SUPREME COURT OF THE UNITED STATES

No. 92–602

ST. MARY'S HONOR CENTER, ET AL., PETITIONERS *v.* MELVIN HICKS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June 25, 1993]

JUSTICE SCALIA delivered the opinion of the Court.

We granted certiorari to determine whether, in a suit against an employer alleging intentional racial discrimination in violation of §703(a)(1) of Title VII of the Civil Rights Act of 1964, 78 Stat. 255, 42 U. S. C. §2000e–2(a)(1), the trier of fact's rejection of the employer's asserted reasons for its actions mandates a finding for the plaintiff.

Petitioner St. Mary's Honor Center (St. Mary's) is a halfway house operated by the Missouri Department of Corrections and Human Resources (MDCHR). Respondent Melvin Hicks, a black man, was hired as a correctional officer at St. Mary's in August 1978 and was promoted to shift commander, one of six supervisory positions, in February 1980.

In 1983 MDCHR conducted an investigation of the administration of St. Mary's, which resulted in extensive supervisory changes in January 1984. Respondent retained his position, but John Powell became the new chief of custody (respondent's immediate supervisor) and petitioner Steve Long the new superintendent. Prior to these personnel changes respondent had enjoyed a satisfactory

employment record, but soon thereafter became the subject of repeated, and increasingly severe, disciplinary actions. He was suspended for five days for violations of institutional rules by his subordinates on March 3, 1984. He received a letter of reprimand for alleged failure to conduct an adequate investigation of a brawl between inmates that occurred during his shift on March 21. He was later demoted from shift commander to correctional officer for his failure to ensure that his subordinates entered their use of a St. Mary's vehicle into the official log book on March 19, 1984. Finally, on June 7, 1984, he was discharged for threatening Powell during an exchange of heated words on April 19.

Respondent brought this suit in the United States District Court for the Eastern District of Missouri, alleging that petitioner St. Mary's violated §703(a)(1) of Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e–2(a)(1), and that petitioner Long violated Rev. Stat. §1979, 42 U. S. C. §1983, by demoting and then discharging him because of his race. After a full bench trial, the District Court found for petitioners. 756 F. Supp. 1244 (ED Mo. 1991). The United States Court of Appeals for the Eighth Circuit reversed and remanded, 970 F. 2d 487 (1992), and we granted certiorari, 506 U. S. ___ (1993).

Section 703(a)(1) of Title VII of the Civil Rights Act of 1964 provides in relevant part:

> "It shall be an unlawful employment practice for an employer—
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> "(1) . . . to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race . . . ." 42 U. S. C. §2000e–2(a).

With the goal of "progressively . . . sharpen[ing] the

inquiry into the elusive factual question of intentional discrimination," *Texas Dept. of Community Affairs* v. *Burdine*, 450 U. S. 248, 255, n. 8 (1981), our opinion in *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792 (1973), established an allocation of the burden of production and an order for the presentation of proof in Title VII discriminatory-treatment cases.[1] The plaintiff in such a case, we said, must first establish, by a preponderance of the evidence, a "prima facie" case of racial discrimination. *Burdine*, *supra*, at 252–253. Petitioners do not challenge the District Court's finding that respondent satisfied the minimal requirements of such a prima facie case (set out in *McDonnell Douglas*, *supra*, at 802) by proving (1) that he is black, (2) that he was qualified for the position of shift commander, (3) that he was demoted from that position and ultimately discharged, and (4) that the position remained open and was ultimately filled by a white man. 756 F. Supp., at 1249–1250.

Under the *McDonnell Douglas* scheme, "[e]stablishment of the prima facie case in effect creates a presumption that the employer unlawfully discriminated against the employee." *Burdine*, *supra*, at 254. To establish a "presumption" is to say that a finding of the predicate fact (here, the prima facie case) produces "a required conclusion in the absence

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[1]The Court of Appeals held that the purposeful-discrimination element of respondent's §1983 claim against petitioner Long is the same as the purposeful-discrimination element of his Title VII claim against petitioner St. Mary's. 970 F. 2d 487, 490–491 (1992). Neither side challenges that proposition, and we shall assume that the *McDonnell Douglas* framework is fully applicable to racial-discrimination-in-employment claims under 42 U. S. C. §1983. Cf. *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 186 (1989) (applying framework to claims under 42 U. S. C. §1981).

