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*Après the Acquittal, Le Deluge: Release Procedures and Allocation of the Burden of Proof in Subsequent Review Hearings Following a Finding of "Not Guilty by Reason of Insanity" in State of New Jersey v. Hetra Fields **

MICHAEL L. PERLIN, ESQ. **

While the academically interesting but empirically fruitless debate rages on concerning the issue of the abolition of the insanity defense,¹ there has been little analytical attention paid to the fate of those who are found "Not Guilty by Reason of Insanity" (NGRI). Although we have begun to realize that, in the words of two attorneys with vast experience in this highly-specialized field, "No [other] group has been more deprived of treatment, discriminated against, or mistreated,"² the issue of what happens to persons following an NGRI finding has not exactly set the legal or psychiatric world on fire. Although the "Son-of-Sam"-type case stokes political ferment and inspires demagoguery on all sides, the hard issues of how an NGRI patient is to be treated — both procedurally and substantively — are relegated to the drafting room floor, so to speak.³

It is clear, of course, that all of the problems which relate to the commitment of and treatment of civilly committed patients — by what procedures a person is committed; what process is due; for how long is the commitment; what sort of hearing must be held; what civil rights does a committed patient possess — are applicable to NGRI patients as well,⁴ and that — in addition — the very nature of the NGRI patient's status raises other issues which beg definitive (or at least non-murky) solutions: Can such a person be committed indefinitely to a hospital by reason of the NGRI finding? Does the NGRI verdict imply the commission of a criminal act for which the patient still needs to be punished? Should the NGRI patient be treated like civil patients or like convicted persons who have been transferred to psychiatric hospitals? These questions and others recur each time an NGRI verdict is handed down, and it is only in the most recent years that litigation has begun to sketch in even the vaguest contours of the legal principles applicable to such cases.

Thus, in at least a partial acknowledgement that the acquitted patient is "doubly cursed . . . and doubly neglected,"⁵ state and federal courts have begun to hold — relatively unanimously — that a judicial finding of "not guilty by reason of insanity" can no longer be used as a means of automatically consigning mentally ill criminal defendants to a lifetime in a

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maximum security forensic unit without realistic hope for release. On the heels of three related United States Supreme Court decisions — *Baxstrom v. Herold*,⁶ *Humphrey v. Cady*,⁷ and *Jackson v. Indiana*⁸ — which served as a “first step”⁹ towards the establishment of equal treatment for all hospitalized psychiatric patients,¹⁰ such jurisdictions as the District of Columbia,¹¹ New York¹² and others have ruled that NGRI’s must be given a judicial hearing with procedures substantially similar to those afforded civil patients.¹³

This trend¹⁴ reached a high-water mark of sorts with the decision of the New Jersey Supreme Court in 1975 in *State v. Krol*.¹⁵ There, the court held that both due process and equal protection considerations apply to such matters, that the distinction between the standards for involuntary commitment for persons acquitted by reason of insanity and other persons “lacks even a rational basis,”¹⁶ that “where personal liberty is involved . . . each individual’s fate must be adjudged on the facts of his own case, not on the general characteristics of a ‘class’ to which he may be assigned,”¹⁷ and that the same standard for commitment — dangerousness to self or others — is applicable to NGRI’s as to all other patients.¹⁸ In short, the *Krol* patient was entitled to virtually the same due process hearing as any other patient prior to involuntary commitment.

The *Krol* decision was hailed in the academic literature,¹⁹ for “inject[ing] coherence into a confused sector of the law,”^{19A} but even as the praiseworthy analyses filtered in, it was viewed as an example of “how far courts have come along the road to equalization and how far they still have to go.”²⁰ Like any other precedent-shattering decision, *Krol* raised more questions than it answered, and served the primary function of peeling several more layers off the onion of the NGRI proceeding. Soon, attention would inevitably focus on difficult issues involving treatment and release, issues merely brushed over in cases such as *Krol* and earlier similar decisions: Once committed, what was the extent of the NGRI patient’s right to treatment or right to refuse? By what standards is an NGRI to be released from a hospital? Is the release hearing to be treated as a civil review hearing (*i.e.*, with the burden on the prosecuting or committing agency), or is it to be treated as a *habeas corpus* hearing (*i.e.*, with the burden on the defendant-patient)? Does the NGRI finding imply the commission of such a serious act on the part of the patient as to justify the establishment of an “exceptional class” which can be held to a stricter release standard than a “regular” civil patient, or does the acquittal simply mean that the patient is a civil patient for release purposes because he/she has committed no crime, and that to suggest otherwise violates constitutional mandates? Finally, because cases of this sort are often the most sensational, would the publicity afforded the “Son-of-Sam”-type defendant engender a situation with such a severe public backlash as to make *any* sort of NGRI release a virtual political impossibility?

