JAMES C. DUFF

The U.S. Courts: A Source of Confidence

FOUR WORDS DECLARE the mission of our federal courts: Equal Justice Under Law. They are etched in marble above the front steps of the Supreme Court of the United States. To those who enter our courts, those words offer hope. To those who toil in our courts, those words are a pledge. They pledge fairness and independence in applying the laws to all in our country.

Today, the judicial branch encompasses 199 separate courts, more than 2,000 judges, and more than 30,000 men and women dedicated to helping our judges uphold the pledge to ensure equal justice under law day by day and case by case. The federal judiciary's mission is a considerable undertaking. In fiscal year 2008, nearly 1.5 million cases poured into federal courts—including appellate, district, and bankruptcy courts. That same year, our federal probation system was responsible for more than 120,000 persons in supervised release programs.

The Administrative Office of the United States Courts and the Federal Judicial Center, whose specific responsibilities are explained elsewhere in this issue, support the mission of the federal courts. And it is the job of the Judicial Conference of the United States, whose operations are described in a separate article, to set administrative policies for the courts.

In addition, the United States Sentencing Commission, an independent agency of the judicial branch, helps establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for those convicted of federal crimes. Another judicial branch entity, the Judicial Panel on Multidistrict Litigation, was created by Congress in 1968 to help streamline adjudication of related complex cases filed in multiple judicial districts.

Our nation's federal court system serves as a model for many other countries, just as the U.S. Constitution does. Our court system and the rule of law are among the United States' greatest success stories and most important exports.

A Look Back

The nation's growth and evolution of our federal laws have created enormous changes in the size, jurisdiction, and workload of the judicial branch. It is eye-opening to compare today's federal court system with what it was 220 years ago, two years after Article III of the U.S. Constitution vested judicial power "in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

The Judiciary Act of 1789 established a judicial system that consisted of three types of federal courts: the Supreme Court, originally with a Chief Justice and five associate justices; a one-judgeship district court in each state; and circuit courts that had no judgeships of their own but would hear cases over which two Supreme Court justices and a district judge would preside. A principal author of the 1789 act was Oliver Ellsworth, who also had helped draft Article III of the Constitution. He later would become the nation's third Chief Justice. The three-tiered federal court system structure that is familiar to today's practitioners did not actually take shape until a century later in an 1891 enactment by Congress.

As the United States grew westward, the U.S. Congress expanded the number of district and circuit courts, and expanded the number of Supreme Court seats—to nine in 1837—in order to accommodate the greater circuit-riding responsibilities. Federal jurisdiction also grew, until in 1875 Congress granted the circuit courts the authority to hear all cases arising from the U.S. Constitution and federal laws.

Congress struggled in the 1800s to put a workable bankruptcy system in place. An 1898 law established the position of referee—that is, officials appointed by district judges to administer bankruptcy cases. That law, in essence, governed bankruptcy proceedings for 80 years, until passage of the Bankruptcy Reform Act of 1978. Today, bankruptcy proceedings are presided over by more than 300 bankruptcy judges who are appointed by U.S. appellate courts and serve 14-year terms.

The nation's industrial revolution and the ensuing increase in federal regulatory agencies and accompanying statutes enacted by Congress, especially in the field of criminal justice, greatly expanded the work of the federal courts. In 1998, the Commission on Structural Alternatives for the Federal Courts of Appeals reported that the number of federal district judgeships had grown from 139 in 1930 to 646 in 1997, and the number of federal appellate judgeships had increased from 55 to 179 in that time period. The commission, chaired by retired Supreme Court Justice Byron White, noted that "[t]he work assigned to these courts, howev-

er, has increased disproportionately to the increase in judgeships." In the ensuing 11 years, caseload growth has continued to outpace the number of judgeships added. The number of district judgeships today is 678, and the number of appellate judgeships remains at 179—unchanged since 1990.

For much of the nation's history, U.S. commissioners were used in district courts to try petty offenses and to conduct preliminary hearings in criminal cases. The Federal Magistrates Act of 1968 created a new judicial officer who not only could do the work of a commissioner but also could perform many other duties to help district courts cope with their burgeoning caseloads. In 1990, the title of the office was changed by statute to U.S. magistrate judge. The term of office is eight years.

Today, our country is fortunate, indeed, to have the many dedicated public servants in the judiciary. Americans are served not only by the ingenious structure of judicial independence provided by our Founders but also by the committed public servants who give life to the structure. Our senior judges, in particular, embody that spirit of public service. Were it not for their continued service when retirement is an appealing alternative, the judiciary would not be able to meet the increased demands of its workload: each year, senior judges handle between 15 and 20 percent of the caseload in appellate and district courts.

Progress, Accountability, and Commitment

As our courts' workloads grow and our numbers are expanded, there are increased challenges to maintaining the public's trust and the quality of our services. Notwithstanding these challenges, public opinion polls suggest that the federal judiciary is delivering on its mission. Our federal court system consistently ranks highest among our three branches of government in public opinion surveys on trustworthiness. Americans generally express confidence in their federal courts.

Judicial independence, secured by life tenure, clearly contributes to that public trust. And so, too, does an appropriate measure of accountability to the public within the strictures of an independent branch of government. In that regard, the federal judiciary takes very seriously the conduct of all its members, especially judges. In recent years, we have strengthened the mechanisms used to assure that judges' conduct meets the standards demanded by the American public.

In one recent example, the late Chief Justice William Rehnquist responded to concerns expressed in Congress by creating a committee in 2004 to review and report on the process by which the judiciary handled complaints about federal judges' conduct under the Judicial Conduct and Disability Act of 1980. The committee, chaired by Justice Stephen Breyer, made 12 specific recommendations, and the Judicial Conference, led by Chief Justice John Roberts Jr., reacted promptly. The Judicial Conference has acted on all 12 of the Breyer committee's recommendations and has approved the first-ever binding nationwide set of rules for handling conduct and disability complaints. The new rules seek to promote greater public awareness of the complaint process and to enable the Judicial Conference's Committee on Judicial Conduct and Disability to review complaints that have been dismissed by judicial councils to determine whether special investigating committees should be appointed. Such efforts at self-improvement help secure the judiciary's independence and thereby make it possible for the federal courts to fulfill their mission and maintain the public's trust.

The public's current supportive view of the federal judiciary does not give us a reason to rest. The public's trust serves to inspire us to correct our shortcomings, uphold a great tradition of public service, and fulfill our mission to the public. **TFL**

James C. Duff was appointed director of the Administrative Office of the United States Courts by Chief Justice John Roberts in 2006. Previously, he served as administrative assistant to Chief Justice William Rehnquist from 1996 to 2000.

Judicial Profile Writers Wanted

The Federal Lawyer is looking to recruit current law clerks, former law clerks, and other attorneys who would be interested in writing a Judicial Profile of a federal judicial officer in your jurisdiction. A Judicial Profile is approximately 1,500–2,000 words and is usually accompanied by a formal portrait and, when available, personal photographs of the judge. Judicial Profiles do not follow a standard formula, but each profile usually addresses personal topics such as the judge's reasons for becoming a lawyer, his/her commitment to justice, how he/she has mentored lawyers and law clerks, etc. If you are interested in writing a Judicial Profile, we would like to hear from you. Please send an e-mail to Stacy King, managing editor, sking@fedbar.org.