10-1985

Allen v. Illinois

Lewis F. Powell Jr.

CFR

Descem.
Altho there is
a Cert. it presents
a serious Const Q

Ill. statute provides for ~~procedure of~~ incarceration of
"a sexually dangerous person" (p 2).
Incarceration (apparently in
2 prison with persons convicted
of ~~the~~ crimes) lasts until the
offender can show, by ~~clear~~ preponderance
of ev., an absence of dangerousness.
Ill. decisions do require State
to prove the charge by "beyond a
reasonable doubt"

PRELIMINARY MEMORANDUM

Petr. was examined by
psychiatrists w/o being told that
what he said could be used vs him.

November 1, 1985 Conference
List 2, Sheet 3

No. 84-5404

The Q is whether the ~~Fifth~~ privilege
against self-incrimination applies to
these so-called "civil procedure"?

Allen (sexually dangerous)
v.
Illinois

Cert to Ill. Sup. Ct. (Moran; others not indicated)

State/Civil

Timely

1. SUMMARY: Petr claims that the Fifth Amendment's protection against self-incrimination should apply in Illinois' proceedings to commit petr as sexually dangerous.

2. FACTS AND DECISIONS BELOW: According to the victim, petr forced her to engage in various sexual acts with him. Criminal charges were brought.

See back

See back
10/30/85

The state then also petitioned to have petr declared a "sexually dangerous person" (SDP) under Ill. Rev. Stat., ch. 39, para. 105--1.01 et seq. (reproduced in app. B to petn). To succeed, the state must show

> "a mental disorder [that] has existed for a period of not less than one year ... coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities towards acts of sexual assault or acts of sexual molestation of children." Id., at 105--1.01.

An SDP can be incarcerated until he or she can show, by a preponderance of the evidence, a lack of sexual dangerousness. Id., at para. 105--9.

At a hearing, the trial court explained to petr the procedures of, and petr's rights under, the SDP statute. Petr was represented by counsel. Petr indicated that he understood the nature of the proceedings. The court ordered petr to submit to examinations by two psychiatrists.

According to the intermediate appellate court, one psychiatrist "never warned" petr that the examination could be used in the SDP proceeding, while the other gave no "adequate warning." 123 Ill. App. 3d at 671.

After a probable cause hearing, the criminal charges were dismissed.

At the trial on the charge that petr was sexually dangerous, the two psychiatrists who examined petr testified. The trial court refused to admit their recounting of petr's statements, but did allow expert opinions based on the interviews. Both pyschiatrists testifed that petr fulfilled the SDP criteria. The

victim also testified. The trial court found petr sexually dangerous.

The Illinois intermediate appellate court reversed the determination. It reasoned that the psychiatrists' testimony improperly relied upon information obtained in violation of petr's privilege against self-incrimination. 123 Ill. App. 3d 669. A dissent argued that the proceedings were not criminal, and thus no Fifth Amendment privileges attached.

The Illinois Supreme Court reinstated the determination. The proceedings under the SDP Act are "similar to criminal proceedings [but] nonetheless essentially civil in nature." Slip op. in app. A to petn at 4 (discussing People v. English, 31 Ill. 2d 301 (1964)). Because of the liberty interests at stake, due process requires that the proceedings show sexual dangerousness beyond a reasonable doubt. People v. Pembrock, 62 Ill. 2d 317 (1976). Nonetheless, the purpose of the program is treatment, not punishment. Ill. Rev. Stat., ch. 38, para. 105--8. The Illinois legislature has stated that the proceedings are civil. Ibid.

In People v. Capoldi, 10 Ill. 2d 261 (1957), the court held that the state must make a preliminary showing as to the voluntariness of admissions sought to be introduced in SDP proceedings. Here, however, in-court warnings to petr and his representation by counsel are sufficient to show voluntariness. Slip op. at 6.

The multiple, already-existing safeguards would bring little increased reliability to the SDP determination, while to enforce

a privilege against self-incrimination would make it much more difficult to identify the sexually dangerous. Slip op. at 7-8. Courts must, however, exclude any testimony compelled by the psychiatric examination that the state might attempt to introduce in criminal proceedings. See Estelle v. Smith, 451 U.S. 454 (1981).

Having stated that "[v]oluntariness and the self-incrimination privilege are separate issues," slip op. at 6, the court noted that it was not reaching the issue of whether the privilege had been waived, since no privilege existed. Slip op. at 8.

3. CONTENTIONS: In re Gault, 387 U.S. 1 (1967), requires Illinois to provide petr with the privilege against self-incrimination in these proceedings. Findings of sexual dangerousness result in incarceration and stigma, both to a degree greater than in the juvenile proceedings involved in Gault. See United States ex rel. Stauchalak v. Coughlin, 520 F.2d 931 (CA7 1975). The privilege against self-incrimination protects against unreliable confessions and state coercion. Any interest that the state has in protecting society from the sexually dangerous can be served by criminal prosecution.

Resp replies that, since the Illinois Supreme Court found petr's statements voluntary, petr waived any Fifth Amendment rights he may have had.

In Estelle, the Court stated in dicta that no Fifth Amendment issue would have arisen if defendant's statements had been used to determine competency to stand trial. 451 U.S. at 465. Similarly, here the determination is one of mental illness, not

guilt or innocence. In the context of determining mental health, concern for reliability is lessened because psychiatrists are as interested in the lies or distortions of the interviewee as they are in statements truthfully made.

Illinois provides in these proceedings a panoply of rights also available to criminal defendants. See Ill. Rev. State., ch. 38, paras. 105--5, 105--3.01 (right to trial by jury, to counsel, to proof beyond a reasonable doubt); People v. Nastasio, 19 Ill.2d 524 (1960) (right to confront witnesses). Nonetheless, even these protections are not constitutionally required in all proceedings. See Addington v. Texas, 441 U.S. 418 (1979) (proof in involuntary commitment need not be beyond a reasonable doubt); McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (no right to trial by jury in juvenile hearings). The Court should not require the proceedings to include the privilege against self-incrimination, just as it declined to require the privilege in probation proceedings. See Minnesota v. Murphy, 104 S. Ct. 1136 (1984).

Finally, the Court has declined to review a "remarkably similar state court decision." Resp at 8. See Commonwealth v. Barboza, 438 N.E.2d 1064 (Mass.), cert. denied, 459 U.S. 1020 (1982). A number of states have declined to require a privilege against self-incrimination in involuntary commitment proceedings. See, e. g., Moss v. State, 539 S.W.2d 936 (Tex. Civ. App. 1976) (mental illness); Cramer v. Tyars, 588 P.2d 793 (Cal. 1979) (mental retardation and danger to self or others).

Petr's reply asserts that the proceedings at issue are not equivalent to involuntary commitment procedures. SDPs are com-

mitted to the Illinois Department of Corrections, not the Illinois Department of Mental Health, and SDPs are generally incarcerated with criminal sex offenders. The proceedings requires a showing not just of mental illness, but also of criminal propensities, and past crimes are relevant thereto.

Barboza involves a proceeding held after determination of criminal guilt, and incriminatory statements are inadmissible to determining guilt.

In light of the Illinois Supreme Court's express statement that it did not need to reach the issue of waiver because no right existed to waive, Illinois is clearly going to refuse to recognize any Fifth Amendment privilege in the future in SDP proceedings, whether asserted or waived.

