MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON HUMAN RESOURCES AND FACILITIES

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
May 5, 1981

The Senate Committee on Human Resources and Facilities was called to order by Chairman Joe Neal at 8:06 a.m., Tuesday, May 5, 1981, in Room 323 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Joe Neal, Chairman
Senator James N. Kosinski, Vice Chairman
Senator Richard E. Blakemore
Senator Wilbur Faiss
Senator Virgil M. Getto
Senator James H. Bilbray

GUEST LEGISLATORS:

Senator Lawrence E. Jacobsen

STAFF MEMBERS PRESENT:

Connie S. Richards, Committee Secretary

SENATE BILL NUMBER 611

Mr. Alvin Willie, Tribal Chairman, Walker River Piute Tribe spoke in support of Senate Bill No. 611. He explained that under existing Nevada state law, students are required to attend school in the district in which they reside unless there is an agreement between two adjoining school districts. The majority of Indian parents at Walker River would like their teen-agers (numbering from 28-30) to attend school in Yerington, Lyon County although they live in Mineral County, and thus are required to attend school in Hawthorne. He said the main reason for this is the shorter distance from Schurz to the school (a difference of 16 miles round trip). Secondly, Lyon County provides a vocational agricultural program which Hawthorne schools do not provide. The Indians are able to combine their education program with the Yerington Piute Tribe which has an outstanding program of its own that the Walker River Piute tribe can benefit from.

He told the committee that Hawthorne School District would like to keep Schurz's students attending within the district because of the population decrease as well as the decrease in revenue which has resulted from the army base in Hawthorne reverting to a private contract. The impact aid monies currently being received by the Hawthorne County School District would be missed if the students attend school in Lyon County.

Mrs. Ellen Willie, Schurz, Nevada spoke in support of Senate Bill No. 611. She said the Walker River Piute Tribe high school students prefer to attend school in Yerington because they feel they fit in better with other Indians who also have an interest in agriculture while the people in Hawthorne do not. She believes students do better in school when they are happier and feel that they fit in with their peers. She urged the committee's support for Senate Bill No. 611.

Ms. Louise Uttinger presented testimony on behalf of Mr. Edward Johnson, Phoenix Area Vice President representing the American Indian people of Nevada, Utah, and Arizona (see Exhibit C).

Mr. Arlo K. Funk, Superintendent of Schools, Mineral County School District spoke in opposition to Senate Bill No. 611.

Mr. Don Jehlick, Member, Mineral County Board of Trustees, Mineral County School District spoke in opposition to Senate Bill No. 611. He told the committee the bill constitutes special interest legislation; if the bill passes, the precident of allowing students to cross district lines would be set. He told the committee the bill would have a great financial affect on local government in Mineral County (approximatley $40,000 in transportation costs per year and a loss of from $50,000 to $60,000 in funds to the county). There is already a mechanism in NRS that allows students to attend schools in a different county by agreement between the school districts. He asked why this mechanism was not being utilized and said the bill is unneccesary as it places an unacceptable financial burden on Mineral County School District.

Mr. Ted Sanders, Superintendent of Public Instruction, Department of Education told the committee he is under

the impression that Mineral County School District cannot count the Schurz youngsters in the 81-874 report and transfer the money through a tuition agreement to Lyon County School District. He added that this was based on a staff analysis and said he would perform further research and report back to the committee (see Exhibit D).

Senator Kosinski asked Mr. Sanders what opinion he has of the bill.

Mr. Sanders replied that he agrees with the gentlemen from Mineral County that the bill is special legislation designed to deal with a special situation for which there has been no local resolution. He said the mileage difference is nominal (for the students to attend one school over the other). He said he understands the Schurz parents' concern for the vocational agriculture program, given the nature of their reservation and the need for training in agricultural production because that is the way they make their living. He also recognized that under the provisions of the impact monies, the district with those students must counsel with those students relative to the educational programming with the expenditure of certain funds, and therefore could build such an agricultural program from the funds of the 874 program alone. He said it is his personal opinion that if the youngsters are attending school in Lyon County and performing well, they should be allowed to continue with their education at that school.

Senator Kosinski asked Mr. Sanders how the issue of the financial burden be dealt with.

Mr. Sanders replied that the school district is reimbursed for 85% of transportation funds from the state distributive school fund.

Senator Blakemore observed that there are an additional 11 students from Schurz who attend school in Hawthorne and who transportation must be provided.

Sentor Getto asked how many of the 28 students attending school in Yerington are actually enrolled in the agricultural vocation program.

