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The American Bar Association Standards for Criminal Justice: Their Development, Evolution and Future

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THE AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE: THEIR DEVELOPMENT, EVOLUTION AND FUTURE

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I. BACKGROUND

It would be difficult, even for members of the legal profession, to appreciate fully the scope and breadth of the American Bar Association (ABA) *Standards for Criminal Justice*[1] (*Standards*) without having at least a brief historical account of the *Standards'* creation and evolution. This portion of the Symposium is therefore devoted to a discussion of how, when, and why the

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The author acknowledges with thanks the major contribution of Mr. Richard P. Lynch to the preparation of those portions of this article dealing with the Criminal Justice Mental Health Standards Project. Mr. Lynch serves as the project director.

1. ABA STANDARDS FOR CRIMINAL JUSTICE (2d ed. 1980). In February 1981 the ABA House of Delegates approved the controversial new standards on the Legal Status of Prisoners, which will be added as Chapter 23 to the second edition by a supplement. Unlike the other chapters, the Legal Status of Prisoners standards were not developed originally by the Standing Committee. They were the product of the ABA's Joint Committee on the Legal Status of Prisoners. In 1978, the ABA House of Delegates referred the proposed standards to the Standing Committee and requested the Standing Committee to reconcile differences between the ABA draft standards and positions held by the American Correctional Association.

The chapters with their approval dates are listed below. The single digit number appearing in parentheses designates the task force which prepared the initial draft of the revisions. Chapter numbers omitted have been reserved for future standards.

1. Urban Police Function (February 1979) (4)
2. Electronic Surveillance (August 1978) (4)
3. Prosecution Function (February 1979) (2)
4. Defense Function (February 1979) (2)
5. Providing Defense Services (February 1979) (2)
6. Special Functions of the Trial Judge (August 1978) (1)
8. Fair Trial and Free Press (August 1978) (5)
10. Pretrial Release (February 1979) (2)
11. Discovery and Procedure Before Trial (August 1978) (4)
12. Speedy Trial (August 1978) (1)
13. Joinder and Severance (August 1978) (4)
14. Pleas of Guilty (February 1979) (2)
15. Trial by Jury (August 1978) (1)
18. Sentencing Alternatives and Procedures (August 1979) (1)
20. Appellate Review of Sentences (August 1978; amended February 1980)
21. Criminal Appeals (August 1978) (3)
22. Postconviction Remedies (August 1978) (3)
23. Legal Status of Prisoners (February 1981)

Standards came into being. Furthermore, it will analyze the impact which the *Standards* have had and assess their continuing potential for improvements in the administration of criminal justice in America.

The second edition of the *Standards* was published after the chapter on Sentencing Alternatives and Procedures was approved in August 1979 by the ABA House of Delegates. Sentencing Alternatives and Procedures was the last chapter of the first edition of the *Standards* to be revised. The House of Delegates' approval of that chapter completed a three-year effort to update the first edition by the ABA Standing Committee on Association Standards for Criminal Justice (Standing Committee). This comprehensive revision was mandated by the ABA's bylaws, which state that "[t]he Standing Committee on Association Standards for Criminal Justice . . . shall: (1) continuously review the Association's standards for criminal justice; (2) recommend such changes in, or additions to, those standards as it considers appropriate . . . ."[2]

The Standing Committee's mandate to update the *Standards* was but a continuation of an original ten year ABA project to develop standards for the criminal justice system. That ABA effort began in 1963 and was proposed by Professor Delmar Karlen who served as Director of the Institute of Judicial Administration located at New York University Law School.

The project began during the annual American Law Institute meeting held in May 1963 when the ABA, in conjunction with the Institute of Judicial Administration (IJA), proposed to undertake the formulation of "minimum standards" in the field of criminal justice. "The standards were born in a climate of deep concern over the burgeoning problems of crime and the correlative crisis in our courts occasioned by overwhelming caseloads, recidivism, and a seeming incapacity of the system to respond to the challenges of the Sixties."[3] As a result, the Criminal Law Section and the Judicial Administration Section each appointed one committee to consult with the IJA.[4]

In 1964, the IJA conducted a pilot study which was supervised by a committee composed of ABA members named by the Board of Governors, the Criminal Law Section and Judicial Administration Section. The committee determined that the proposed project was essential and viable. Subsequently, a twelve member special committee was appointed to coordinate the approved project. Initially, six advisory committees were appointed to focus on specific areas in which standards would be written. In 1969 a seventh committee was appointed to draft standards on the function of the trial judge. In August 1964, the ABA Board of Governors and House of Delegates approved the undertaking of the *Standards* project, which was funded by grants from the American Bar Endowment, the Avalon Foundation, and

2. ABA BYLAWS § 30.7.

3. Jameson, *The Beginning: Background and Development of the ABA Standards for Criminal Justice*, 12 AM. CRIM. L. REV. 255, 255-56 (1974) (quoting Clark, *The American Bar Association Standards for Criminal Justice: Prescription for an Ailing System*, 47 NOTRE DAME LAW. 429 (1972)).

4. For a detailed discussion of the development of the *Standards* see Jameson, *supra* note 3.

the Vincent Astor Foundation.[5]

Initially, the phrase "minimum standards" was used. The word "minimum" was dropped because the special committee recognized that the standards were "more aptly described as desirable or acceptable rather than minimal."[6] Seventeen sets of standards were eventually developed and the House of Delegates approved these standards over a nine year period. Finally, in February 1973, the last set of standards was approved.[7]

The need for the first edition *Standards* was evidenced by the "challenges of the Sixties" previously mentioned. This challenge referred to the "criminal law revolution" of that decade which commenced with *Mapp v. Ohio*.[8] In the *Mapp* case, the United States Supreme Court extended a number of the United States Constitution's Bill of Rights protections to state and local actions. Prior to *Mapp*, those protections had largely been treated as restraints only on federal action.

Thus, *Mapp* signaled the downfall of the double standard which had prevailed in state and federal criminal cases. *Mapp*, and a swift succession of landmark cases, held that the fourteenth amendment made nearly all of the guarantees of the fourth, fifth, sixth, and eighth amendments binding on the states.[9]

Since the Court's rulings were limited to the specific issues of the individual cases, they frequently did not provide comprehensive guidance for reform. Moreover, there were wide differences of opinion within the legal community concerning their interpretation, impact, and implementation. The Warren Court was depicted as having unfairly tipped the scales in favor of the criminal. This opinion found support in the fact that the crime rate was rising at a much faster rate than the population. Clearly there was need for *practical* guidelines to assist legislators, judges, law enforcement personnel, practitioners, law schools, and the public in bringing state criminal justice systems into conformity with the increasing number of sweeping Supreme Court decisions. The system, in short, had to be updated.

