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ABA MINIMUM STANDARDS FOR CRIMINAL JUSTICE—A STUDENT SYMPOSIUM

INTRODUCTION—WHY THE ABA STANDARDS?

*Honorable Tom C. Clark**

Why the ABA Standards? Why should these Criminal Justice Standards be adopted in my State?

These are questions that were asked and answered by over 300 judges from nearly every state who met in February, 1972, at Louisiana State University in an Institute sponsored by the Louisiana Law School and the Criminal Law Section of the American Bar Association. And they were so well answered that every judge returned home determined to put the Standards into effect in his state. Today the most active campaign in the judiciary's history is being carried on to implement the findings of that Institute that the Standards are one of the most effective instruments that we have in our all-out fight against crime.

The value of the ABA Standards for Criminal Justice can, I think, be summed up in just a few words: By cleaning out the cobwebs from our criminal procedures, the adoption of the Standards results in the more effective administration of criminal justice. This includes not only the quality of that justice but its swift disposition. How do the Standards accomplish this? Why are the Standards better than existing procedures?

In order to answer these questions, we must first look at the nature of the Standards. They are a blend of modernization, clarification, renovation and practicalities. Their goal is elimination of the obsolescences and pit-falls besetting the administration of criminal justice in our country and the substitution of a more practical and effective one. Their ultimate goal is, simply, more effective justice—for the accused, society and the system, without compromising constitutional safeguards.

The Standards, however, are not intended to supersede a state's system or its law; our purpose is not to impose the Standards on any jurisdiction. Instead, the Standards are merely suggested outlines for modernizing out-dated systems. If after

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study, the state finds that the Standards may be helpful to its system of criminal justice, we will assist in effectuating their adoption. Our hope is that they will be adopted in every state and federal jurisdiction.

Our nation is blessed with having the most enlightened system of criminal justice in the world; and Winston Churchill said that this was the real test of the stability of a civilization. However, like the finest machine, the criminal justice system must be given constant maintenance and periodic overhaul to enable it to more adequately fulfill the needs of an expanding society—with its population explosion, transportation and instantaneous communication systems, scientific and technical advances and development of human relations and individual involvement. To this end it is our mission to assist every state in culling from the Standards what it needs to bring its administration of criminal justice up to present-day requirements. Take, for example, Alaska and Hawaii; each have comparatively new organic laws. They are not as out-of-date as are some of the remaining states. It will be quite an easy task to up-date their criminal justice systems.

The ABA Standards, then, are not a set of principles being forced upon the states. Rather, they are suggested guidelines that have been tested out and found true as a balanced, workable and fair set of rules for the more effective administration of criminal justice.

As Chief Justice Warren E. Burger, who participated in formulating many of the Standards and himself headed the parent ABA Special Committee on Standards from 1968 until his appointment to the Supreme Court in 1969, has pointed out, "these Standards can be used by the State and Federal Systems to bring criminal justice to a new level which is reasonable, workable, and what is more important, fair. The Standards are not intended as a model code; but they supply a rich background of material from which sound and decent procedures can be developed."¹

The history of the Standards—their formulation—is substantial evidence of their worth. The years that went into their

1. Speech before the National Association of Attorneys General, Washington, D.C., February 6, 1970.

writing is one proof that they are not the result of any instant analysis of the ills of the criminal justice system. They *are* the product of deliberation by a concert of appellate and trial judges, prosecutors, public defenders, criminal law professors, practicing attorneys and professionals of other disciplines. It is now nine years since the American Bar Association authorized formulation of a Special Committee on Standards for the Administration of Criminal Justice. During the intervening time, the Committee has produced 16 approved volumes of ABA Standards covering the entire trial process from arrest and trial to post-conviction appeal.²

Unlike many such studies, however, the Standards volumes have not been left on the shelves to take their places among the archives of valuable ideas which died for want of attention. In 1968, the Section of Criminal Law was assigned responsibility for implementing all of the Standards except the volume relating to Fair Trial and Free Press.³ Since then, the Section has worked tirelessly on a massive, nationwide program of implementation.

One of the most difficult hurdles the Implementation Committee continues to face is the misconception that the Standards represent some sort of mandatory rules handed down from on high. But, as past president of the ABA, Leon Jaworski, has emphasized, "they are not a fixed set of principles Neither are they a federal creation to replace state practices and procedures. The correct view is that the ABA Standards primarily represent the *best* of what dedicated legal scholars could pre-

2. The 17th volume of STANDARDS RELATING TO THE URBAN POLICE FUNCTION is expected to have been approved at the midyear meeting of the American Bar Association in Cleveland, Ohio, February, 1973.

