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Supreme Court of Texas.
In re Commitment of Michael Fisher.
No. 04-0112.

November 30, 2004

Appearances:

Ryan D. Clinton, Asst. Solicitor Gen., for State.
Daniel E. Maeso, State Counsel for Offenders, Huntsville, for Respondent.

Before:

Chief Justice Wallace B. Jefferson, Justice Don R. Willett, Justice Harriet O'Neill, Justice David Medina, Justice Paul W. Green, Justice Nathan L. Hecht, Justice Dale Wainwright, Justice Phil Johnson, Justice Scott A. Brister.

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SPEAKER: Oyez, oyez, oyez. The Honorable Supreme Court of Texas. All persons having business before the Honorable Supreme Court of Texas, [inaudible] your attention to the Courts now. [inaudible] state of Texas [inaudible].

CHIEF JUSTICE JEFFERSON: Thank you. Please be seated. Good morning. The Court has three matters on its oral submission docket. In the order of their appearance, they are docket number 04-0112 In Re: The Commitment of Michael Fisher from Montgomery County in the Thirteenth Court of Appeals District, number 04-0119 In re: Weekley Homes, L.P., and docket number 04-0307, In the Interest of J.L., a Child from [inaudible] in the Thirteenth Court of Appeals District.

The court has allotted 20 minutes per side and we expect to conclude these arguments by noon. The Court will take a brief recess in between each argument. These proceedings are being recorded and the parties may contact the Court's office for a copy of today's argument. There is currently one vacancy on the Court which we expect to be filled in the near future. The Court is ready to hear argument in 04-0112 In Re: The Commitment of Michael Fisher.

SPEAKER: May it please the Court. Mr. Clinton will present argument for the petitioner. Petitioner has reserved five minutes for rebuttal.

ORAL ARGUMENT OF RYAN D. CLINTON ON BEHALF OF THE PETITIONER

MR. CLINTON: Chief Justice, may it please the Court. This case is largely controlled by the United States Supreme Court Decisions of *Kansas v. Hendricks* and *Allen v. Illinois*. Most of the arguments presented by Mr. Fisher were considered by the U.S. Supreme Court in those decisions and expressly rejected. The threshold question before this Court and the question upon which Mr. Fisher's argument depends is the question whether the Texas Sexual Predator Law is civil or punitive. That question, the U.S. Supreme Court has told us, is a matter of statutory construction.

JUSTICE O'NEILL: Is that a question we have to answer to globally or can pieces of it be punitive?

MR. CLINTON: The United States Supreme Court has said that the question of a statute's character is a facial question, so it can't be considered as applied in particular circumstances raised by individual defendants in the case --

JUSTICE O'NEILL: But -- but can a piece of it be facially punitive where other pieces are not? Or is it -- or do you look at the whole thing? I mean, specifically, I'm talking about the -- the felony case.

MR. CLINTON: Every time, the U.S. Supreme Court has considered [inaudible] what it has done on the Federal Constitution [inaudible] looked at the entire process --

JUSTICE O'NEILL: But what are the other statutes the Court has looked at has ever had this felony piece in it? I mean ours is unique in that respect.

MR. CLINTON: That's correct but in none of the cases that the Court has considered has an isolated one piece of the procedure in isolation. It said it's a question of statutory interpretation that you look to the intent of the legislature. The only instance in which you disregard the intent of the legislature is where there is the clearest proof that the statute is punitive. And so I would submit that in doing so, that is an examination of the entire statutory proceeding, not one particular aspect. And each of the cases standing back for two decades that the Court has considered these sorts of cases, it has done that, it has looked at the entire proceeding, all of the protection [inaudible] how an individual gets into the proceeding, what happens, how an individual gets out of the proceeding. That has been the --

JUSTICE O'NEILL: But you'd agree the felony piece is probably the stickier issue here?

MR. CLINTON: The felony piece is Mr. Fisher's strongest argument. Other than that, this case is almost identical to *Kansas v. Hendricks*. So, the question then becomes, with respect to Mr. Fisher's argument, between the Texas and Kansas statutes, the two are virtually identical. There were five arguable differences. Three, Mr. Fisher has mentioned, I think are largely on the Court. The difference between mental abnormality and behavioral abnormality is rejected by the Court in *Hendricks*. The differences in terms of the petition for review proceedings and particularly when it is biennial or once a year, the cases have given no weight to that and the standard of proof remains on the [inaudible] beyond a reasonable doubt. And finally, the rules of evidence, *Allen* rejects the notion that providing some criminal protections brings the whole panoply of criminal protections. Those are the three I would suggest are relatively unimportant. I will elaborate on this further if you like. The two that matter are one that weighs heavily in support of the statute and one that Mr. Fisher relies. The one that weighs heavily in support of the statute is that in Texas, the civil commitment is outpatient treatment.

