

1974

Commission Introduces New Standards of Judicial Administration

Geoffrey C. Hazard Jr.

UC Hastings College of the Law, hazardg@uchastings.edu

Follow this and additional works at: http://repository.uchastings.edu/faculty_scholarship

Recommended Citation

Geoffrey C. Hazard Jr., *Commission Introduces New Standards of Judicial Administration*, 60 *A.B.A. J.* 912 (1974).

Available at: http://repository.uchastings.edu/faculty_scholarship/935

This Article is brought to you for free and open access by UC Hastings Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.



Faculty Publications
UC Hastings College of the Law Library

Author: Geoffrey C. Hazard, Jr.
Source: American Bar Association Journal
Citation: 60 A.B.A. J. 912 (1974).
Title: *Commission Introduces New Standards of Judicial Administration*

Originally published in the AMERICAN BAR ASSOCIATION JOURNAL. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Commission Introduces New Standards of Judicial Administration

by Geoffrey C. Hazard, Jr.

Seeking to enhance the quality and efficiency of American justice, the Commission on Standards of Judicial Administration has evolved a modern set of guidelines for court systems. The guidelines, if adopted, could prove valuable for all jurisdictions.

NEW Standards Relating to Court Organization were adopted by the House of Delegates of the American Bar Association in Houston at its 1974 midyear meeting. The standards constitute a revision and extension of Association policy on selection and tenure of judges, organization of court systems, and efficient management of court administrative operations. They represent a program for renewing efforts to achieve essential improvements in the quality and efficiency of American justice.

The standards adopted by the House were a set of recommendations presented by the American Bar Association's Commission on Standards of Judicial Administration, which was organized in 1970 and began deliberations in 1971. The commission's assignment was to undertake a comprehensive reconsideration of Association policy concerning judicial selection and tenure, court organization, and court administration.

That policy had originated in a series of resolutions adopted by the House of Delegates in 1938, commonly known as the Vanderbilt-Parker standards. In the years between 1938 and 1970, the Vanderbilt-Parker standards had been updated by actions of the House of Delegates and supplemented action of the Section of Judicial Administration (now the Division of Judicial Administration). These changes had been merely piecemeal, however, and did not take full account of the radical changes in the volume and types of litigation coming through the courts since the standards were originally promulgated in 1938. A new and comprehensive examination of the problems of judicial administration was therefore thought to be overdue. It was in this spirit that the commission was created.

The commission consists of a widely representative

group of leaders in law and judicial administration from all parts of the country. Members of the commission include both trial and appellate judges from federal and state courts, members of the bar who are engaged primarily in litigation, a professor of the law, and a court administrator. The chairman of the commission is Carl McGowan, a judge of the United States Court of Appeals for the District of Columbia Circuit. The commission has operated with a small staff, consisting of a reporter, two assistant reporters, and a number of research assistants; in addition, the commission has availed itself of consulting experts in the various fields of judicial administration.

Tentative Draft Was Widely Circulated

The over-all responsibilities of the commission fell into three subdivisions: court organization, trial courts, and appellate courts. The commission began its work with court organization, including selection of judges. Draft standards were developed out of research and deliberations extending over more than a year and a half. In the spring of 1973 a tentative draft was distributed to thousands of judges, lawyers, news media representatives, representatives of civic organizations, legal scholars, legislators, and others. The response to this circulation was gratifying and instructive, indicating both that the draft appeared to enjoy general approval and that a number of its particulars needed revision or clarification.

These revisions were completed in the fall of 1973, and a final draft was transmitted to the House of Delegates in January, 1974. The recommendations in the final draft, with one significant exception, were approved as presented and now constitute the American Bar Association's statement of principles on the subject. The commission plans to follow a similar procedure in its work on Standards Relating to Trial Courts, to be published in draft form this year, and thereafter with Standards Relating to Appellate Courts.