of explanation" (here, the finding of unlawful discrimination). 1 D. Louisell & C. Mueller, Federal Evidence §67, p. 536 (1977). Thus, the *McDonnell Douglas* presumption places upon the defendant the burden of producing an explanation to rebut the prima facie case—*i.e.*, the burden of "producing evidence" that the adverse employment actions were taken "for a legitimate, nondiscriminatory reason." *Burdine*, 450 U. S., at 254. "[T]he defendant must clearly set forth, through the introduction of admissible evidence," reasons for its actions which, *if believed by the trier of fact*, would support a finding that unlawful discrimination was not the cause of the employment action. *Id.*, at 254–255, and n. 8. It is important to note, however, that although the *McDonnell Douglas* presumption shifts the burden of *production* to the defendant, "[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff," *id.*, at 253. In this regard it operates like all presumptions, as described in Rule 301 of the Federal Rules of Evidence:

> "In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast."

Respondent does not challenge the District Court's finding that petitioners sustained their burden of production by introducing evidence of two legitimate, nondiscriminatory reasons for their actions: the severity and the accumulation of rules violations committed by respondent. 756 F. Supp., at 1250.

Our cases make clear that at that point the shifted burden of production became irrelevant: "If the defendant carries this burden of production, the presumption raised by the prima facie case is rebutted," *Burdine*, 450 U. S., at 255, and "drops from the case," *id.*, at 255, n. 10. The plaintiff then has "the full and fair opportunity to demonstrate," through presentation of his own case and through cross-examination of the defendant's witnesses, "that the proffered reason was not the true reason for the employment decision," *id.*, at 256, and that race was. He retains that "ultimate burden of persuading the [trier of fact] that [he] has been the victim of intentional discrimination." *Ibid.*

The District Court, acting as trier of fact in this bench trial, found that the reasons petitioners gave were not the real reasons for respondent's demotion and discharge. It found that respondent was the only supervisor disciplined for violations committed by his subordinates; that similar and even more serious violations committed by respondent's coworkers were either disregarded or treated more leniently; and that Powell manufactured the final verbal confrontation in order to provoke respondent into threatening him. 756 F. Supp., at 1250–1251. It nonetheless held that respondent had failed to carry his ultimate burden of proving that *his race* was the determining factor in petitioners' decision first to demote and then to dismiss him.[2] In short, the District Court concluded that "although [respondent] has proven the existence

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[2]Various considerations led it to this conclusion, including the fact that two blacks sat on the disciplinary review board that recommended disciplining respondent, that respondent's black subordinates who actually committed the violations were not disciplined, and that "the number of black employees at St. Mary's remained constant." 756 F. Supp. 1244, 1252 (ED Mo. 1991).

of a crusade to terminate him, he has not proven that the crusade was racially rather than personally motivated." *Id.*, at 1252.

The Court of Appeals set this determination aside on the ground that "[o]nce [respondent] proved all of [petitioners'] proffered reasons for the adverse employment actions to be pretextual, [respondent] was entitled to judgment as a matter of law." 970 F. 2d, at 492. The Court of Appeals reasoned:

> "Because all of defendants' proffered reasons were discredited, defendants were in a position of having offered no legitimate reason for their actions. In other words, defendants were in no better position than if they had remained silent, offering no rebuttal to an established inference that they had unlawfully discriminated against plaintiff on the basis of his race." *Ibid.*

That is not so. By producing *evidence* (whether ultimately persuasive or not) of nondiscriminatory reasons, petitioners sustained their burden of production, and thus placed themselves in a "better position than if they had remained silent."

In the nature of things, the determination that a defendant has met its burden of production (and has thus rebutted any legal presumption of intentional discrimination) can involve no credibility assessment. For the burden-of-production determination necessarily *precedes* the credibility-assessment stage. At the close of the defendant's case, the court is asked to decide whether an issue of fact remains for the trier of fact to determine. None does if, on the evidence presented, (1) any rational person would have to find the existence of facts constituting a prima facie case, and (2) the defendant has failed to meet its burden of production—*i.e.*, has failed to introduce evidence which, *taken as true*, would *permit* the conclusion that there was a nondiscriminatory reason for the adverse action. In that event, the court must award judgment to the

plaintiff as a matter of law under Federal Rule of Civil Procedure 50(a)(1) (in the case of jury trials) or Federal Rule of Civil Procedure 52(c) (in the case of bench trials). See F. James & G. Hazard, Civil Procedure §7.9, p. 327 (3d ed. 1985); 1 Louisell & Mueller, Federal Evidence §70, at 568. If the defendant has failed to sustain its burden but reasonable minds could *differ* as to whether a preponderance of the evidence establishes the facts of a prima facie case, then a question of fact *does* remain, which the trier of fact will be called upon to answer.[3]