As might well be expected, the courts have split radically on the questions involved: state court decisions in Arizona,²¹ Michigan,²² and Indiana,²³ and a federal court in Texas²⁴ all have held that insanity acquittees are entitled to the same release procedures applicable to all other patients;²⁵ decisions in federal courts in Maryland²⁶ and Washington, D.C.²⁷

have decided that different procedures are permissible.²⁸ Thus, the decision late in 1977 by the New Jersey Supreme Court — the same court that decided *Krol* — to certify the case of *State v. Hetra Lee Fields* for argument directly from the trial court²⁹ raised the possibility that, perhaps, some sort of guidelines might be established which could offer aid and guidance to other courts in other jurisdictions, and which might harmonize some of the conflicting prior cases and legal theories. For *Fields* raised virtually every issue settled neither by *Krol* nor by other cases dealing with the procedures of commitment following an NGRI finding.

Fields, the appellant, had been indicted for the stabbing murder of her boyfriend and was subsequently acquitted by reason of insanity at the time of the offense.³⁰ Following *Krol* procedures, the trial judge ordered her temporarily confined for observation and evaluation, and subsequent to that evaluation, the court found Fields mentally ill and a danger to herself and others and ordered her committed to a civil psychiatric hospital.³¹ Her commitment was continued at a review hearing held six months after the initial hearing, and at a second hearing held six months thereafter,³² at which the *only* witness was a hospital physician who testified that the defendant was neither mentally ill nor dangerous and that further hospitalization would be detrimental to her.^{32A} At the latter hearing, although the trial judge found that the defendant was in a state of remission, he found that “the defendant’s underlying condition of schizophrenia, chronic, undifferentiated type continues and *that it is incurable.*”³³ He reasoned further that although the defendant “may not constitute a present danger . . . she constitutes a probable danger to society because . . . if she becomes exposed to alcohol, this may trigger a psychotic episode,”³⁴ and that her “underlying mental disease of the mind may erupt.”³⁵ He thus continued confinement, subject to review in one year, and directed the hospital to take steps aimed at her eventual conditional release.³⁶ The defendant then appealed from this order, and the Supreme Court certified the case to, in its own words, “resolve certain important questions not settled by our decision in *Krol.*”³⁷

In her brief to the State Supreme Court, defendant argued that, just as the burden of proof remains on the committing/prosecuting agency in any other involuntary civil commitment proceeding, so it must remain at a review of an NGRI patient, and that to suggest otherwise would violate due process and equal protection principles³⁸; that the committing/prosecuting agency must present affirmative evidence of present mental illness and dangerousness to justify continued confinement at such a hearing³⁹; and that the problems raised are especially exacerbated in matters such as these, involving, as they do, issues of over-prediction of dangerousness, “incurability” of conditions, and contemporaneity of diagnosis.⁴⁰ Defendant also argued that the verdict below was contrary to the weight of the credible evidence, and that the court erred in receiving into evidence — and then giving dispositive weight to — a letter written to the judge some fourteen months prior to the hearing by a former hospital staff doctor.⁴¹

On July 3, 1978 — some five months after oral argument — the New Jersey Supreme Court decided *Fields*, and held unequivocally in the course of a 34-page opinion that:

NGI committees possess the same right to automatic periodic review of the justification for their commitment (or lesser restraints, as the case may be) as that enjoyed by civil committees. We further hold that the State must bear the ultimate burden of proof in justifying any continued restrictions upon the liberty of NGI committees at each periodic review proceeding by establishing, by a preponderance of the evidence, that such restrictions currently meet the criteria set forth in *Krol* for the initial imposition of restraints.⁴²

