

# *O'Connor v. Donaldson*: Retelling a Classic and Finding Some Revisionist History

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**This article discusses the 1975 Supreme Court opinion *O'Connor v. Donaldson*. The article first examines the due process clause of the Fourteenth Amendment, the basis for the *O'Connor* ruling. It then looks carefully at the Court's conclusions, with particular attention to the Court's reasoning and analysis. The article goes on to look at how the Supreme Court has interpreted *O'Connor* on subsequent occasions and suggests that the Court has often misconstrued its own decision. The article concludes by offering thoughts and commentary on the *O'Connor* opinion and its progeny.**

Nearly 25 years have passed since the United States Supreme Court handed down its decision in *O'Connor v. Donaldson*.<sup>1</sup> The issue put before the Supreme Court in January of 1975 was whether the State of Florida had violated Kenneth Donaldson's constitutional right to due process of law. Florida had committed Donaldson to a psychiatric hospital in January of 1957 and had not released him until July of 1971. No evidence was presented to suggest that Donaldson had ever been violent, and much evidence indicated that he was able to live safely outside the hospital, either with the help of a health care organization

that had offered its services or with the aid of a friend who had repeatedly attempted to gain Donaldson's release. Despite half-hearted attempts to characterize Donaldson's circumstances in confinement as "milieu therapy," the hospital all but conceded that he had received little other than custodial care.

In the quarter century since the Supreme Court rendered its judgment, *O'Connor* has become a landmark case in mental health law. Despite its stature, however, the *O'Connor* ruling has more subtlety and nuance than is often recognized by commentators and courts. Indeed, the Supreme Court itself appears to have misstated the ruling on several occasions. This article attempts to clarify the *O'Connor* decision by providing a close examination of the Court's analysis and conclusions.

This article has four parts. The first part

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discusses the due process clause of the Fourteenth Amendment, on which the Supreme Court based its ruling. The second part closely examines *O'Connor's* language and reasoning. Here the paper attempts to state as precisely as possible what the Court decided and how the Court reached its conclusions. The third part of the paper examines how the Supreme Court has interpreted *O'Connor* on subsequent occasions and suggests that the Court has often misconstrued its own decision. Finally, the article will offer concluding thoughts and commentary on the opinion and its progeny.

### The Due Process Clause

The Fourteenth Amendment to the United States Constitution says that no State "shall deprive any person of life, liberty, or property, without *due process of law*" [emphasis added]. By virtue of the Fourteenth Amendment, a State must provide due process before it can deprive an individual of his liberty—by confining him in a psychiatric hospital against his will, for example.

A distinction is sometimes made between *substantive* due process and *procedural* due process. Procedural due process looks at the *process* by which a State deprives an individual of his life, liberty, or property. The greater the deprivation, the greater the process due. As an example of procedural due process, greater process is afforded an individual to contest a life sentence in prison than is afforded an individual to contest a parking ticket. The greater deprivation—the loss of liberty for an entire lifetime—merits the right to an attorney and the right to a

trial by jury. The Constitution does not require that these rights be provided to an individual who comes to pay a parking ticket in traffic court. The deprivation is less, and so the process due under the Constitution to protect against an unwarranted or unjust deprivation is less as well.

Substantive due process refers to the reason that justifies a deprivation of life, liberty, or property. The greater the deprivation, the more important the reason required as a justification. Thus, the State imposes the death penalty for only the most egregious crimes—a State will take a life only for the very best (or worst) of reasons. Procedural due process addresses the *process by which* a deprivation takes place, and substantive due process addresses the *basis on which* the deprivation is justified; procedural due process asks *what steps must be taken* before a State can take away life, liberty, or property, whereas substantive due process asks whether a state *has a good enough reason* for taking what it wants to take. The question in *O'Connor v. Donaldson* was one of substantive due process—at issue were the reasons that would justify depriving a man of his liberty for nearly 15 years.

