

Eye on Washington by Anita Gallagher

Innocent voices from death row

Four innocent American citizens testified before a congressional subcommittee that, after years on Death Row waiting to be killed, they were saved from execution only because of extraordinary efforts by unpaid legal investigators—and simple luck.

Three of the four, Walter McMillian of Alabama, Federico Macias of Texas, and Kirk Bloodsworth of Maryland, proved their innocence just in the last five months. The fourth, Shabaka, born Joseph Green Brown, was freed on March 17, 1987 in Florida.

Certainly, others (one estimate is 10%) among the 2,700 men and women currently on Death Row in the United States are also innocent, but will be executed unless U.S. law is reformed.

The hearings, on "Innocence and the Death Penalty," were chaired by Rep. Don Edwards (D-Calif.), head of the House Judiciary Committee's Subcommittee on Civil and Constitutional Rights. Similar hearings were held by the U.S. Senate Judiciary Committee on April 1.

The hearings are aimed at undoing recent rulings of the U.S. Supreme Court which have stripped away constitutional protections against executing innocent people, exemplified in the Supreme Court ruling on the *Herrera* case. Leonel Herrera was executed on May 12.

The fight is expected to occur around the *habeas corpus*, or post-conviction appeal procedures, which will be contained in the all-inclusive crime bill Congress is preparing for a vote before year's end. Sources say that the Senate Judiciary Committee has just completed its markup of the

bill, which will soon be sent to the House. The Senate bill is rumored to be far worse than existing law in every aspect, including gutting what is called "the great Writ"—the right to *habeas corpus* appeal.

Wouldn't anyone agree that innocent persons must not be executed? The appearance of four such Death Row innocents, virtually back from the grave, points to the monumental flaws in the U.S. justice system. Yet, the subcommittee's Republican minority chose to produce three opposing witnesses who argued that U.S. death penalty law provides ample protections.

Bloodsworth: 'I'm supposed to be dead'

Kirk Bloodsworth of Maryland, released June 26 after DNA tests showed he could not have raped and murdered a nine-year-old girl in Baltimore, nearly cried at points during his testimony. "Nine years ago, in 1984, I was 23 years old and newly married. I had never been arrested for anything in my life." Bloodsworth was charged and convicted because he resembled a police composite sketch of the last man seen with the little girl.

Bloodsworth's first conviction was overturned because the prosecution had withheld evidence—but he was convicted by a jury a second time.

Bloodsworth recounted, "I had a full jury trial, at which I testified and my friends and family members testified that I was with them during the crime. The jury believed the eyewitnesses and did not believe us. . . . I was sentenced to death. People in the courtroom started to applaud and stare

at me with feelings of glee."

Federico Macias, released June 23 in Texas, told the subcommittee, "I owe my release—indeed, my life—to the federal writ of *habeas corpus*. Had some of the proposed restrictions on federal *habeas* been enacted a few years ago, I likely would have been unable to show that I was wrongfully convicted, and I would be dead." The federal court found that Macias "was denied his constitutional right to adequate counsel in a capital case in which actual innocence was a close question. The state paid defense counsel \$11.84 per hour. Unfortunately, the justice system got only what it paid for." A Texas grand jury refused to indict Macias.

Graham execution set

Despite the Macias case, Texas has now set Aug. 17 as Gary Graham's execution day. Graham, who is black, was convicted of a 1981 murder based on the testimony of only one eyewitness, with no corroborating evidence, while the other five eyewitnesses say Graham was not the killer.

Graham's lawyers have filed suit to force the Texas Board of Pardons and Paroles to hold a clemency hearing. The board's refusal even to meet on clemency cases has been broadly attacked, especially since the Supreme Court's *Herrera* ruling specified that executive clemency, and not the courts, was the proper vehicle to save innocent people from execution.

Calls and faxes from all over the world are being received by Texas Governor Ann Richards (512) 463-2000 (telephone) and (512) 463-1849 (fax), demanding Graham be given a new trial.