

# The Burger Court Opinion Writing Database

## *Allen v. Illinois*

478 U.S. 364 (1986)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



4

CHAMBERS OF  
THE CHIEF JUSTICE

Supreme Court of the United States  
Washington, D. C. 20543

June 7, 1986

Re: 85-5404 - Allen v. Illinois

Dear Bill,

I join.

Regards,



Justice Rehnquist

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 5, 1986

No. 85-5404

Allen v. Illinois

Dear Thurgood, Harry and John,

We four are in dissent in the  
above. Would you, John, be willing to  
take it on?

Sincerely,

*Bill*

Justice Marshall

Justice Blackmun

Justice Stevens

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 27, 1986

No. 85-5404

Allen v. Illinois

Dear Bill,

I await the dissent.

Sincerely,



Justice Rehnquist

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

JUN 30 1986

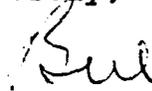
No. 85-5404

Allen v. Illinois

Dear John,

Please join me in your dissenting  
opinion in the above case.

Sincerely,



Justice Stevens

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 22, 1986

85-5404 - Terry B. Allen v. Illinois

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 22, 1986

Re: No. 85-5404 - Allen v. Illinois

Dear Bill:

I await the dissent.

Sincerely,



T.M.

Justice Rehnquist

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 30, 1986

Re: No. 85-5404 - Allen v. Illinois

Dear John:

Please join me in your dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 30, 1986

Re: No. 85-5404, Allen v. Illinois

Dear John:

Please join me in your dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Justice Stevens

cc: The Conference

May 27, 1986

85-5404 Allen v. Illinois

Dear Bill:

The most troublesome aspect of this case, at least for me, is petitioner's argument that the nature of the facility to which he was sentenced resulted in his "treatment" being the functional equivalent of "punishment". The state conceded at oral argument that the Menard Psychiatric Center is located within a large maximum-security prison complex, and contains a large number of persons convicted of serious felonies. It also conceded, as I recall, that persons like petitioner ("sexually dangerous persons") were confined in the same type cells as these felons, and took their meals with them.

These facts alone may not be enough to make this a "criminal" case, but if the record fully supported the view that there is no difference in the way "sexually dangerous persons" and ordinary felons are treated in other prisons, this would be a much closer call for me. Your opinion, see pp. 8-9, disposes of this issue rather briefly. It would help me if your opinion recognized that if the confinement of the two categories is identical except that a "sexually dangerous person" is entitled to have his status reviewed every six months, we would have a different case--one that would perhaps be controlled by In re Gault. Here, as your footnote p. 6 states, the record is inadequate. It tells us little or nothing about the daily regimen at Menard, or whether there are in fact relevant differences in the confinement there and confinement of felons in other state prisons.

If you prefer not to include language along the foregoing lines, I will join your opinion but write briefly in concurrence.

Sincerely,

Justice Rehnquist

LFP/vde

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 29, 1986

85-5404 Allen v. Illinois

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

Circulated: MAY 21 1986

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-5404

TERRY B. ALLEN, PETITIONER *v.* ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
ILLINOIS

[May —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented by this case is whether the proceedings under the Illinois Sexually Dangerous Persons Act (Act), Ill. Rev. Stat., ch. 38, ¶ 105-1.01 *et seq.*, are "criminal" within the meaning of the Fifth Amendment's guarantee against compulsory self-incrimination.

Petitioner Terry B. Allen was charged by information in the circuit court of Peoria County with committing the crimes of unlawful restraint and deviate sexual assault. Shortly thereafter the State filed a petition to have petitioner declared a sexual dangerous person within the meaning of the Act.<sup>1</sup> After a preliminary hearing on the information, the criminal charges were dismissed for lack of probable cause, and the petition was apparently dismissed as well. Petitioner was then recharged by indictment, and the petition to declare him sexually dangerous was reinstated.

