High court approves execution of innocent

by Anita Gallagher

Any nation which accepts the fiction that the United States is the world's leading defender of human rights after the U. S. Supreme Court's decision on the case of Leonel Torres Herrera, should check whether its leaders' brains have been fried. For on Jan. 25, the highest court ruled that innocent persons who have been convicted of murder may be executed without violating the U. S. Constitution.

Justice Harry Blackmun, joined by Justices John Paul Stevens and David Souter, blasted the Rehnquist majority's reasoning as "perverse." In the final portion of his dissent, unjoined by any other justice, Blackmun warned: "The execution of a person who can show that he is innocent comes perilously close to simple murder."

The Supreme Court's ruling was authored by Chief Justice William Rehnquist, who supports the Constitution of the Confederacy, not that of the U.S. Founding Fathers. Rehnquist, and his "majority," have severed "law" from the principles of justice and equity, which have their basis in what the Declaration of Independence calls "the law of Nature and Nature's God." The majority's reasoning is like that of Shakespeare's villain Shylock in *The Merchant of Venice:* "The pound of flesh. . . . 'Tis mine and I will have it. If you deny me, fie upon your law." Like Shylock, the Rehnquist majority uses "case law" to violate justice.

The practical effect of the court's ruling is to allow U.S. Circuit Courts of Appeal to continue to send to their deaths capital defendants who have evidence (a "colorable claim") of innocence.

Rehnquist's 'figleaf'

Of course, the 6-3 majority, and two justices (Sandra Day O'Connor and Anthony Kennedy) in a separate concurrence, claimed that the court was not ruling that an innocent man could be executed without violating the Constitution. Rehnquist cleverly inserted the sentence in the majority's opinion: "We may assume, for the sake of argument in deciding this case, that in a capital case a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional."

Justices Kennedy and O'Connor explicitly state that executing an innocent person would be unconstitutional, but maintain that Herrera's proofs of innocence are simply not good enough. However, none of the majority's opinions makes any attempt to set a standard for what a "truly persuasive" demonstration would be. Herrera's proofs—which included a sworn statement from the actual murderer's trial attorney, who is now a judge, and an eyewitness's sworn statement, among other evidence—are the normal types of proof a defendant would be able to offer. What proof would be good enough to get a hearing? Perhaps the situation Justice Kennedy hypothesized at the Oct. 7, 1992 argument: If the defendant had a videotape which showed another person committing the murder!

Justice Blackmun, with Stevens and Souter concurring, exposes how the Rehnquist majority has connived to destroy protections to those with colorable claims of innocence, calling the majority's decision "even more perverse, when viewed in the light of this court's recent *habeas* jurisprudence." Blackmun recounts how, with a trio of decisions in 1986, the court shifted the standard of review away from *whether a defendant's constitutional rights were violated,* to *whether he was guilty or innocent*. Having made a showing of "actual innocence" necessary for successive *habeas* review, the Rehnquist majority now turns around and says that executing an innocent man is not a constitutional violation, but instead a "truly persuasive" showing of innocence has now become merely the necessary threshold from which a constitutional violation must be raised.

"The only principle that would appear to reconcile these two positions is the principle that *habeas* relief should be denied wherever possible," Blackmun comments acidly.

The most vicious aspect of the majority decision, perhaps, is its hype of executive clemency, and claim that this is the proper avenue of relief for Herrera. Across the United States, Lilliputians win office by "tough on crime" campaigns that manipulate the rage of the voters. Clemency, "an act of grace," has become virtually extinct. The Texas Board of Pardons and Parole, for example, to which the court directed Herrera, has *never* granted a commutation in a capital case—except to block a court-ordered new trial.

"If the exercise of a legal right turns on 'an act of grace,' then we no longer live under a government of laws," warns Blackmun. When will the American people realize where their support of elected officials who demand "an end to appeals" has gotten them?

Documentation

Excerpts from the case of 'Herrera v. Collins'

Justices Antonin Scalia and Clarence Thomas, on conscience and law: "There is no basis in text, tradition, or even in contemporary practice (if that were enough) for finding in the Constitution a right to demand judicial consideration of

newly discovered evidence of innocence brought forward after conviction. In saying that such a right exists, the dissenters apply nothing but their personal opinions to invalidate rules of more than two-thirds of the States, and a Federal Rule of Criminal Procedure for which this Court iself is responsible. If the system that has been in place for 200 years (and remains widely approved) 'shocks' the dissenters' consciences (citing dissenters' opinion), perhaps they should doubt the calibration of their consciences, or, better still, the usefulness of 'conscience-shocking' as a legal test."

