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Those Still Elusive Neutral Principles— A Further Groping

Elliott M. Abramson*

In their *The Myth of Neutrality in Constitutional Adjudication*,¹ Miller and Howell dispute the normative thrust of Professor Herbert Wechsler's *Toward Neutral Principles of Constitutional Law*² as impossible of human attainment. The core of Wechsler's position is:

the main constituent of the judicial process is precisely that it must be genuinely principled, resting with respect to every step that is involved in reaching judgment on analysis and reasons quite transcending the immediate result that is achieved. . . . [M]ust [the courts] not decide on grounds of adequate neutrality and generality, tested not only by the instant application but by others that the principles imply?³

Miller and Howell respond:

consistent teaching of . . . respected observers is that neutrality . . . is not attainable . . . knowledge . . . is primarily *decisional* in nature. This means that the human agency cannot be eliminated from any subject to which man addresses his attention, that value preferences inescapably intrude to guide decisions made among competing alternatives. Professor Wechsler agrees that a judge must make a choice among conflicting values, but maintains that such a choice itself can be guided by adherence to neutral principles. This we deny. . . .⁴

And in summarizing the observations of thinkers from other disciplines into a synthesis with which to solidly confront Wechsler's quest for chimera, Miller and Howell further assert:

choices among values are unavoidable in human knowledge and human activity; and . . . when those choices are made, they are motivated not by neutral principles or objective criteria but by

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1. Miller and Howell, *The Myth of Neutrality in Constitutional Adjudication*, 27 U. CHI. L. REV. 661 (1960).

2. Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959).

3. *Id.* at 15.

4. Miller and Howell, *supra* note 1, at 665.

the entire biography and heredity of the individual making them.

...

In making choices among competing values, the Justices of the Supreme Court are themselves guided by value preferences. Any reference to neutral or impersonal principles is, accordingly, little more than a call for a return to a mechanistic jurisprudence and for a jurisprudence of nondisclosure as well as an attempted denial of the teleological aspects of any decision, wherever made.⁵

At this point it seems appropriate to inquire whether what Miller and Howell have proven, or re-stated, *viz*, that human beings engaged in decision making are intensely influenced by their value preferences,⁶ confutes what Wechsler proposes. Cannot Wechsler be understood to mean that principles inescapably influenced by values should nevertheless be consistently applied, and account taken of long range, rather than merely short range or immediate, (the case at hand), consequences? Indisputably a judge's decision as to whether a particular literary expression is protected by the First Amendment, or falls beyond the shield of free speech because hard-core pornography, may, inevitably, be at least partially, conditioned by such factors as his training in literature, the position of his church on such matters, in conjunction with his relationship to his church, what his parents told him many years ago about "dirty books," etc. Yet it is nevertheless appropriate to expect the principle which he fashions to decide the status of the disputed expression to be totally independent of the fact that the expression appears in poetic rather than prose form. Or, to put the matter another way, if the judge decides that the words "x,y,z" expressed in the context of a prose work are not merely "pornographic" it would be rea-

5. *Id.* at 671. Further elaboration of this theme comes at 690 of the article:

In the annals of American constitutional adjudication, those men we call the great judges have habitually analyzed and thought in terms of consequences. Although their decisions are often couched in terms of adherence to "the law," nevertheless to some degree they have been engaging in operational thinking. In the main, we are suggesting in this paper that operational thinking become the outward rule rather than the hidden actuality.

6. To illustrate the way values essentially irrelevant to the making of a rational decision in some area nevertheless intrude upon the decision maker's efforts Miller & Howell, *supra* note 1, at 670, quote from I. BERLIN, *HISTORICAL INEVITABILITY* at 35-36 (1954):

the scope of human choice is a good deal more limited than we used to suppose; . . . the evidence at our disposal shows that many of the acts too often assumed to be within the individual's control are not so . . . that human beings more often than not act as they do because of characteristics due to heredity or physical or social environment or education, or biological laws of physical characteristics or the interplay of these factors with each other. . . . And this certainly alters our ideas about the limits of freedom and responsibility.

