

I.B.M. WINS SHIFT IN TRIAL RULINGS

Court of Appeals Overturns Edelstein on Witnesses, Papers and Motions

By WILLIAM D. SMITH

The United States Court of Appeals yesterday supported the International Business Machines Corporation in its requests to overturn three procedural rulings by Judge David N. Edelstein, chief judge of the Federal Court for the Southern District of New York, who is presiding over the Justice Department's antitrust action against I.B.M.

The Government has charged that I.B.M. is monopolizing the general purpose computer market. It has asked that the computer company be broken up into several separate companies.

In a highly unusual move, I.B.M. submitted a writ of mandamus on Oct. 14 asking the Appeals Court to force Judge Edelstein to change certain of his court procedures.

Position Supported

The three Appeals Court judges, Leonard P. Moore, Ellsworth Van Graafeiland and Thomas J. Meskill, yesterday supported I.B.M.'s position.

I.B.M. had charged that Judge Edelstein's orders were preventing the company from privately interviewing adverse witnesses. The Appeals Court said yesterday that "restrictions on interviewing set by

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the trial judge exceeded his authority."

I.B.M.'s second contention was that Judge Edelstein was refusing to file certain of I.B.M.'s papers with the clerk of the court. On this issue the Appeals Court commented, "Judge Edelstein's refusals have constituted an impermissible interference with petitioner's right to make the record it chooses for purposes of appeal."

The computer company's third contention was that Judge Edelstein was preventing it from making oral motions in court and insisting that motions be in writing. The appeals court said that the judge could reserve decision on motions but could not bar them.

In concluding a 21-page decision, the Appeals Court judges commented: "This court has the greatest respect for Judge Edelstein's efforts to conduct an orderly trial in the U.S. vs. I.B.M. suit and we are cognizant of the possibly unprecedented burden which that case has presented. Our decision today is reached on the ground that it will enable parties to present the best case possible for the court's consideration and therefore should assist in the District Court's eventual disposition of the suit based on all the facts counsel may bring before it."

The Justice Department's antitrust action against I.B.M. was filed on the last day of President Lyndon B. Johnson's Administration in 1969. It is acknowledged to be the largest and most complicated antitrust suit in history. The trial began this spring and is expected to go on for more than a year. Judge Edelstein has said it would probably take him a year after the trial closed to render his decision.