

# David Rose on the inept handling of British citizen Linda Carty's murder trail | Magazine

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## Lethal counsel

Texas sentences more people to death than any other state in America, and the emotional toll on its defence lawyers is so great that many only ever work on a handful of cases. Not so Jerry Guerinot. He's defended 39 men and women. The bad news: 20 have been sentenced to death. Is he incompetent, or does he just get the 'hardest cases'? David Rose reports

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A few miles west of downtown Houston, in his office on a scruffy industrial estate, Jerry Guerinot, probably America's most dangerous defence lawyer, reflects on his career. For a conscientious attorney, death penalty murder trials create 'absolutely the most pressure you can have', he says emphatically. 'You never want anybody to be sentenced to death on your watch. I'm never happy to see anybody get sentenced to death. I don't think anybody could ever be happy.' Guerinot, a big man with a booming voice and thinning, silvery hair, says that at the age of 62 he's finally had enough of the legal death business in which he's toiled for more than 25 years. '[If] the state tries you for the death penalty in Harris County [the jurisdiction in which Houston sits], the chances of you getting it are huge. And the chances of you having it carried out against you are even bigger.' Guerinot is right - as of July this year, 98 Harris County men and two women have been dispatched since the US Supreme Court restored the death penalty in 1976. Houston has 1.3 per cent of America's population but carries out 10 per cent of its executions.

But however great the trauma of losing a client, Guerinot, who earlier acted as a prosecutor in six cases in which the defendant received the death penalty, says he can't recall how many of those he defended have been sentenced to die in Texas's well-used lethal injection chambers: 'I want to say maybe 10 to 15, somewhere in there.' But he cannot, he admits, remember them all: 'There's just so many.'

According to Guerinot, 'significantly more did not get death than got death'. In fact, no fewer than 20 of the men and women Guerinot has represented since he turned to defence work have been sentenced to death. Two had their sentences commuted when the Supreme Court ruled in 2005 against capital punishment for juveniles, because they were under 18 when they committed their crimes. Thirteen are still on death row. Five have already been executed, the most recent last year.

In Texas, it is the jury, rather than the judge, which decides when to confer the ultimate penalty. Guerinot has acted for 39 capital murder defendants, of whom three had their charges dropped by the prosecution and six pleaded guilty in return for life imprisonment. In a further five trials, the prosecution did not ask for the death penalty when it came to sentencing. Guerinot has managed to persuade a jury to give his client life instead of death just five times since 1983. Not one of his capital clients has been found not guilty. Thirty-eight states in the US have the death penalty: former Guerinot clients have either been executed or are on death row in 15 states besides Texas.

Guerinot says the reason for this is that Houston's judges deliberately assigned him the toughest propositions - in Texas, publicly-funded defence lawyers are appointed by the courts. 'Most of the cases I've tried where the state was seeking the death penalty were horrific. Multiple killings: I mean seven, eight, nine people dead. Cold, calculated killings. Little girls, seven years old, raped and strangled and murdered, you know. I came to the conclusion that unless the case was horrific enough, I never got it. The easy ones, somehow, never came to me, only the ones where there were lots of bodies around. I think it's a recognition, that if I represent them the state is in for one hell of a fight. Nothing goes down easy.

'People need to be represented by aggressive lawyers who will not just sit in their chair and let the state run over them. I am an extremely aggressive lawyer. There's a lawyer that does appeals here named McLean. He called me a pit-bull one time. I would say that's accurate.'

Others disagree. They include attorneys from Baker Botts, the 'white shoe' international law firm led by James A Baker III, George Bush senior's Secretary of State, which now represents pro bono one of the 10 women on death row in Texas. Linda Carty, a British citizen, was convicted of ordering the bizarre 2001 murder of her neighbour Joana Rodriguez, allegedly in order to steal her baby. In their appeal claim to the federal courts, which is likely to be decided early next year, Carty's lawyers Michael Goldberg and Maryanne Lyons say she did not get a fair trial, that the prosecution was allowed to call evidence

that should never have been admissible, and that crucial testimony that might have persuaded the jury that she did not deserve execution was never called.