The Standards Relating to Court Organization prescribe the basic elements of a modern court system. The topics they address can be considered under four headings: a unified court system; selection of a competent and independent judiciary; the authority and procedure for promulgating rules of court and court administrative regulations; and the organization and functions of court administration services. The recommendations in each of these areas are important in and of themselves, and together they constitute mutually rein-

The members of the Commission on Standards of Judicial Administration are: from the judiciary, Carl McGowan—chairman, Griffin B. Bell, Charles D. Breitel, Louis H. Burke, Walter Ely, Charles W. Light, Wade H. McCree, Jr., Phillip J. Roth, and Robert H. Wahl; from the bar, Thomas E. Deacy, Jr., Thomas S. Jackson, John E. Mathews, Jr., Craig Spangenberg, and Robert L. Trescher; from court administration, Harry O. Lawson; from teaching, Prof. Charles A. Wright. Others who served on the commission are William T. Coleman, John T. Reardon, the late Bernard Botein, the late Hicks Epton, and the late Abraham Freedman.

forcing means of strengthening and improving the administration of justice.

The recommendations on court organization begin with the principle that all courts within a system ought to be included in a single organization. Court unification involves the traditional jurisdictional relationships within a court system—a trial court, an intermediate appellate court (except in states with a limited volume of appeals), and the supreme court. Court unification also involves an administrative aspect, in that the highest court, or a central judicial council, acting through the chief justice, has general responsibility and authority for administration of the court system. These relationships are clarified and confirmed in Sections 1.10 and 1.11 of the standards.

Unification Is Feasible and Desirable

In addition, Section 1.12 of the standards calls for a single trial court whose jurisdiction embraces all matters of first instance, heretofore generally distributed among two or more trial court levels. Within the trial court there would be distinct types of procedure for various types of cases—criminal, general civil, limited amount civil, special proceedings such as probate, etc.—and specialized departments or divisions in multijudge trial courts. Unification of trial court jurisdiction is feasible with the use of modern administrative techniques; it is desirable as an expression of the idea that there ought to be a high quality of justice administered in all types of cases regardless of the amount in controversy.

If it is important that a court system have a compact and efficient structure, it is even more important that it be staffed with competent and independent judges. The selection and retention of capable judges is at the same time a primary problem of judicial administration and an issue on which reasonable minds may differ.¹ On this key issue, the commission recommended two alternatives.

The first of these was the now familiar “merit” plan (also known as the American Bar Association plan and the Missouri plan) for selection of judges: a nominating commission, composed of members of the bar and members of the public and presided over by a high ranking judge, presents to the chief executive (the

governor in state systems) a list of at least three qualified persons for a judicial position. The chief executive must then appoint from among the list; the person so appointed may be required to run on his record periodically after his appointment (Section 1.21).

The other plan proposed by the commission was the “confirmation commission” procedure. This proposal was based in part on the procedure now followed in California for appellate judges and in part on the well-established consultative procedure used by the Association’s Committee on the Federal Judiciary regarding the appointment of federal judges: the chief executive nominates for a judicial vacancy a person that he deems qualified, but that person may assume office only if confirmed by a commission consisting of judges, lawyers, and members of the public. The commission believed it important to present this alternative, not only because it might prove more practically acceptable in jurisdictions that have so far refused to adopt the merit plan but also because, in the view of many members of the commission, the “confirmation commission” plan would in fact result in superior judicial appointments.

These alternatives were debated by the House of Delegates, which reaffirmed its commitment to the merit plan, that is, the nomination commission procedure. It is to be hoped that this important decision will help stimulate renewed efforts to secure adoption of the merit plan method. Merit selection is especially needed in states having systems of judicial selection in which popular election or executive appointment is unrestricted by procedures for evaluating qualifications. At all events, the issue of procedure for selection of judges was the only one on which the House departed from the recommendations presented to it by the commission; the other recommendations of the commission were adopted by the House without change.

Of comparable importance to the procedure for selecting judges is the establishment of an effective procedure whereby inquiry can be made into the fitness of judges who are already on the bench. In most jurisdictions, the only procedures for this purpose have been impeachment and, in states where judges are

1. See, e.g., NAGEL, *COMPARING ELECTED AND APPOINTED JUDICIAL SYSTEMS*, SAGE AMERICAN POLITICS SERIES (1973).

elected, electoral campaigns. Neither of these procedures has proved effective, and the electoral system is subject to abuse. The need is for a procedure that is effective to remove or discipline a judge who has been guilty of misbehavior or who ceases to be able to perform his duties and that is also fair to the judge.