JUSTICE O'NEILL: Okay. Let me ask you about that. What about the

restrictions that the trial court put on Mr. Fisher here, his treatment?

MR. CLINTON: That the Texas provision provides outpatient treatment does not mean it only to request treatment. What it provides is supervision and treatment. And many of the provisions that were put on Mr. Fisher, relate to supervision, relate to the fact that a jury has found him to be a dangerous sexual predator.

JUSTICE O'NEILL: Do any of them relate to treatment per se? I mean --

MR. CLINTON: A number of them. He was explicitly required to attend treatment to follow the instruction of the case manager. The entire system is set up to ensure that individuals that are found to be sexually violent predators receive [inaudible]. And that's actually -- with respect to that distinction, it is worth noting that even the dissenting judges in *Kansas v. Hendricks* would have agreed presumably that the Texas statute is constitutional. Justice Breyer writing the dissent in *Kansas v. Hendricks* focused on two factors that he found unacceptable under Kansas provision. The first is that it didn't provide for treatment. The Texas provision does provide for treatment, that's its entire function or its principal function. The second was that it didn't consider less intrusive alternatives such as half-way houses such as precisely the sort of thing the Texas statute does. So, the two failings that the dissent found in Kansas are both satisfied here.

JUSTICE O'NEILL: But what about the -- the way that it actually works, if you violate any minor provision of the order of confinement under the strict -- in combination with the three structure at -- you're proposing for that?

MR. CLINTON: Well, Mr. Fisher raises that as a hypothetical. But to the best of the state's knowledge, no individual has ever been convicted as a habitual offender for a violation --

JUSTICE O'NEILL: Which [inaudible] facial challenge, are you not?

MR. CLINTON: We're talking about a facial challenge. And Mr. Fisher, in suggesting the possibility that someone might be committed for life for violating a minor provision of the elaborate court order, is a hypothetical which is contrary to the notion of facial challenge. He is opposing one particular circumstance where an individual might have a constitutional claim. But a facial challenge doesn't look for one's hypothetical circumstance that could happen rather it asks, is it impossible for this statute to be enforced in a way that is constitutional? If it is possible for it to be enforced in a way that's constitutional, then it must survive a facial challenge.

JUSTICE: Is it habit?

MR. CLINTON: At the end of the day that Mr. Fisher found himself violating a minor provision of the court's order. And if Mr. Fisher's second hypothetical, that he violates a minor provision and that he is then prosecuted as habitual offender and facing a life sentence, at that point, his claim would be right and that would be the appropriate venue to raise it.

CHIEF JUSTICE JEFFERSON: But one of his questions is how does he conform his conduct in a way that would not violate the terms that the trial court set out. For example, he could be in a stop sign, and a wooded area to the right, a school less than a thousand feet from him, and if he stopped, he could be convicted for that and that's a felony conviction. How is he supposed to conform his conduct in a way that doesn't get him in trouble?

MR. CLINTON: With respect to the questions you've raised on that,

that's essentially his vagueness challenge. The first problem with this vagueness challenge is that it was not presented to the trial court, so it was a claim that was not preserved. Secondly, a vagueness challenge asks whether a statute is vague, not whether a particular order is vague and nothing in the statute is vague. And beyond that, if he is in a situation in practical operation, the way that these systems work is the case manager works with a sexual predator to layout the parameters of what he or she, typically he, is allowed to do. And so, the various hypotheticals Mr. Fisher comes up with about what he might or might not be prevented from doing are precisely that. They are hypotheticals that are not right in a facial challenge.

JUSTICE O'NEILL: Well, let me -- let me ask this. I mean, the -- they have argued that our statute violates substantive due process because it won't, in this instance, the -- Mr. Fisher is incapable of understanding the conditions of his treatment supervision and therefore, presumably incapable of complying with them. At what point would you take little confidence into account? I mean, would it be when he is prosecuted as a habitual offender we can then assert little incompetency?