Their appeal puts most of the blame on one man: Carty's trial attorney, Jerry Guerinot.

'Guerinot's a waste. A waste for society, a waste to the legal system,' says Linda Carty with a shudder. A handsome woman who looks younger than her 49 years, her broad smile and twinkling eyes belie her surroundings - the death-row visitation centre at the Mountain View unit in Gatesville, four hours northwest of Houston on the edge of the Texas hill country. 'Basically he's an undertaker for the State of Texas.'

Meeting Carty, separated from her by thick glass, within the rings of prison security and razor wire, one experiences a sense of dissonance: nothing about her seems to fit the expected profile of a death-row inmate. Born on the Caribbean island of St Kitts, then a UK colony, she lived there until she was 23. This is the basis of her British Dependent Territory citizenship, and she still speaks with a slight West Indies lilt. 'The thing I always loved is cricket,' she says. 'Garry Sobers, Viv Richards - those were my guys. And, my God, they were hot.'

In St Kitts, she worked as a primary school teacher. After her conviction, investigators from Reprieve, the London-based charity founded by the British death penalty lawyer Clive Stafford Smith, visited the island. Here, they learnt that Carty was still remembered as a passionate teacher who thought nothing of giving up her own time to hold extra classes for children with special needs. Her family was close to the then prime minister, Kennedy Simmons, and Carty was active in his party, the People's Action Movement. She also taught at Sunday school, sang in a national youth choir and led a volunteer social-work group.

The story of Carty's life in St Kitts, her appeal claim says, would have enabled Guerinot to present her to the jurors as 'a dedicated teacher, fearless political voice and community leader' - factors that might well have induced them to vote to spare her life, even if they thought her guilty of murder. But although Guerinot applied to the court for funds to go to St Kitts before Carty's trial, neither he nor his staff made the trip. The fact he made that request means he must have known she was entitled to British citizenship, and hence to the support she is getting only now from the Foreign Office. 'They've been great,' says Carty's mother, Enid, 71. 'They've helped a lot over conditions at the prison, getting phone calls and so on. Who knows what they might have done if they'd been involved before the trial?'

Yet Guerinot made no attempt to contact this source of potential assistance. 'The first we knew she was British was after she was sentenced to death,' a Foreign Office spokesman says. 'Had we known beforehand, we would have been in touch with her within 24 hours and would have made our position very clear to the Houston authorities - that we are opposed to the death penalty in all circumstances.' The British consulate, he adds, has a list of approved lawyers, and would have helped Carty to change her representation if asked. Guerinot is not on that list.

Asked about these omissions, Guerinot blusters. 'Did I go to St Kitts? No. Why would I go there? She ain't from there. She was born, she may have been from there at one point, [but] she's an American citizen. This stuff about calling the British consulate and all is the biggest bunch of bunk I've ever seen.'

By the time Carty emigrated to America along with most of her family in 1982, she had a daughter, Jovelle, then two. 'I always thought my mum was the smartest person in the world,' Jovelle says. 'She was strict, but that worked out in the end. She was always involved in my school and the thing she insisted on was reading, that I always had a book.' In America, Carty worked as a pharmaceutical technician, and at the time of her arrest was planning to train as a pharmacist - as Jovelle now is, too.

By the end of the Eighties, Carty had begun to develop a second, more dangerous line of business: as a confidential informant for the Drug Enforcement Administration (DEA). 'I was in college, at the University of Houston, doing pharmacology and working part-time at [the pharmacy chain] Eckert's,' says Carty. 'I had been dating this guy, a Jamaican, and apparently he was a big-time drug dealer, which was something I had no prior knowledge of, although maybe I didn't pay attention to the signs. The DEA wanted him, the cops wanted him, and the only way they could do that was to have someone on the inside.'

Approached at first by a Houston cop, she was introduced to Charlie Mathis, a DEA agent whose speciality was recruiting and running confidential informants (CIs). 'I went through the whole background check, got a new phone number, was given a codename, was given clearance and became part of that unit,' says Carty. 'I was basically their surveillance girl without the badge. I sat through briefings, was on first-name terms with everyone, had home numbers, went to functions. I was a part of it.'

