

From *Hendricks* to *Crane*: The Sexually Violent Predator Trilogy and the Inchoate Jurisprudence of the U.S. Supreme Court

Sameer P. Sarkar, MD

J Am Acad Psychiatry Law 31:242–8, 2003

Leong and Silva¹ have likened the sexually violent predator (SVP) laws to fictional serial slashers in horror movies. Like Jason in *Friday the 13th*, these cannot be vanquished and reappear in sequel after sequel, meaner and naughtier. The latest episode of the SVP trilogy premiered on January 22, 2002, in the chambers of the U.S. Supreme Court. The analogy with serial slasher movies, although on a lighter note than the issue suggests, is not entirely inappropriate, as the SVP laws share other characteristics of this genre of movies. Both intend to shock, test human rationality to the limit, and have incredible and unbelievable twists and turns, and both get worse with each sequel. In this article I will try to trace the jurisprudence of the U.S. Supreme Court on the sexual predator laws, from *Kansas v. Hendricks*² to *Kansas v. Crane*.³

The Prequels

In 1940 the U.S. Supreme Court first had to decide on the civil commitment of a dangerous sex offender. A Minnesota statute authorizing commitment of psychopathic individuals who are dangerous to others by application of laws relating to insanity was challenged on the grounds of violation of the due process and equal protection clauses of the Fourteenth Amendment. The Court affirmed⁴ the state court's construction that the statute sought to limit

confinement to a class that: (1) had a habitual course of misconduct; (2) evidenced utter lack of power to control their sexual impulses; and (3) were likely to harm the objects of their abnormal desires. The proofs needed to establish these findings were essentially the same as any other criminal matter.

On the equal protection issue, the Court was equally generous. It said that "the legislature is free to recognize the degree of harm, and it may confine its restrictions to those classes of cases in which the need is deemed to be the clearest" (Ref. 4, p 271). On procedural matters, the court said that to be invalid the statute must be "invalid on its face" and "not by reasons of some particular application inconsistent with due process" (Ref. 4, p 271). These words would reappear in one of the sequels.

Twenty-six years later, in 1966, the Supreme Court decided in *Baxstrom v. Herold*⁵ that on equal protection matters, "there is no conceivable basis for distinguishing the [civil] commitment of a person who is nearing the end of a penal term from all other civil commitments" (Ref. 5, p 112). This is an alternative reading of the *Baxstrom* opinion, which is also read as affirming that a convicted criminal who is allegedly mentally ill is entitled to release at the end of the sentence unless the state commits the offender in a civil proceeding.

In 1986 a sex offender, Terry B. Allen, was classified by a trial court as a sexually dangerous person under the Illinois Sexually Dangerous Persons Act.⁶ Allen's contention was slightly different: that he should have been protected by the Fifth Amendment

Dr. Sarkar is a Consultant in Forensic Psychiatry, Broadmoor Hospital, Crowthorne, Berkshire, UK, and a Master's student at the University of Northumbria School of Law, Newcastle-upon-Tyne, UK. Address correspondence to: Broadmoor Hospital, Crowthorne, Berkshire, RG45 7EG, UK. E-mail: sameer.sarkar@wlmht.nhs.uk

right against self-incrimination. The U.S. Supreme Court⁷ held that this did not apply to him because the right is available only in criminal cases and set the now famous criteria that determined whether the Act was civil in nature. It held that the determining factors are: (1) the intent of the legislature; (2) the use of procedural safeguards that usually accompany criminal proceedings; and (3) The role of treatment. The Supreme Court later expanded on these factors in its decision in *Hendricks*.

SVP I: *Kansas v. Hendricks*

The case of Leroy Hendricks, a self-confessed pedophile who by his own admission would remain dangerous until he died, created a furor. His claims were appealingly simple: that the Kansas Sexual Violent Predator Statute,⁸ under which he was detained indefinitely, was unconstitutional on the grounds of substantive due process and double jeopardy and on an *ex post facto* basis.

The Kansas Supreme Court declared the legislation unconstitutional, but the U.S. Supreme Court, by the thinnest majority (five to four) upheld the Kansas law.² The majority held that involuntary civil commitment of a limited subclass of dangerous persons is not contrary to our understanding of ordered liberty. The precommitment requirement of a finding of mental abnormality or personality disorder (see also *Minnesota ex rel. Pearson v. Probate Court of Ramsey County*⁴), along with dangerousness, narrows the class of persons eligible for confinement to those who are unable to control their dangerousness.