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sonable to expect his determination to be sufficiently general so that one could rely on his reaching the same result if "x,y,z" appeared in a poem, notwithstanding his hatred of poetry. Thus, while his reaction to whether "x,y,z" is pornographic would be a composite of many value determinants, the final assessment of "x,y,z" in one particular literary genre might reasonably be relied upon as objective enough to control the outcome in a somewhat different context, regardless of the decision maker's feelings about each of the contexts themselves. As stated by Wechsler:

must . . . not [courts] decide [cases] on grounds of adequate neutrality and generality, tested not only by the instant application but by others that the principles imply? Is it not the very essence of judicial method to insist upon attending to such other cases, preferably those involving an opposing interest, in evaluating any principle avowed?⁷

Of course, it may be asserted that one's relative preference vis à vis prose and poetry is itself a value determinant which in some cases could be the deciding factor. To so assert, it might be said, is to extend the general proposition that decision making is intensely value influenced. But to extend so far is to perhaps destroy the point thereby made; i.e. a literal nth degree application of Miller and Howell's position may generate its own destruction while tearing down Wechsler's aspiration. If each decision is totally *ad hoc* in the sense that any particular value factor in the situation may be decisive, of what use is it to, as Miller and Howell suggest, articulate general value predicates in the hope of rationalizing and making manifest the true origins of the decisions spawned by such predicates?

In the main, we are suggesting . . . that operational thinking become the outward rule, rather than the hidden actuality.

Hence we suggest that judicial decisions should be gauged by their results and not by either their coincidence with a set of allegedly consistent doctrinal principles or by an impossible reference to neutrality of principle. The effects . . . of a decision should be weighed and the consequences assessed in terms of their social adequacy. Alternatives of choice are to be considered, not so much in terms of who the litigants are or what the issue is, but rather in terms of the realization or non-realization of stated societal values [J]udges have always done this . . . overtly or covertly . . . [and] now it should become a matter of conscious choice. . . . Dis-

7. Wechsler, *supra* note 2, at 15.

putes are and should avowedly be settled in terms of the external consequences of their application. . . .⁸

But if Wechsler agrees that values influence decisions⁹ and Miller and Howell assent to the norm that those values which decide cases must be broad ("stated societal values") rather than narrow ("who the litigants are"; one is negro, one is caucasian), does Wechsler's insistence on keeping the breadth of the applicable principles in mind (free speech is free for poems as well as prose) really conflict with the prescriptions of Miller and Howell? Do not both sides opt for even handed application of socially beneficent principles, and urge the sacrifice of immediate values of very narrow scope (personal whim—"I can't stand poetry") in behalf of the broader causes? A solipsistic position turns out to be as generally disparaged by lawyers as discredited among philosophers.

However, assuming Miller and Howell are urging a position distinguishable from what they regard as Wechsler's exercise in phantasmagoria, it is perhaps instructive to take them at their word. If human decision makers, interpreters, and the like are indeed pervasively value directed, does this mean it is necessarily totally inapposite to speak of "objectivity" or "neutrality" respecting the decision making process.

This question would seem particularly crucial where the decision maker is compelled to validate the decision he actually arrives at, at least to some extent, on the basis of his interpretation of an expression of values formulated by another, or others. Such a situation arises clearly when a set of facts is measured against the words of a statute for the purpose of determining whether the fact complex is one spoken of by the statute in the sense that the consequences mandated by the statute, in case it is, must follow. If the statute says that a corporation may not pay dividends except out of earned surplus, and if a corporation in operation for three years, and having lost \$10,000 in each of the first two years, but having made \$10,000 in the third year, pays out dividends amounting, in toto, to \$10,000 and is challenged by one of its shareholders for having violated the statute, a judge will have to decide whether "earned surplus" is to be thought of in terms of the entire life of the business or whether it may be construed as referring merely to any year's profit and loss statement.

