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## THE GROWING-UP STICK

(A Book Review for Washington Lawyers)

JOHN N. RUPP\*

MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION, edited by Arthur T. Vanderbilt. New York: Law Center of New York University for The National Conference of Judicial Councils, 1949. Pp. xxxii + 752.

ON A KITCHEN wall in our house hangs a serviceable and elegantly painted measuring stick upon which we mark, at more or less regular intervals, the ascending heights of our children. This object is known locally as "the growing-up stick," and it is both interesting and useful as a permanent record of comparative statistics.

Now the law may be either an art or a science or both, but in any case it is not exact and has few, if any, absolute standards, except, perhaps, those ultimate goals which characterize any civilized legal system. All of us know, however, that our legal system is not perfect and that there is ample room for improvement. When we leave the substantive law out of the picture and narrow our focus so that we look only at the adjective law—the mechanics of putting the substantive law to work—we shall probably find virtual unanimity among lawyers and laymen alike that there is much now to do to improve our legal procedures. A prime difficulty, however, has been that there were few standards to apply; we had, as it were, no "growing-up stick."

The book at hand goes a considerable way to fill this need for a set of standards, although the editor, Hon. Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey, and a former eminent President of the American Bar Association, vigorously emphasizes the fact that these are "the *minimum* standards needed in a *practical* way to make our court procedure work in the twentieth century." These standards have the firm support of the American Bar Association and the National Conference of Judicial Councils. In the introduction to the volume Judge Vanderbilt tells how and why these standards were developed. The following excerpts will tell the story, at least in part:

One of the strangest phenomena in the law is the general indifference of the legal profession to the technicalities, the anachronisms, and the delays

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in our procedural law. While our substantive law, dealing with legal rights, has been developing from year to year, gradually adapting itself to the changing needs of the times as the result of the unstinted efforts of judges, lawyers, legislators, and administrative officials laboring in the workaday world and of law professors reading and reflecting in their libraries, our procedural law, dealing with the means of enforcing our legal rights, has been relatively neglected. Various reasons have been assigned for this singular attitude . . . One suggestion is that it is a case of the shoemaker neglecting his barefoot children; lawyers are so preoccupied with the substantive problems of their clients that they have little time to devote to the great problem of ways and means in the law that we call judicial administration and procedural law. Another suggestion, less complimentary to the profession, is that while we are adept at developing the substantive law, which concerns the public generally, we are loath to change our own world of procedure, even in favor of something concededly better.

Whatever the reason may be for our neglect, we cannot escape the unenviable contrast between the streamlined efficiency of the age of the assembly line and of the scientific methods of modern technology and our cumbersome and inefficient methods of utilizing our judicial machinery. In many states modern business has to rely on outmoded procedures, some medieval in origin, some reminiscent of the horse and buggy age, to enforce its legal rights. It is not remarkable that businessmen have sensed far more vigorously than most lawyers that a legal right is worthless if it cannot be enforced, and therefore that procedural law is as important as substantive law. . . .

. . . by and large laymen are not dissatisfied with our substantive law, but merely with the technicalities of outmoded procedure and the interminable and unjustifiable delays of the law and, occasionally and unfortunately, with the shortcomings of conscience or of mind or the lack of good manners of a judge. Yet in many places, the bench and the bar, which have the greatest stake in public respect for the law as well as the primary responsibility for its well-being, have neglected to take care of their birthright, leaving the task to enlightened laymen with sufficient perspective to perceive the importance to the body politic of courts that have the confidence of the public and procedure that commands its respect.

In any period of unrest and of conflicting political, economic and social ideas the law and the courts that administer it are peculiarly the target of attacks by enemies both within and without the country. And, as I have just said, these attacks center not on the substantive body of the law but on its defects of procedure or of personnel. In 1937 these considerations combined to induce a group of eminent judges, lawyers, and law professors in the Section of Judicial Administration of the American Bar Association under the leadership of Chief Judge John J. Parker of the United States Court of Appeals for the Fourth Circuit to devote themselves to the formulation of recommendations for the standards that were necessary to make our procedure workable and thus save our entire body of law from attack. These

recommendations were embodied in seven reports dealing with judicial administration, pretrial practice, trial practice, trial by jury and jury selection, the law of evidence, appellate practice and administrative agencies. The recommendations of these seven reports were supported by a wealth of authority. Basic to these reports was the conviction that the battle for improved judicial procedure had to be fought on a nationwide front if the battle was to be won in time, and this could be done successfully only with the aid of the entire legal profession and of intelligent and public spirited laymen. . . .