4. DISCUSSION: In re Gault involved an adjudication of delinquency in connection with a phone call "of the irritatingly offensive, adolescent, sex variety." 387 U.S. at 4. Commitment to a state institution was a possible resolution of the proceeding. The Court held that the privilege against self-incrimination applied, id. at 43-55, both to ensure reliability and to prevent the state from "overcoming the mind and will of the person under investigation," id., at 47.

The fact that the juvenile proceedings in Gault were denominated "civil" was insufficient. More than half the states allowed the transfer or placement of juveniles in adult penal institutions. Juvenile courts often relinquished their jurisdiction to ordinary criminal courts. Id., at 49-51.

This case does not involve juveniles, and thus the concern for reliability in confessions that partly motivated the Gault Court is absent. Nonetheless, the results of the SDP proceeding--at least if, as petr asserts, SDPs are typically housed with "criminal" sex offenders--are quite similar to the results of a criminal trial. In addition, explicit consideration of criminality is necessary to make an SDP determination.

Minnesota v. Murphy held that a meeting with a probation officer did not, in light of the dissimilarity of the interview to police custody and the relatively uncompelling nature of a threat to revoke parole, give rise to a self-executing Fifth Amendment privilege. 104 S. Ct. at 1143-1147. In light of these factors, the defendant's failure to assert the privilege made the statements admissible. See also United States v. Ward, 448 U.S. 242 (1980) (fine of up to $5000 not criminal, especially in light of other punishments in statute expressly labelled as criminal); Baxter v. Palmigiano, 425 U.S. 308, 316-320 (1976) (Fifth Amendment privilege does not apply to prison disciplinary proceedings).

In this case, the "interviews" at issue occurred well after petr had been placed in custody, and were compelled by an order of the court. The punishment is incarceration, not a fine or forfeiture of in-prison privileges.

The CA7 in Coughlin held that the Constitution required the application of the beyond-a-reasonable-doubt standard to Illinois' SDP proceedings. The opinion relied on In re Winship, 397 U.S. 358 (1970). In Winship, the Court required proof beyond a

reasonable doubt in adjudications of juvenile delinquency for actions which would be criminal if performed by an adult. I note that then-Judge Stevens joined Coughlin (without separate opinion).

The Court declined to require such a rigorous standard of proof in adjudications of mental illness leading to commitment. Addington v. Texas ("clear and convincing evidence" standard is sufficient to satisfy due process). The possibility of incarceration with conventional criminals and the consideration in the proceeding of criminality would seem reasonable grounds on which to distinguish commitment of the mentally ill from an SDP proceeding.

Estelle v. Smith involved the use of psychiatric testimony in the sentencing phase of a capital case, and held that the Fifth Amendment privilege applied to such statements. The fact that the proceedings there were obviously criminal makes Estelle of limited use here.

Barboza involved a determination of sexual dangerousness made during the individual's criminal imprisonment for a sexual offense. The individual had been warned by the psychiatrists involved that their conversations with him were unprivileged.

The "voluntariness" of petr's statements leaves open the possibility that petr waived his Fifth Amendment rights. Nonetheless, although the Illinois Supreme Court may be drawing a fine line in distinguishing "voluntariness" from "waiver," its explicit statement that it was not considering waiver because there was no right to waive would seem to foreclose this Court's

ability to assume the outcome might be different in a case where there was clearly no waiver.

In summary, I think the SDP proceedings are very close to criminal proceedings, and thus that the Illinois Supreme Court may have misapplied Gault in ruling that no Fifth Amendment privilege existed. The particularly salient reliability concerns that accompany juvenile confessions are absent here, however. This absence would give the Court a chance to speak to the relative weights to be accorded reliability and similarity to criminal proceedings, the other important factor in Gault.

If the SDP proceedings are not functionally equivalent to criminal proceedings, the case gives the Court the chance to consider whether due process requires granting a privilege against self-incrimination in civil commitment proceedings. The facts of this case would allow the Court, in making this determination, to consider whether the availability of a number of other procedural safeguards in a commitment proceeding might make unnecessary a privilege against self-incrimination. Cf. Mathews v. Eldridge, 424 U.S. at 335 (allowing consideration of "probable value, if any, of additional or substitute procedural safeguards" in disability determinations).

The psychiatric examinations occurred while the criminal charges were still pending. Although there is no indication in the appellate opinions that this examination was to determine competency to stand trial in addition to providing evidence on sexual dangerousness, the timing of the exam makes such a dual function conceivable. A dual competency/dangerousness examina-

tion would raise somewhat different questions than those raised by a straightforward examination for dangerousness. I therefore recommend a call for the record to make sure the examinations were conducted only as part of the SDP proceeding.

IFP status is proper.

I recommend calling for the record with an eye towards a grant.

There is a response.

October 18, 1985 Setear opn in petn

dll's proceedings to determine if a person is sexually dangerous do not afford subjects full 5A rights. The State has classified the proceedings as civil, but the result is "incarceration" with criminal sexual offenders, at least until the subject can prove fitness beyond a reasonable doubt.

These proceedings are sufficiently like criminal litigation to require full 5A protection, in my opinion.

The memo recommends CF Rec to resolve a wrinkle that I think will not present any problem.

CF Rec w/eye toward
Grant

Cabell

10/30/85 | the examinations were only part of

The issue in the record, whether the Sexually Dangerous Person proceedings, is not controlling.

Might as well discuss.

Cabell

11/1/85

Court Ill. Sup. Ct.
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 85-5404

TERRY B. ALLEN, Petitioner

vs.

ILLINOIS

09/16/85 - Cert.

Relist

	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.		✓											
White, J.		✓3											
Marshall, J.			✓										
Blackmun, J.			✓										
Powell, J.			✓										
Rehnquist, J.			✓										
Stevens, J.		✓											
O'Connor, J.			✓										
.....													

November 8, 1985

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 85-5404

ALLEN

vs.

ILLINOIS

Granted

BRW changed to Grant

	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.													
White, J.													
Marshall, J.													
Blackmun, J.			✓										
Powell, J.													
Rehnquist, J.													
Stevens, J.													
O'Connor, J.													

April 15, 1986

ALLEN GINA-POW

85-5404 Allen v. Illinois

MEMO TO BILL:

Reclined to aff in. See my summary on p 4

This case involves the validity of a curious Illinois statute applicable to "sexual dangerous persons". The statute defines a "sexual dangerous person" as one "suffering from a mental disorder" for more than a year, "coupled with criminal propensities to the commission of sex offenses, and who has demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children." Illinois courts have construed this statute to require more than proof of mere "propensity"; rather, the state must prove that the defendant "demonstrated" this propensity. In other words, the state must prove at least one act of sexual assault or molestation.

State must prove at least one act of sexual assault

In this case petitioner had been charged by the state with the crime of deviate sexual assault. Apparently, deciding not to try petitioner for the crime, the state filed this petition to declare him a sexual dangerous person. If a person is found to be a sexual dangerous person, he is confined in a special mental health facility where he receives psychiatric care. Although there is no

limitation on the period of confinement, the Attorney General's brief states that "regular progress evaluations [are made] until recovery is achieved." Br. p. 6. Under Illinois law the proceeding that results in this confinement is "civil" and not criminal. Indeed, when the state filed its petition under the "sexual dangerous person" statute, it dismissed the criminal charge against petitioner.