Classically, the judge is conceived of as obliged to strive to ascertain

8. Miller and Howell, *supra* note 1, at 690-91.

9. See *supra*, note 4, and accompanying text.

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how the legislature used the words when it wrote the statute. (Whether it is meaningful to speak of a legislature using words or having an intent is itself a question of the utmost independent complexity and difficulty.¹⁰ In what follows it will be assumed that the meaning and intention of the author(s) of an arrangement,¹¹ expressive of value preferences, which comes under judicial interpretation, are in some way rationally definable.)¹² Presumably this responsibility arises from the similarly classical conception of the legislature in a democratic society as being principally charged with making the laws while the judiciary is chiefly concerned with the interpretation and application of those laws in specific factual contexts.

Perhaps a short aside on the concept, and its validity, is in order. For if the division of responsibility proclaimed by the theory is not desirable or wise, there need be no concern whatsoever with whether judges are accurately interpreting legislators or merely ventilating their own ideas about what society needs. If judges are as entitled as legislators to select values what does it matter if they plumb legislative language with fidelity or suspend the law makers' judgment by inserting their own predilections into the web of society's arrangements?

It is submitted that in a democracy adherence to the division of responsibility limned by the classical theory is appropriate if government, not merely by the consent, but by the direction of the governed, is regarded as a genuinely important desideratum. If those who function under the arrangements of a society are entitled to participate in the formulation, adjustment, and reappraisal of those arrangements via the election of representatives whose function it is to craft and enact such arrangements, only arrangements so created bear the seal of legitimacy.

John Dewey expressed the notion with graceful intensity:

The keynote of democracy . . . may be expressed . . . as the neces-

10. See, e.g. Bishin, *The Law Finders*, 38 S. CAL. L. REV. 1, 7 (1965).

11. The terminology connoting a legislative enactment as a verbal formulation intended to direct and arrange human activity in some way or another is suggested by HART & SACKS, *THE LEGAL PROCESS* 124-206 (tent. ed. 1958); and *passim*.

12. Even if the legislative "intention" in the sense of unitary, unequivocal meaning may not be derivable from the language of a statute, it does seem fair to conceive of certain interpretations as sufficiently reasonable to be permissible and to regard all others as so implausible as to be impermissible. Objectivity of approach could serve in delineating the demarcation. Naturally even after such delineation the problem of choosing amongst the plausible alternatives remains, as well as the problem of whether there is need to make a single hard and fast choice. Yet, again, in narrowing down to the sub-set of those choices more likely to be correspondent with legislative thrust, from the general category of all reasonably possible choices, objectivity may wisely inform discretion.

sity for the participation of every mature human being in formation of the values that regulate the living of men together. . . .

...

Democratic political forms are simply the best means that human wit has devised up to a special time in history. But they rest back upon the idea that no man or limited set of men is wise enough to rule others without their consent; the positive meaning of this statement is that all those who are affected by social institutions must have a share in producing and managing them. The two facts that each one is influenced in what he does and enjoys and in what he becomes by the institutions under which he lives, and that therefore he shall have, in a democracy, a voice in shaping them, are the passive and active sides of the same fact.

...

The individuals of the submerged mass may not be very wise. But there is one thing they are wiser about than anybody else can be, and that is where the shoe pinches, the troubles they suffer from.¹³

From this perspective, abrogation or modification of authoritative, legislatively prepared arrangements, as distinguished from a faithful application thereof, represents a usurpation of power; a fashioning of collective living procedures by those not certified by the electoral process as acceptable for the undertaking.¹⁴

But even if it is postulated as vital to a democratic society, that the decision making law interpreter strive to faithfully comprehend the meaning of the law giver, and to avoid substituting his own values for those of the latter, the question remains whether it is possible; is neutrality attainable or is augmentation or modification of the values expressed, in that which is being interpreted, by imposition of the values of the interpreter, inevitable?