The seven committee reports, as approved by the Section of Judicial Administration, were distributed to every member of the American Bar Association for study well in advance of the annual meeting at Cleveland in 1938, and it was with the full knowledge of its members that in many respects their own states fell short of complying with these minimum requirements of sound judicial administration that the Association unanimously approved the reports with a single exception in appellate practice that was recommitted to committee. A resolution was passed making the advocacy of these recommendations a special program of the Association and directing the constitution of committees of the Association in the several states to press for the adoption of the recommendations.

The problems of judicial selection and tenure were not considered in the seven reports, not because the Section and its committees were oblivious to the fundamental importance of these topics, but because they were the concern of a special committee of the Association and, even more to the point, the Association had declared its policy the year before, in 1937, in favor of a method of selecting judges that would ameliorate the unfortunate effects of the direct election of judges. . . .

Having arrived at this set of "minimum standards of judicial administration," the American Bar Association's next step, only recently completed, was to make a factual survey to determine the extent to which each state was measuring up to these minimum practical standards. Elaborate questionnaires were carefully developed and entrusted to selected reporters in each state for research and answer. (Who the reporters were for the state of Washington does not appear.) The answers were then tabulated and the summaries returned to the states to be rechecked by new reporters. Thereafter the several chapters of the present book were prepared, and the book was published. As Judge Vanderbilt says, "The book simply records whether or not—or in what degree—each state is complying with the standards of judicial and procedural reform accepted by the American Bar Association. . . . To such patriotic citizens as may be interested in these vital matters in a time of unrest and doubt, this volume is tendered not as a literary effort but as an arsenal of facts."

Here, then, is the measuring stick. Let us stand our Washington State system of judicial administration up against it and see how we are "growing up."

For purposes of this article I shall assume that in all respects the standards set up are sound and desirable. The inquiry will be directed not at the standards, but at the measuring of our own system against those standards.

### *Judicial Selection, Conduct, and Tenure*

The first chapter is concerned with the selection, conduct, tenure, removal and retirement of judges. It is doubtless placed first because of the close and vital relation between the proper administration of justice and the existence of a qualified and independent judiciary.

Upon the method of *selecting* judges, it is well known that the American Bar Association does not favor the system of popular election of judges which is in force in a majority of the states. Judge Vanderbilt refers to that system as "an unhappy legacy from the popular revolt of a century ago often called the Jacksonian Revolution," and says:

That an elected judiciary has proved workable at all has been due to such factors as the gradual extension of judicial terms, the movement for nonpartisan judicial nominations, the impartial endorsements of judicial candidates on the basis of professional standing by bar associations and civic bodies and almost everywhere the appointment by governors of many lawyers of high standing to fill the numerous vacancies in judicial office for which they would never have been willing to campaign.

Briefly stated, the American Bar Association recommendation for the "most acceptable substitute available for direct election of judges" is that (1) vacancies be filled by executive appointment from a list named by an independent agency composed of high judicial officers and of selected citizens who hold no other public office; (2) (optional) these appointees be confirmed by the State Senate; and (3) judges, after a period of service, be eligible for reappointment periodically, if still on the list; or be required periodically to run with no opposition, the question before the voters being, "Shall Judge Blank be retained in office?"

At present this plan is in effect only in Missouri, although a somewhat similar plan has operated since 1934 in California for appellate judges.

Washington is one of the thirty-five states in which all judges are selected by popular vote, although it is not one of the twenty-five of

these in which judges run on a partisan ticket. "A representative group of judges, lawyers and law school professors whose views were solicited for the purposes of this survey" stated that in Washington three-fourths of the trial judges and two-thirds of the appellate judges were "generally satisfactory to the bar and the public." Just when this appraisal was made does not appear, although it seems to have been sometime between 1942 and 1948.

In the *length of judicial terms of office* Washington appears to be somewhat below the average; similarly in the matter of *retirement pensions*.

It must be said that, assuming that the American Bar Association is right, Washington's system of selection of judges falls far short of the "standard."

### *Managing the Business of the Courts*

In the matter of court administration, the first American Bar Association standard is that there should be *a unified judicial system*, with power and responsibility in one judge to assign judges to service so as to relieve congested dockets and to utilize available judges to the best advantage. Washington is said to have a "minimum number of elements of external control," but there is no report of any sentiment in this state for more of such control, and one gathers that our system works quite well.