Despite the "civil" purpose of psychiatric treatment, the proceedings that result in confinement resemble in many ways a criminal trial. Counsel is provided, there is a right to jury trial, proof must be beyond a reasonable doubt, and there is a right to confront witnesses. See opinion of Illinois court, App. 48.

This case involves two safeguards available to a person charged with "crime" that are not available in this type of proceeding: (i) Miranda warnings are not required before the defendant is examined by a psychiatrist pursuant to court order; and (ii) the privilege against self-incrimination is not thought to be applicable because of the civil nature of the proceedings. The validity of these differences is the question presented to us.

The factual situation in which the question arises involve the testimony of two psychiatrists who examined petitioner prior to trial without Miranda warnings. Counsel had been appointed, but it is not clear - at least I do not recall - whether counsel had been appointed at that time and could have been present. Both psychiatrists' testimony was based almost entirely upon petitioner's "statements and admissions made during these interviews". App. p. 42. The TC ruled, however, that petitioner's statements were not admissible in evidence, but allowed the physicians to give their professional opinions based upon information obtained primarily from petitioner in the course of these psychiatric examinations. Both psychiatrists concluded that defendant was mentally ill with criminal propensities to commit sex crimes.

"Statements" not admitted in evidence, but psychiatrist's based their opinions on info. obtained in these psychiatric exams

Petitioner's brief by the state public defender is well-written, and an amicus brief by my former clerk Joel Klein for the American Psychiatric Association also strongly supports petitioner. I am not entirely persuaded, however, that either of these briefs presents as fully and fairly the holding and rationale of the Illinois Supreme Court as they could have. Yet, this is

not unusual in advocacy (although my personal view is that it may be self-defeating, depending on a question of degree).

In brief summary, petitioner argues that the statute at issue exposes the defendant to consequences that are potentially more severe than those of a criminal conviction because the period of confinement is unlimited. This statute, in effect, compels a defendant to provide information to psychiatrists that can lead to indefinite confinement. There will have been no more Miranda warnings, with the result that a defendant may be compelled to incriminate himself, contrary to the Fifth Amendment privilege. These are not insubstantial arguments.

The brief of the Attorney General, however, is one of the better briefs that come to us from the Offices of State Attorney's. I refer you, Bill, to the summary argument that presents quite a different picture from petitioner's briefs. It is argued that (1) proof of a respondent's mental disorder, (2) dismissal of the pending criminal charge, and (3) the penalty of being confined only for psychiatric care, distinguish this proceeding from the criminal trial for which the privilege was designed. Also (4) immunity from subsequent trial on the res offense (see next pg). State interest in substantial.

Distinctions between civil proceeding & a criminal prosecution

The program would be handicapped if the D could decline to answer Qs (see next page)

Full protection of the respondent's Fifth Amendment is provided by the immunity from subsequent criminal prosecution that Illinois law provides. Reliance also is placed on the clear legislative intent to create a civil, mental health commitment as an alternative to criminal prosecution. The Illinois Supreme Court found that the state has a "substantial interest" in treating sexually dangerous persons as well as in protecting the public from such persons. Moreover, according to the Illinois Supreme Court this "interest would be almost totally throttled by a strict application of the self-incrimination privilege in such a proceeding. If a defendant is allowed to refuse to answer questions asked during the psychiatric interview, then it would be nearly impossible for the state to determine whether or not the defendant was sexually dangerous." App. 48.

* * *

I find this a rather close case. I am inclined to think, at least for the present, that the state has the better argument. There is a clear state interest in providing psychiatric care for persons like petitioner, care that would not be available under the criminal law.

LFP, JR.

wjs 04/29/86

BENCH MEMORANDUM

To: Justice Powell April 29, 1986

From: Bill

Re: Allen v. Illinois, No. 85-5404
Cert to Illinois Supreme Court
Argument date: April 30, 1986 (Wednesday)

Questions Presented

1. Does the Fifth Amendment's privilege against self-incrimination apply to a proceeding to commit sexually dangerous persons to a prison hospital?

2. If so, must a psychiatrist give a defendant Miranda warnings prior to conducting any pretrial examination pursuant to the commitment proceeding?

[Your memo to the file accurately summarizes the facts; I won't repeat them here.]

Discussion

I find this a close case. My own view is that the privilege against self-incrimination probably does not apply here, but that view is tentative, and could change based on oral argument. If you conclude that the privilege does apply, the second issue--whether or not Miranda warnings are required--is virtually governed by Estelle v. Smith, 451 U.S. 454 (1981). Estelle held that Miranda warnings are required in a psychiatric examination where the psychiatrist testifies against the defendant in a capital sentencing proceeding. Estelle strongly suggests that Miranda applies to psychiatric examinations and police interrogation equally, so long as the examination takes place in the context of a "criminal" proceeding.

I'll begin by discussing the Fifth Amendment issue, which for me is the difficult one. I'll then briefly discuss the Miranda issue.

I. Application of the Fifth Amendment

1. The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself." It has long been clear that the privilege against self-incrimination protects against questioning outside the courtroom, e.g., Miranda v. Arizona, 384 U.S. 436(1966), but only insofar as the statements might be used in a criminal prosecution. Thus,

the threshold issue in this case is whether a proceeding under Illinois' Sexually Dangerous Persons Act is a criminal prosecution for Fifth Amendment purposes.

The starting point in addressing that issue is the label the state places on the proceeding. The Act itself states that "proceedings under this Act shall be civil in nature." Ill. Rev. Stat. ch. 38, §105-3.01.[1] Consequently, in order to find the Fifth Amendment applicable here, the Court must find that the Act is "so punitive either in purpose or effect as to negate [the legislature's] intention" that it be construed as civil rather than criminal. United States v. Ward, 448 U.S. 242, 249 (1980). "'[O]nly the clearest proof could suffice'" to show that a regulatory statute labelled civil is in fact criminal for Fifth Amendment purposes. Ibid., quoting Flemming v. Nestor, 363 U.S. 603, 617 (1960). In short, there is a strong presumption that a punishment labelled "civil" by the legislature is what it says, and consequently that the privilege against self-incrimination does not apply. The Court has listed a number of factors to use in deciding whether that presumption may be overcome.[2] But the

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[1]A copy of the Act appears in the appendix to petr's brief, pp. 1a-4a.

[2]In Kennedy v. Mendoza-Martinez 372 U.S. 144 (1963), the Court looked to whether the sanction being imposed (1) involved a disability or restraint (i.e. confinement), (2) has historically been considered to be punishment, (3) is applied only after the defendant's intent has been proved, (4) promotes retribution and deterrence, (5) applies to conduct already considered criminal, (6) can be ascribed to some purpose other than punishment, and (7) is excessive in relation to any non-punitive purpose. Id., at 168-169. In Ward, supra, the Court suggested that the

(Footnote continued)

point of all these factors, Ward makes clear, is to determine whether the purpose of the sanction is punitive. 448 U.S., at 249-250.

