

INSTITUTE OF CURRENT WORLD AFFAIRS

JLS-18 The Judges-1

29 West 17th Street
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Dear Mr. Nolte:

What follows is an interview with one of the New York State Supreme Court¹ judges whose hearings I attended last spring at Bellevue and Manhattan State Hospitals. My purpose is to find out something about the men who decide civil commitment cases, the standards they use to decide, and their attitudes toward the patients and psychiatrists who appear before them.

I interviewed Judge B. at 60 Centre Street in Manhattan. A secretary ushered me into the judge's spacious air-conditioned office, its walls lined with volumes of New York statutes and cases. Judge B., a man of 73, in his shirtsleeves, sat behind a dark wooden desk, on which were a thin sheaf of legal papers and mementos from his years of service as a lawyer and a judge. The interview, which I recorded on tape, took slightly more than an hour. None of the judge's words have been changed, though I have edited the material to less than half its original

¹ In New York, the Supreme Court is primarily a trial court, from which appeals may be taken to the Appellate Division and the Court of Appeals. Supreme Court judges, who are elected to 14-year terms, rotate among the various "parts", including Special Term Part Two, hearings at public mental hospitals.

length and rearranged some pieces of it without, I believe, altering the sense. My brief comments follow the interview.

JLS: Let me start by asking how you decide whether to commit someone to a mental hospital.

Judge B: First of all, you look to see if there is a background, if there's a long history of previous mental disorders. You give it a great deal of weight. You see a person has been committed in 1962 to Manhattan State, was released in 1964, in 1965 was committed to Rockland. Then you have a commitment in Massachusetts. You may say that one must judge the [present] case. But you do go according to a history.

Now you also judge by the irrational behavior of the person, if it's something bizarre. One time, alright. A person doesn't keep himself clean, lives.... well, that's a borderline case because that may be the natural way of a fellow's life.

Then you judge, is this person a danger to others? You may feel that a person may be assaultive in nature, has been convicted and served jail for assault, has been in jail for impairing the morals of a minor, something of that nature.

Then you go on whether a person is a danger to himself or herself. A person, say, has been wandering around, is picked up in the subway, is found near some dangerous activity, wandering in the subway roadbed.

Now you also have the borderline case, you have the case where someone is interfering with the neighbors and is shouting out of the window, and all this. You try to call the family in and you try to see, can't you take him in with you. But you find out that generally the people you get in Bellevue have already been marked off. They've been helped before, to no avail.... The family is already disgusted with them.

You've been sitting there. You heard me say, is there anyone here from the family? Surprisingly enough,

how many did you see? Would you say 20% of the families responded? So? What are you going to do with those cases? They have no home. I try, if possible, if there's a relative, to save him from going away. But you see, the relative doesn't want to take responsibility. Now what can you do? If the relative doesn't want to, if he has no place to go, he has to have somebody look after him.

There's one thing I've learned. People do not recognize they have an illness, and it's hard to get a fellow to come for treatment on the outside. Especially people who are not logical in their thought. So say you see a fellow today and a week later he's brought in again. You can be sure he's due for a commitment.

Now we have cases where a woman will continuously write and harass a man, send letters to him. Do you remember that one? There's nothing you can do there but commit.

JLS: Why not?

Judge B: I'll tell you why. Because you're never going to stop that person. And it can create great havoc in the family, can break up a family, because you can't talk to that person and reason with her. It's a hard one.

What happened to that woman? I don't even remember.

JLS: You ordered her committed.

Judge B: Those are the toughest cases. Sometimes they're not mentally insane. I had a case where a fellow goes out with a woman, a married woman, and she wants to go back to her husband. And the man will not desist. He will keep calling and so forth. Now that doesn't necessarily mean he's mentally ill, and those are hard cases.

JLS: Isn't that a job for the criminal law?

Judge B: Well, now it's a crime to call on the phone and.... But at one time it was not a penal offense. But with this woman, though, after she began to talk up, I saw that you had to commit her. If the patient would keep quiet, many a time when they speak, they make up a case against themselves. Say you have a psychiatrist and you're a little doubtful, and then a patient speaks up and he's confused.

JLS: In discussing these cases, you've talked about the danger to others and the effect on the community. Yet

the New York commitment statute, which has other provisions applying to dangerous people, requires that hospitalization be essential to the patient's welfare. This was a change in the 1973 revision of the statute, and it appears to narrow the grounds for commitment.

Judge B: If you want an expert on changes in the law, you ought to speak with Judge ----- . But the point is this. Where it says "for the benefit of the patient," you may be in doubt whether it's going to benefit him. But if you have the added factor that he's a person who's going to make trouble, we commit him.