This environment prompted Professor Karlen to propose that the ABA undertake the development of criminal justice standards. He and his colleagues were aware of the success of an earlier ABA program to promulgate standards for judicial administration in civil cases. These same factors nurtured the ABA's interest in undertaking the project and carrying out one of the ABA's primary purposes: "to promote throughout the nation the administration of justice and the uniformity of legislation and of judicial decisions."[10]

The pilot committee and the special committee recognized that scholarly essays, no matter how erudite, would not suffice as standards. The stan-

5. *Id.* at 256-57.
6. *Id.* at 258.
7. *Id.*
8. 367 U.S. 643 (1961).
9. The Supreme Court rulings virtually mandated that the states examine and revise their criminal law procedures because when state procedures failed to conform to the Court's decisions, corrective action became necessary.
10. ABA CONST. art. 1.2.

dards needed to be practical, useful, and credible to legislatures, courts, the legal profession, law schools, and the public. Achieving these goals was crucial; otherwise, the project would not be worthwhile. Chief Justice Burger actively participated in the achievement of these goals as chairman of an advisory committee and later, as chairman of the special committee. Judge William J. Jameson, United States Senior District Court Judge, United States District Court for the District of Montana, succeeded Chief Justice Burger (who had succeeded Chief Judge J. Edward Lumbard, Chief Judge of the United States Court of Appeals for the Second Circuit) as chairman of the special committee and completed the project.[11]

During the early stages of the project, the pilot committee and the special committee defined the project's scope, and developed an organizational structure, method of operation, and general format for the *Standards*. To promote uniformity of approach in the preparation of the *Standards* and to minimize overlap and duplication, a joint meeting of the special committee and the chairmen and reporters of the advisory committees preceded implementation of the project. A portion of that meeting was devoted to an exposition by Herbert Wechsler, Director of the American Law Institute, on the manner in which the American Law Institute (ALI) Restatements had been formulated. Although the participants agreed that the ALI approach generally would be followed in the development and format of the *Standards*, they enunciated one philosophical difference: the ALI Restatements were not aspirational but rather reflected the actual state of the law. The ABA project would take a different tack. In view of the wide disparities existing in criminal procedure, and, in many instances, an absence of any recognized practice or rule, the committee decided the *Standards* should promulgate rules of practice and procedure that would serve as minimally acceptable standards in a fair system of criminal justice. Thus, the ABA *Standards* would do more than report what the law "was"; they would suggest what the law "should be." This philosophy was later refined by deleting the term "minimum" in favor of standards that were "desirable and acceptable." The test for each pro-

11. Chief Justice Burger, whose participation in the *Standards* project continued until his confirmation as Chief Justice of the United States Supreme Court, described the project in this manner:

> This project represents, I believe, the single most comprehensive and probably the most monumental undertaking in the field of criminal justice ever attempted by the American legal profession in our national history. The Standards represent more than 10 years of intense work, study, and debate by more than 100 of the nation's leading jurists, lawyers, and legal scholars operating in advisory committees of 10 or 12 each. The participants were drawn from every part of the country and included state and federal judges, prosecuting attorneys, defense lawyers, public defenders, law professors, penology experts and police officials. In addition, the active participants consulted with scores of other interested and knowledgeable individuals in the criminal justice field for their advice and assistance. As a result, the Standards reflect the richest reservoir of experience ever developed concerning the functioning of our criminal justice system. The caliber of the participants is illustrated in the fact that one advisory committee with a membership of 12 embraced a total of some 400 years of intensive exposure to work in the courts and the criminal system. In sum, this project was much more than a theoretical and idealistic restatment of the law, but rather a synthesis of the experience of a diverse and highly experienced group of professionals.

Burger, *Introduction: The ABA Standards for Criminal Justice*, 12 AM. CRIM. L. REV. 251, 251-52 (1974).

posed standard would be whether that standard afforded protection for society as well as for the individual defendant's constitutional rights.

The manner in which the advisory committees approached their tasks varied. In cases where law and practice were reasonably well established, as in Pleas of Guilty, the reporter, after one or more preliminary sessions with his committee, would propose black letter standards and supporting memoranda for the committee's consideration and review. In areas where no recognized "standard" of practice or procedure existed, the advisory committee devised a different approach. In developing the standards on the Prosecution and Defense Functions, for example, the advisory committee, under the chairmanship of then Judge Burger, conducted detailed interviews of experienced prosecutors and criminal defense counsel to find out what practice they followed in a variety of factual situations arising before, during, and after criminal trial. Thereafter, the advisory committee and the reporter developed proposed standards reflecting the consensus of views from these "expert witnesses" and offered their findings as standards.

While still in the planning stage, the pilot and special committees decided not to duplicate on-going projects of other organizations. Consequently, the advisory committee on the Police Function delayed action on its assigned standards of the Urban Police Function pending completion of the ALI's Model Code of Pre-Arraignment Procedure.[12] The special committee also decided that it would not attempt to duplicate the ALI's Model Penal Code or the Model Code of Evidence. Finally, the committee decided that it would confine itself generally to adult offenders in the criminal process, from the first contact with the police through sentencing, appeals, and postconviction remedies. Therefore, the committee did not attempt to develop standards relating to juvenile justice.[13]

In preparing several of the standards, specially qualified consultants

12. ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE (1975). The ALI Model Code offers a set of specific rules covering the criminal process from the first contact of a police officer with a suspect through arrest, police custody, investigation, early court appearance, and plea. Its 121 sections include detailed rules relating to such difficult and controversial issues as stop-and-frisk, line-ups, search and seizure, preliminary hearings, and plea bargaining. The ABA Standards on the Urban Police Function do not overlap or duplicate the ALI Model Code. To the contrary, the Urban Police Function provides policy recommendations, rather than specific rules of conduct to be followed by individual police officers. The standard attempts to define the scope of the police function by identifying the principal objectives and responsibilities of police departments. It gives lengthy consideration to the need for providing the police with adequate resources. The standard also places a high priority on the formulation of administrative rules to govern the exercise of police discretion, particularly in the areas of selective enforcement, investigative techniques, and enforcement methods. In addition, the standard recognizes the need for control over police authority and recommends various methods of review. In short, the standard establishes broad policies for consideration by the police, legislatures, lawyers, and other public groups which helps determine how the police department should be organized and how it can efficiently carry out its broad range of functions.