The court reiterated its *Krol* language — premised on *Jackson* and *Baxstrom* — that “the fact that a mentally ill person has committed an act which would expose a mentally competent person to criminal sanction is a constitutionally unacceptable justification for granting him less procedural and substantive protection against involuntary commitment than that generally afforded all other members of society,”⁴³ and thus concluded that “due process would seem to require a meaningful periodic review of the continued legitimacy of restraints on the liberty of all persons whose alleged dangerousness by reason of mental disability brought about these restrictions,”⁴⁴ such hearings to be held at such “reasonable intervals”⁴⁵ as would “guarantee NGI committees *equivalent protection* [as all other civilly committed persons] against the unwarranted continuance of state-imposed restrictions on their liberty.”⁴⁶

The court relied on *Jackson* and *O'Connor v. Donaldson*⁴⁷ to support the proposition that “the deprivation of [a] person’s liberty can constitutionally continue only so long as the potential for that harm remains sufficiently great so that his confinement would be warranted were his initial commitability at issue,”⁴⁸ noting that this analysis has led the court originally to promulgate a regular periodic review schedule for all other civil patients,⁴⁹ and that, “in light of the constitutional imperative of substantially equal treatment reflected in *Baxstrom* and *Jackson*, we discern no constitutionally satisfactory justification for denying comparable protection to NGI committees.”⁵⁰

It then continued:

A defendant who has successfully avoided criminal sanction by establishing his insanity at the time he committed the offense for which he was tried stands on essentially the same legal footing, in terms of his amenability to involuntary commitment, as any other member of society. Justification for imposing restraints upon his liberty must be found under legal criteria which do not “deviate substantially from those applied to civil commitments generally.” *State v. Krol, supra*, 68 *N.J.* at 251. Prospective NGI committees and prospective civil committees are constitutionally indistinguishable in terms of their entitlement to procedural and substantive due process rights. As we indicated in *Krol*, the “labels ‘criminal commitment’ and ‘civil commitment’ are of no constitutional significance” in this context. 68 *N.J.* at 251. Although the particular mechanisms for commitment to which such persons are subject may differ, the exercise of State power to deprive them of their liberty must be initially sanctioned and

subsequently reaffirmed under the same substantive test — present dangerousness by reason of mental illness. To underscore the identity of these two forms of involuntary imposition of restrictions on an individual's liberty due to mental disability, we direct that henceforth commitment proceedings involving prospective NGI committees shall be captioned as civil actions and entitled "In the Matter of the Commitment of _____." ⁵¹

On the issue of the burden of proof, the court similarly ruled that, as the State bears the burden of persuasion by a preponderance of the evidence on the necessity for the initial imposition of restraints, "it must similarly reestablish its authority to restrict the liberty of the committee by showing that his present condition warrants their continuance."⁵² It quoted what it characterized as an "eloquent" statement by the Connecticut Supreme Court of "compelling reasons" for allocating the burden of proof to the state at such hearing:⁵³

The burden should not be placed on the civilly committed patient to justify his right to liberty. Freedom from involuntary confinement for those who have committed no crime is the natural state of individuals in this country. The burden must be placed on the state to prove the necessity of stripping the citizen of one of his most fundamental rights, and the risk of error must rest on the state. Since the state has no greater right to confine a patient after the validity of the original commitment has expired than it does to commit him in the first place, the state must bear the burden of proving the necessity of recommitment, just as it bears the burden of proving the necessity for commitment.⁵⁴

The court thus reasoned that "the State must renew its authority to subject a committee to a partial or total deprivation of his liberty at each periodic review hearing by demonstrating that such a deprivation is warranted by the committee's current condition."⁵⁵

Following this clear and straightforward treatment of the relevant principles of constitutional law, the Court then shifted into a lengthy philosophical discourse on the *gestalt* of the review hearing. If the State fails to meet its burden of justifying continuance of restraints, it is the task of the reviewing judge to "mold" an appropriate order based upon his evaluation of the "level of restraints dictated by the committee's present condition."⁵⁶ However, "the mere failure of the State to prove the necessity of continuing the prevailing restraints does not entitle the committee to relaxation of those restraints to any extent he might desire;"⁵⁷ in all cases the "determination of the suitable level of restraint is a matter entrusted to the sound discretion of the reviewing judge . . . who must be accorded a wide range of flexibility."⁵⁸ And, "even where the committee's condition shows marked improvement, only the most extraordinary case would justify modification in any manner other than by a gradual deescalation of the restraints upon the committee's liberty."⁵⁹ Such a process of gradual deescalation will "substantially minimize the risk of erroneous determinations of non-dangerousness and will

thus protect the State's compelling interest in maintaining the safety and security of its citizens."⁶⁰

