

Automatic and Indefinite Commitment Following an Insanity Acquittal: *Jones v. United States*¹ — The last few years have seen the introduction of widespread changes in the insanity defense in both federal and state jurisdictions. Many of these changes resulted from the intense outburst of public criticism of the defense which came in the wake of John Hinckley's insanity acquittal following his attempted assassination of President Ronald Reagan.² In the Comprehensive Crime Control Act of 1984, for example, Congress responded to public pressure by modifying the version of the defense used in federal circuits to limit its use by criminal defendants.³ Another statutory approach enacted by nine states in response to public criticism of the defense has been the enactment of "guilty but mentally ill" verdicts.⁴ A jury or court may enter such a verdict only when a defendant has put his mental health in issue by raising the insanity defense.⁵ Following a "guilty but mentally ill" verdict, an offender is sentenced in precisely the same fashion as are offenders who are simply found guilty.⁶ As is the case with the federal Comprehensive Crime Control Act of 1984, "guilty but mentally ill" statutes are widely viewed as efforts to limit the number of mentally ill offenders who may successfully raise the insanity defense.⁷

In addition to legislative modifications in the insanity defense designed to limit the scope of the defense, the United States Supreme Court recently handed down an opinion affecting the rights of mentally ill offenders. In *Jones v. United States*, the Court considered whether the government could constitutionally grant mentally ill individuals who are civilly committed greater procedural protections at commitment proceedings than those procedural protections afforded offenders acquitted by reason of insanity.⁸ Specifically, the Court considered whether an acquittal by reason of insanity alone constitutes a constitutionally adequate basis on which to ground an involuntary and indefinite psychiatric commitment.⁹ The Court found that it did.¹⁰ The Court further held that the requirements of due process are met when the government requires an individual committed following a successful insanity defense to bear the burden of showing that he has recovered his sanity or is no longer dangerous to obtain release from confinement.¹¹ In so holding, the *Jones* Court rejected the petitioner's claim that he was entitled to

¹ 463 U.S. 354 (1983).

² See *United States v. Hinckley*, 525 F. Supp. 1342 (D.D.C.), *op. clarified*, *reconsideration denied*, 529 F. Supp. 520 (D.D.C.), *aff'd* 672 F.2d 115 (D.C. Cir. 1982). For a discussion of the public outrage which followed Hinckley's acquittal, see Perr, *The Hinckley Case, the Media, and the Insanity Defense*, 28 J. FOR. SCI. 816, 818-20 (1983); Rodriguez, LeWinn, and Perlin, *The Insanity Defense Under Siege: Legislative Assault and Legal Rejoinders*, 14 RUTGERS L.J. at 897, 904-19 (1983); Slovenko, *The Insanity Defense in the Wake of the Hinckley Trial*, 14 RUTGERS L.J. 373, 373 (1983) [hereinafter cited as Slovenko].

³ Comprehensive Crime Control Act of 1984, Pub. L. 98-473 (Title II), 98 Stat. 1976 (1984).

⁴ Hermann, *Assault on the Insanity Defense: Limitations on the Effectiveness and Effect of the Defense of Insanity*, 14 RUTGERS L.J. 241, 360-69 (1983) [hereinafter cited as Hermann]; Slovenko, *supra* note 2, at 373, 392-95; Note, *Guilty But Mentally Ill: A Critical Analysis*, 14 RUTGERS L.J. at 453, 453-77 (1983) [hereinafter cited as Note, *Guilty But Mentally Ill*].

⁵ Hermann, *supra* note 4, at 360-61.

⁶ *Id.* at 362.

⁷ *Id.* at 362-71; Slovenko, *supra* note 2, at 393-95; Note, *Guilty But Mentally Ill*, *supra* note 4, at 465-77.

⁸ 463 U.S. 354, 371 (1983) (Brennan, J., dissenting).

⁹ *Id.*

¹⁰ *Id.* at 370.

¹¹ *Id.*

recommitment in proceedings where the government has the burden of proving mental illness and dangerousness.¹²

In *Jones*, the petitioner had been automatically committed following his insanity acquittal under District of Columbia Code section 24-301.¹³ This statute provides that in order to be acquitted by reason of insanity, a criminal defendant must prove by a preponderance of the evidence that the criminal act with which he is charged was committed because of mental illness.¹⁴ A person acquitted under this statute is automatically committed to a mental institution for an indefinite period of time.¹⁵ Fifty days following commitment, and every six months thereafter, the committed individual ("insanity acquittee") is entitled to a judicial hearing to determine whether he is still mentally ill or dangerous.¹⁶ The statute also provides that, to obtain a release from confinement, the insanity acquittee must prove by a preponderance of the evidence¹⁷ that he is no longer mentally ill or dangerous.¹⁸

Jones was arrested in September 1975 on a charge of attempted petit larceny for trying to steal a jacket from a department store.¹⁹ On the following day, he was arraigned and committed to a mental institution for psychiatric evaluation of his competency to stand trial.²⁰ Five and a half months later, a hospital psychiatrist submitted a report to the superior court, stating that although Jones was competent to stand trial, he was schizophrenic, and that his mental illness had produced his allegedly criminal behavior.²¹ The superior court determined that Jones was competent to stand trial, and Jones entered a plea of not guilty by reason of insanity.²²

On March 12, 1976, a few days after the submission of the psychiatrist's report, the District of Columbia Superior Court acquitted Jones of attempted petit larceny by reason

¹² *Id.*

¹³ *Id.*

¹⁴ D.C. CODE ANN. § 24-301(j) (1981) provides:

Insanity shall not be a defense in any criminal proceeding in the United States District Court for the District of Columbia or in the Superior Court of the District of Columbia, unless the accused or his attorney in such proceeding, at the time the accused enters his plea of not guilty or within 15 days thereafter or at such later time as the court may for good cause permit, files with the court and serves upon the prosecuting attorney written notice of his intention to rely on such defense. No person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by a preponderance of the evidence.

¹⁵ D.C. CODE ANN. § 24-301(d)(1) (1981) provides:

If any person tried upon an indictment or information for an offense raises the defense of insanity and is acquitted solely on the ground that he was insane at the time of its commission, he shall be committed to a hospital for the mentally ill until such time as he is eligible for release pursuant to this subsection or subsection (e) of this section.

¹⁶ D.C. CODE ANN. §§ 24-301(d)(2), 24-301(k) (1981).

¹⁷ D.C. CODE ANN. § 24-301(d)(2)(B) (1981).

¹⁸ D.C. CODE ANN. § 21-545(b) (1981). The insanity acquittee is also entitled to release on court approval of certification of recovery by the mental institution chief of service. D.C. CODE ANN. § 24-301(e) (1981).

¹⁹ *Jones*, 463 U.S. at 359.

²⁰ *Id.* Although the *Jones* Court cites to the 1981 District of Columbia Code, the petitioner in *Jones* was committed under the 1973 District of Columbia Code. The statutory content in relevant sections is substantially the same in both versions.

²¹ 463 U.S. at 359-60.

²² *Id.* at 360.

of insanity.²³ He was committed to St. Elizabeth's Hospital under District of Columbia Code section 24-301(d).²⁴ This provision states that a person may be acquitted of a crime by reason of insanity²⁵ if the individual's insanity is "affirmatively established by a preponderance of the evidence."²⁶ Following commitment, the insanity acquittee is entitled to a judicial hearing within fifty days of confinement, and every six months thereafter,²⁷ to determine whether he has regained his sanity or is no longer dangerous.²⁸ The insanity acquittee is also entitled to release upon court approval of a certification of recovery by the confining institution's chief of service.²⁹

Jones' fifty-day release hearing was held on May 25, 1976 in the District of Columbia Superior Court.³⁰ The court found that Jones remained mentally ill and dangerous, and he was returned to St. Elizabeth's Hospital.³¹ On February 22, 1977, more than a year after Jones was first committed, a second release hearing was held.³² At this hearing, Jones argued that he was entitled to immediate release because he had been confined for a period of time which exceeded the maximum possible prison sentence of one year for the crime of attempted petit larceny.³³ Alternatively, the petitioner argued that, if not entitled to immediate release, he was entitled to recommitment under procedures similar to the procedures used in civil commitments.³⁴ Those procedures included the right to a jury

²³ *Id.*

²⁴ *Id.* See *supra* note 15 for the language of D.C. CODE ANN. § 24-301(d)(1) (1981).

²⁵ D.C. CODE ANN. § 24-301(j) (1981). The rule in the District of Columbia for finding that a person committed a crime because he was mentally ill was enunciated by the District of Columbia Court of Appeals in *United States v. Brawner*, 471 F.2d 969 (D.C. Cir. 1972). The *Brawner* court adopted the American Law Institute MODEL PENAL CODE § 4.01, which provides that a "person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law."

²⁶ Generally, three standards of proof have been developed for use in determining whether or not a defendant is guilty of a crime, liable for an act, or may be excused from liability, as in commitment proceedings. The "preponderance of the evidence" standard is applied in civil suits. See Simon and Mahan, *Quantifying Burdens of Proof*, 5 L. & Soc. REV. 319 *passim* (1971) [hereinafter cited as *Burdens of Proof*]. It is the least burdensome standard for the moving party to meet, in part because society is minimally concerned with the outcome of private civil disputes. See *Addington v. Texas*, 441 U.S. 418, 423 (1979). The "clear and convincing evidence" standard is an intermediate one, less burdensome to the moving party than the "beyond a reasonable doubt" standard. *Id.* at 424. The "clear and convincing" standard applies when the risk of an erroneous outcome carries with it the potential for greater harm to the individual than in suits applying a "preponderance" standard. *Id.* Thus, the risk of an erroneous deprivation is lowered by increasing the plaintiff's burden of proof. *Id.* The "clear and convincing" standard is also used to "protect particularly important individual interests in various civil cases." *Id.* Finally, in criminal trials, evidence that a person committed a crime must be proved "beyond a reasonable doubt" in order for the accused to be convicted. See *Burdens of Proof*, *supra*, at 319. This standard reflects society's desire to rule out the risk of an erroneous deprivation by placing that risk almost entirely on itself. See *Addington*, 441 U.S. at 423-24.

²⁷ D.C. CODE ANN. §§ 24-301(d)(2), 24-301(k)(5) (1981).

²⁸ D.C. CODE ANN. § 24-301(e) (1981). The *Jones* Court determined that, under District of Columbia Code provisions, both civil committees and insanity acquittees, to obtain release from confinement, must show that they are no longer mentally ill or dangerous to themselves or others. 463 U.S. at 358 n.3.

²⁹ D.C. CODE ANN. § 24-301(e) (1981).

³⁰ 463 U.S. at 360.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* D.C. CODE ANN. § 21-545 regulates civil commitment proceedings in the District of

trial on the issue of continuing insanity, with the government bearing the burden of proving insanity by clear and convincing evidence.³⁵ The superior court held that Jones was not entitled either to immediate release or to recommitment under civil commitment proceedings.³⁶

Jones appealed this ruling to the District of Columbia Court of Appeals. A panel of

Columbia. Under this section, a civil committee has the right to a jury. D.C. CODE ANN. § 21-545(b) (1981). In addition, the government bears the burden of proving insanity at the commitment hearing by "clear and convincing evidence." See *infra* note 35. At the time Jones' case was before the Superior Court, the government had to prove insanity and dangerousness by a "preponderance of the evidence" in civil commitment proceedings in the District of Columbia. *Bolton v. Harris*, 395 F.2d 642, 651 (D.C. Cir. 1966). This standard has since been changed by the Court's decision in *Addington v. Texas*, 441 U.S. 418 (1979). See *infra* notes 111-26 and accompanying text for a discussion of *Addington* (standard of proof in civil commitment cases must be proof of mental illness and dangerousness by "clear and convincing evidence").

Case law in the District of Columbia supports the petitioner's argument in *Jones* that he was entitled either to immediate release upon the expiration of the maximum possible prison sentence for his crime or to recommitment under procedures similar to those used in civil commitment proceedings. The petitioner relied on these cases to support his constitutional claims. See Brief for Petitioner at 28; *Jones v. United States*, 463 U.S. 354 (1983). For example, in *Waite v. Jacobs*, 475 F.2d 392 (D.C. Cir. 1973), the appellant was acquitted by reason of insanity of assault with a dangerous weapon and was committed to a mental institution. *Id.* at 393. The appellant contended that, after expiration of a period equal to the duration of the maximum possible prison sentence he could have received had he been convicted, the burden should shift to the government to prove that he continued to be mentally ill and dangerous and therefore that his confinement should continue. *Id.* at 394-95. The District of Columbia Court of Appeals remanded the appellant's case, holding that on remand the lower court should consider the appellant's claim. *Id.* at 400-01. No printed record exists of the disposition of appellant's case on remand. In reaching its conclusion that the appellant had raised a colorable claim, the Court of Appeals reasoned that after the expiration of the period an insanity acquittee could have been incarcerated had he been convicted some question existed whether, under the equal protection clause, it was irrational to distinguish between insanity acquittees and civil committees when allocating the burden of proving continuing mental illness and dangerousness. *Id.* at 395.