### *O'Connor v. Donaldson*

Kenneth Donaldson spent a very long time in the State Hospital at Chattahoochee, FL. The reasons for the prolonged confinement were never entirely clear; although diagnosed with paranoid schizophrenia, Donaldson had never been demonstrated to pose a danger to himself or to anyone else, either before or during his hospitalization. Even certain hospital

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staff believed he would be able to earn a living on the outside, as he had for nearly a decade and a half before his admission. Despite Donaldson's repeated attempts to gain his release, and despite several offers from a concededly responsible friend and a health care organization to provide residential and other care, Dr. O'Connor, the superintendent of Florida State Hospital, consistently turned down Kenneth Donaldson's request for discharge. Dr. O'Connor refused to release Donaldson to anyone other than his parents, who by that time were too old and infirm to care for their 50-year-old son. When asked to explain his refusal to release Donaldson, Dr. O'Connor replied that Donaldson suffered from paranoid delusions, that he had occasionally refused both medical and nonmedical forms of treatment on religious grounds, and that other psychiatrists who had assessed Donaldson agreed with the necessity of continued hospitalization. Donaldson's lawyers were nonetheless convinced that the State of Florida had no reason sufficient to justify their client's lengthy hospitalization. Put another way, they believed that the prolonged confinement in a psychiatric hospital had violated Donaldson's Fourteenth Amendment right to due process of law.

When Kenneth Donaldson's lawyers came before the Supreme Court, they presented the Court with a novel question: Under what circumstances will the United States Constitution permit a state to confine an individual involuntarily because of mental illness? A principle that guides the Supreme Court is that decisions interpreting the Constitution should be written

as *narrowly* as possible. This principle makes enormous sense for our republic—interpretations of our Constitution are matters of great national import and should be made only when absolutely necessary. Perhaps the principle could be restated as: When it is not necessary to interpret the Constitution, it is necessary *not* to interpret the Constitution. Thus, the Court tends to be as parsimonious as possible when addressing Constitutional questions.

In keeping with this principle, the Court began its decision by stating a series of questions that it intended *not* to answer. This point is enormously important, not only because of what it says about how the Supreme Court works, but also because these questions form the context in which the actual ruling was placed. To understand what the Court did, it is necessary to understand what it did *not* do as well. A complete grasp of *O'Connor* requires one to appreciate both sides of the coin.

The Court's brief (barely four pages) but deceptively complex analysis can perhaps best be captured by assigning letters (*a* through *g*) to each of the factors the Supreme Court saw as necessary to consider in assessing Donaldson's due process claim (Table 1).

As an example, the statement "A mentally ill individual (*a*) who is dangerous (*b*) has a right to receive treatment (*d*)" is represented by: *a + b has a right to d*. A "not" in front of a parameter indicates that, in writing its decision, the Court indicated the absence or lack of some quality or circumstance. For example, the statement, "A State cannot confine invol-

**Table 1**  
**Salient Factors in the O'Connor Decision**

- 
- a. Mental illness
  - b. Dangerousness
  - c. Ability to live safely in freedom
  - d. Receives treatment
  - e. Superior standard of living for mentally ill individuals
  - f. Save citizens from exposure to nondangerous mentally ill individuals
  - g. Involuntary confinement by the State
- 

untarily (*not g*) a mentally ill individual (*a*) who is not dangerous (*not b*) and who is able to live safely in freedom (*c*)” is represented by: *a + (not b) + c* requires (*not g*).