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[3]If the finder of fact answers affirmatively—if it finds that the prima facie case *is* supported by a preponderance of the evidence—it *must* find the existence of the presumed fact of unlawful discrimination and *must*, therefore, render a verdict for the plaintiff. See *Texas Dept. of Community Affairs* v. *Burdine*, 450 U. S. 248, 254, and n. 7 (1981); F. James & G. Hazard, Civil Procedure §7.9, p. 327 (3d ed. 1985); 1 D. Louisell & C. Mueller, Federal Evidence §70, pp. 568–569 (1977). Thus, the *effect* of failing to produce evidence to rebut the *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792 (1973), presumption is not felt until the prima facie case has been *established*, either as a matter of law (because the plaintiff's facts are uncontested) or by the fact-finder's determination that the plaintiff's facts are supported by a preponderance of the evidence. It is thus technically accurate to describe the sequence as we did in *Burdine:*

"First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection." 450 U. S., at 252–253 (internal quotation

If, on the other hand, the defendant has succeeded in carrying its burden of production, the *McDonnell Douglas* framework—with its presumptions and burdens—is no longer relevant. To resurrect it later, after the trier of fact has determined that what was "produced" to meet the burden of production is not credible, flies in the face of our holding in *Burdine* that to rebut the presumption "[t]he defendant need not persuade the court that it was actually motivated by the proffered reasons." 450 U. S., at 254. The presumption, having fulfilled its role of forcing the defendant to come forward with some response, simply drops out of the picture. *Id.*, at 255. The defendant's "production" (whatever its persuasive effect) having been made, the trier of fact proceeds to decide the ultimate question: whether plaintiff has proven "that the defendant intentionally discriminated against [him]" because of his race, *id.*, at 253. The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons, will

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omitted).

As a practical matter, however, and in the real-life sequence of a trial, the defendant *feels* the "burden" not when the plaintiff's prima facie case is *proved*, but as soon as evidence of it is *introduced*. The defendant then knows that its failure to introduce evidence of a nondiscriminatory reason will cause judgment to go against it *unless* the plaintiff's prima facie case is held to be inadequate in law or fails to convince the factfinder. It is this practical coercion which causes the *McDonnell Douglas* presumption to function as a means of "arranging the presentation of evidence," *Watson* v. *Fort Worth Bank & Trust*, 487 U. S. 977, 986 (1988).

permit the trier of fact to infer the ultimate fact of intentional discrimination,[4] and the Court of Appeals was correct when it noted that, upon such rejection, "[n]o additional proof of discrimination is *required*," 970 F. 2d, at 493 (emphasis added). But the Court of Appeals' holding that rejection of the defendant's proffered reasons *compels* judgment for the plaintiff disregards the fundamental principle of Rule 301 that a presumption does not shift the burden of proof, and ignores our repeated admonition that the Title VII plaintiff at all times bears the "ultimate burden of persuasion." See, *e.g.*, *United States States Postal Service Bd. of Governors* v. *Aikens*, 460 U. S. 711, 716 (1983) (citing *Burdine*, *supra*, at 256); *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 187 (1989); *Price Waterhouse* v. *Hopkins*, 490 U. S. 228, 245–246 (1989) (plurality opinion of Brennan, J., joined by Marshall, BLACKMUN, and STEVENS, JJ.); *id.*, at 260 (WHITE, J., concurring in judgment); *id.*, at 270 (O'CONNOR, J., concurring in judgment); *id.*, at 286–288 (KENNEDY, J., joined by THE CHIEF JUSTICE and SCALIA, J., dissenting); *Cooper* v. *Federal Reserve Bank of Richmond*, 467 U. S. 867, 875 (1984); cf. *Wards Cove Packing Co., Inc.* v. *Atonio*, 490 U. S. 642, 659–660 (1989); *id.*, at 668 (STEVENS, J., dissenting); *Watson* v. *Fort Worth Bank & Trust*, 487 U. S. 977, 986 (1988).

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[4]Contrary to the dissent's confusion-producing analysis, *post*, at 11–12, there is nothing whatever inconsistent between this statement and our later statements that (1) the plaintiff must show "*both* that the reason was false, *and* that discrimination was the real reason," *infra*, at 13, and (2) "it is not enough . . . to *dis*believe the employer," *infra*, at 17. Even though (as we say here) rejection of the defendant's proffered reasons is enough at law to *sustain* a finding of discrimination, *there must be a finding of discrimination*.

