


AMERICAN BAR ASSOCIATION PROJECT ON  
STANDARDS FOR CRIMINAL JUSTICE

STANDARDS RELATING TO

*The Function of the  
Trial Judge*

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This volume contains the Tentative Draft of June 1972. The standards in it were approved by the ABA House of Delegates in August 1972, and may be cited as "Approved Draft, 1972."

Tentative Draft

AMERICAN BAR ASSOCIATION PROJECT ON  
STANDARDS FOR CRIMINAL JUSTICE

STANDARDS RELATING TO

# *The Function of the Trial Judge*

Recommended by the

ADVISORY COMMITTEE ON THE JUDGE'S FUNCTION

Frank J. Murray, *Chairman*

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June 1972

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*The Function of the Trial Judge*

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## *Preface*

THE REPORT in this volume is the last of a series of tentative reports on a variety of topics which have been prepared by advisory committees of the American Bar Association Project on Standards for Criminal Justice. At this time it is being distributed for study and discussion. It has not been approved by the Special Committee which oversees the Project, by the Sections of the ABA which sponsor the Project, or by the House of Delegates, whose eventual approval of the Project's recommendations will make them official ABA policy.

When earlier Project reports were issued, the title of the Special Committee—and of the Project—described the standards as *minimum* standards (although, when they were adopted by the ABA, they were adopted merely as standards). In August 1969 the House of Delegates voted to delete that description from the Special Committee and Project titles.

A word as to the background of the Project may be helpful in placing this report in context. The formulation of standards in the field of criminal justice was proposed to the ABA in 1963 by the Institute of Judicial Administration (at New York University Law School), of which the first two presidents—Arthur T. Vanderbilt and John J. Parker—had been the leaders in the ABA's promulgation of Minimum Standards of Judicial Administration 25 years earlier. During early 1964, the Institute conducted a pilot study of the problems involved, under the supervision of a committee headed by Chief Judge J. Edward Lumbard of the United States Court of Appeals for the Second Circuit and composed of ABA members nominated by the Board of Governors and the Sections of Criminal Law and Judicial Administration. On the

basis of the Pilot Study Committee's report, the ABA, at its annual meeting in August 1964, authorized a three-year project with a budget of \$750,000. By the end of December 1964, all of the funds had been raised through equal grants from the ABA Endowment, the Avalon Foundation and the Vincent Astor Foundation; all of the members of the various Project committees had been appointed by President Lewis F. Powell, Jr.; a full-time director, Richard A. Green, had been selected, and a central office to administer the Project had been established in New York City at the Institute of Judicial Administration, which was appointed to serve as the secretariat. The original budget having been exceeded as the Project expanded, additional funding has been provided by the ABA Endowment.

A fifteen-member Special Committee on Standards for the Administration of Criminal Justice is responsible for the overall supervision and coordination of the Project and the maintenance of liaison with the Sections of Criminal Law and Judicial Administration, the chairmen of which are ex-officio members of the Special Committee. The Special Committee recommends the standards to those sections, and to the Board of Governors and the House of Delegates for their consideration and endorsement. Chief Judge Lumbard served as Special Committee chairman from August 1964 until resigning from that position in August 1968. Chief Justice Warren E. Burger, then a United States Circuit Judge, was designated as his successor, serving until August 1969. United States Senior District Judge William J. Jameson, a former president of the ABA, is the present Special Committee chairman.

The scope of the Project's concern has been the entire spectrum of the administration of criminal justice, including the functions performed by law enforcement officers, by prosecutors and by defense counsel, and the procedures to be followed in the pretrial, trial, sentencing and review stages. In order to cover this broad area, the administration of criminal justice was initially divided into five sub-areas, and a separate advisory committee was appointed to make the necessary studies and to draft the standards for the topics of major concern within each of those areas. The titles of those committees indicate their scope:

Police Function, Pretrial Proceedings, Prosecution and Defense Functions, Criminal Trial, and Sentencing and Review. A sixth advisory committee was created specifically to deal with the subject of Fair Trial and Free Press. A seventh was created in 1969 to deal with aspects of the Judge's Function not treated in the other reports.

Each of these committees is or was composed of ten to thirteen ABA members with experience and expertise in the administration of criminal justice, including appellate and trial judges, both state and federal; prosecuting attorneys, public defenders and other public officials; criminal law professors, and practicing lawyers, including defense attorneys. The committees have been aided by reporters and consultants drawn from law faculties across the nation and by the resources of interested specialized organizations.

Most of these committees have prepared standards on more than one topic and, except for the one instance when two sets of standards were presented in a single volume, have reported on each topic separately. Accordingly, there will have been seventeen reports, including eighteen sets of standards, made by the Project. Each such report is being, or has been, initially distributed in the form of a tentative draft for study and discussion.

