Process Clause and in the realm of factfinding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'" [993]

Applying the formula it has worked out for determining what process is due in a particular situation,[994] the Court has held that a standard at least as stringent as clear and convincing evidence is required in a civil proceeding to commit an individual involuntarily to a state mental hospital for an indefinite period.[995] Similarly, because the interest of parents in retaining custody of their children is fundamental, the state may not terminate parental rights through reliance on a standard of preponderance of the evidence—the proof necessary to award money damages in an ordinary civil action—but must prove that the parents are unfit by clear and convincing evidence.[996] Further, unfitness of a parent may not simply be presumed because of some purported assumption about general characteristics, but must be established.[997]

As long as a presumption is not unreasonable and is not conclusive, it does not violate the Due Process Clause. Legislative fiat may not take the place of fact in the determination of issues involving life, liberty, or property, however, and a statute creating a presumption which is entirely arbitrary and which operates to deny a fair opportunity to repel it or to present facts pertinent to one's defense is void.[998] On the other hand, if there is a rational connection between what is proved and what is inferred, legislation declaring that

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[993] Addington v. Texas, 441 U.S. 418, 423 (1979) (quoting *In re* Winship, 397 U.S. 358, 370 (1970) (Justice Harlan concurring)).

[994] Mathews v. Eldridge, 424 U.S. 319 (1976).

[995] Addington v. Texas, 441 U.S. 418 (1979).

[996] Santosky v. Kramer, 455 U.S. 745 (1982). Four Justices dissented, arguing that considered as a whole the statutory scheme comported with due process. Id. at 770 (Justices Rehnquist, White, O'Connor, and Chief Justice Burger). Application of the traditional preponderance of the evidence standard is permissible in paternity actions. Rivera v. Minnich, 483 U.S. 574 (1987).

[997] Stanley v. Illinois, 405 U.S. 645 (1972) (presumption that unwed fathers are unfit parents). *But see* Michael H. v. Gerald D., 491 U.S. 110 (1989) (statutory presumption of legitimacy accorded to a child born to a married woman living with her husband defeats the right of the child's biological father to establish paternity.

[998] Presumptions were voided in Bailey v. Alabama, 219 U.S. 219 (1911) (anyone breaching personal services contract guilty of fraud); Manley v. Georgia, 279 U.S. 1 (1929) (every bank insolvency deemed fraudulent); Western & Atlantic R.R. v. Henderson, 279 U.S. 639 (1929) (collision between train and auto at grade crossing constitutes negligence by railway company); Carella v. California, 491 U.S. 263 (1989) (conclusive presumption of theft and embezzlement upon proof of failure to return a rental vehicle).