2. In In re Gault, 387 U.S. 1 (1967), the Court found that a juvenile delinquency proceeding was sufficiently criminal to justify applying the privilege against self-incrimination. The key factors in Gault included (1) the stigma that attached to convicted juvenile offenders, id., at 23-24, and (2) the fact that juvenile offenders could be sentenced to serve time in adult prisons. Id., at 49-50. These factors showed that the reality of punishment in juvenile proceedings was no different than ordinary criminal sentencing. The fact that juveniles could be sent to the same prisons as their adult counterparts belied the legislature's supposedly non-punitive intent to "treat" juvenile offenders rather than punish them. Ibid. See Developments in the Law: Civil Commitment of the Mentally Ill, 87 Harv. L. Rev. 1190, 1305 (1974).

Gault cuts in both directions in this case. On the one hand, unlike Gault, this case involves commitment to a hospital and not a jail.[3] The Act requires the Corrections department to

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(Footnote 2 continued from previous page)
point of all these factors was to discern whether the statute in question was intended to be punitive. 448 U.S., at 249-250.

[3]Petr and amici make much of the fact that the hospital is administered by the Illinois Department of Corrections. I don't see why this matters. The critical point about incarceration is not what agency administers it, but whether its character is punitive or not.

"provide care and treatment for the person committed ... to effect recovery." §105-8 (quoted App to petr's brief 3a). This language has been read to confer a right to be assigned to a place at which psychiatric care is available. People v. Shiro, 52 Ill.2d 279, 283 (1972). The institution to which sexually dangerous persons are sent, the Menard Psychiatric Center, is not part of any prison. Moreover, sexually dangerous persons may not be transferred to another facility.[4] Thus, the state can plausibly maintain that petr's disposition is more consistent with treatment than with punishment. See Addington v. Texas, 441 U.S. 418, 428 (1979) ("In a civil commitment state power is not exercised in a punitive sense"). That was not the case in Gault.

On the other hand, Gault also emphasized the stigma that attached to juvenile delinquent status. 387 U.S., at 23-24, 49. In this case, the Illinois Act requires proof of a "demonstrated propensity" to commit either sexual assault or child molestation. §105-1.01 (quoted App to Petr's Brief 1a). Consequently, in order to confine petr under the Act, the state must prove that

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[4]On the other hand, Menard Psychiatric Center does contain, according to petr, a large number of convicted criminals referred there for treatment. See Brief for Petr 15, n. 3. If true (and resp doesn't directly contradict this assertion), this gives petr a fair argument that sexually dangerous persons are treated the same as criminals, since they are sent to a facility that houses a large number of convicted criminals.

I don't think that argument works, however, because I think the critical factor is whether the state is giving petr treatment rather than punishment. The fact that some criminally insane are also at Menard may only show that the state offers treatment to some prisoners as well as to civil committees.

petr has committed acts that constitute sex crimes in Illinois.[5] Confinement thus labels petr as a rapist or child molester--a fairly severe stigma if ever there was one. If stigma alone is justification for applying the privilege against self-incrimination, then the privilege ought to be applied here.

I think there are two answers to this argument. First, the state often imposes both civil and criminal penalties for the same conduct. United States v. Ward, 448 U.S., at 250; Helvering v. Mitchell, 303 U.S. 391, 399 (1938). It doesn't follow that the civil penalties are therefore essentially "criminal"; rather, the touchstone remains whether the legislature intended to impose an essentially criminal punishment. Ward, supra, at 250-251. Second, there is an obviously strong stigma to being labelled mentally ill in any civil commitment case. Nevertheless, in Addington v. Texas the Court rejected the argument that such stigma makes civil commitment proceedings the equivalent of criminal trials. The Court emphasized that erroneous confinement for mental illness was more easily corrected than erroneous imprisonment for a crime, 441 U.S., at 428-429; in addition, the Court noted that those who are not committed, but should be,

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[5]The state responds to this point by noting that it does not need to prove any criminal intent in order to confine someone as a sexually dangerous person. That is correct, so far as it goes, but I don't think it matters much in this context: it's hard to conceive of unintentional child molestation or accidental sexual assault. The offenses themselves are almost inherently intentional (cf. Rose v. Clark, 84-1974), so that proof of the conduct amounts to proof of the completed crime.

suffer a stigma as well. Id., at 429 ("One who is suffering from a debilitating mental illness and in need of treatment is neither wholly at liberty nor free of stigma."). These points apply to persons suffering from illnesses that compel them to assault women or children as well as to persons with other emotional or mental diseases.

3. My tentative conclusion is that Gault is distinguishable, and that the privilege should not apply here. The practical stigma for people like petr is likely to be tremendous. But given the Court's analysis of civil commitment proceedings and the associated stigma in Addington, I think that isn't enough to render this proceeding "criminal." As for the kind of sanction that is imposed, in Gault it was fundamentally punitive in nature. Here, the statute at issue, as construed by Illinois cases, requires psychiatric treatment in a facility designed for that purpose.

4. Petr emphasizes a number of other factors that proceedings under the Illinois Act share in common with criminal trials. In particular, petr notes that the state must prove that would-be committees fall within the Act beyond a reasonable doubt--the same burden of proof as in criminal cases. Petr also emphasizes that proceedings under the Act are begun by formal charges by criminal prosecutors, and are only brought after criminal charges have been brought. (The criminal charges are dropped once the defendant is determined to be a sexually

dangerous person.) Petr argues that these factors suggest that the Act is nothing more than an alternative means of criminal punishment for rapists and child molestors.

I find this line of argument unpersuasive. Nothing in the Constitution requires the state to civilly commit all persons with sex-related disease; the state can rationally decide that it should confine only those who have manifested their illness in some destructive way. Once it makes that decision, the most logical way to identify such people is to examine those who are charged with sex crimes. I see nothing sinister in such an approach. Nor does it seem strange that the state requires proof beyond a reasonable doubt in these cases. States should be commended, not criticized, for providing more process than is constitutionally necessary.

5. For these reasons, I would conclude that the privilege against self-incrimination does not apply here. The evident purpose of the Illinois Act is to provide treatment for people whose illnesses cause them to commit sex crimes. That purpose distinguishes this case from Gault, and suggests that the Act cannot be considered criminal under Ward. Moreover, that purpose might well be thwarted if defendants were able to refuse to be examined by psychiatrists.

II. Necessity of Miranda Warnings

If you conclude otherwise, you must reach the question whether Miranda warnings are required in this context. I think

this issue is governed by Estelle v. Smith, 451 U.S. 454 (1981). Estelle was a capital case in which the TC ordered the defendant examined by a psychiatrist to determine whether he was competent to stand trial. The defendant was found competent, and was convicted of capital murder. At his sentencing hearing, the psychiatrist testified against him, emphasizing the defendant's lack of remorse for the killing. The Court held that the psychiatrist had been obliged to give Miranda warnings in this context. Id., at 466-469. The Court specifically rejected the argument that Miranda was limited to police interrogation, and did not apply to a medical examination. Id., at 467.

If you determine that the proceeding in this case is criminal, I see no basis for distinguishing Estelle. As in that case, petr's statements to the psychiatrist were used against him in a "criminal" proceeding. And there is no suggestion in Estelle that its rule applies only to capital cases. I would therefore conclude that Miranda applies in this case, if you first conclude that the proceeding under the Illinois Act is criminal for Fifth Amendment purposes.

Conclusions

1. I tentatively recommend affirmance. Although it's a close case, I would conclude that the privilege against self-incrimination does not apply where the state seeks only to impose treatment rather than criminal punishment.

2. If you disagree, I would conclude that Miranda applies

in this context. Since no Miranda warnings were given in this case, that conclusion would require reversal.