It could, she admits, be risky. Her tasks were to befriend suspected traffickers in order to get information and sometimes to make test purchases of drugs. Usually, her targets were Caribbean, but sometimes they were from Colombia: 'Then you had to step your game up.' Over the years, she was paid thousands of dollars by the DEA. Mathis remained her handler

for many years. 'Sometimes I introduced him as my brother. If I phoned and left a message saying it was his sister, Lucille, that was a code that meant I was in trouble.'

Carty's daughter Jovelle believes there may well be a connection between her mother's career as a CI and the murder case: 'I think if she hadn't worked for the DEA, she wouldn't be in this situation. I think someone in the drugs world found out what she was and wanted to set her up to take the fall.'

Be that as it may, as Carty's federal court appeal claim states, it seems apparent that if the jury had known of the scope of her undercover work against drug dealers, they might not have sentenced her to death. They did not get the chance to find out. Mathis did give evidence, but only for the prosecution, which limited its questioning of him to establishing that by the time of the murder in 2001, Carty was no longer on the DEA's books. This, says the appeal claim, 'had the effect of portraying her as a liar'.

I ask Guerinot whether he or his colleagues ever talked to Mathis before the trial. If they had, they might have called him to testify for the defence, or asked him about the real extent of Carty's DEA work in cross-examination. Guerinot replies instantly: 'Talked to him, yes.'

Once again he seems to be mistaken. In October 2005, Mathis swore an affidavit for Carty's appeal lawyers from Baker Botts, saying: 'I never spoke prior to or during the trial to Linda's attorneys, Jerry Guerinot or [his junior counsel] Wendi Akins about what I was going to testify about. I did have a brief conversation with Ms Akins during the trial, but we talked about a completely different case. I found it odd that Linda's attorneys never even attempted to contact me, let alone talk with me about my testimony at Linda's trial.'

If they had done so, the affidavit makes clear, Mathis would have been of considerable help. Confirming that she passed a background check and worked for years as an active CI, it states Carty was 'effective and helpful', and although she was currently off the books, 'she still called me semi-regularly with tips on various cases. Had one of these tips warranted it, I would not have hesitated to put Linda back on the books as a CI. That was generally how CIs were employed, and it was not uncommon for a CI to come on and off the books as circumstances warranted.'

Over the years, Mathis's affidavit adds, he got to know Carty 'very well'. She might, it says, be 'capable of exaggeration', but 'I do not believe her to be a compulsive liar. I would have been willing to testify that Linda should not have gotten the death penalty and also would have been willing to testify that I do not believe her to be a future danger. I would have testified that she

is not a violent person, let alone a cold-blooded murderer... I would not have employed someone like Linda as a CI if I had felt they were capable of intentionally murdering someone. Had Linda's counsel approached me, I would have been willing to testify on Linda's behalf.'

Craig Goodhart, the prosecutor from the Houston District Attorney's office, saw Carty rather differently. About the only undisputed facts of the case are that at about 1am on 16 May 2001, three men stormed a Houston apartment. They demanded drugs, stole a small quantity of cash, then beat and bound a man called Raymundo Cabrera and his cousin, Rigoberto Cardenas, and abducted Cabrera's partner, Joana Rodriguez, 25, and Ray, her four-day-old baby. Ray was later found unharmed in a car, but Joana's suffocated body had been left in the boot of a second car Carty had been renting. Her limbs had been bound, her mouth duct-taped, and a torn plastic bag placed over her head.

No one suggested Carty had been at the apartment, while Chris Robinson, a career criminal with an ugly record, admitted he had helped put Rodriguez in the boot. However, the state dropped capital murder charges against him and, after agreeing to testify against Carty, he pleaded guilty to lesser crimes, for which he was jailed for 25 years. Three of his associates had done similar deals. 'We will not apologise now or in the future for bringing these witnesses,' Goodhart told the jury at Carty's trial in February 2002. 'I brought you an armed robber, a dope dealer, a drive-by shooter, [and] another armed robber, a dope head without a doubt.' But in Goodhart's account, the witnesses' very criminality made them more credible. 'Welcome to our nightmare. If you were going to kidnap someone and execute them, who would you go with and who would you pick up?'