Fifteen full sets of standards have now been approved by the ABA House of Delegates. In February 1968 it approved standards relating to: Fair Trial and Free Press, Post-Conviction Remedies, Pleas of Guilty, Appellate Review of Sentences, Speedy Trial, and Providing Defense Services. In August 1968 it approved standards relating to: Joinder and Severance, Sentencing Alternatives and Procedures, Trial by Jury, and Pretrial Release. In August 1970 it approved standards relating to: Discovery and Procedure Before Trial, Criminal Appeals, and Probation. In February 1971 it approved standards relating to: Electronic Surveillance, The Prosecution Function, and The Defense Function.

In July 1971 the ABA House of Delegates approved standards relating to The Judge's Role in Dealing With Trial Disruptions. Those standards were formulated by the Advisory Committee on the Judge's Function as part of the report being presented in this volume. They



were submitted to the House of Delegates in advance of completion of the full report upon the request of then ABA President Bernard G. Segal, who had called upon the Project to give priority attention to that subject. Those standards have now been integrated into the full report and are expressly identified as having already received approval by the House of Delegates.

The Advisory Committee on the Judges' Function was established in January 1969 upon the recommendation of Chief Justice Burger, then chairman of the Special Committee. Although many of the standards formulated in the Project up to that time related to the function of the trial judge, it had become apparent that it would not only be helpful to draw some of them together into a single report but was also essential to deal with significant matters not fully treated in other reports, *e.g.*, the judge's role in dealing with trial disruptions and in implementing standards recommended as to conduct of prosecutors and defense counsel. To aid in coordination of the work of this advisory committee with that of others, some members of other advisory committees were appointed to the Judge's Function Committee in addition to lawyers and judges who were new to the Project.

Serving as members of the Advisory Committee on the Judge's Function have been the following:

HON. FRANK J. MURRAY, *Chairman*

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United States District Judge, District of Massachusetts; Associate Justice, Superior Court, Commonwealth of Massachusetts, 1946-67; Chairman, Board of Directors, National College of the State Judiciary; Member, Board of Trustees, Institute for Court Management; Chairman, ABA Section of Judicial Administration, 1969-70; Chairman, National Conference of State Trial Judges, 1964-65; Corporation Counsel, City of Boston, 1943-45; Member, Advisory Committee on Pretrial Proceedings, ABA Project on Standards for Criminal Justice, 1964-70.

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Jacksonville, Florida

Practicing lawyer; former Chairman, Trial Lawyers Section and Criminal Law Committee, and former Member, Board of Governors and

Executive Committee, Florida Bar; former President, Jacksonville Bar Association; Member, Advisory Committee on the Prosecution and Defense Functions, ABA Project on Standards for Criminal Justice, 1964-71.

HON. THOMAS COAKLEY

Mariposa, California

Associate Justice, California Court of Appeal, 5th Appellate District, 1969-71; Judge, Superior Court of Mariposa County, California, 1953-69; Member, Judicial Council of California, 1959-62; Member, Board of Governors, California Bar, 1951-53; President, San Francisco Bar Association, 1948; Deputy Attorney General, California, 1939-42.

FRANK S. HOGAN

New York, New York

District Attorney of New York County, since 1942; Member, Advisory Committee on the Prosecution and Defense Functions, ABA Project on Standards for Criminal Justice, 1964-71.

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Practicing lawyer; Assistant Attorney General of Illinois, 1948-52; U. S. Referee in Bankruptcy, 1936-40; Member, Advisory Committee on Civil Rules, Judicial Conference of the U. S.

HON. BURTON R. LAUB

Carlisle, Pennsylvania

Dean, Dickinson School of Law; Judge, Court of Common Pleas of Erie County, Pennsylvania, 1946-66; District Attorney of Erie County, 1940-46, First Assistant, 1930-40; Member, Pennsylvania Crime Commission, 1969; President, Pennsylvania Conference of State Trial Judges, 1963-65; President, Pennsylvania District Attorneys Association, 1945.

HON. MIRON A. LOVE

Houston, Texas

State District Judge, 177th District Court, Harris County, Texas; Municipal Judge, City of Houston, 1953-58; Assistant District Attorney, Harris County, 1951-53.

HON. SAM PHILLIPS MCKENZIE

Atlanta, Georgia

Judge, Superior Court, Atlanta Judicial Circuit; Member, Board of Directors, National College of the State Judiciary; Chairman, National Conference of State Trial Judges, 1971-72; Member, Institute of Judicial Administration Advisory Committee on Standards for Juvenile Justice.

HON. JOHN A. H. MURPHREE

Gainesville, Florida

Judge, 8th Judicial Circuit Court of Florida, since 1943; Chairman, National Conference of State Trial Judges, 1966.

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HON. EDWARD ALLEN TAMM

Washington, D.C.