4/28

85-404 Allen v. Ill.

Provides

Ask
When Pet. was examined by psychiatrists had counsel been appointed? If so could he have been present?

Period of confinement is unlimited. State says there are "periodic exams": How frequently?

State interest is substantial

No Miranda warnings & no right not to incriminate one self. But psychiatrists did not repeat any statements — they testified as to their medical findings

If accused could decline to talk, difficult to prove need for med. care

Bill

85-5405 ALLEN v. ILLINOIS

Argued 4/30/86

5 4th Sexually dangerous persons.

Messy (Petr)

The "proof beyond reasonable doubt" was required by Ill Ct.

After a sexually dangerous person is incarcerated, he may claim he has recovered, & this entitles him to a trial by the court that found him to be sexually dangerous. But burden of proof is then on him.

The issue is the 5th Amend right not to incriminate

Not claiming a right to jury trial on issue of being sexually dangerous.

~~Even if we agree with Petr that this is a criminal proceeding, this type of case would~~

There is a Mental Health Chapter in Ill Code that provides for Civil Committee.

With respect to sexually dangerous persons, the provisions for commitment are in the Criminal Code. But Counsel is not claiming that Sex. Dang. Persons are entitled to the civil commitment proceeding. The State could continue all three types

Robert (Ill AG) (able lawyer) (persuasive)
Staffed by physchiatrics & no guards
There are about 300 physchiatric patients in this prison. All of these are convicted felons except about 30 sexually dangerous persons.

A sexually dangerous person must be ~~convicted~~ found guilty beyond a reasonable doubt.

This type of proceeding is initialed as a ~~crimi~~ criminal case

The Director of the Institution must evaluate every sex/dang. person ~~in~~ every 6 mo & make written report. ~~The inmate does~~

Commitments must be indefinite. Can't tell when a sexually dangerous person will recover to point where he is no longer dangerous.

5th Amend protects only against criminal prosecution. Therefore 5th does not apply here unless we find the proceedings here to be the functional privilege of of a criminal trial & 5th would apply

If Ill wanted to treat Petr as a criminal, it could have ~~made~~ done so.
There was a criminal indictment (& must be one before ~~the~~ the State changes to the civil type proceedings.
If Petr is cured, the crim prosecution [illegible]

Penalty 6 to 30 yrs

Then ~~of~~ no 5th violat

If Ill. loses this case, the persons who are charged or ~~r~~ sexually dangerous will be tried as criminals

5/1

85-5404 Allen v. Ill

Aff'm

1. 5th Amend - by its terms applies only to "criminal" cases.

2. Ill has three types of proceedings that result in confinement:

(a) Conventional criminal.

(b) Conventional civil commitment for mentally ill (e.g. Adding ~~tax~~ - proof not required beyond reasonable doubt; nor does 5th Amend apply.

(c) "Sexually dangerous persons" who ~~[redacted]~~ could be charged with crime - but State may elect to pursue a "hybrid" ~~proceeds~~ procedure.

Has committed a crim. offense

(i) most safeguards are provided: counsel, proof beyond reasonable doubt, criminal prosecution dropped.

State interest is substantial.

3. Q Is the third type procedure the "functional eq." of criminal prosecution:

(a) State says "civil" proceeding.

(b) Treatment in State interest.

6 to 20 yrs

(c) Confinement depends only on continued mental status as a person dangerous to society.

TO: Justice Powell

FROM: Bill

DATE: May 1, 1986

RE: Allen v. Illinois, No. 85-5404

You asked for a short summary of my position in this case; that summary follows.

1. The Fifth Amendment applies here only if the sexually dangerous persons proceeding is "criminal." The Illinois legislature expressly classified this statute as civil, not criminal. That classification is entitled to substantial weight, United States v. Ward, 448 U.S. 242, 249-250 (1980), and can be disregarded only if the statute's scheme of punishment is functionally no different from criminal punishment. In this case, it isn't. As a matter of Illinois law, petr has a legal right to psychiatric treatment, and he is being sent to a facility designed to provide such treatment. He is free to apply for release at any time, and if his doctors find

that he is no longer dangerous, he will be let out. This kind of "sentence" is not criminal in nature, because it neither punishes nor deters--sexually dangerous persons may be released after only a very short time in the hospital, and on average they are released after only about 2 years.

2. It is true that sexually dangerous persons are confined in cells with bars, and are not "free to leave," as Justice Marshall noted at oral argument. But all persons who are civilly committed against their will are deprived of liberty. Nevertheless, in Addington v. Texas, 441 U.S. 418 (1979), the Court made clear that civil commitment is not the same as criminal punishment, since those committed receive treatment rather than punishment. I would so conclude in this case as well, and would therefore affirm the Illinois Supreme Court.

No. 85-5404, Allen v. Illinois Conf. 5/2/86

The Chief Justice Passed on 1st vote:

Hard case, & lawyers were able.

Hospital is part of a max. security.

The committed person may seek to prove recovery every 6 months.

The issue is whether 5th Amend prohibition vs self-incrimination is violated. Close.

~~Rev~~ This procedure does not create a criminal record.

Justice Brennan Rev.

The penal character of Pet's confinement.

5th amend. is violated.

Removal will not affect rights

Justice White Affirm

Not convinced procedure violates 5th amend.

Justice Marshall Rev.

Petr. ends up same place as hardened prisoner.

State doesn't have to "do it our way".

Prisoner should be given all const. rights

Justice Blackmun Rev,

Gault leads supports

Justice Powell aff'm

See my notes.

Justice Rehnquist ~~Rev~~ Affirm

Case is unlike Daubert

Ill. has developed an alternative procedure that is progressive

Not close enough to make this procedure invalid.

Justice Stevens Rev

5th amend is violated.

Justice O'Connor Penn - very different case.

State could have a separate substitute.

In the ordinary committee procedure, person may claim 5th

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 3, 1986

Re: Allen v. Illinois, No. 85-5404

Dear Chief:

My tentative vote in this case is to affirm.

Sincerely,

Sandra

Sandra D. O'Connor

Copies to the Conference

Bill

see p 8 & 9. As Bill says, W. & R. does not adequately answer the argument that Petr. was incarcerated in a max. security prison.

I'll probably address this subject in a concur. op. — emphasizing inadequacy of the record.

L. F. P

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: MAY 21 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5404

Ins
Journal

TERRY B. ALLEN, PETITIONER *v.* ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

[May ——, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented by this case is whether the proceedings under the Illinois Sexually Dangerous Persons Act (Act), Ill. Rev. Stat., ch. 38, ¶105–1.01 *et seq.*, are "criminal" within the meaning of the Fifth Amendment's guarantee against compulsory self-incrimination.

Petitioner Terry B. Allen was charged by information in the circuit court of Peoria County with committing the crimes of unlawful restraint and deviate sexual assault. Shortly thereafter the State filed a petition to have petitioner declared a sexual dangerous person within the meaning of the Act.[1] After a preliminary hearing on the information, the criminal charges were dismissed for lack of probable cause, and the petition was apparently dismissed as well. Petitioner was then recharged by indictment, and the petition to declare him sexually dangerous was reinstated.

Pursuant to the Act, with petitioner and counsel present, the trial court ordered petitioner to submit to two psychiatric examinations; the court explained the procedure as well as

[1] The Act defines sexually dangerous persons as follows:

"All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children, are hereby declared sexually dangerous persons." ¶105–1.01.

