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COLORADO CRIMINAL PROCEDURE—DOES IT MEET THE MINIMUM STANDARDS?

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The American Bar Association at its annual meeting in 1938 made a number of specific recommendations for the improvement of the administration of justice in the United States.[1] Although these recommendations are not limited to matters of judicial procedure,[2] most of them do deal with procedure, both civil and criminal. It is the purpose of this article to examine the American Bar Association's recommendations for the improvement of *criminal* procedure, and to see to what extent Colorado complies with the recommended procedure in this field.[3]

The recommendations in question do not purport to cover procedure in any detail. Instead they pick out a few items considered really essential to the proper administration of justice in modern times—items which, while they represent the *minimum* requirements for achieving justice, are yet of a *practical,* rather than simply theoretical or academic, nature.[4]

The first recommendation of the American Bar Association, "that practice and procedure in the courts should be regulated by rules of court; and that to this end the courts should be given full rule-making powers," is called the "keystone" of the association's program for reform of judicial procedure.[5] This recom-

[1] These recommendations, as well as the committee reports on which they were based, may be found in 63 A.B.A. REP. 522-656 (1938), and in VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION, 505-624 (1949). The history of these recommendations is as follows: The ABA's Section of Judicial Administration undertook to make specific recommendations for reform of judicial administration. It obtained the services of seven committees of distinguished lawyers, judges and professors to report on seven principal sub-topics (judicial administration; pre-trial procedure; trial practice; selection of jurors; law of evidence; appellate practice; and administrative agencies). These committees made specific proposals to the section, which adopted most of them in its recommendations to the House of Delegates. The House adopted all these recommendations at the annual convention.

[2] They include recommendations for improvement of justice (1) through better selection of judges; (2) through better integration of the judiciary by the establishment of judicial councils, administrative offices, administrative judges, etc.; and (3) through improvement of administrative tribunals and practice. As to the methods of selection of judges in Colorado, and their conformity to A.B.A. standards, see Van Cise, *The Colorado Judicial System—Can it and Should it be Improved?*, 22 ROCKY MT. L. REV. 142 (1950).

[3] Two recent publications are very helpful for understanding the ABA's minimum standards and the reasons therefor, and for seeing how far each of the states complies with these standards. They are: VANDERBILT, *op. cit.* note 1 *supra;* and AMERICAN BAR ASSOCIATION, THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE (1949) a handbook prepared by the Section of Judicial Administration. I have one criticism of both works (and indeed of the wording of the ABA recommendations): they do not always make clear which recommendations apply to criminal procedure as well as to civil procedure. For instance, does the recommendation for pre-trial conferences, or that for partial new trials, apply to criminal as well as civil cases?

[4] Judge Vanderbilt lays great stress on the fact that the recommendations deal with *minimum* standards of *practical* application, and not something academic and utopian. VANDERBILT, *op. cit.* note 1, at xxviii.

[5] A.B.A. HANDBOOK, *op. cit.* note 3 *supra,* at 8. By the rule-making power, a somewhat ambiguous expression, the ABA means: (1) A *complete* power, not merely a power to supplement legislative rules of procedure. In case of conflict between legislative rule and court rule, the latter prevails. (2) A *supervisory* power in one court—the court of last resort—to make rules governing procedure in other courts. VANDERBILT, *op. cit* note 1, at 92, 94.

mendation is not, of course, limited to the field of civil procedure but embraces criminal procedure as well.[6] Colorado lawyers are familiar with the state legislature's statutory recognition in 1939 of the Colorado Supreme Court's right to prescribe rules of procedure for civil cases in the Colorado courts,[7] soon thereafter followed by the court's adoption in 1941 of the Colorado Rules of Civil Procedure. The Colorado legislature has in recent times passed no such statute relative to the rule-making power of the court over criminal procedure.