Pursuant to the Act, with petitioner and counsel present, the trial court ordered petitioner to submit to two psychiatric examinations; the court explained the procedure as well as

<sup>1</sup>The Act defines sexually dangerous persons as follows:

"All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children, are hereby declared sexually dangerous persons." ¶ 105-1.01.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 28, 1986

Re: No. 85-5404 Allen v. Illinois

Dear Lewis,

I think I understand what you were driving at in your letter of May 27th; would it satisfy you if I deleted the present footnote 6 and substituted the following paragraph in the text following the first paragraph break on page 9?

"Petitioner has not demonstrated, and the record does not suggest, that 'sexually dangerous persons' in Illinois are confined under conditions incompatible with the State's asserted interest in treatment. Had petitioner shown, for example, that the confinement of such persons imposes on them a regimen which is essentially identical to that imposed upon felons with no need for psychiatric care, this might well be a different case. But the record here tells us little or nothing about the regimen at the psychiatric center, and it certainly does not show that there are no relevant differences between confinement there and confinement in the other parts of the maximum-security prison complex. Indeed, counsel for the State assures us that under Illinois law sexually dangerous persons must not be treated like ordinary prisoners. Tr. of Oral Arg. 32-33. We therefore cannot say that the conditions of petitioner's confinement themselves amount to 'punishment' and thus render 'criminal' the proceedings which led to confinement."

Sincerely,

*Wm*

Justice Powell

PP [4, 8, 9 (new medical)]

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

                      
No. 85-5404  
                    

TERRY B. ALLEN, PETITIONER *v.* ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
ILLINOIS

[June —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented by this case is whether the proceedings under the Illinois Sexually Dangerous Persons Act (Act), Ill. Rev. Stat., ch. 38, ¶105-1.01 *et seq.* (1985), are "criminal" within the meaning of the Fifth Amendment's guarantee against compulsory self-incrimination.

Petitioner Terry B. Allen was charged by information in the Circuit Court of Peoria County with committing the crimes of unlawful restraint and deviate sexual assault. Shortly thereafter the State filed a petition to have petitioner declared a sexual dangerous person within the meaning of the Act.<sup>1</sup> After a preliminary hearing on the information, the criminal charges were dismissed for lack of probable cause, and the petition was apparently dismissed as well. Petitioner was then recharged by indictment, and the petition to declare him sexually dangerous was reinstated.

Pursuant to the Act, with petitioner and counsel present, the trial court ordered petitioner to submit to two psychiatric examinations; the court explained the procedure as well as

<sup>1</sup>The Act defines sexually dangerous persons as follows:

"All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children, are hereby declared sexually dangerous persons." ¶105-1.01.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 5, 1986

Re: 85-5404 - Allen v. Illinois

Dear Bill:

I would be happy to take on the dissent in this case.

Respectfully,



Justice Brennan

cc: Justice Marshall  
Justice Blackmun

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 22, 1986

Re: 84-5404 - Allen v. Illinois

Dear Bill:

As soon as I can get to it, I shall prepare a  
dissent in this case.

Respectfully,



Justice Rehnquist

Copies to the Conference

85-5404 - Allen v. Illinois

*Please see me*  
*[Signature]* G.H.

JUSTICE STEVENS, dissenting.

Article 105 of the Illinois Criminal Code authorizes a special procedure for the involuntary commitment of individuals found to be "sexually dangerous persons."<sup>1</sup> In many respects, the proceeding is virtually identical to Illinois' proceeding for prosecution of sex-related crimes. When the criminal law casts so long a shadow on a putatively civil proceeding, I think it clear that the procedure must be deemed a "criminal case" within the meaning of the Fifth Amendment.<sup>2</sup>

I

As the Court reaffirms today, the fact that a State attaches a "civil" label to a proceeding is not dispositive. Ante, at 4. Such a label cannot change the character of a criminal proceeding. In re Gault, 387 U.S. 1, 49-50 (1967). Moreover, the words "criminal case" in the Fifth Amendment have been

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<sup>1</sup>Ill. Rev. Stat. ch. 38, Article 105, §1.01, et seq. (1981).

<sup>2</sup>The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself."