5/22
I recommend you join - Bill

The only truly difficult aspect of this case is petr's argument that the →

petitioner's rights under the Act, and petitioner indicated that he understood the nature of the proceedings. At the bench trial on the petition, the State presented the testimony of the two examining psychiatrists, over petitioner's objection that they had elicited information from him in violation of his privilege against self-incrimination. The trial court ruled that petitioner's statements to the psychiatrists were not themselves admissible, but allowed each psychiatrist to give his opinion based upon his interview with petitioner. Both psychiatrists expressed the view that petitioner was mentally ill and had criminal propensities to commit sexual assaults. Petitioner did not testify or offer other evidence at the trial. Based upon the testimony of the psychiatrists, as well as that of the victim of the sexual assault for which petitioner had been indicted, the trial court found petitioner to be a sexually dangerous person under the Act. Consistent with the requirements of Illinois case law, see *People* v. *Pembrock*, 62 Ill. 2d 317, 321–322, 343 N. E. 2d 28, —— (1976), the court made three specific findings: that at the time of trial petitioner had been suffering from a mental disorder for not less than one year; that he had propensities to commit sex offenses; and that by his actions he had demonstrated such propensities.

The Appellate Court of Illinois for the Third District reversed, over one dissent. Relying on *Estelle* v. *Smith*, 451 U. S. 454 (1981), the court held that the trial court had improperly relied upon testimony obtained in violation of petitioner's privilege against self-incrimination. *People* v. *Allen*, 123 Ill. App. 3d 669 (1984).[2]

[2] The appellate court interpreted the Act to require specific proof of more than one act of sexual assault. It therefore concluded that the the State had relied on the psychiatrists to make its entire case because the victim had only testified about one act. The Supreme Court of Illinois thereafter interpreted the Act to require proof of only one act, and concluded that the victim's testimony was sufficient to satisfy the State's burden in this case. *People* v. *Allen*, 107 Ill. 2d 91, ——, 481 N. E. 2d 690, 697 (1985).

The Supreme Court of Illinois unanimously reversed the appellate court and reinstated the trial court's finding that petitioner was a sexually dangerous person. It held that the privilege against self-incrimination was not available in sexually dangerous person proceedings because they are "essentially civil in nature," the aim of the statute being to provide "treatment, not punishment." *People* v. *Allen*, 107 Ill. 2d 91, ——, 481 N. E. 2d 690, 694, 695 (1985). The court also found support for its ruling in *Mathews* v. *Eldridge*, 424 U. S. 319 (1976). Observing that the State's interest in treating, and protecting the public from, sexually dangerous persons would be "almost totally thwarted" by allowing those persons to refuse to answer questions posed in psychiatric interviews, and that the privilege "would be of minimal value in assuring reliability," the court concluded that "due process does not require the application of the privilege." 107 Ill. 2d, at ——, 481 N. E. 2d, at 696. Finally, the court held that "a defendant's statements to a psychiatrist in a compulsory examination under the provisions here involved may not be used against him in any criminal proceedings." *Id.*, at ——, 481 N. E. 2d, at 696. We granted certiorari, 474 U. S. ——, and now affirm.

The Self-Incrimination Clause of the Fifth Amendment, which applies to the States through the Fourteenth Amendment, *Malloy* v. *Hogan*, 378 U. S. 1 (1964), provides that no person "shall be compelled in any criminal case to be a witness against himself." This Court has long held that the privilege against self-incrimination "not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also 'privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *Minnesota* v. *Murphy*, 465 U. S. 420, 426 (1984) (quoting *Lefkowitz* v. *Turley*, 414 U. S. 70, 77 (1973)); *McCarthy* v. *Arndstein*, 266 U. S. 34, 40 (1924). In this case the Illinois

Supreme Court ruled that a person whom the State attempts to commit under the Act is protected from use of his compelled answers in any subsequent criminal case in which he is the defendant. What we have here, then, is not a claim that petitioner's statements to the psychiatrists might be used to incriminate him in some future criminal proceeding, but instead his claim that because the sexually dangerous person proceeding is itself "criminal," he was entitled to refuse to testify at all.

The question whether a particular proceeding is criminal for the purposes of the Self-Incrimination Clause is first of all a question of statutory construction. See *United States* v. *Ward*, 448 U. S. 242, 248 (1980); *One Lot Emerald Cut Stones* v. *United States*, 409 U. S. 232, 236–237 (1972). Here, Illinois has expressly provided that proceedings under the Act "shall be civil in nature," ¶ 105–3.01, indicating that when it files a petition against a person under the Act it intends to proceed in a nonpunitive, noncriminal manner, "without regard to the procedural protections and restrictions available in criminal prosecutions." *Ward*, *supra*, at 249. As petitioner correctly points out, however, the civil label is not always dispositive. Where a defendant has provided "the clearest proof" that "the statutory scheme [is] so punitive either in purpose or effect as to negate [the State's] intention" that the proceeding be civil, it must be considered criminal and the privilege against self-incrimination must be applied. *Id.*, at 248–249. We think that petitioner has failed to provide such proof in this case.

The Illinois Supreme Court reviewed the Act and its own case law and concluded that these proceedings, while similar to criminal proceedings in that they are accompanied by strict procedural safeguards, are essentially civil in nature. 107 Ill. 2d, at ——, 481 N. E. 2d, at 694–695. We are unpersuaded by petitioner's efforts to challenge this conclusion. Under the Act, the State has a statutory obligation to provide "care and treatment for [persons adjudged sexually dan-

gerous] designed to effect recovery," ¶ 105–8, in a facility set aside to provide psychiatric care, *ibid.*[3] And "[i]f the patient is found to be no longer dangerous, the court shall order that he be discharged." ¶ 105–9. While the committed person has the burden of showing that he is no longer dangerous,[4] he may apply for release at any time. *Ibid.*[5] In short, the State has disavowed any interest in punishment, provided for the treatment of those it commits, and established a system under which committed persons may be released after the briefest time in confinement. The Act thus does not appear to promote either of "the traditional aims of punishment—retribution and deterrence." *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 168 (1963). Cf. *Addington* v. *Texas*, 441 U. S. 418, 428 (1979) (in Texas "civil commitment state power is not exercised in a punitive sense"); *French* v. *Blackburn*, 428 F. Supp. 1351, 1358–1359 (MDNC), aff'd mem., 443 U. S. 901 (1979) (state need not accord privilege against self-incrimination in civil commitment proceeding).

Petitioner offers several arguments in support of his claim that despite the apparently nonpunitive purposes of the Act, it should be considered criminal as far as the privilege against self-incrimination is concerned. He first notes that the State

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[3] Under Illinois Department of Correction regulations, the progress of persons confined at such facilities is reviewed at least every six months by a staff psychiatrist, and a request for a review hearing may be made at any time. 8 Ill. Register 14501 (1984).

[4] Even if he fails to meet his burden the committed person may nonetheless be conditionally released:

"If the court finds that the patient appears no longer to be dangerous but that it is impossible to determine with certainty under conditions of institutional case that such person has fully recovered, the court shall enter an order permitting such person to go at large subject to such conditions and such supervision by the Director as in the opinion of the court will adequately protect the public." ¶ 105–9.