RULE-MAKING POWER INHERENT IN COURTS

It is doubtless true that the Colorado Supreme Court may properly promulgate rules of criminal procedure without such a statute. The regulation of procedure in the courts is inherently a judicial rather than a legislative function,[8] and this power to regulate has not been lost through abandonment merely because the court has not exercised it as much as it might have done.[9] Furthermore, the Colorado constitution specifically provides that the Supreme Court has "a general superintending control over all inferior courts;" [10] this provision is broad enough to include the rule-making power.[11] Lastly, the Colorado legislature as long ago as 1913 expressly recognized the Supreme Court's right to prescribe rules of criminal procedure.[12] It might be well, however, for the Colorado legislature to enact a statute at the instigation of the Colorado Bar Association expressly conferring on the Supreme Court the rule-making power in the criminal field.

There are many advantages to court-made rules of procedure over legislature-made rules. Courts know more about procedure than do members of the legislature. They can better withstand harmful influences by interested groups. They can make needed changes from time to time more quickly and easily than can the legislature. Legislative changes are almost always piece-meal, patchwork affairs, but the courts may promulgate a well-rounded, complete, cohesive set of rules. The truth of this last statement may be tested by comparing the present confusing state of the law of criminal procedure in Colorado, contained in various scattered statutes, Supreme Court decisions and unwritten practices

[6] *See* A.B.A. HANDBOOK, *op. cit.* note 3, at 12. Note that the United States Congress authorized the Supreme Court to promulgate rules of criminal procedure, 54 STAT. 688 (1940), 18 U.S.C. § 3771 (1948) in a separate statute from that authorizing rules of civil procedure, 48 STAT. 1064 (1934), 28 U.S.C. § 2072 (1948). The Federal Rules of Criminal Procedure became effective on Mar. 21, 1946, seven years after the Federal Rules of Civil Procedure went into effect.

[7] COLO. LAWS 1939, p. 264.

[8] VANDERBILT, *op. cit.* note 1, *supra*, at 132-134. The Colorado Supreme Court has so held: Kolkman v. People, 89 Colo. 8, 300 Pac. 575 (1931).

[9] See Kolkman v. People, note 8 supra.

[10] COLO. CONST. Art. VI, § 2.

[11] Kolkman v. People, note 8 *supra*. VANDERBILT, *op. cit.* note 1, *supra*, at 135-6.

[12] COLO. LAWS 1913, p. 447. The statute provides that the Colorado Supreme Court may make rules of procedure in all courts of record, which rules shall supersede any statute in conflict therewith. While not expressly mentioning criminal procedure, it includes it by inference, since it is not limited to civil procedure.

in trial courts,[13] with the much shorter and simpler but more complete statement of the law in the new Federal Rules of Criminal Procedure.

The power to make rules of criminal procedure is not, of course, an end in itself but only a means to an end; that is, a means of improving the administration of justice in criminal cases. The court, having such a power, must take some action. What action? It should appoint a committee of lawyers to draw up rules of criminal procedure, as it did for the rules of civil procedure.[14] It seems clear that, with very little actual change in Colorado criminal procedure, much can be done to simplify, consolidate and make more certain the present law, to prune away some obsolete provisions and to incorporate some of the procedural changes recommended by the American Bar Association,[15] which are to be discussed in the remainder of this article. The rules committee would have the great benefit of having not only the Federal Rules of Criminal Procedure, but also the American Law Institute Code[16] and these American Bar Association recommendations, to serve as aids in formulating the best possible rules of criminal procedure.

PRE-TRIAL CONFERENCES

The American Bar Association recommended that trial courts should utilize the pre-trial conference, especially in metropolitan areas.[17] It is not clear whether this recommendation is meant to apply to criminal, as well as civil, cases. It would seem to be a useful device in the criminal field, to achieve, for instance, a simplification of the issues, or to obtain possible admissions of fact or of documents and thus avoid the necessity of proof at the trial. It has sometimes been used in criminal cases in other states.[18] The Advisory Committee for the Federal Rules of Criminal Procedure proposed a pre-trial conference in criminal cases, based on Rule 16 of the Federal Rules of Civil Procedure,[19] but the United States Supreme Court omitted the provision when it adopted the Rules. Colorado apparently has no provision for pre-trial conferences in criminal cases.