United States Circuit Judge for the District of Columbia Circuit and Chief Judge, United States Temporary Emergency Court of Appeals; United States District Judge, District of Columbia, 1948-65; Assistant to the Director, Federal Bureau of Investigation, United States Department of Justice, 1930-48.

Justice Harry A. Blackmun, then a United States Circuit Judge for the Eighth Circuit, served as a member of the Advisory Committee until June 1970 when he was appointed to the Supreme Court of the United States. Judge Robert V. Rensch, a judge of the District Court of Minnesota in St. Paul, also served as a member of the Advisory Committee until his death in March 1971.

The initial proposal of most of the standards to the Committee, the drafting of the commentary and the research behind them were the responsibility of the reporter, Professor Thomas J. O'Toole of Northeast-

ern University School of Law. Prof. O'Toole served as dean of that law school from 1967 to 1971 and was previously a member of the faculty of the Georgetown University Law Center (1963-67). Similar work was done with respect to contempt and related matters by the associate reporter, Professor Steven Duke of Yale Law School.

Approximately 14,000 copies of this volume are being distributed within the American Bar Association: to members of the House of Delegates, the Sections of Criminal Law and Judicial Administration and interested committees. Additional copies are being furnished to other individuals and groups who have exhibited interest in the subject. By such distribution of a tentative draft for study and discussion, the Special Committee and the Advisory Committee proposing it are soliciting wide and careful consideration of these proposals and welcome comments in writing. Through this procedure, it is hoped to achieve the formulation of standards which can be recommended for application throughout the United States. It is also hoped that by involving in the formulation process many of the persons who would be responsible for the application of such standards, the Project can stimulate their interest in improving the effectiveness, efficiency and fairness of the administration of criminal justice.

In order to receive appropriate attention, all communications should be addressed and sent as soon as possible to:

Office of Criminal Justice Project  
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May, 1972

## *Table of Contents*

PREFACE .....	v
INTRODUCTION .....	1
STANDARDS .....	7
Part I     Basic Duties .....	7
Part II    Facilities and Staff .....	9
Part III   Pretrial Duties .....	10
Part IV    Accepting Pleas and Waivers .....	13
Part V     Procedures During Trial .....	14
Part VI    Maintaining Decorum of Courtroom .....	18
Part VII   Use of the Contempt Power .....	22
Part VIII   Sentencing and Post-Conviction Remedies .....	23
Part IX    Procedures Regarding Judicial Misfeasance, Nonfeasance and Disability .....	24
STANDARDS WITH COMMENTARY .....	25
Part I     Basic Duties .....	25
1.1    General responsibility of the trial judge .....	26
1.2    Adherence to Standards .....	28
1.3    Appearance and demeanor of the judge .....	29
1.4    Obligation to use judicial time effectively .....	31
1.5    Duty to maintain impartiality .....	32
1.6    Duty to prevent ex parte discussions of a pending case .....	34
1.7    Circumstances requiring recusation .....	34

Part II	Facilities and Staff .....	36
2.1	Necessity to provide judicial manpower .....	36
2.2	Adequacy of courtroom facilities and supporting staff .....	37
2.3	Trial court's obligation to seek or compel adequate support .....	38
2.4	Duty to have staff properly trained .....	39
2.5	Judge's duty concerning record of judicial proceedings .....	39
Part III	Pretrial Duties .....	41
3.1	Issuance or review of warrants .....	41
3.2	Inquiries concerning jail population .....	42
3.3	Ruling on pretrial release .....	42
3.4	Protecting the accused's right to counsel .....	44
3.5	Attorneys from other jurisdictions .....	45
3.6	Pretrial procedures .....	46
3.7	Prejudicial publicity .....	47
3.8	Responsibility for the criminal docket .....	48
3.9	Ordering severance on judge's own motion .....	50
Part IV	Accepting Pleas and Waivers .....	51
4.1	Role of the judge in plea discussions and plea agreements .....	51
4.2	Acceptance of pleas of guilty or nolo contendere ...	60
4.3	Waiver of right to trial by jury .....	63
Part V	Procedures During Trial .....	63
5.1	Conduct of voir dire examination of jurors .....	63
5.2	Control over and relations with the jury .....	64
5.3	Custody and restraint of defendant and witness ...	65
5.4	Duty to protect witnesses .....	66
5.5	Duty to control length and scope of examination ...	67
5.6	Right of judge to give assistance to the jury during trial .....	68
5.7	Duty of judge on counsel's objections and requests for rulings .....	70
5.8	Duty of judge to respect attorney-client relationship .....	71
5.9	Requests for conferences outside hearing of the jury .....	72