Several important matters were discussed in the majority opinion. First, the Court clearly stated that the term “mental illness” is devoid of any talismanic significance and that the Court has never required any particular form of nomenclature when drafting legislation. In support, it quoted *Jones v. U.S.*⁹ that when a legislature “undertakes to act in areas fraught with medical and scientific uncertainties, legislative options must be especially broad and courts should be cautious not to rewrite legislation” (Ref. 9, p 362).

The Court accepted that, by the standards set in *Allen*,⁷ the Kansas Act was not criminal and thus did not violate Mr. Hendricks’ double jeopardy and *ex post facto* claims. It further noted that the Act did not implicate retribution or deterrence; prior criminal convictions were used as evidence in the commitment proceeding (but were not a prerequisite to confinement); the Act required no finding of scienter;

and, although the safeguards were similar to those in the criminal context, they did not alter the character of the scheme. It also clarified that Mr. Hendricks should not be entitled to discharge simply because he was untreatable—no more than he would have been if he had a highly contagious but untreatable illness.¹⁰ To do so would obligate states to release certain mentally ill and dangerous individuals simply because they could not be successfully treated for their afflictions. Even if no treatment were being provided to Mr. Hendricks at the time, or treatment was not the state’s overriding or primary concern,¹¹ given a statutory obligation to provide treatment, the punitive intent could not be proved.

The dissent (lead by Justice Breyer) disagreed with the majority’s conclusion, stating that incapacitation is a basic objective of criminal law. Although the Act imposes confinement only on individuals who have previously committed a criminal offense,¹² this similarity does not by itself render a civil law criminal, just as the word “civil” written into the statute does not prove that the statute is not criminal. However, when a state believes that treatment exists and couples that belief with a legislatively required delay of such treatment until a person is at the end of a prison term (so that further incapacitation is therefore necessary), such a legislative scheme begins to look punitive. Paraphrasing the seven factors cited as “helpful” in *U.S. v. Ward*,¹³ Justice Breyer argued that the Act involves an affirmative restraint, namely confinement, that serves the traditional intent of punishment, does not primarily serve an alternative purpose (such as treatment), and is excessive in relation to any alternative purpose assigned.¹⁴ In support, he stated that the Kansas Act meets all three criteria: the state delays treatment, fails to consider less restrictive alternatives, and applies the law to pre-Act crimes.

It is Justice Kennedy’s concurring opinion, however, that goes beyond the facial challenge. His concern was whether the criminal or civil system should determine the length of detention. Given Mr. Hendricks’s criminal record, a life term may well have been the most appropriate sentence. However, Justice Kennedy argued that if the civil system was used to make good the deficiencies of the criminal system, it was not fulfilling its proper function. He went on to say:

We should bear in mind that while incapacitation is a goal common to both the criminal and civil systems of confinement, retribution and general deterrence are reserved for the criminal

system alone. On the record before us, the Kansas civil statute conforms to our precedents. If, however, civil confinement were to become a mechanism for retribution or general deterrence, or if it were shown that mental abnormality is too imprecise a category to offer a solid basis for concluding that civil detention is justified, our precedents would not suffice to validate it [Ref. 2, p 373].

In the backdrop of this major concern, we go to the first sequel.

SVP II: *Seling v. Young*

Washington's SVP law is almost identical with that of Kansas, which the Supreme Court held by a five-to-four majority to be constitutional. Andre Bingham Young was convicted of six rapes over three decades. Like Mr. Hendricks, just before his scheduled release he was committed as an SVP, with a diagnosis of severe personality disorder and severe paraphilia. After several unsuccessful challenges against his confinement in the state court, he filed a *habeas* action under 28 U.S.C. 2254. Without going into the extremely complicated history of appeals and remands that are detailed in the majority opinion, it can be said that the Supreme Court granted *certiorari*¹⁵ to resolve the conflict between the Ninth Circuit and the Washington State Supreme Court.

The linchpin of Mr. Young's claims was whether the Washington Act was punitive "as applied" to him. The Supreme Court started with the assumption that the Washington Act is civil. Since *Hendricks*, the court had reaffirmed the principle that determining the civil or punitive nature of an Act must begin with the text and legislative history.¹⁶ Courts must evaluate the question by reference to several factors considered in relation to the statute on its face, and only the clearest proof can override legislative intent.