13. Juvenile justice standards were later developed by the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, under the chairmanship of Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit. IJA-ABA JT. COMMISSION ADMINISTRATION OF JUVENILE JUSTICE (1980). The ABA House of Delegates approved seventeen of these standards in February 1979; three additional standards were approved in February 1980. The twenty volume edition of the juvenile justice standards was published in 1980.

were called upon to provide advice with respect to matters outside the general knowledge of the members of the advisory committees. For example, career police officers, including representatives of the International Association of Chiefs of Police, provided expert guidance in the preparation of the standards on the Urban Police Function and Electronic Surveillance. Similarly, experienced probation officers assisted significantly in the drafting of the standards on probation. Members of the media provided valuable input for the standards on Fair Trial and Free Press.

When the special committee and its advisory committees and reporters had completed a first tentative draft of the black letter standards, those standards and their supporting commentary were printed. More than 12,000 copies were distributed throughout the ABA and its affiliated organizations for review, comment, and critical analysis. The refined drafts were then submitted for action to the ABA Board of Governors and House of Delegates. The latter entity consists of some 350 members representing the ABA's more than 260,000 members and affiliated organizations. As noted earlier, all seventeen sets of the *Standards* were ultimately approved by the House of Delegates, and became official ABA policy.[14]

It was not enough, however, to develop and publish useful and practical standards. The ABA's approval could not guarantee that the *Standards* would have significant impact upon the administration of criminal justice.

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14. Since I participated in the project from the time it was proposed in 1963 until it was completed ten years later, I feel that some special mention should be made of those who contributed significantly to its success, even at the risk of omitting mention of others who devoted so much of their time to it. The three chairmen provided inspirational leadership (Chief Judge Lumbard—1936-1968; Chief Justice (then Judge) Burger—1968-1969; and Judge Jameson—1969-1973). The members of the special committee and its advisory committees included seven members who were or would be presidents of the ABA, and two other former or future ABA presidents who were active in the planning and fund-raising (Whitney North Seymour and the late Orison S. Marden). Four members would ascend to the Supreme Court of the United States. In addition to Justice Powell (then a practicing lawyer) and Chief Justice Burger (then a United States Court of Appeals Judge), two of the advisory committees included Abe Fortas and Harry A. Blackmun, both of whom were later appointed Associate Justices of the Supreme Court.

Chief Judge Lumbard, however, as chairman of the pilot and special committees during the early years of the project, stands out as the individual who bore the heaviest burden in developing the operational concept, defining the scope of the project, and moving it forward in a timely and effective manner. He was ably assisted by Professor Karlen and by Richard A. Green, a former assistant U.S. Attorney, who conducted the pilot study and who served as full-time project director once the project was approved.

Justice Lewis F. Powell, Jr., as ABA President-Elect (1963-1964) and as President (1964-1965), participated actively in devising the organizational structure of the special committee and its advisory committees. Because of his strong belief in the value of the project and his position as ABA President, Justice Powell was able to convince busy and highly qualified lawyers and judges to give of their time and energies to serve as members of the special committee and its advisory committees. He also served as an active member of the special committee until 1972 when he was sworn in as Associate Justice of the Supreme Court.

Funding was essential to the success of the project. The American Bar Endowment was encouraged to fund the pilot project and to allocate an additional $250,000 for the project itself. This was accomplished through the efforts of then ABA President Powell who was strongly assisted by former ABA Presidents Judge Walter Craig and Judge William Jameson. Special committee member David W. Peck, a practicing lawyer in New York City and a former New York Supreme Court Judge, headed the effort to seek other funds. He was singularly successful in swiftly obtaining $250,000 in project funding from both the Avalon and the Vincent Astor Foundations.

During the period when the ABA's *Criminal Justice Standards* were being formulated, the President's Commission on Law Enforcement and Administration of Justice, the National Commission on Civil Disorders, and the National Commission on the Causes and Prevention of Violence had been created. Yet, no meaningful effort had been made to carry out the comprehensive findings and recommendations of those bodies. Their recommendations languished on library shelves.

The late Louis B. Nichols, then chairman of the ABA Criminal Law Section, was aware of the national commissions' lack of significant impact on the criminal justice system. Therefore, in 1968 he proposed that the Criminal Law Section make a long-range commitment for a nationwide implementation of the ABA *Criminal Justice Standards*, except for the standards relating to Fair Trial and Free Press. These standards were to be the responsibility of a special subcommittee of the ABA's Standing Committee on Public Relations, and later the Standing Committee on Association Communications. The ABA Board of Governors approved the Nichols proposal and the section embarked on an ambitious, successful ten year implementation program to put the *Standards* in the market place.

The section was fortunate to obtain the volunteer services of retired United States Supreme Court Associate Justice Tom C. Clark as chairman of the implementation committee. He was a tremendous asset and he continued to head the committee until his untimely death in June 1977. Colorado Supreme Court Justice William H. Erickson, who had served as deputy chairman and had been actively involved with the *Standards* and their implementation, succeeded Justice Clark as chairman. Justice Erickson continues to chair the implementation activities and he has carried on Justice Clark's tradition with energy and imagination.

The implementation program involved careful planning, large-scale fund raising from private and governmental sources, recruiting and training of staff, distribution of more than 1,800,000 copies of the individual paperback *Standards*, and organizing volunteers from both local and national levels. The program also included all branches of the government, as well as religious, labor, professional, and civic groups.[15]

After the House of Delegates approved the last two sets of the first *Standards* in 1973, Chesterfield Smith, then ABA President, appointed eight members to a new committee, the Special Committee on the Administration of Criminal Justice, and designated Justice William H. Erickson as chairman. This new committee was charged with monitoring the existing *Standards* to determine the need for revision and for additional standards.

During the first several years of its work, the new committee reviewed all 476 black letter standards in the light of subsequent United States Supreme Court opinions and other developments in the criminal justice system. The review commended the classic composition and painstaking craftsmanship that went into the *Standards*; no major deficiencies or drastic need

15. The entire implementation process functioned under the guidance of H. Lynn Edwards, then the ABA Staff Director of the Criminal Law Section.

for amendments were revealed. The new committee concluded, however, that such landmark Supreme Court decisions as *Argersinger v. Hamlin*,[16] *Gagnon v. Scarpelli*,[17] and *Morrissey v. Brewer*[18] called for several clarifying and substantive amendments to the existing black letter standards.

Changes in black letter standards, with supporting commentary, were prepared, but action to submit them to the House of Delegates for approval was withheld for several reasons. First, the amendments would be of little utility to the implementation effort unless there were means to make them available to the holders of the original *Standards* which had been distributed nationwide. Even if the mailing lists could be located and brought up to date, budgetary limitations alone would have prevented such a distribution.