Perhaps the ideal is somewhat achievable if neutrality itself may be regarded as a value factor influencing decision. Might not the welter of

13. Dewey, *Democracy and Educational Administration*, 45 *SCHOOL AND SOCIETY* 457, 458 (1937); and reproduced in part in 2 *CONTEMPORARY CIVILIZATION STAFF OF COLUMBIA COLLEGE, COLUMBIA UNIVERSITY, INTRODUCTION TO CONTEMPORARY CIVILIZATION IN THE WEST* 1018-23 (2d ed. 1954). In this essay Dewey asserts that mechanisms such as popular participation, through elected representatives, in the public administration of the laws, are the very minimal credentials a society must possess to qualify as democratic.

14. This characterization becomes somewhat blurred in view of the fact that in certain cases judges are popularly elected. But even in such instances their selection does not revolve about profession of values and is thus not a typical political choice. Indeed, in most cases, the customary political trappings are to be scrupulously avoided. The effect is often to manifest the apolitical bases of selection. And if subsequent to selection the chosen function politically by imposing their values on the society which has never passed on such values the principles of democracy are betrayed.

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value elements through which a decision maker's decision is strained include as one referent a "disposition to neutrality"?¹⁵ Such a disposition to neutrality element might be defined as a strong impulse to interpret in a manner congruent with the interpretations which would be rendered by those having no interest in the consequences of the interpretation, other than its correctness, despite the existence of other impulses impelling toward another or contrary interpretation because of the personal benefits, extrinsic to being accurate, the consequences flowing from such other interpretation would confer. In not so rigorous, but much plainer, language such a disposition to neutrality factor might be thought of as pushing a person to gauge the meaning of language written by another as most men, without any axes to grind, would understand the language even though the person in question might stand to substantially benefit, materially, for example, if the language were deemed to say something different from what disinterested observers would read it as stating.

Perhaps an illustration might better bring the concept into relief.

Assume the necessity to interpret the verbal configuration "x." Assume further that "x" may be reasonably interpreted to imply either "a" or "b," each of the latter itself implying a separate set of economic consequences. All members of the set of persons $D_1, D_2, D_3 \dots D_n$, each of whom has something to gain economically if "x" implies "a," interpret "x" as "x implies a." All members of the set of persons $E_1, E_2, E_3 \dots E_n$ each of whom stands to benefit economically if "x" implies "b" interpret "x" as "x implies b." All members of the set of persons $F_1, F_2, F_3 \dots F_n$ each of whom has no apparent advantage to gain from "x" being interpreted as implying either "a" or "b" interpret "x" to mean "x implies b." On these hypotheses would it not be fair to suggest that objectively viewed "x" implies "b." When essentially the only value determinant operative in the interpretive process was the disposition to rationalize, to be logical, to perceive accurately (i.e. when only "disinterested" interpreters were at work), "x" was found to mean "b."

Now assume the following modification in the above hypothesis: The great preponderance, but not all of the persons in the set of persons $D_1, D_2, D_3 \dots D_n$ interpret "x" as "x implies a"; a relatively

15. This terminology is not maintained consistently throughout the remainder of the paper because just what it is that promotes or results in objective human judgment is far from clear. The principal thrust is the assertion that in the congeries of impulses, relations, etc. that compose an individual's personality there is a push toward accuracy in rendition of data.

few interpret "x" as "x implies b" notwithstanding that "a" is much preferable to "b" in terms of their own personal economic posture. Might not this small dissenting sub-set of persons be classified as objective respecting the problem of interpreting the operational meaning of "x?" To be sure, their interpretation was as value directed as the interpretations which were offered by the economic motivists. However, the value controlling the interpretation of the dissenters was utter fidelity to the meaning of "x" as contemplated by the entity which formulated "x"; and is not that the point—that a disposition to neutrally ascertain meaning is itself an independent value operator.¹⁶