Mr. Funk replied that there are currently 7 of the 28.

The Chairman acknowledged the problems of the families in Schurz as well as the school districts'. He declared that children's education should come first before the cost factor; children should be provided with the best education possible.

Ms. Louise Uttinger, representing the Walker River Education Committee as legal counsel spoke in support of Senate Bill No. 611. She said the legislation is special to address a special need of Indian students that is not addressed in the current statutes. She said the indian children should not become pawns between two school districts which are competing for federal money.

SENATE BILL NUMBER 612

Ms. Carolyn Mann, representing Ken Sharigian, Division of Mental Hygiene and Mental Retardation spoke in support of Senate Bill No. 612 which brings present Nevada Statutes in compliance with a recent U. S. Supreme Court Decision, Addington v. Texas (see Exhibit E). The new language on lines 4 and 11 of the bill introduces a new standard called "clear and convincing evidence". There are three standards that may be used to determine a person's guilt or innocence: 1) preponderence of evidence (least stringent), 2) clear and convincing evidence, and 3) beyond a reasonable doubt (most stringent, used for criminal cases). The U. S. Supreme Court Decision Addington v. Texas determined that committing someone involuntarily to a mental health institute is more important than a normal civil action, but due to the nature of psychiatric diagnosis one cannot know "beyond a reasonable doubt" and it was determined that "clear and convincing" is the standard necessary for committing a person involuntarily to a mental health institute.

Senator Kosinski referred to line 19, page 1. He asked Ms. Mann why the new language provides for an easier method of release.

Ms. Mann replied that persons are often committed for a period of six months, though it is not necessary that they stay for the entire duration.

Senator Kosinski remarked that there has been a great deal of conflict over the years between the court system and the division relative to the release of patients committed by

judges and in some cases, the courts claim they were never told of the release. He asked if this was not why the language was placed in the law in 1975. He asked Ms. Mann whether the court opinion mandates this type of language be removed, or if not, whether it might not be better policy to leave the language as it stands.

Ms. Mann replied removal of the language is not mandated by the court opinion. She said Mr. Sharigian was the originator of that particular change and added she will check with him upon his return.

ASSEMBLY BILL NUMBER 458 (EXHIBIT F)

Mr. Ted Sanders, Superintendent of Public Instruction, Department of education spoke in support of Assembly Bill No. 458. He told the committee the commission consists of eight members who meet twice a year and are paid $40 per day plus travel and per diem, the total of which amounts to approximately $2,500 per year. The adoption process in the state, relative to text books is as follows: Provisions are made for a teacher or group of teachers within a district to use a text in the classroom on a trial basis which is followed by a recommendation to the district administration of the board of school trustees. The recommendation, if affirmative, is sent to the text book commission which reviews the two-page summary of the pilot study in the school district and makes a recommendation to the state board of education, who under current statutes has the final authority to adopt the text for use.

Mr. Sanders said the removal of the textbook commission from the above process has no adverse affect in his judgment. He said to anyone's recollection there has only ever been one occasion when the commission had not agreed with the district's recommendation. He said at this point in time, both money committees of the legislature have closed the education administration budget and the monies for the commission were not included in that budget.

Mr. Sanders added that there are times when the state education community needs some collective review of a particular issue. He said in those cases the state is better advised to create a special task force or group with expertise surrounding that particular issue, rather than relying on a group of generalists. He urged the passage of Assembly Bill No. 458.

SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES
MAY 5, 1981

SENATE BILL NUMBER 614

Senator Lawrence E. Jacobsen spoke in support of Senate Bill No. 614 which requires installation and operation of smoke-detectors in certain dwellings. He said early notice is one of the most important things in fighting fires and should be required in all new construction.

Mr. Tom Huddleston, State Fire Marshal told the committee he supports Senate Bill No. 614 though expressed some concern over some sections of the bill: Section 2, line 4 requirement has been in effect in the uniform building code since the 1973 addition for detectors in private residences. Subsection 5 residential property when offered for sale or transfer be required to install smoke-detectors. He said this requirement must have some vehicle of enforcement specified within the bill, he suggested that title companies be required to enforce that requirement.

Senator Kosinski asked Mr. Huddleston what the 1973 addition to the uniform building code applied to.

Mr. Huddleston said the requirement for smoke-detector installation in new construction is required in private residence, apartment residence, and hotel rooms. He expressed a concern over section 3, subsection 2. He suggested an amendment to alleviate some of the requirements for the tenant to perform tests of the device: delete the words "test the smoke detector at least once every six months according to those instructions, and".