The Supreme Court began its analysis by stating that “there is no reason now to decide whether mentally ill persons (*a*) dangerous to themselves or to others (*b*) have a right to treatment (**right to *d***) upon compulsory confinement by the State (*g*).”<sup>2</sup> This statement can be represented by the question:

**1. Does *a + b + g* create a right to *d*?**

The Court continues, “there is no reason now to decide. . . whether the State may compulsorily confine (*g*) a nondangerous (*not b*), mentally ill individual (*a*) for the purpose of treatment (*d*),”<sup>3</sup> which may be represented by:

**2. Is *a + (not b) + d* sufficient to justify *g*?**

The Court then lists a series of three questions that it will likewise not address:

We need not decide whether, when, or by what procedures, a mentally ill person (*a*) may be confined by the State (*g*) on any of the grounds which, under contemporary statutes, are generally advanced to justify involuntary confinement of such a person—to prevent injury to the

**Table 2**  
**Questions the Court States It Will Not Answer in O'Connor**

- 
1. Does *a + b + g* create a right to *d*?
  2. Is *a + (not b) + d* sufficient to justify *g*?
  3. Is *a + b* sufficient to justify *g*?
  4. Is *a + (not c)* sufficient to justify *g*?
  5. Is *a + d* sufficient to justify *g*?
- 

*a*, mental illness; *b*, dangerousness; *c*, ability to live safely in freedom; *d*, receives treatment; *e*, superior standard of living; *f*, save citizens from exposure to harmless mentally ill; *g*, involuntary confinement by State.

public (*b*), to ensure his own survival or safety (*not c*),\* or to alleviate or cure his illness (*d*).<sup>4</sup>

These questions may be summarized as follows:

**3. Is *a + b* sufficient to justify *g*?**

**4. Is *a + (not c)* sufficient to justify *g*?**

**5. Is *a + d* sufficient to justify *g*?**

The questions the Court states it will not answer are shown in tabular form in Table 2. In keeping with the principle of interpreting the Constitution only to the extent necessary, the Court reasons that it need not answer any of these five questions to decide whether Kenneth Donaldson’s constitutional right to due process had been violated. Note, however, how significant these five questions are. The Court states it will not answer: whether a dangerous mentally ill person hospitalized against his will has a *right* to treatment (item 1); whether a mentally ill person who is not dangerous may be hospitalized involuntarily *if* he is given treatment in the hospital (item 2); whether *any* of the following—dangerousness (item 3), the inability to live safely on

\* The Court’s statement is represented by *not c* because the reason for confinement is that the individual is *not* able to live safely on his own.

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one's own (item 4), or treatment (item 5)—will justify placing a person in a hospital against his will. These questions were “off the table” and could wait for another day.

Having clarified what questions it need not answer to settle Kenneth Donaldson's due process claim, the Court then made a series of affirmative statements. The Court stated first that “A finding of ‘mental illness’ alone (*a*) cannot justify a State's locking a person up against his will (*g*) and keeping him indefinitely in simple custodial confinement (**confinement without *d***).”<sup>5</sup> This may be stated as:

**1. *a* alone, without *d*, is not sufficient to justify *g*.**

The Court continued “there is . . . no constitutional basis for confining such [mentally ill] persons (*a*) involuntarily (*g*) if they are dangerous to no one (*not b*) and can live safely in freedom (*c*).”<sup>6</sup> So:

**2. *a* + (*not b*) + *c* is not sufficient to justify *g*.**

The Court next asked whether “the State [may] confine (*g*) the mentally ill (*a*) merely to ensure them a living standard superior to that they enjoy in the private community (*e*)? The Court answers “incarceration (*g*) is rarely if ever a necessary condition for raising the living standards (*e*) of those capable of surviving safely in freedom (*c*), on their own or with the help of family or friends”<sup>7</sup>; that is, *e* is rarely, if ever, a legitimate basis for *g*. Therefore:

**3. *a* + *c* + *e* is rarely if ever sufficient to justify *g*.**

The Court poses another question, “May the State fence in (*g*) the harmless

mentally ill (*a*) solely to save its citizens from exposure to those whose ways are different (*f*)?” which it likewise answers, “Mere public intolerance or animosity (*f*) cannot constitutionally justify the deprivation of a person's physical liberty (*g*)”<sup>8</sup>; that is, *f* is not a legitimate basis for *g*. Therefore:

**4. *a* + *f* is not sufficient to justify *g*.**

At the end of the opinion, the Supreme Court concludes “In short, a State cannot constitutionally confine (*g*) without more a nondangerous (*not b*) [mentally ill] individual (*a*) who is capable of surviving safely in freedom by himself (*c*) or with the help of willing and responsible family members or friends.”<sup>9</sup> Therefore:

**5. *a* + (*not b*) + *c* “without more” is not sufficient to justify *g*.**

The Court thus announces the following five principles:

**1. *a* alone, without *d*, is not sufficient to justify *g*.**

**2. *a* + (*not b*) + *c* is not sufficient to justify *g*.**

**3. *a* + *c* + *e* is rarely if ever sufficient to justify *g*.**

**4. *a* + *f* is not sufficient to justify *g*.**

**5. *a* + (*not b*) + *c* “without more” is not sufficient to justify *g*.**

For analytic purposes, the Court's analysis can be reduced to statements 1 and 5. First, statements 2 and 5 restate the same principle. (Statement 2 says that a set of conditions is not sufficient to satisfy involuntary confinement (*g*), whereas statement 5 says that these same conditions cannot justify involuntary confinement (*g*) “without more.”) Thus, statement 2 can be dropped. Second, because statements 3 and 4 state that a particular rea-

son is rarely, or never, a legitimate basis for involuntary confinement, these considerations (*e* and *f*) will not be part of any court's analysis.

Kenneth Donaldson's case fell squarely under these two principles. Donaldson was mentally ill (*a*), but he was not receiving treatment (**without *d***), he was not dangerous (*not b*), and he could live safely in freedom (*c*). The Court's conclusion was crystal clear: Florida had violated Kenneth Donaldson's right to due process of law. The State had provided no reason sufficient to justify depriving Donaldson of nearly 15 years of his freedom.

Note five points about what the Supreme Court did in reaching its conclusions. First, the Court states its conclusions (Table 3) in terms of what factor or combination of factors is *insufficient* to justify a State placing an individual in the hospital against his will. If one thinks of involuntary confinement as an end or goal, one can think of *O'Connor* as an exercise in exploring what will not suffice to reach that end or goal "without more." This point is enormously important, because the Court's subtle and nuanced phrasing leaves the reader to wonder what "more" will be required to justify confin-

ing a nondangerous mentally ill individual who is able to live safely on his own. The language and analysis suggest that the "more" will be treatment—but the Court declines to provide a definitive answer and leaves this enigmatic phrase without further explanation or definition.

Second, the Court's phrasing suggests that a State may not be limited to its police power in confining mentally ill individuals. Consider that a State has two powers it may invoke for curtailing an individual's autonomy: the police power and the *parens patriae* power. The police power is used when an individual presents a threat of danger and the State must intervene to maintain order and safety. The *parens patriae* power is invoked when an individual is mentally or physically compromised and needs assistance. The Court's language suggests that the *parens patriae* power, quite apart from the police power, may be a legitimate basis for involuntary State confinement. Put another way, the Court leaves open the possibility that a State may confine an individual against his will solely because that individual suffers from a mental illness and needs care. By not foreclosing this question, the Court leaves open whether a "need for treatment" standard for involuntary confinement would be constitutional.

Third, although the Court's language and analysis suggests that treatment could provide a legitimate basis for confining a mentally ill individual against his will, the Court fails to create a *right* to treatment. The Court's opinion is a bit confusing and somewhat paradoxical on this point. The Court (using a lot of negatives)

**Table 3**  
**Essentials of the *O'Connor* Ruling**

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1. *a* alone, without *d*, is not sufficient to justify *g*.
  2. *a* + (*not b*) + *c* "without more" is not sufficient to justify *g*.
- 

*a*, mental illness; *b*, dangerousness; *c*, ability to live safely in freedom; *d*, receives treatment; *e*, superior standard of living; *f*, save citizens from exposure to harmless mentally ill; *g*, involuntary confinement by State.