To attempt to further clarify in practical terms: Assume "x" as a phrase in an anti-trust statute declaring illegal certain "combinations in restraint of trade"; the set of persons $D_1, D_2, D_3 \dots D_n$ as proprietors of businesses each of which has just acquired all the assets of a business formerly in competition with the acquiring businesses; the set of persons $E_1, E_2, E_3 \dots E_n$ as proprietors of businesses in competition with those businesses owned by the persons in set $D_1, D_2, D_3 \dots D_n$; $F_1, F_2, F_3 \dots F_n$ as a set of persons who neither buy anything from, or sell anything to, or work for any of the business owned by any of the persons in the sets $E_1, E_2, E_3 \dots E_n$ and $D_1, D_2, D_3 \dots D_n$; "a" as a finding that the acquisitions made by the business owned by the set of persons $D_1, D_2, D_3 \dots D_n$ did not generate "combinations in restraint of trade"; "b" as a finding that such acquisitions did produce the proscribed effect; and the interpretation by the sub-set of dissenters of the set $D_1, D_2, D_3 \dots D_n$ of "x" as "x implies b" a finding that the acquisitions which are to their economic advantages are illegal, because proscribed by those who authoritatively formulated "x," and thus subject to being set aside. And if some of those who stand to gain from permission of the acquisitions acknowledge that prohibition rather than authorization has been directed by the legislature and that they shall have to contest with their competitors ($E_1, E_2, E_3 \dots E_n$) absent the advantage control of the assets of the acquired businesses would have given them, may it not be said that a disposition to judge objectively and neutrally manifested itself?

Even those distinguished observers most conscious of the subjectivity

16. It is possible to contend that the dissenters may have been motivated to their atypical interpretation by factors having nothing to do with a sense of objectivity, e.g. psychological disorders prompting masochistic reactions. But unless this is the reason all the dissenters deviated (the denial of which proposition rests on the faith on which all axioms are posed) the point as to a disposition to neutrality component of at least some human personalities holds.

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of decision making seem to recognize with equal acuteness that objectivity may nevertheless inhere in the process to some degree and that it may perhaps be magnified by the application of certain techniques. Thus Harold Lasswell, in *Self Analysis And Judicial Thinking*,¹⁷ in speculating about "logical thought" refers to it as a:

guided form of mental operation . . . not something clearly marked off from impulse, but rather a progressive elaboration and differentiation of impulse. It proceeds by the affirmation of a starting point, whose distinctive peculiarity is that it is in fact a vague indication of the goal to be reached, and develops by the criticism of the material which appears in consciousness according to its relevance to the end in view. . . .¹⁸

Yet in the same article he remarks "The absence of effective logic is a symptom of a *disease* which logic itself cannot cure" [emphasis mine]¹⁹ and that:

Quite a different technique of thinking is needed to get on with the task of *ridding the mind* of the distorting results of unseen compulsions . . . logical thinking is but one of the methods of using the mind, and cannot itself achieve an adequate inspection of reality because it cannot achieve self-knowledge without the aid of other forms of thinking [emphasis added].²⁰

Implicit in each of these latter comments is the suggestion that objectivity is attainable although frequently unattained because of the mind not having had applied to it a technique [free fantasy] which could liberate it for neutral operation. Presumably, even currently, minds are "diseased" to varying degrees so that some are more objective than others prior to treatment (or perhaps, additionally, because some have already been treated while the mass has not).

Indeed the disposition to neutrality as an independent value operator in the skein of interpretive determinants may be fairly easily isolated in certain contexts.

Suppose three boys, *A*, *B*, and *C*, who are walking together, find two tickets to today's ball game. All exhibit the highest enthusiasm to attend but there is obviously one ticket too few. *A* then proposes the following arrangement: On two of three pieces of paper an "X" be written, that after the marks are made each of the pieces of paper be

17. Lasswell, *Self Analysis and Judicial Thinking*, 40 INT'L J. ETHICS 354 (1930).

18. *Id.* at 357.

19. *Id.* at 356.

20. *Id.* at 356-57.

folded over to conceal what if anything is written on it, that all three pieces of paper so folded be placed in a hat, and that *C* and then *B* and then *A* each draw out one of the papers, the two boys winding up with papers marked with an X to go to the game. Suppose that after the mechanics are taken care of selection begins with *C* picking a paper having an X on it, and with *B* drawing a paper that is blank. At this point in view of *B*'s having comprehended the arrangement proposed by *A* and in view of that operator in *B*'s value framework which disposes him to perceive objectively, would *B*, despite the intense prodding of the determinant in his value framework which impels him to maximize his own material enjoyment (see the ball game) dare contend that he is entitled to one of the free tickets? It may be said that *B* is compelled to abide by the result his disposition to judge neutrally pushes him toward, due to the relative lack of ambiguity in the situation; but such commentary nevertheless implicitly admits the independent existence of such a disposition to neutrality element in the interpretive complex.

The point may be seen in a formal judicial context by assuming that *Q* is a business in bankruptcy proceedings and that *A*, *B* and *C* are its three creditors and that a relevant statute proclaims that in such situations *A*'s claim is to be satisfied prior to *B*'s and that *B*'s claim is to be satisfied prior to *C*'s. Would it be possible for any judge to accord *C*'s claim priority over either or both of the other two, regardless of whatever value preferences the judge might possess for those in *C*'s category (e.g. wage earners) over those in *A* and *B*'s categories (e.g. suppliers who are general creditors, and secured creditors)? In a relatively unequivocal situation the disposition to decide neutrally assumes controlling proportions—which suggests its presence in all human decision making situations although its potency may be inversely proportional to the complexity of that as to which a decision is being rendered.

And just as individuals vary in the strength of other value drives—e.g. some persons are more concerned with the enjoyment they derive from food than others—and some persons manifest more economic acquisitiveness than others, are not some persons more disposed to judge neutrally than others—to be able to accurately perceive the operational consequences intended by those who sought to direct such consequences through verbal formulation, and to be controlled by such perceptions in rendering their judgments as to what, indeed, was

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intended? And if there is value, to a democratic society, in the law interpreters adhering as accurately as possible to the intentions of the law givers is it not these persons with well developed dispositions to act neutrally who should be our judges?

In this day when measurement of all varieties of things accelerates toward fetishistic proportions can we perhaps aspire to measure the disposition to neutrality element in the infinity of matter and mind that is a human being? Conceptualization of at least crude types of such gauges is possible. Suppose each member of a group of persons of perfect eyesight is given a sheet of paper with $\frac{5}{8}$ of the surface red and $\frac{3}{8}$ of the surface green. Suppose this conclusion is clear in the sense, and to the extent that, 100 persons of perfect eyesight, but otherwise selected at random, all replied "more red" to the query "Is this paper 'more red' or 'more green?'" Suppose that the persons who have been given such sheets of paper are told to answer the next question that they are asked honestly and that \$100 will be given to anyone whose honest response is "more green." Then suppose that each person in the group is asked whether the sheet of paper he has been given is more red or more green. Would not those whose response was "more green" reveal themselves as possessing a less well developed "sense of objectivity" than those who sacrificed the monetary reward to respond truthfully.²¹ Clearly this test is neither sufficiently refined nor particularly revealing in any comprehensive sense, but perhaps it suggests that the ultimate ideal may be attainable.

And indeed speculation respecting highly accurate methods for evaluating a person's capacity for objectivity is, considering the highly developed state of modern science, perhaps not unwarranted. If it is more and more possible to correlate mental disorders with specific physiological symptoms²² perhaps traits such as objectivity are similarly

21. Of course to ensure the accuracy of a determination made as a result of such a procedure the subjects would have to be totally unaware that there might be some reward (e.g. consideration for a judgeship) for those found to be "objective."