The concurring opinion of Justice Thomas (author of the majority opinion in *Hendricks*) challenges the assumption that the Act is civil. He argues that the appellant had no case for "as applied" relief because appellant is claiming that the statute is not being applied according to its professed scope (term) at all. Justice Thomas is joined by the sole dissenter, arguing that the act cannot be assumed to be civil. They argue that it was at best "otherwise" or "facially" civil.

Somewhat vaguely, the majority said that because confinement is not a "fixed event" and conditions are subject to change over time, conditions of confine-

ment should not be considered at all, except in the first challenge to a statute. They added, "the civil nature of a confinement scheme cannot be altered based merely on the vagaries in the implementation of the authorizing statute" (Ref. 15, p 263). Accordingly, the double jeopardy and *ex post facto* challenge must fail.

Justice Scalia with whom Justice Souter joined in concurring, however, left some room for reexamining this. The opinion stated:

[F] or Double Jeopardy and *Ex Post Facto* Clause purposes, the question of criminal penalty *vel non* depends upon the intent of the legislature; and harsh executive implementation cannot "transfor[m] what was clearly intended as a civil remedy into a criminal penalty," any more than compassionate executive implementation can transform a criminal penalty into a civil remedy. This is not to say that there is no relief from a system that administers a facially civil statute in a fashion that would render it criminal. The remedy, however, is not to invalidate the legislature's handiwork under the Double Jeopardy Clause, but to eliminate whatever excess in administration contradicts the statute's civil character [Ref. 15, p 269, internal citations omitted].

Justice Stevens, in his dissent argued the opposite. He stated that, as a practical matter, the evidence of unsatisfactory conditions of confinement is most likely not to constitute the requisite clearest proof in the first challenge as the majority suggested and therefore should not be limited to first challenge only. He added: "If conditions of confinement are such that a detainee has been punished twice in violation of the Double Jeopardy Clause, it is irrelevant that the scheme has been previously labeled as civil without full knowledge of the effects of the statute" (Ref. 15, p 276–277).

This most interesting construction of what was "facially" a simple matter shows how the Supreme Court continues to struggle with the constitutionality of the SVP laws. At least six judges can be thought to have left the door open for further constitutional challenge to the SVP laws, although in the end it was a very dry technical legal discussion of what constituted an "as applied" challenge. Like the unfortunate movie sequel that bombs at the box office, this one went largely unnoticed. In its relative anonymity, it left the door open for more debate.

SVP III: *Kansas v. Crane*

Michael T. Crane did not raise double jeopardy or *ex post facto* claims. He raised substantive due process claims. Accordingly, this case³ decided only how narrowly one should read a Supreme Court decision.

Unlike Mr. Hendricks and Mr. Young, Mr. Crane had a benign criminal history. He was convicted of exposing himself to two women, one of whom he physically assaulted and threatened to rape. Following respondent's plea to aggravated sexual battery, the state filed a petition to have him adjudicated a sexual predator under the Sexually Violent Predator Act (SVPA).¹⁷

At the commitment hearing, Mr. Crane's disorder was diagnosed as exhibitionism and antisocial personality disorder. No court or jury had determined that he was volitionally impaired. Respondent moved for summary judgment, arguing that for his commitment to be constitutionally valid, there must be a showing of complete inability to control oneself. The trial court denied this motion and instructed the jury pursuant to the terms of the statute who unanimously found him an SVP for commitment. On appeal, the Kansas Supreme Court took the view that the federal Constitution as interpreted in *Hendricks* insists on "a finding that the defendant cannot control his dangerous behavior" even if problems of "emotional capacity" and not "volitional capacity" prove the "source of bad behavior" warranting commitment. (*Kansas* law defines mental abnormality as a condition that affects an individual's emotional or volitional capacity.¹⁷) Kansas argued that the Kansas Supreme Court wrongly read *Hendricks* as requiring the state to prove that a dangerous individual is completely unable to control his behavior; that reading, said Kansas, is far too rigid.