The court further ruled that, for the first two years of review hearings, "live" psychiatric testimony as to present mental condition and dangerousness must be presented⁶¹; after that point, that requirement may be relaxed and written reports of a psychiatrist who testified in an earlier proceeding may be submitted as long as they are based on current reevaluations.⁶² However, if the patient chooses to present his own psychiatric testimony at such a hearing in support of a request for lessening of restraints, and the State chooses to challenge that request, the State "should ordinarily support its position with psychiatric testimony."⁶³ A similar rule applies if the State seeks to tighten restraints.⁶⁴

This rule relaxation "is not intended to sanction any deprivation of the committee's right to meaningful confrontation,"⁶⁵ the court warned, noting that any factual evidence of the patient's behavior "bearing upon present dangerousness and contravened should be presented through competent evidence,"⁶⁶ and underscoring — once again — that "the committee in these proceedings enjoys rights of procedural and substantive due process comparable to those available in any judicial proceeding where liberty is at stake."⁶⁷

The court again repeated language from *Krol* that "the decision is not one that can be left wholly to the technical expertise of the psychiatrists and psychologists . . . [and] is ultimately a legal one, not a medical one,"⁶⁸ warning that judges "often accord undue deference to the presumed expertise underlying psychiatric opinions on [the] issue [of dangerousness];"⁶⁹ that psychiatric opinion "is no more conclusive on the dangerousness issue than is evidence from lay sources concerning particular instances where the committee has manifested actual or potential harmful behavior,"⁷⁰ and that "the final decision on the need for and appropriate extent of restrictions on the committee's liberty is *for the court, not the psychiatrists*."⁷¹

"The focus . . . must always be upon the actual conduct of the committee, not merely upon its characterization as 'criminal' or anti-social conduct,"⁷² the court continued, but added that the patient's "prior commission of an act for which he has been relieved of criminal responsibility is *powerful evidence* of his potential dangerousness."⁷³

At a review hearing, "*all* prior evidence, both factual and expert, pertaining to [the] issues of [current condition and need for restrictions on liberty] remains relevant;"⁷⁴ the new review hearing is not a "clean slate," although "the passage of time might diminish the relevancy of certain expert diagnostic evidence to the point where it may be insignificant."⁷⁵

The court finally ruled that its decision would have retrospective application to all NGRI patients "who are presently subject to any restraints upon their liberty,"⁷⁶ and thus ruled that all such persons⁷⁷ were entitled to a review hearing under the guidelines announced in *Fields* within 60 days of the entry of the opinion.⁷⁸

One judge concurred, objecting only to the two-year line of demarcation as to the type of psychiatric testimony required, seeing "no justification"⁷⁹ for such a distinction, while one justice dissented in part on the issue of the

quantum of burden of proof, arguing that the State should be required to prove "beyond any reasonable doubt"⁸⁰ the need to restrict one's liberty on account of mental illness.⁸¹ In no instance, however, did any member of the court dissent from the opinion's basic premises: that the NGRI patient is entitled to periodic review in the same way as any other patient, and that the burden of proof remains on the state at all such subsequent review hearings.