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

JUN 29 1986

Circulated: \_\_\_\_\_

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*JPS*  
*Please give me an opinion dated*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 85-5404

TERRY B. ALLEN, PETITIONER *v.* ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[July —, 1986]

JUSTICE STEVENS, dissenting.

Article 105 of the Illinois Criminal Code authorizes a special procedure for the involuntary commitment of individuals found to be "sexually dangerous persons."<sup>1</sup> In many respects, the proceeding is virtually identical to Illinois' proceeding for prosecution of sex-related crimes. When the criminal law casts so long a shadow on a putatively civil proceeding, I think it clear that the procedure must be deemed a "criminal case" within the meaning of the Fifth Amendment.<sup>2</sup>

I

As the Court reaffirms today, the fact that a State attaches a "civil" label to a proceeding is not dispositive. *Ante*, at 4. Such a label cannot change the character of a criminal proceeding. *In re Gault*, 387 U. S. 1, 49-50 (1967). Moreover, the words "criminal case" in the Fifth Amendment have been consistently construed to encompass certain proceedings that have both civil and criminal characteristics.<sup>3</sup> And, of

<sup>1</sup> Ill. Rev. Stat. ch. 38, Article 105, § 1.01, *et seq.* (1981).

<sup>2</sup> The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself."

<sup>3</sup> See *Boyd v. United States*, 116 U. S. 616, 633-634 (1886) ("We are . . . clearly of opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offences committed by him, though they may be civil in form, are in their nature criminal"); *United States v. U. S. Coin and Currency*, 401 U. S. 715, 718 (1971) ("From the relevant constitutional standpoint there is no difference between a man

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT  
SEE PAGE 6

2nd Draft

From: Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_ JUN 30 1986

## SUPREME COURT OF THE UNITED STATES

No. 85-5404

TERRY B. ALLEN, PETITIONER *v.* ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[July 1, 1986]

JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN join, dissenting.

Article 105 of the Illinois Criminal Code authorizes a special procedure for the involuntary commitment of individuals found to be "sexually dangerous persons."<sup>1</sup> In many respects, the proceeding is virtually identical to Illinois' proceeding for prosecution of sex-related crimes. When the criminal law casts so long a shadow on a putatively civil proceeding, I think it clear that the procedure must be deemed a "criminal case" within the meaning of the Fifth Amendment.<sup>2</sup>

### I

As the Court reaffirms today, the fact that a State attaches a "civil" label to a proceeding is not dispositive. *Ante*, at 4. Such a label cannot change the character of a criminal proceeding. *In re Gault*, 387 U. S. 1, 49-50 (1967). Moreover, the words "criminal case" in the Fifth Amendment have been consistently construed to encompass certain proceed-

<sup>1</sup>Ill. Rev. Stat., ch. 38, ¶105-1.01 *et seq.* (1983).

<sup>2</sup>The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself."

HAB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 2, 1986

No. 85-5404 Allen v. Illinois

Dear Chief,

My vote is tentatively to reverse. The label the state has placed on its sexually dangerous person proceeding is not determinative. What tips the scale for me is the commitment to a penal institution for the mental health treatment and the indefinite nature of the commitment which does not require the state to periodically bear the burden of establishing that the commitment should be continued. A state procedure which provided for such periodic review and placing the burden of proof on the state, and which provided for maintenance in a secure facility under civil rather than penal jurisdiction could properly be characterized as civil in nature in my view.

This probably does not accord with the other votes on the reverse side, however. Perhaps the writing will clarify the matter further.

Sincerely,

*Sandra*

*again, she wrote  
too soon & went off  
half-cooked!*

The Chief Justice

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

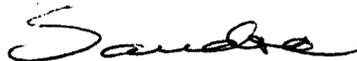
May 3, 1986

Re: Allen v. Illinois, No. 85-5404

Dear Chief:

My tentative vote in this case is to affirm.

Sincerely,



Sandra D. O'Connor

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13

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 4, 1986

Re: 85-5404 Allen v. Illinois

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference