10-1978

Addington v. Texas

Lewis F. Powell Jr.

Case presents Q as to standard of proof (preponderance or beyond reasonable doubt) required to commit one to insane asylums for indefinite term.
Texas S/Ct held preponderance is sufficient. There is extensive conflict.
(See 3 & 4)

PRELIMINARY MEMORANDUM

Conference of ~~February 24~~ April 14, 1978
List 2, Sheet 1

No. 77-5992

ADDINGTON (civilly committed as insane)	State/Civil	Timely
v.		
TEXAS	Appeal to Supreme Ct. Texas (per curiam)	

1. Summary. Does due process require a standard of proof beyond a reasonable doubt to commit a person for an indefinite time for insanity?

2. Facts. Frank Addington was civilly committed for an indefinite period of time after a jury determined that he was

CFR.
Nancy

mentally ill and required hospitalization for his own protection and welfare and that of the community. At the commitment trial, appellant requested an instruction that the jury find he was insane and a danger to the community or to himself beyond a reasonable doubt. The trial judge refused the instruction, and instead charged the jury that the burden of proof was "upon the State to prove each of the . . . special issues by clear and convincing evidence." (js at B-9

The Texas Court of Civil Appeals reversed. It held that, in light of the serious deprivation of liberty involved in an indefinite commitment, the stigma that attached, and the inexactitude of the psychological sciences, the State should have to prove the necessary elements beyond a reasonable doubt. The State appealed to the Supreme Court of Texas.

3. Opinion below(no dissents). The Texas Supreme Court reversed on the basis of State v. Turner, 556 SW 2d 563 (1977), decided by that court while this case was on appeal. State v. Turner is included in the jurisdictional statement. The Texas Supreme Court held that a mere preponderance of the evidence was sufficient, so that even the requirement of "clear and convincing evidence" was more than the Constitution required. There were four reasons. First, the loss of liberty was less severe in mental incompetency commitments than in juvenile delinquency and criminal proceedings. The court thereby distinguished In Re Winship, 397 U.S. 358 (1970). In mental commitment cases, the patient has a right to treatment, a right to periodic review of his continued treatment, and

a right to release when cured. Secondly, civil commitments were ordered on the basis of probabilities of future conduct, not proof of past acts. This distinguished both criminal and juvenile delinquency proceedings. Future probabilities were inherently more difficult to prove than past events, so the State should be afforded more freedom on the standard of proof. Third, the State's interest was beneficent, and there was a serious risk of denying a person the care he needed because the State could not prove the necessary elements beyond a reasonable doubt. The Texas Court's last rationale was a summary of the foregoing: the State had a parens patriae function to perform and the lower standard of proof was necessary to accomplish it.

This sounds like Winship.

The Texas Supreme Court recognized that other jurisdictions required proof beyond a reasonable doubt, and some others imposed a clear and convincing evidence rule, while the CA 4 recognized a mere preponderance. The breakdown of the Circuit and State conflicts is as follows:

PROOF BEYOND A REASONABLE DOUBT CONSTITUTIONALLY REQUIRED:

not surprising

D.C. Circuit, In re Ballay, 482 F.2d 648 (1973)(civil commitment for insanity); but cf., United States v. Brown, 478 F.2d 606 (D.C. Cir. 1973)(preponderance sufficient/where jury has returned verdict in criminal case of not guilty by reason of insanity).

for civil commitment

CA 7, United States ex rel. Stachulak v. Coughlin, 520 F.2d 931 (1975) (under Illinois' sexually dangerous persons act, so possibly distinguishable by reason of the greater stigma);

Massachusetts, In re Andrews, 334 NE 2d 15 (1975)(also involving commitment under a sexually dangerous persons statute).

PROOF BY CLEAR AND CONVINCING EVIDENCE CONSTITUTIONALLY SUFFICIENT

Florida, In re Beverly, 342 So.2d 481 (1977) ("clear and convincing")

Illinois, People v. Sansone, 309 NE 2d 733 (Ill.App. Ct. 1974) (Constitution requires more than mere preponderance, but beyond a reasonable doubt is not required)

New Mexico, State v. Valdez, 540 P.2d 818 (1975) (Constitution requires more than mere preponderance; "clear and convincing" is sufficient)

Utah, In re Ward M., 533 P.2d 896 (1975)(opinion by Henriod, C.J.)

West Virginia, State ex rel Hawks v. Lazaro, 202 SE2d 109 (1974) ("clear, cogent, and convincing" sufficient).

PROOF BY MERE PREPONDERANCE SUFFICIENT

CA 4, Tippett v. Maryland, 436 F.2d 1153 (1971), cert. dismissed sub nom. Murel v. Baltimore City Criminal Court, 407 U.S. 355 (1972).

4. Contentions. Appellant challenges the premises underlying the Texas Supreme Court opinion. There is no recognized right to treatment or right to release when cured under Texas State law; hence, the asserted lesser infringement on liberty is not accurate. The greater difficulty in assessing future probabilities than past events argues for a stronger standard of proof, lest individuals be deprived of their liberty on the basis of vague probabilities. In

this argument, appellant mirrors the Texas Court of Civil Appeals. The beneficent State purpose argument used by the Texas Court cannot stand after In re Winship and In re Gault, 387 U.S. 1 (1967), where the Court explicitly held that good intentions did not absolve a state from due process requirements before liberty was forfeited. And the same response serves to answer the Texas Supreme Court's parens patriae perspective: the state's interest might permit deprivations of liberty on the basis of probabilities, but those probabilities must still be proven beyond a reasonable doubt. Parens patriae is no license to smother individual rights.

5. Discussion. This issue was presented in Murel v. Baltimore City Criminal Court, supra, but subsequent events mooted that case. The dissenting opinion of Mr. Justice Douglas argues that a standard of proof beyond a reasonable doubt is constitutionally required for indeterminate civil commitment. The logic of Winship is undeniably strong; perhaps the clearest distinguishing aspect is the assessment of probabilities about the future involved in civil commitments as opposed to the fact-finding process in criminal and juvenile proceedin But on that question, the two Texas Courts express equally convincing, and perfectly opposite, arguments. This case is a strong candidate for noting probable jurisdiction, and I recommend that a response from the Attorney General of Texas be requested.

2/15/78 Campbell Opinions and Turner in js

There is no response.

Distribute to Conf
on June 3

See my notes.

This purports to be an appeal
& State urges DFWSFQ.
~~But~~ But it is difficult to
say Q is insubstantial.

SUPPLEMENTAL MEMORANDUM

TO: Mr. Justice Powell

FROM: Nancy April 5, 1978

RE: No. 77-5992, Addington v. Texas

In a 2-page Motion to Dismiss, the State argues that the question presented is insubstantial. It notes, first, that the statute itself does not provide the standard of proof but only provides for commitment. (I do not think the State is arguing that this is not a proper appeal because it urges the Court to d DFWSFQ, not to dismiss for want of jurisdiction.) On the merits, the State says that this is a civil proceeding and therefore should be governed by the preponderance standard. The State distinguishes juvenile proceedings on the ground that there the adjudication is

concerned with past wrongdoing whereas here the commitment is because of a person's emotional problems.

I am not persuaded by the State's arguments. I am not certain that this is a proper appeal, however, so the Court might postpone rather than note. On the other hand, this might be a proper appeal because the statute provides for commitment without providing for allegedly required due process.

On the merits, the conflict described by the preliminary memo will have to be resolved at some point, and the Court might as well do it in a case where the lower court has opted for the lowest standard of proof.

Nancy

Court ..... *Voted on* ....., 19... APR 14 1978

Argued ....., 19... *Assigned* ....., 19... No. 77-5992

Submitted ....., 19... *Announced* ....., 19...

ADDINGTON

vs.

TEXAS

Response requested - motion to dismiss filed.

CJ says "reasonable doubt standard" from pursuant many people form receiving treatment

Noted

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.						✓							
Brennan, J.				✓									
Stewart, J.				✓									
White, J.				✓									
Marshall, J.				✓									
Blackmun, J.						Part/me							
Powell, J.				✓									
Rehnquist, J.						✓							
Stevens, J.				✓									

CA 5 appointment.
Goltz

G

May 18, 1978 Conference
List 1, Sheet 4

No. 77-5992

Motion of Appellant for Appointment of Counsel

ADDINGTON

v.

TEXAS

On April 17, the Court noted prob. jurisd. to consider whether the Due Process Clause requires proof of insanity beyond a reasonable doubt to accomplish a civil commitment to a mental institution. The Court also granted appellant's motion for leave to proceed ifp.

Appellant, by his counsel of record in this Court (William P. Allison), now requests that Martha L. Boston be appointed to represent him.

Ms. Boston has represented appellant throughout the proceedings below. She graduated from the University of Texas School of Law in January, 1975, and will not be eligible for admission to the Bar of

Grant
Sam

this Court until May 9, 1978. Mr. Allison's association with this case apparently came about for no reason other than to furnish the signature of a member of this Bar.

There is no response.

5/5/78 Goltz

PJC

Court ..... *Voted on* ....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 77-5992

Submitted ....., 19... *Announced* ....., 19...

ADDINGTON

vs.

TEXAS

Motion of appellant for appointment of counsel.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
Stewart, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.													

S/Ct need not ... proportionality ... meets D/P standards.

In Hess case, jury actually was instructed on "clear & convincing ev. standard".

Appellant contends D/P (in re Winship) requires "beyond reasonable doubt standard".

Eric would require "reasonable doubt" proof where sole ground for commitment is that the committee will be dangerous to public. But where commitment is sought for welfare & protection of committee (rather than to protect society from danger), Eric thinks "clear & convincing" standard is appropriate. Winship can be distinguished in such cases.

In Hess case, jury was instructed in alternative — if jury finds either that D's welfare (i.e. required treatment, or that he was danger to society. As there was ev. of possible danger, we must assume jury decided on this ground. If we adopt Eric's view of two standards for commitments, we would remand for retrial under a different instruction.

I will still read briefs & talk to Eric. I not yet persuade that two standards are required.

BOBTAIL BENCH MEMORANDUM

TO: Mr. Justice Powell

FROM: Eric

DATE: 11-20-78

RE: Addington v. Texas, No. 77-5992

This is a very difficult case concerning the standard of proof constitutionally required in civil commitment proceedings. The briefs of the parties themselves are unimpressive, but fortunately several amici have supplied us with thorough, well-written briefs. In particular, the brief for the American Psychiatric Association (APA), authored by Joel Klein, and the

briefs for the National Center for Law and the Handicapped and for the National Association for Mental Health (NAMH) et al. are helpful.

Standard of proof. Court below gave as instruction "clear & convincing"

I. PRELIMINARY ISSUE

The facts and the course of the proceedings in the Texas courts are adedquately described in the briefs. The only point I would stress is that although the Texas Supreme Court held that the "preponderance" standard is all that is required in civil commitment cases, the trial court actually gave "clear and convincing evidence" instructions to the jury. This raises a question about what procedural course the Court should follow should it decide that the "clear and convincing evidence" test is proper. Klein's view is that because appellant received the benefit of the clear and convincing evidence standard, reversal is necessary only if the Court decides that the reasonable doubt standard is necessary. See APA Brief at 7 n.1. The National Association for Mental Health, by contrast, argues that even if the Court approves the clear and convincing evidence standard it should consider a remand. This is because the Texas Supreme Court has ruled that the clear and convincing test simply has no place in Texas jurisprudence. A remand, amicus says, would be necessary to allow that court to choose between adopting the clear and convincing test in response to this Court's holding, and imposing the reasaonable doubt test as the only available alternative, under state law, to the unacceptable preponderance

test. See NAMH Brief at 5.

The latter position seems correct to me. If the Texas court refuses, as a matter of state law, to adopt a clear and convincing evidence test, it would have to hold that appellant was entitled to reasonable doubt instuctions and therefore must be retried. Thus, contrary to Klein's suggestion, the adoption by this Court of the clear and convincing test could affect the judgment of appellant's case on remand.

II. PRINCIPAL QUESTION

A

Before deciding the ultimate question of what burden of proof is appropriate, the Court should take account of a less obvious, but equally important, aspect of this case. Although this appeal does not directly present for review the propriety of the substantive criteria used to commit appellant, the decision of the Court may well have a direct bearing on the states' ability to rely on psychiatric diagnoses as grounds for civil commitment. This is because, as all responsible contributors to the briefs in this case agree, psychiatric evidence does not readily lend itself to the traditional criminal-law formulation of proof beyond a reasonable doubt, and the imposition of the reasonable doubt standard would make it more difficult to obtain judgments of civil commitment. Thus, if the Court opts for the reasonable doubt standard, this might properly be understood as a

step towards requiring proof of overt acts as a substantive criterion for civil commitment. It would therefore seem wise to give some consideration to the question of the extent to which psychiatric diagnoses may form the basis for involutary commitments.

Klein's brief suggests persuasively that "the pragmatic realities of the adversary process make it apparent that a competent attorney almost invariably will be able to raise a reasonable doubt with respect to [the] medical criteria [that are involved in proving that an individual should be committed]." APA Brief at 19. Thus, the imposition of the reasonable doubt standard might seriously impair the state's ability to care for its mentally ill citizens. The briefs for the National Center for Law and the Handicapped and the NAMH, by contrast, focus on the magnitude of the indiviudal interests at stake. They convincingly describe both the infringement on individual liberty and the serious stigma that attach to civil commitment. They believe that the interest in minimizing the risk of erroneously imposing such burdens is virtually as great as its counterpart in the criminal law field.

Klein

Opposing view

At the core of this disagreement, of course, is the question of how useful and trustworthy psychiatric diagnosis really is. This is an intractable problem. On the one hand, the need to treat the mentally ill, sometimes against their expressed wisshes, seems apparent, and psychiatry, imperfect though it may be, is the only predictive tool we have. Unless we insist that a person actually harm himself or others before he may be

psychiatry, however imperfect, is only scientific basis

committed, we must necessarily rely on psychiatry, shored up with whatever procedural safeguards will add to its accuracy without (as Klein's brief says would be the case with the resaonble doubt standard) undermining its effectiveness altogether. Requiring that a person go so far as actually to commit self-destructive or anti-social (criminal) acts before permitting civil commitment surely would preclude treatment for many individuals about whom there could be a convincing demonstration, if not one beyond a reasonable doubt, that commitment desparately is needed and would be beneficial.

On the other hand, I am impressed with the information offered by the brief of the National Center for Law and the Handicapped at pp. 30-41. It is persuasively argued that psychiatric predictions are in fact wrong in a great many cases, some studies say in a majority of them. It is disconcerting in the extreme to think of needlessly incarcerating substantial numbers of individuals, even as a trade-off for insuring the availability of involuntary treatment for others who actually do need it.

yes — but alternative may be more disconcerting

Because this strikes me as an exceptionally important issue, and because it is not the precise question presented for review, I would recommend deciding this case in a way that leaves the question as open as possible for future consideration in a case where it is squarely presented. One possible way to do this would be to focus on the concept of "dangerousness." The most convincing factual argument of the National Center's brief is that psychiatry is woefully inaccurate in predicting whether an

individual will commit violent acts towards other persons in the future. See their brief at 34-41. Perhaps (I am unsure about this) it makes sense to distinguish between psychiatry's ability to diagnose the existence of mental illness suitable for treatment and even to predict a patient's inability adequately to care for himself on the one hand and, on the other, its ability to predict that violent, anti-social acts will be committed. If the latter prediction is even arguably more difficult, it might be appropriate to rule narrowly that when a person is sought to be civilly committed on that basis, the state must prove its case beyond a reasonable doubt.

Several arguments could be advanced in support of such a holding. First, since dangerousness predictions seems to be so unreliable, it might be sound to make the risk of error as small as possible as to this particular basis for civil commitment. Second, since a predictive finding of dangerousness resembles a criminal conviction in important respects, it may carry with it an unusally onerous stigma which should not be inflicted in the absence of the most exacting judicial safequards. Third, to the extent the opinion in this case will necessarily anticipate future decisions on the permissibility of basing civil commitments on certain kinds of diagnostic evidence, it might not be inappropriate to lay the groundwork for a future holding that commitments based on dangerousness must be founded at least in part on proof of past conduct in which violence was threatened, if not performed. Cf. Lessard v. Schmidt, 349 F.Supp. 1078 (E.D. Wis. 1972), vacated and remanded, 414 U.S. 473 (1974),

reinstated, 379 F.Supp. 1376 (E.D. Wis. 1974), vacated and remanded, 421 U.S. 957 (1975), reinstated, 413 F.Supp. 1318 (E.D. Wis. 1976). A reasonable doubt standard clearly would be appropriate if actual conduct, as opposed to the accuracy of a medical judgment were put in issue.

In this case, the jury was instructed that it could comit appellant if it found that he required hospitalization either for "his own welfare and protection," or for "the protection of others." The verdict did not specify which basis, if not both, was relied upon, but the evidence and arguments presented to the jury suggest that dangerousness may well have been the controlling rationale. See Brief of NAMH at 13-15. Thus, the Court cannot assume that appellant was not committed solely "for the protection of others," i.e., because he was dangerous.

If, as suggested above, the Court were to hold no more than that civil commitments based on a finding of dangerousness to others must be proved beyond a reasonable doubt, it would leave open for future development important issues that should not be resolved until squarely presented and thoroughly briefed. In future case the Court would be free to extend this holding to all civil commitment proceedings if it were convinced that this is required. On the other hand, consistent with Klein's observation that the standard of proof imposed should be considered in tandem with the substantive facts that must be proved to authorize commitment, see APA brief at 17-18, the Court would not preclude a future decision that the reasonable doubt

standard is not appropriate when commitment is based solely upon the "grave disability" or "serious need for treatment" that some state statutes use as a basis for involuntary hospitalization. See appendix to Brief for NAMH. The narrow holding proposed also would leave the Court maximum flesibility in future holdings going to the substantive criteria themselves -- e.g., that psychiatric diagnosis of the existence of serious, treatable mental illness, as opposed to predicted dangerousness, is reliable enough to justify commitment. Because of the importance and difficulty of the issues, I would think that proceeding at a snail's pace as suggested in this memo might be the best way for the Court to deal with the problems of due process and involuntary mental health treatment.

B

Winship not easy to distinguish, but it should not apply to commitments based on need of Rx for treatment.

There remains the question that perhaps should have been treated initially: whether, apart from the troubling policy arguments discussed above, In re Winship, 397 U.S. 358 (1970), mandates reversal in this case. Appellant and two of the amici argue that since the nature of the infringement on liberty and the stigma associated with involuntary civil commitment for mental illenss are scarcely distinguishable from that involved with criminal adjudications, the holding in that case, that proof must be beyond a reasonable doubt, controls here. This is a difficult argument to answer. In fact, insofar as it pertains to commitments based on predictions of future dangerousness to

Even though it should apply where commitment is sought solely because of ~~dangerousness~~ need for treatment

others, I find it compelling. Being incarcerated for treatment solely because a court or jury believes one will commit violent (i.e. criminal) acts in the future is simply too similar to being incarcerated for rehabilitation as a juvenile delinquent to justify different due process standards. Especially in light of psychiatry's poor track record in predicting dangerousness and the likelihood that the Court will someday require proof of actual or threatened overt acts to sustain commitments on this basis, it seems appropriate to require that the proof be beyond a reasonable doubt.

I do not understand Klein's brief to argue strongly to the contrary. As I read between the lines of his brief at pp. 18-21, especially footnote 9, he seems to warn against imposing the reasonable doubt standard on civil commitments not based on dangerousness, while conceding that his opponents have a point to the extent they object to commitments based on findings that the individual will commit harmful acts in the future.

But Klein may have a point when he argues that Winship does not necessarily mandate the reasonable doubt standard for all civil commitments. His discussion on pp 9-16 points out important, if subtle, differences between some civil commitments and juvenile delinquency proceedings. In his Mathews v. Eldridge analysis for discovering due process requirements, Klein is persuasive that not all involuntary commitments must be accompanied by the procedural safeguards developed in the criminal law context. I will not repeat his arguments here, and I am not convinced that they are necessarily unimpeachable. But

I do think it would be wise to reserve ruling on them as they apply to civil commitments not based on a finding of dangerousness. When the proper case arises, his arguments may properly prevail.

The arguments of the State of Texas are not sound. The main thrust of its brief is that since the Court has not required proof beyond a reasonable doubt in the parole and probation revocation cases, which involve deprivations of liberty, the reasonable doubt standard is not required in civil commitment cases merely because they ingringe upon liberty interests. The obvious problem with this apporach, of course, is that a probationer or parolee has already lost his right to liberty through a criminal conviction and is free at the mercy of the state. The defendant in a civil commitment proceeding, by contrast, has an unconditional right to liberty until the state makes a sufficient showing that commitment is justified. The probation and parole revocation cases are therefore not particularly helpful.

All amici seems to agree either expressly or implicitly one one point: the preponderance of the evidence test is inadequate. Texas is apparently the only state expressly to adopt such a standard, although it is unclear in several other exactly what standard is applied. See appendix to Brief of National Center for Law and the Handicapped. Amici seem correct. Weighing the risk of error, the magnitude of the private interests involved, and the interests of the state in the balance as required by Mathews v. Eldridge, it seems highly doubtful that

permitting civil commitment solely upon a finding that the evidence pointing to that conclusion is only slightly stronger than that going the other way comports with the Constitution.

III. CONCLUSION

In light of the difficulties of the issues involved and the nature of the single question presented, I would rule narrowly in this case. Amici NAMH and National Center for Law and the Handicapped have shown that civil commitments based on predictions of dangerousness are peculiarly subject to error. For this reason and because the stigma and probable conditions of confinement are much like those associated with incarceration for criminal offenses and juvenile delinquency, proof should be beyond a reasonable doubt for civil commitments based solely on this ground, as the one in this case may well have been. I would leave open the question whether the same standard of proof should apply when commitment is on other grounds.

I'm out -
I was absent
at Wenker funeral
L.F.P.

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice
Circulated: APR 12 1979
Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-5992

Frank O'Neal Addington, Appellant, v. State of Texas. | On Appeal from the Supreme Court of Texas.

[April —, 1979]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We noted probable jurisdiction of this appeal to determine what standard of proof is required by the Fourteenth Amendment to the Constitution in a civil proceeding brought under state law to commit an individual involuntarily for an indefinite period to a state mental hospital.

I

On seven occasions between 1969 and 1975 appellant was committed temporarily, Texas Mental Health Code Ann., Art. 5547-31-39 (Vernon), to various Texas state mental hospitals and was committed for indefinite periods, *id.*, at 5547-40-57, to Austin State Hospital on three different occasions. On December 18, 1975, when appellant was arrested on a misdemeanor charge of "assault by threat" against his mother, the county and state mental health authorities therefore were well aware of his history of mental and emotional difficulties.

Appellant's mother filed a petition for his indefinite commitment in accordance with Texas law. The county psychiatric examiner interviewed appellant while in custody and after the interview issued a Certificate of Medical Examination for Mental Illness. In the Certificate, the examiner stated his opinion that appellant was "mentally ill and re-

You were gone when this case was argued and did not vote at conference. For what it's worth, this is not very impressive, in my opinion. E.G.

quire[d] hospitalization in a mental hospital." Art. 5547–42.

Appellant retained counsel and a trial was held before a jury to determine in accord with the statute:

> "(1) whether the proposed patient is mentally ill, and if so
>
> "(2) whether he requires hospitalization in a mental hospital for his own welfare and protection or the protection of others, and if so
>
> "(3) whether he is mentally incompetent." Art. 5547–51.

The trial on these issues extended over six days.

The State offered evidence that appellant suffered from serious delusions, that he often had threatened to injure both of his parents and others, that he had been involved in several assaultive episodes while hospitalized and that he had caused substantial property damage both at his own apartment and at his parents' home. From these undisputed facts, two psychiatrists, who qualified as experts, expressed opinions that appellant suffered from psychotic schizophrenia and that he had paranoid tendencies. They also expressed medical opinions that appellant was probably dangerous both to himself and to others. They explained that appellant required hospitalization in a closed area to treat his condition because in the past he had refused to attend out-patient treatment programs and had escaped several times from mental hospitals.

Appellant did not contest the factual assertions made by the State's witnesses; indeed, he conceded that he suffered from a mental illness. What appellant attempted to show was that there was no substantial basis for concluding that he was probably dangerous to himself or others.

The trial judge submitted the case to the jury with the instructions in the form of two questions:

> "1) Based on clear, unequivocal and convincing evidence, is Frank O'Neal Addington mentally ill?
>
> "2) Based on clear, unequivocal and convincing evi-

dence, does Frank O'Neal Addington require hospitalization in a mental hospital for his own welfare and protection or the protection of others?"

Appellant objected to these instructions on several grounds, including the trial court's refusal to employ the "beyond a reasonable doubt" standard of proof.

The jury found that appellant was mentally ill and that he required hospitalization for his own or others' welfare. The trial court then entered an order committing appellant as a patient to Austin State Hospital for an indefinite period.

Appellant appealed that order to the Texas Court of Civil Appeals, arguing, among other things, that the standards for commitment violated his substantive due process rights and that any standard of proof for commitment less than that required for criminal convictions, *i. e.*, beyond a reasonable doubt, violated his procedural due process rights. The Court of Civil Appeals agreed with appellant on the standard of proof issue and reversed the judgment of the trial court. Because of its treatment of the standard of proof, that court did not consider any of the other issues raised in the appeal.

On appeal, the Texas Supreme Court reversed the Court of Civil Appeals' decision. In so holding the supreme court relied primarily upon its previous decision in *State* v. *Turner*, 556 S. W. 2d 563 (Tex., cert. denied, 435 U. S. 929 (1977).

In *Turner*, the Texas Supreme Court held that a "preponderance of the evidence" standard of proof in a civil commitment proceeding satisfied due process. The court declined to adopt the criminal law standard of "beyond a reasonable doubt" primarily because it questioned whether the State could prove by that exacting standard that a particular person would or would not be dangerous in the future. It also distinguished a civil commitment from a criminal conviction by noting that under Texas law the mentally ill patient has the right to treatment, periodic review of his condition and immediate release when no longer deemed to be a danger

to himself or others. Finally, the *Turner* court rejected the "clear and convincing" evidence standard because under Texas rules of procedure juries could be instructed only under a beyond a reasonable doubt or a preponderance standard of proof.

Reaffirming *Turner*, the Texas Supreme Court in this case concluded that the trial court's instruction to the jury, although not in conformity with the legal requirements, had benefited appellant, and hence the error was harmless. Accordingly, the court reinstated the judgment of the trial court.

We noted probable jurisdiction, 435 U. S. 967, and we reverse and remand.

II

The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to "instruct the fact finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." *In re Winship*, 397 U. S. 358, 370 (1970) (Harlan, J., concurring). The standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision.

Generally speaking, the evolution of this area of the law has produced across a continuum three standards or levels of proof for different types of cases. At one end of the spectrum is the typical civil case involving a monetary dispute between private parties. Since society has a minimal concern with the outcome of such private suits, plaintiff's burden of proof is a mere preponderance of the evidence. The litigants thus share the risk of error in roughly equal fashion.

In a criminal case, on the other hand, the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as

possible the likelihood of an erroneous judgment.[1] In the administration of criminal justice our society imposes almost the entire risk of error upon itself. This is accomplished by requiring under the Due Process Clause that the State prove the guilt of an accused beyond a reasonable doubt. *In re Winship*, 397 U. S. 358 (1970).

The intermediate standard, which usually employs some combination of the words "clear," "cogent," "unequivocal" and "convincing" is less commonly used, but nonetheless "is no stranger to the civil law." *Woodby* v. *INS*, 385 U. S. 276, 285 (1967). See also McCormick, Evidence § 320 (1954); 9 Wigmore, Evidence § 2498 (3d ed. 1940). One typical use of the standard is in civil cases involving allegations of fraud or some other quasi-criminal wrongdoing by the defendant. The interests at stake in those cases are deemed to be more substantial than mere loss of money and some jurisdictions accordingly reduce the risk to the defendant of having his reputation tarnished erroneously by increasing the plaintiff's burden of proof. Similarly, this Court has used the "clear and convincing" standard of proof to protect particularly important individual interests in various civil cases. See, *e. g.*, *Woodby* v. *INS*, *supra*, at 285 (deportation); *Chaunt* v. *United States*, 364 U. S. 350, 353 (1960) (denaturalization); *Schneiderman* v. *United States*, 320 U. S. 118, 125, 159 (1943) (denaturalization).

Candor suggests that, to a degree, efforts to analyze what lay jurors understand concerning the differences among these three tests or the nuances of a judge's instructions on the law may well be largely an academic exercise, there are no directly

[1] Compare Morano, A Reexamination of the Development of the Reasonable Doubt Rule, 55 B. U. L. Rev. 507 (1975) (reasonable doubt represented a less strict standard than previous common-law rules) with May, Some Rules of Evidence, 10 Am. L. Rev. 642 (1875) (reasonable doubt constituted a stricter rule than previous ones). See generally Underwood, The Thumb on the Scales of Justice: Burdens of Persuasion in Criminal Cases, 86 Yale L. J. 1299 (1977).

relevant empirical studies upon which we are prepared to rely. Indeed, the ultimate truth as to how the standards of proof affect decisionmaking may well be unknowable, given that factfinding is a process shared by countless thousands of individuals throughout the country. We probably can assume no more than that the difference between a preponderance of the evidence and proof beyond a reasonable doubt probably is better understood than either of them in relation to the intermediate standard of clear and convincing evidence. Nonetheless, even if the particular standard-of-proof catch-words do not always make a great difference in a particular case, adopting a "standard of proof is more than an empty semantic exercise." *Tippett* v. *Maryland*, 436 F. 2d 1153, 1166 (CA4 1971) (Sobeloff, J., concurring and dissenting), cert. dismissed as improvidently granted *sub nom. Murel* v. *Baltimore City Criminal Court*, 407 U. S. 355 (1972). In cases involving individual rights, whether criminal or civil, "the standard of proof at a minimum reflects the value society places on individual liberty." *Ibid.*

III

In considering what standard should govern in a civil commitment proceeding, we must assess both the extent of the individual's interest in not being involuntarily confined indefinitely and the State's interest in committing the emotionally disturbed under a particular standard of proof. Moreover, we must be mindful that "the function of legal process . . . is to minimize the risk of erroneous decisions." *Greenholtz* v. *Inmates of the Nebraska Penal & Correctional Complex*, No. 78–201, at 10; *Mathews* v. *Eldridge*, 424 U. S. 319, 335 (1976); *Speiser* v. *Randall*, 357 U. S. 513, 525–526 (1958).

A

This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. See, *e. g.*, *Jackson* v.

Indiana, 406 U. S. 715 (1972); *Humphrey* v. *Cady*, 405 U. S. 504 (1972); *In re Gault*, 387 U. S. 1 (1967); *Specht* v. *Patterson*, 386 U. S. 605 (1967). Moreover, it is indisputable that involuntary commitment to a mental hospital after a finding of probable dangerousness to self or others can engender adverse social consequences to the individual. Whether we label this phenomena "stigma" or choose to call it something else is less important than that we recognize that it can occur and that it can have a very significant impact on the individual.

The State has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable, because of emotional disorders to care for themselves; the state also has authority under its police power to protect the community from the dangerous tendencies of some who are mentally ill. Under the Texas Mental Health Code, however, the State has no interest in confining individuals involuntarily if they are not mentally ill or if they do not pose some danger to themselves or others. Since the preponderance standard creates the risk of increasing the number of individuals erroneously committed, it is at least unclear to what extent, if any, the State's interests are furthered by using a preponderance standard in such commitment proceedings.

The expanding concern of society in recent years with mental disorders is reflected in the fact that in the past few years many states have enacted statutes designed to protect the rights of the mentally ill. However, only one state has a statute that permits involuntary commitment by a mere preponderance of the evidence, Miss. Code Ann. § 41–21–75, and Texas is the only State where a court has concluded that the preponderance of the evidence standard satisfies due process. We attribute this not to any lack of concern in those states, but rather to a belief that the varying standards tend to produce comparable results. As we stated earlier, however, standards of proof are important for their symbolic meaning as well as for their practical effect. We conclude that the

individual's interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the State to justify confinement by proof more substantial than a mere preponderance of the evidence. The individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the State.

B

Appellant urges the Court to hold that due process requires use of the criminal law's standard of proof—"beyond a reasonable doubt." He argues that the rationale of the *Winship* holding that the criminal law standard of proof was required in a delinquency proceeding applies with equal force to a civil proceeding.

In *Winship*, against the background of a gradual assimilation of juvenile proceedings into traditional criminal prosecutions, we declined to allow the State's "civil labels and good intentions" to "obviate the need for criminal due process safeguards in juvenile courts." 397 U. S., at 365–366. The Court saw no controlling difference in loss of liberty and stigma between a conviction for an adult and a delinquency adjudication for a juvenile. *Winship* recognized that the basic issue—whether the individual in fact committed a criminal act—was the same in both proceedings. There being no meaningful distinctions between the two proceedings, we required the State to prove the juvenile's act and intent beyond a reasonable doubt.

There are significant reasons why different standards of proof are called for in civil commitment proceedings as opposed to criminal prosecutions. In a civil commitment the State's power cannot be exercised in any punitive sense. The State may confine only for the purpose of providing care designed to treat the individual. *Jackson* v. *Indiana*, 406

U. S. 715 (1972).[2] Unlike the delinquency proceeding in *Winship*, a civil commitment proceeding can in no sense be equated to a criminal prosecution. Cf. *Woodby* v. *INS*, *supra*, at 284–285.

In addition, the "beyond a reasonable doubt" standard historically has been reserved for criminal cases. This unique standard of proof, not prescribed or defined in the Constitution, is regarded as a critical part of the "moral force of the criminal law," 397 U. S., at 364, and we should hesitate to apply it too broadly or casually in noncriminal cases. Cf. *ibid.*

The heavy standard applied in criminal cases manifests our concern that the risk of error to the individual must be minimized even at the risk that some who are guilty might go free. *Patterson* v. *New York*, 432 U. S. 198, 208 (1977). The full force of that idea does not apply to a civil commitment. It may be true that an erroneous commitment is sometimes as undesirable as an erroneous conviction. 5 Wigmore, *supra*, at § 1400. However, even though an erroneous confinement should be avoided in the first instance, the layers of professional review and observation of the patient's condition, and the concern of family and friends generally will provide continuous opportunities for an erroneous commitment to be corrected. Moreover, it is not true that the release of a genuinely mentally ill person is no worse to the individual than the failure to convict the guilty. One who is suffering from a debilitating mental illness and in need of treatment is neither wholly at liberty nor free of stigma. See Chodoff, The Case for Involuntary Hospitalization of the Mentally Ill, 133 Am. J. Psychiatry 496, 498 (1976); Schwartz, et al., Psychiatric

[2] As the Texas Supreme Court said in *State* v. *Turner*, 556 S. W. 2d 563, 566 (1977):

"The involuntary mental patient is entitled to treatment, to periodic and recurrent review of his mental condition, and to release at such time as he no longer presents a danger to himself and others."

Labeling and the Rehabilitation of the Mental Patient, 31 Arch. Gen. Psychiatry 329, 335 (1974). It cannot be said, therefore, that it is much better for a mentally ill person to "go free" than for a mentally normal person to be committed.

Finally, the initial inquiry in a civil commitment proceeding is very different from the central issue in either a delinquency proceeding or a criminal prosecution. In the latter cases the basic issue is a straightforward factual question—did the accused commit the act alleged. There may be factual issues to resolve in a commitment proceeding, but the factual aspects represent only the beginning of the inquiry. Whether the individual is mentally ill and dangerous either to himself or others and is in need of confined therapy turns on the *meaning* of the facts which must be interpreted by expert psychiatrists and psychologists. Given the lack of certainty and the fallibility of psychiatric diagnosis, there is a serious question as to whether a State could ever prove beyond a reasonable doubt that an individual is both mentally ill and likely to be dangerous. See *O'Connor* v. *Donaldson*, 422 U. S. 563, 584 (1976) (concurring opinion); *Blocker* v. *United States*, 110 U. S. App. D. C. 41, 288 F. 2d 853, 860–861 (1961) (concurring opinion). See also *Tippett* v. *Maryland*, 436 F. 2d 1153, 1165 (CA4 1973) (Sobeloff, J., concurring and dissenting), cert. dismissed as improvidently granted *sub nom. Murel* v. *Baltimore City Criminal Courts*, 407 U. S. 355 (1974); Note, Civil Commitment of the Mentally Ill.: Theories and Procedures, 79 Harv. L. Rev. 1288, 1291 (1968), Note, Due Process and the Development of "Criminal" Safeguards in Civil Commitment Adjudications, 42 Ford. L. Rev. 611, 624 (1974).

The subtleties and nuances of psychiatric diagnosis render certainties virtually beyond reach in most situations. The reasonable doubt standard of criminal law functions in its realm because there the standard is addressed to specific, knowable facts. Psychiatric diagnosis, in contrast, is to a large extent based on medical "impressions" drawn from

subjective analysis and filtered through the experience of the diagnostician. This process often makes it very difficult for the expert physician to offer definite conclusions about any particular patient. Within the medical discipline, the traditional standard for "factfinding" is a "reasonable medical certainty." If a trained psychiatrist has difficulty with the categorical "beyond a reasonable doubt" standard, the untrained lay juror—or indeed even a trained judge—who is required to rely upon expert opinion could be forced by the criminal law standard of proof to reject commitment for many patients desperately in need of institutionalized psychiatric care. See Fordham Note, *supra*, at 624. Such "freedom" for a mentally ill person would be purchased at a high price.

That practical considerations may limit a constitutionally based burden of proof is demonstrated by the reasonable doubt standard, which is a compromise between what is possible to prove and what protects the rights of the individual. If the State was required to guarantee error-free convictions, it would be required to prove guilt beyond all doubt. However, "[d]ue process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person." *Patterson* v. *New York*, 432 U. S. 197, 208 (1977). Nor should the State be required to employ a standard of proof that may completely undercut its efforts to further the legitimate interests of both the State and the patient that are served by civil commitments.

That some States have chosen—either legislatively or judicially—to adopt the criminal law [3] gives no assurance that

[3] Haw. Rev. Stat. § 334–60 (4) (I); Idaho Code § 66–329 (i); Kan. Stat. Ann. § 59–2917; Mont. Rev. Codes Ann. § 38–1305 (7); Okla. Stat., Tit. 43A, § 54.1 (C); Ore. Rev. Stat. § 426.130; Utah Code Ann. § 64–7–36 (6); Wis. Stat. § 51.20 (14) (e); *Superintendent of Worcester State Hospital* v. *Hagberg*, 372 N. E. 2d 242 (Mass. 1978); *Proctor* v. *Butler*, 380 A. 2d 673 (NH 1977); *In re Hodges*, 325 A. 2d 605 (DC 1974); *Lausche* v. *Comm'r of Public Welfare*, 302 Minn. 65, 225 N. W. 2d 366 (1974), cert. denied, 420 U. S. 993 (1975). See also *In re J. W.*, 44 N. J.

the more stringent standard of proof is needed or is even adaptable to the needs of all States. The essence of federalism is that States must be free to develop a variety of solutions to problems and not be forced into a common, uniform mold. As the substantive standards for civil commitment may vary from state to state, procedures must be allowed to vary so long as they meet the constitutional minimum. See Monahan & Wexler, A Definite Maybe: Proof and Probability in Civil Commitment, 2 Law & Human Behavior 49, 53–54 (1978); Share, The Standard of Proof in Involuntary Civil Commitment Proceedings, 1977 Det. Coll. L. Rev. 209, 210. We conclude that it is unnecessary to require States to apply the strict, criminal standard.

C

Having concluded that the preponderance standard falls short of meeting the demands of due process and that the reasonable doubt standard is not required, we turn to a middle level of burden of proof that strikes a fair balance between the rights of the individual and the legitimate concerns of the State. We note that 20 States, most by statute, employ the standard of "clear and convincing" evidence; [4] three States use

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Super. 216, 130 A. 2d 64 (App. Div.), cert. denied, 24 N. J. 465, 132 A. 2d 558 (1957); *Danton* v. *Commonwealth*, 383 S. W. 2d 681 (Ky. 1964) (dicta).

[4] Ariz. Rev. Stat. Ann. § 36–540; Colo. Rev. Stat. § 27–10–111 (1), Conn. Gen. Stat. § 17–178 (c); Del. Code, Tit. 16, § 5010 (2); Ga. Code § 88–501 (a); Ill. Rev. Stat., ch. 91½, § 3–808; Iowa Code § 229.12; La. Rev. Stat. Ann., Tit. 28, § 55E (West); Me. Rev. Stat. Ann. Tit. 34, § 2334 (5)(A)(1); Mich. Stat. Ann., § 14.800 (465); Neb. Rev. Stat. § 83–1035; N. M. Stat. Ann. § 34–2A–11C; N. D. Cent. Code § 25–03.1–19; Ohio Rev. Code Ann. § 5122.15 (B); Pa. Cons. Stat. Tit. 50, § 7304 (f); S. C. Code § 44–17–580; S. D. Comp. Laws Ann. § 27A–9–18; Vt. Stat. Ann. Tit. 18, § 7616 (b); Md. Dept. of Health & Mental Hygiene Reg. 10.04.03G; *In re Beverly*, 342 So. 2d 481 (Fla. 1977).

"clear, *cogent*, and convincing" evidence;[5] and two States require "clear, *unequivocal* and convincing" evidence.[6]

In *Woodby* v. *INS*, 385 U. S. 276 (1967), dealing with deportation and *Schneiderman* v. *United States*, 320 U. S. 118, 125, 159 (1943), dealing with denaturalization, the Court held that "clear, unequivocal and convincing" evidence was the appropriate standard of proof. The term "unequivocal," taken by itself, means proof that admits of no doubt,[7] a burden approximating, if not exceeding, that used in criminal cases. The issues in *Schneiderman* and *Woodby* were basically factual and therefore susceptible of objective proof and the consequences to the individual were unusually drastic—loss of citizenship and expulsion from the United States.

We have concluded that the reasonable doubt standard is inappropriate in civil commitment proceedings because, given the uncertainties of psychiatric diagnosis, it may impose a burden the State cannot meet and thereby erect an unreasonable barrier to needed medical treatment. Similarly, we conclude that use of the term "unequivocal" is not constitutionally required, although the States are free to use that standard. To meet due process demands, the standard has to inform the factfinder that the proof must be greater than the preponderance of the evidence standard applicable to other categories of civil cases.

We noted earlier that the trial court employed the standard of "clear, unequivocal and convincing" evidence in appellant's commitment hearing before a jury. That instruction was constitutionally adequate, however, the precise burden greater than a preponderance of the evidence that the Texas Supreme Court may choose to require is a matter of state law which

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[5] N. C. Gen. Stat. § 122–58.7 (i); Wash. Rev. Code § 71.05.310; *State ex rel. Hawks* v. *Lazaro*, 202 S. E. 2d 109 (W. Va. 1974).

[6] Ala. Code, Tit. 22, § 52–10 (a); Tenn. Code Ann. § 33–604 (d).

[7] See Webster's Third New International Dictionary 2494 (1969).

we leave to that court.[8] Accordingly, we remand the case for further proceedings not inconsistent with this opinion.

Reversed and remanded.

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[8] We noted earlier the court's holding on harmless error. See p. 4, *ante*.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 13, 1979

Re: 77-5992 - Addington v. State of Texas

Dear Chief,

Please join me.

Sincerely yours,

Byron

The Chief Justice

Copies to the Conference

cmc

April 14, 1979

77-5992 Addington v. Texas

Dear Chief:

Please show on the next draft of your opinion that I took no part in the decision of this case.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 18, 1979

Re: No. 77-5992 - Addington v. Texas

Dear Chief:

Your records will show that I voted to postpone jurisdiction.

Sincerely,

Harry

The Chief Justice

cc: The Conference

did not participate in decision because of absence at funeral on 11/28/78

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
11/78								
1st draft 4/12/79 2nd draft		Join CJ 4/20/79	Join CJ 4/13/79	Join CJ 4/17/79	Typed draft 4/17/79	out letter 4/14/79	Join CJ 4/23/79	Join CJ 4/16/79
4/20/79 2nd draft					voted to postpone jurisdiction			
4/27/79					4/18/75 Join CJ 4/23/75			
				77-5992 Addington v. Texas				