A strong and representative *Judicial Council* is the second standard recommended, and Washington is one of the fifteen states that measure up to this standard. It is one of the seventeen states that compile *adequate judicial statistics*, and thus it meets the third standard.

I think we can safely say that in the matter of properly managing the business of the courts, the state stands in the upper one-third.

### *Rule Making*

It is recommended that practice and procedure in the courts be regulated by rules of the court (*not* by statute) and that the courts be given full rule-making power. Washington is one of the fourteen states in which the court of last resort has complete rule-making power. Our Supreme Court has had this power since 1925, but it has not yet fully exercised it, i.e., many statutes regulating procedure have not yet been superseded by rules of court. However, Washington is one of twenty-six states in which the present system of rule-making is reported to be satisfactory.

### *Selection and Service of Juries*

The American Bar Association recommends: (1) that jurors be selected by commissioners appointed by the courts; (2) that in metropolitan centers a system like the "Cleveland system" be adopted to select healthy, literate, and intelligent persons for jury duty; (3) that *voir dire* examination should be conducted by both court and counsel in the manner set out in Rule 47 of the Federal Rules of Civil Procedure; and (4) that in long trials at least one alternate juror be empaneled.

Twenty-four states use the recommended method of *selecting jurors* by commissioners appointed by the courts. Washington does not employ this system, but Washington's system (said to be, "judges select jurors from list prepared by county assessors and other sources") is not criticized, as are systems in which the jurors are picked by city mayors or county commissioners.

The recommended Cleveland "key number" system is not in use here, but it is used in parts of only five states. It employs fairly careful screening processes involving questionnaires and personal interviews of prospective veniremen.

The recommended method for *voir dire* examination is substantially followed in Washington, which fact puts it among the twenty-nine states which measure up to this standard.

As to the recommendation on *alternate jurors*, Washington is one of the eight states which permit alternate jurors only in criminal cases, while twenty-four states permit alternates in all cases. At least, however, we are not among the sixteen which have no provision at all for alternate jurors.

To sum up on this matter of jury selection, Washington seems to measure up fairly well with the "standards" set up, except that we fall under the editor's general indictment that, "Much remains to be done for the improvement of the mode of investigating the competency of the prospective juror."

### *Pretrial Conferences.*

Pretrial hearings or conferences, before a judge, are recommended in all metropolitan areas and are suggested in other areas "if justified by local conditions." The time for such hearings is left to the individual needs of each jurisdiction. It is also recommended that "a pretrial hear-

ing need not involve a disclosure of the details of proof which counsel prefer not to disclose.”

I shall not add here to the rather extensive literature on the subject of pretrial conferences and hearings. Opinions on the efficacy of pretrial procedures vary all the way from the idea that they are utterly useless, to the notion that they are the “wonder drug” that will cure all our ills, result in profitable settlements of all our lawsuits, and give us all more time to be bedevilled by law review editors into writing articles which will never be read. Somewhere in between these extremes lies the truth, and only the passage of time and the growth of experience will reveal it.

The recommendations of the American Bar Association and, especially, the adoption of Rule 16 of the Federal Rules of Civil Procedure gave a strong impetus to pretrial procedures, and now twenty-nine states provide for such hearings or conferences. Washington is one of these. On the books at least we are in conformity with the recommendations. I have the impression, however, that “pretrial” has been rather a slow-starter here and that much more experience with it is needed before the bench and bar generally come to regard it as a valuable adjunct to the judicial process. The book reports that it is very highly regarded in those places where it has been in common use for a substantial period of time, and it cannot be denied that potentially it is a very useful device for the simplification of issues, the settling of facts about which there is no real dispute, the stabilizing of trial dockets, and, incidentally, the settling of lawsuits.

### *Trial Practice*

Because a summary or a paraphrasing of the recommendations on the very important subject of trial practice would not be effective, I set out these recommendations in full:

- (1) That the common-law concept of the function and authority of the trial judge be uniformly restored in the states which have departed therefrom.
- (2) That after the evidence has been closed and counsel have concluded their arguments to the jury, the trial judge should instruct the jury orally as to the law of the case, and should have power to advise them as to the facts by 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.
- (3) That the trial judge should be at all times the governor of the trial in the sense of actively, and firmly when necessary, requir-

ing that the proceedings be conducted with dignity, decorum and the avoidance of waste of time.