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says that if a State does not provide treatment, it cannot hospitalize against his will a mentally ill individual who is not dangerous and who can live safely on his own (item 2 in Table 3). Yet, if a State can invoke the *parens patriae* power to confine a nondangerous mentally ill person who is able to live safely on his own, it would seem that an individual so confined has a right to treatment. Put another way, if confinement is justified on the basis that the individual receives treatment, it would seem that the confined individual would have a *right* to treatment. Nonetheless, the Court did not create a right to treatment and, nearly a quarter century later, the Court has yet to rule that a mentally ill individual placed in a psychiatric hospital against his will has the right to receive treatment.

Fourth, the Court names two reasons that will not justify involuntary confinement. In a powerful and moving passage, the Court states that intolerance of the mentally ill is not an acceptable basis to place someone in a hospital against his will. Moreover, in support of individual autonomy, the Court states that a mentally ill individual cannot be placed in a hospital against his will for the purpose of raising his standard of living.<sup>†</sup> Although the Court leaves certain questions open, it addresses directly the relationship between the due process clause and intolerance, and the relationship between the due process clause and individual autonomy.

<sup>†</sup> In the past two and one-half decades, the homeless population in the United States has increased dramatically. It is not completely clear whether the conditions in which certain homeless people live, more common today than in 1975, would cause the Court to revisit its unequivocal stance in favor of individual autonomy.

Finally, the Court's conclusions are put in terms of individuals who are *not* dangerous. From the *O'Connor* ruling alone, one cannot conclude that dangerousness is a necessary (or even sufficient) condition for involuntary confinement. This point is important, because *O'Connor* is often invoked as holding that dangerousness is both a necessary and a sufficient condition for involuntary confinement.

### **After *O'Connor***

The Court had thrown down a powerful gauntlet: mental illness alone could not justify involuntary confinement, if the mentally ill individual was not dangerous and was able to live safely on his own. In the majority opinion of five subsequent cases, the Supreme Court cited the majority opinion in *O'Connor* for making a claim about a State's right to confine an individual against his will. Each of these cases is discussed below.

One additional comment about representing the Court's language in terms of parameters *a* through *g* is helpful when examining later opinions of the Court. When the Court states that a certain factor or combination of factors alone is not enough to provide a constitutional basis for involuntary confinement, the wording, "is insufficient to justify" is used. For example, the statement, "mental illness (*a*) alone cannot provide a basis for involuntary confinement (*g*)" is represented as "*a* is insufficient to justify *g*." When the Court indicates that a certain factor or combination of factors creates a right to be free from involuntary confinement, the wording "requires" is used. For example, the statement, "A mentally ill individual

(a) who can live safely on his own (c) has a right to freedom (*not g*)” is represented as “*a + c requires (not g)*.” Because the Court is not always precise in its language, it is sometimes necessary to interpret whether the Court is saying that certain factors are not enough to justify involuntary confinement or that certain factors require that an individual not be confined. Where there is ambiguity, a footnote attempts to explain the choice of representation.<sup>‡</sup> (The factors from Table 1 have been inserted directly into the quotations.)

*Jones v. United States*<sup>10</sup> involved an individual who was committed to a mental hospital following his acquittal of criminal charges by reason of insanity. The Court asked whether such a person must be released when he had been confined in the hospital for a period longer than he might have served in prison, had he been convicted. In rendering its decision, the Court reasoned: “The purpose of commitment (*g*) following an insanity acquittal, like that of civil commitment, is to treat the individual’s mental illness (*a*) and protect him and society from his potential dangerousness (*b*). The committed acquittee is entitled to release (*not g*) when he has recovered his sanity (*not a*) or is no longer dangerous (*not b*). See *O’Connor v. Donaldson* [*O’Connor* citation].”<sup>11</sup>

<sup>‡</sup> It could be argued that this is an artificial distinction. The argument would be that if a factor or combination of factors is not sufficient under the Constitution to justify involuntary confinement by the State, then that factor or combination of factors requires freedom (nonconfinement). But this argument misses an important aspect of the Court’s analysis. To say that *x* is not sufficient for *y* is not the same as saying that *x* requires *not y*. The Court preserved this distinction, and so does this article.

