

# Commitment Versus Confinement: Therapeutic Passes in the Management of Insanity Acquittees

Stephen A. Young, MD, Richard L. Frierson, MD, R. Gregg Dwyer, MD, EdD, and Amishi Shah, MD

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Despite documented changes in the not-guilty-by-reason-of-insanity (NGRI) defense during the past 15 years, most states and the federal government continue to recognize the underlying principle that some mentally ill defendants must be viewed in a different light when assigning criminal responsibility.<sup>1</sup> Although the NGRI defense is rarely invoked and is not usually successful,<sup>2</sup> some individuals nationwide are found NGRI each year, creating complex dispositional questions for mental health agencies, courts, and patient advocacy groups. In most states that recognize some version of the NGRI verdict, statutory guidelines direct procedures for a disposition after NGRI acquittal. Although the general nature of these statutes mandates immediate commitment to a treatment facility, the parameters of commitment vary significantly between jurisdictions. Frequently, these statutes fail to cover the use of therapeutic passes, a clinical tool used to ease the transition of patients into the community before conditional release. Specifically, statutory language frequently fails to address the crucial matter of who bears decision-making responsibility for allowing patients to have therapeutic passes: clinicians or the courts.

In this article, we explore a recent case in South Carolina in which the very definition of the word

commitment was in dispute, leading to a larger discussion about how decision-making authority regarding therapeutic passes was to be divided between the department of mental health, the office of attorney general, and the original trial court. A detailed review of the case will be followed by a discussion of the results of a state-by-state survey on the question of therapeutic passes for this population. Finally, a discussion of the broader issues involving this area of post-trial management of insanity acquittees will be presented.

## Facts of *State v. Hudson*

On April 1, 1995, Ui Sun Hudson, a 39-year-old Korean female, was wandering through a Charleston, South Carolina, shopping mall and attacked three children with a pair of scissors, causing significant injury. One child suffered permanent loss of vision in one eye. The parents, who eventually subdued Ms. Hudson, were also injured. Ms. Hudson had immigrated to the United States several years earlier in the context of a brief marriage to a U.S. serviceman. Although initially able to maintain a job and a home, her history in the years prior to the offense revealed a gradual but severe deterioration in her ability to function. By 1995, she had been homeless for at least a year and had joined a group of people who moved semiannually between Florida and Washington, D.C., to avoid cold weather. On the day of the offense, she reportedly had become so paranoid that she frightened her traveling companions and ended up hitching a ride to South Carolina on her own.

Dr. Young is Associate Professor of Clinical Psychiatry, Drs. Dwyer and Shah are General Psychiatry Residents, University of South Carolina School of Medicine, Columbia, SC, and Dr. Frierson is Associate Professor of Clinical Psychiatry, William S. Hall Psychiatric Institute, University of South Carolina School of Medicine, Columbia, SC. Address correspondence to: Stephen A. Young, Associate Professor of Clinical Psychiatry, University of South Carolina School of Medicine, 3555 Harden Street, Columbia, SC 29203. E-mail: syoung@hsc.sc.edu

# Management And Treatment Of Insanity Acquittees

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