- (4) That the provisions of the new federal Rules 26 to 37 relating to discovery should be adopted in all the states.
- (5) That the trial court should be authorized, in its discretion to submit specific issues to the jury to be considered in connection with a general verdict, in accordance with the practice prescribed by Rule 49 of the new federal rules.
- (6) That the trial judge should have power to grant a partial new trial where in his judgment the several issues are clearly and fairly separable.
- (7) That the practice of granting judgment *non obstante veredicto* be uniformly adopted, and that it be extended to authorize judgment on motion, in accordance with the original motion for a directed verdict, after the jury has disagreed and upon discharge, as provided for in Rule 50 of the new federal rules.
- (8) That after the trial of a law suit has begun, dismissal without prejudice by voluntary *non-pros* be permitted only in the legally reviewable discretion of the trial judge.
- (9) That in law cases involving complicated fact issues, there may well be reference to a special master or auditor in advance of a jury trial with the submission of his report for consideration by the jury. . . . ; that in equity and non-jury law cases the report should be accepted by the court as to the facts unless clearly erroneous, but nevertheless with power in the trial judge to adopt or modify or reject the report in whole or in part or, in his discretion, to receive further evidence with regard to the facts found, or to re-commit the report with instructions. In jury actions the findings of the referee, special master or auditor should be made admissible as evidence of the matters found and be read to the jury subject to the ruling of the court upon any objection in point of law which may be made to the report (see new federal Rule 53).
- (10) That the practice as to issuing preliminary injunctions should be in accordance with that outlined in the new federal Rule 65 which in substance forbids the issuance of preliminary injunctions without a hearing, but permits a temporary restraining order when necessary to obviate irreparable injury.

The first three of these recommendations are stated to be the most important of the ten, the first and third being fundamental concepts and the second being "directed specifically to one vital phase in the attainment of these fundamentals."

All of us know the Washington rule and practice that the trial judge does not have the common-law right and duty to "*comment on the*

evidence." Thus Washington does not meet the second standard set out above. Neither, however, do thirty-five other states. We do not even permit the judge to *sum up* or *summarize* the evidence and in this we are joined by only nineteen other states.

As to standard (4), quoted above, on *discovery*, the reporters report that Washington is one of the sixteen states which have discovery rules "substantially similar" to the two federal rules cited.

Standard (5) relating to the submission of *specific issues* to the jury to be considered in connection with a general verdict is, the reporters say, complied with in Washington. Washington also provides for a special verdict. Both of these are in the discretion of the judge, which is in accord with the recommendation, and is the rule in the large majority of states.

Washington practice does *not* comply with standard (6), since we require that a new trial must be on *all* the issues of the case. Here we are in a twenty-two state minority.

Recommendation (7), relating to *judgments n.o.v.*, is generally complied with in our practice, as it is in the majority of jurisdictions.

Washington permits a plaintiff to *dismiss* or *take a nonsuit* as a matter of right at the trial before the defendant enters on his defense. Thus Washington does not comply with the standard set up by recommendation (8). The Washington rule is unique, but twenty-four other states permit voluntary dismissal or nonsuit at various stages of the trial.

Recommendation (9) relates to *masters' reports* in jury and nonjury cases. The Washington practice is said to conform to the recommendation in jury cases, but not to conform in nonjury cases because the master's findings of fact are persuasive only. In the jury case situation we are one of a fifteen-state "good minority"; in the nonjury case we are in an eighteen-state "bad minority."

Recommendation (10), on *preliminary injunctions*, is complied with by this state and thirty-seven others.

To sum up, it appears that we are in accord with recommendations (4), (5), (7), part of (9) and (10). Washington does not comply with recommendations (2), (6), (8), and part of (9). How we stand on (1) and (3) is a matter of opinion.

*Traffic Courts and Justice of the Peace Courts*

The bulk of this chapter is devoted to a consideration of progress made in the adoption of fifty-seven specific recommendations for the improvement of traffic courts made by George Warren in his 1942 publication *Traffic Courts* (the fourth volume of this Judicial Administration Series of books). The fifty-seven recommendations are dealt with in the present volume under nine headings.

The first heading relates to the *extent and uniformity of motor vehicle statutes*. Here Washington is in practically full conformity with the recommendations, since it has statutes requiring certificates of title, drivers' licenses, financial responsibility, and a statute thoroughly regulating traffic.

Secondly, it is recommended that only *lawyers be eligible to serve on the traffic court bench*. Here we do not conform except in larger cities.