Similar criticism of the District of Columbia's commitment scheme is found in *United States v. Brown*, 478 F.2d 606 (D.C. Cir. 1973). In *Brown*, the appellant was acquitted by reason of insanity of several crimes, including robbery, assault and rape. *Id.* at 607. The United States Court of Appeals for the District of Columbia held that the "preponderance of the evidence" rather than the "reasonable doubt" standard should be used when determining whether someone found not guilty by reason of insanity is mentally ill and should be committed to a mental institution. *Id.* at 612. In reaching this conclusion, the *Brown* court questioned the constitutionality of the District's commitment scheme under which the appellant had been committed. *Id.* The court stated that, when a committed person has been detained for a "considerable period," continued detention should be governed by the standard of proof used in civil commitments. *Id.* The court further stated that, although the length of each commitment is discretionary, several factors should be taken into account when determining the appropriate commitment duration. *Id.* These factors included whether a crime was violent or not, the nature of the treatment, and the committed person's response to treatment. *Id.* The court concluded that confinements generally would not exceed five years and never should exceed the maximum sentence for the offense, minus mandatory release time. *Id.*

³⁵ See D.C. CODE ANN. § 21-545(b) (1981). Civil commitment procedures differ from procedures available when an insanity acquittee challenges continuing commitment. Under D.C. CODE ANN. § 24-301(j), a committed insanity acquittee bears the burden of proving, by a preponderance of the evidence that he has recovered his sanity. Under D.C. CODE ANN. § 21-545(b), which regulates civil commitment proceedings, an individual whom the government seeks to commit may have a jury, and the government bears the burden of proving insanity by "clear and convincing evidence." See *supra* note 34.

³⁶ *Jones*, 463 U.S. at 360-61.

the court initially affirmed the lower court decision,³⁷ but then reversed on rehearing.³⁸ Ultimately, the Court of Appeals heard the case en banc and affirmed the superior court's ruling.³⁹ The court held that Jones' due process and equal protection rights were not violated by continuing commitment.⁴⁰ In reaching its holding, the court of appeals addressed Jones' argument that the District of Columbia's criminal commitment scheme was partly punitive in nature.⁴¹ In the District of Columbia, Congress has determined that an insanity acquittal raises presumptions of continuing mental illness and dangerousness sufficiently strong to ground an automatic commitment.⁴² Jones argued that an insanity acquittal alone was constitutionally insufficient to ground presumptions of continuing dangerousness and mental illness in every case.⁴³ He also argued that, because automatic commitment could not be justified by evidence of dangerousness in every case, to presume dangerousness, when in fact none existed, was impermissibly punitive.⁴⁴ Finally, Jones argued that, because it was based on a punitive rationale, his continuing confinement was unconstitutional.⁴⁵ The court of appeals rejected Jones' constitutional claims.⁴⁶ The court concluded that Jones' commitment was based on legitimate and nonpunitive grounds, including the government's strong interest in protecting the public and rehabilitating mental patients.⁴⁷ Additionally, the court found that the duration of a commitment was solely a function of the length of time necessary for a patient either to recover his sanity or to stop being dangerous to himself or to others.⁴⁸ Consequently, the court concluded that Jones' claim that he either be released or civilly committed was without merit.⁴⁹

³⁷ *Jones v. United States*, 396 A.2d 183 (D.C. 1978).

³⁸ *Jones v. United States*, 411 A.2d 624 (D.C. 1980). This reversal was based on an interpretation of the District of Columbia's commitment-release procedures for insanity acquitees as partly punitive in nature. *Id.* at 630. The Court of Appeals panel held that, because of the partly punitive character of the District of Columbia's commitment-release procedures for insanity acquitees, as a matter of equal protection, committed insanity acquitees must either be released or civilly committed following the expiration of the maximum possible prison sentence they could have received had they been convicted. *Id.* See D.C. CODE ANN. § 24-301(d) (1981). In concluding that the District of Columbia criminal commitment statute was partly punitive in nature, the Court of Appeals panel rejected the government's argument that an acquittal by reason of insanity raises a presumption of continuing mental illness sufficient to ground its automatic commitment of insanity acquitees. *Jones*, 411 A.2d at 630. On the basis of its rejection of this argument, the court held that differences between the District of Columbia's criminal and civil commitment procedures "cannot be justified on purely evidentiary grounds," and that the criminal commitment-release procedure was partly punitive in nature. *Id.* The panel concluded that the petitioner should be immediately released or civilly committed because the maximum prison sentence of one year he could have received if convicted had expired. *Id.*

³⁹ *Jones v. United States*, 432 A.2d 364, 376 (D.C. 1981).

⁴⁰ *Id.* at 371-76.

⁴¹ *Id.* at 371.

⁴² See D.C. CODE ANN. § 24-301(d)(1) (1981). See also *Jones*, 103 S. Ct. at 3048-50 (citing H.R. REP. NO. 91-907, 91st Cong., 2d Sess. 74 (1970)).

⁴³ *Jones*, 432 A.2d at 370-74.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 368.

⁴⁷ *Id.* at 371.

⁴⁸ *Id.* at 369-70.

⁴⁹ *Id.* at 370.

The court of appeals also considered Jones' equal protection argument that the government should bear the burden of proving continued insanity by clear and convincing evidence after the expiration of the maximum possible prison sentence which he could have received had he been convicted of attempted petit larceny.⁵⁰ According to the court, the differences between civil and criminal commitment procedures, which include different standards of proof and the unavailability of a jury at the criminal commitment release hearing, were rationally related to situational differences between civil and criminal commitments.⁵¹ On this ground the court held that the government had no duty to prove continuing insanity.⁵²

After granting certiorari, the United States Supreme Court affirmed the decision of the court of appeals, and held that the government could constitutionally continue the petitioner's indefinite commitment.⁵³ The Court rejected the petitioner's arguments that he was constitutionally entitled to an immediate release from psychiatric hospitalization or to recommitment under proceedings in which the government has the burden of proving mental illness or dangerousness.⁵⁴ In upholding the validity of the District of Columbia's commitment-release procedures, the Court concluded that the government could constitutionally commit a criminal defendant following an acquittal by reason of insanity automatically for an indefinite period of time.⁵⁵

This casenote will examine the *Jones* Court's ruling on the constitutionality of the challenged release provisions of the District of Columbia's criminal commitment statute. To demonstrate how *Jones* departs from the clear trend established by the Court in prior commitment cases increasing procedural protections for mentally ill offenders, the casenote will first review Supreme Court cases which have addressed the question of what procedural protections are constitutionally required when mentally ill offenders are committed. The casenote will then review the majority opinion and Justice Brennan's dissenting opinion. Finally, the Court's opinion in *Jones* will be analyzed. The casenote will conclude that *Jones* was incorrectly decided for three principal reasons. First, the *Jones* Court accorded little weight to relevant case law in the commitment area. Although no prior Supreme Court case is directly on point, the casenote will demonstrate that the holdings in earlier Supreme Court cases in this area support Jones' argument that continued commitment violates his constitutional rights under the due process clause. Second, due process requires that a constitutional commitment be based on findings of mental illness and dangerousness. It will be submitted that, because the petitioner's

⁵⁰ *Id.* at 371. See *infra* notes 135 and 247 for a discussion of the Supreme Court's treatment of the petitioner's equal protection claims.

⁵¹ *Jones*, 432 A.2d at 374-75. Included among these differences is that an insanity acquittee, unlike a civil committee, affirmatively raises the issue of mental illness. *Id.* at 375. In addition, because insanity acquittees raise and prove at trial that they were insane when they committed their crimes, the court concluded that Congress could constitutionally require committed acquittees to bear the burden of proving recovered sanity at subsequent release hearings. *Id.* Contrasting civil committees from committed insanity acquittees, the court stated that when the government seeks to commit a person civilly who disputes the government's position that he is both insane and dangerous, in contrast to the situation which exists when defendants themselves raise the issue of insanity at their criminal trials, it is "reasonable" that the government rather than the civil commitment candidate bear the heavier burden of proof. *Id.*

⁵² *Id.*

⁵³ 463 U.S. at 370.

⁵⁴ *Id.*

⁵⁵ *Id.*

commitment in *Jones* was based simply on presumptions and not on findings of both mental illness and dangerousness, his continued commitment is a violation of due process. Third, due process requires that a reviewing court carefully weigh each important interest in a case before reaching its holding. It will be submitted that the *Jones* Court failed to give the petitioner a constitutionally adequate review of his claims by failing to balance all important interests involved in this case prior to reaching its conclusion that the petitioner was not entitled to release or recommitment under procedures similar to civil commitment proceedings. For these reasons, the article will conclude that the Court's decision in *Jones* marks an unwarranted retreat from the previously unbroken Supreme Court trend toward strengthened procedural protections for mentally ill offenders.

I. THE TREND TOWARD STRENGTHENED PROCEDURAL PROTECTIONS FOR MENTALLY ILL OFFENDERS: SUPREME COURT CASE LAW PRIOR TO *JONES V. UNITED STATES*

No Supreme Court case directly addresses the question of what procedural protections are required following a successful insanity defense.⁵⁶ A number of Supreme Court cases, however, have addressed various problems relating to the confinement of mentally ill individuals and the concomitant curtailment of their liberty. For example, in *Baxstrom v. Herold*, the Court reviewed a constitutional challenge to the automatic civil commitment of a prisoner who had served a sentence for assault.⁵⁷ In *Baxstrom*, the petitioner challenged the New York Department of Corrections request that he be civilly committed under special procedures used only when the state sought to commit a prisoner nearing the end of his prison sentence.⁵⁸ The Supreme Court held that the petitioner could not be committed to a mental institution under these circumstances, but that he was entitled to the same procedural protections afforded all other civil commitment candidates.⁵⁹ Because he was not given the right to a jury review of the determination of his insanity, and because he was denied a judicial determination that he was dangerously insane, the Court concluded that the petitioner was denied equal protection.⁶⁰ In reaching the conclusion that the petitioner was entitled to a jury review of the determination that he was insane, the *Baxstrom* Court reasoned that, because all other candidates for civil commitment were given these procedural safeguards, no conceivable basis existed for distinguishing between a commitment candidate nearing the end of his prison sentence and other civil commitment candidates.⁶¹ In *Baxstrom*, therefore, the Court found that the presence of criminality along with mental illness was not, without more, a constitutionally adequate ground on which to distinguish between differently situated civil commitment candidates.⁶²

The Supreme Court has also held that constitutionally sufficient procedural protections must be provided where convicted criminals may be subject to commitment in lieu of sentencing because of the nature of their crimes.⁶³ In *Specht v. Patterson*, the Supreme

⁵⁶ See *id.*

⁵⁷ *Baxstrom v. Herold*, 383 U.S. 107 (1966) (Black, J., concurring).

⁵⁸ *Id.* at 108.

⁵⁹ *Id.* at 110-11.

⁶⁰ *Id.* at 110.

⁶¹ *Id.* at 111-13.

⁶² *Id.* at 111-12; see *Jones*, 463 U.S. at 380 (Brennan, J., dissenting) (mental illness plus criminal behavior constitutionally insufficient grounds for indefinite psychiatric commitment).

⁶³ *Specht v. Patterson*, 386 U.S. 605 (1967) (Harlan, J., concurring in result).

Court considered the constitutional validity of state commitment procedures basing indefinite confinement on a determination that an individual was an habitual offender and mentally ill or dangerous to the public.⁶⁴ The *Specht* Court held that the petitioner had been denied due process by the procedures under which he was committed to a treatment facility for sexual offenders.⁶⁵ In *Specht*, the petitioner was convicted for taking "indecent liberties" under a statute specifying a maximum possible sentence of ten years.⁶⁶ On the basis of his conviction, the petitioner was sentenced in a separate proceeding under a statute which called for detention for an indefinite period of time from one day to life.⁶⁷ The Court held that the petitioner was denied due process because his conviction based an entirely separate sentencing proceeding where new findings of fact had been made on the question whether he was an habitual offender and mentally ill or dangerous.⁶⁸ The Court further held that the sentencing proceeding, where it was determined whether the petitioner was an habitual offender and mentally ill or dangerous, must afford the petitioner stronger procedural protections because de novo fact finding was involved.⁶⁹ In listing the procedural protections that were constitutionally necessary during the second sentencing proceeding, the *Specht* Court concluded that due process required that the petitioner have counsel, an opportunity to be heard and to confront witnesses against him, the right to cross-examine, and the right to present evidence.⁷⁰ Concluding that there must be findings adequate to make meaningful any appeals allowed, the Court found that none of the constitutionally mandated procedural protections were present in the proceedings in question.⁷¹

The *Specht* decision highlights the Court's concern in decisions prior to *Jones* that persons committed under proceedings involving new findings of fact on the issues of mental illness and dangerousness receive the same or similar procedural protections given other similarly situated commitment candidates. In *Specht*, the Court determined that such persons should not be denied constitutionally guaranteed procedural rights simply because, in addition to being mentally ill, they have committed criminal acts.