Only one unfamiliar with our case-law will be upset by the dissent's alarum that we are today setting aside "settled precedent," *post*, at 2, "two decades of stable law in this Court," *post*, at 1, "a framework carefully crafted in precedents as old as 20 years," *post*, at 17, which "Congress is [aware]" of and has implicitly approved, *post*, at 19. Panic will certainly not break out among the courts of appeals, whose divergent views concering the nature of the supposedly "stable law in this Court" are precisely what prompted us to take this case—a divergence in which the dissent's version of "settled precedent" cannot remotely be considered the "prevailing view." Compare, *e.g.*, *EEOC* v. *Flasher Co.*, 986 F. 2d 1312, 1321 (CA10 1992) (finding of pretext does not mandate finding of illegal discrimination); *Galbraith* v. *Northern Telecom, Inc.*, 944 F. 2d 275, 282–283 (CA6 1991) (same) (opinion of Boggs, J.), cert. denied, 503 U. S. ___ (1992); 944 F. 2d, at 283 (same) (opinion of Guy, J., concurring in result); *Samuels* v. *Raytheon Corp.*, 934 F. 2d 388, 392 (CA1 1991) (same); *Holder* v. *City of Raleigh*, 867 F. 2d 823, 827–828 (CA4 1989) (same); *Benzies* v. *Illinois Dept. of Mental Health and Developmental Disabilities*, 810 F. 2d 146, 148 (CA7) (same) *(dictum)*, cert. denied, 483 U. S. 1006 (1987); *Clark* v. *Huntsville City Bd. of Ed.*, 717 F. 2d 525, 529 (CA11 1983) (same) *(dictum)*, with *Hicks* v. *St. Mary's Honor Center*, 970 F. 2d 487, 492–493 (CA8 1992) (case below) (finding of pretext mandates finding of illegal discrimination), cert. granted, 506 U. S. ___ (1993); *Tye* v. *Board of Ed. of Polaris Joint Vocational School Dist.*, 811 F. 2d 315, 320 (CA6) (same), cert. denied, 484 U. S. 924 (1987); *King* v. *Palmer*, 250 U. S. App. D. C. 257, 260, 778 F. 2d 878, 881 (1985) (same); *Duffy* v. *Wheeling Pittsburgh Steel Corp.*, 738 F. 2d 1393, 1395–1396 (CA3) (same), cert. denied, 469 U. S. 1087 (1984); *Lopez* v. *Metropolitan Life Ins. Co.*, 930 F. 2d 157, 161 (CA2) (same) *(dictum)*, cert.

denied, 502 U. S. ___ (1991); *Caban-Wheeler* v. *Elsea*, 904 F. 2d 1549, 1554 (CA11 1990) (same) *(dictum)*; *Thornbrough* v. *Columbus & Greenville R. Co.*, 760 F. 2d 633, 639–640, 646–647 (CA5 1985) (same) *(dictum)*. We mean to answer the dissent's accusations in detail, by examining our cases, but at the outset it is worth noting the utter implausibility that we would ever have held what the dissent says we held.

As we have described, Title VII renders it unlawful "for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U. S. C. §2000e-2(a)(1). Here (in the context of the now-permissible jury trials for Title VII causes of action) is what the dissent asserts we have held to be a proper assessment of liability for violation of this law: Assume that 40% of a business' work force are members of a particular minority group, a group which comprises only 10% of the relevant labor market. An applicant, who is a member of that group, applies for an opening for which he is minimally qualified, but is rejected by a hiring officer of that *same minority group*, and the search to fill the opening continues. The rejected applicant files suit for racial discrimination under Title VII, and before the suit comes to trial, the supervisor who conducted the company's hiring is fired. Under *McDonnell Douglas*, the plaintiff has a prima facie case, see 411 U. S., at 802, and under the dissent's interpretation of our law not only must the company come forward with some explanation for the refusal to hire (which it will have to try to confirm out of the mouth of its now antagonistic former employee), but the jury must be instructed that, if they find that explanation to be *incorrect*, they must assess damages against the

company, *whether or not they believe the company was guilty of racial discrimination*. The disproportionate minority makeup of the company's work force and the fact that its hiring officer was of the same minority group as the plaintiff will be irrelevant, because the plaintiff's case can be proved "indirectly by showing that the employer's proffered explanation is unworthy of credence."[5] Surely nothing short of inescapable prior *holdings* (the dissent does not pretend there are any) should make one assume that this is the law we have created.