The majority agreed. In their reading, *Hendricks* referred to the Kansas Act as requiring a "mental abnormality" or "personality disorder" that makes it "difficult, if not impossible, for the [dangerous] person to control his dangerous behavior." The word "difficult" indicates that the lack of control was not absolute and indeed, an absolutist approach, in their view was unworkable. Moreover, the majority opined, most severely ill people, even those commonly termed psychopaths, retain some ability to control their behavior. The majority thought that insistence on absolute lack of control would risk barring the civil commitment of highly dangerous persons with severe mental abnormalities.

In a remarkable feat of what Justice Scalia termed "jurisprudential jujitsu," the majority ruled that the constitution does not permit commitment of the type of dangerous sexual offender considered in *Hendricks*, without some determination of lack of con-

trol. *Hendricks* underscored the constitutional importance of distinguishing a dangerous sexual offender subject to civil commitment "from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings (Ref. 2, p 360). That distinction, the court thought was necessary lest "civil confinement were to become a mechanism for retribution or general deterrence"—functions properly those of criminal law, not civil commitment (Ref. 2, p 372–3, Justice Kennedy concurring). The court said that the presence of what the "psychiatric profession itself classify[d]. . . as a serious mental disorder" helped to make that distinction in *Hendricks*, and a critical distinguishing feature of that "serious. . . disorder" in that case consisted of a special and serious inability to control behavior. It went on to state that the court had "sought to provide constitutional guidance in this area by proceeding deliberately and contextually, elaborating generally stated constitutional standards and objectives as specific circumstances require (Ref. 3, p 6).

Hendricks limited its discussion to volitional disabilities. The majority reasoned that it is often appropriate to say of such individuals, in ordinary English, that they are "unable to control their dangerousness." In its defense, it said that the Court has never distinguished (when considering civil commitments) for constitutional purposes among volitional, emotional, and cognitive impairments (Ref. 3, p 7).

The dissent by Justices Scalia and Thomas is unashamedly scathing. Wishing to reverse rather than vacate the Kansas Supreme Court's decision, it accuses the majority of "snatching back from the State of Kansas a victory so recently awarded" and thereby cheapening the currency of their judgments. Justice Scalia delivers what can be seen as the most potent arguments against the majority opinion. First, the section of the Kansas SVPA that defines "mental abnormality," contains no requirement of inability to control. Rather, the SVPA's required finding of a "causal connection" between the likelihood of repeat acts of sexual violence and the existence of a "mental abnormality" or "personality disorder" necessarily establishes "difficulty if not impossibility" in controlling behavior. It conditions civil commitment not on a mere finding that the sex offender is likely to reoffend, but only on the additional finding (beyond a reasonable doubt) that the cause of the likelihood of recidivism is a "mental abnormality or personality

disorder.”¹⁸ *Hendricks* suggested that ordinary recidivists choose to reoffend and are therefore amenable to deterrence through the criminal law. Those subject to civil commitment under the SVPA, because their mental illness is an affliction and not a choice, are unlikely to be deterred. The dissent points out that even the narrowest holding of *Hendricks* affirmed the constitutionality of commitment on the basis of the jury charge given in that case. Because that charge did not require a finding of volitional impairment, neither does the Constitution.

Second, Justice Scalia found no justification for preserving the special status of volitional impairment, arguing that the court had never previously distinguished between the various types of impairments because it made no sense. He concluded that the majority’s ruling would be unworkable, because no trial court will find the majority’s guidance helpful in charging the jury.

In summary, the dissent argued that all that the law requires and the Constitution demands is that there be a jury determination, beyond reasonable doubt, (assisted by expert testimony) that the respondent has either a mental abnormality or a personality disorder making it likely that he will commit repeated acts of sexual violence. The constitution does not require an additional third finding of inability to control behavior, given that this is bound to vary. They finish by saying that it is “is irresponsible to leave the law in such a state of utter indeterminacy” (Ref. 3, p 10).

Discussion

In *Kansas v. Hendricks* the Supreme Court dealt with the question of preventive detention in the context of mental abnormality. Previous court decisions had found that the substantive standard of mentally ill and dangerous could justify more than brief confinement. The question before the current court was whether mental abnormality also meets the substantive criterion. It held by a majority that it does.

