

## Last Words from Death Row

By Norma Herrera

Nightengale Press (2007), Softcover

Review by Natalie Smith-Parra

*Last Words from Death Row* is a sister's gift. It is a record of the death of an innocent man, author Norma Herrera's brother Leo, executed in 1993 by Texas' legal system.

The saga begins in a small south Texas town where Leonel (Leo) Herrera's family is partners with the local sheriff and his deputies in smuggling large amounts of cocaine into the United States from Mexico. When two deputies are killed, it is Leo who is arrested for the crimes – which he didn't commit. He is captured and beaten unconscious by 20 officers. When Norma is admitted into the jail with a lawyer, she sees her brother handcuffed wrists to ankles, bloody and unconscious. Every officer she passes on the way to Leo's cell has blood on his knuckles, arms, boots, or clothes. Norma has little medical training, but upon seeing her brother on the concrete floor she administers CPR to save his life. She first has to tilt his head to allow blood to slither out of his mouth. The sheriff finally transports Leo to the hospital emergency room...in a hearse. And so begins a story of injustice and brutality that the Herrera family suffered, a story so horrific, that few people would believe it could occur in a so-called civilized country.

Eventually, Sheriff Marmalejo is arrested and convicted for his role in the drug smuggling operation. He is sent to prison in Florida, but none of the considerable assets he acquired from the drug trade are seized.

As too often happens in small towns, four members of Leo's jury are intimately connected to local law enforcement and the two murdered deputies.

After Leo's conviction and death sentence, his brother Raul came forward and admitted to the killings. He explains that when he shows up instead of Leo to cut the drugs, Deputy Rucker becomes infuriated. An argument ensues during which Raul shoots Rucker. Raul shoots the second deputy on the way home when he is stopped for speeding. Raul's son, then nine years old witnesses both murders, and when he is questioned by law enforcement, he tells what he knows.

Years later, Raul Jr. writes an affidavit attesting to what he saw: His father shot both men and his Uncle Leo was not present. Several other witnesses also executed affidavits clearing Leo of the murders.

Hours before Leo's first scheduled execution, a U.S. District Court judge orders a stay so that his writ of habeas corpus' claim of innocence can be considered. In his order he writes, "...a sense of fairness and due process made it necessary for a state court to listen to Herrera's evidence of innocence." The State of Texas appeals.

In overruling the stay and giving the OK for Leo's execution, the federal Fifth Circuit Court of Appeal writes: "The existence merely of newly discovered evidence relevant to the guilt of a state prisoner is not a ground for relief on federal habeas corpus." Leo then obtains a stay while he appeals to the U.S. Supreme Court.

In February 1993 the U.S. Supreme Court rules against Leo, "Petitioner urges us to hold that this showing of innocence entitles him to relief in this federal habeas proceeding. We hold that it does not." National Public Radio Commentator Nina Totenberg summed it up: "Innocence is irrelevant." The Supreme Court's ruling in Leo's case is memorialized in *Herrera v. Collins* (USSC 1993) The way is paved for Texas to carry out Leo's sentence.

A series of protests take place on the days leading up to Leo's execution scheduled for May 12, 1993. Celebrities, including actor Danny Glover, attend the protests of an innocent man about to be executed.

The final telephone conversation between Leo and his sister and mother is as heart-breaking a page of writing as has been written. Norma agonizes about how to tell their mother that all avenues to save Leo have been exhausted: What do you say? "I'm sorry, Mom. There is nothing left to do. They are going to execute Leo."

Leo makes a final request to his sister: "My story, remember, I want you to make sure that people know what was done to me and the whole truth. This will be the last thing I will ask of you."

And it is the last thing Norma is able to do for her brother: to tell his story. To save his memory, even though she couldn't save his life.

## In Memoriam: Norma Herrera Ellis

Leonel Herrera was convicted in Texas of the 1981 murder of a police officer and sentenced to death. After the U.S. Supreme Court ruled against considering the merits of Herrera's writ of habeas corpus that was based on new evidence of his factual innocence, he was executed in 1993. The Supreme Court's decision in Herrera's case, *Herrera v. Collins*, 506 U.S. 390 (1993), is well-known in legal circles because Justice Blackmun decried the Court's refusal to consider Herrera's petition, bluntly writing in his dissent, "The execution of a person who can show that he is innocent comes perilously close to simple murder."



Leonel Herrera

Herrera's sister Norma unconditionally supported him, and in the days before his execution he asked her to tell the true story of his case. Fourteen years after his execution she finally completed her book. In February 2007 Norma published a detailed account of her brother's case, *Last Words From Death Row*.



Norma Herrera Ellis at a book signing for *Last Words From Death Row* at Hastings Books in McAllen, Texas on June 30, 2007.

Norma Herrera Ellis, 54, a retired nurse who lived in McAllen, Texas, died of an apparent heart attack on January 14, 2008.

*Last Words From Death Row* is available from *Justice:Denied's* Bookshop for \$19.95 (264 pages, softcover). Send a check or money order (stamps OK) to: Justice Denied; PO Box 68911; Seattle, WA 98168. Or order with a credit card from JD's website, [www.justicedenied.org/books.html](http://www.justicedenied.org/books.html)

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