The Supreme Court again heard a constitutional challenge to an indefinite commitment in *Humphrey v. Cady*.⁷² The petitioner in *Humphrey* was convicted in Wisconsin of contributing to the delinquency of a minor, a crime punishable by a maximum prison sentence of one year.⁷³ Under the statute challenged in this case, a person convicted of a sexually-motivated crime was referred to the Department of Public Welfare for evaluation.⁷⁴ If the Department recommended treatment for mental or physical abnormalities, a hearing was held at which the state presented evidence on the individual's need for treatment.⁷⁵ The individual would be committed to the Department by the court, rather

⁶⁴ *Id.* at 606-08.

⁶⁵ *Id.*

⁶⁶ *Id.* at 607. See COLO. REV. STAT. ANN. § 40-2-32 (1963).

⁶⁷ *Specht*, 386 U.S. at 607-08. See COLO. REV. STAT. ANN. § 39-19-1 -10 (1963).

⁶⁸ *Specht*, 386 U.S. at 607-09.

⁶⁹ *Id.* at 608-11.

⁷⁰ *Id.*

⁷¹ *Id.* at 610-11.

⁷² 405 U.S. 504 (1972).

⁷³ The petitioner was convicted under WIS. STAT. ANN. § 947.15 (1958).

⁷⁴ *Humphrey*, 405 U.S. at 507; see WIS. STAT. ANN. § 959.15 (1958). Under this statute, the individual was initially committed for treatment for a period equal to the maximum possible sentence for that crime. At the end of that period, however, the commitment could be renewed for periods of up to five years.

⁷⁵ *Humphrey*, 405 U.S. at 507.

than sentenced, if the need for treatment was proved.⁷⁶ The commitment to the Department was of the same duration as the maximum possible sentence for the crime.⁷⁷ At the end of the commitment period, the individual could be recommitted for additional five-year periods if the reviewing court found that he would be a public danger due to some mental or physical abnormality.⁷⁸

In *Humphrey*, the petitioner was committed under the Wisconsin Sex Crimes Act for one year, and subsequently recommitted under a court order for five years.⁷⁹ The petitioner challenged his recommitment, arguing that he was entitled to the same procedural protections as civil commitment candidates.⁸⁰ Under the Wisconsin civil commitment statute which the petitioner cited, a commitment candidate had the right to a jury determination on the question whether he met the standards for commitment.⁸¹ The petitioner argued that his recommitment for a five-year period, made without a jury, denied him equal protection because he was not given the same procedural protections as individuals hospitalized under the civil commitment statute.⁸² Noting that the commitment-renewal proceedings closely resembled the post-sentence commitment procedure challenged in *Baxstrom*, the *Humphrey* Court rejected the lower court's conclusion that the petitioner's constitutional claims were too frivolous to require an evidentiary hearing and remanded the case.⁸³ By holding that the petitioner in *Humphrey* had a colorable claim that his constitutional rights had been violated under the challenged proceeding, the Court reinforced its position that individuals committed under proceedings involving new findings of fact are constitutionally entitled to the same procedural protections afforded to similarly situated civil commitment candidates.

In *Jackson v. Indiana*, the Supreme Court again considered the question of what procedural protections are guaranteed under the Constitution to individuals indefinitely committed.⁸⁴ The petitioner in *Jackson* was a mentally defective deaf-mute charged with robbery.⁸⁵ Under Indiana law,⁸⁶ the petitioner was given a non-jury hearing during which he was represented by counsel to determine his competency to stand trial.⁸⁷ Following this hearing, the petitioner was committed to the Indiana Department of Mental Health until such time as it certified him "sane."⁸⁸ Ruling on the petitioner's challenge to his commitment, the Supreme Court noted that due to Jackson's deafness, mental deficiency, and extremely poor communication skills it was unlikely that he would ever be found competent to stand trial.⁸⁹ The Court concluded that the petitioner's commitment was, for all practical purposes, permanent, and held that Indiana could not constitutionally commit him for an indefinite length of time simply because he was incompetent to stand trial.⁹⁰

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ WIS. STAT. ANN. § 51.03 (1957).

⁸² *Humphrey*, 405 U.S. at 508.

⁸³ *Id.* at 517. No published record of the disposition of the petitioner's case on remand exists.

⁸⁴ *Jackson v. Indiana*, 406 U.S. 715 (1972).

⁸⁵ *Id.* at 717.

⁸⁶ IND. ANN. STAT. § 9-1706a (Supp. 1971), subsequently IND. CODE § 35-5-3-2 (1971).

⁸⁷ *Jackson*, 406 U.S. at 718.

⁸⁸ *Id.* at 719.

⁸⁹ *Id.* at 725-26.

⁹⁰ *Id.* at 730.

In *Jackson*, the Court held that the petitioner's equal protection and due process rights had been violated. First, the Court held that the petitioner's rights under the equal protection clause were violated because he was not given access to procedural safeguards afforded persons civilly committed because of mental illness or feeble-mindedness.⁹¹ Second, the Court held that the petitioner's rights under the due process clause had been violated.⁹² Observing that, at a minimum, due process requires that both the nature and duration of commitment must bear some "reasonable relation" to the purpose for which the individual is committed, the Court concluded that it would violate due process to commit a person charged with a crime for a period longer than the amount of time necessary to determine whether he would become competent to stand trial in the foreseeable future.⁹³

In *Baxstrom*, *Specht*, *Humphrey*, and *Jackson* the Supreme Court concluded that the commitment procedures in question were unconstitutional because they failed to provide adequate procedural protections to the petitioners. In each of these cases, the Court held that where the challenged commitment proceedings involved new findings of fact, individuals committed under those procedures were entitled to the same procedural protections as other individuals hospitalized under the state's ordinary civil commitment statute. Furthermore, these cases firmly established a general trend in Supreme Court cases increasing procedural protections for mentally ill offenders.

In the commitment area, the Supreme Court has also considered questions concerning the required factual basis for a constitutional commitment,⁹⁴ the scope of the interest balancing a reviewing court must perform when considering a mentally ill individual's constitutional challenge to state action,⁹⁵ and the standard and burden of proof a party must meet in civil commitment proceedings.⁹⁶

In *O'Connor v. Donaldson*, the Supreme Court considered the first of these questions and held that only when an individual is found to be both dangerous and mentally ill can he be constitutionally committed.⁹⁷ The respondent in that case was committed to a mental institution for fifteen years for care, maintenance, and treatment following his father's claim that he was delusional.⁹⁸ The respondent brought an action against the

⁹¹ *Id.* at 729-30.

⁹² *Id.* at 731.

⁹³ *Id.* at 738. A similar Supreme Court case involved a minor convicted of two assaults and sentenced to five years in prison. *McNeil v. Director, Patuxent Institution*, 407 U.S. 245 (1972). Instead of serving his sentence, McNeil was sent to a state mental health facility for an evaluation to determine whether he should be committed for treatment. *Id.* at 246. McNeil refused to cooperate with the mental health professionals there and was detained for evaluation beyond the time he could have been incarcerated. *Id.* The *McNeil* Court concluded that the same due process considerations circumscribing the petitioner's possible indefinite detention in *Jackson v. Indiana* on the ground that he was incompetent to stand trial controlled McNeil's indefinite commitment for observation and evaluation. *Id.* at 249. Relying on *Specht v. Patterson*, 386 U.S. 605 (1967), and *Humphrey v. Cady*, 405 U.S. 504 (1972), the *McNeil* Court held that, because the petitioner had been held without a hearing or an opportunity to be heard, he had been denied due process and should be immediately discharged.

⁹⁴ *O'Connor v. Donaldson*, 422 U.S. 563 (1975). See *infra* notes 97-103 and accompanying text for a discussion of *O'Connor*.

⁹⁵ *Mathews v. Eldridge*, 424 U.S. 319 (1976). See *infra* notes 105-10 and accompanying text for a discussion of *Mathews*.

⁹⁶ *Addington v. Texas*, 441 U.S. 418 (1979). See *infra* notes 111-26 and accompanying text for a discussion of *Addington*.

⁹⁷ *O'Connor v. Donaldson*, 422 U.S. 563, 575-76 (1975).

⁹⁸ *Id.* at 565-66.

institution's director and other staff members, claiming that they had intentionally deprived him of his constitutionally based right to liberty.⁹⁹ He claimed that the director and staff members could have released him at any time because they had authority to release mentally ill patients who were not dangerous.¹⁰⁰ Concluding that there is no constitutional basis for involuntarily confining nondangerous, mentally ill persons if they can live safely in freedom, the Court held that a person must be both dangerous and mentally ill before a state can constitutionally commit him.¹⁰¹ Although the case was remanded on other grounds,¹⁰² the *O'Connor* Court concluded that the petitioner, as a nondangerous person capable of living safely outside a mental institution, was constitutionally entitled to his freedom.¹⁰³

Along with the requirement that a constitutional commitment be based on findings of both mental illness and dangerousness, due process requires that the government give individuals adequate notice and an opportunity to be heard.¹⁰⁴ In addition, due process requires that a court considering a challenge to state action carefully balance each important interest involved in a case when reaching its conclusion on the constitutionality of the state action.¹⁰⁵ The Supreme Court recently enunciated the principle elements required in a constitutionally adequate due process analysis in *Mathews v. Eldridge*.¹⁰⁶ In that case, the Court specified that a court reviewing a challenge to governmental action must balance three factors to insure that the challenged government action meets the requirements of due process. First, a court must examine the private interest affected by governmental action.¹⁰⁷ Second, a court must consider the government's interest in the function involved,¹⁰⁸ including consideration of the fiscal and administrative costs that

⁹⁹ *Id.* at 565.

¹⁰⁰ *Id.* at 567. At trial, the mental institution's director was unable to provide reasons why he had concluded that the respondent would have been unable to adjust to life outside the institution. *Id.* at 567-68.

¹⁰¹ *Id.* at 575-76.

¹⁰² *Id.* at 577.

¹⁰³ *Id.* at 576.

¹⁰⁴ *Fuentes v. Shevin*, 407 U.S. 67, 80-82 (1972); *Specht v. Patterson*, 386 U.S. 605, 608-11 (1967); see also L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 512-14 (1978) [hereinafter cited as L. TRIBE]; see generally Note, *Rules for an Exceptional Class: The Commitment and Release of Persons Acquitted of Violent Offenses by Reason of Insanity*, 57 N.Y.U. L. REV. 281 (1982).

¹⁰⁵ See, e.g., *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 80-96 (1972) (states' prejudgment replevin statutes unconstitutional under due process clause because no hearing permitted plaintiffs prior to states' seizure of property); *Cafeteria & Restaurant Workers Local 473 v. McElroy*, 367 U.S. 886, 894-99 (1961) (summary exclusion of worker from naval facility without hearing or notification of cause held not to violate due process clause).

¹⁰⁶ 424 U.S. 319, 334-35 (1976). *Mathews* involved a constitutional challenge made by a person whose social security disability benefits had been cut off. *Id.* at 324. The petitioner questioned the constitutional validity of the Department of Health, Education and Welfare ("HEW") procedures used in establishing whether or not a social security recipient had a continuing disability. *Id.* at 324-25. The Supreme Court held that the procedures used by HEW were constitutional under the due process clause, and that no evidentiary hearing was necessary prior to terminating disability benefits. *Id.* at 349.

¹⁰⁷ *Id.* at 335. In the commitment context, the private interest involved includes loss of liberty as well as stigma associated with involuntary confinement. *Jones*, 463 U.S. at 383 (Brennan, J., dissenting).