Third, it is recommended that "*dignified*" *physical facilities* be provided for traffic courts. Compliance with this recommendation varies with the locality. Seattle, Olympia, and Richland in this state are specially mentioned as "converts" to the recommendation.

The remainder of the recommendations deal with such points as these: that the traffic "ticket" serve also as the court complaint; that each police officer have certain designated days for court appearance; that traffic cases be separated, for trial, from "police court" cases; that there be a special traffic violations bureau; that the "Michigan uniform traffic ticket" be used; that "costs" be not added to the fine; that adequate records be kept on "repeaters;" and that "ticket fixing" be eliminated by various recommended devices.

The book is of no great aid in determining accurately how this state stands with respect to these recommendations, and I list them here simply as a convenient means of again bringing this whole important matter to the attention of the Bar.

There is also a section of the book devoted to the justice courts and to suggestions for their improvement. No specific recommendations are set forth, however. I suppose that all Washington judges, lawyers, and justices of the peace agree that our system of justice courts and the procedure therein are badly in need of an overhaul. Some day we will do the job. It is perhaps some consolation, though a rather wry one, to know that it is a task still to be done by nearly every other state in the Union.

*The Law of Evidence*

The chapter on the law of evidence sets out fifteen minimum standards. I shall condense, combine, and paraphrase them.

*First*, it is said that error in admitting or rejecting evidence ought not to be ground for a new trial unless the appellate court believes that the error resulted in a miscarriage of justice. Also, in nonjury cases, a new trial should not be granted for error in the admission of evidence if there is substantial evidence to support the findings unless the findings are based on the evidence erroneously admitted. Washington complies with this standard.

It is recommended that a formal "exception" to admission or rejection of evidence should not be required. Here again Washington complies.

On *survivor's testimony*, the recommendation is that an interested party should be permitted to testify to transactions with a deceased person and that declarations of a decedent should be admitted in evidence if the judge finds that they were made in good faith and on the decedent's personal knowledge. Washington does not comply with this standard—only six states do. The majority rule is criticized as "an anachronism and an obstruction to the truth, since its details are highly technical and have no relation to the psychology of veracity."

It is also recommended that the *declarations of a deceased or insane person* should be received in evidence if the trial judge finds that the declarant is dead or insane and that he made the declaration in good faith on his own personal knowledge before commencement of the action. Only six states have this rule. Washington does not.

On *privileged communications* the North Carolina rule is recommended, to the effect that the trial judge may require a physician to disclose a privileged communication from a patient if the judge finds that the disclosure is necessary for the proper administration of justice. Washington does not comply with the standard, since it is one of the thirty-one states which recognize the physician-patient privilege.

It is also recommended that *privilege be not extended* to accountants, social workers, or journalists. Washington has not extended the rule to any of these occupations.

The rule of the Uniform Business Records as Evidence Act is set up as a standard. Washington is one of the 16 states that have this rule.

It is recommended that an *ordinary witness be allowed to state his*

*conclusion* with respect to ordinary matters, subject to explanation. Washington is one of twenty-six jurisdictions which do not permit this form of "opinion evidence."

On *expert testimony* it is recommended that the principles (too long to be set down here) embodied in the Model Expert Testimony Act and in the American Law Institute's Model Code of Evidence (202-216) be adopted. Washington and forty-four other states still follow the "outmoded" common-law principles on this point.

The provisions of new federal Rule 44 on *certified copies of official records* are recommended. Washington is one of thirty-five states that comply with this standard.

Adoption of the principles of the *Uniform Judicial Notice of Foreign Law Act* is recommended. Washington is in compliance. Only ten states follow the criticized common-law rules on this point.

It is recommended that *oaths* be administered to witnesses separately and in a dignified and understandable way. Washington complies with these two standards; many states do not.

Abolition of the "scintilla rule" is recommended. Washington and most other states do not have this criticized rule.

It is recommended that the provisions of the new federal Rule 43 (b) on the *examination of hostile or adverse parties as witnesses* should be adopted. Washington is one of the thirty states which have provisions similar to Rule 43 (b).

On balance then, we do not look too bad. We comply with nine of the standards and we fail to comply with five of them. In our noncompliances we are joined by a majority of the jurisdictions. A good many of our compliances are quite recent and are due to our having an active Judicial Council and an alert Supreme Court, as well as a Legislature which has shown itself willing to adopt progressive legislation.

