fined.[1262] Left to another day were such questions as "when, or by what procedures, a mentally ill person may be confined by the State on any of the grounds which, under contemporary statutes, are generally advanced to justify involuntary confinement of such a person—to prevent injury to the public, to ensure his own survival or safety, or to alleviate or cure his illness"[1263] and the right, if any, to receive treatment for the confined person's illness. To conform to due process requirements, procedures for voluntary admission should recognize the possibility that persons in need of treatment may not be competent to give informed consent; this is not a situation where availability of a meaningful post-deprivation remedy can cure the due process violation.[1264]

Procedurally, it is clear that an individual's liberty interest in being free from unjustifiable confinement and from the adverse social consequences of being labeled mentally ill requires the government to assume a greater share of the risk of error in proving the existence of such illness as a precondition to confinement. Thus, the evidentiary standard of a preponderance, normally used in litigation between private parties, is constitutionally inadequate in commitment proceedings. On the other hand, the criminal standard of beyond a reasonable doubt is not necessary because the state's aim is not punitive and because some or even much of the consequence of an erroneous decision not to commit may fall upon the individual. Moreover, the criminal standard addresses an essentially factual question, whereas interpretative and predictive determinations must also be made in reaching a conclusion on commitment. The Court therefore imposed a standard of "clear and convincing" evidence.[1265]

In *Parham v. J.R.*, the Court confronted difficult questions as to what due process requires in the context of commitment of allegedly mentally ill and mentally retarded children by their parents or by the state, when such children are wards of the state.[1266] Under the challenged laws there were no formal preadmission hearings, but psychiatric and social workers did interview parents and children and reached some form of independent determination that commitment was called for. The Court acknowledged the potential

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[1262] 422 U.S. at 576–77. The Court remanded to allow the trial court to determine whether Donaldson should recover personally from his doctors and others for his confinement, under standards formulated under 42 U.S.C. § 1983. *See* Wood v. Strickland, 420 U.S. 308 (1975); Scheuer v. Rhodes, 416 U.S. 232 (1974).

[1263] O'Connor v. Donaldson, 422 U.S. 563, 573 (1975).

[1264] Zinermon v. Burch, 494 U.S. 113 (1990).

[1265] Addington v. Texas, 441 U.S. 418 (1979). *See also* Vitek v. Jones, 445 U.S. 480 (1980) (transfer of prison inmate to mental hospital).

[1266] 442 U.S. 584 (1979). *See also* Secretary of Public Welfare v. Institutionalized Juveniles, 442 U.S. 640 (1979).