¹⁰⁸ *Mathews*, 424 U.S. at 335. In the commitment context, this consideration involves the government's interest in protecting society from dangerously mentally ill individuals. *Jones*, 463 U.S. at 377 (Brennan, J., dissenting).

additional or more complex procedures would require.¹⁰⁹ The final step in the analysis requires a court to weigh the risk of error involved in using the challenged procedure against the value of strengthened procedural safeguards.¹¹⁰

The Supreme Court recently applied the *Mathews* due process balancing test in *Addington v. Texas* in determining which standard of proof is constitutionally required in civil commitment proceedings.¹¹¹ In addition, the *Addington* Court considered whether the government or the commitment candidate should bear the burden of proving or disproving insanity at commitment proceedings.¹¹² After weighing the state's interests in accurate and efficient commitment proceedings against the petitioner's interests in avoiding commitment, the *Addington* Court concluded that a civil commitment candidate's interest in liberty and autonomy outweigh the government's interests in isolating, protecting and treating mentally ill persons.¹¹³ To confine a civil commitment candidate constitutionally, the *Addington* Court held that the government must bear the burden of proving insanity by the standard of "clear and convincing evidence."¹¹⁴

The petitioner in *Addington* had a history of emotional and mental problems prior to the challenged commitment.¹¹⁵ He was arrested in 1975 and charged with "assault by threat" against his mother.¹¹⁶ His mother subsequently filed a petition for the petitioner's indefinite commitment.¹¹⁷ Following a jury trial to establish whether he was mentally ill and dangerous under the standard of "clear, unequivocal and convincing evidence," *Addington* was committed indefinitely.¹¹⁸ He appealed the commitment, contending that due process required that he be found mentally ill and dangerous under the "beyond a reasonable doubt" standard used in criminal proceedings.¹¹⁹

In reaching its holding that proof of insanity by the standard of "clear and convincing" evidence was constitutionally adequate under the due process clause, the *Addington* Court used the *Mathews* due process balancing test.¹²⁰ Thus, the Court balanced the petitioner's liberty interest against the state's interest in treating mentally ill and dangerous persons and in protecting these persons and the public from a mentally ill individual's dangerous behavior.¹²¹ Observing that an individual should not be asked to share equally with society the risk of an error when the possible injury to the individual is significantly greater than possible harm to the state,¹²² the Court held that, in light of the individual's strong liberty interest, proof of mental illness by the standard of "clear and convincing evidence" rather than that of "preponderance of the evidence" was necessary to insure due process.¹²³ In reaching this conclusion, the Court rejected the petitioner's argument

¹⁰⁹ *Mathews*, 424 U.S. at 335.

¹¹⁰ *Id.* In the commitment context, this factor includes the ease or difficulty of proving or disproving mental illness and dangerousness in court. *Jones*, 463 U.S. at 372 (Brennan, J., dissenting).

¹¹¹ *Addington v. Texas*, 441 U.S. 418, 425-27 (1979).

¹¹² *Id.* at 427.

¹¹³ *Id.*

¹¹⁴ *Id.* at 427, 433.

¹¹⁵ *Id.* at 420-21.

¹¹⁶ *Id.* at 420.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 421.

¹¹⁹ *Id.* at 421-22.

¹²⁰ *Id.* at 425-27; see *Mathews*, 424 U.S. at 334-35. See also Easterbrook, *Substance and Due Process*, 1982 SUP. CR. REV. 85, 88-89, 109-25, for an analysis of the *Mathews* due process balancing test.

¹²¹ *Addington*, 441 U.S. at 425-27.

¹²² *Id.* at 427.

¹²³ *Id.*

that the "beyond a reasonable doubt" standard was constitutionally mandated in civil commitment proceedings.¹²⁴ In its analysis, the *Addington* Court focused on the importance of the standard of proof, observing that a particular standard of proof alerts the fact finder to the degree of confidence society believes it should have in the correctness of factual conclusions for particular kinds of adjudication.¹²⁵ The Court also noted that the standard of proof allocates the risk of an erroneous finding, alerts the fact finder to the relative importance of the final outcome, and in cases involving a deprivation of liberty, indicates the relative importance which society places on those interests.¹²⁶

The decision in *Addington* continued the Court's trend toward increased procedural safeguards for mentally ill individuals. Although the *Addington* Court rejected the petitioner's argument that the standard of proof at his commitment proceedings should be "beyond a reasonable doubt" in favor of the "clear and convincing evidence" standard, the decision nevertheless established the Court's position that mentally ill individuals' interests in liberty and autonomy must be very carefully weighed against the states' interests in committing them.

In summary, past Supreme Court decisions in cases raising constitutional challenges to commitment proceedings have established a strong trend toward strengthened procedural protections for mentally ill individuals. *Baxstrom*, *Specht*, *Humphrey*, and *Jackson* mandate that a state cannot constitutionally commit a mentally ill individual who has committed a criminal act under proceedings involving new findings of fact on mental illness and dangerousness unless that individual has access to the same procedural safeguards afforded other commitment candidates in new fact-finding proceedings. *O'Connor* provides that a commitment, to be constitutional, must be based on proof of both dangerousness and mental illness. *Mathews* established that due process requires a reviewing court to balance carefully each significant interest in a case raising a constitutional challenge to state procedures. Finally, *Addington* requires that, in civil commitment proceedings, the government must prove that a commitment candidate is mentally ill and dangerous by "clear and convincing evidence" to commit him constitutionally. Although the holdings in these cases bear directly on the petitioner's constitutional claims in *Jones v. United States*, the Court failed to accord them adequate weight in its analysis of his claims. In particular, the Court failed to use the due process balancing test it established in *Mathews* or to follow *O'Connor*, which requires that proof of mental illness and dangerousness support a constitutional commitment. A discussion of these errors in the *Jones* Court's analysis follows the next section of the casenote, which reviews the majority opinion in *Jones* along with Justice Brennan's dissenting opinion.

II. THE OPINIONS OF THE COURT IN *JONES V. UNITED STATES*

A. The Majority Opinion

After granting certiorari,¹²⁷ in a five-to-four decision¹²⁸ the Supreme Court held in *Jones v. United States* first, that the government may constitutionally commit an individual

¹²⁴ *Id.* at 430-31.

¹²⁵ *Id.* at 423 (quoting *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring)).

¹²⁶ *Id.* at 432.

¹²⁷ 454 U.S. 1141 (1982).

¹²⁸ Justice Powell wrote the majority opinion. *Jones*, 463 U.S. at 356. Justice Brennan drafted a dissenting opinion in which Justices Marshall and Blackmun joined. *Id.* at 371 (Brennan, J., dissenting). Justice Stevens filed a separate dissent. *Id.* at 387 (Stevens, J. dissenting).

indefinitely on the basis of an insanity acquittal, and second, that the committed individual is not constitutionally entitled to release or recommitment under procedures similar to procedures used in civil commitment proceedings.¹²⁹ In reaching its holding, the Court first addressed the petitioner's equal protection claim that insanity acquittees are entitled to a jury trial at their statutorily mandated release hearings held fifty days following commitment.¹³⁰ Because civil commitment candidates may have a jury at their commitment hearings, the petitioner argued that, as a matter of equal protection, insanity acquittees are entitled to have a jury at their fifty-day release hearings where the acquittees' present mental states are considered for the first time in any proceeding.¹³¹ Disagreeing with the petitioner's equal protection claim, the Court held that because insanity acquittees have the right to have a jury determine whether they were mentally ill when they committed their crimes, they are not constitutionally entitled to a jury determination of present mental state at their commitment-release hearings.¹³² According to the Court, the relevant equal protection comparison does not involve contrasting the procedures available at insanity acquittees' fifty-day release hearings with those available at civil-commitment hearings.¹³³ Instead, the Court contrasted procedures available at criminal trials, in particular, the right to a jury determination of sanity, with procedures available at civil-commitment hearings, and held that the equal protection clause does not guarantee the petitioner the right to jury determinations of sanity at both his criminal trial and his commitment-release hearing.¹³⁴

Turning to the petitioner's due process claims, the Court first considered the argument that continuing confinement originally based only on the finding at his criminal trial that he was insane when he committed his misdemeanor violated due process.¹³⁵ The Court held that the finding of insanity at trial was sufficiently probative of continuing insanity to provide a constitutional basis for commitment under the due process clause.¹³⁶ This holding was based on three grounds. First, the Court concluded that Congress could reasonably have decided that, when an insanity acquittee has been found guilty of committing a crime, an inference of continuing dangerousness exists.¹³⁷ In so concluding, the Court rejected the petitioner's contention that the commission of a nonviolent crime was a constitutionally insufficient basis on which to base a presumption of continuing dangerousness, and noted that violence had never been a necessary prerequisite to a constitutional commitment.¹³⁸ Second, the Court held that Congress could reasonably determine that an insanity acquittal supports an inference that mental illness continues

¹²⁹ *Id.* at 369-70.

¹³⁰ *Id.* at 362 & n.10.

¹³¹ *Id.* D.C. CODE ANN. § 21-544 provides that a civil committee has the right to demand a jury trial at his commitment proceedings. D.C. CODE ANN. § 24-301(d) does not give insanity acquittees the right to have a jury at their fifty-day commitment-release hearings.

¹³² *Jones*, 463 U.S. at 362-63 n.10.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 362-63. The Court noted that the petitioner had based all of his claims in the Court of Appeals on both equal protection and due process grounds. *Id.* at 362-63 n.10. The Court concluded that, because the petitioner's equal protection claims essentially mirrored his due process claims, it would analyze all but one of his claims under the due process clause. *Id.* at 364.

¹³⁶ *Id.* at 364-65.

¹³⁷ *Id.* at 364.

¹³⁸ *Id.* at 364-65.

beyond the commission of a crime.¹³⁹ In support of this second conclusion, the Court observed that "it comports with common sense" to conclude that an individual whose mental illness was sufficient to cause him to commit a crime is likely to remain mentally ill and in need of treatment.¹⁴⁰ Finally, the Court considered governmental interests in the outcome of the proceedings.¹⁴¹ Stressing the importance of administrative convenience, the Court focused on the government's strong interest in avoiding new proceedings requiring second jury trials for insanity acquittees at which the government would have to prove present mental illness.¹⁴² The Court concluded that the efficiency of proceedings is an important factor which must be considered when evaluating the governmental interests in automatic commitment proceedings.¹⁴³ Following its analysis of the petitioner's due process claims, the Court held that the court's finding of insanity at the petitioner's criminal trial was sufficiently probative of continuing insanity and dangerousness to provide a constitutional basis for commitment under the due process clause.¹⁴⁴

The Court then considered the petitioner's argument that his continued commitment was unconstitutional because the proper standard of proof of mental illness had not been

¹³⁹ *Id.* at 364.

¹⁴⁰ *Id.* at 366.

¹⁴¹ *Id.*

¹⁴² *Id.* An extensive discussion of the development of modern substantive due process analysis is beyond the scope of this article. A limited overview of the Supreme Court's analyses in this area is necessary, however, to facilitate understanding of the *Jones* Court's opinion.

For the past forty years in the area of social and economic legislation, the Supreme Court has generally upheld such legislation if known or "reasonably inferable" facts supported the legislative judgment. See L. TRIBE, *supra* note 104, at 450. In the area of personal entitlements, however, recent years have seen the development of a new type of substantive due process analysis. Such analysis is characterized by the Court upholding legislation affecting individual rights only when the state has a compelling interest underlying the allegedly unconstitutional legislation. See, e.g., *Zablocki v. Redhail*, 434 U.S. 374, 388-91 (1978) (state statute forbidding marriage of any resident noncustodial parent obligated to support his minor children, unless resident obtained prior court approval of such marriage, held to violate resident's equal protection rights); *Roe v. Wade*, 410 U.S. 113, 154-56 (1973) (women's constitutional right to obtain abortions recognized); *Shapiro v. Thompson*, 394 U.S. 618, 634-38 (1969) (statute denying public assistance to poor persons solely because they did not meet jurisdiction's one-year residency requirement held unconstitutional under due process clause). The *Jones* Court, after scrutinizing the petitioner's due process claim, held that the government's strong interest in automatic commitment following an insanity acquittal outweighed any interest the petitioner would have in avoiding confinement. *Jones*, 463 U.S. at 366. On its face, the Court's conclusion appears to be reasonable. In reaching its holding, however, the Court failed to weigh carefully the petitioner's strong liberty interest against the government's interests. The Court has repeatedly acknowledged the importance of an individual's interest in liberty. See, e.g., *id.* at 361-62; *Vitek v. Jones*, 445 U.S. 480, 487-88 (1980) (state required to provide counsel to indigent mentally ill prisoners upon whom state sought to impose involuntary psychiatric treatment); *Addington*, 441 U.S. at 425 (state must bear burden of proving civil commitment candidates mentally ill by "clear and convincing evidence"); *O'Connor*, 422 U.S. at 575 (constitutional commitment must be grounded on proof of mental illness and dangerousness). The petitioner's interest in avoiding confinement was fundamental to his constitutional claims, yet the *Jones* Court failed to give careful consideration to this strong liberty interest. See 463 U.S. at 361-67. Although the *Jones* Court ostensibly reached its conclusion by fairly weighing the petitioner's interests in avoiding confinement against the government's interests in automatic and indefinite commitment of insanity acquittees, in fact it applied a truncated due process analysis to the petitioner's claims. See *infra* notes 225-46 and accompanying text for further development of this criticism of the *Jones* Court's constitutional analysis.

