

# A drugged-up defendant can't participate in defense

A jury sentenced James Colburn to death in October 1995, but he probably was too drugged up to notice. Mr. Colburn is severely and chronically mentally ill. In an effort to make him competent to stand trial for the attempted rape and the murder of Peggy Murphy, he was shot up with Haldol. The anti-psychotic drug sedated Mr. Colburn so much that he slept through much of his trial.

The U.S. Supreme Court has long held that it offends our constitutional notions of due process and fundamental fairness to subject a person to trial who is unable to understand the proceedings against



**RAMAN GILL**

him and to consult with and assist his lawyers in preparing a defense. Yet the court denied a motion to stay Mr. Colburn's execution, in which his appellate lawyers argued that he was "incompetent to stand trial" because he was heavily sedated as well as severely mentally ill.

On the day Mr. Colburn was scheduled to die, the court stayed

the execution to consider whether to decide if federal courts had the authority to hear a second petition raising the separate issue of "incompetency to be executed." But the court recently lifted the stay without addressing that issue. And Mr. Colburn now is scheduled to be executed on March 26.

No one thinks Mr. Colburn is faking it. His mental illness was detected at the age of 14, although he wasn't diagnosed as suffering from paranoid schizophrenia until he was 17. Thereafter, he was intermittently on medication. And when he was off his medication, he often experienced auditory and visual hallucinations.

Jail records reportedly indicate that even after his arrest, there were gaps in Mr. Colburn's medical treatment. Although Mr. Colburn was indigent, he was expected to pay for his medication from the little money in his commissary account. At times, Mr. Colburn, who at least one expert has determined has the reasoning ability of a 10-year-old, opted to spend his money on other things, like candy.

For the 15 or so months Mr. Colburn spent in jail before his trial, he often was agitated, sometimes urinating and defecating on himself, and repeatedly was on suicide watch. Yet based on an examination of Mr. Colburn 10 months be-

fore trial, the court-appointed psychologist found that Mr. Colburn was competent to stand trial.

So off to trial Mr. Colburn went, shot full of Haldol and with lawyers who thought his spaced-out demeanor would help convince the jury that Mr. Colburn was insane when he committed the crime. That strategy was developed by the same counsel who didn't seem to think it was a big deal that Mr. Colburn was sleeping through large portions of his trial.

Not only did that strategy fail to convince the jury that Mr. Colburn was insane, it may have cost Mr. Colburn his life. At least one juror reportedly has said she thought Mr. Colburn's detached demeanor indicated he was mean, not insane. She now says she wouldn't have voted for the death penalty if she had realized Mr. Colburn's demeanor was a result of his mental illness.

The State Board of Pardons and Paroles should recommend to Gov. Rick Perry that Mr. Colburn's death

sentence be commuted to life. But the board rarely recommends commutations or pardons, and Mr. Perry can't commute the sentence without its recommendation.

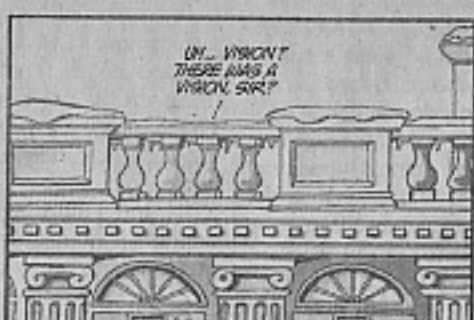
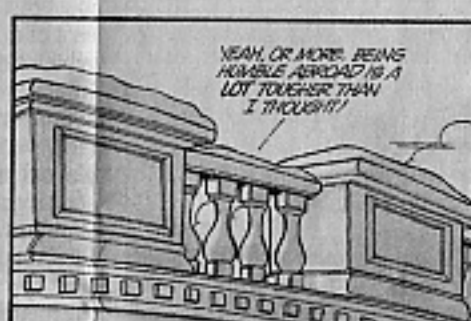
There may be an attempt this legislative session to push for a constitutional amendment to give the governor more power to commute sentences. That would be welcome, but there is no assurance it will happen. In the meantime, we have to find ways to ensure we effectively deal with mental health issues on the front end of cases instead of leaving those issues to be dealt with later — or not at all.

Every county in Texas must set standards for lawyers who represent indigent and mentally ill clients like Mr. Colburn. Those standards should include the requirement of substantial training. That is important not only because it prepares lawyers to deal with the sometimes complicated issues that can arise when the defendant has a mental disorder but also because it tends to attract lawyers who care about such issues.

After all, those lawyers are going to be the ones most likely to take the time to be properly trained. And for people like Mr. Colburn, a well-trained and caring lawyer could mean the difference between life and death.

*Raman Gill is a lawyer with Texas Applesed, a public interest law center that has produced a handbook for lawyers to help them better represent their clients with mental illness. Sarah J. Clark, a member of the Texas Applesed board of directors, contributed to this piece.*

## DOONESBURY by Garry Trudeau



## Viewpoints

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