Goodhart turned Carty's work for the DEA against her, suggesting it meant she knew where to find potential killers. 'Let's say you were a former DEA snitch and you used to work a bunch of dope cases. Where do you go? How do you motivate a human psyche to go do a kidnapping? You motivate them by saying, "I've got 500lb of weed, I've got \$1,000 cash.'" Then, he said, 'They will do it in a heartbeat.' It was true, Goodhart said, that there were discrepancies between the witnesses' accounts, but this too made them more believable: 'If they all told the exact same story, that would look like someone made up a story, someone manufactured evidence.'

To make the capital charge stick against Carty, Goodhart had to establish a murderous intent. He did it in dramatic fashion at the start of his closing speech to the jury, by citing a statement Carty was supposed to have made to her accomplices. 'Bring

me the lady. I will cut the baby out of the bitch,' he began. 'That's the first thing I want you to remember for the rest of the trial. Second, there are the surgical scissors.'

It was a horrifying image. According to Goodhart, Carty was afraid of losing her common-law husband, Jose Corona, and thought that if she had another baby he would stay. But apparently unable to get pregnant, her plan was to have Rodriguez kidnapped, then cut the child from her womb. The 'surgical scissors' that Goodhart claimed Carty had recently purchased seemed to clinch his argument. 'It don't get much more intentional than that, folks,' Goodhart told the jury.

There were problems with this theory. Firstly, of course, Joana Rodriguez had already had her baby - a fact that could hardly have been unknown to Carty, who lived two doors away in the same apartment complex. Secondly, the scissors were not pointed surgical instruments at all, but blunt, round-bladed bandage cutters, whose packaging stated: 'Not intended for invasive medical procedures.' As Carty's appeal lawyers now argue, 'they could not have been used to penetrate the skin, much less a person's abdominal and uterine walls'. Yet when Goodhart referred to them so luridly at the start of his speech, Guerinot made no objection. Asked about this now, he shrugs, saying the scissors 'didn't prove anything'.

According to Carty's appeal claim, Guerinot's conduct of her defence had other flaws. Perhaps the most significant was that he never spoke to her common-law husband, Jose Corona. Even in Texas, the state would not have been able to secure a conviction on the testimony of criminals who had been given deals without some shred of corroboration. It came with Corona, who was called by the prosecution, and said that in the three years he had lived with Carty, she had told him she was pregnant three times. On the first and second occasions, she went on to say that later she had miscarried. The third time - when their relationship was in trouble - was in May 2001, shortly before Joana's death.

Guerinot's failure to talk to Corona had two consequences. First, it meant Guerinot never asked him in court what he thought about Linda Carty. Had he done so, Corona's own affidavit states, 'I would have testified that Linda did not deserve the death penalty and that I do not believe that she is an aggressive person or a threat to society.'

The second consequence was more serious. Under Texan law, the 'spousal privilege' means a common-law husband cannot be obliged to testify against their partner. Corona's affidavit says: 'I did not want to get involved in the trial or to testify against Linda, but when the prosecutor's office called me, I thought I had no other choice. Neither Jerry Guerinot nor Wendi Akins talked to me before I testified. It was never explained to me that

there is a marital privilege and under that privilege I had the right to refuse to testify.' Had Guerinot informed him, Corona says, he would never have given evidence, and the state would have lost a crucial plank of its case.

When I interview Guerinot, he claims his staff did speak to Corona before the trial: 'Talked to him. Absolutely,' he says. This is yet another mistake. In his own affidavit sworn last year, Guerinot states: 'In my representation of Linda, I did not contact her husband Jose Corona prior to trial. I assumed my investigator John Castillo would speak to him. In reviewing the file, I now see that my investigator never spoke to Corona.'

What is certain is that by the time Carty's trial began, she had deep misgivings about having Guerinot as her lawyer, and had expressed her desire to change him. She and Guerinot both agree that before the hearing started, they had spoken just once, for less than an hour - hardly a basis for preparing an adequate defence.