We have no authority to impose liability upon an employer for alleged discriminatory employment practices unless an appropriate factfinder determines, according to proper procedures, *that the employer has unlawfully discriminated*. We may, according to traditional practice, establish certain modes and orders of proof, including an initial rebuttable presumption of the sort we described earlier in this opinion, which we believe *McDonnell*

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[5]The dissent has no response to this (not at all unrealistic) hypothetical, except to assert that *surely* the employer must have "personnel records" to which it can resort to demonstrate the reason for the failure to hire. The notion that every reasonable employer keeps "personnel records" on people who never became personnel, showing *why* they did not become personnel (*i.e.*, in what respects all other people who were hired were better) seems to us highly fanciful—or for the sake of American business we hope it is. But more fundamentally, the dissent's response misses the point. Even if such "personnel records" *do* exist, it is a mockery of justice to say that if the jury believes the reason they set forth is probably not the "true" one, all the other utterly compelling evidence that dis-
crimination was *not* the reason will then be excluded from the jury's consideration.

Douglas represents. But nothing in law would permit us to substitute for the required finding that the employer's action was the product of unlawful discrimination, the much different (and much lesser) finding that the employer's explanation of its action was not believable. The dissent's position amounts to precisely this, *unless* what is required to establish the *McDonnell Douglas* prima facie case is a degree of proof so high that it would, in absence of rebuttal, require a directed verdict for the plaintiff (for in that case proving the employer's rebuttal noncredible would leave the plaintiff's directed-verdict case in place, and compel a judgment in his favor). Quite obviously, however, what is required to establish the *McDonnell Douglas* prima facie case is infinitely less than what a directed verdict demands. The dissent is thus left with a position that has no support in the statute, no support in the reason of the matter, no support in any holding of this Court (that is not even contended), and support, if at all, only in the dicta of this Court's opinions. It is to those that we now turn —begrudgingly, since we think it generally undesirable, where holdings of the Court are not at issue, to dissect the sentences of the United States Reports as though they were the United States Code.

The principal case on which the dissent relies is *Burdine*. While there are some statements in that opinion that could be read to support the dissent's position, all but one of them bear a meaning consistent with our interpretation, and the one exception is simply incompatible with other language in the case. *Burdine* describes the situation that obtains after the employer has met its burden of adducing a nondiscriminatory reason as follows: "Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." 450

U. S., at 253. The dissent takes this to mean that if the plaintiff proves the asserted reason to be *false*, the plaintiff wins. But a reason cannot be proved to be "a pretext *for discrimination*" unless it is shown *both* that the reason was false, *and* that discrimination was the real reason. *Burdine*'s later allusions to proving or demonstrating simply "pretext," *e.g.*, *id.*, at 258, are reasonably understood to refer to the previously described pretext, *i.e.*, "pretext for discrimination."[6]

Burdine also says that when the employer has met its burden of production "the factual inquiry proceeds to a new level of specificity." *Id.*, at 255. The dissent takes this to mean that the factual inquiry reduces to whether the employer's asserted reason is true or false—if false, the defendant loses. But the "new level of specificity" may also (as we believe) refer to the fact that the inquiry now turns from the few generalized factors that establish a prima facie case to the specific proofs and rebuttals of discriminatory motivation the parties have introduced.

In the next sentence, *Burdine* says that "[p]lacing this burden of production on the defendant thus serves . . . to frame the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext." *Id.*, at 255–256. The dissent thinks this means that the only factual issue remaining in the case is whether the employer's reason is false. But since in our view "pretext"

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[6]The same is true of *McDonnell Douglas*'s concluding summary of the framework it created (relied upon by the dissent, *post*, at 7) to the effect that if the plaintiff fails to show "pretext," the challenged employment action "must stand." 411 U. S., at 807. There, as in *Burdine*, "pretext" means the pretext required earlier in the opinion, *viz.*, "pretext for the sort of discrimination prohibited by [Title VII]," 411 U. S., at 804.

means "pretext for discrimination," we think the sentence must be understood as addressing the form rather than the substance of the defendant's production burden: The requirement that the employer "clearly set forth" its reasons, *id.*, at 255, gives the plaintiff a "full and fair" rebuttal opportunity.

A few sentences later, *Burdine* says: "[The plaintiff] now must have the opportunity to demonstrate that the proffered reason was not the true reason for the employment decision. This burden now merges with the ultimate burden of persuading the court that she has been the victim of intentional discrimination." *Id.*, at 256. The dissent takes this "merger" to mean that the "the ultimate burden of persuading the court that she has been the victim of intentional discrimination" is *replaced* by the mere burden of "demonstrat[ing] that the proffered reason was not the true reason for the employment decision." But that would be a merger in which the little fish swallows the big one. Surely a more reasonable reading is that proving the employer's reason false becomes
part of (and often considerably assists) the greater enterprise of proving that the real reason was intentional discrimination.