MR. CLINTON: Yes, Justice O'Neill. That would be precisely what one would expect, that if he were in a situation where he violated the terms of his commitment and if a prosecutor then shows to prosecute it, then his competency -- all of the full protections of criminal trial would apply then. As I said, to the best of our knowledge, no individual has been convicted as a habitual offender for violations of these provisions. What Mr. Fisher is presenting is a hypothetical rather than what the statute in day-to-day operation provides.

Beyond that, the felony provision is, at the end of the day, a basic enforcement mechanism. And it flows from the fact that Texas chose to go the least intrusive way through an outpatient program rather than an inpatient program. The reason why Texas needs some enforcement mechanisms is that if you're gonna have an outpatient program for dangerous predators, you got to have some method of enforcing the requirements of the outpatient program. In an inpatient program, you have the people in full incarceration. You take away virtually all of their liberties and you don't need a separate enforcement mechanism because you're physically confining them. The walls and the bars and the guards do the operation of this enforcement [inaudible].

JUSTICE O'NEILL: It seems to me the difference here -- the subtle difference is, yes, you could confine him without treatment but it's a civil confinement, it's not a criminal confinement. If he -- if he violated, for example, the statutes said, well, if you violate one of these terms of your treatment, then you get confined with reasonable confinement. This statute makes it a penal offense of a third-degree felony and you're put back in the criminal system for -- I mean, do we have comparable penal provisions in the general civil commitment laws where if you violate any provision of your civil commitment order that you are subject to penal statute?

MR. CLINTON: There -- there is not a comparable provision of the civil commitment procedures but there is an analogy, the civil -- rather criminal contempt which courts have long had the authority to find an individual in criminal contempt for willfully violating the orders of the court.

JUSTICE O'NEILL: And the fine is, what, up to \$500 a day and not more than six months imprisonment which is opposed to here, given the way that -- in conjunction with habitual offender, we're looking at

much different prison sentences.

MR. CLINTON: But that limitation on criminal contempt was a decision of the Texas Legislature and it's not a necessary procedure. You can have broader findings of criminal [inaudible].

JUSTICE: But has this fit within the Supreme Court's discussion in Hendricks and Crane about the need to desegregate these people from people that ought to be dealt with in the criminal system? In other words, we are not looking at the conduct for punishment or deterrence. We are looking at the behavior or conduct for the purpose of predicting future atrocities and treatment confinement, civil confinement. How does that fit together?

MR. CLINTON: I would suggest it fits almost precisely within Hendricks. In terms of the statute on this phase is the civil commitment statute. It's a noncriminal section --

JUSTICE O'NEILL: But once you violate the commitment provision, then you're -- it's a third-degree felony and in conjunction with the prior convictions that are part of this, you face that very [inaudible].

MR. CLINTON: But if an individual violates it, that individual is not being punished for their prior criminal conduct. That individual is being punished for violating a court order which is a separate and subsequent criminal offense. And without some enforcement mechanism, the outpatient procedures would have a null effect because if at the end of the day, an individual who a jury just found unanimously to be a violent sexual predator and a danger to the community were told, "We want you to go to outpatient counseling but if you don't, nothing happens." That's a provision -- that's a system that would make no sense.

JUSTICE O'NEILL: So the provisions of the treatment order are violated. Let's say, he is prosecuted as a habitual offender. They seek the maximum, they seek life through the enhancement provisions. What happens if they determined he is incompetent to stand trial? Is he then civilly committed until he is competent just as in a criminal context?

MR. CLINTON: It is a pure criminal context. If there is -- if there is a charge brought for a violation of the order, it's a third-degree felony so it's a criminal trial. All of the rights of any other criminal trial attached to the defendant because a defendant then and he is found to be incompetent, that individual is then under article 46 via the criminal procedure, can be held, if his incompetent for trial, can be held until he becomes competent or he can be ultimately civilly committed. And in that procedure, it's a basic requirement for that criminal trial as for any criminal trial and it must be found --

JUSTICE O'NEILL: So, the argument that -- just for a minor violation, you can be thrown into jail for life even though you're not mentally competent to understand what you're doing really is not how the statute plays out.