¹⁴³ *Jones*, 463 U.S. at 366.

¹⁴⁴ *Id.*

used at his trial.¹⁴⁵ The petitioner argued that the "clear and convincing evidence" standard enunciated by the Supreme Court in *Addington v. Texas*¹⁴⁶ rather than the "preponderance of the evidence" standard should have been used at trial.¹⁴⁷ Rejecting the petitioner's argument, the Court held that the preponderance of the evidence standard satisfies the requirements of due process in the criminal commitment, as opposed to civil commitment, context.¹⁴⁸ In reaching this conclusion, the Court stated that there was no reason for adopting the same standard of proof in civil and criminal commitments.¹⁴⁹ Distinguishing criminal commitments from their civil counterparts, the *Jones* Court concluded that the risk that a civil commitment candidate might be confined merely for idiosyncratic behavior,¹⁵⁰ one of its most important concerns in *Addington*, was absent in the criminal commitment context.¹⁵¹ The *Jones* Court observed that the *Addington* Court, in light of its concern on this point, had deemed it inappropriate for a civil commitment candidate to have to bear equally with society the risk of an erroneous commitment, and had concluded that proof by "clear and convincing evidence" was required to protect civil commitment candidates from unwarranted commitment merely based on idiosyncratic behavior.¹⁵² Because an insanity acquittee raises the issue of insanity as an affirmative defense at trial, and because commitment following a successful defense is based on the finding at trial that the defendant committed his crime because he was mentally ill, the *Jones* Court concluded that there is no danger that an insanity acquittee will be committed simply on the basis of idiosyncratic behavior.¹⁵³ Consequently, the Court concluded that determining an insanity acquittee's mental status at the time the crime was committed under the preponderance of the evidence standard meets the requirements of due process.¹⁵⁴

Finally, the Court addressed the petitioner's claim that, because he had been confined for longer than the one-year maximum possible prison sentence for his crime, he was entitled to release or to recommitment in proceedings similar to those used in civil commitments.¹⁵⁵ Initially, the Court observed that an insanity acquittee is entitled to release when he has recovered his sanity or is no longer dangerous.¹⁵⁶ Stating that there is no necessary correlation between severity of an acquittee's offense and length of time necessary for recovery, the Court held that the length of the maximum possible prison sentence for any crime is irrelevant to the duration and purpose of an insanity acquittee's commitment, and concluded that the petitioner was not entitled to release on the basis of this claim.¹⁵⁷

¹⁴⁵ *Id.* at 366-67.

¹⁴⁶ *Addington*, 441 U.S. at 433. See *supra* notes 111-26 and accompanying text for a discussion of *Addington*.

¹⁴⁷ *Jones*, 463 U.S. at 366-67. See D.C. CODE ANN. § 24-301(j) (1981).

¹⁴⁸ *Jones*, 463 U.S. at 367-68.

¹⁴⁹ *Id.* at 367.

¹⁵⁰ *Addington*, 441 U.S. at 427.

¹⁵¹ *Jones*, 463 U.S. at 367.

¹⁵² *Id.* (quoting *Addington*, 441 U.S. at 427).

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 367-68.

¹⁵⁵ *Id.* at 368.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

B. The Dissenting Opinion of Justice Brennan

Justice Brennan's dissent in *Jones* characterized the issue raised in this case as whether an insanity acquittal alone is a constitutionally adequate ground for an involuntary psychiatric commitment of indefinite duration.¹⁵⁸ The outcome of the case, Justice Brennan concluded, pivoted on the answer to the question of what standard and burden of proof of mental illness and dangerousness are constitutionally required prior to commitment following an insanity acquittal.¹⁵⁹ Thus, Justice Brennan questioned whether, in light of psychiatric uncertainty about the connection between an insanity acquittee's mental illness and dangerousness at the time he commits his crime and his mental state and dangerousness at the time of his trial and subsequent commitment, the government could compel the acquittee to share equally with society the risk of an erroneous, indefinite commitment.¹⁶⁰ Justice Brennan concluded that the government must at some point bear the burden of proving that the petitioner is currently mentally ill and dangerous under the "clear and convincing evidence" standard.¹⁶¹ An insanity acquittal of a single, nonviolent misdemeanor, Justice Brennan reasoned, is not a constitutionally adequate substitute for the constitutional protections of proof by the government of present mental illness and dangerousness by clear and convincing evidence.¹⁶² According to Justice Brennan, the predictive value of nonviolent criminal behavior for future dangerousness is not well-established, but attempts by researchers to predict future dangerousness on the basis of past dangerous acts are often extremely inaccurate.¹⁶³ In addition, Justice Brennan concluded that the Court's decisions in prior cases involving mentally ill offenders mandated that the petitioner have access to procedural safeguards associated with civil commitment proceedings, including proof of continuing mental illness and dangerousness by the clear and convincing evidence standard at his commitment hearings.¹⁶⁴

Finally, Justice Brennan focused on the governmental interests served by the requirement that insanity acquittees demonstrate recovered sanity by a "preponderance of the evidence" to be released from confinement following their commitments.¹⁶⁵ Although

¹⁵⁸ *Id.* at 371 (Brennan, J., dissenting); *id.* at 387 (Stevens, J., dissenting). Justice Marshall and Blackmun concurred with Justice Brennan's dissenting opinion. *Id.* at 371 (Brennan, J., dissenting). Justice Stevens' separate dissent is not discussed in the body of the article. In Justice Stevens' opinion, the petitioner was presumptively entitled to recommitment proceedings where the government must bear the burden of proving continuing insanity by "clear and convincing evidence" once the maximum prison sentence the petitioner might have received had he been convicted had expired. *Id.* at 387 (Stevens, J., dissenting).

¹⁵⁹ *Id.* at 386 (Brennan, J., dissenting).

¹⁶⁰ *Id.* at 378-79 (Brennan, J., dissenting) (citing *Addington*, 441 U.S. at 427).

¹⁶¹ *Id.* at 382 (Brennan, J., dissenting).

¹⁶² *Id.* at 377 (Brennan, J., dissenting).

¹⁶³ *Id.* at 378-79 (Brennan, J., dissenting). For a review of research concerning the predictive value of an insanity acquittal on future dangerous behavior, see Coccozza and Steadman, *The Failure of Psychiatric Predictions of Dangerousness: Clear and Convincing Evidence*, 14 RUTGERS L. REV. 1084 (1976); Dershowitz, *The Law of Dangerousness: Some Fictions About Predictions*, 23 J. LEGAL EDUC. 24, 46-47 (1970); Diamond, *The Psychiatric Prediction of Dangerousness*, 123 U. PA. L. REV. 439, 444-47 (1974); Note, *Rule for an Exceptional Class: The Commitment and Release of Persons Acquitted of Violent Offenses by Reason of Insanity*, 57 N.Y.U. L. REV. 281, 295-99 (1982); Note, *Estelle v. Smith and Psychiatric Testimony: New Limits on Predicting Future Dangerousness*, 33 BAYLOR L. REV. 1015, 1022-28 (1981).

¹⁶⁴ 463 U.S. at 375-76 (Brennan, J., dissenting).

¹⁶⁵ *Id.* at 376-82 (Brennan, J., dissenting). See *infra* notes 235-46 and accompanying text for further discussion of the *Jones* Court's treatment of the government's interest in automatic and indefinite commitment following insanity acquittals.

it acknowledged that the government has a legitimate interest in efficient and accurate commitment proceedings. Justice Brennan stressed that governmental interests in isolating, protecting, and treating mentally ill individuals were present in a number of past Supreme Court cases.¹⁶⁶ Noting that, in those cases, the government's interests had not outweighed the petitioners' interests in avoiding confinement, Justice Brennan concluded that due process requires the government to justify the petitioner's continuing commitment by "clear and convincing evidence."¹⁶⁷ Findings of present insanity and dangerousness, Justice Brennan observed, are quite distinct from findings made at an acquittee's criminal trial that he was mentally ill and dangerous when the crime was committed.¹⁶⁸ Justice Brennan concluded that, at some point, the government must bear the burden of proving that the petitioner is presently mentally ill and dangerous under the more stringent "clear and convincing evidence" standard.¹⁶⁹

III. A CRITIQUE OF *JONES V. UNITED STATES*

The *Jones* Court held that the petitioner was not entitled to either immediate release from confinement or to recommitment under procedures similar to civil commitments which would afford him the right to a jury determination of current insanity with the government bearing the burden of proof by "clear and convincing evidence."¹⁷⁰ The Court's analysis in *Jones* fails to support this conclusion for several reasons. First, the Court unduly minimized the precedential value of the Court's prior decisions on the rights of mentally ill offenders. Although none of its earlier decisions directly concerned the constitutionality of commitment-release provisions for insanity acquittees, they support *Jones*' constitutional arguments that he was entitled to either immediate release or recommitment under proceedings where the government has the burden of proving current insanity by "clear and convincing evidence." Second, the Court failed to adequately consider *Jones*' claim that the proceedings under which he was committed formed a constitutionally deficient basis for an automatic commitment of indefinite duration. Specifically, the Court accorded very little weight to *Jones*' argument that, because he was never given the opportunity to have a jury determine whether his mental illness continued beyond the time he committed his crime, he was constitutionally entitled to such a determination following the expiration of the maximum sentence he could have received had he been sentenced. In addition, the Court's decision in *O'Connor v. Donaldson* mandates that a commitment, to pass constitutional muster, must be based on findings, and not presumptions, of mental illness and dangerousness. *Jones*' commitment was grounded only on the finding at his criminal trial that he committed a crime because of mental illness, and not on the finding that his mental illness continued up to the time of his criminal trial, or on findings at any point prior to his commitment-release hearing held fifty days following commitment that he was dangerous. Under *O'Connor*, therefore, *Jones*' initial commitment was unconstitutional. Through its inadequate analysis of these constitutional claims, the Court incorrectly concluded that a commitment of indefinite duration may be based constitutionally on a finding at a defendant's criminal trial that he

¹⁶⁶ *Id.* at 377 (Brennan, J., dissenting). See *Addington v. Texas*, 441 U.S. 418 (1979); *O'Connor v. Donaldson*, 422 U.S. 563 (1975); *Humphrey v. Cady*, 405 U.S. 504 (1972); *Baxstrom v. Herold*, 383 U.S. 107 (1966).

¹⁶⁷ *Jones*, 463 U.S. at 382 (Brennan, J., dissenting).

¹⁶⁸ *Id.* at 382-83 n.17 (Brennan, J., dissenting).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 368.

committed his crime because he was mentally ill. Following its precedents in this area, the Court should have concluded that Jones' initial commitment was unconstitutional because it was not based on findings that his mental illness continued up to the time of his trial and that he was dangerous when committed. In addition, the Court only superficially analyzed the petitioner's claim that the District of Columbia's commitment scheme is impermissibly punitive because it automatically commits insanity acquittees solely on the ground that they committed crimes and that their crimes were committed because the acquittees were mentally ill, while individuals are civilly committed only after proceedings establish that they are currently mentally ill and dangerous. Because this argument goes directly to the validity of the District of Columbia's commitment scheme, and because the lower courts in this case concluded that its resolution was crucial to their decisions on the constitutionality of the statute, the *Jones* Court should have carefully analyzed this argument. Finally, by focusing the majority of its analysis on the government's interests involved in *Jones* while curtailing its consideration of the petitioner's interests, the Court misapplied the *Mathews v. Eldridge* due process balancing test,¹⁷¹ and failed to accord the petitioner an adequate review of his claims. The final result of the Court's abbreviated and inadequate analysis of the petitioner's constitutional challenge to the District of Columbia's criminal commitment scheme is an unwarranted reversal of the prior Supreme Court trend toward strengthened procedural protections for mentally ill offenders.