Has *Fields*, then, definitively clarified the issues in question? As is usually the case with opinions of a court of last resort,⁸² the answer can be only "Yes and no." It is likely that the opinion will be afforded heavy preential value in other states on both of its major holdings; on the other hand, the court did not clearly come to grips with the specific sub-issues of overpredictivity of dangerousness, "incurability" of psychiatric conditions, and significance of contemporaneity of diagnoses. Under *Krol* and *State v. Carter*,⁸³ an earlier New Jersey case, NGRI patients were guaranteed the "right to treatment."⁸⁴ This was not elaborated upon in *Fields* — most likely because there was no current evidence of her mental illness — so questions still remain in this regard. The opinion chose to couch ancillary issues in language involving the appropriate "suitable" level of restraints,⁸⁵ phraseology much more reminiscent of cases involving the "least restrictive alternative,"⁸⁶ a right made elsewhere applicable to all New Jersey patients by statute⁸⁷ and case law,⁸⁸ but not mentioned in *Fields*. Further, the troublesome issues of the scope of civil rights extended to NGRI patients is not dealt with squarely. Although virtually *all* such civil rights (save such specific areas as expungement⁸⁹ and interstate transferrability⁹⁰) generally are made applicable to *all* patients (including NGRI's) in states with "patients' bills of rights,"⁹¹ it still is likely that the precise scope of the extent of such rights will be dealt with by other courts on a strict case-by-case basis. *

Finally, although *Fields* gives the law, so to speak, to the lawyers for the patients, it — to some extent — gives the facts to the lawyers for the state. Its emphasis on the NGRI's "propensity . . . to engage in serious antisocial conduct . . . on at least one occasion"⁹² and on the fact that the prior commission of such an act is "powerful evidence of his potential dangerousness"⁹³ underlines the court's concern that truly dangerous persons — the paradigmatic "Son-of-Sam"-type patient — not be prematurely released. Indeed, in a footnote buried in the middle of the opinion, the court takes note of the "conceptual anomaly of the law, so often incomprehensible to lay persons and provocative of community outrage,"⁹⁴ which holds that an NGRI committee "may not accurately be considered as having engaged in criminal acts,"⁹⁵ virtually suggesting legislative action to "correct"⁹⁶ the anomaly.

Language such as this will most likely insure that, while NGRI patients are entitled to virtually full procedural due process protections under *Fields*, the cases of such patients will still be investigated minutely to insure that the NGRI patient is not, in the words of the title of a recent provocative article in the public press, "getting away with murder."⁹⁷ It is hoped, however, that this caution does not allow for the perpetuation of the situation referred to earlier, in which the acquitted patient is "doubly cursed . . . and doubly neglected."⁹⁸ Hopefully, it will mean that each case will be individually

assessed on a fact-by-fact, case-by-case basis in a procedurally fair context. Such an outcome truly would be a most needed reform welcomed by all parties to such proceedings.