Mr. Marty Richard, Fire Marshal, City of Reno reiterated Mr. Huddleston's concerns with the bill.

Mr. Jim Harris, Fire Marshall, Truckee Meadows Fire Protection District expressed similar concerns over the bill as had Mr. Huddleston and Mr. Richard. He said the bill may have some problems as far as the enforcement of the regulations, but said he supports the bill. He referred to section 2, subsection 2 for residences occupied by a tenant, he asked how those residences would be identified. Additional problems could occur in the area of enforcement if the landlords or owners of those residences were required to perform tests on the devices because many owners do not reside in the city or state in which the home is owned.

Mr. Harris told the committee the words "as soon as possible" as used in section 3, subsection 3 are too ambiguous. He said he does not see a need for section 4 of the bill, but does support the concept of the bill.

Mr. Tony Taormina, Director of Buildings and Safety for Washoe County said "remodeling" as expressed in section 2, subsection 3, is covered by the uniform building code. He said the use of the words "common area" in section 3, 4a is too ambiguous and should be clarified and should relate to sleeping areas, as common areas are difficult to deterime.

The Chairman asked Mr. Richard, Mr. Huddleston, Mr. Taormina, and Mr. Harris to meet with Senator Jacobsen to compose some amendments for the bill.

ASSEMBLY BILL NUMBER 458 (EXHIBIT F)

Senator Bilbray moved to "Do Pass" Assembly Bill No. 458.

Senator Kosisnki asked what the repealers in the bill refer to.

The Chairman said the repealers refer to the text book commission, dates for meetings, salary schedule, etc.

Senator Faiss seconded the motion.

The motion carried. (Senator Getto was not present for the vote.)

SENATE BILL NUMBER 611

Senator Bilbray moved to "Amend and Do Pass" Senate Bill No. 611 amending the bill so that if any fees are imposed beyond the amount to be paid by the state, said fees are to be borne by the parents of those students attending school in a county other than that in which they reside.

Senator Blakemore said he would like to vote to help the indians, but Mineral County is in need of any funds they can get. He asked to meet with Mr. Sanders to determine whether there may not be another alternative.

The motion died for the lack of a second.

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SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES
MAY 5, 1981

ASSEMBLY BILL NUMBER 144

The committee reviewed Assembly Bill No. 144 and agreed the amendment was written as prescribed by the committee.

There being no further business, the meeting adjourned at 10:54 a.m.

Respectfully submitted:

Connie S. Richards, Committee Secretary

APPROVED BY:

Senator Joe Neal, Chairman

DATE: May 7, 1981

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on Human Resources and Facilities, Room 323

Day Tuesday, Date May 5, Time 8:00 a.m.

S. B. No. 611--Permits pupils who reside on Indian reservations which are in more than one county to attend closest schools.

S. B. No. 612--Requires that court order for involuntary admission to mental health facility be based on clear and convincing evidence.

S. B. No. 614--Requires installation and operation of smoke-detectors in certain dwellings.

A. B. No. 458--Abolishes state textbook commission.

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES

DATE: May 5, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
TED SANDERS	DEPT OF EDUC	885-5700
Carolyn Kramer	Dir of Mktg	885-5918
Don Jehlick	Mineral County Bd. Trustees	945-2527
Arlo K. Funk	Min Co Sch Dist	945-2403
Tom Huddleston	State Fire Marshal	885-4290
TONY TAORMINA	WASHOE CO	785-4214
Alfred Prince	Min. Co. Sch Dist.	945-3196
BERNARD SEASE	CARSON CITY FIRE DEPT	887-2210
CHUCK NEELY	CLARK COUNTY SCHOOL DIST	736-5216
Jim Harris	Truckee Meadows Fire Prot. Dist.	785-4322
John Iratcabal	City of Reno	785-2022
[illegible]	[illegible]	329-[illegible]
Dick Weir	WCSD	322-7041

NATIONAL CONGRESS OF AMERICAN INDIANS

202 E STREET, N.E., WASHINGTON, D.C. 20002 (202) 546-1168

May 1, 1981

EXHIBIT C

Senator Joe Neal
Chairman
Human Resources and
Facilities Committee
Nevada State Senate
Carson City, Nevada

Dear Chairman Neal:

I request that you and the other members of the Nevada State Senate enact SB 611 into law.

I will not repeat the drop out rate statistics of American Indian children in the public school systems, but they are high.

