

A turning point for death penalty in U.S.

by Anita Gallagher

While South Africa suspended its use of the death penalty early this year, the United States instead will dramatically step up executions as dozens of the 2,500 inmates on death row exhaust their appeals during 1992. Most shocking, a number of those facing imminent execution across the United States have produced evidence showing that they are very probably innocent—evidence which U.S. state and federal courts are refusing to hear.

On Feb. 9, the U.S. Supreme Court accepted the case of *Herrera v. Texas*, which poses the fundamental natural law issue of whether the innocence of the defendant ought to bar execution if the conviction followed existing case law. With the dissent of Justices John Paul Stevens and Harry Blackmun, the Court simultaneously refused to stay Leonel T. Herrera's execution, now scheduled for April 15, until the case is argued—October at the earliest. It is widely feared that the Court's refusal to stay Herrera's execution is a portent of how the majority of the Rehnquist Court intends to rule.

With federal courts increasingly hostile to review rulings of state courts, death row defendants in the United States are increasingly forced to resort to appeals for clemency from state governors, waged through the corrupt U.S. media. Though this alternative represents an abrogation by the courts of their duty to uphold natural law, and a virtual assembly line to the death house, the publicity surrounding the attempts by these defendants to win executive clemency has proved a powerful polemic against the death penalty. While U.S. federal and state judges may believe that the possibly innocent should be sacrificed to judicial economy or legal precedents, it is becoming clear that the majority of Americans do not.

No more election stunts

The most prominent case in the U.S. media at this moment is the conviction of Barry Lee Fairchild, secured by the administration of Gov. Bill Clinton in Arkansas. Democratic presidential candidate Lyndon LaRouche has called on Clinton "to show clemency in the case." Said LaRouche, "There's no doubt that the guilt of Barry Lee Fairchild, a poor, retarded black man, is very much in doubt. . . . I think that at this time we want no more of public executions as election stunts in the course of this presidential campaign."

Fairchild has charged that he was convicted because a Clinton-appointed sheriff, Tommy Robinson, tortured him into confessing to the murder of a white nurse in 1982. The

videotaped confession is the only evidence in the case, and 13 other suspects, as well as sheriff's deputies, have corroborated Fairchild's claim that the confession was coerced by torture, on the ABC News program "20/20" shown in 1991, among other instances.

Robinson, who was jailed for contempt for refusing to follow a black judge's order to improve conditions in his jail in the early 1980s, was later elected to Congress. Robinson has now emerged as the congressman with the greatest number of bounced checks in the House bank scandal.

In Illinois, Assistant State Attorney General Mary Brigid Kenney resigned as a state prosecutor in March, in protest of her assignment to oppose the appeals of convicted murderer Rolando Cruz, who has been sentenced to death. "After a careful examination of the record . . . I realized that I was being asked to help execute an innocent man," Kenney wrote in her letter of resignation. Kenney said that her belief that Brian Dugan, who subsequently confessed to the crime, is the real murderer, is shared by current and former members of the state police, the DuPage County sheriff's office, local police, and the Kane County, Illinois prosecutor's office.

The case of Rolando Cruz, who has been twice convicted for the sex slaying of 10-year-old Jeanine Nicarico of Naperville, Illinois, is now before the Illinois Supreme Court for the third time. Illinois Attorney General Roland Burris, a Bush Democrat who stated in March that "LaRouche is in jail where he belongs," announced that despite the recommendation of the prosecutor he assigned to the case, he would continue to seek the execution of Cruz.

Virginia Attorney General Mary Sue Terry, the woman whom LaRouche has called "the Ilse Koch of the United States," smarting from Gov. Doug Wilder's commutation of the death sentence of Herbert Bassette on Jan. 23, is now seeking the May 20 execution of 32-year-old Roger Coleman, whose claims of innocence are even more powerful than Bassette's.

Coleman was convicted by a biased jury, because on evidence of his innocence was withheld by the police. Attorneys for Coleman, and investigators for Centurion Ministries, have produced a witness-corroborated account of his whereabouts for every moment of the time frame in which the victim was murdered. Investigators from Centurion Ministries were responsible for the March release of two men wrongfully imprisoned on murder charges for 17 years in California.

In Coleman's case, Virginia Attorney General Terry stood on the argument that the actual innocence of the defendant is not a ground on which an execution can be lifted. The U.S. Supreme Court, with Stevens and Blackmun dissenting, also used Coleman's case to enunciate the barbaric doctrine that a procedural default at the state level (in Coleman's case, his attorneys filed papers one day late) meant that the merits of his case could not be considered, even though he would be executed.