JLS: Yet in none of the hearings I've watched has the patient's dangerousness to others been raised in open court.

Judge B: You have another factor. If you let him go, he may do a lot of damage that you can never correct. It's also a benefit to himself to keep out of trouble. We look at the spirit of the thing, and what's right.

JLS: The word "essential" seems narrower than "benefit." You'd think that "essential" includes only people who can't take care of themselves at all, who might starve to death, or get pneumonia or....

Judge B: Or someone who wanders off and may be killed, right?

JLS: Yes. But I don't see how it includes some of the other cases we've talked about.

Judge B: You have to be flexible, and you have to take chances. And in this present era that we live in, judges are so criticized, so on the hot seat that in order to play safe, like in a criminal case, you let somebody out on probation, and in a month or two somebody's killed. And they say, why did the judge let him out?

That means you've got to be a prophet and know what's going to happen. In a mental case, you let somebody out, and then he goes and he snuffs the life out of two or three people. The newspapers say, why did you let him out? We had a case of a family court judge, a woman, who let somebody go for awhile, and I think the stepfather went and he killed the child. And there was such a newspaper outcry.

You know, after all, we can't kid ourselves. The mental institutions are not perfect places. Society is not equipped with all the money in the world to do an excellent job--no more than the prisons. It's really custodial in nature. So if a person has some money, and you think that that person is not a genius but can get along, I wouldn't commit him.

Standards? There are no standards. But we're better off now than we were. Years ago, we didn't have reviews after six months, after a year. At one time, a person could be there for twenty years, twenty-five years, and nobody ever checked back on him. So we've made some progress.

And this Mental Health Information Service, we didn't have it at one time. We used to...in Yiddish there's a word grabbel.¹ You know grabbel? We used to try to get through the thing, but it was very superficial. And we had to ask questions ourselves. The Mental Health Information report gives you immediately, are there relatives, what is the background, what was the incident, are there any suggestions. And we rely on them a great deal. They do a good job. They're conscientious, they're lawyers....

JLS: What aspects of expert psychiatric testimony do you rely on?

Judge B: Well, first of all, I want to know how thorough was his examination. I mean, if he saw him once, saw a patient once, and he saw him for fifteen minutes, I wouldn't commit on that kind of testimony. They generally come in with a two-doctors' checkup. And they have also checked with the nurses on the floor to see what the behavior is. Because when you're speaking with a patient in fifteen minutes, and that's about all I think they give a patient---they may tell you they did this, they did that, but it's pro forma. So he has to check with the nurse to see, and so forth. Now when we get them, we're really not in the best position to judge. They're heavily sedated. If you'll notice, when they come in, they're quiet, there are very few of them that are agitated, because they've been given sedatives, tranquilizers. So in a way you can't really speak to them either.

As I tell you, we have to take that history, and we have to rely on the psychiatrist.

JLS: How important is the diagnosis?

Judge B: It is important. First of all, it gives you a medical term for what is the ailment. And it tells you whether the person is in touch with reality or not. [The psychiatrist] also gives you some of the questions and

¹ Probably רעגלען: to "scratch, scabble, scramble (up a vertical surface)". Weinreich, Modern English-Yiddish Yiddish-English Dictionary (New York, McGraw-Hill) 1968, p. 666. Corresponds to English grabble and Dutch grabbelen: "to feel or search with the hands, to grope about". O.E.D., p. 325. A Yiddish-speaking informant tells me that רעגלען is used in the sense of "looking for a needle in a haystack."

answers, and whether the answers were in response or were wholly outside the thinking of this world.

You get a lot if it in religious terms. A fellow will say, I'm Jesus Christ. I'm the Savior, I've come to save the world. When you see a party like that, you know he's not a religious zealot, he's a little off the beam, you know what I mean. Or he'll tell you he's Moses, he's been reincarnated, he's come to lead the Jews out of the wilderness, and all that.

Now if a fellow is asked, what is today's date, and he says Wednesday [this interview was conducted on a Monday], I wouldn't put much stock in that, because a fellow may be a little slow in thinking. That doesn't mean he should be committed.

If you would ask me, is this what you would consider fine evidence, I say no. I'd say it's sufficient, but it's superficial. Because he's only seen him once or twice, and he also goes by the event that brought him to the hospital. I mean, what's the use of fooling. A policeman picks up a man on the street and he's acting in a peculiar, bizarre manner, and he's running around with an iron bar, threatening people. So [the psychiatrist] really forms a great deal of his opinion on this event. Because sitting down and questioning someone isn't the answer.