The commission recommended that each jurisdiction establish a board of judicial inquiry, consisting of judges, lawyers, and members of the public, that would be responsible for conducting investigations into charges concerning the fitness of judges (Section 1.22). When this investigation revealed circumstances justifying a formal inquiry, the board would conduct a hearing on the question of the judge's fitness and make a recommendation to the highest court. The highest court, on the basis of the hearing record and the board's recommendation, would make the final decision whether the judge should be disciplined for misbehavior or retired for disability. In all proceedings, the judge would have the right to counsel and to a hearing according to basic rules of procedure and evidence. The proceedings would remain confidential unless the charges were found sufficient to warrant a recommendation that disciplinary or remedial action be taken.

Commission Should Review Compensation

The standards recommend that every jurisdiction establish a commission on judicial compensation, charged with the responsibility of periodically reviewing the level of compensation paid to judges and making recommendations to the legislature. Particularly in these times of inflation, it is important that judicial salaries be maintained at an adequate level in terms of real purchasing power and that the judges not be compelled to rely on their own advocacy to secure adequate legislative response. It is hoped that establishing a compensation review commission can introduce an element of continued concern and rationality into this difficult area (Section 1.23). The standards also recommend that all judges be required to retire at age seventy and that provisions for voluntary retirement after substantial service be available to a judge prior to age seventy. Recommendations are also made concerning adequate pensions and medical benefits (Sections 1.23 and 1.24).

In addition to provisions concerning judges, Section 1.26 of the standards contains recommendations concerning court officials described as "judicial officers." This term refers generally to officials now functioning in courts under the titles of magistrate, commissioner, auditor, permanent master, and the like. It is recommended that the status and use of "parajudges" be recognized and regularized and that they perform appropriately delegated judicial and quasi-judicial functions under the direct supervision of, and with responsibility

ABOUT THE AUTHOR: Geoffrey C. Hazard, Jr., is reporter for the Commission on Standards of Judicial Administration. He is a former executive director of the American Bar Foundation and is a professor of law at Yale Law School.

to, judges of the court in which they serve.

The third major topic in the Standards Relating to Court Organization adopted at Houston concerns rule making, policy making, and administration. The standards reiterate the policy expressed in the Vanderbilt-Parker standards that the court system should be vested with authority to prescribe rules of procedure for all types of cases within its jurisdiction (Section 1.31). It is recommended that the rule-making power be exercised through a system of advisory committees constituted to provide participation by the bar and representatives of the general public. At the same time, it is recognized that in the exercise of the rule-making power, the courts should respect the primacy of the legislature in matters of substantive law and in matters which, although arguably "procedural," have major policy implications and thus political significance.

While the rule-making function should be performed with participation of the bar and the public, the internal management of a court system should be the province of the judiciary itself. On this basis, the standards distinguish between the rule-making power and the power to make administrative policy for the internal operation of the courts. Authority concerning the latter should be vested either in the highest court of the state or in a judicial council (Section 1.32). At the same time, the standards differentiate between the function of establishing rules and administrative policy and that of carrying out administration of policy.

Administration, as recognized by the standards, is a task that should be performed by individuals vested with authority to carry out policy (Sections 1.11 and 1.33). The chief justice should have administrative responsibility for the operation of the court system as a whole. Subordinate to him should be a presiding judge in each court who exercises a like authority within that court. When the court is a large and complex unit, as is the case in major metropolitan areas, the presiding judge should appoint assistant presiding judges to manage specialized departments or perform specified administrative functions.

Judges with administrative responsibilities are reminded of the importance of having advisory committees composed of their fellow judges and of consulting with representatives of those particularly concerned with the administration of the courts—the bar, prosecutors, and defense offices with respect to criminal matters for example. The theme of the recommendations concerning administrative powers is that policy should be established by group deliberation but administered by individuals, acting in consultation with those who will be affected. The standards thus recognize the teaching of modern public administration that the processes of consultation and feedback are as essential to effective management as clear definition of policy and specification of authority.