Sexual predator laws have a long history. They have recently come back in fashion, perhaps because sex offenders remain a special social problem. Roughly 10 percent of the nation’s prison population (or about 250,000) have been convicted of these offenses. The definition of a sexual predator, even by the Kansas statutes’ broad definition¹⁹ (which includes lewd touching and the possession of pornography) remains uncertain. The problem of definition

is compounded by its relationship (if any) to diagnosis. Experts testified that Mr. Hendricks had pedophilia, which is a valid DSM-IV diagnosis. However, there was no psychiatric consensus on whether pedophilia is a mental disorder or whether it is treatable. Although the experts did not explicate in detail the difference between mental disorder and mental illness, they all agreed that pedophilia alone is not a mental illness).

The experts’ differences necessitated that Kansas have a separate law authorizing detention of this group of offenders who would not otherwise meet the mental illness criteria. The Supreme Court supported this, citing *Jones*: “These disagreements, however, do not tie the State’s hands in setting the bounds of its civil commitment laws. In fact, it is precisely where such disagreement exists that legislatures have been afforded the widest latitude in drafting such statutes” (Ref. 2, p 360, footnote 3 therein).

Justice Kennedy’s concurring opinion in *Hendricks* has a caveat (Ref. 2, p 378) about psychiatric diagnosis. Diagnosis in psychiatry, unlike in other branches of medicine, is subject to multiple influences. The DSM has undergone more than five revisions in the past 50 years or so, and its validity has been questioned on the grounds that diagnoses are formulated by professional committees with vested interests in increasing the number of diagnoses. Although diagnostic systems must change with improved scientific knowledge, psychiatric diagnoses may also change in response to changes in social, cultural, and political values. This is especially so when the diagnostic criteria rest on consensus.

The majority opinion in *Hendricks* introduced a new prong in civil commitment of the sexual predator. Previously, civil commitment required a showing of mental illness (and now mental abnormality) and dangerousness. Now it requires not only both those criteria, but also a functional link with volitional impairment. Because there is no particular reason why these criteria should not apply to the non-SVP population, the opinion represents a widening of the detention goal posts. While ostensibly limiting confinement to those who have volitional impairments, it runs the risk of making the definition so broad as to render it useless. Indeed, this is what happened in *Kansas v. Crane*.³

In *Crane*, the majority of seven to two held that volitional impairment need not be absolute (al-

though a determination must always be made). However, given that volitional impairment is one prong of the insanity defense, which goes to a determination of responsibility, this opinion reinforces Mr. Hendricks' claim, and the dissent of Justice Breyer, that it is thus a criminal as opposed to civil statute (Ref. 2, p 380). Considering that the defense of absence of volitional control has had a checkered history in the criminal courts, it is somewhat surprising to see its reemergence in a civil context. The concern here is that most volitional disorders fall short of the absolute standard, because "there is usually a series of controllable behavior that lead up to the offense."²⁰ The concern remains that of the now famous American Psychiatric Association statement on the insanity defense: "[T]he line between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk."²¹

These concerns came back to haunt the Court in *Crane*, where it was argued that the exhibitionism and antisocial personality disorder diagnosed in Mr. Crane are not essentially disorders of volitional impairment. Impulsiveness (which is a diagnostic criterion for some personality disorders) is not the same as compulsiveness. There also remain concerns about circularity of argument in the diagnosis of antisocial personality disorder, in which bad behavior is at once both a symptom of and an explanation for the disorder. The Court acknowledged that it is not possible to be precise about the measurement of "the inability to control behavior," but argued that the severity of the disorder distinguishes mentally disordered SVPs from "the dangerous but typical recidivist" (Ref. 3, p 5). However, it also conceded that 40 to 50 percent of the male prison population are diagnosable with antisocial personality disorder, thus leaving open the very fear Justice Kennedy had in *Hendricks* (Ref. 2, p 373). In response, the Court argued that distinctions made by psychiatric science "do not seek precisely to mirror those of the law." Because this distinction is not one of principle, but rather of diagnostic labeling, the protections guaranteed by our constitution become "matters of sovereign grace rather than clear entitlement."²²

When applied to risk, a diagnostic system devoid of construct and predictive validity is as morally bankrupt as the very patients it seeks to classify. Psychiatrists traditionally have complained about the lack of precision in predicting dangerousness, but the

courts have required psychiatric testimony on precisely those counts.²³ Unlike Mr. Hendricks, Mr. Crane was not a repeat offender and would thus not qualify for the surest test psychiatrists have: nothing predicts violence like past violence. The determination of his dangerousness then must rely on actuarial factors, which are not helpful if the base rate is low for offending behavior. *Crane* seems to imply that status (of being a person with mental abnormality) as opposed to an act is now a valid reason for detention. If so, this is a backward step in legislative history.