Finally, in the next sentence *Burdine* says: "[The plaintiff] may succeed in this [*i.e.*, in persuading the court that she has been the victim of intentional discrimination] either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence. See *McDonnell Douglas*, 411 U. S., at 804–805." *Ibid.* We must agree with the dissent on this one: The words bear no other meaning but that the falsity of the employer's explanation is *alone enough* to compel judgment for the plaintiff. The problem is, that that dictum contradicts or renders inexplicable numerous other statements, both in *Burdine* itself

and in our later case-law—commencing with the very citation of authority *Burdine* uses to support the proposition. *McDonnell Douglas* does *not* say, at the cited pages or elsewhere, that all the plaintiff need do is disprove the employer's asserted reason. In fact, it says just the opposite: "[O]n the retrial respondent must be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for his rejection *were in fact a coverup for a racially discriminatory decision.*" 411 U. S., at 805 (emphasis added). "We . . . insist that respondent under §703(a)(1) must be given a full and fair opportunity to demonstrate by competent evidence *that whatever the stated reasons for his rejection, the decision was in reality racially premised.*" *Id.*, at 805, n. 18 (emphasis added). The statement in question also contradicts *Burdine*'s repeated assurance (indeed, its holding) regarding the burden of persuasion: "The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." 450 U. S., at 253. "The plaintiff retains the burden of persuasion." *Id.*, at 256.[7] And lastly, the statement renders inexplicable *Burdine*'s explicit reliance, in describing the shifting

[7]The dissent's reading leaves *some* burden of persuasion on the plaintiff, to be sure: the burden of persuading the factfinder that the employer's explanation is not true. But it would be beneath contempt for this Court, in a unanimous opinion no less, to play such word-games with the concept of "leaving the burden of persuasion upon the plaintiff." By parity of analysis, it could be said that holding a criminal defendant guilty unless he comes forward with a credible alibi does not shift the ultimate burden of persuasion, so long as the Government has the burden of persuading the factfinder that the alibi is *not* credible.

burdens of *McDonnell Douglas*, upon authorities setting forth the classic law of presumptions we have described earlier, including Wigmore's Evidence, 450 U. S., at 253, 254, n. 7, 255, n. 8, James' and Hazard's Civil Procedure, *id.*, at 255, n. 8, Federal Rule of Evidence 301, *ibid.*, Maguire's Evidence, Common Sense and Common Law, *ibid.*, and Thayer's Preliminary Treatise on Evidence, *id.*, at 255, n. 10. In light of these inconsistencies, we think that the dictum at issue here must be regarded as an inadvertence, to the extent that it describes disproof of the defendant's reason as a totally independent, rather than an auxiliary, means of proving unlawful intent.

In sum, our interpretation of *Burdine* creates difficulty with one sentence; the dissent's interpretation causes many portions of the opinion to be incomprehensible or deceptive. But whatever doubt *Burdine* might have created was eliminated by *Aikens*. There we said, in language that cannot reasonably be mistaken, that "the ultimate question [is] discrimination *vel non*." 460 U. S., at 714. Once the defendant "responds to the plaintiff's proof by offering evidence of the reason for the plaintiff's rejection, the factfinder must then decide" *not* (as the dissent would have it) whether that evidence is credible, but "whether the rejection was discriminatory within the meaning of Title VII." *Id.*, at 714–715. At that stage, we said, "[t]he District Court was . . . in a position to decide the ultimate factual issue in the case," which is "whether the defendant intentionally discriminated against the plaintiff." *Id.*, at 715 (brackets and internal quotation marks omitted). The *McDonnell Douglas* methodology was "`never intended to be rigid, mechanized, or ritualistic.'" 460 U. S., at 715 (quoting *Furnco*, 438 U. S., at 577). Rather, once the defendant has responded to the plaintiff's prima facie case, "the district court has before it all the evidence it needs to

decide" *not* (as the dissent would have it) whether defendant's response is credible, but "whether the defendant intentionally discriminated against the plaintiff." 460 U. S., at 715 (internal quotation marks omitted). "On the state of the record at the close of the evidence, the District Court in this case should have proceeded to this specific question directly, just as district courts decide disputed questions of fact in other civil litigation." *Id.*, at 715–716. *In confirmation of this* (rather than in contradiction of it), the Court then quotes the problematic passage from *Burdine*, which says that the plaintiff may carry her burden either directly "`or indirectly by showing that the employer's proffered explanation is unworthy of credence.'" 460 U. S., at 716. It then characterizes that passage as follows: "In short, the district court must decide which party's explanation of the employer's motivation it believes." *Ibid.* It is not enough, in other words, to *dis*believe the employer; the factfinder must *believe* the plaintiff's explanation of intentional discrimination. It is noteworthy that JUSTICE BLACKMUN, although joining the Court's opinion in *Aikens*, wrote a separate concurrence for the sole purpose of saying that he understood the Court's opinion to be saying what the dissent today asserts. That concurrence was joined only by Justice Brennan. Justice Marshall would have none of that, but simply refused to join the Court's opinion, concurring without opinion in the judgment. We think there is little doubt what *Aikens* meant.

We turn, finally, to the dire practical consequences that the respondents and the dissent claim our decision today will produce. What appears to trouble the dissent more than anything is that, in its view, our rule is adopted "for the benefit of employers who have been found to have given false evidence in a court of law," whom we "favo[r]" by "exempting them

from responsibility for lies." *Post*, at 13. As we shall explain, our rule in no way gives special favor to those employers whose evidence is disbelieved. But initially we must point out that there is no justification for assuming (as the dissent repeatedly does) that those employers whose evidence is disbelieved are perjurers and liars. See *ibid.* ("the employer who lies"; "the employer's lie"; "found to have given false evidence"; "lies"), *post*, at 16 ("benefit from lying"; "must lie"; "offering false evidence"), 16, n. 13 ("employer who lies"; "employer caught in a lie"; "rewarded for its falsehoods"), 17 ("requires a party to lie"). Even if these were typically cases in which an individual defendant's sworn assertion regarding a physical occurrence was pitted against an individual plaintiff's sworn assertion regarding the same physical occurrence, surely it would be imprudent to call the party whose assertion is (by a mere preponderance of the evidence) disbelieved, a perjurer and a liar. And in these Title VII cases, the defendant is ordinarily *not* an individual but a company, which must rely upon the statement of an employee—often a relatively low-level employee—as to the central fact; and that central fact is *not* a physical occurrence, but rather that employee's state of mind. To say that the company which in good faith introduces such testimony, or even the testifying employee himself, becomes a liar and a perjurer when the testimony is not believed, is nothing short of absurd.

Undoubtedly some employers (or at least their employees) will be lying. But even if we could readily identify these perjurers, what an extraordinary notion, that we "exempt them from responsibility for their lies" unless we enter Title VII judgments for the plaintiffs! Title VII is not a cause of action for perjury; we have other civil and criminal remedies for that. The dissent's notion of judgment-for-lying is seen to be not even a fair and even-handed punishment for

vice, when one realizes how strangely selective it is: the employer is free to lie to its heart's content about whether the plaintiff ever applied for a job, about how long he worked, how much he made—indeed, about anything and everything *except* the reason for the adverse employment action. And the plaintiff is permitted to lie about absolutely *everything* without losing a verdict he otherwise deserves. This is not a major, or even a sensible, blow against fibbery.

The respondent's argument based upon the employer's supposed lying is a more modest one: "A defendant which unsuccessfully offers a `phony reason' logically cannot be in a better legal position [*i.e.*, the position of having overcome the presumption from the plaintiff's prima facie case] than a defendant who remains silent, and offers no reasons at all for its conduct." Brief for Respondent 21; see also Brief for United States as *Amicus Curiae* 11, 17–18. But there is no anomaly in that, once one recognizes that the *McDonnell Douglas* presumption is a *procedural* device, designed only to establish an order of proof and production. The books are full of procedural rules that place the perjurer (initially, at least) in a better position than the truthful litigant who makes no response at all. A defendant who fails to answer a complaint will, on motion, suffer a default judgment that a deceitful response could have avoided. Fed. Rule Civ. Proc. 55(a). A defendant whose answer fails to contest critical averments in the complaint will, on motion, suffer a judgment on the pleadings that untruthful denials could have avoided. Rule 12(c). And a defendant who fails to submit affidavits creating a genuine issue of fact in response to a motion for summary judgment will suffer a dismissal that false affidavits could have avoided. Rule 56(e). In all of those cases, as under the *McDonnell Douglas* framework, perjury may purchase the defendant a chance at the factfinder—though there, as here, it also carries substantial risks,

see Rules 11 and 56(g); 18 U. S. C. §1621.

