

President's Column

Gerald T. Elliott

Change happens.

One strength of our legal system, and judicial institutions, consists in part in stability, consistency, and willingness to act on the authority of precedent. But even for judges and courts, *change* does happen; it is inevitable, and today it is accelerating.

It is not surprising to us as judges, but at times we must pause to recognize that the same stability that can be such a strength can also be a weakness of our legal system and judicial institutions when it prevents us from recognizing or responding to change.

A change in the "role of the judge" demonstrates, and is representative of, what we address. It is a change on which professional organizations are presently focusing time and attention. Fifty and more years ago, the role of the judge was simply to find the facts, determine the law, and decide the case, *i.e.*, a legal decision maker. Judges, and indeed the larger judicial institution, currently recognize that the responsibilities of judges have expanded well beyond this first role, the case-by-case decision maker.

First, judges today are expected to perform an administrative/management role. Bob Tobin of the National Center for State Courts has presented this change in his recent book, *Creating the Judicial Branch: The Unfinished Reform*. It is useful and informative, albeit a bit discomfiting at points. I recommend it to you. It was, and continues to be, necessary for judges and courts to manage and administer themselves. The alternative was, and still is, for others to set the rules and do the management, with the obvious resulting loss of independence necessary for an effective and impartial judiciary and court system.

Second, judges and courts today are being asked to solve not only legal conflicts but also social problems, and to address the need for social services. This role was demonstrated recently in the June 2000 *New York State Bar Association Journal* in the article, "New York's Problem-Solving Courts Provide Meaningful Alternatives to Traditional Remedies." The article is a good exposition of the "problem solving" role of courts and judges in New York and the concepts are applicable to all of us as judges and in our courts. But, apart from New York, all judges and courts have had their own experience with the problem-solving role. We all do this regularly in juvenile courts as well as in domestic relations. Custody cases always involve determining and carrying out the best interest of children. A central feature of drug courts is to provide and moni-

tor the service of drug treatment. In our criminal courts and criminal cases, we not only convict and incarcerate, but also provide training and other services during incarceration and post-incarceration designed to break the cycle and reduce recidivism.

Third, judges and courts are increasingly being held accountable for public assets, resources, and finances. Though arguably an aspect of administration and management, performance-based budgeting for the use of public funds and financial management are discrete areas that are ultimately the role and responsibility of the judge.

Fourth, judges and courts are being asked to adjudicate with an awareness of and sensitivity to the effect the process may have on the parties involved, that is, to be aware of and adjudicate with the therapeutic/anti-therapeutic consequences. *Court Review* explored this in depth in its last issue, Spring 2000.

Last, judges and courts are being urged to adopt a self-monitoring and self-evaluation role to ensure the performance of their court addresses appropriate aspirational goals and objectives, such as those articulated by the Trial Court

Performance Standards.

Some may observe more, some less, and others simply different changes in the role of judges. Few, if any, however, have expressed the notion that the role of the judge is not changing from that of solely an adjudicator.

Whether, and the extent to which, this changing role impacts individual judges will be determined by local statutes, rules, and legal cultures, but it is likely that judges with any administrative or similar responsibilities will be confronted and involved with changes like this sooner or later, if they haven't already.

Responding to these changes, the American Judges Association is expanding its educational programs to include attention to the administrative and management aspects of judging. Those expanded programs may include breakout discussion groups at our meetings focused on administrative aspects; separate presentations; or longer programs, all depending, of course, on the needs and interests of the judges.

Judges will benefit from more opportunity to focus on the growing and changing administrative aspects of judging. It is the intention of the American Judges Association to respond to that need as a part of its service to the membership and judiciary as an institution.