MR. CLINTON: No, your Honor. And that also illustrates why Mr. Fisher's second argument that he could not have been committed as competent really flows from his first. If the statute is criminal, his second argument is correct. Under a criminal statute, you cannot bring a criminal conviction against an individual who is incompetent. If the statute is civil, his argument is incorrect and no court has ever saw that --

JUSTICE O'NEILL: But if it's civil, you still can't.

MR. CLINTON: You can break --

JUSTICE O'NEILL: Whether it's civil or criminal, you still can't bring a criminal action against a person who is [inaudible].

MR. CLINTON: Yes, your Honor. It's true that you can't bring a criminal action but if commitment under the sexual predators statute is civil, which we submit that it is, then constitutionally, one is allowed to civilly commit an individual who is not competent because it is civil. It is not a violation for past crimes, it is rather a preventative measure, a measure for treatment that is hinged upon the individual's current mental condition and their danger together. But that's the fundamental divide, is the statute civil or is it criminal? And if it is civil, then Mr. Fisher does not have a right to be competent. In fact, the claim that you cannot civilly commit someone who is incompetent flows against the entire purpose of civil commitment.

JUSTICE O'NEILL: But what your -- into the criminal -- into 841.085, I have two questions. One, do we need to read scienter or into that or should we to make it constitutional. And two, once you're into that, would it be a defense that you didn't have mental capacity to note you were violating the commitment.

MR. CLINTON: Yes, with respect to both of the questions.

JUSTICE O'NEILL: You think we should read scienter into 841.085?

MR. CLINTON: Yes. But that is for a criminal action brought for a violation of the court order, that is not the initial proceeding itself.

JUSTICE O'NEILL: I understand. Do you think it's unconstitutional if we don't read scienter into the criminal penalty section?

MR. CLINTON: I think that there is an implied scienter requirement in that provision.

JUSTICE: Your brief is careful to indicate that the U.S. Supreme cases are precedent. They are not controlling. They are not binding. Your brief never, as I read it, makes that assertion. When you started your argument this morning, you said those opinions largely control this case. Obviously, U.S. Supreme Court decisions on constitutional matters set a floor under the Texas Constitution which it intends that for -- about more rights, more protection. The U.S. Supreme Court precedence on legislative matters on statutes have some connection with federal law, are not binding at all on this Court. We are to follow order on that. What did you mean when you said Kansas and Allen largely control?

MR. CLINTON: I was speaking with respect to the federal constitutional claims which are then the principal claims that Mr. Fisher has advanced. With respect to the Texas Constitutional claims, this Court often looks to the U.S. Supreme Court for guidance. But of course [inaudible] drafted those, those are not binding [inaudible] Texas Constitution.

CHIEF JUSTICE JEFFERSON: Thank you, Counsel. The Court is ready to hear argument from the respondent.

SPEAKER: May it please the Court. Mr. Maeso will present argument for the respondent.

ORAL ARGUMENT OF DANIEL E. MAESO ON BEHALF OF THE RESPONDENT

MR. MAESO: May it please the Court, Chief Justice Jefferson, Texas Supreme Court. My name is Daniel E. Maeso and I represent the interest of Mr. Fisher. Sitting at the counsel table with me is the Division Chief Ms. Kim Vernon, also a member of the bar of this Court.

Let me go straight to the point. Mr. Fisher, a schizophrenic and mentally retarded individual who was described as out of control and delusional in the trial court, and also described was that as he gets more psychotic, he picks up speed and aggression.

JUSTICE O'NEILL: Let me ask you this question. Let's suppose that we didn't have the statute at all, but we did have a penal provision on the books that said, if you have been convicted of a sexual predatory act in the past, you cannot do the things that are listed in 841.082 and if you do, it's a penal violation. And if you've adjudicated of child molestation, you cannot go -- you cannot go within the safety zone around certain areas. What if we had that statute on the books, would that be unconstitutional? And a violation of that means you go back to jail.

MR. MAESO: So long as the statute provided for treatment, mental or --

JUSTICE O'NEILL: No, no, that criminal statute. We didn't have any civil statute. Would you say if you're a repeat offender and you get caught, you know, you have a history here, it's illegal for you to do these things, the things that are listed in 841.082. It's criminally -- it's punishable with a third-degree felony. Would that be constitutional?

