

# Texas must ensure justice for mentally ill

By RAMAN GILL

Texas executed James Colburn a few weeks ago. This may seem like business as usual for Texas, but Colburn's case is more alarming than most because he was severely and chronically mentally ill. In fact, Colburn was shot up with the anti-psychotic drug Haldol in an effort to make him competent to stand trial for attempted rape and murder. The drug sedated Colburn so much that he slept through much of his trial.

No one thought Colburn, who at least one expert has determined had the reasoning ability of a 10-year-old, was faking it. For the 15 or so months 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 Colburn 10 months before trial, the court-appointed psychologist found that Colburn was competent to stand trial.

So off to trial Colburn went, shot full of Haldol and with lawyers who thought his spaced-out demeanor would help convince the jury that 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 Colburn was sleeping through large portions of his trial.

Not only did that strategy fail to convince the jury that Colburn was insane, it may have cost Colburn his life. At least one juror reportedly has said she thought 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 Colburn's demeanor was a result of his mental illness.

Colburn's story is the worst-case scenario for someone with mental illness in the criminal justice system. Most people with mental health disorders in the system are not on death row; in fact, they often circulate time and again through the courts on minor misdemeanor charges that are a result of their mental condition. But like Colburn, these people are also the victims of a system that fails to address even their most basic mental health issues. This is particularly troubling in light of the fact that Texas's prison system has almost as many inpatient beds as the state mental health system.

The first line of defense against the negligent,

discriminatory or improper treatment of indigent mentally ill and mentally retarded inmates is their defense attorney. Yet, according to a 2000 report by Texas Appleseed, attorneys in Texas's criminal justice system are under great pressure to "move" cases.

This fast-paced justice may lead an attorney to miss signs of a defendant's mental health disorder. If this happens, the attorney will not know to look for mental health records that can help get the case dismissed or reduced pretrial, build a defense for trial, or mitigate damaging evidence at sentencing. This could also result in the client accepting a plea bargain or making other decisions about the case when he or she is incompetent and does not fully understand all the consequences that flow from that plea.

Under Texas law, each county must, at the beginning of every year, submit to the state its indigent defense plan, including standards that every attorney in the county must meet in order to be appointed to criminal cases in which the defendant is indigent. Most counties do not require any special mental health training for attorneys to be qualified to take appointments. Counties should consider setting up a separate appointment list for those lawyers who want to represent defendants with mental health disorders, and there should be special training requirements to get on that list. Rigorous training 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 the most about such issues.

After all, those lawyers are going to be the ones most likely to take the time to be properly trained. For most people with mental disorders in the criminal justice system, a qualified and caring lawyer could mean keeping an unjust conviction off their record or getting badly needed mental health treatment. In the most severe cases, like Colburn's, a well-trained and caring lawyer could mean the difference between life and death.

*Gill is a lawyer with Texas Appleseed, a public interest law center that has produced a handbook for lawyers to help them better represent their clients with mental illness.*