22. R. Molmo, *Physiological Concomitants of Emotion*, in *COMPREHENSIVE TEXTBOOK OF PSYCHIATRY* § 29.4 (A. Freedman & H. Kaplan eds. 1967). The following passages appear at 1045-47:

In general the intensity of an emotional reaction may be gauged by recording various physiological measures. . . . In general the stronger the emotion, the greater is the overall physiological activation. Physiological recordings that have been successfully taken from human subjects during psychiatric interview or under similar conditions include the following measures: cardiovascular, respiratory, skin conductance, gastrointestinal. . . .

From Freud's treatment of the problem of anxiety to the present, physiological

discernible via physio-chemical tests. For example, once a manifestation of objectivity is considered to have been isolated, as perhaps in the case of those who deferred monetary gain in the example above, in order to respond truthfully, an observation and cataloging of distinctive accompanying physiological symptoms might be possible. Such a procedure might suggest certain physio-chemical characteristics present in those possessed of a well developed disposition to objectivity of judgment. And subsequently those found to have such physio-chemical characteristics could be presumed as endowed with the capacity to judge impartially.

The discussion of neutrality embodied here has deliberately been placed in a context more discursive than that of constitutional adjudi-

overactivation is cited as an objective accompaniment of anxiety. . . .

Examples of other kinds of physiological dysfunction that were observed in anxiety patients . . . are the following: irregularities in motor action, such as finger tremor and respiratory irregularity, and autonomic nervous system overreactivity such as reactions of blood pressure and heart rate. . . .

In Cleghorn and McClure, *Endocrines*, in *COMPREHENSIVE TEXTBOOK OF PSYCHIATRY*, *id.* § 39.9 at 1091 the following appears:

Pershky et al. . . . found that radioactive cortisol had a higher turnover rate in those with anxiety than in normal persons, indicating that cortisol is produced in larger amounts and metabolized faster in anxious subjects.

[I]t has been shown by Bliss et al. that acute schizophrenics who are emotionally disturbed appear to have elevated plasma cortisol levels. . . .

[T]he Michael Rees group . . . findings showed elevation of 17-hydroxycorticosteroid levels in the plasma; the more severe the depression the higher the corticosteroid levels. Higher cortisol values were seen in the retarded depressions than in the agitated ones. . . .

Rizzo et al. found low urinary glucocorticoids in a manic-depressive female patient during her hyperactive episodes, with the levels returning to normal after clinical recovery. . . .

Elmadjian, Hope and Lamson, *EXCRETION OF EPINEPHRINE AND NOREPINEPHRINE IN VARIOUS EMOTIONAL STATES*, 17 *J. CLINICAL ENDOCRINOLOGY AND METABOLISM* 608 (1957) set forth the following model:

A study was undertaken to determine the excretion of epinephrine (E) and norepinephrine (NE) of normal and psychiatric patients in various emotional states. . . .

The excretion rates of E and NE were studied after graded doses of E and NE were infused. These data were used to estimate the secretion of the amines in the various stress conditions studied.

At 619 the results were summarized:

The results support the hypothesis that active, aggressive emotional displays are related to increased excretion of NE with or without increased excretion of E whereas tense, anxious but passive emotional displays are related to increased excretion of E in association with normal excretion of NE.

And in Freedhoff and van Winkle, *A Biochemical Approach to the Study of Schizophrenia*, 121 *AMER. J. PSYCHIATRY* 1054 (1965) the following appears:

[S]amples of urine were collected from 19 schizophrenic patients and 14 non-schizophrenic controls. . . .

Urine samples were subjected to extraction and paper chromatographic separation. As a result of these procedures an amine was found in about 70% of schizophrenic patients which was not present in any of the normal controls. We developed a specific test . . . and with the aid of this procedure . . . identified the compound found in schizophrenic urine. . . . 3,4-dimethoxyphenylethylamine. . . .

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cation. The suggestion has been that such neutrality is a vital element in the general process of adjudication of disputes involving an interpretation of legislative directions, i.e. statutes. It is on the stage of this premise—that judicial neutrality of interpretation of the legislature's value judgments is essential to the proper proportioning of a democratic polity—that it is urged that the quest for objective judges is an important enterprise.