A. *The Jones Court's Use of Supreme Court Precedent Affecting the Rights of Mentally Ill Offenders*

Although no Supreme Court cases explicitly delineate those rights which are constitutionally guaranteed to defendants who successfully raise the insanity defense, a number of Supreme Court cases have examined the general question of what rights are available to mentally ill individuals in the civil commitment context. The holdings in these cases support the petitioner's claim in *Jones* that he was entitled either to release following the expiration of the maximum possible prison sentence he could have received had he been sentenced or to recommitment under procedures similar to those used in civil commitments. In *Baxstrom v. Herold*, for example, the Supreme Court concluded that the state had to provide the petitioner, a prisoner nearing the end of a prison sentence for assault, with the same procedural safeguards other civil commitment candidates received before it could constitutionally commit him.¹⁷² The Court held that the petitioner was denied equal protection both because he did not have the right to a jury review of the determination about his sanity and because he was denied a judicial determination that he was dangerously insane.¹⁷³ In *Specht v. Patterson*, another case involving an involuntary commitment, the Court held that the petitioner was unconstitutionally committed to a

¹⁷¹ *Mathews*, 424 U.S. at 335. See *supra* notes 105-10 and accompanying text for a further discussion of *Mathews*.

¹⁷² *Baxstrom*, 383 U.S. at 110-11. The *Jones* Court merely alluded to *Baxstrom* in a footnote, where it noted that *Baxstrom* neither involved an insanity acquittee nor discussed the constitutionally permissible length of an insanity acquittee's commitment. See *supra* text accompanying notes 57-62 for a discussion of *Baxstrom*.

¹⁷³ *Baxstrom*, 383 U.S. at 110-11. Justice Brennan's dissenting opinion in *Jones* concluded that the primary difference between *Jones* and *Baxstrom* was that the petitioner in *Jones* admitted that his crime was "the product" of his mental illness. *Jones*, 463 U.S. at 371; cf. *Baxstrom*, 383 U.S. at 110.

treatment facility for sexual offenders.¹⁷⁴ The *Specht* Court concluded that the petitioner was denied due process and equal protection because his conviction was the basis for a separate sentencing proceeding involving new findings of fact about whether the petitioner was an habitual offender and mentally ill or dangerous to the public.¹⁷⁵ Consequently, the Court held that the proceeding which determined whether the petitioner was an habitual criminal and mentally ill or a dangerous must afford the petitioner stronger procedural protections.¹⁷⁶

In both *Baxstrom* and *Specht*, the Court held that the petitioners had not been given their constitutionally guaranteed rights to full and fair determinations of insanity or dangerousness under the states' commitment procedures.¹⁷⁷ The Court determined in both cases that the petitioners had a right to procedural safeguards afforded commitment candidates who had not committed criminal acts.¹⁷⁸ These two cases are similar to *Jones* in one significant respect. In both cases the mentally ill petitioners, who had also been convicted of crimes, were afforded fewer procedural protections than commitment candidates who had not committed crimes. In *Baxstrom* and *Specht* the Court held that the petitioners, whose commitment proceedings involved new findings of fact on the issues of mental illness and dangerousness, were constitutionally entitled to the same procedural protections at their commitment hearings as commitment candidates who were not convicted of criminal acts.¹⁷⁹ The Court justified its holding that the petitioner in *Jones* was not entitled to comparable procedures in part by observing that fact-finding on the issues of current mental illness and dangerousness had taken place at the petitioner's fifty-day release hearing, where he was found to be currently mentally ill and dangerous.¹⁸⁰ In *Jones*, however, the petitioner's initial commitment was based only on the presumption that the mental illness which had caused him to commit a crime continued beyond the time of his criminal act up to the time he was committed, and also upon a presumption of dangerousness arising automatically simply because he had committed a crime.¹⁸¹ Unlike the petitioners' initial commitments in *Baxstrom* and *Specht*, therefore, the petitioner's

¹⁷⁴ *Specht v. Patterson*, 386 U.S. 605, 610-11 (1967). See *supra* text accompanying notes 63-71 for a discussion of *Specht*.

¹⁷⁵ *Id.* at 608-11.

¹⁷⁶ *Id.* at 610-11.

¹⁷⁷ *Specht*, 386 U.S. at 610-11; *Baxstrom*, 383 U.S. at 110.

¹⁷⁸ *Specht*, 386 U.S. at 610-11; *Baxstrom*, 383 U.S. at 110.

¹⁷⁹ *Specht*, 386 U.S. at 610-11; *Baxstrom*, 383 U.S. at 110.

¹⁸⁰ *Jones*, 463 U.S. at 360.

¹⁸¹ *Id.* at 364. See also S. REP. NO. 1170, 84th Cong., 1st Sess. 13 (1955) (reflecting the congressional determination that mental illness may be presumed to continue from the time a crime is committed to the time of commitment to a mental institution). The *Jones* Court quoted language from *Lynch v. Overholser*, 369 U.S. 705, 714 (1962), as supporting the theory that, in every case, individuals who commit crimes are dangerous, and that their dangerousness may be presumed to continue from the time their crimes were committed. A fuller quote of the same language from *Lynch*, however, fails to support the Court's reading of the case. See *Lynch*, 369 U.S. at 714, where the Court stated:

But the fact that the accused has pleaded guilty or that, overcoming some defense other than insanity, the Government has established that he committed a criminal act constitutes only strong evidence that his continued liberty could imperil "the preservation of public peace." It no more rationally justifies his indeterminate commitment to a mental institution on a bare reasonable doubt as to past sanity than would any other cogent proof of possible jeopardy to "the rights of persons and of property" in any civil commitment.

commitment in *Jones* was based on presumptions and not on findings of current mental illness and dangerousness. Although Jones' continued confinement after his fifty-day hearing followed a judicial determination of mental illness and dangerousness, his initial presumption-based confinement did not meet the Court's requirements in *Baxstrom* and *Specht* that all commitment candidates have similar procedural protections whether or not they also have committed crimes. Findings of current insanity and dangerousness are different from the finding made at Jones' trial that he committed his crime because he was mentally ill; no further investigation about the petitioner's mental state or potential dangerousness was made prior to his automatic commitment following his successful insanity defense. Jones was not committed under proceedings which followed the *Baxstrom* and *Specht* requirement that mentally ill individuals who have also committed crimes receive procedural safeguards during their commitment proceedings similar to those procedures available to commitment candidates who have not committed criminal acts. Under *Baxstrom* and *Specht*, therefore, Jones' initial commitment proceedings were constitutionally inadequate, and the adequacy of the procedures available to him at his fifty-day release hearing did not adequately compensate for this initial constitutional infirmity.

The Court's holding in *Humphrey v. Cady* also supports Jones' claim that he should be immediately released or recommitted under procedures similar to those available when individuals are civilly committed.¹⁸² In *Humphrey*, the Court held that the petitioner's claim that his recommitment for a five year period, made without a jury, denied him equal protection with respect to other compulsory commitment candidates warranted an evidentiary hearing and remanded the case.¹⁸³ Humphrey's situation closely resembles that of Jones after his initial release hearing. Both Humphrey and Jones had committed crimes as a result of mental disorders, and at the time they challenged the proceedings under which they had been committed both had been confined for longer than the maximum prison sentence available for the crime committed.¹⁸⁴ The *Humphrey* Court concluded that the petitioner's challenge to the constitutionality of his commitment proceedings warranted an evidentiary hearing because he had not been given the same procedural safeguards afforded other involuntary commitment candidates.¹⁸⁵ This holding fully supports Jones' claim that, because he had not been given procedural protections available to civil commitment candidates, he was entitled to release or to a redetermination of his commitment's continuing validity.¹⁸⁶

One other case supports Jones' claim that all mentally ill individuals committed under procedures at some point involving new findings of fact on the issues of current insanity and dangerousness are constitutionally entitled to essentially the same procedural protections. In *Jackson v. Indiana*, the Court evaluated the scope of rights constitutionally

¹⁸² *Humphrey v. Cady*, 405 U.S. 504, 506 (1972). See *supra* notes 72-83 and accompanying text for a discussion of *Humphrey*.

¹⁸³ *Id.* at 506. No printed record of the disposition of the petitioner's case on remand exists.

¹⁸⁴ *Jones*, 463 U.S. at 376 (Brennan, J., dissenting); *Humphrey*, 405 U.S. at 506-07. Justice Brennan observed in *Jones* that Humphrey's situation was almost precisely identical to that of Jones after his 1977 habeas corpus hearing, 463 U.S. at 376 (Brennan, J., dissenting).

¹⁸⁵ *Humphrey*, 405 U.S. at 506.

¹⁸⁶ The *Jones* Court viewed *Humphrey* as not controlling primarily because it did not involve an insanity acquittee. *Jones*, 463 U.S. at 369-70 n.19. Both cases, however, concerned individuals who either were committed to mental institutions or were commitment candidates, and both raised issues regarding the constitutional adequacy of available procedural protections. See *id.* at 376.

guaranteed to an individual who had been indefinitely committed.¹⁸⁷ In *Jackson*, the Court concluded that it was unlikely that the petitioner would ever be found competent to stand trial because of his mental deficiency, deafness and extremely poor communication skills.¹⁸⁸ The Court held that the petitioner was denied equal protection because he was not afforded access to procedural safeguards given to persons civilly committed because of mental illness or feeble-mindedness.¹⁸⁹ According to the Court, the petitioner had also been denied due process because the nature and duration of his indefinite confinement until certified "sane" were not reasonably related to the purpose of his commitment — temporary confinement until found competent to stand trial.¹⁹⁰

The *Jones* Court distinguished *Jackson* on the ground that there never was any affirmative proof in *Jackson* that the petitioner had committed any crime or was dangerous.¹⁹¹ Although this factual distinction between the cases exists, the *Jackson* holding nevertheless supports Jones' argument that the government cannot constitutionally commit a person indefinitely unless he has access to the same procedural safeguards afforded persons civilly committed because of mental illness or infirmity.

The holdings in *Baxstrom*, *Specht*, *Humphrey*, and *Jackson* all support the conclusion that a state cannot constitutionally commit a person indefinitely based on proceedings involving new fact-finding unless that person has access to the same procedural safeguards afforded persons civilly committed.¹⁹² Required constitutional guarantees include the right to procedures which provide a meaningful opportunity to be heard when new findings of fact on the issue of current insanity and dangerousness are raised at commitment proceedings.¹⁹³ Each of these decisions supports Jones' argument that, because he was not given certain procedural protections afforded civil commitment candidates at proceedings establishing whether they are currently mentally ill and dangerous, he was constitutionally entitled to either immediate release from confinement or recommitment under such procedures.

In addition to challenging his continuing confinement on the ground that, at his fifty-day release hearing where the issues of current mental illness and dangerousness were considered for the first time, he did not receive procedural protections available to civil commitment candidates, Jones raised a separate challenge to the constitutional adequacy of the District of Columbia's criminal commitment scheme. The petitioner argued that his confinement, which was based on presumptions and not findings of mental illness and dangerousness, did not meet the requirement enunciated by the Court in *O'Connor v. Donaldson* that a constitutional commitment be grounded on findings of current mental illness and dangerousness.¹⁹⁴

In *O'Connor v. Donaldson*, the Supreme Court addressed the question of what mental

¹⁸⁷ *Jackson v. Indiana*, 406 U.S. 715, 725-26 (1972). See *supra* notes 84-93 and accompanying text for further discussion of *Jackson*.

¹⁸⁸ *Jackson*, 406 U.S. at 725-26.

¹⁸⁹ *Id.* at 729-30.

¹⁹⁰ *Id.* at 737-38.

¹⁹¹ *Jones*, 463 U.S. at 364 n.12.

¹⁹² See *Jackson*, 406 U.S. at 729-30, 738-39; *Humphrey*, 405 U.S. at 508; *Specht*, 386 U.S. at 610-11; *Baxstrom*, 383 U.S. at 111-12.

¹⁹³ See *Jackson*, 406 U.S. at 729-30, 737-39; *Humphrey*, 405 U.S. at 508-11; *Specht*, 386 U.S. at 610-11; *Baxstrom*, 383 U.S. at 111-12.

¹⁹⁴ *Jones*, 463 U.S. at 366-67, 371. See *O'Connor v. Donaldson*, 422 U.S. 563 (1975) (discussed *supra* notes 97-103 and accompanying text).

state must be proved to confine a mentally ill individual constitutionally.¹⁹⁵ The *O'Connor* Court concluded that a constitutional commitment must be based on the findings that the individual the state seeks to commit is presently both mentally ill and currently dangerous.¹⁹⁶

Jones was committed under proceedings which did not base the commitment of an insanity acquittee on findings of mental illness and dangerousness, but rather on presumptions that mental illness and dangerousness exist currently.¹⁹⁷ In the District of Columbia, acquittal by reason of insanity requires proof that the accused committed a crime because he was mentally ill.¹⁹⁸ On the basis of an insanity acquittal, the individual is automatically committed.¹⁹⁹ No findings of dangerousness or current mental illness are required prior to commitment.²⁰⁰ When enacting the District of Columbia criminal commitment statute, Congress determined that an insanity acquittal permits inferences of both present dangerousness and mental illness.²⁰¹ *O'Connor*, however, requires that there be findings, and not merely presumptions, of both mental illness and dangerousness before an individual can be constitutionally committed.²⁰² Although the Court in *Jones* approved of Congress' determination that an insanity acquittal raises an inference of present dangerousness and mental illness,²⁰³ *O'Connor* mandates that findings and not simply inferences of both dangerousness and mental illness be made prior to commit-

¹⁹⁵ *O'Connor*, 422 U.S. at 574-77.