MR. MAESO: Yes, your Honor, it would be and it should be in Texas. Now, the Texas civil commitment statute for sexually violent predators was not written for the Mr. Fishers of this world. Indeed, it is like trying to force a square peg into a round hole. That square peg being Mr. Fisher who is thoroughly unable and incompetent to comply with the conditions of confinement. And I will take up those conditions of confinement at this time.

JUSTICE O'NEILL: Well, now, my understanding is there are two points in time. There is one point in time when you're ordered a civil commitment and the order with the conditions are imposed upon you.

MR. MAESO: Yes, your Honor.

JUSTICE O'NEILL: And the arguments made that you don't have to be mentally competent to have the conditions imposed upon you. Let's put that argument aside for the moment.

MR. MAESO: Yes, your Honor.

JUSTICE O'NEILL: That if you don't understand the conditions -- if you're incompetent to understand them and you're proceeded against for a felony, habitual offender charge, then full criminal protections apply and your competency can be determined then and therefore, you cannot be convicted for mental incompetence. What constitutional provision does that violate?

MR. MAESO: The provisions -- the substantive due process of Mr. Fisher at that time, you cannot right the wrong that was committed at the beginning with the rights that are given to Mr. Fisher at that time. Mr. Fisher is bound to be prosecuted under the third-degree felony because he will violate it.

JUSTICE O'NEILL: And -- and will be protected at that point based on mental incompetency.

MR. MAESO: But he needs the protection before that punishment. If you eliminate the punishment clause from the statute, then Mr. Fisher will have had all his right assuming that as the statute promises, the proper treatment -- individualized treatment had been given to Mr. Fisher.

JUSTICE O'NEILL: But I thought you said if we had no treatment at all, none, and we just have a criminal provision, that would be okay?

MR. MAESO: If you had a criminal penalty at the beginning, yes,

your Honor. Mr. Fisher would have to comply with all of the conditions of confinement, technical conditions such as, as Mr. -- Justice Jefferson mentioned, being in the wrong bus at the wrong time thinking about sex, not passing a polygraph, missing a deadline with the case manager, all of those are conditions that are up to the dictatorial judgment of the case manager and the judge. They indeed become the legislature and they indeed violate the separation of powers.

CHIEF JUSTICE JEFFERSON: Did you raise separation of powers? Did you preserve that argument for us --

MR. MAESO: Yes, your Honor, we did. In the very first brief that we filed.

CHIEF JUSTICE JEFFERSON: Did you preserve a challenge to the statutes or the order of vagueness?

MR. MAESO: Yes, your Honor, we did.

CHIEF JUSTICE JEFFERSON: The counsel says, you did not.

MR. MAESO: What?

CHIEF JUSTICE JEFFERSON: He says that it was not preserved. Where was it preserved?

MR. MAESO: In the very original brief with -- being in the Thirteenth Court. We raised that issue that the statute was vague. As a matter of fact, I was going to go into that, that all the terms of the statute, all the terms and conditions that are applied to Mr. Fisher are vague. As Justice Kennedy stated, to have criminal principles in a civil statute is not enough and the legislature should not be concerned with imposing these criminal penalties against persons like Mr. Fisher. To do so is to inconceivably violate the rights of Mr. Fisher.

I beg of this court to send the case back to the legislature, affirm the Thirteenth Court of Appeals because the statute violates due process. It violates equal protection. It violates the Fifth Amendment. It violates substantive due process and it violates the separation of powers doctrine. There are a number of things that were found wrong by Judge Webby. Indeed, Judge Webby listed all of the things that are wrong with the statute. But I want to direct the attention of this Court to the argument on the promise of the statute to provide treatment once the person is committed to that half-way house. It would not take long for Mr. Fisher to violate one of these conditions. And the statute offers protection to the public. If Mr. Fisher or one like him is placed in a half-way house, when he picks up that stress and he picks up that psychotic character, not only can he hurt himself but he can hurt the public. So, the statute does not offer the protections to the public nor to Mr. Fisher.

JUSTICE: You think he should be confined?

MR. MAESO: I'm sorry?

JUSTICE: You think he should be confined?

MR. MAESO: I think that he should be confined in a mental institution receiving mental condition treatment. That is what he needs. It is not -- this case and the statute in Texas is not like the Hendricks -- Kansas v. Hendricks case. In that case, the court was not concerned with the penalty clause such as this one -- had no penalty clause. From the very beginning, Hendricks was found to be treated for his mental condition. In addition to the fact that he admitted that he was a pedophile and that he wanted to be confined because if he went out, he would violate the law again.