The proposed amendment to NRS 392.010 will keep American Indian children in school. It is a matter of choice, compatible education and distance.

American Indian children and their parents when their reservation extends into several counties should have a choice where they should go to school.

The two reservations affected by the amendment were created in 1859, two years before Nevada became a territory and five years before Nevada became a state. These are Walker River and Pyramid Lake.

As the Phoenix Area Vice President representing the American Indian people of Nevada, Utah and Arizona on the executive committee or the largest and oldest National Indian organization, the National Congress of American Indians, I urge you and the other Senators to pass SB 611.

Sincerely,

Edward C. Johnson
Phoenix Area Vice President
320 Clear Creek Avenue
Carson City, Nevada 89701

cc:legislators

OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION
Capitol Complex
Carson City, Nevada 89710

TED SANDERS
Superintendent

EXHIBIT D

May 5, 1981

The Honorable Joe Neal
Nevada State Senate
Legislative Building
Carson City, Nevada 89710

Dear Senator Neal,

Following the hearing on SB 611 this morning we contacted Mr. William Stormer, Program Officer for P.L. 81-874, regarding the legality of Mineral County counting the students at Schurz who attend the Lyon County School District for P.L. 81-874 entitlements.

From this discussion it is apparent that there are no legal barriers to accomplishing this providing that:

1) The Mineral County School District enrolls these students and receives the state distributive school fund apportionment for them, and

2) The two school districts enter into an interagency agreement detailing the conditions under which the students will attend the recipient school district.

Mr. Stormer stated that he had concerns regarding these type arrangements and therefore discouraged their existence. In response to questioning about his concern, we learned that it was based upon similar experiences in other school districts where the recipient district utilized the P.L. 81-874 monies for purposes other than providing for the education of the Indian students who had generated the entitlement. His concerns can be addressed here through the approval process required under lines 17-23 on page 1 and lines 11-15 on page 2 of the bill.

In closing, may I reiterate what I was attempting to say in response to Senator Kosinski's question. Given the current statutes, there should not be a need for this type of legislation if everyone were concerned first and foremost about the education of these youngsters. However, it seems that financial concerns have a way of becoming paramount and we lose sight of the basic issue. If I were the final authority in this matter, I would allow these students to continue attending the Lyon County Schools.

If I may provide you with additional information on this matter, please do not hesitate to call on me.

Sincerely,

Ted Sanders
Superintendent of Public Instruction

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Frank O'Neal ADDINGTON, Appellant,

v.

State of TEXAS.

No. 77-5992.

Argued Nov. 28, 1978.

Decided April 30, 1979.

In an indefinite commitment case, a probate court in Texas found that defendant was mentally ill and required hospitalization for his own welfare and protection as well as for the protection of others. The Beaumont Court of Civil Appeals, Ninth Supreme Judicial District, 546 S.W.2d 105, reversed, holding that the proper standard of proof was "beyond a reasonable doubt." The State was granted a writ of error by the Supreme Court of Texas, 557 S.W.2d 511. On grant of certiorari, the Supreme Court, Mr. Chief Justice Burger, held that to meet due process demands, the standard for use in commitment for mental illness must inform the fact finder that proof must be greater than the preponderance of evidence standard applicable to other categories of civil cases, but the reasonable doubt standard is not constitutionally required.

Vacated and remanded.

1. Federal Courts ⇐509

Where no challenge to constitutionality of any state statute was presented, appeal to United States Supreme Court was not authorized, and papers were construed as petition for writ of certiorari. 28 U.S.C.A. § 1257(2).

2. Constitutional Law ⇐311

Function of standard of proof, as that concept is embodied in due process clause and in realm of fact-finding, is to instruct fact finder concerning degree of confidence society thinks he should have in correctness of factual conclusions for particular type of adjudication. U.S.C.A.Const. Amend. 14.

3. Constitutional Law ⇐251.5

Function of legal process is to minimize risk of erroneous decisions. U.S.C.A.Const. Amend. 14.

4. Constitutional Law ⇐81
Mental Health ⇐36

State has legitimate interest under its parens patriae powers in providing care to its citizens who are unable because of emotional disorders to care for themselves, and state also has authority under its police power to protect community from dangerous tendencies of some who are mentally ill. U.S.C.A.Const. Amend. 14; Vernon's Ann.Civ.St. arts. 5547-1 et seq., 5547-31 to 5547-39, 5547-40 to 5547-57, 5547-42, 5547-51.