References

1. See, e.g., Perlin: Psychiatric testimony in a criminal setting, 3 Bull Am Acad Psych & L 143, 146-147 (1975), and articles cited *id.*, at 150, n.40; Halpern: The insanity defense: A juridical anachronism, 7 Psych Annals 41 (1977)
2. German and Singer: Punishing the not guilty: Hospitalization of persons acquitted by reason of insanity. 29 Rutgers L Rev 1011, 1974 (1976) (hereinafter "Punishing the Not Guilty")
3. Thus, although the Task Force on Legal and Ethical Issues of the President's Commission on Mental Health specifically quoted the language of German and Singer, footnote 2, above, in support of its recommendation that the President's Commission "endorse legislation on a State level which would amend those statutes establishing jurisdiction of public defender offices to specify that such offices should represent persons in all matters involving... criminal responsibility," 4 App., Task Panel Reports to the President's Commission on Mental Health 1359, 1374 (1978), no such suggestion was incorporated as part of the Commission's "Protecting Basic Rights" recommendations sections; see 1 President's Commission on Mental Health, Report 42-45 (1978)
4. See, e.g., *Rouse v. Cameron*, 373 F. 2d 451 (D.C. Cir. 1966); *State v. Krol*, 68 N.J. 236, 344 A. 2d 289 (Sup. Ct. 1975); *Davis v. Watkins*, 384 F. Supp. 1196 (N.D. Ohio 1974); *Kesselbrenner v. Anonymous*, 33 N.Y. 2d 161, 305 N.E. 2d 903, 350 N.Y.S. 2d 889 (Ct. App. 1973).
5. "Punishing the Not Guilty," above, at 1011
6. 383 U.S. 107 (1966)
7. 405 U.S. 504 (1972)
8. 406 U.S. 715 (1972)
9. "Punishing the Not Guilty," above, at 1013
10. See, e.g., Burt: Of mad dogs and scientists: The perils of the "Criminal Insane," 123 U Pa L Rev 258 (1974)
11. *Bolton v. Harris*, 395 F.2d 642 (D.C. Cir. 1968)
12. *People v. Lally*, 19 N.Y. 2d 27, 224 N.E. 2d 87, 277 N.Y.S. 2d 654 (Ct. App. 1966)
13. *Bolton*, 395 F. 2d, above, at 647; *Lally*, 277 N.Y.S. 2d, above, at 660
14. See, e.g., *Wilson v. State*, 259 Ind. 375, 287 N.E. 2d 875 (Sup. Ct. 1972); *State ex rel. Kovach v. Schubert*, 64 Wis. 2d 612, 219 N.W. 2d 341 (Sup. Ct. 1974)
15. 68 N.J. 236, 344 A. 2d 289 (Sup. Ct. 1975). For an analysis of how the *Krol* decision signaled a "remarkable reversal" in policy by the New Jersey Supreme Court in three years, see "Punishing the Not Guilty," above, at 1031, n.83.
16. *Krol*, 68 N.J., above, at 253
17. *Id.* at 265
18. *Id.* at 259-260
19. See, e.g., "Punishing the Not Guilty," above, at 1030-1031; Note, Standard for commitment following acquittal by reason of insanity made uniform with that for civil commitment, 7 Seton Hall L Rev 412 (1976)
- 19A. Continuing insanity must be proved for criminal commitment. 29 Rutgers L Rev 576, 606 (1976)
20. "Punishing the Not Guilty," above, at 1075
21. *State v. Clemons*, 110 Ariz. 79, 515 P. 2d 324, 329 (Sup. Ct. 1973)
22. *People v. McQuillen*, 392 Mich. 511, 211 N.W. 2d 569, 582 (Sup. Ct. 1974)
23. *Wilson*, 287 N.E. 2d, above, at 881
24. *Reynolds v. Neill*, 381 F. Supp. 1374, 1385 (N.D. Tex. 1974), vacated on other grounds *sub nom. Sheldon v. Reynolds*, 442 U.S. 1050 (1975), on remand *sub nom. Reynolds v. Sheldon*, 404 F. Supp. 1004 (N.D. Tex. 1975)
25. See, e.g., *Reynolds*, above: "Any distinctions which were relevant for the purposes of commitment . . . have disappeared" (emphasis added).
26. *Dorsey v. Solomon*, 435 F. Supp. 725 (D. Md. 1977)
27. *United States v. Ecker*, 543 F. 2d 178 (D.C. Cir. 1976), *cert.den.* — U.S.—, 97 S. Ct. 788 (1977)
28. See, e.g., *Ecker*, 543 F. 2d, above, at 199: "We believe that prior criminal conduct . . . provides a 'reasonable justification' . . . for the differences in release procedures found in the D.C. Code."
29. *State v. Fields*, 75 N.J. 588, 384 A. 2d 819 (Sup. Ct. 1977)
30. *State v. Fields*, 77 N.J. 282, 289, 390 A. 2d 574 (Sup. Ct. 1978), (hereinafter *Fields*)
31. *Id.*
32. *Id.* at 289-290
- 32A. *Id.* at 292-293