[5] The Act further provides that "[u]pon an order of discharge every outstanding information and indictment, the basis of which was the reason for the present detention, shall be quashed." ¶ 105–9.

cannot file a sexually dangerous person petition unless it has already brought criminal charges against the person in question. ¶105–3. In addition, the State must prove that the person it seeks to commit perpetrated "at least one act of or attempt at sexual assault or sexual molestation." *People* v. *Allen*, 107 Ill. 2d, at ——, 481 N. E. 2d, at 697. To petitioner, these factors serve to distinguish the Act from other civil commitment, which typically is not tied to any criminal charge and which petitioner apparently concedes is not "criminal" under the Self-Incrimination Clause. Transcript of Oral Argument 24. We disagree. That the State has chosen not to apply the Act to the larger class of mentally ill persons who might be found sexually dangerous does not somehow transform a civil proceeding into a criminal one. And as the State points out, it must prove more than just the commission of a sexual assault: the Illinois Supreme Court, as we noted above, has construed the Act to require proof of the existence of a mental disorder for more than one year and a propensity to commit sexual assaults, in addition to demonstration of that propensity through sexual assault. See *supra*, at ——.

The discussion of civil commitment in *Addington*, *supra*, in which this Court concluded that the Texas involuntary commitment scheme is not criminal insofar as the requirement of proof beyond a reasonable doubt is concerned, fully supports our conclusion here:

> "[T]he 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 to either 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." 441 U. S., at 429 (emphasis in original).

While here the State must prove at least one act of sexual assault, that antecedent conduct is received not to punish past misdeeds, but primarily to show the accused's mental condition and to predict future behavior. *People* v. *Allen*, 107 Ill. 2d, at ——, 481 N. E. 2d, at 697.

In his attempt to distinguish this case from other civil commitment, petitioner places great reliance on the fact that proceedings under the Act are accompanied by procedural safeguards usually found in criminal trials. In particular, he observes that the Act provides an accused with the right to counsel, ¶ 105–5, the right to demand a jury trial, *ibid.*, and the right to confront and cross-examine witnesses, *People* v. *Nastasio*, 19 Ill. 2d 524, ——, 168 N. E. 2d 728, 731 (1960). At the conclusion of the hearing, the trier of fact must determine whether the prosecution has proved the person's sexual dangerousness beyond a reasonable doubt. ¶ 105–3.01; *People* v. *Pembrock*, 62 Ill. 2d 317, 342 N. E. 2d 28 (1976). But as we noted above, the State has indicated quite clearly its intent that these commitment proceedings be civil in nature; its decision nevertheless to provide some of the safeguards applicable in criminal trials cannot itself turn these proceedings into criminal prosecutions requiring the full panoply of rights applicable there. See *People* v. *English*, 31 Ill. 2d 301, 304, 201 N. E. 2d 455, —— (1964).

Relying chiefly on *In re Gault*, 387 U. S. 1 (1967), petitioner also urges that the proceedings in question are "criminal" because a person adjudged sexually dangerous under the Act is committed for an indeterminate period to the Menard Psychiatric Center, a maximum security institution that is run by the Illinois Department of Corrections and that houses convicts needing psychiatric care as well as sexually dangerous persons. Whatever its label and whatever the State's alleged purpose, petitioner argues, such commitment

is the sort of punishment—total deprivation of liberty in a criminal setting—that *Gault* teaches cannot be imposed absent application of the privilege against self-incrimination. We believe that *Gault* is readily distinguishable.

First, that case's sweeping statement that "our Constitution guarantees that no person shall be 'compelled' to be a witness against himself when he is threatened with a deprivation of his liberty," *id.*, at 50, is plainly not good law. Although the fact that incarceration may result is relevant to the question whether the privilege against self-incrimination applies, *Addington* demonstrates that involuntary commitment does not itself trigger the entire range of criminal procedural protections. Indeed, petitioner apparently concedes that traditional civil commitment does not require application of the privilege. Only two Terms ago, in *Minnesota* v. *Murphy*, 465 U. S. 420, 435, n. 7 (1984), this Court stated that a person may not claim the privilege merely because his answer might result in revocation of his probationary status. Cf. *Middendorf* v. *Henry*, 425 U. S. 25, 37 (1976) ("fact that a proceeding will result in loss of liberty does not *ipso facto* mean that the proceeding is a 'criminal prosecution' for purposes of the Sixth Amendment").

The Court in *Gault* was obviously persuaded that the State intended to *punish* its juvenile offenders, observing that in many states juveniles may be placed in "adult penal institutions" for conduct that if committed by an adult would be a crime. 387 U. S., at 49–50. Here, by contrast, the State serves its purpose of *treating* rather than punishing sexually dangerous persons by committing them to an institution expressly designed to provide psychiatric care and treatment. That the Menard Psychiatric Center houses not only sexually dangerous persons but also prisoners from other institutions who are in need of psychiatric treatment does not transform the State's intent to treat into an intent to punish.[6] Nor

[6] To the extent that petitioner suggests that the conditions at the Menard Psychiatric Center are in fact "punitive," and therefore belie the

does the fact that Menard is apparently a maximum security facility affect our analysis:

> "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." *Addington*, *supra*, at 426.

Illinois' decision to supplement its *parens patriae* concerns with measures to protect the welfare and safety of other citizens does not render the Act punitive.

Our conclusion that proceedings under the Act are not "criminal" within the meaning of the Fifth Amendment's guarantee against compulsory self-incrimination does not completely dispose of this case. Petitioner rather obliquely suggests that even if his commitment proceeding was not criminal, the Fourteenth Amendment's guarantee of due process nonetheless required application of the privilege. In particular, petitioner contends that the Illinois Supreme Court "grossly miscalculated" in weighing the interests set out in *Mathews* v. *Eldridge*, 424 U. S. 319 (1976). This Court has never held that the Due Process Clause of its own force requires application of the privilege against self-incrimination in a noncriminal proceeding, where the privilege claimant is protected against his compelled answers in any subsequent criminal case. We decline to do so today.

We think that the parties, and to some extent the Supreme Court of Illinois, have in their reliance on *Mathews* v. *Eldridge* misconceived that decision. *Mathews* dealt with the procedural safeguards required by the Due Process Clause of the Fifth Amendment before a person might be de-

---

state's professed interest in treatment, thereby rendering committment proceedings under the Act "criminal," we note that this suggestion is simply not supported by the record in this case.

prived of property, and its focus was on such safeguards as were necessary to guard against the risk of erroneous deprivation of property. As the Supreme Court of Illinois and the State have both pointed out, it is difficult, if not impossible, to see how requiring the privilege against self-incrimination in these proceedings would in any way advance reliability. Indeed, the state takes the quite plausible view that denying the evaluating psychiatrist the opportunity to question persons alleged to be sexually dangerous would *decrease* the reliability of a finding of sexual dangerousness. As in *Addington*, "to adopt the criminal law standard gives no assurance" that states will reach a "better" result. 441 U. S., at 430–431.

The privilege against self-incrimination enjoined by the Fifth Amendment is not designed to enhance the reliability of the fact-finding determination; it stands in the Constitution for entirely independent reasons. *Rogers* v. *Richmond*, 365 U. S. 534, 540–541 (1961) (involuntary confessions excluded "not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system"). Just as in a "criminal case" it would be no argument against a claim of the privilege to say that granting the claim would decrease the reliability of the fact-finding process, the privilege has no place among the procedural safeguards discussed in *Mathews* v. *Eldridge*, which are designed to enhance the reliability of that process.