¹⁹⁶ *Id.* at 575-76.

¹⁹⁷ See *Jones*, 463 U.S. at 364.

¹⁹⁸ See *supra* note 25.

¹⁹⁹ D.C. CODE ANN. § 24-301(d)(1) (1981).

²⁰⁰ *Id.* See *supra* note 181.

²⁰¹ *Jones*, 463 U.S. at 366 (citing H.R. REP. NO. 91-907, 91st Cong., 2d Sess. 74 (1970)). Current psychiatric research on the prediction of future dangerousness indicates that it is difficult if not impossible to predict whether an insanity acquittee, if released, will commit another crime. This predictive uncertainty exists even if the released acquittee continues to be mentally ill following his release. See *Jones*, 463 U.S. at 378-79 (Brennan, J., dissenting); see also *supra* note 163 for sources reviewing the research on the predictive value of an insanity acquittal on future dangerousness. Discussing this predictive uncertainty, Justice Brennan in *Jones* concluded that it is unknown whether nonviolent criminal behavior is a statistically valid predictor of future nonviolent behavior, much less of future violent behavior. *Id.* at 379 (Brennan, J., dissenting). Following a review of research available on this question, Justice Brennan concluded that it is unlikely that insanity acquittees display a rate of future dangerousness which is higher than that of civil committees with similar arrest records, or than that of individuals convicted of crimes who are found mentally ill following their convictions. *Id.* at 380-81 (Brennan, J., dissenting). The majority in *Jones*, however, dismissed the value of psychological research in this area, and stated:

[w]e do not agree with the suggestion that Congress' power to legislate in this area depends on the research conducted by the psychiatric community . . . the lesson we have drawn is not that the government may not act in the face of this uncertainty [in diagnosing mental illness and dangerousness], but rather that courts should pay particular deference to reasonable legislative judgments.

Id. at 365 n.13. The petitioner in *Jones*, however, did not claim that Congress' ability to legislate in this area depends on current psychiatric research. Like Justice Brennan's dissent in *Jones*, he merely noted that psychiatric research in this area does not support the predictive value of prior dangerous acts, and that Congress failed to cite any empirical evidence indicating that mentally ill individuals who have committed crimes are likely to commit future dangerous acts when it enacted D.C. CODE ANN. § 24-301(d). *Id.* See Reply Brief for Petitioner at 13, *Jones v. United States*, 463 U.S. 354 (1983).

²⁰² *O'Connor*, 422 U.S. at 575-76.

²⁰³ *Jones*, 463 U.S. at 364-65.

ment.²⁰⁴ Because no findings were made that Jones was mentally ill or dangerous until his fifty-day release hearing, his original commitment was unconstitutional under *O'Connor*. The *Jones* Court nowhere addressed this constitutional issue, in part because it characterized the issues raised in *Jones* as not involving a direct challenge to the District of Columbia's criminal commitment scheme.²⁰⁵ Under *O'Connor*, however, the petitioner's original commitment was unconstitutional because it was not based on findings of current mental illness and dangerousness. The constitutional infirmity of Jones' commitment was not overcome by the finding at his fifty-day release hearing that he was mentally ill and dangerousness because his initial commitment was based on presumptions and not findings of the requisite mental conditions.

The petitioner in *Jones* also claimed that, because he had been confined for longer than the maximum possible prison sentence for his crime, he was entitled to either immediate release or to recommitment under proceedings similar to those used in civil commitment proceedings.²⁰⁶ Such recommitment proceedings, the petitioner asserted, should include a jury determination of current insanity with the government bearing the burden of proof by "clear and convincing evidence."²⁰⁷ The petitioner based his claims for these specific procedural protections on *Addington v. Texas*, where the Court held that the government must bear the burden of proving insanity by "clear and convincing evidence" in civil commitment proceedings.²⁰⁸ In reaching this conclusion, the *Addington* Court used the due process balancing test which it had enunciated in *Mathews v. Eldridge*.²⁰⁹ *Mathews* requires that a court reviewing the constitutionality of a governmental action must balance three factors.²¹⁰ These factors are, first, the private interest affected by the challenged governmental action, second, the government's interest in the challenged governmental function, including the monetary and administrative burdens which increased procedural protections would require, and third, the risk of error which might be caused by the challenged procedure weighed against the increased protection brought about by strengthening available procedures.²¹¹ In *Addington*, after weighing the state's interests in accurate and efficient commitment proceedings against the petitioner's interest in avoiding commitment, the Court concluded that civil commitment candidates' interests in liberty and autonomy outweighed the state's interests in isolating, protecting and treating mentally ill individuals.²¹²

²⁰⁴ *O'Connor*, 422 U.S. at 575-76.

²⁰⁵ *Jones*, 463 U.S. at 362. The *Jones* Court characterized the primary issue in this case as whether, because he had been committed for longer than the maximum possible prison term for his crime, the petitioner had the right to unconditional and immediate release or to procedures available in civil recommitment proceedings. *Id.* at 363. The *Jones* dissent, however, framed the issue more broadly as encompassing a direct challenge to the constitutional adequacy of the District of Columbia's criminal commitment scheme, specifically, whether an insanity acquittal alone constitutes a constitutionally adequate basis for an automatic commitment of indefinite duration. *Id.* at 371. The *Jones* Court's narrow framing of the issue does an injustice to the question raised by the petitioner about the constitutional adequacy of the District of Columbia's criminal commitment scheme.

²⁰⁶ *Jones*, 463 U.S. at 363.

²⁰⁷ *Id.* at 362-63; *id.* at 382 (Brennan, J., dissenting).

²⁰⁸ *Addington*, 441 U.S. at 433. See *supra* notes 111-26 and accompanying text for a further discussion of *Addington*.

²⁰⁹ *Addington*, 441 U.S. at 425-27. See *Mathews*, 424 U.S. at 335. See *supra* notes 105-10 and accompanying text for a discussion of *Mathews*.

²¹⁰ *Mathews*, 424 U.S. at 335.

²¹¹ *Id.*

²¹² *Addington*, 441 U.S. at 425-27.

After considering the petitioners's claims in light of *Addington*, the *Jones* Court held that due process did not require the government to meet the *Addington* "clear and convincing evidence" standard for insanity acquittees.²¹³ Distinguishing *Jones* from *Addington*, the *Jones* Court concluded that "critical concerns" present in the civil commitment context were either reduced or absent in the criminal commitment context, and that no reason existed for requiring the same standard of proof in each case.²¹⁴ The first critical concern the Court discussed in *Jones* was its fear in *Addington* that a civil commitment candidate might be confined merely for idiosyncratic behavior.²¹⁵ This concern, the *Jones* Court concluded, underpinned the *Addington* Court's holding that civil commitment candidates should not share equally with society the risk of error of erroneous commitment.²¹⁶ Addressing this concern, the *Jones* Court reasoned that, because insanity acquittees themselves plead and prove that they are not guilty by reason of insanity of the crimes with which they are charged, there is a sound basis for diminished concern about the risk that insanity acquittees will be committed erroneously.²¹⁷ The second concern that the *Jones* court found to be present in *Addington* but not in *Jones* which distinguished the two cases involved the stigma attached to commitment.²¹⁸ Reasoning that the verdict of not guilty by reason of insanity alone stigmatizes an insanity acquittee, the *Jones* Court concluded that commitment following an insanity acquittal causes little additional stigmatization.²¹⁹

The *Jones* Court's analysis when distinguishing concerns critical to its *Addington* decision from those critical to *Jones* is not convincing for three reasons. First, an individual is not likely to be committed civilly simply because of idiosyncratic behavior, because *O'Connor* mandates that an individual must be found both mentally ill and dangerous before he can be committed constitutionally.²²⁰ Because of this mandate, there was little danger in either *Addington* or *Jones* that the petitioners would have been committed simply because of idiosyncratic behavior. Under *O'Connor*, in both civil and criminal commitment contexts, individuals must be found mentally ill and dangerous, and not merely odd or bizarre, to be committed constitutionally. Second, the Court has repeatedly acknowledged that individuals who have been found mentally ill nevertheless have a strong interest in avoiding involuntary confinement.²²¹ The *Jones* Court's determination that an insanity acquittee's only interest in not being involuntarily committed is one of avoiding the stigma commitment adds to an insanity acquittal was thus incorrect, if not irrational. Common sense dictates that under many circumstances an insanity acquittee would desire to avoid not only the added stigma attached to commitment but also the concomitant infringement on his personal liberty which commitment entails. Third, the government's interests in isolating, protecting and treating mentally ill persons were equally present in *Jones* and *Addington*, and the petitioners' interests in avoiding confinement were the same in both cases.²²² Conceivably, to protect society from dangerously mentally ill offenders, the government might have a stronger interest in insuring that insanity acquittees are com-

²¹³ *Jones*, 463 U.S. at 367-68.

²¹⁴ *Id.* at 367.

²¹⁵ *Id.* (citing *Addington*, 441 U.S. at 426-27).

²¹⁶ *Id.* (citing *Addington* 441 U.S. at 426-27).

²¹⁷ *Jones*, 463 U.S. at 367.

²¹⁸ *Id.* at 367 n.16.

²¹⁹ *Id.*

²²⁰ See *O'Connor*, 422 U.S. at 575-76.

²²¹ See, e.g., *Jones*, 463 U.S. at 383-84 (Brennan, J., dissenting); *O'Connor*, 422 U.S. at 575 (1975).

²²² *Jones*, 463 U.S. at 377, 383 (Brennan, J., dissenting).

mitted than it does in guaranteeing commitment of mentally ill individuals who have not also committed crimes. In the District of Columbia, however, a successful insanity defense merely indicates that the insanity acquittee committed his crime because he was mentally ill; commitment following an insanity acquittal is automatic. Findings on present mental illness or dangerousness are not made prior to the time insanity acquittees are committed, but rather are made for the first time nearly two months following commitment. Because no findings were made in *Jones* prior to the petitioner's commitment that he was either mentally ill or dangerous when committed, he argued that the government's only conceivable justification for committing him automatically following his criminal trial was to ensure that he did not escape confinement entirely.²²³ This argument is particularly compelling in the petitioner's case, since he was automatically committed following an acquittal by reason of insanity of the nonviolent crime of attempted shoplifting.²²⁴ Even if the automatic commitment of insanity acquittees is not inherently punitive because no findings of current mental illness or dangerousness are made prior to commitment, despite what the petitioner suggested, the absence of evidence of continuing mental illness or dangerousness prior to commitment indicates that the government can have no stronger interest in committing insanity acquittees to protect society than it does in confining civil commitment candidates.

A commitment candidate's interest in avoiding confinement has been repeatedly acknowledged by the Court.²²⁵ By virtually ignoring the petitioner's liberty interest in avoiding confinement and by failing to weigh all interests involved in his case, the *Jones* Court denied the petitioner a constitutionally adequate review of his due process claims. The last section of the article will analyze the *Jones* Court's due process review of the petitioner's claims. It will first examine the elements of a constitutional due process review enunciated by the Court in *Mathews v. Eldridge*,²²⁶ and will compare the due process analysis used in *Jones* with that used in *Mathews*. The article will then review the *Jones* Court's treatment of the petitioner's equal protection claim, and will conclude with a discussion of the changes in future cases involving mentally ill offenders which may follow in the wake of the Court's decision in *Jones*.

²²³ *Id.* at 362-63. See also *Jones v. United States*, 432 A.2d 364 (D.C. 1981); *Jones v. United States*, 411 A.2d 624 (D.C. 1980); *Jones v. United States*, 396 A.2d 183 (D.C. 1978); *supra* notes 37-52 and accompanying text.

²²⁴ See *supra* notes 163 and 201 and *infra* note 237 for discussion of the predictive value of a nonviolent crime on future dangerous behavior.

²²⁵ See, e.g., *Jones*, 463 U.S. at 383 (Brennan, J., dissenting). The Court has repeatedly voiced concern about the loss of liberty which occurs when individuals are confined in mental institutions. See, e.g., *Vitek v. Jones*, 445 U.S. 480 (1980); *Addington v. Texas*, 441 U.S. 418 (1979). *Vitek* involved a due process challenge to a Nebraska statute allowing the transfer of prisoners to mental hospitals if they were found to be mentally ill. The *Vitek* Court reasoned that such an involuntary transfer implicated a constitutionally protected liberty interest. 445 U.S. at 482-83. Addressing its attention to a different aspect of involuntary commitment, the *Vitek* Court stated:

[t]he loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement. It is indisputable that commitment to a mental hospital "can engender adverse social consequences to the individual" and that "[w]hether we label this phenomenon 'stigma' or choose to call it something else . . . we recognize that it can occur and that it can have a very significant impact on the individual."