JLS: What else in the psychiatrist's testimony influences you?

Judge B: I took a course in elementary psychiatry myself, taught by a fellow called Dr. -----, a professor at St. Elizabeth's, the mental hospital outside Washington. He wrote several books. I went out to St. Elizabeth's, where they had these demonstrations. And I learned that it's only by the grace of God that one is there.

And so I listen to these psychiatrists, and if it strikes me that they know what they're talking about, I give them some credence. But as I say, I go a great deal on the event that brings the patient to the hospital. And I look at the history. And I ask, is there a substitute--either to leave him out or to have him in some private institution in the City. And if possible, if it's the first time, I try my very best not to stigmatize him as a person that's been committed.

As I say, it's all based on one thing, intuition.

JLS: When two psychiatrists disagree, how do you decide?

Judge B: Generally we don't get a disputed issue of fact. How many hearings did you see where they had a psy-

chiatrist appearing pro-patient?

JLS: One out of twenty.

Judge B: In any event, you've asked a question that cannot be scientifically answered. The same judgment must be exercised all the time by a judge deciding cases. It's based on the intuitive knowledge that one gets from experience. It isn't a concrete thing. After many years of experience, especially the older judge--and I may be a little prejudiced when I say that--he intuitively knows the right answer, more or less. Because over the years of experience, he's had other cases, he's heard the testimony, he understands and can cut through this jargon that they use at times, by asking sharp questions.

Sometimes a judge, when there's a difference of opinion, is happy that he has a jury because the onus is on the jury. In criminal cases, you base it on a reasonable doubt. But how do you do that in a psychiatric case? It's a calculated guess, that's all it is.

JLS: How many weeks a year do you spend at Bellevue and Manhattan State?

Judge B: This year I had two, I was going to have another two which I gave up, and I'll have one in November--so I'll be there three weeks.

JLS: How does it compare with your other duties?

Judge B: Well, honestly, I don't like it. But with the course of years it doesn't affect me personally. Originally I would be sick when I got out of there. I would be happy when I got out on 25th Street. It was a shaking experience, to commit a person. But I'll tell you, now when I go there, I'm still happy to get out, but I'm not as easily upset as I was. I don't know whether I'm getting colder or....

JLS: Would you choose another assignment if you could?

Judge B: No, then I would be ducking my responsibility. I don't think it would be right.... I don't like the matrimonial part, but I'm going to fill in there. Custody cases of children, they're the worst. That worries you. But a judge has got to rotate. A judge has got to hear motions too. I do very well on motions. I give it a great deal of attention; I don't just do it superficially. I've had a lot of decisions that were published in the [New York] Law Journal right along in this last term.

When you have the same judges, there's a tendency to become staid. If you have the same judges, you're in trouble. They may be more experienced, but they're also more routine. It's a challenge. You get new blood, new thought.

JLS: Do you talk with your fellow judges about civil commitment cases?

Judge B: I would say no. We do have seminars. I think we had one seminar once on some mental thing. You know, you have a good idea--one of the seminars should be on civil commitment.

JLS: Actually, I wondered how you know whether you're deciding these cases well.

Judge B: I see what you mean. You're in a room in a hospital, you're not in the courthouse. It's more or less perfunctory. And who'll tell us how we did? The clerk may have an idea. But he may not tell you the truth. You know, vanity is a very sacred thing.

JLS: Do you find it hard to keep your composure at Bellevue?

Judge B: I never lose my composure in civil commitment cases with mentally ill people. I look at them as sick people.

I never lose my composure in criminal court. When I sentence a man to jail, I never lecture him. You're up on the bench, the fellow's below you. What can he do? Can he fight back. He's at a disadvantage. To lecture him would be sadistic in nature.

I lose my composure in cases where someone is trying to take advantage of somebody, committing a fraud. A man takes a woman over for thousands and thousands of dollars and those kinds of cases.

JLS: Could you tell me something about your background?

Judge B: I went to evening law school. Those days, you didn't have to go to college. You could come right out of high school. In 1925 I graduated Brooklyn Law School, in 1927 I was admitted, and then I practiced law. In 1949 I was appointed a City Magistrate. Then I was an acting justice of the Court of Special Sessions. Then I went into the City Court in 1957, then the County Court.... We had everything--up to homicides. Then I went into the Supreme Court in 1962, and I've been there now for the past 13 years. So I've had 26 years of actual trial court experience.