This passage can be represented by the following two statements: (*not a*) or (*not b*) requires (*not g*) and *a + b* is sufficient for *g*.

These two statements can then be combined as follows:

1. *a + b* are both necessary and sufficient to justify *g*.

*Barefoot v. Estelle*<sup>12</sup> involved the death penalty. In deciding to allow expert testimony in the penalty phase of a capital murder case, the Court addressed the exactitude with which psychiatrists could predict dangerousness. The Court looked to *O’Connor* to bolster its argument that psychiatric testimony should be allowed “. . . in *O’Connor v. Donaldson*, [*O’Connor* citation], we held that a non-dangerous (*not b*) civil committee (*a*) could not be held in confinement against his will (*not g*).”<sup>13</sup>

2. *a + (not b) requires*<sup>§</sup> (*not g*).

*Foucha v. Louisiana*<sup>14</sup> involved a State law that set forth conditions under which an individual found not guilty by reason of insanity could be kept involuntarily in a psychiatric hospital. The law at issue called for an individual so acquitted to remain hospitalized, regardless of whether he was mentally ill, should a trial court determine that he was dangerous. In determining that this statute violated the due process clause, the Court looked to *O’Connor*: “We relied on *O’Connor v. Donaldson*, [*O’Connor* citation], which held as a matter of due process that it was

<sup>§</sup> “Requires” is used here because the Court is saying that nondangerousness (*not b*) must result in the patient’s release. In other words, the Court is saying that a particular condition (*not b*) necessarily entails freedom from involuntary confinement (*not g*).

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unconstitutional for a State to confine (*not g*) a harmless (*not b*), mentally ill person. (*a*).<sup>15</sup> Again:

2. *a + (not b) requires*<sup>¶</sup> (*not g*).

At issue in *Cooper v. Oklahoma*<sup>16</sup> was a State law that required a defendant to show by clear and convincing evidence that he was incompetent to stand trial. If the defendant could not make this showing, he would be presumed competent and the trial would proceed. In striking the law down as unconstitutional, the Court distinguished between the reasons behind competency to stand trial and civil commitment. In discussing the basis for the latter, the Court looked to *O'Connor v. Donaldson*, "Although we have not had the opportunity to consider the outer limits of a State's authority to civilly commit an unwilling individual (*g*) [*O'Connor* citation], our decision in *Donaldson* [*O'Connor*] makes clear that due process requires at a minimum a showing that the person is mentally ill (*a*) and either poses a danger to himself or others (*b*) or is incapable of 'surviving safely in freedom (*not c*).' [*O'Connor* citation]"<sup>17</sup>; therefore:

3. *a and [b or (not c)] is required*<sup>¶</sup> for *g*.

In *Zinermon v. Burch*,<sup>18</sup> a patient argued that his voluntary admission to a State hospital had violated due process because he had been unable to give informed consent at the time of his admission. To answer the question, the Court

<sup>¶</sup> "Requires" is used because by using the term "unconstitutional" in this context, the Court is indicating that (*not b*) necessarily entails (*not g*).