Id. at 492 (quoting *Addington*, 441 U.S. at 425-26).

²²⁶ 424 U.S. 319 (1976).

B. *The Court's Constitutional Analysis in Jones v. United States*

The Court prefaced its due process analysis in *Jones* with the statement that commitment "constitutes a significant deprivation of liberty that requires due process protection."²²⁷ The Court further observed that, in light of this protected liberty interest, a state must have a constitutionally adequate purpose for commitment.²²⁸ Although these declarations prefatory to the Court's analysis of the petitioner's claims are true, they do not set out the elements necessary for a constitutionally adequate commitment.

The principal elements of a constitutionally adequate due process analysis were enunciated by the Court in *Mathews v. Eldridge*.²²⁹ The *Mathews* Court specified three factors which must be balanced by a reviewing court to insure that the challenged governmental action comports with the requirements of due process.²³⁰ The first factor that must be weighed is the private interest affected by the challenged governmental action.²³¹ Second, the risk of an erroneous outcome involved in using the challenged procedure must be weighed against the value of strengthened procedural safeguards.²³² The final factor to be evaluated is the government's interest in the challenged function.²³³ Examination of this interest may also include consideration of fiscal and administrative costs which additional or more complicated procedures would involve.²³⁴

When evaluating the petitioner's due process claim that he was entitled either to immediate release from confinement or to recommitment under procedures similar to those used in civil commitment proceedings, the *Jones* Court failed to balance all significant interests involved in the case before it. Most importantly, the Court neglected to weigh carefully the petitioner's strong interest in avoiding confinement. Thus, when analyzing the petitioner's claims the Court first examined the governmental interests present.²³⁵ Based in part on the legislative history of the District of Columbia's criminal commitment statute, the Court concluded that the government has both reasonable and legitimate reasons for automatically committing mentally ill persons for an indefinite period of time following acquittals by reason of insanity.²³⁶ The Court explicitly validated Congress' determination that commitment may automatically follow a successful insanity defense, maintaining that this determination was based on "reasonable" and "common sense" inferences of continuing mental illness and dangerousness.²³⁷ The *Jones* Court also

²²⁷ *Jones*, 463 U.S. at 361 (quoting *Addington*, 441 U.S. at 425).

²²⁸ *Id.* at 361 (quoting *O'Connor*, 422 U.S. at 574).

²²⁹ 424 U.S. 319, 335 (1976). See *supra* notes 105-10 and accompanying text for a discussion of *Mathews*.

²³⁰ 424 U.S. at 335.

²³¹ *Id.* at 335.

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Jones*, 463 U.S. at 366.

²³⁶ *Id.* at 364 (citing H.R. REP. NO. 91-907, 91st Cong., 2d Sess. 74 (1970); S. REP. NO. 1170, 84th Cong., 1st Sess. 13 (1955)).

²³⁷ *Id.* at 366. In validating Congress' determination that an insanity acquittal provides a constitutionally adequate basis on which to base presumptions of mental illness and dangerousness continuing up to the time of commitment, the Court concluded that proof that a person committed a crime because he was mentally ill provided "common sense" grounds on which to infer continued dangerousness and mental illness. See *id.* at 364-66. In *Jones*, the petitioner was acquitted of the misdemeanor of attempted petit larceny. Common sense indicates that an insanity acquittal of attempted petit larceny provides little if any support for an inference of continuing mental illness

examined the government's interest in automatic commitment proceedings which is based on fiscal and administrative considerations, focusing principally on the government's interest in avoiding costly commitment hearings.²³⁸ Lastly, the Court reviewed the government's interest in confining mentally ill persons indefinitely for treatment until they recover their mental health or are no longer dangerous.²³⁹ The Court then turned to an examination of the petitioner's interests, consisting of a footnote reference to the minimal effect that the stigma associated with commitment has on insanity acquittees compared with its greater impact on civil committees.²⁴⁰ Concluding its limited evaluation of the petitioner's interests, the Court stated that a criminal defendant who successfully raises the insanity defense is stigmatized by the verdict itself, and the commitment which follows automatically causes little additional harm.²⁴¹

When evaluating the petitioner's claims, the *Jones* Court nowhere weighed his constitutionally guaranteed liberty interest prior to holding that he was not entitled either to immediate release or to recommitment under procedures similar to those used in civil commitment proceedings. The *Jones* dissent, on the other hand, balanced each important interest involved in the case, focusing in particular on the petitioner's liberty interest, and not simply on the petitioner's interest in avoiding the stigma associated with involuntary commitment.²⁴² The dissent observed that the facts of past criminal behavior plus mental illness do not justify indefinitely committing an individual without affording him the minimum due process standards associated with civil commitment.²⁴³ Thus, after balancing the government's interest in efficient and accurate commitment proceedings against both the petitioner's liberty interest and his interest in avoiding stigma, the *Jones* dissent concluded that, at some point, the government must bear the burden of proving continuing insanity by the *Addington* standard of "clear and convincing evidence."²⁴⁴

The *Jones* dissent's due process analysis, unlike that of the majority, reflects a consideration of each important interest involved in the case, as *Mathews* mandates. First, the dissent's conclusion that the petitioner should either be recommitted under civil commitment proceedings or immediately released is required under the Court's holding in *Mathews* that a commitment, to be constitutional, must be based on findings of mental illness and dangerousness. Thus, the Court's emphasis on the importance of the government's interests together with its incomplete consideration of the petitioner's interests is, if not unconstitutional under *Mathews*, impermissibly skewed toward the government's position that the procedural safeguards afforded the petitioner were constitutionally sufficient. Most importantly, when compared with the petitioner's constitutionally protected liberty interest, the government's interest in inexpensive and efficient proceedings, although one factor to be weighed, is certainly not determinative on the question whether to recognize a constitutional right to de novo commitment proceedings following an

and dangerousness. See *id.* at 379-80 (Brennan, J., dissenting) and sources cited therein. Indeed, the legislative history relied on by the Court to uphold the congressionally mandated presumptions of continuing mental illness and dangerousness speaks of "serious criminal charges . . ." See *id.* at 364 (quoting H.R. REP. NO. 91-907, 91st Cong., 2d Sess. 74 (1970)).

²³⁸ *Id.* at 366.

²³⁹ *Id.* at 368.

²⁴⁰ *Id.* at 367 n.16.

²⁴¹ *Id.*

²⁴² *Id.* at 377-86 (Brennan, J., dissenting).

²⁴³ *Id.* at 375 (Brennan, J., dissenting).

²⁴⁴ *Id.* at 382 (Brennan, J., dissenting).

insanity acquittal. Second, the Court engaged in speculation when stating that, "instead of focusing on the critical question whether the acquittee has recovered, the new proceeding [which the petitioner urged] likely would have to relitigate much of the criminal trial."²⁴⁵ As the *Jones* dissent observed, however, issues of current mental illness and dangerousness are distinct from findings made at criminal trials.²⁴⁶ Furthermore, no criminal trial took place in *Jones* because the petitioner successfully raised the insanity defense prior to trial. In summary, because the dissent, unlike the majority, fairly weighed the questions raised in *Jones* concerning the constitutional validity of the District of Columbia's criminal commitment scheme as required by *Mathews*, its conclusion that the petitioner was constitutionally entitled to immediate release or to recommitment should have prevailed.

In addition to his due process argument, the petitioner raised an equal protection claim.²⁴⁷ The petitioner contended that, because civil commitment candidates have the right to a jury at their commitment hearings,²⁴⁸ insanity acquittees also have a right to a jury determination of current insanity at their fifty-day release hearings.²⁴⁹ Addressing the petitioner's equal protection claim in a footnote, the Court concluded that the relevant equal protection comparison was between the availability of a jury at the acquittee's trial and the availability of a jury at the civil commitment hearing.²⁵⁰

At no time does an insanity acquittee in the District of Columbia have the right to a jury determination of present insanity, although civil commitment candidates have that right.²⁵¹ The function of a jury at the criminal trial, in part, is to determine whether the accused committed the crime as a result of insanity.²⁵² The jury at the criminal trial does not also determine whether the individual's insanity continues from the time of the crime's commission until the time of the criminal trial.²⁵³ Unlike civil commitment candidates, therefore, insanity acquittees in the District of Columbia are not afforded the opportunity to have a jury determine whether they are presently insane prior to commitment. Consequently, denying the petitioner in *Jones* the right to a jury at his fifty-day release hearing was not justified by the fact that insanity acquittees have a right to a jury determination of the mental state which existed at the time they committed their crimes.²⁵⁴ A finding that a person has committed a crime because of mental illness cannot substitute for a finding that the individual is mentally ill at the time of the trial and should be committed for treatment.

²⁴⁵ *Id.* at 366.

²⁴⁶ *Id.* at 383 n.17 (Brennan, J., dissenting).

²⁴⁷ *Id.* at 362 n.10. The *Jones* Court chose to consider all but one of the petitioner's claims under the due process clause rather than the equal protection clause, even though the petitioner had based his claims on both due process and equal protection grounds. In rejecting equal protection as a separate basis on which to evaluate the petitioner's claims, the Court reasoned that if, under the due process clause, the petitioner had no right to *Addington* procedural protections, it necessarily followed that a rational basis exists for equal protection purposes to distinguish between civil commitment candidates and insanity acquittees. *Id.* If, as this article concludes, the *Jones* Court's analysis is constitutionally flawed, then according to Justice Brennan's dissenting opinion, which concluded that there was no constitutional basis for distinguishing between civil and criminal committees when defining constitutionally adequate grounds for an indefinite commitment, separate equal protection grounds exist on which to evaluate the petitioner's claims.

²⁴⁸ D.C. CODE ANN. § 21-544 (1981).

²⁴⁹ *Jones*, 463 U.S. at 362 n.10.

²⁵⁰ *Id.*

²⁵¹ See *supra* note 131.

²⁵² D.C. CODE ANN. § 24-301(c) (1981).

²⁵³ *Id.*

²⁵⁴ *Jones*, 463 U.S. at 362-63 n.10 (citing *Jones v. United States*, 432 A.2d 364, 373 (D.C. 1981)).

CONCLUSION

The Supreme Court's opinion in *Jones v. United States* is analytically flawed in several critical respects. First, the holdings in prior Supreme Court cases concerning the rights of mentally ill offenders support the conclusion that the petitioner in *Jones* was entitled either to immediate release or to recommitment under procedures similar to those available to civil commitment candidates. The Court accorded little weight to relevant case law in this area, ignoring earlier opinions in which it ruled that, if challenged commitment proceedings involve new findings of fact, individuals committed under these proceedings must have available the same procedural protections afforded other commitment candidates. Second, because a commitment, to be constitutional, must be based on findings and not simply on presumptions of mental illness and dangerousness, the petitioner's automatic commitment following his insanity acquittal was unconstitutional. In upholding the validity of the procedures under which the petitioner was committed, the *Jones* Court failed to adhere to this procedural requirement which the Court in its earlier cases had concluded was necessary for a constitutionally valid commitment. Finally, due process requires that a court reviewing a constitutional challenge to governmental proceedings carefully weigh each important interest involved in the case. The *Jones* Court, by neglecting to weigh the petitioner's liberty interest when analyzing his challenge to the District of Columbia's criminal commitment scheme, afforded the petitioner an impermissibly abbreviated analysis of his claims prior to reaching its conclusion that he was not entitled either to release from confinement or to recommitment under procedures similar to those used in civil commitments. For these reasons, the Supreme Court's decision in *Jones v. United States* marks an unwarranted retreat from Supreme Court precedent giving strong procedural protections to mentally ill offenders.

Because *Jones* marks a distinct departure from prior Supreme Court cases increasing the procedural rights available to mentally ill offenders, predicting how the Court will evaluate future cases in the mental health area is difficult. If the Court chooses to return to the line of cases preceding *Jones*, the impact that this decision will have on future commitment cases may not be significant. Indeed, since the Court's opinion is both substantively and analytically flawed, it is to be hoped that *Jones* will remain a lone aberration among cases involving commitment proceedings. In keeping with recent statutory cutbacks in the insanity defense which followed in the wake of Hinckley's insanity acquittal, however, *Jones* may be an early and alarming warning that the Court is reversing its line of cases which uniformly had strengthened the procedural rights of mentally ill offenders.

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