33. *State v. Fields*, Ind. No. 3216-74 (Super. Ct. 1977) (order), at 2
34. *State v. Fields*, hearing of February 10, 1977 (Super. Ct. 1977), transcript, at 1.109-10 to 14
35. *Id.* at 1.109-18 to 19
36. *Fields*, 77 N.J., above, at 290
37. *Id.*
38. *State v. Fields*, Supplemental Supreme Court Brief of Defendant-Appellant (Sup. Ct. 1978), Point IA, at 2-32
39. *Id.*, Point IB, at 33-40
40. *Id.*, Point IC, at 41-47
41. *Id.*, Point II, at 50-66
42. *Fields*, 77 N.J., above, at 293
43. *Id.* at 294
44. *Id.* at 295 (emphasis added)
45. *Id.*
46. *Id.*
47. 422U.S. 563 (1975)
48. *Fields*, 77 N.J., above, at 295
49. *Id.* at 297
50. *Id.*
51. *Id.* at 297-298 (footnote omitted)
52. *Id.* at 300
53. *Id.*
54. *Id.*, quoting from *Fasulo v. Arafef*, 173 Conn. 473, 378 A.2d 553, 557 (Sup. Ct. 1977)
55. *Fields*, 77 N.J., above, at 301
56. *Id.* at 302
57. *Id.*
58. *Id.* at 303
59. *Id.*
60. *Id.*
61. *Id.* at 305
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.* at 306
68. *Id.* at 307, quoting *Krol*, 68 N.J., above, at 261
69. *Fields*, 77 N.J., above, at 307-308
70. *Id.* at 308
71. *Id.* (emphasis in original). See also, e.g., *In re R.B.*, 158 N.J. Super. 542 (App. Div. 1978)
72. *Fields*, 77 N.J., above, at 308-309
73. *Id.* at 309 (emphasis added)
74. *Id.* at 310 (emphasis in original)
75. *Id.*
76. *Id.* at 311
77. Thus, although the court noted there were only 53 persons committed pursuant to *Krol* as of six weeks prior to the issuance of the *Fields* opinion, *Fields*, 77 N.J., above, at 312, n.10, this number is believed to be inaccurate to a significant degree. First, it does not take into account patients at county hospitals or in several units of one of the four state hospitals; second, it does not include those patients conditionally released under *Krol* but still under significant "restraints upon their liberty." *Fields*, 77 N.J., above, at 311. See, for examples of such cases, "Punishing the Not Guilty," above, at 1068-1973, and especially, *id.* at nn.277-280, 284, and 289.
78. *Fields*, 77 N.J., above, at 312
79. *Fields*, 77 N.J., above, at 312, 313 (opinion of Conford, P.J.A.D. (t/a), concurring)
80. *Fields*, 77 N.J., above, at 314, 315 (opinion of Clifford, J., dissenting in part)
81. The *Fields* court had noted the "continued flurry of decisions either approving or rejecting a requirement that proof beyond a reasonable doubt is necessary to justify involuntary commitment of mentally ill persons," 77 N.J. at 299, n.6, but declined to modify its *Krol* position that a "preponderance of evidence is an appropriate and constitutionally permissible standard of proof," *id.*, until such time as the United States Supreme Court rules in *State v. Addington*, 557 S.W. 2d 511 (Tex. Sup. Ct. 1977), prob. juris. noted *sub nom.* *Addington v. Texas*, -U.S.-, 56 L.Ed. 2d 58 (1978), on the issue in question, *Fields*, 77 N.J. above at 300, n. 6. See *Addendum* below, after n. 98.
82. No appeal was taken by the Attorney General of New Jersey to the United States Supreme Court.

83. 64 N.J. 382, 316 A. 2d 449 (Sup. Ct. 1974)
84. *Carter*, 64 N.J., above, at 393; *Krol*, 68 N.J., above, at 262
85. *Fields*, 77 N.J., above, at 308
86. See, e.g., *Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972), vacated on other procedural grounds 414 U.S. 473 (1974), on remand 379 F. Supp. 1376 (E.D. Wis. 1974), vacated and remanded on other grounds 412 U.S. 957 (1975), reinstated 413 F. Supp. 1318 (E.D. Wis. 1976)
87. N.J.S.A. 30:4-24.2e(2)
88. See, e.g., *Krol*, 68 N.J., above, at 257
89. See, e.g., N.J.S.A. 30:4-80.10
90. See, e.g., N.J.S.A. 30:7B-9(a) (Interstate Compact on Mental Health)
91. E.g., N.J.S.A. 30:4-24.1 refers to "every individual who is mentally ill" and "every patient" interchangeably.
92. *Fields*, 77 N.J., above, at 308
93. *Id.* at 309
94. *Id.* at 301, n.7
95. *Id.* at 300, n.7
96. *Id.* at 301, n.7
97. Gleick: Getting away with murder. *New Times* 21 (Aug. 21, 1978)
98. "Punishing the Not Guilty," above, at 1011

Addendum. On April 30, 1979, the United States Supreme Court held, in *Addington v. Texas*, that the appropriate burden of proof in an involuntary civil commitment proceeding was "equal or greater than the 'clear and convincing' standard which we hold is required to meet due process guarantees." — U.S. —, 47 U.S.L.W. 4473, 4477 (1979).