There has in recent times been a good deal of criticism of the institution of trial by jury. Many persons, especially laymen, believe that the jury trial today is not a search for truth and justice at all, but rather a contest between lawyers endeavoring to fool the jury into giving a favorable verdict. If this ancient institution is to survive in modern times, it must serve as a proper instru-

[13] See Scott, *Criminal Procedure in Colorado—A Summary; and Recommendations for Improvement,* 22 ROCKY MT. L. REV. 221, 246 (1950).

[14] The methods used successfully by the Colorado Supreme Court in preparing civil rules, by appointing a committee to prepare a draft, followed by an invitation to members of bench and bar to submit criticisms, were substantially those used by the United States Supreme Court to draw up the Federal Rules both of Civil and Criminal Procedure.

[15] That is the recommendations of 63 A.B.A. REP. 522 (1938). cited at note 1, *supra.*

[16] AMERICAN LAW INSTITUTE, CODE OF CRIMINAL PROCEDURE (1930).

[17] 63 A.B.A. REP. at 523 (1938).

[18] ORFIELD, CRIMINAL PROCEDURE FROM ARREST TO APPEAL, 323-4 (1947).

[19] Similar to COLO. R. CIV. P. 16 (1941).

ment for achieving justice. The American Bar Association lays great stress on the necessity for improving the caliber of the jury panel through improved methods of selecting jurors, in most states a very haphazard affair. While it is important not to discriminate against any social, economic, religious or racial group in selecting jurors, it is equally important to get intelligent, sensible, high-minded persons for jury service.

The first recommendation as to jury selection is that "jurors should be selected by commissioners appointed by the courts" [20] on a non-partisan basis. Colorado fulfills this "minimum standard" only in part: for counties over 40,000 in population it is true[21]; for counties of smaller size jury selection is made by county commissioners.[22]

Since the primary purpose of the jury commissioner system is to improve the caliber of the jury, "the commissioner should have authority to send out questionnaires, conduct personal interviews, give intelligence tests and use other procedures to determine the fitness of those under consideration; and, of course, he should have sufficient funds and clerical assistance to enable him to do a thorough job." [23] The Colorado laws allow the jury commissioner to send questionnaires and conduct personal interviews as to the qualifications of prospective jurors,[24] but do not direct or authorize a thorough investigation of their general fitness for the task.

DISCRETIONARY POWER IN JUDGE PREFERRED

While the American Bar Association in its 1938 recommendation did not cover this matter, it has since adopted, as part of its program of law reform, the recommendation of the Knox committee on jury selection to the effect that state jury laws should provide for a liberal standard of qualifications for jury service with few exemptions, with discretion in the trial judge to excuse particular individuals or groups from serving.[25] Colorado is one of the few states which substantially follow this Knox recommendation.[26]

One bad feature of the Colorado law on jury selection is the statutory provision, explaining the duties of the jury selection officials, to the effect that these officials shall list only those qualified persons who are not exempt.[27] In effect this disqualifies the exempt persons, although exempt persons are qualified even though they need not serve if they do not wish.[28]