### *Appellate Practice*

There are sixteen standards set up for the improvement of appellate practice.

First is the pious recommendation that appeals from inferior courts (e.g., justice courts) by way of full retrial in higher courts should be avoided by *improving the quality of the inferior courts*. On this I do not comment.

Next is a recommendation that *pecuniary limits* should be placed on appeals-as-a-matter-of-right. No attempt is made to say what these

limits should be. Washington has such limits, although they are quite low.

It is recommended that an appeal should be effected *by filing a simple notice of appeal in the lower court*. Washington complies, as do most states.

On *supersedeas bonds* it is recommended that the amount be fixed by the court so as adequately to secure to the respondent the benefit of his judgment. Washington's requirement of double the amount of the judgment is criticized.

It is recommended that *assignments of error* be required to be pointed out only in the briefs. Washington complies.

*Typewritten records*, instead of printed records, are recommended. Here again we are in compliance, as are thirty-one other states.

That the *originals of exhibits and other papers* be sent up in the appellate record is recommended. Washington complies, except for its practice about transcripts.

The abolition of the *abstract* is recommended, and Washington complies. But it is also recommended (and we do not comply) that such matters in the record as the parties desire to bring to the court's attention should be set forth in appendices to the brief, either by summarized statement or quotation. The reason for this is that, when there is only one typewritten copy of the record, all the judges will likely not see the matters deemed to be important.

It is recommended that, except in the case of an agreed statement, the record be set up in *question-and-answer form*. Washington records are commonly in this form.

It is recommended that either the trial or appellate court be empowered to *correct the record* at any time so as to present the case fully and correctly. Washington permits the appellate court to do this.

It is recommended that "the number of pages in any brief taxable as costs should be limited by rule of court." Washington has a descending cost scale, "the effectiveness of which in achieving the purposes of the recommendation [i.e., shorter briefs] may be questioned."

The restoration of the importance of *oral argument* is urged.

Studies are recommended to cope with the problem of "one-man" *decisions* on appeal. Washington is characterized as a one-man decision state, since it is said that cases are assigned in regular sequence to Supreme Court judges for opinion writing. Several devices to insure full participation of several judges are suggested.

*Memorandum opinions* are recommended where no new principle or novel application of law is involved and the decision is controlled by certain statutes or cases. Washington does not comply—along with twenty-seven other states. This is referred to as “discouraging.”

It is recommended that *findings of fact* should have the same effect in all nonjury cases on appeal—whether at law or in equity. Washington complies, when there are findings.

It is recommended that the *appellate court should have power to enter or order the proper judgment without a new trial* where the record shows as a matter of law what the judgment should be. Washington is in accord.

Finally it is recommended that, *when error affects only a part of the case*, the appellate court should have power to remand for a new trial on that part only, if such remand will not prejudice the substantial rights of any litigant. Here Washington does not comply and is in the minority.

To sum up this chapter, it appears that Washington is in accord with nine of the recommended minimum standards and that it does not comply with six of them.

### *State Administrative Agencies and Tribunals*

The last chapter in the book deals with state administrative agencies and tribunals and takes for its standards those set up in the Model State Administrative Procedure Act, adopted in 1946 by the National Conference of Commissioners on Uniform State Laws.

The standards deal with the organization of the agencies, the exercise of their rule-making power, their adjudications in specific causes, their hearing procedures and rules, the separation of administrative, prosecuting and judicial functions, and the judicial review of their orders. It would be impossible, in the space allotted to me, to discuss these matters in detail and to apply the discussion to the various agencies of this state. Suffice it to say that there are standards set up in the model act and that in many instances we do not comply with them.

### *Conclusion*

Having completed this process of measuring our state's system of judicial administration against this “growing-up stick” of minimum standards, I am perforce reminded of the following colloquy:

Hamlet: Good lads how do ye both?

Rosencrantz: As the indifferent children of the earth.

Guildenstern: Happy in that we are not over happy;

On Fortune's cap we are not the very button.

Hamlet: Nor the soles of her shoe?

Rosencrantz: Neither, my lord.

Lest, however, this "gentleman's grade of C" lull any of us into a pleasant sense of security or satisfaction with the "progress" already made, let us again remember that the standards here set up are "the *minimum* standards needed in a *practical* way to make our court procedure work in the twentieth century."

*Defects in the adjective law do much to cause popular dissatisfaction with the Bench and Bar. While defects exist we cannot rest.*