<sup>¶</sup> "Required" is used because the Court says that non-dangerousness (*not b*), or the ability to live safely on one's own (*c*), necessitate freedom (*not g*).

made a distinction between the basis for finding an individual incompetent and the basis for placing an individual in a hospital against his will. In terms of the latter, the Court explained:

Confinement (*g*) of such a person [a mentally ill person (*a*) who is harmless (*not b*) and who can live safely outside an institution (*c*)] not only violates [this State's] law, but also is unconstitutional. *O'Connor v. Donaldson*. [*O'Connor* citation] (there is no constitutional basis for confining mentally ill persons (*a*) involuntarily (*g*) "if they are dangerous to no one (*not b*) and can live safely in freedom (*c*)").<sup>19</sup>

Here the Court makes two statements, represented as:

4. *a + (not b) + c requires*\*\* (*not g*);

5. *a + (not b) + c is not sufficient* for *g*.

Table 4 contains statements that the Supreme Court has made in interpreting *O'Connor*. To compare the Court's analysis and conclusions in *O'Connor* with how *O'Connor* has been interpreted in later Supreme Court opinions, Tables 2 and 3 may be juxtaposed with Table 4. Each of the statements in Table 4 is analyzed according to the actual ruling in *O'Connor* (as captured in Tables 2 and 3).

1. **Mental illness and dangerousness are both necessary and sufficient to justify involuntary confinement (*Jones v. United States*).** This statement deviates from *O'Connor* in three ways. First, *O'Connor* states explicitly that it will not answer the "sufficiency" aspect of this

\*\* "Requires" is used in representation 4 because the Court says it would violate the Constitution to confine (*g*) a nondangerousness (*not b*) person who could live safely on his own (*c*). Because *g* would violate the Constitution, *not g* is required. The Court's next statement, "there is no constitutional basis," is weaker and implies that a threshold has yet to be met. For this reason, representation 5 uses the language "is not sufficient."

**Table 2**  
**Questions the Court States It Will Not**  
**Answer in *O'Connor***

- 
1. Does  $a + b + g$  create a right to  $d$ ?
  2. Is  $a + (\text{not } b) + d$  sufficient to justify  $g$ ?
  3. Is  $a + b$  sufficient to justify  $g$ ?
  4. Is  $a + (\text{not } c)$  sufficient to justify  $g$ ?
  5. Is  $a + d$  sufficient to justify  $g$ ?
- 

**Table 3**  
**Essentials of the *O'Connor* Ruling**

- 
1.  $a$  alone, without  $d$ , is not sufficient to justify  $g$ .
  2.  $a + (\text{not } b) + c$  "without more" is not sufficient to justify  $g$ .
- 

**Table 4**  
**How Supreme Court Has Interpreted**  
***O'Connor***

- 
1.  $a + b$  are both necessary and sufficient to justify  $g$ .
  2.  $a + (\text{not } b)$  requires ( $\text{not } g$ ).
  3.  $a$  and [ $b$  or ( $\text{not } c$ )] is required for  $g$ .
  4.  $a + (\text{not } b) + c$  requires ( $\text{not } g$ ).
  5.  $a + (\text{not } b) + c$  is not sufficient for  $g$ .
- 

$a$ , mental illness;  $b$ , dangerousness;  $c$ , ability to live safely in freedom;  $d$ , receives treatment;  $e$ , superior standard of living;  $f$ , save citizens from exposure to harmless mentally ill;  $g$ , involuntary confinement by State.

question (see item 3 in Table 2). Second, the ruling in *O'Connor* is limited to individuals who are *not* dangerous (see Table 3). Third, *O'Connor* leaves open the possibility that some factor *other* than dangerousness (such as treatment) could justify involuntary confinement (see item 2 in Table 3).

2. **A mentally ill individual who is not dangerous cannot be confined against his will (*Barefoot v. Estelle*).** According to this statement, an individual who is not dangerous cannot be confined against his

will. As seen by item 2 in Table 3, however, *O'Connor* explicitly leaves open the possibility that reasons other than dangerousness may suffice to confine a mentally ill individual against his will.