Second, by the mid-1970's, several other "standards" affecting criminal justice procedure appeared, including the Uniform Rules of Criminal Procedure of the National Conference of Commissioners on Uniform State Laws,[19] the ALI Model Code of Pre-Arraignment Procedure,[20] and the revised Federal Rules of Criminal Procedure[21] promulgated by the United States Supreme Court.

The ABA Criminal Justice Section, under the chairmanship of Alan Y. Cole, made a comprehensive analysis of these "standards" and compared them with the ABA *Standards for Criminal Justice*. Although the analysis identified conflicts between the ABA *Standards* and the other four publications, it did not conclude which of the competing standards established the best practice or procedure. Thus, the ABA's implementation effort was significantly affected by a plethora of conflicting standards.

The second edition of the *Standards* attempts to eliminate this confusion. Not all conflicts, however, have been eliminated because the task forces and the Standing Committee did not always agree with the provisions of other

16. 407 U.S. 25 (1972). In *Argersinger*, the Court concluded that the sixth amendment forbids imposing a prison or jail sentence on an indigent who has not been afforded the right to counsel. Standard 4.1 of the first edition of the standards on Providing Defense Services required assistance of counsel in all cases punishable by loss of liberty "except those types of offenses for which such punishment is not likely to be imposed." This provision left open the possibility that a prison or jail term might be imposed even though the defendant was not afforded the right to counsel. Standard 5-4.1 of the second edition now provides that counsel is to be provided in all cases where the offense charged is punishable by imprisonment.

17. 408 U.S. 471 (1972). In *Gagnon*, the Court outlined due process requirements for the revocation of probation, and included the right to counsel in certain situations. Included in these procedures was a requirement for a two-stage procedure, namely, a preliminary hearing to determine whether there was a violation of parole or probation provisions, and a final hearing to consider not only this fact question, but if there was a violation, what to do about it. Standard 5.4 of the first edition of the standards on Probation had not clearly spelled out that a two-stage procedure was required, nor did it address the question of right to counsel. Standard 18-7.5 of the second edition included all of the due process requirements of Morrisey v. Brewer, 408 U.S. 487 (1972), and *Gagnon*, plus the right to counsel in all cases. *Standards*, *supra* note 1, § 18-7.5. Although this standard deals only with revocation of probation, it seems clear that revocation of parole should follow the same procedures.

18. 408 U.S. 487 (1972). In this case, the Court established detailed due process requirements for the revocation of parole.

19. NATIONAL CONFERENCE OF COMMISSIONERS, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS, UNIFORM STATE LAWS, UNIFORM R. CRIM. P. 412 (1974).

20. ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE (1975).

21. 18 U.S.C. § 3001 (1976).

standards, goals, and codes. The Standing Committee adopted the policy of citing applicable portions of related standards after each boldface standard. Further, the commentary to the *Standards* discusses any conflict and the rationale for the adoption of the ABA standard when there was a conflict with any of the related standards. In many cases the reporters drew extensively on the provisions of related standards in revising the first edition. This was particularly true with the Uniform Rules of Criminal Procedure. In adopting this policy of citing and discussing the related standards, the Standing Committee intended to provide maximum guidance to legislatures and courts of various jurisdictions in adopting their own code or rules of criminal procedure.

It was impossible to maintain the credibility and the utility of the first edition of the ABA *Standards* through piecemeal amendment, without assurance that such amendments would find their way to the users. Moreover, the presence of competing and conflicting standards convinced the committee that it should seek funds for a comprehensive revision of the original *Standards*. These factors were buttressed by the fact that ten years had elapsed since the original ABA *Standards* had been prepared. In addition, the impact of Supreme Court decisions and new competing standards created a need to assess the first edition's impact with data gained from such experiments as pretrial release projects, speedy trial statutes and court rules, public defender offices, and police legal adviser units.

II. CREATING THE SECOND EDITION

In December 1976, the Special Committee on the Administration of Criminal Justice obtained Phase I funding from the Law Enforcement Assistance Administration (LEAA). Matching funds also were provided by the American Bar Endowment.[22] By the time the Standing Committee on Association Standards for Criminal Justice was officially established, many of the preliminary tasks of the updating project were well underway. A core staff, task forces, and reporters had been recruited and oriented, and were ready to function under the policy direction of the nine-member Standing Committee. The Standing Committee had a balanced composition of defense, prosecution, and judiciary representatives. The membership of each of the five task forces appointed by the Standing Committee had a similar composition. The ABA Adjunct Committee on Fair Trial and Free Press, then operating under the ABA Standing Committee on Association Communications, served as a special task force to review and recommend changes in the standards relating to Fair Trial and Free Press.

The task forces and reporters exercised wide discretion in carrying out their assignments. A Standing Committee ground rule required one advocating a change in a black letter standard to satisfy the Standing Committee that the change was necessary. This rule was established in part to ensure that the Committee fulfilled its duties by recommending necessary changes

22. Phase II funding necessary to complete the updating project was also a combination of LEAA discretionary funds and matching grants from the American Bar Endowment.

in or additions to the *Standards*, including changes needed to keep pace with constitutional amendments, Supreme Court decisions, new ABA policies or developments in criminal justice. The rule was formulated principally because the original *Standards* had proven their worth and established their credibility in the marketplace. The rule therefore ensured that the *Standards* would be modified only when necessary and desirable.

Some of the first edition *Standards* were not changed at all, many only slightly modified, and a number substantially altered. The changes depended on what had happened in the past ten years, what each task force believed the present national norm should be, and what stylistic changes were deemed appropriate.

The Standing Committee was determined to eliminate overlap and duplication within the second edition. The first edition was conceived and executed as a compendium of individual standards volumes, drafted over a period of some nine years. Each volume underwent lengthy circulation in tentative draft form for comment and feedback. This was followed by refinement, presentation to the Board of Governors and House of Delegates, debate, approval, and finally publication. Despite the circulation process, the first edition contained a degree of overlap, duplication, and in some instances inconsistencies.[23] The committee attempted to "purge" these duplications and inconsistencies in the second edition.[24]

Because of the tight deadlines established by the LEAA in granting funds for the project, it was clear that the second edition could not afford the lengthy post-preparation review that played such an important role in the

23. An example of inconsistency is found in the volumes relating to Pleas of Guilty and the Function of the Trial Judge on the question of judicial involvement in plea negotiations.

24. It was not always possible to eliminate all inconsistencies. The House of Delegates acted on each chapter of the *Standards* separately and on one occasion, its action resulted in an inconsistency, in philosophy at least, between the standards on Sentencing Alternatives and Procedures and those on Appellate Review of Sentences. In August 1978, the House of Delegates approved the latter standards, including provisions permitting the government to appeal an excessively low sentence and the accused to appeal an excessively high sentence. However, in February 1980, the Section of Corporation, Banking and Business Law recommended that the House delete the provision permitting government appeals of low sentences. This recommendation was based partly on policy, and partly on the holding of the United States Court of Appeals in United States v. DiFrancesco, 604 F.2d 769 (2d Cir. 1979), *rev'd*, 449 U.S. 117 (1980). The court of appeals held that government appeals of unjustly light sentences under 18 U.S.C. § 3576 (1976) violated the double jeopardy clause of the United States Constitution. *See* Ad Hoc Committee of Federal Criminal Code, *Report on Government Appeal of Sentences*, 35 BUS. LAW. 617 (1980) for a full report of the Section's position. The House approved this recommendation, and the provision permitting government appeals was deleted from the standards on Appellate Review of Sentences. Between these two actions of the House, however, the House had, in August 1979, approved the standards on Sentencing Alternatives and Procedures, which contained provisions for an agency to establish sentencing guidelines for judges. The philosophy underlying these provisions was that sentences which fell below the guidelines could be appealed by the government; if above the guidelines, the accused could appeal. This philosophy was consistent with the 1978 action of the House approving the standards on Appellate Review of Sentences, including the provision for government appeals. It is, however, inconsistent with the 1980 House action deleting the provision for government appeals. It should be noted that the Supreme Court subsequently reversed the decision of the court of appeals, United States v. DiFrancesco, 449 U.S. 117 (1980), and supported the position of the task force and Standing Committee that government appeal of sentences in such cases did not violate the double jeopardy clause.

first edition. Recognizing the value of participation by national organizations interested in criminal justice improvement, the Standing Committee announced its willingness to accept input at the outset. More than fifty organizations accepted the committee's invitation,[25] and some sent representatives to meetings of the Standing Committee and its task forces. Other groups, particularly those with large constituencies of ABA members as well as specialized ABA sections and divisions, created special committees of their own to examine the Standing Committee's recommendations. In somes instances, these groups invited persons associated with the updating efforts to meet with them as they considered areas of the *Standards* germane to their organizations' interests. Participation by these groups was a valuable part of the project, and enabled the Standing Committee to meet the deadlines imposed by the grant.

After the task forces had agreed on necessary changes, including textual revisions of commentary to reflect primary and secondary authorities, the drafts were then presented to the Standing Committee and ultimately to the ABA House of Delegates. Each entity made the additional changes it deemed appropriate. Ten of the revised sets of *Standards*, "chapters" in the second edition terminology, were approved by the House of Delegates in August 1978, six in February 1979, and the last one, Sentencing Alternatives and Procedures, which incorporated the revised standards on probation, in August 1979.[26]

Though changes were made during the revision, the significant change in the format of the second edition is described in the introduction:

> [T]he second edition is a multivolume loose-leaf compendium with the sets of standards arranged as numbered chapters approximating the sequential order in which a case would proceed through the criminal justice system—from the initial role of the police through final postconviction remedies. Unlike the first edition, this loose-leaf compendium will be periodically updated by supplements as dictated by significant court decisions, important or widespread statutory changes or changes in ABA policy. . . .[27]

The ABA hopes that the second edition will have a significant impact on the law. The New York Times noted the success of the implementation effort: "In criminal law the Association's publication of Standards Relating to the Administration of Criminal Justice [has] had an enormous impact on the development of the law."[28] There are some concrete illustrations which justify the Times' assessment:

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25. Some of the organizations that attended were: the National District Attorneys Association, the National Legal Aid and Defender Association, the American Probation and Parole Association and the National Conference of Commissioners on Uniform State Laws.

26. *See* note 1 *supra*.

27. *Standards*, *supra* note 1, introduction at xvii-xviii. The second edition consists of a three part format: (1) *History of Standards*, which contains the changes between the first and second edition; (2) *Related Standards*, which provides a list of other nationally approved standards; and (3) *Commentary*, which provides a current discussion of pertinent case law and statutory developments. *Id.*

28. Goldstein, *American Bar Association is More or Less Influential*, N.Y. Times, November 20, 1977 § 4, at 16, col. 4.

1. As of March 1981, according to Shepard's Criminal Justice Citations, the *Standards* have been cited more than 8,900 times by the United States Supreme Court, federal courts, military courts, and appellate courts in every state.[29]
2. As of May 1980, thirty-six states had revised their criminal codes, while four states, the District of Columbia, and the federal government had drafted revisions, three states were planning revisions, and six states had drafted revisions which had been aborted. Criminal code revision has been stressed as the means of implementing the *Standards*, and the ABA *Criminal Justice Standards* were widely used in the revision efforts.[30]
3. Every state has followed the implementation committee's recommendation to conduct a comparative analysis of state criminal justice procedures in relation to the 476 policy recommendations of the first edition black letter ABA *Standards*.[31] The analysis enabled each state to set priorities and goals consistent with budgetary resources for overhauling its procedures.

Whether the second edition will fare as well in the marketplace as its first edition predecessor will depend, in large part, on the efforts of the Standing Committee. The Standing Committee, with the approval of the Criminal Justice Section, was given the responsibility for all *Standards* implementation activities. With the sharp reduction of discretionary funds available from the LEAA, it is clear that the extensive and expensive first edition implementation effort cannot be duplicated. There is, however, reason to believe that such a costly effort will not be necessary.

Operating within its limited budget, the Standing Committee, working through its Adjunct Committee on Implementation chaired by Deputy Chief Justice Erickson, has taken steps to ensure that the second edition does not languish on library shelves. For example, complimentary copies of the four volume second edition were presented to the Chief Justice of each State Supreme Court by the ABA State Delegate. Pictures of the presentation ceremonies with explanatory stories appeared in many State Bar Journals and newsletters. This program, guided jointly by the Standing Committee and the Adjunct Committee on Implementation, ensured that both the judiciary and the lawyers in each state became aware of the new second edition. The Standing Committee is also encouraging the editors of leading law reviews to publish articles about the *Standards*. This special Symposium Issue of the *Denver Law Journal* is a prime example of how the second edition can be brought to the attention of the legal profession.

Each jurisdiction must decide in what manner it will implement these *Standards*, and to what degree. A jurisdiction can translate the *Standards* into legislation and/or rules of court. The jurisdiction may also encourage its judicial officers to use the *Standards* in deciding cases. These and other methods have been used in varying degrees in implementing the first edition of the *Standards* in all states and in the federal system.

29. 6 Shepard's Criminal Justice Citations (Mar. 1981).
30. Records of the ABA Standing Committee on Association Standards for Criminal Justice, 1800 M Street, N.W., Washington, D.C.
31. *Id.*

The judiciary's use of the *Standards* is the most effective and persuasive implementation model. When courts cite the *Standards* they not only recognize their utility, but they also implicitly encourage lawyers to employ the *Standards* in preparing their cases and briefs. Thus, the ABA's distribution of copies to the appellate courts should reap significant benefits.

The second edition preserves the guiding philosophy of the first edition, a philosophy tested and proven over more than a decade of nationwide implementation. The philosophy dictates that the *Standards* in the second edition are neither model codes nor rules, and hence are not drafted in such language. Rather, they are guidelines and recommendations for legislatures, courts, and practitioners. The *Standards* are action-oriented, practical guidelines, targeted at achieving a criminal justice system that is fair, balanced, and constitutionally responsive to contemporary and future needs.

Continuous evaluation, adjustment, and change are vital characteristics of a criminal justice system which effectively accommodates the dynamics of growth and cultural evolution. The first edition formulated standards to serve criminal justice needs as those needs were then perceived. In the intervening years, changes emerged which warranted additional review and development work. During the mid-1970's, the Special Committee monitoring the *Standards* pinpointed several areas that justified the development of new standards. One of these areas, the Legal Status of Prisoners, was presented to the House of Delegates in February of 1981.

Plans for the development of several other standards chapters have been approved by the Standing Committee, among them Urban Police Function Part II (police discretion and the use of force) and the Charging Function (prosecutorial discretion, including the grand jury). Full action to develop these standards will be undertaken when project funding becomes available. These new standards, like the Legal Status of Prisoners, will take their place as full chapters in the second edition upon approval by the House of Delegates.

Another burgeoning area of the law requiring attention, mental health issues in criminal law, has become a major Standing Committee project and ABA Criminal Justice Mental Health Standards will therefore be developed.

III. ABA CRIMINAL JUSTICE MENTAL HEALTH STANDARDS PROJECT

For many years the American Bar Association has maintained an interest in the field of mental health and its relationship to the law. The mentally retarded, the mentally disabled, and the mentally diseased present special problems for those charged with the administration of both civil and criminal law. Moreover, citizens who suffer from various forms of mental defect have special legal needs. The ABA's interest in the field of mental health was emphasized with the 1961 publication of the Mentally Disabled and the Law by the American Bar Foundation.[32] That major study devoted a full chapter to the subject of mental disability and the criminal law. Since its

32. AMERICAN BAR FOUNDATION, THE MENTALLY DISABLED AND THE LAW (1961).

original publication in 1961, the study has been updated and the American Bar Foundation is now in the process of producing yet another revision.

Building upon the substantial research done by the American Bar Foundation, the ABA created a Special Commission on the Mentally Disabled in 1973. This fifteen-member commission is charged with the responsibility for the review and evaluation of existing studies and materials on the subject of mental disability.[33] The Commission publishes the Mental Disability Law Reporter, a bi-monthly publication which provides comprehensive coverage of all important issues in the rapidly expanding fields of mental disability and developmental disability law. In 1977 and 1978, two special issues of the Mental Disability Law Reporter were devoted to the publication of a series of articles dealing with a host of major criminal justice issues in the mental health field. Those special articles dealt with incompetency to stand trial on criminal charges, the insanity defense, mental health services for prisoners, and civil commitment.[34]

The birth and operation of the ABA's Commission on the Mentally Disabled occurred during the time when the ABA was engaged in a massive effort to update the first edition of the *Standards*. For the most part those standards and the revised second edition remain silent on the major mental health issues which cause continuing perplexity for all participants, actors, and institutions engaged in the administration of criminal justice. While some chapters of the second edition *Standards* make reference to mental health matters,[35] the treatment these matters are accorded is minimal. For some time the Standing Committee and its predecessor entities had recognized the need to promulgate proposed criminal justice mental health standards for consideration by the ABA's House of Delegates. Nonetheless, a comprehensive undertaking in this relatively uncharted area of the criminal law was not possible while the Committee's energies were being devoted to the major updating project. For all practical purposes that updating project was completed in 1979 and, at that time, the Standing Committee began work on the development of a plan to undertake a comprehensive criminal justice mental health standards development program. A detailed and comprehensive project proposal was developed, and in February 1981 the Criminal Justice Mental Health Standards Project began in earnest. The project's first phase is a fifteen-month effort which will end on April 30, 1982, and its goal is to produce by that date "provisional" black letter standards in six specific areas: 1) police encounters with mentally disabled persons; 2) incompetency to stand trial; 3) nonresponsibility for crime; 4) special dispositional statutes and mentally disabled convicts; 5) civil commitment of prosecuted persons; and, 6) an examination of ethical and other guidelines governing the role of psychiatrists, psychologists, and other mental health professionals in the criminal process. Each of the areas falls under the scru-

33. AMERICAN BAR ASSOCIATION POLICIES AND PROCEDURES HANDBOOK 30 (1980-81).

34. 2 MENTAL DISABILITY L. REP. 57-159, 615-78 (1977-78).

35. *See Standards*, *supra* note 1, ch. 1 (Urban Police Function); ch. 3 (Prosecution Function); ch. 4 (Defense Function); ch. 10 (Pretrial Release); ch. 11 (Discovery and Procedure Before Trial); ch. 14 (Pleas of Guilty); ch. 15 (Trial by Jury); ch. 18 (Sentencing Alternatives and Procedures); and ch. 21 (Criminal Appeals).

tiny of one of the project's six task forces. Each task force is chaired by a member of the Standing Committee and is served by a legal reporter and an interdisciplinary membership.

The project operates under policy guidance of the ABA's nine-member Standing Committee on Association Standards for Criminal Justice, and is financed by a grant from the John D. and Catherine T. MacArthur Foundation. Six task forces have been assigned discrete jurisdictional areas. Those areas and the key issues under examination within those areas are discussed below.

Task Force One

This task force has been assigned the topic of police encounters with mentally disabled persons. That title perhaps fails to do justice to the full scope of this task force's inquiry. Key issues under consideration by the Police Task Force include: the extent to which explicit statutory authority should grant police agencies express powers to detain mentally disturbed persons, the specific criteria which must be met before police may take an individual into custody because of mental illness, the extent to which aberrant behavior which is non-criminal, or, if criminal, merely disorderly, should result in a non-custodial resolution, and the extent to which the custody of mentally ill law breakers should fall under the civil rather than the criminal law. The Police Task Force will also examine desirable training criteria—at least for large urban police departments—designed to provide officers with the requisite background to enable them to recognize and cope with the mentally ill in emergency situations.

Because of police response to mental health emergencies, the task force will also consider the requisite characteristics of an emergency reception center and the services that should be offered to persons referred to the center by police. Finally, Task Force One will examine the extent to which police officers would be provided with immunity from civil liability resulting from their good faith actions in emergency mental health situations.

Task Force Two

Task Force Two has been assigned the topic of incompetency to stand trial. This will be one of the project's most complex areas of inquiry. In essence, Task Force Two will examine all issues relating to the question of a defendant's competency or fitness to stand trial for the crime with which that defendant has been charged.

First, Task Force Two will examine the responsibility of various parties to the proceedings to raise the issue of competency. For example, the task force will examine the ethical problems faced by both the defense and prosecution in raising the competency issue. Under certain circumstances, for instance, a defense attorney may decide that his client is in fact incompetent, but nonetheless determine that a trial on the merits, as opposed to a competency hearing, is in the client's best interest.

Second, the factual bases to be utilized by the court in ordering a com-

petency examination will be considered. The task force will attempt to draft a specific standard setting forth the criteria which should be used by the court in determining the need for a diagnostic competency examination. A host of issues will face the task force in this inquiry. For example, must a defendant be committed or would a less restrictive bail procedure enable a competency examination to take place on an out-patient basis? The task force will also study issues regarding requisite qualifications of competency examiners and consider whether a competency examination may be a "dual purpose" examination.

The content of the competency examination and report will also be considered. In this area the task force will undertake an extensive review of "present tests" and the reporting requirements under those tests. The goal of the task force will be to construct a specific guideline setting forth areas which must be addressed in a competency examination by the examining experts. Part and parcel of this inquiry will be a specific delineation of necessary treatment indicated by the examination. In accordance with *Jackson v. Indiana*,[36] the examining expert must render a prognosis concerning whether the defendant will improve within a reasonable time. In addition, the task force will also consider the relationship between an incompetency commitment for treatment and civil commitment.

Task Force Two will also examine specific fifth and sixth amendment rights as they relate to court-ordered competency examinations. For example, to what extent does the right to counsel extend to the diagnostic examination and may counsel be an active participant rather than an observer? In addition, issues of confidentiality will be reviewed and the task force will examine such concomitant issues as psychiatric *"Miranda"* warnings and the applicability of exclusionary rules related to information obtained during a competency examination.

While exploring procedural and due process questions, the task force will also attempt to draft guidelines for the actual hearing on the issue of competency. Included in this area will be such issues as the necessity for a formal hearing, the nature of evidence to be considered at such a hearing, burden of proof requirements, treatment issues, and the actual content of a judicial order adjudicating a defendant incompetent.

Post-incompetency commitment treatment will also be considered. The task force will explore a defendant's right to appropriate treatment as well as

36. 406 U.S. 715 (1972). This case involved a deaf mute, Theon Jackson, who was charged with robbery in the criminal court of Marion County, Indiana. He possessed virtually no communications skills. As a result, the court held a competency hearing. At the hearing, two doctors stated that Jackson would probably never learn to read or write. Subsequently, the trial court ordered Jackson committed to a mental hospital until the hospital could certify that Jackson was sane. Jackson's attorney argued that committing Jackson to a mental hospital under the circumstances was equivalent to a "life sentence" without the benefit of a trial. The attorney also argued that this commitment violated Jackson's fourteenth amendment rights to due process and equal protection.

The Supreme Court reversed the trial court decision and held that Jackson could not constitutionally be committed for an indefinite period of time because he was incompetent to stand trial. Such a person can only be held until the state is able to determine whether it is probable that the incompetent will attain competency in the future. If the person will not attain competency, civil proceedings which involve an indefinite commitment must be applied.

a defendant's right to refuse treatment. Issues to be explored include an examination of least restrictive alternative matters and the site of hospitalization.

Finally, Task Force Two will examine issues regarding the duration of commitment and the perplexing issues surrounding permanently incompetent defendants.

Task Force Three

Task Force Three has been assigned the topic of nonresponsibility for crime or, in other words, the insanity defense. Perhaps no issue in contemporary criminal law has received as much recent public attention as the topic of the insanity defense. Nonetheless, the major substantive issue confronting Task Force Three lies at the heart of our notions about criminal law: blameworthiness. It is this fundamental question, the nature of legal guilt and legal responsibility, which will be examined by Task Force Three. The Task Force will concentrate on a variety of procedural issues connected with the use of the insanity defense, such as notice requirements and sanctions for the failure to comply with such requirements, and diagnostic examinations sought by the defense and ordered by the court. In addition, the task force will concentrate on discovery and privilege questions which arise from the mental examination and, at the actual trial stage, attention will also be given to issues involving the introduction of evidence of mental disorder and questions regarding the burden of going forward and the burden of persuasion. Finally, the task force will deliberate regarding jury instructions and forms of the verdict.

Task Force Four

This task force will concentrate on special dispositional statutes and mentally disabled convicts. The task force will undertake an examination of the utility of special dispositional statutes presently in force throughout the country, that is, sexual psychopath statutes. In addition, the task force will examine the kinds of mental health treatment available to incarcerated offenders.

First, Task Force Four will examine the application of special dispositional statutes to persons subject to commitment thereunder because of the type of crime they committed or because of their mental condition at time of sentencing.

Second, the task force will develop guidelines for:

a.) the commitment of special defendants to mental health facilities for diagnosis, observation, and evaluation;

b.) the procedures which must be followed before an offender may be committed under a special dispositional statute;

c.) the placement of offenders who have been found to fall within the criteria of a special dispositional statute; and,

d.) terminating offender's status under a special dispositional statute.

In addition, guidelines delineating the rights of persons committed under special dispositional statutes and guidelines defining the levels and extent of judicial oversight for such individuals will be developed.

The task force will also consider a number of specific areas regarding mentally disabled convicts. Those areas included development of criteria and procedures for the transfer of mentally disabled offenders from correctional institutions to mental health facilities and back to a correctional setting. Guidelines regarding the status and rights of prisoners who have been transferred to mental health facilities and the effect of such a transfer on eligibility for parole or other release will also be developed. Task Force Four will also create guidelines regarding the appropriate administration of mental health facilities providing treatment for inmates. Finally, the development of standards governing the civil commitment of prisoners at the expiration of their sentence will be considered.

Task Force Five

This task force will devote its attention to the civil commitment of prosecuted persons. The work of this task force will focus on such issues as examination of interim custody and the disposition of a criminal defendant immediately after that defendant's acquittal by reason of insanity. For example, the task force will consider the duration of interim custody prior to the time that a commitment hearing must be held. In addition, this inquiry will attempt to determine whether habeas corpus rights apply and whether *Miranda* rights apply.

Also, Task Force Five will concentrate on the development of standards for commitment of defendants found not guilty by reason of insanity. The task force will examine what presumptions arise from a successful insanity defense, what substantive criteria should be established for commitment, which party bears the burden of proof in the commitment proceeding, and what that standard of proof should be.

Guidelines governing commitment hearing procedures will also be established. The issues will include requisite notice to the defendant, the extent to which a right to counsel applies, the extent to which a defendant is entitled to expert witnesses, and the extent to which hearsay and other evidentiary rules and the privilege against self-incrimination apply.

Guidelines will also be developed regarding the duration of confinement of defendants committed following a not-guilty-by-reason-of-insanity verdict. The task force will consider the relationship between the period of commitment and the potential sentence for the crime with which the defendant was charged. Moreover, the task force will consider requirements for the periodic review of the patient's commitment and whether the patient may initiate that review. Procedures for the conditional release of committed persons, requirements for notification about that release, and the disposition of committed persons who have completed treatment but whose release is opposed by the courts will also be examined.

Task Force Five will create guidelines governing civilly committed per-

sons who have pending criminal prosecutions awaiting the outcome of their mental health treatment. The task force will attempt to determine whether such patients should be treated under ordinary civil commitment proceedings. In addition, issues regarding notice of release, power to release, and procedures for dropping criminal prosecution upon successful completion of treatment will be examined.

Finally, guidelines should be developed concerning defendants found incompetent to stand trial who cannot be restored to competency within a reasonable period of time.[37] The task force will examine whether there are persuasive and constitutionally permissible reasons for treating such defendants differently from those who face civil commitment.

Task Force Six

This task force is charged with the responsibility for examining the ethical guidelines governing the role in the criminal process of psychiatrists, psychologists, and community mental health staff members. The task force will therefore explore the fundamental relationships between mental health professionals and their individual and institutional counterparts within the criminal justice system. This is an especially sensitive and challenging topic. The task force will attempt to delineate specifically the roles which mental health professionals should play at the pretrial, trial, and post-trial stages of the criminal process.

Traditionally, mental health professionals called as experts in criminal law matters have been psychiatrists. Nonetheless, this task force will attempt to promulgate guidelines which would provide for the participation of psychologists and other non-psychiatrists as experts.

Moreover, the task force will devote considerable attention to matters involving interdisciplinary communication within the criminal justice system. The purpose of this inquiry is to develop guidelines to assist mental health professionals in the acquisition of a full understanding of their role as experts and consultants within the criminal justice system. Concomitantly, an attempt will be made to promulgate guidelines which will assist attorneys and other officers of criminal justice institutions in their interactions with, and understanding of, the role and function of mental health professionals. Thus, the task force will focus attention on the need for standards of professional responsibility and performance, interdisciplinary training and cooperative problem-solving, and a delineation of the responsibilities of mental health institutions.

Because of the nature of this undertaking it is imperative that the task forces be interdisciplinary in character. That goal has already been achieved and forty-two task force members have been appointed. Eight psychiatrists, five psychologists and one medical doctor currently serve on the project. In addition, each task force is served by at least one member of the ABA's Commission on the Mentally Disabled. Finally, many of the lawyer members of the respective task forces have substantial background and experience in

37. *See id.*

mental health law issues. This heavy emphasis on the involvement of mental health professionals recognizes the fact that the eventual promulgation of standards within this area requires the full participation of psychiatrists and psychologists. The need for interdisciplinary involvement with the *Criminal Justice Standards*' development was made more than evident when the Standing Committee undertook the task of proposing legal status of prisoners standards to the ABA's House of Delegates in 1979. Substantial opposition to those standards was generated by the corrections profession, and the failure to involve that profession during the initial stages of the standards development work resulted in substantial delays. To remedy that kind of oversight, the Standing Committee has provided for the participation of mental health professionals in its current project at the outset. That participation is more than cosmetic and the project's Joint Advisory Committee, in addition to its three members from the Standing Committee, has three representatives who have substantial mental health backgrounds. One, Dr. Bernard Diamond, is a distinguished forensic psychiatrist; another, John McNeill Smith, is a lawyer who serves as chairman of the ABA's Commission on the Mentally Disabled; and the third, Professor Norval Morris, is a distinguished law professor and former law dean whose wide-ranging dissertations on the criminal law include a keen interest in the relationships between law and psychiatry.

By April 30, 1982 the Standing Committee on Association Standards for Criminal Justice will complete Phase I of this project. The work product will consist of provisional black letter standards and supporting legal memoranda. Those professional standards will represent the initial interdisciplinary decisions of the project's six task forces. While these professional standards will not represent the views of the American Bar Association, they will provide the basis for a more concentrated Phase II activity which, by August 1984, will produce final and voluminous recommendations for formal consideration by the ABA's House of Delegates. The Phase II Criminal Justice Mental Health Standards Project, should it succeed in obtaining funding, will rely heavily upon the participation of mental health professional organizations as well as upon the continued participation of individual psychiatrists, psychologists, and other mental health professionals.

CONCLUSION

The Standing Committee believes that the second edition of the ABA *Standards for Criminal Justice* is a worthy successor to the original *Standards*. The second edition preserves and enhances the high quality of the first edition and represents a just balance between the dynamic and sometimes conflicting goals of effective administration of criminal justice: a proper regard for the constitutional rights of the accused and the protection of society. The format of the second edition will permit periodic revision to ensure its continued viability, and the second edition should enjoy the same wide acceptance as its predecessor. It should continue to bring great credit to the ABA for its enlightened leadership in pioneering the development of *Criminal Justice Standards* when the need was so great, and for the unwavering support of

its handiwork ever since. This brief description of the evolution of the ABA *Standards* will hopefully demonstrate for the reader the extent to which the *Standards* represent an association-wide undertaking which has distilled the learning and experience of the legal profession and which demonstrates clearly our profession's dedication to fair and effective administration of the law in the service of the public.