On a different note, some commentators²⁴ have noted with sadness the diminishing importance of treatment in SVP legislation. *Jackson v. U.S.*²⁵ may be applied to such cases as *Hendricks* (although it is cited only once in one of these three cases, in a different context; Ref. 2, p 359). Although *Jackson* was about equal protection, it also stated the less celebrated dictum that commitment must bear some relevance to the purpose for which it is sought (Ref. 25, Justice Blackmun delivering unanimous opinion with Justices Powell and Rehnquist abstaining). The *Jackson* court interpreted "purpose" as whatever is permitted in the statute. In this context it appears that, save a showing that treatment is really the objective and is actually being provided, the very basis of detention based on dangerousness linked to irresistible or unresisted impulse may be open to challenge.

The principle of reciprocity dictates that the state gives something in return when it takes away liberty. This could have been the "without more" mentioned by the Court in *O'Connor v. Donaldson* (Ref. 26 at 571, opinion of Justice Stewart), which the Supreme Court has not yet ruled on. The resurrection of right to treatment may not be far behind. *Jackson* may have been the most important constitutional precedent in mental health law, because the unanimous *Jackson* court spelled out the spirit behind detention on psychiatric grounds—that reciprocity should be at least the minimum required criteria behind these detentions. In its absence, our protection may indeed be as flimsy as sovereign grace.

References

1. Leong GB, Silva JA: Sexually violent predator II: the sequel. *J Am Acad Psychiatry Law* 29:340–3, 2001
2. *Kansas v. Hendricks*, 521 U.S. 346 (1997)
3. *Kansas v. Crane*, 534 U.S. 407 (2002)
4. *Minnesota ex rel. Pearson v. Probate Ct. of Ramsey County*, 309 U.S. 270 (1940)
5. *Baxstrom v. Herold*, 383 U.S. 107 (1965)

The Supreme Court and the SVP Trilogy

6. 725 Ill. Comp. Stat. Ann 205/0.01-205/12 (West 1993 & Supp.)
7. *Allen v. Illinois*, 478 U.S. 364, 369 (1986)
8. Kan. Stat. Ann. Sec. 59-29a01 et seq. (1994)
9. *Jones v. U.S.*, 463 U.S. 354 (1983)
10. *Compagnie Francaise de Navigation a Vapeur v. Louisiana Bd. Of Health*, 186 U.S. 380 (1902)
11. *In re The Care and Treatment of Leroy Hendricks*, 912 P.2d 129, 138 (1996), stay granted sub. Nom. by *Kansas v. Hendricks*, 517 U.S. 1153 (1996), rev'd, 521 U.S. 346 (1997)
12. Kan. Stat. Ann. § 59-29a02(a), 59-29a03(a) (1994)
13. *U.S. v. Ward*, 448 U.S. 242, 249 (1980)
14. *Kennedy v. Mendoza Martinez*, 372 U.S. 144, 168-9 (1963)
15. *Seling v. Young*, 531 U.S. 250 (2001)
16. *Hudson v. U.S.*, 522 U.S. 93 (1997)
17. Kan. Stat. Ann. § 59-29a02(b) (2000 Cum. Supp.)
18. Kan. Stat. Ann. § 59-29a02(a) (2000 Cum. Supp.)
19. Kan. Stat. Ann. 21-3503 (1994)
20. Freidland, SI: On treatment, punishment, and the civil commitment of sex offenders. *Univ Colo Law Rev* 70:73-154, 1999
21. American Psychiatric Association: Statement on the insanity defense. *Am J Psychiatry* 140:681-88, 1983
22. Colb SF: The Supreme Court's decision in *Kansas v. Crane*: which "dangerous" people can be incarcerated? <http://writ.findlaw.com/colb/20020130.html>, (last accessed on 12/27/2002)
23. *Barefoot v. Estelle*, 463 U.S. 880 (1983)
24. Gossman TM: *Kansas v. Hendricks*: The diminishing role of treatment in the involuntary civil confinement of sexually dangerous person. *N Engl Law Rev* 33:475-513, 1999
25. *Jackson v. Indiana* 406 U.S. 715 (1972)
26. *O'Connor v. Donaldson*, 422 U.S. 563 (1975)