The approved STANDARDS are: Appellate Review of Sentences; Criminal Appeals; Discovery and Procedure Before Trial; Electronic Surveillance; Fair Trial and Free Press; Function of the Trial Judge; Joinder and Severance; Pleas of Guilty; Post-Conviction Remedies; Pretrial Release; Probation; Prosecution Function and the Defense Function; Providing Defense Services; Sentencing Alternatives and Procedures; Speedy Trial; Trial by Jury.

The STANDARDS volumes are available at the minimal cost of \$2 per volume, or \$1 per volume in sets of 10 or more, assorted or same titles, from ABA Circulation Department, 1155 E. 60th Street, Chicago, Illinois 60637, (312) 493-0533.

3. The implementation of these STANDARDS is the responsibility of the ABA Legal Advisory Committee on Fair Trial and Free Press, chaired by U.S. Court of Appeals Judge John J. Gibbons of New Jersey.

scribe."⁴ As suggested guidelines, the Standards have the dual goal of safeguarding the constitutional rights of the accused, on the one hand, and promoting fair, effective law enforcement and the adequate protection of society, on the other.

The Standards' implementation necessarily must be the responsibility of a state—its bench, bar and citizenry. At best, our Section can only act as catalyst and coordinator. It was the ABA which gave birth to the Standards. Now it is the job of the Section of Criminal Law, through our implementation program, to sell the product. We can tell you about the hard work and devotion that went into their drafting; we can pass along to you the experience of those who have tried them. We can even offer you effective methods for using them. Beyond that, however, you must adapt the product to your own state and local needs, and in turn fashion the Standards to make them acceptable to the local tastes and traditions you know best.

Acceptance of the Standards, beyond representing the policy of 160,000 lawyers and judges who make up the Association's membership, can be attested to by the enthusiastic reaction across the country to our implementation program. In a landmark breakthrough just this February, Florida became the first state in the Union to substantially implement the Standards by formal court order. Effective February 1, 1973, the Florida supreme court adopted most of the ABA Standards by incorporating them into the revisions of the criminal procedure rules. A few substantive areas—such as appellate review of sentences—remain to be enacted by legislation. The success in Florida was particularly gratifying to the Section because Florida had been picked as one of three pilot states when the implementation program was launched five years ago.

Besides Florida, the Section can now point proudly to some implementation activity in over 40 states. Comparative analyses between the Standards and a state's law, rule and practice—considered the first step in implementation—have now been completed in 15 states. As part of the nationwide educational campaign on the Standards, the Section has co-sponsored more than

4. Address before the National Judicial Conference on Standards for the Administration of Criminal Justice, Baton Rouge, Louisiana, February 11, 1972.

a dozen statewide implementation conferences. More are in the planning stages.

Another indication of the accepted worth of the Standards can be found in more than 1000 appellate citations of the Standards. This is in addition to innumerable lower court decisions citing them. Some states, such as Colorado, have virtually implemented the Standards by court decisions. Other states are following Florida's lead by incorporating the Standards into their revised rules of criminal procedure. This is the most feasible route if your state is fortunate enough to be among the approximately 25 states having clear-cut rule-making powers. Short of that, a state may have to resort to legislation, or in a rare situation, constitutional amendment. No matter what path a state may follow, the benefit at the journey's end will justify the trip.

Several new aids will immeasurably benefit the implementation program. West Publishing Company is now including cumulative citations of the Standards in its National Reporter Service, and will soon incorporate the Standards into the West Key Number System, an invaluable research tool for attorneys. Shepard's Citator will soon include the ABA Standards in its valuable citator service. And once the final volume of Standards is approved, the Section has arranged with the ABA Special Committee to print all the Standards, with commentary, in one volume. This will facilitate distribution of the Standards, as well as their use by judges and lawyers.

A few examples of how the Standards deal with major problems of our outmoded criminal justice system further underscore their value. The Standards Relating to Pretrial Release, for instance, are both innovative and practical. They call for conditions of release tailored to the situation, rather than use of high money bail, which is unrealistic, hits the little man hardest, and contributes greatly to overcrowded detention and the staggering costs of prisons. The Standards Relating to Speedy Trial recommend adoption of law or court rule to specify the maximum time which may elapse between arraignment and trial, with the heavy sanction of discharge of the accused if the time conditions are not met. The Standards Relating to Post-Conviction Remedies deal with the sticky problem of limiting and giving needed finality to the avalanche of habeas corpus appeals

which are now overwhelming many of our courts, not to mention the crises in Federal-State relations which this condition creates as a by-product. These Standards provide relief for legitimate questions not originally adjudicated with adequate finality, while at the same time providing controls against abuse by frivolous and repetitive invocations of the "great writ."