And also for a time I was a secretary to a Member of the House of Representatives. And I was also active in politics before I went on the bench. And it stood me in good stead. You meet people from all walks of life. And you know how people tick. The big thing in a judge...today you get a man with more extensive theoretical knowledge as a lawyer when he becomes a judge, but he's lost something. We understood people. We understood people better than the fellow that is sheltered in a grade-A law school, college, and is never in contact with the poor, the forlorn, the people from the other side of the tracks. We have gained experience that stands us in good stead. We feel for people more. And this is a great asset.

JLS: Did you have much contact with people considered mentally ill?

Judge B: Well, you meet all kinds. You have instances where people come to you for help; they'll be calling you, and they'll keep you on the phone for an hour, an hour-and-a-half. You're trying to reach them and no matter what you say, you can't reach them. All this gives you experience... So if you notice, the older judge that you come into contact with seems to have-- I don't know, I may be wrong--a better understanding. Am I right?

You have to treat people kindly, no matter who they are. After all, it's only by the grace of God-- it could have been me, it could have been somebody else in your family.

JLS: You seem to be more sympathetic towards the patients' petitions than other judges. Out of the twenty hearings I attended, three patients were released, and you released two of them.

Judge B: I'm surprised. But I'll tell you why I do that. You know, a judge has God-like powers. To deprive a person of his liberty even for a day, it's an autocratic power, if you look into it.

In a criminal case, we say if a person deserves it, he should go away. So it may not sound like much if a mentally ill person goes away for three months, six months, or a year. But you know, a year is a spring followed by a summer, a summer followed by a fall, and a fall by a winter. And you're confined there, you're regimented. It's not like us. We can walk around, look at a store window. It's liberty. Do you see what I mean?

Both in his courtroom and in private conversation, Judge B. seems conscientious and compassionate--aware of the stigma of commitment to a mental hospital and reluctant to deprive a man of his liberty unless, in the Judge's view, there is no alternative. He evaluates a psychiatrist's recommendation for involuntary commitment with the same skepticism and common sense customarily used to appraise the credibility of any witness, and with compassion for the patient's predicament. Viewing most psychiatric testimony in his court as superficial, Judge B. relies on his own intuition about a patient; unable to learn much from the sedated patient sitting before him, Judge B. accords great weight to the patient's past history of hospitalizations, a record usually compiled by the staff at Bellevue.

As the interview drew on, it also became apparent that Judge B., like other judges I've spoken with, considers the protection of the community to be a central function of civil commitment hearings. Relying heavily on the event that brought the patient to Bellevue, and referring to the reports of nurses' descriptions of the patient's behavior on the ward, Judge B. drew many analogies to the criminal law. He spoke of preventing a patient from causing damage outside the hospital, of the possibility that a woman disappointed in love might break up a family with constant phone calls and letters, and of the danger of letting "somebody out, and then he goes and he snuffs the life out of two or three people." Regarding Judge B.'s notion that the mentally ill are particularly dangerous, what little evidence there is on this question suggests that released mental patients may be less dangerous than the population at large. Yet it seems that this fear of the mentally ill--and perhaps other fears less easy to name--may shape the outcome of many civil commitment hearings.

Preventive detention is, of course, an unusual objective even in the criminal law, and even when a man has been

charged with a specific crime. New York's civil commitment law has special provisions for a 14-day observation period in the case of persons thought to be mentally ill and dangerous. Yet only once in my months of attending hearings was the dangerousness of a patient an issue; most hearings were conducted ostensibly to determine whether hospitalization was essential to the patient's welfare. This issue, as I've urged in an earlier newsletter, turns on judgments of how the patient can be expected to fare on the outside and what benefits can be expected from hospitalization. Judge B. apparently does not look for detailed psychiatric testimony of this kind, perhaps because testifying psychiatrists are rarely prepared to develop and defend such judgments, perhaps out of a realistic view of the custodial character of involuntary hospitalization.

Judge B. reasoned that, despite the 1973 statutory revision, it may still be considered essential to a person's welfare to be kept out of trouble by keeping him in the hospital. But if one accepts this logic and views preventive detention of dangerous people as a wise public policy, civil commitment hearings become an adjunct to criminal law enforcement, and the proceedings at Bellevue come to resemble criminal hearings--but without the traditional Constitutional safeguards applying to criminal trials. Yet a man who is believed likely to commit an act of violence deserves at least the same fastidious attention to his procedural civil rights as a man accused of having committed one--stricter rules of evidence, the right to have a lawyer present at psychiatric examinations, proof of his dangerousness beyond a reasonable doubt. When a patient's dangerousness, though a central issue to the judge, is left unspoken, the patient has small opportunity to contest openly the real accusation against him.


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