5. Mental Health ⇐36

Under Texas mental health code, 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. U.S.C.A.Const. Amend. 14; Vernon's Ann.Civ.St. arts. 5547-1 et seq., 5547-31 to 5547-39, 5547-40 to 5547-57, 5547-42, 5547-51.

6. Mental Health ⇐36

Loss of liberty by confinement for mental illness calls for showing that the individual suffers from something more serious than is demonstrated by idiosyncratic behavior. U.S.C.A.Const. Amend. 14; Vernon's Ann.Civ.St. arts. 5547-1 et seq., 5547-31 to 5547-39, 5547-40 to 5547-57, 5547-42, 5547-51; Code Miss.1972, § 41-21-75.

7. States ⇐4

Essence of federalism is that states must be free to develop variety of solutions to problems and not be forced into common, uniform mold.

8. Constitutional Law ⇐255(5)

Substantive standards for civil commitment for mental illness may vary from state to state, and procedures must be allowed to vary so long as they meet constitutional minimum. Vernon's Ann.Civ.St. arts. 5547-1 et seq., 5547-31 to 5547-39, 5547-40 to 5547-57, 5547-42, 5547-51; U.S.

EXHIBIT E

C.A.Const. Amend. 14; Code Miss.1972, § 41-21-75.

9. Constitutional Law ⇐255(5)
Mental Health ⇐41

Reasonable doubt standard is inappropriate in civil commitment proceedings, and use of term "unequivocal" is not constitutionally required, although states are free to use that standard. Vernon's Ann.Civ.St. arts. 5547-1 et seq., 5547-31 to 5547-39, 5547-40 to 5547-57, 5547-42, 5547-51; U.S.C.A.Const. Amend. 14; Code Miss.1972, § 41-21-75.

10. Constitutional Law ⇐255(5)

To meet due process demands, standard for use in commitment for mental illness must inform fact finder that proof must be greater than preponderance of evidence standard applicable to other categories of civil cases. Vernon's Ann.Civ.St. arts. 5547-1 et seq., 5547-31 to 5547-39, 5547-40 to 5547-57, 5547-42, 5547-51; U.S.C.A. Const. Amend. 14; Code Miss.1972, § 41-21-75.

11. Constitutional Law ⇐255(5)
Federal Courts ⇐513

Instruction used in proceeding in Texas for commitment for mental illness, such instruction employing the standard of "clear, unequivocal and convincing" evidence, was constitutionally adequate, but determination of precise burden, equal to or greater than such standard, required to meet due process requirements was matter of state law to be left to Texas Supreme Court. U.S.C.A.Const. Amend. 14; Vernon's Ann.Civ.St. arts. 5547-1 et seq., 5547-31 to 5547-39, 5547-40 to 5547-57, 5547-42, 5547-51; Code Miss.1972, § 41-21-75.

Syllabus *

Appellant's mother filed a petition for his indefinite commitment to a state mental hospital in accordance with Texas law governing involuntary commitments. Appellant had a long history of confinements for mental and emotional disorders. The state trial court instructed the jury to determine whether, based on "clear, unequivocal and convincing evidence," appellant was mentally ill and required hospitalization for his own welfare and protection or the protection of others. Appellant contended that the trial court should have employed the "beyond a reasonable doubt" standard of proof. The jury found that appellant was mentally ill and that he required hospitalization, and the trial court ordered his commitment for an indefinite period. The Texas Court of Appeals reversed, agreeing with appellant on the standard of proof issue. The Texas Supreme Court reversed the Court of Appeals' decision and reinstated the trial court's judgment, concluding that a "preponderance of the evidence" standard of proof in a civil commitment proceeding satisfied due process and that since the trial court's improper instructions in the instant case had benefited appellant, the error was harmless.

Held: A "clear and convincing" standard of proof is required by the Fourteenth Amendment in a civil proceeding brought under state law to commit an individual involuntarily for an indefinite period to a state mental hospital. Pp. 1809-1813.

(a) The individual's liberty interest in the outcome of a civil commitment proceeding is of such weight and gravity, compared with the state's interests in providing care to its citizens who are unable, because of emotional disorders, to care for themselves and in protecting the community from the dangerous tendencies of some who are mentally ill, that due process requires the state to justify confinement by proof more substantial than a mere preponderance of the evidence. Pp. 1809-1810.

(b) Due process does not require states to use the "beyond a reasonable doubt" standard of proof applicable in criminal prosecutions and delinquency proceedings. *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068,

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

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25 L.Ed.2d 368, distinguished. 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. The state should not 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. Pp. 1810–1812.