Some of the most convincing and startling evidence to date of the worth of the Standards has been in areas which have adopted the omnibus hearing technique advocated by the Standards Relating to Discovery and Procedure Before Trial. This procedure provides for maximum disclosure by adversaries before trial and is specially designed to surface and dispose of as many preliminary and time-consuming issues as possible. "Omnibus" also reduces the number of § 2255 motions in the Federal system and habeas corpus post-conviction applications in State courts. And most important omnibus improves the quality of criminal justice. Where instituted in good faith it eliminates "trial by ambush" and gives the defendant a speedy trial as required by our federal constitution.

In the United States District Court for the Western District of Texas, for example, Judge Adrian Spears reports that following adoption of the omnibus hearing in his court, the median time interval for disposition of criminal cases dropped to only 3.5 *days* against a national average of 3.4 months. In this regard, his court ranked first in the nation's 93 federal district courts in fiscal 1972; despite the fact that the five judges in his district had the highest weighted criminal caseload in the Federal system. Likewise, in the District of Columbia, Southern District of California, and the Southern District of New York, the use of "omnibus" has greatly increased dispositions.

These are only a sprinkling of examples illustrating the impact the Standards can have in reversing the trend towards "slow-motion justice." I trust they may be enough to whet your appetites. Their value has been proven by experience across the nation. But their worth in any particular state can only be proven through a carefully plotted implementation program beginning with an intensive comparison of the Standards with the state's existing law, rule and practice; continuing with a statewide educational campaign among bench, bar and lay citi-

zens; and culminating in the adoption of those Standards judged appropriate for the needs of that state.

So I urge you to become thoroughly familiar with the ABA Standards. Find out about the progress of implementation in your own state.⁵ Take advantage of the educational materials on the Standards available from the Section of Criminal Law.⁶ And, last, I urge you to consider joining the Section and becoming a partner in our nationwide implementation effort.

FREE PRESS v. FAIR TRIAL: INSULATION AGAINST INJUSTICE

In the current era of mass media and wide, rapid dissemination of news, the possibility of prejudice to the criminal process has become particularly acute. It is becoming increasingly difficult to find an impartial jury and to conduct a trial without undue publicity. An ever increasing number of verdicts have been set aside and changes of venue granted because the vote of one or more jurors was influenced by exposure to extrajudicial communication.¹

"[It is the goal of our legal system] that each party shall have his case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury. Such news or comments may prevent

5. For more information on the ABA Standards Implementation program, contact Criminal Law Section Staff Director H. Lynn Edwards, ABA Section of Criminal Law, Room 401, 1705 DeSales Street, N.W., Washington, D.C. 20036, telephone (202) 872-8060.

6. Educational materials available on a complimentary basis from the Section Staff Office (address above) include the following: May, 1972 issue of *Judicature*, entirely devoted to discussion of ABA Standards and Implementation; "How To Do It" implementation brochure, outlining steps a state must take to implement STANDARDS; article on "ABA Standards for Criminal Justice: Prescription for an Ailing System," Justice Tom C. Clark, from *Notre Dame Lawyer*, Vol. 47, No. 3; article on "ABA Standards for Criminal Justice," Justice William H. Erickson [former Section Chairman], reprinted from *Criminal Defense Techniques* (Cipes, ed. Matthew Bender, 1972); Annual Report of the Section Chairman, 1971-72, including status report on implementation as of date of report; "Proposed Revision of Florida Procedure Rules," reprinted by Section; and Section brochure, containing membership application and order blank for ABA Standards.

1. *Johnson v. Beto*, 337 F. Supp. 1371 (S.D. Tex. 1972); *Frazier v. Superior Ct.*, 5 Cal. 3d 287, 486 P.2d 694, 95 Cal. Rptr. 798 (1971); *Oliver v. State*, 250 So.2d 888 (Fla. 1971); *State v. Mejia*, 250 La. 518, 197 So.2d 73 (1967); *Pulliam v. State*, 491 P.2d 353 (Okla. Crim. 1971).