5.10	Final argument to the jury . . . . .	73
5.11	Requests for jury instructions, and instructions . . . .	73
5.12	Assistance during jury deliberations . . . . .	74
5.13	Judicial comment on verdict . . . . .	77
Part VI	Maintaining Decorum of Courtroom . . . . .	78
6.1	Special rules for order in the courtroom . . . . .	78
6.2	Colloquy between counsel . . . . .	79
6.3	Judge's use of his powers to maintain order . . . . .	80
6.4	Judge's responsibility for self-restraint . . . . .	81
6.5	Detering and correcting misconduct of attorneys . .	82
6.6	The defendant's election to represent himself at trial . . . . .	84
6.7	Standby counsel for defendant representing himself .	87
6.8	The disruptive defendant . . . . .	88
6.9	Misconduct of defendant representing himself . . . .	90
6.10	Misconduct of spectators and others . . . . .	91
6.11	Arrangements for the news media . . . . .	91
Part VII	Use of the Contempt Power . . . . .	92
7.1	Inherent power of the court . . . . .	92
7.2	Admonition and warning . . . . .	93
7.3	Notice of intent to use contempt power; postponement of adjudication . . . . .	93
7.4	Notice of charges and opportunity to be heard . . . .	95
7.5	Referral to another judge . . . . .	95
Part VIII	Sentencing and Post-Conviction Remedies . . . . .	96
8.1	Duties of judge in sentencing . . . . .	96
8.2	Duties of judge administering post-conviction remedies . . . . .	97
Part IX	Procedures Regarding Judicial Misfeasance, Nonfeasance and Disability . . . . .	98
9.1	Procedures for disciplining judges . . . . .	98
9.2	Retirement of judges for disability . . . . .	101
APPENDIX	. . . . .	103
	Appendix: Table of Concordance of Sections in Ad- vance Report on The Judge's Role in Dealing with Trial Disruptions and Similar Sections of Complete Report on The Function of the Trial Judge . . . . .	103

## *Introduction*

The standards proposed in this report touch aspects of judicial control and conduct in the administration of criminal justice beginning with the issuance of warrants (§ 3.1) through post-conviction proceedings (§ 8.2). The main emphasis, however, is on the judge's responsibility and conduct in the courtroom and at the trial, and his obligations and duties before trial relating thereto. Other standards refer to the need of the criminal justice system for adequate facilities and support to enable the judiciary to meet and fulfill its responsibilities (§§ 2.1-2.4). The last part of the report recommends procedures to deal with judicial misconduct and incompetence, and provisions for retirement of judges for disability (§§ 9.1, 9.2), implementing other standards relating to conduct of the judge. The report contains standards included in the partial, advance report of this Advisory Committee, entitled *The Judge's Role in Dealing With Trial Disruptions*, approved by the House of Delegates in July 1971. With the consent of the House the Advisory Committee reserved leave to make editorial changes in the approved standards, provided there would be no change in substance. This report designates by asterisks and footnotes the standards approved (and those approved in substance) by the House. The Appendix shows the corresponding numbering of the standards included in both this and the Advance Report. Since this is one of a series of reports on standards relating to the administration of criminal justice, no attempt has been made to present a comprehensive draft of standards relating to all aspects of judicial conduct and responsibilities, although there is some overlap with canons and codes on that subject.



The standards proposed are concerned not only with the role and conduct of the trial judge but with the roles and conduct of all participants at the trial from the perspective of the judge. Certain other reports of the ABA Project on Standards for Criminal Justice which refer to the trial judge's role are mentioned, and in selecting some and not all the Advisory Committee implies no disagreement with those standards not included. Notice has been taken of recent developments concerning plea agreements largely set in motion by the report on Standards Relating to Pleas of Guilty, and of necessary changes in procedure on acceptance of the plea of guilty. The Advisory Committee proposes enlargement of the obligations of the trial judge in the consideration to be given both to plea agreements and acceptance of guilty pleas. Since a cut-off point in treating of details of performance within the trial judge's function had to be determined as a practical matter, the Committee, though cognizant that additional standards of judicial conduct in more minute detail might be fashioned, believes the report as presented covers the substantial and significant aspects of the judge's role.

The standards recommended reflect the position of the Advisory Committee that adequate support and facilities should be provided to ensure the actual administration of individualized justice by judges in courts at every level of our criminal justice system. Although the lower criminal courts, so called, in dense centers of population are plagued with ever-mounting case loads, deteriorating physical facilities and insufficient personnel, no courts anywhere in the nation compare in importance with them from the standpoint of inculcating confidence in the judicial system for vast numbers of our citizens. The measure of justice administered in every court should be its significance and importance to the individual defendant, whose stake is greatest in the criminal process, if we are to be consistent in our professed desire to provide equal justice for all. Accordingly, the standards are recommended for all courts alike, whether of general, limited or special jurisdiction.

In formulating standards the Advisory Committee recognizes that the heart of the process is the trial. Like the English system from