The dissent repeatedly raises a procedural objection that is impressive only to one who mistakes the basic nature of the *McDonnell Douglas* procedure. It asserts that "the Court now holds that the further enquiry [*i.e.*, the inquiry that follows the employer's response to the prima facie case] is wide open, not limited at all by the scope of the employer's proffered explanation." *Post*, at 10. The plaintiff cannot be expected to refute "reasons not articulated by the employer, but discerned in the record by the factfinder." *Ibid.* He should not "be saddled with the tremendous disadvantage of having to confront, not the defined task of proving the employer's stated reasons to be false, but the amorphous requirement of disproving all possible nondiscriminatory reasons that a factfinder might find lurking in the record." *Post*, at 11. "Under the scheme announced today, any conceivable explanation for the employer's actions that might be suggested by the evidence, however unrelated to the employer's articulated reasons, must be addressed by [the plaintiff]." *Post*, at 14. These statements imply that the employer's "proffered explanation," his "stated reasons," his "articulated reasons," somehow exist *apart from the record*—in some pleading, or perhaps in some formal, nontestimonial statement made on behalf of the defendant to the factfinder. ("Your honor, pursuant to *McDonnell Douglas* the defendant hereby formally asserts, as *its* reason for the dismissal at issue here, incompetence of the employee.") Of course it does not work like that. The reasons the defendant sets forth are set forth "through the introduction of admissible evidence." *Burdine*, 450 U. S., at 255. In other words, the defendant's "articulated reasons" *themselves* are to be found "lurking in the record." It thus makes no sense to contemplate "the employer who is caught in a lie, but succeeds in *injecting* into the trial an *unarticulated* reason for its actions."

Post, at 16, n. 13 (emphasis added). There is a "lurking-in-the-record" problem, but it exists not for us but for the dissent. *If*, after the employer has met its preliminary burden, the plaintiff need not prove discrimination (and therefore need not disprove *all* other reasons suggested, no matter how vaguely, in the record) there must be some device for determining which particular portions of the record represent "articulated reasons" set forth with sufficient clarity to satisfy *McDonnell Douglas*—since it is only *that* evidence which the plaintiff must refute. But of course our *McDonnell Douglas* framework makes no provision for such a determination, which would have to be made not at the close of the trial but *in medias res*, since otherwise the plaintiff would not know what evidence to offer. It makes no sense.

Respondent contends that "[t]he litigation decision of the employer to place in controversy only . . . particular explanations eliminates from further consideration the alternative explanations that the employer chose not to advance." Brief for Respondent 15. The employer should bear, he contends, "the responsibility for its choices and the risk that plaintiff will disprove any pretextual reasons *and therefore prevail*." *Id.*, at 30 (emphasis added). It is the "therefore" that is problematic. Title VII does not award damages against employers who cannot prove a nondiscriminatory reason for adverse employment action, but only against employers who are proven to have taken adverse employment action by reason of (in the context of the present case) race. That the employer's proffered reason is unpersuasive, or even obviously contrived, does not necessarily establish that the plaintiff's proffered reason of race is correct. That remains a question for the factfinder to answer, subject, of course, to appellate review—which should be conducted on remand in this case under the "clearly erroneous" standard of Federal Rule of Civil Procedure 52(a), see, *e.g.*, *Anderson* v.

Bessemer City, 470 U. S. 564, 573–576 (1985).

Finally, respondent argues that it "would be particularly ill-advised" for us to come forth with the holding we pronounce today "just as Congress has provided a right to jury trials in Title VII" cases. *Id.*, at 31. See §102 of the Civil Rights Act of 1991, 105 Stat. 1073, 42 U. S. C. §1981a(c) (1988 ed., Supp. III) (providing jury trial right in certain Title VII suits). We think quite the opposite is true. Clarity regarding the requisite elements of proof becomes all the more important when a jury must be instructed concerning them, and when detailed factual findings by the trial court will not be available upon review.

* * *

We reaffirm today what we said in *Aikens*:

> "[T]he question facing triers of fact in discrimination cases is both sensitive and difficult. The prohibitions against discrimination contained in the Civil Rights Act of 1964 reflect an important national policy. There will seldom be `eyewitness' testimony as to the employer's mental processes. But none of this means that trial courts or reviewing courts should treat discrimination differently from other ultimate questions of fact. Nor should they make their inquiry even more difficult by applying legal rules which were devised to govern `the basic allocation of burdens and order of presentation of proof,' *Burdine*, 450 U. S., at 252, in deciding this ultimate question." *Aikens*, 460 U. S., at 716.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.