For the reasons stated, we conclude that the Illinois proceedings here considered were not "criminal" within the meaning of the Fifth Amendment to the United States Constitution, and that due process does not independently require application of the privilege. Here, as in *Addington*, "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" of the sort urged by petitioner.

441 U. S., at 431. The judgment of the Supreme Court of Illinois is therefore

Affirmed.

nature of the facility to which he has been sentenced ~~makes this~~ transforms his "treatment" into "punishment." At oral argument, the State conceded that Menard Psych. Center (i) is located within a large, maximum-security prison complex, and (ii) ~~is populated~~ contains a large number (about 25) of convicted criminals along with ~~35~~ 30-35 "sexually dangerous persons."[1] I don't think these facts alone are enough to make this a "criminal" case, though it's a fairly close call. Unfortunately, ~~the~~ WHR's opinion deals with this issue in very cursory fashion — see pp. 8-9. That opens the door to a needlessly strong dissent. I therefore recommend that you consider writing a short concurrence after the dissent is circulated. You could make clear that, if petr could show that Menard was in all respects identical to a prison, his ~~claim~~ 5th Amendment claim would have merit.*

There is no real need to write such an opinion now, since WHR doesn't really say anything substantive on this point. See pp. 8-9, n. 6. Since the rest of the opinion looks fine to me, I recommend you join it.

Jmp

* No such showing has been made here, of course. The record tells us nothing about what the daily regimen at Menard is, how doctors treat the patients, etc.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 22, 1986

Re: 84-5404 - Allen v. Illinois

Dear Bill:

As soon as I can get to it, I shall prepare a dissent in this case.

Respectfully,

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 22, 1986

Re: No. 85-5404 - Allen v. Illinois

Dear Bill:

I await the dissent.

Sincerely,

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 27, 1986

No. 85-5404

Allen v. Illinois

Dear Bill,

I await the dissent.

Sincerely,

Bill

Justice Rehnquist

Copies to the Conference

TO: Justice Powell

FROM: Bill

DATE: May 27, 1986

RE: Allen v. Illinois, No. 85-5404

I have looked at your draft letter to WHR in this case, and have only one substantive comment. Your letter suggests that this case might come out differently if the record showed that the authorities gave identical treatment to (i) the convicted felons assigned to Menard Psychiatric Center and (ii) "sexually dangerous persons" also assigned to Menard. My own view is that the critical comparison is between "sexually dangerous persons" and felons assigned to ordinary prisons--not those assigned to Menard. The difference might be important. For example, Illinois might provide that when prisoners develop mental problems, they should be taken out of prison and put in a "non-punitive" environment similar to the one that civilly committed persons face. It would not make sense, in my view, for such a humane gesture to lead to a decision that the civilly committed persons are "criminally" confined because they are housed together with prisoners.

In sum, I think the focus should be on whether sexually dangerous persons live in the same kind of environment that a normal felon faces in a normal "punitive" prison. I've suggested a couple of language changes along these lines (including a reference to Gault), and I've attached a revised version of the letter with the changes incorporated. (I've also attached the copy of your draft that you gave me.)

May 27, 1986

85-5404 Allen v. Illinois

Dear Bill:

The most troublesome aspect of this case, at least for me, is petitioner's argument that the nature of the facility to which he was sentenced resulted in his "treatment" being the functional equivalent of "punishment". The state conceded at oral argument that the Menard Psychiatric Center is located within a large maximum-security prison complex, and contains a large number of persons convicted of serious felonies. It also conceded, as I recall, that persons like petitioner ("sexually dangerous persons") were confined in the same type cells as these felons, and took their meals with them.

These facts alone may not be enough to make this a "criminal" case, but if the record fully supported the view that there is no difference in the way "sexually dangerous persons" and ordinary felons are treated in other prisons, this would be a much closer call for me. Your opinion, see pp. 8-9, disposes of this issue rather briefly. It would help me if your opinion recognized that if the confinement of the two categories is identical except that a "sexually dangerous person" is entitled to have his status reviewed every six months, we would have a different case--one that would perhaps be controlled by In re Gault. Here, as your footnote p. 6 states, the record is inadequate. It tells us little or nothing about the daily regimen at Menard, or whether there are in fact relevant differences in the confinement there and confinement of felons in other state prisons.

If you prefer not to include language along the foregoing lines, I will join your opinion but write briefly in concurrence.

Sincerely,

Justice Rehnquist

LFP/vde

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 28, 1986

Re: No. 85-5404 Allen v. Illinois

Dear Lewis,

I think I understand what you were driving at in your letter of May 27th; would it satisfy you if I deleted the present footnote 6 and substituted the following paragraph in the text following the first paragraph break on page 9?

> "Petitioner has not demonstrated, and the record does not suggest, that 'sexually dangerous persons' in Illinois are confined under conditions incompatible with the State's asserted interest in treatment. Had petitioner shown, for example, that the confinement of such persons imposes on them a regimen which is essentially identical to that imposed upon felons with no need for psychiatric care, this might well be a different case. But the record here tells us little or nothing about the regimen at the psychiatric center, and it certainly does not show that there are no relevant differences between confinement there and confinement in the other parts of ~~the~~ this maximum-security prison complex. Indeed, counsel for the State assures us that under Illinois law sexually dangerous [illegible] treated [illegible]. 32-33. [illegible]ns of [illegible]t to [illegible]he

(A)

or in other prisons in which felons are confined.

(A)

Bill - What do you think?

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 28, 1986

Re: No. 85-5404 Allen v. Illinois

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Sincerely,

WEB

Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 28, 1986

Re: No. 85-5404 Allen v. Illinois

Dear Lewis,

I think I understand what you were driving at in your letter of May 27th; would it satisfy you if I deleted the present footnote 6 and substituted the following paragraph in the text following the first paragraph break on page 9?

> "Petitioner has not demonstrated, and the record does not suggest, that 'sexually dangerous persons' in Illinois are confined under conditions incompatible with the State's asserted interest in treatment. Had petitioner shown, for example, that the confinement of such persons imposes on them a regimen which is essentially identical to that imposed upon felons with no need for psychiatric care, this might well be a different case. But the record here tells us little or nothing about the regimen at the psychiatric center, and it certainly does not show that there are no relevant differences between confinement there and confinement in the other parts of the maximum-security prison complex. Indeed, counsel for the State assures us that under Illinois law sexually dangerous persons must not be treated like ordinary prisoners. Tr. of Oral Arg. 32-33. We therefore cannot say that the conditions of petitioner's confinement themselves amount to 'punishment' and thus render 'criminal' the proceedings which led to confinement."

Sincerely,

WEB

Justice Powell:

This proposed paragraph isn't elegant (see the double-negative underlined above), but it gets the point across. I recommend you join subject to this change.

Bill

Justice Powell

May 29, 1986

85-5404 Allen v. Illinois

Dear Bill:

Please join me.

Sincerely,

Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 4, 1986

Re: 85-5404 Allen v. Illinois

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 7, 1986

Re: 85-5404 - Allen v. Illinois

Dear Bill,

I join.

Regards,

WEB

Justice Rehnquist

Copies to the Conference