(c) To meet due process demands in commitment proceedings, the standard of proof 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. However, use of the term "unequivocal" in conjunction with the term "clear and convincing" in jury instructions (as included in the instructions given by the Texas state court in this case) is not constitutionally required, although states are free to use that standard. Pp. 1812–1813.

Appeal dismissed and certiorari granted; 557 S.W.2d 511, vacated and remanded.

Martha L. Boston, Austin, Tex., for appellant.

James F. Hury, Jr., Galveston, Tex., for appellee.

Joel I. Klein, Washington, D. C., for the American Psychiatric Ass'n, as amicus curiae, by special leave of Court.

Mr. Chief Justice BURGER delivered the opinion of the Court.

The question in this case is 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., Arts. 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 require[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

EXHIBIT E

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 evidence, 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, 98 S.Ct. 1499, 55 L.Ed.2d 525 (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.

[1] We noted probable jurisdiction. 435 U.S. 967, 98 S.Ct. 1604, 56 L.Ed.2d 58. After oral argument it became clear that no challenge to the constitutionality of any Texas statute was presented. Under 28 U.S.C. § 1257(2) no appeal is authorized; accordingly, construing the papers filed as a petition for a writ of certiorari, we now grant the petition.[2]

1. See *Lynch v. California Superior Court*, 436 U.S. 64, 98 S.Ct. 1699, 56 L.Ed.2d 152 (1978); *Mahan v. Oklahoma*, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958); *May v. Anderson*, 345 U.S. 528, 72 S.Ct. 840, 97 L.Ed. 1221 (1953). As in those cases we continue to refer to the

II

[2] 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, 90 S.Ct. 1068, 1076, 25 L.Ed.2d 368 (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.[2] 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, 90 S.Ct. 1068, 25 L.Ed.2d 368 (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, 87 S.Ct. 483, 488, 17 L.Ed.2d 362 (1957). 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, unequivocal and convincing" standard of proof to protect particularly important individual interests in various civil cases. See, e. g., *Woodby v. INS*, *supra*, at 285, 87 S.Ct., at 487 (deportation); *Chaunt v. United States*, 364 U.S. 350, 353, 81 S.Ct. 147, 149, 5 L.Ed.2d 120 (1960) (denaturalization); *Schneiderman v. United States*, 320 U.S. 118, 125, 159, 63 S.Ct. 1333, 1336, 1353, 87 L.Ed. 1796 (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 relevant empirical studies.[3] Indeed, the ultimate truth as to how the standards of proof affect decisionmaking may well be unknowable, given that factfinding is a

parties as appellant and appellee. See *Kulko v. California Superior Court*, *supra*, 436 U.S., at 90 n. 4, 98 S.Ct., at 1696.

2. 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).

3. There have been some efforts to evaluate the effect of varying standards of proof on jury factfinding, see, e. g., L. S. E. Jury Project, Juries and the Rules of Evidence, 1973 Crim.L.Rev. 208, but we have found no study comparing all three standards of proof to determine how juries, real or mock, apply them.

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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 *sub nom. Murel v. Baltimore City Criminal Court*, 407 U.S. 355, 92 S.Ct. 2091, 32 L.Ed.2d 791 (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

[3] 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. See *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976); *Speiser v. Randall*, 357 U.S. 513, 525-526, 78 S.Ct. 1332, 1341-1342, 2 L.Ed.2d 1460 (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, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972); *Humphrey v. Cady*, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972); *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); *Specht v. Patterson*, 386 U.S. 605, 87 S.Ct. 1209, 18 L.Ed.2d 326 (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.

[4, 5] 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 with problems of mental disorders is reflected in the fact that in recent years many states have enacted statutes designed to protect the rights of the mentally ill. However, only one state by statute 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 noted earlier, however, standards of proof are important for their symbolic meaning as well as for their practical effect.

[6] At one time or another every person exhibits some abnormal behavior which

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might be perceived by some as symptomatic of a mental or emotional disorder, but which is in fact within a range of conduct that is generally acceptable. Obviously such behavior is no basis for compelled treatment and surely none for confinement. However, there is the possible risk that a factfinder might decide to commit an individual based solely on a few isolated instances of unusual conduct. Loss of liberty calls for a showing that the individual suffers from something more serious than is demonstrated by idiosyncratic behavior. Increasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate commitments will be ordered.

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. 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.