Contrary to that, the only, and I'd say again, the only state in the United States that has a penalty clause for violating any of the conditions of confinement is the state of Texas. In Texas, we cannot execute an incompetent but we can put an incompetent, a psychotic,

aggressive individual out in the public in a half-way house where he is certainly, indomitably bound to fail, and to go to the penitentiary for life. It's packaged in the beginning with the two felony convictions and it is finally wrapped at the end with the third-degree felony. Those are the realities of the statute in Texas. This Court should affirm the Thirteenth Court of Appeals and send the case back to the drawing board of the legislature. Thank you.

CHIEF JUSTICE JEFFERSON: Thank you, Counsel.

REBUTTAL ARGUMENT OF RYAN D. CLINTON ON BEHALF OF THE PETITIONER

MR. CLINTON: There is no general constitutional prohibition on laying out requirements that may affect individuals who may or may not be incompetent. Right now, Mr. Fisher, as a result of a unanimous jury finding that he is a violent sexual predator, is subject to the requirements of court order. Right now, Mr. Fisher is also subject to all of the codes including, right now, a criminal code that prohibits running a stop sign. Mr. Fisher may or may not be incompetent but the fact that he is subject at this instant to a provision on running a stop sign, does not run afoul of any constitutional provision.

Laying out the requirements that will regulate conduct of those who are either competent or incompetent is consistent with both the U.S. and Texas Constitution. The second stage where a criminal proceeding is brought against an individual for violating those requirements, either the requirements of the court order or the requirements for violating -- for running a stop sign, that criminal proceeding is where the constitutional provisions come to play. And in a criminal proceeding for any criminal violation, it is unconstitutional to proceed against an individual who is incompetent. And any incompetent person can raise that indeed and a court is obliged to raise it on its own if it observes that the defendant --

CHIEF JUSTICE JEFFERSON: Let's assume that the -- I know you say vagueness wasn't preserved and we'll look at that, but let's presume that the individual is not incompetent, but is convicted, under the example I gave to you before, for being in a place not knowing the presence of the school or on a bus or, you know, what have you, would there be any constitutional problems with any conviction under the terms of both the statute, and the statute give the trial court the ability to state the treatment in terms -- under the treatment terms in varying place here?

MR. CLINTON: If a defendant were convicted for violating a provision, that would be the appropriate time and that would be when the claim became right to determine whether that provision was vague or not. And so, Mr. Fisher would be able to raise that at that time. If he violates the terms and if it turns out that those terms are in fact vague, he can then raise those claims in the ordinary course. Where Mr. Fisher did not raise vagueness, he raised it in the Court of Appeals, where he did not raise it was in the trial court. And in any event, the claim isn't right. He is not faced with prosecution or threaded prosecution. He is hypothesizing possible future conduct and then hypothesizing a second supposition of possible prosecution following the possible future conduct.

JUSTICE O'NEILL: That would have to be on your interpretation [inaudible] knowing violation under the Chief's hypothetical.

MR. CLINTON: Yes, Justice, [inaudible]. That is part of the dichotomy I was drawing at the beginning of this rebuttal between laying out regulations on individuals being competent or incompetent and criminal prosecutions. These criminal prosecutions require competence. They require that the individual not have been insane at the time of conduct, and they require mens rea. And so, a knowing violation would indeed be required but that's because that would be a criminal proceeding. The question for this Court is a statutory -- the threshold question is a statutory construction question about the nature of this statute as whole. Is it civil or is it criminal? And with respect to that, 16 states have enacted sexual predator statutes. Of those 16, Texas' is the least restrictive of all of them.

JUSTICE O'NEILL: One piece of it is, the felony piece is more restrictive.

MR. CLINTON: Well, the felony piece is part and parcel of the outpatient treatment, and so the program must be judged as a whole. And the question is whether an individual who is allowed liberty, allowed not to be confined in the penitentiary, allowed to have many of the liberty interests that are valued by individuals but subject to supervision and monitoring with enforcement, that is less egregious than incarceration and penitentiary.

CHIEF JUSTICE JEFFERSON: Thank you, Counsel. That concludes the argument and the Court will take a brief recess.

SPEAKER: All rise.

2004 WL 5597662 (Tex.)