The starting place in court administrative services is having an adequate number of qualified personnel with

well-defined responsibilities. The standards recommend that there be created within each court system a central administrative office, responsible to the chief justice and charged with general supervision and planning for the court system as a whole.

For Each Unit, A Competent, Dedicated Staff

Each unit within the court system, including each trial court, should have its own administrative staff with power and authority to perform all administrative tasks that the court requires, including the functions traditionally performed by the clerk, court reporters, and similar court officers. Court administrative personnel should be selected according to merit, be paid adequate salaries, enjoy sufficient retirement benefits, and be subject to discharge only in accordance with fair hearing procedures (Sections 1.40 to 1.44).

These recommendations proceed from the premise that modern court systems depend to a very high degree on competent and dedicated service by nonjudicial personnel who are directly responsible to the court system and who have the training and freedom from political influence to be able to perform efficiently. Implementation of these recommendations can bring about an end to the situation, too long prevalent, where-in staff work for the courts is performed by people who are either independent of the supervision of the courts or subject to selection on a patronage basis, or both.

Another major aspect of court administration is financial. Section 1.50 of the standards recommends that in state court systems financial support for the courts be provided at the state level, rather than the local level, and that the finances of the courts be managed in a single budget prepared and administered by the court's central administrative office. The standards further recommend that the administrative office have responsibility for budget preparation and for supervising court financial expenditure. These recommendations recognize that the courts can no longer afford the administrative rigidity and discontinuity that results from funding their operations through diverse sources according to un-coordinated budgets.

The final set of recommendations in the Standards Relating to Court Organization concerns court records, statistics, and information systems (Sections 1.60-1.63). Basic principles are presented as to the functions that records should serve, the kinds of records that courts ought to keep, and the basis on which court statistics ought to be developed. Careful attention is given to the use—and potential for abuse—of automated data processing systems (computerization). The standards recognize that record systems, statistical systems, and data processing systems are not ends in themselves but means to the end of improving quality and efficiency.

Throughout the standards, the sustaining idea is that administrative organization and administrative technique are servants of justice and not its master. As stated at the beginning of the standards:

“A court system has two basic objectives. Its primary objective is to determine the matters committed to its jurisdiction. Fulfillment of this objective requires that the reception and processing of cases be as simple and orderly as possible, that fair consideration be given to each type of case, and that all cases be determined promptly and economically. A secondary objective of the court system is to maintain itself as an independent and respected branch of government.”

The Standards Relating to Court Organization represent a program of court modernization useful in every jurisdiction, no matter how up-to-date it may now be and indispensable in those jurisdictions where court reform has not kept pace with the demands. It is now time for members of the bar to turn to the task of securing adoption of the new standards in every jurisdiction in the country. ▲

German Marshall Fund Fellowships

THE German Marshall Fund of the United States, a private American foundation, has announced five to eight full-time Marshall Fund common problems fellowships to be awarded for 1975-76 to outstanding American scholars whose work is designed to contribute “to the better understanding and resolution of significant contemporary or emerging common problems of industrial societies,” particularly in their comparative, international, social, political, and economic aspects.

Scholars selected for appointments may come from careers in any academic field or profession, and there are no arbitrary age limits. Awards will be made only to applicants who will devote full time to the proposed projects during the appointment period. Applications must be submitted by October 31, 1974, and appointments will be announced about January 1, 1975.

Further information and application forms may be obtained from the German Marshall Fund, 1717 Massachusetts Avenue, N.W., Washington, D.C. 20036 (telephone 202/234-3158).

Action Seeking Lawyer Volunteers

ACTION, the federal government agency for volunteer service, is seeking lawyers to serve in a variety of functions in many programs. Volunteer lawyers may serve in housing, welfare, bail bond programs, group work, legal education, law reform, economic development, employment security, police-community relations, and consumer rights. Volunteers serve for one year and receive a subsistence allowance for food, housing, and incidentals. Medical coverage is provided, as well as a fifty dollars monthly stipend paid at the end of service.

Persons interested should write or call Action, Washington, D.C. 20525 (telephone toll free 800/424-8580).