Why Justices Scalia and Thomas concurred with Rehnquist's opinion, despite its arguendo *assumption that innocence would bar execution:* "[I] can understand, or at least am accustomed to, the reluctance of the present Court to admit publicly that Our Perfect Constitution lets stand any injustice, much less the execution of an innocent man. . . . With any luck, we shall avoid ever having to face this embarrassing question again, since it is improbable that evidence of innocence as convincing as today's opinion requires would fail to produce an executive pardon."

Justice Harry Blackmun's dissent, alone: "I have voiced disappointment over this Court's obvious eagerness to do away with any restriction on the States' power to execute whomever and however they please (citing case of Roger Coleman of Virginia, 1991). I have also expressed doubts about whether, in the absence of such restrictions, capital punishment remains constitutional at all. . . . Of one thing, however, I am certain. Just as an execution without adequate safeguards [the reason capital punishment was temporarily declared unconstitutional in 1972—ed.] is unacceptable, so too is an execution when the condemned prisoner can prove that he is innocent. The execution of a person who can show that he is innocent comes perilously close to simple murder."

Justices Blackmun, Stevens, and Souter, on the Eighth Amendment, which prohibits "cruel and unusual" punishment: "The protection of the Eighth Amendment does not end once a defendant has been validly convicted and sentenced. . . . [C]apital defendants may be entitled to further proceedings because of an intervening development even though they have been validly convicted and sentenced to death. . . [Texas] and the United States would impose a clear line between guilt and punishment. . . . [S]uch a division is far too facile. What [Texas] and the United States fail to recognize is that the legitimacy of punishment is inextricably interwined with guilt."

Justices Blackmun, Stevens, and Souter, on executive clemency: " 'The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.' (*Marbury v. Madison* [1803]). If the exercise of a legal right turns on 'an act of grace' [the majority's definition of clemency—ed.] then we no longer live under a government of laws."

Clinton expands death penalty for unborn

by Warren A.J. Hamerman

In his first act in office, on the 20th anniversary of the Supreme Court's anti-life ruling, President Bill Clinton kept one campaign promise: With the stroke of a pen he ordered one of the most sweeping packages of pro-abortion measures in history.

One year ago, then-Governor Clinton, as *EIR* readers will recall, rushed home from campaigning in New Hampshire in order to oversee the execution of a lobotomized prisoner in Arkansas. He has now begun his presidency by extending the application of the death penalty to the unborn.

The day after Clinton's actions, the Vatican responded in an unprecedentedly swift and sharp statement to a new President's first actions. An editorial in the Vatican newspaper *L'Osservatore Romano* on Jan. 23 commented: "Believing that he is keeping faith with electoral promises, President Bill Clinton has already changed the rules of his predecessors . . . that favored the right to life of the unborn child. Those who were hoping that Clinton's first acts would promote a 'renewal' involving first of all the protection of human rights have had a big disappointment. With the recent measures, the declared 'renewal' has embarked on the paths of death and violence against innocent beings. This is not progress for the United States, nor for humanity, which, once again, is forced to accept the humiliating defeat of life. 'Spring' is not synonymous with death," the editorial concludes, noting that Clinton had used the metaphor of spring as a time of renewal in his Inaugural Address.

What did Clinton do to merit this response? On Jan. 22, he signed several executive orders that would further liberalize abortion. Clinton overturned:

1) The 1988 ban on abortions performed in military hospitals, "if paid for entirely" with non-Department of Defense funds.

2) The 1984 ban on using Agency for International Development (AID) funds to finance organizations that promote abortion overseas.

3) The ban on fetal tissue experimentation. Tissue, glands, and organs are cut out or "scooped out" of live fetuses, sold and used as implants. It takes the glands of several fetuses for each brain implant for patients with Parkinson's disease. There are no studies indicating lasting positive results from such implants, although Clinton's order claims that research into major diseases has been "hampered" by the ban.

4) The so-called Gag Rule which prohibited federal dol-