3. **A mentally ill individual must either be dangerous or unable to live safely on his own before he may be placed in a psychiatric hospital against his will (*Cooper v. Oklahoma*).** According to this statement, involuntary confinement must be justified by either dangerousness or an inability to live safely on one's own. *O'Connor*, however, stated that a State might be able to confine an individual against his will for *additional* reasons as well (see item 2 in Table 3). The *O'Connor* opinion leaves open the possibility that a State could justify involuntary confinement on a pure *parens patriae* basis—a "need for treatment." From the *O'Connor* opinion, a State could argue that involuntary confinement may be based upon at least three standards: danger to self or others, inability to live safely on one's own, or need for treatment. *Cooper v. Oklahoma* incorrectly limits *O'Connor* to the first two of these three standards.

4. **A State cannot confine a mentally ill individual who is not dangerous and who can live safely on his own (*Zimmerman v. Burch*).** According to this statement, providing treatment could not justify involuntary confinement. The Court in *O'Connor* explicitly refused to make this finding (see item 2 in Table 2). Moreover, the Court stated that some (unspecified) factor (e.g., need for treatment) *could* justify confining a mentally ill individual against his will, even if that in-

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dividual were not dangerous and could live on his own (item 2 in Table 3).

5. **A State cannot confine without more a mentally ill individual who is not dangerous and who can live safely on his own (*Zinermon v. Burch*).** This statement is a correct rendition of the *O'Connor* ruling.

### **Commentary**

The *O'Connor* opinion made a powerful statement regarding when a State may deprive a citizen of his liberty: mental illness alone would not justify placing an individual in a psychiatric hospital—against his will. At the same time, the opinion is actually quite humble in what it concludes. The Supreme Court said that a State, “without more,” may not confine a nondangerous mentally ill individual who is able to live safely on his own—although the Court does not say precisely what more is required, or even what the “more” might be. Subsequent cases have looked to *O'Connor* but not always in a manner that is faithful to the text of the original opinion. Cases have tended to err by overreaching—*O'Connor* was less expansive than many later cases that claimed it as a foundation would suggest.

A more specific tendency is the posture certain cases have taken toward dangerousness. These cases have stated that, following *O'Connor*, dangerousness is either necessary or sufficient to justify placing a mentally ill individual in a psychiatric hospital against his will. *O'Connor* says neither. Although *O'Connor* leaves open the possibility that dangerousness would suffice for involuntary hospitalization, it explicitly leaves open

the possibility that *other* adequate justifications, such as treatment, exist as well. Perhaps *O'Connor's* most important implication is that dangerousness may *not* be a necessary condition for involuntary confinement.

Other cases have erred by relying on *O'Connor* to say that treatment is not an adequate justification for involuntary hospitalization. To the contrary, *O'Connor* explicitly leaves open the possibility that treatment *does* provide an adequate justification for hospitalizing an individual against his will, even if the individual is not dangerous and is able to live safely on his own. The Court's summary statement in the *O'Connor* opinion is that a State cannot, “without more,” hospitalize a mentally ill individual who is not dangerous and is able to live safely outside the hospital. Nothing in that statement, nor in the entire opinion, suggests that treatment could not be the “more” that is required. Indeed, if treatment is not the necessary “more,” it is difficult to imagine what is.

It is important to place this point in the context of the entire opinion. Elsewhere the Court says that other justifications for involuntary confinement are *not* adequate to satisfy the Constitution. Specifically, the Court rules out protecting the citizenry from exposure to the mentally ill and raising the living standards of the mentally ill as legitimate bases for involuntary hospitalization. The Court's failure to include “treatment” with these “rule-outs” was deliberate and telling.

*O'Connor v. Donaldson* is a landmark case in the development of mental health law. The Supreme Court based its opinion on the due process clause of the Four-

teenth Amendment to the United States Constitution and, in writing the decision, followed the principle that interpretations of our Constitution should be written as parsimoniously as possible. The opinion is a great one—not because it said so much, but because it did so much by saying so little.

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