Two other recommendations of the American Bar Association

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[20] 63 A.B.A. REP. at 525 (1938).
[21] COLO. STAT. ANN., c. 95, §§ 22, 36 (1935).
[22] *Id.* § 10, as amended by COLO. LAWS 1943, p. 390.
[23] A.B.A. HANDBOOK, op. cit. note 3, *supra*, at 63.
[24] COLO. STAT. ANN., c. 95, §§ 26, 40 (1935).
[25] A.B.A. HANDBOOK, *op. cit.* note 3, *supra*, at 62.
[26] COLO. STAT. ANN., c. 95, § 1 (1935), as amended by COLO. LAWS 1945, p. 426 (repealing c. 95, §§ 3-9). Some exemptions are found scattered about in the statutes, e.g. *id.* c. 95, § 15, exempting those who served within a year; *id.* c. 111, §§ 23, 136 (as amended) exempting national and state guardsmen.
[27] *Id.* c. 95, §§ 10 (as amended by COLO. LAWS 1943, p. 390), 25, 39.
[28] Criticized in VANDERBILT, *op. cit.* note 1, *supra*, at 171.

have to do with juries. First, the proposal that on the examination of jurors on their *voir dire* the procedure of Rule 47 of the Federal Rules of Civil Procedure—having the initial questioning of jurors done by the trial judge, and giving him control over later questioning by counsel—should be followed. This procedure, designed to avoid delay in selecting the trial jury, is not followed in civil cases in Colorado,[29] nor is there any authority for it in Colorado criminal cases. Second, the proposal that alternate jurors be impanelled in order to avoid mistrials as a result of the death or unavoidable absence of a regular juror during a long trial. Colorado fulfills this "minimum standard" in criminal,[30] as well as civil,[31] cases.

The important problem of improving the administration of justice by the selection of jurors of higher quality is, of course, only partly a question of changing the law. Most of the results must be achieved through more business-like practices of the jury selection officials, coupled with a greater recognition by the public of their duty to aid in the administration of justice by serving as jurors, rather than thinking of excuses not to serve.

TRIAL PRACTICE

The American Bar Association makes a number of recommendations in this general field. The most important of these are aimed at restoring the power of the trial judge to what it was at common law, by (1) allowing him to give *oral* instructions to the jury *after* argument by counsel and (2) giving him the power, in instructing the jury, of "summarizing and analyzing the evidence and commenting upon the weight and credibility of the evidence or upon any part of it, always leaving the final decision on questions of fact to the jury." [32] These powers are, of course, nothing new and revolutionary, but rather of ancient origin.[33] The American Bar Association felt strongly that possession of these powers by the trial judge is necessary for the proper administration of justice, i. e., the reaching of a just result.[34] The right to analyze and comment on the evidence is necessary at times when counsel deliberately try to cloud the issues or play on the emotions of the jurors. Written instructions are singularly unenlightening, and their usefulness is often greatly diminished if followed by, rather than following, arguments of counsel.

In this area of procedure, both civil and criminal, Colorado measures up badly. In civil cases the judge may not comment on the evidence; it is expressly forbidden by the Colorado Rules of

[29] COLO. R. CIV. P. 47(a) (1941), allowing counsel to question the jurors without court permission.
[30] COLO. STAT. ANN., c. 95, § 21 (1935).
[31] *Id.* Also COLO. R. CIV. P. 47(b) (1941).
[32] 63 A.B.A. REP. at 523.
[33] VANDERBILT, *op. cit.* note 1, at 224-5.
[34] The same proposals are made in AMERICAN LAW INSTITUTE, MODEL CODE OF EVIDENCE, RULE 8 (1942), and in AMERICAN LAW INSTITUTE, CODE OF CRIMINAL PROCEDURE, § 325 (1930). The Federal Rules of Civil Procedure, Rule 51, and the Federal Rules of Criminal Procedure, Rule 30, provide for instructions after argument. Comment on the evidence has always been allowed in practice in civil and criminal cases in Federal courts, although not expressly mentioned in the Federal rules.

Civil Procedure.[35] While there is no statute or rule expressly forbidding comment in criminal cases, such is probably the present law in Colorado.[36] Instructions are given in writing, rather than orally, in both civil [37] and criminal [38] cases, and the instructions precede, rather than follow, arguments of counsel.[39]

As the American Bar Association has pointed out, "These changes will not automatically produce a just verdict in every case. But they will make it more likely that a right verdict will be returned." [40] Colorado should take action to improve its procedure in this area.

SPECIAL INTERROGATORIES TO THE JURY RECOMMENDED

The ABA makes some other recommendations in the field of trial practice, some of which may be applicable to criminal trials. One recommendation is for the authorized use of special interrogatories to the jury along with the general verdict.[41] Colorado, although it authorizes the use of such special verdicts in civil cases,[42] makes no such provision as to criminal cases. It is allowed in some states for criminal cases.[43] Doubtless its use in both civil and criminal cases may help to make juries decide according to the law, preventing them from taking the law into their own hands.[44]

Another recommendation is that trial courts should have the power, after verdict, of granting a motion for judgment notwithstanding the verdict, in accordance with an original motion for directed verdict.[45] This would save the time and expense of an unnecessary new trial. Colorado follows this recommendation in civil cases.[46] On principle, the rule should apply equally to criminal cases, where the evidence on behalf of the prosecution, even if assumed to be true, is insufficient to prove that the defendant committed the crime charged, but the trial judge erroneously has refused to direct a verdict of acquittal. After verdict of guilty, the judge could grant a new trial because of the insufficiency of the evidence; but why should there be a new trial at all? The Federal Rules of Criminal Procedure give the trial judge this

[35] COLO. R. CIV. P. 51 (1941). The 1939 statute, note 7 *supra*, authorizing the Supreme Court to prescribe rules of civil procedure, provides "that no rule shall be made permitting or allowing trial judges to comment on the evidence given on the trial." For a similar restraint, see also COLO. LAWS 1913, p. 447.

[36] See Scott, note 13 *supra*, at 239-40.

[37] COLO. R. CIV. P. 51 (1941).

[38] COLO. STAT. ANN., c. 48, § 491 (1935). If both parties agree, the instructions, submitted to the judge in writing, may be given by him orally. *Id.* § 492.

[39] *Id.* c. 48, § 491 (criminal); COLO. R. CIV. P. 51 (1941) (civil).

[40] A.B.A. HANDBOOK, *op. cit.* note 3 *supra*, at 53.

[41] 63 A.B.A. REP. at 524 (1938).

[42] COLO. R. CIV. P. 49 (1941).

[43] See ORFIELD, *op. cit.* note 18 *supra*, 472-3. AMERICAN LAW INSTITUTE, CODE OF CRIMINAL PROCEDURE, §§ 337, 341-2 (1930), provides for special verdicts. They were allowed in criminal cases at common law. *Id.* p. 1000-1. The Federal Rules of Criminal Procedure are silent on the question.

[44] "The general verdict is an escape-valve from the hardships of fixed law, but it can be abused when juries disregard the law generally and follow prejudice and personal favor." A.B.A. HANDBOOK, *op. cit.* note 3 *supra*, at 53.

[45] 63 A.B.A. REP. at 524 (1938). This, of course, is not the old common law motion for judgment notwithstanding the verdict, which raised questions as to the sufficiency of the pleadings but not of the evidence.

[46] COLO. R. CIV. P. 50(b) (1941). See also FED. R. CIV. P. 50(b) (1939).

power,[47] and a number of states allow this procedure in criminal cases.[48] Although there is nothing in the Colorado statutes expressly giving the Colorado trial judge in a criminal case this power, very likely he nevertheless does have such a power.[49]

THE LAW OF EVIDENCE

We have already considered under the heading "trial practice" one or two of the ABA recommendations dealing with evidence, such as the trial judge's power to comment on the evidence. Some other proposals are made, however, for reforming the rules of evidence in the interests of better administration of justice.[50] These proposals are applicable to evidence in both civil and criminal cases.

One rather general but basic recommendation is that more than mere error in the admission or rejection of evidence should be required for the granting of a new trial by an appellate court. There must also be some showing that, on the whole record, the error resulted in prejudice to the losing party. This is the Colorado law in both civil [51] and criminal [52] cases. Another recommendation is that formal exceptions to the trial court's adverse rulings on evidence should not be a prerequisite for review on appeal. Colorado clearly does not require exceptions in civil cases,[53] but the law is not stated clearly as to criminal cases.[54]

The other proposals for reforming the law of evidence deal with certain specific rules picked out from the total body of rules of evidence as particularly needing change.[55] It is worthy of note that the reform of evidence is not really a matter for a committee drafting rules of procedure,[56] but is such a special job that it should be done as a separate venture.[57]

One of the ABA's recommendations concerning appellate practice [58] is that, to avoid unnecessary expenditures of time and money, appeals from inferior courts by trials *de novo* in a superior court be abolished, and justice of the peace courts either be done away with or improved. Colorado, of course, has a system of justice courts, and in criminal cases a defendant convicted in the justice court may appeal to the county court, where a trial *de novo* is had.[59]

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[47] FED. R. CRIM. P. 29 (1946).

[48] See ORFIELD, *op. cit.* note 18 *supra.* at 436.

[49] The Colorado Supreme Court may reverse and remand with directions to sustain a motion to acquit and discharge the defendant. where the evidence on the state's part is so defective that the trial judge should have directed a verdict. *E.g* Matthews v. People, 89 Colo. 421, 3 P. 2d 409 (1931). See Scott, note 13 *supra,* at 244-5. This being so, it should follow that the trial judge can give judgment of acquittal after verdict of guilty, where the evidence is so defective that the trial judge should have directed a verdict.

[50] 63 A.B.A. REP. at 525-527 (1938).

[51] COLO. R. CIV. P. 61 (1941) ("harmless error").

[52] See Scott, note 13 *supra,* at 244. Accord as to harmless error in federal criminal cases, see FED. R. CRIM. P. 52(a) (1946).

[53] COLO. R. CIV. P. 46 (1941).

[54] Probably formal exceptions are not necessary. See Scott, note 13 *supra,* at 238.

[55] E.g. privileged communications; deceased person's statements; proof of business records; the opinion rule; certified copies of court records.

[56] Thus the Federal Rules of Civil and Criminal Procedure and the Colorado Rules of Civil Procedure do not deal in any way with the specific rules of evidence.

[57] The American Law Institute's Model Code of Evidence (1942) would be a natural starting point in any venture of this kind.

[58] 63 A.B.A. REP. 527-9 (1938).

[59] COLO. STAT. ANN., c. 96 § 165 (1935).

The recent attempts by the Colorado Bar Association to bring about these recommended reforms [60] have not as yet borne fruit, but a further attempt to carry them out may be expected.

Another recommendation deals with the superior qualities of a simple notice of appeal, as distinguished from the old writ of error, which has been abolished in most states today. Colorado still retains the writ of error, both as to civil [61] and criminal [62] cases. Still other recommendations cover the record on appeal, aimed primarily at reducing the cost of appeal, and, by making appeal possible in some instances when it would otherwise be too expensive, thus furthering the administration of justice. Thus, typewritten records of court testimony should be permissible; the papers and pleadings on file which are to be put in the record need not be printed but may be used in their original form; and printed abstracts should not be required.[63] Still further recommendations call for a limitation on the length of briefs with no more than a certain number of pages to be taxable as costs, and the wider use of memorandum opinions when no new principle of law is involved.[64]

Just as there is a recommendation, discussed above under "trial practice," that the trial judge be allowed after verdict to give judgment notwithstanding the verdict, the appellate court should have power to direct that verdict be entered for the defendant, rather than simply power to remand for new trial, on appeal by the defendant from the trial judge's refusal to direct a verdict of acquittal. The record may show not only that the trial judge was wrong but what the correct judgment should be. This recommended procedure is followed in Colorado in criminal cases.[65]

CIVIL RULES GIVE COLORADO HIGH STANDING

In a recent issue of the *American Bar Association Journal,* the 48 states were compared as to how they measured up to the association's minimum standards of judicial administration.[66] The comparison was admittedly somewhat rough and ready, but it does give some indication of Colorado's relative standing. Colorado tied for fifth (along with Minnesota and New Hampshire) behind New Jersey, California, Delaware and Wisconsin, in that order. Two thoughts occur to me about Colorado's relatively high showing. One is that the principal reason for such a showing is

[60] See Johnson's articles in 25 DICTA on the Colorado Bar Association judiciary plan. The Colorado legislature in the 1949 session failed to pass the proposal to amend the judiciary article of the Colorado constitution, including the abolition of the justice courts.

[61] COLO. R. CIV. P. 111 (1941). See explanation for retention of the writ at 1 COLO. STAT. ANN., p. 531 (1941).

[62] COLO. STAT. ANN., c. 48, §§ 497-500 (1935).

[63] Colorado requires abstracts in both civil cases, COLO. R. CIV. P. 115 (1941), and criminal, COLO. STAT. ANN., c. 48, § 499 (1935), although sometimes the abstract may be typewritten, COLO. R. CIV. P. 115 (1941).

[64] The Colorado Supreme Court has no definite limit on length of briefs. It often renders memorandum opinions, as recommended.

[65] Matthews v. People, 89 Colo. 421. 3 P. 2d 409 (1931).

[66] Porter, *Minimum Standards of Judicial Administration: The Extent of Their Acceptance,* 36 A.B.A.J. 614 (1950).

Colorado's adoption of the Rules of Civil Procedure. Her record in the field of criminal procedure is not as good. The other thought is that, while Colorado's standing is relatively high, it still falls well-short of achieving the minimum standards discussed in this article. In other words, it is not so much that Colorado is good as that most of the other states are bad.

It seems to me obvious that Colorado should have a set of modern, well-rounded, simply-stated Supreme Court Rules of Criminal Procedure to take the place of the present confusing array of scattered statutory provisions, court decisions, unwritten practices, out-dated customs and general uncertainty. The changes would be more of form than of substance, since most of the present law of criminal procedure in Colorado is, once it has been found, sensible enough. Some changes in substance can be made, however, Colorado, as we have seen, does fall short of the "minimum standards" in a number of important respects. And some of the procedure not mentioned in the ABA proposals, but contained in the Federal Rules of Criminal Procedure and the American Law Institute Code, could well be adopted in Colorado.

PRACTICAL REFORM A VICTORY FOR DEMOCRACY

It should be noted once more that the American Bar Association's minimum standards are not academic or experimental but are realistic and practical. They were recommended by practical men, most of them practicing attorneys. Many of the recommendations are now in successful use in a few or many jurisdictions. They are not radical or revolutionary; "on the contrary, some of the recommendations involve a return to common law concepts that were unwisely abandoned a century or so ago by various states; others represent the gradual advance in simple, common-sense methods of judicial administration." [67]

By choosing the legal profession for our life's work we lawyers have dedicated ourselves to the principle of justice. We have a duty, greater than have any other group in our society, to devote ourselves to the pursuit of this elusive principle. It has always been an important pursuit, but it is especially so today, when our democratic way of life is matched, in the competition for men's minds, with other forms of government. If our way is to win out in the end, our administration of justice must be as nearly perfect as we can make it. There must be a genuine respect for the law and lawyers. We lawyers do not like to change our ways of doing things any more than other people set in their ways. But, like other segments of the population, we must be willing to make some sacrifices in order to make certain the ultimate victory of democratic institutions. The lawyers of Colorado, with their special knowledge of procedure, should take the lead in improving the administration of justice as a part of the larger fight against anti-democratic forces.

[67] VANDERBILT, *op. cit.* note 1 *supra*, at xxxi.