect the process for approving or spending federal funds approved for the District, whether relating to "entitlement" programs or local functions taken on by the federal government, such as the Court's budget.

Under the current plan, the compensation of judges is tied automatically to that provided to federal district and appellate judges, which undoubtedly enhances the ability to attract well qualified candidates and to retain experienced members of the bench. The stability provided by federal assumption of operations, capital, benefit and pension obligations relating to the court provides an additional recruiting and retention advantage. Given the impediments to financial self-sufficiency for the District manifested by the prohibition of a commuter tax and the inability to tax federal or diplomatic real estate, which comprise much of the District's valuable land, it is apparent that the provision of federal financial support for the courts is an indispensable method of curing what would otherwise be an intolerable budget burden. In short, federal assumption of these obligations – whatever the undesired effect of federal control - relieves the District (and its taxpayers) not only of the routine and heavy burden of normal judicial functions but also of the extraordinary capital expense which a dynamic judicial machine is likely to encounter.

The court's budget, while not sacrosanct, is largely insulated from the political push and pull that affects other components of the government, thereby assuring a high degree of independence to the judiciary, though Congress has been known to act upon the District's judicial decisions with a heavy hand when, for example, a member of a Senator's staff receives an unhappy outcome to a case, or where the political pressure on Congress is translated into a peculiar action limiting local jurisdiction.[28]

Nevertheless, transferring the very considerable financial burden to the shoulders of the District without locating a matching revenue source would be hard to imagine, even if the assumption of full control of the judiciary by the District's residents were a uniformly accepted

[28] For example, in 1989 Congress passed the D.C. Civil Contempt Imprisonment Limitation Act, Pub. L. 101-97, 103 Stat. 633 and later the "Elizabeth Morgan Act", D.C. Code $11-925, both aimed at over-ruling a politically charged custody case. The latter was held to be an unconstitutional Bill of Attainder, *Foretich, et al. v. U.S.*, 351, F.3d 1198 (D.C. Cir. 2003) but this escapade still demonstrates that when it comes to the District of Columbia nothing, and certainly not the courts and their jurisdiction, is beyond the power of Congress.

goal. Because the functions of several justice related agencies – *e.g.*, the U.S. Attorney's Office, the Public Defender Service and the Courts, must function in harmony and in balance, a change in the funding of one would have to call into question the funding of the others. Even a partial transfer of funding – if one could be developed – would require either a significant capital infusion or a marked reduction in services, compensation or both. Anything that would alter the financial stability provided to the court system would likely have deleterious effects for the selection and retention of judges and of other important courthouse personnel. Moreover, the provision of defense services by private counsel and the supervisory pretrial release services provided by the Pretrial Services agency would also likely suffer. Given the importance of judicial independence, the high quality of the current judiciary, and the stability provided by the present financing system, it is difficult to imagine how any changes in the budget process could benefit the District or its citizens absent a change in the restrictions on the District's taxing authority. However, if increased financial control were ceded to the District by elimination of the restriction on commuter taxation, for example, the issue of budgeting would have to come back under the microscope, for with the ability to pay all its own bills, which such new taxing authority would provide, the District might well wish to revisit the options for control and funding of the Courts. That day does not seem near at hand, but if the political winds change and the District's taxing sources are increased, the budgeting process would deserve a fresh look.