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 commitment 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, 90 S.Ct., at 1073. 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 state power is not exercised in a punitive sense.[4] 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*, 385 U.S., at 284–285, 87 S.Ct., at 487–488.

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, 90 S.Ct., at 1072, 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. 197, 208, 97 S.Ct. 2319, 2326, 53 L.Ed.2d 281 (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 § 1400. However, even though an erroneous confinement should be avoided in the first instance, the

4. The State of Texas confines only for the purpose of providing care designed to treat the individual. 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."

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 for 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 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 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. 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, 95 S.Ct. 2486, 2498, 45 L.Ed.2d 396 (1976) (concurring opinion); *Blocker v. United States*, 110 U.S.App.D.C. 41, 48–49, 288 F.2d 853, 860–861 (1961) (concurring opinion). See also *Tippett v. Maryland*, 436 F.2d 1153, 1165 (CA4 1971) (Sobeloff, J., concurring and dissenting), cert. dismissed *sub nom. Murel v. Baltimore City Criminal Court*, 407 U.S. 355, 92 S.Ct. 2091, 32 L.Ed.2d 791 (1974); Note, Civil Commitment of the Mentally Ill: Theories and Procedures, 79 Harv.L.Rev. 1288, 1291 (1966); Note, Due Proces 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 Note, 42 Ford.L.Rev., 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, 97 S.Ct. 2319, 2326, 53 L.Ed.2d 281 (1977). Nor should the state be required to employ a standard of proof that may com-

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pletely undercut its efforts to further the legitimate interests of both the state and the patient that are served by civil commitments.

[7, 8] That some states have chosen—either legislatively or judicially—to adopt the criminal law standard [5] gives no assurance that 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; [6] three states use "clear, *cogent*, and convincing" evidence; [7] and two states require "clear, *unequivocal* and convincing" evidence.[8]

In *Woodby v. INS*, 385 U.S. 276, 87 S.Ct. 483, 17 L.Ed.2d 362 (1967), dealing with deportation and *Schneiderman v. United States*, 320 U.S. 118, 125, 159, 63 S.Ct. 1333, 1336, 1353, 87 L.Ed. 1796 (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,[9] 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.

[9–11] 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

5. Haw.Rev.Stat. § 334–60(b)(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*, Mass., 372 N.E.2d 242 (1978); *Proctor v. Butler*, 380 A.2d 673 (N.H. 1977); *In re Hodges*, 325 A.2d 605 (D.C.App. 1974); *Lausche v. Comm'r of Public Welfare*, 302 Minn. 65, 225 N.W.2d 366 (1974), cert. denied, 420 U.S. 993, 95 S.Ct. 1430, 43 L.Ed.2d 674 (1975). See also *In re J. W.*, 44 N.J.Super. 216, 130 A.2d 64 (App.Div.), cert. denied, 24 N.J. 465, 132 A.2d 558 (1957); *Denton v. Commonwealth*, 383 S.W.2d 681 (Ky.1964) (dicta).

6. Ariz.Rev.Stat.Ann. § 36–540; Colo.Rev.Stat. § 27–10–111(1); Conn.Gen.Stat. § 17–175(c); Del.Code, Tit. 16, § 5010(2); Ga.Code § 88–501(a); Ill.Rev.Stat. ch. 91½, § 3–805; Iowa Code § 229.12; La.Rev.Stat.Ann., Tit. 28, § 55 E (West); Me.Rev.Stat.Ann. Tit. 34, § 2334(5)(A)(1); Mich.Stat.Ann., § 14.800(465) [M.C.L.A. § 330.1465]; Neb.Rev.Stat. § 83–1035; N.M.Stat.Ann. § 34–2A–11 C; 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).

7. 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).

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

9. See Webster's Third New International Dictionary 2494 (1969).

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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 fact-finder 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, determination of the precise burden equal to or greater than the "clear and convincing" standard which we hold is required to meet due process guarantees is a matter of state law which we leave to the Texas Supreme Court.[10] Accordingly, we remand the case for further proceedings not inconsistent with this opinion.

Vacated and remanded.

Mr. Justice POWELL took no part in the consideration or decision of this case.

JAPAN LINE, LTD., et al., Appellants,

v.

COUNTY OF LOS ANGELES et al.

No. 77-1378.

Argued Jan. 8, 1979.

Decided April 30, 1979.

The California Supreme Court, 20 Cal.3d 180, 141 Cal.Rptr. 905, 571 P.2d 254, upheld an ad valorem property tax as applied to cargo containers owned by certain Japanese shipping companies. On appeal, the Supreme Court, Mr. Justice Blackmun, held that California ad valorem property tax, as applied to Japanese shipping companies' cargo containers which were based, registered, and subjected to property tax in Japan, and were used exclusively in foreign commerce, is unconstitutional under the commerce clause since it results in multiple taxation of instrumentalities of foreign commerce and is inconsistent with Congress' power to regulate commerce with foreign nations.

Reversed.

Mr. Justice Rehnquist filed dissenting statement.

1. Federal Courts ⇐505

Supreme Court had appellate jurisdiction to review decision of California Supreme Court upholding California ad valorem property tax as applied to cargo containers of Japanese shipping companies which were based, registered, and subjected to property tax in Japan, and were used exclusively in foreign commerce, since case drew in question the validity of the tax in relation to commerce clause and various treaties. 28 U.S.C.A. § 1257(2); West's Ann.Cal.Rev. & Tax.Code, §§ 117, 405, 2192; U.S.C.A.Const. art. 1, § 8, cl. 2.

2. Commerce ⇐73

Cargo containers of Japanese shipping companies which were based, registered, and subjected to property tax in Japan, and were used exclusively in foreign commerce, were "instrumentalities of foreign commerce," rather than of interstate commerce, for purposes of state's power to tax. U.S.C.A.Const. art. 1, § 8, cl. 3.

3. Commerce ⇐73

When a state seeks to tax instrumentalities of foreign, rather than interstate commerce, court must inquire into whether tax, notwithstanding apportionment, creates substantial risk of interstate multiple taxation and whether tax prevents federal government from "speaking in one voice

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

EXHIBIT F

A. B. 458

ASSEMBLY BILL NO. 458—COMMITTEE ON EDUCATION

APRIL 8, 1981

Referred to Committee on Education

SUMMARY—Abolishes state textbook commission. (BDR 34-1461)
FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to the department of education; abolishing the state textbook commission; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 385.010 is hereby amended to read as follows:

385.010 1. A department of education is hereby created.

2. The department consists of the state board of education, the state board for vocational education [, the state textbook commission] and the superintendent of public instruction.

3. The superintendent of public instruction is the executive head of the department.

SEC. 2. NRS 390.005 is hereby amended to read as follows:

390.005 As used in this chapter, unless the context requires otherwise:

1. "Basic textbook" or "textbook" means any medium or manual of instruction containing a presentation of the principles of a subject and used as a basis of instruction.

2. ["Commission" means the state textbook commission.

3.] "Supplemental textbook" means any medium or material used to reinforce or extend a basic program of instruction.

[4.] *3.* A basic or supplemental textbook becomes "unserviceable" when 4 years have elapsed since its removal from the adopted list.

SEC. 3. NRS 390.140 is hereby amended to read as follows:

390.140 [1. The commission shall select textbooks to be recommended for adoption to the state board of education.

2.] The state board of education shall make the final selection of all textbooks to be used in the public schools in this state.

SEC. 4. NRS 390.160 is hereby amended to read as follows:

390.160 1. The [commission shall have power to] *state board may*

make such contracts for the purchase and use of textbooks in the name of the state as [the commission shall deem] *it deems* necessary for the interests of the public schools.

2. Contracts [shall:] *must:*

(a) Set forth the introductory, exchange and retail price of each textbook, which [price shall] *must* not exceed the lowest price the publisher has charged for the same textbook anywhere in the continental United States for similar quantities exclusive of shipping costs.

(b) Guarantee that there is no subversive or sectarian doctrine, as determined by the laws of Nevada and the United States, in any of the textbooks covered by the contract.

SEC. 5. NRS 390.230 is hereby amended to read as follows:

390.230 1. The textbooks adopted by the state board of education must be used in the public schools in the state and no other books may be used as basic textbooks.

2. This section does not prohibit:

(a) The continued use of such textbooks previously approved until they become unserviceable.

(b) The use of supplemental textbooks purchased by a school district with the approval of the superintendent of public instruction.

(c) After approval by the [commission,] *state board,* the temporary use of textbooks for tryout purposes.

3. Any school officer or teacher who violates the provisions of this chapter, or knowingly fails to follow [the rules of the commission or] the regulations of the state board relating to use of textbooks shall be punished by a fine of not more than $250.

4. All superintendents, principals, teachers and school officers are charged with the execution of this section.

SEC. 6. NRS 390.010, 390.020, 390.040, 390.060, 390.070, 390.080, 390.090 and 390.110 are hereby repealed.

(30)