Each blames the other. According to Guerinot, 'I guarantee you that it was a ton of times I tried to get her to talk to me. In the jail, in the holdover cell, outside the holdover cell, hooked up, on the bench, anywhere in the jury room. I just couldn't get her to talk to me.' His opinion of her is low: 'She was extremely uncooperative. I think Linda's crazy. I think she's got real ...#8594; ...#8592; mental problems. Do I think she knows right from wrong? Oh yeah. Do I think she's hedonistic and self-centred? Yes, I sure do. Whatever pleases her at the moment is exactly what she's going to do.'

For her part, Carty says: 'I tried to get in touch with him numerous times. He wouldn't accept my collect calls: he would basically hang up every time he heard my name. Even during the voir dire [jury selection] he kept saying, "I'm busy, I'm busy, we'll talk tomorrow" - and tomorrow never came.'

According to Guerinot, 'the only time she finally talked to us we were in trial, and we had to bribe her with candy: a Mr Goodbar chocolate'. Guerinot insists this is true. But Carty says his claim is 'outlandish', because she has a severe chocolate allergy: 'If I ate chocolate, I would go into anaphylactic shutdown.' Reprieve's investigators have obtained a letter from her childhood physician in St Kitts, Dr Macmilla Hodge, that confirms Carty had severe allergies. 'I never saw my mum eat chocolate,' says her daughter Jovelle. 'I've had it drummed into me for years: she's allergic to chocolate, eggs and peanuts.'

There was a time, relatively recently, when appellate claims of 'ineffective assistance of counsel' succeeded in overturning many death convictions and sentences. Since the mid-Nineties, successful claims of this nature have dwindled, especially in Texas. There, a capital defendant's vital, state court 'habeas



corpus' appeal, a chance to argue that his or her constitutional rights have been violated, will usually be heard by the same judge who conducted the original trial. 'It's pretty much a conflict of interest,' says Reprieve's Clive Stafford Smith. 'Not many judges are prepared to decide that the defence attorney they appointed themselves turned out to be so incompetent that they denied the prisoner a fair hearing.'

That's how it went with Carty's case in Houston. By the time it came to state habeas in 2005, Goldberg and Lyons from Baker Botts were working feverishly on her behalf, but Judge Carol Davies wasn't prepared to buy their argument that her own appointee, Guerinot, had been a poor choice.

Having lost at state level, defendants can file a second habeas claim in federal court, as Carty has now done. But a Clinton-era law, the 1996 Anti-terrorism and Effective Death Penalty Act, means that to overturn the state court's decision, a federal judge cannot merely decide it was wrong; it has to be perverse. The federal judge must rule that no reasonable tribunal would have reached the state court's conclusion, which is a far more difficult legal standard to meet.

Meanwhile, Baker Botts's investigators - the firm, says Michael Goldberg, has spent the equivalent of well over \$1m on her case to date, amassing a small mountain of paper - claim to have found evidence that Guerinot's performances in other capital murders have been less than impressive. Harris County is a tough jurisdiction and perhaps, as Guerinot claims, he tended to get the harder capital cases. Nevertheless, 56 per cent of these have ended with a death sentence - more than double the average Houston rate.

Carty's federal petition cites numerous examples of poor work by Guerinot in other capital murders, which reveal, it claims, a 'pattern'. For example, it is undisputed that he did not meet with Carty for three months after his appointment. The same thing happened when he represented Willie Marcel Shannon, condemned in 1996 for shooting a man in a carjacking. Guerinot called no witnesses in the trial's punishment phase at all, while a statement by Shannon says: 'For the first three months after my arrest, I did not know who my lawyer was. This was because Mr Guerinot would come to the holding cell looking for a "Willie Swanson" and then leave again. Finally, one day when I was the only one left in the cell, he discovered he had the wrong name and that he was representing me.' This statement is unsigned: before he had the chance to review the final draft, Shannon was executed, on 6 November last year.

Johnny Ray Johnson, accused of a 1995 sexual murder while high on crack, spent a year in jail without seeing Guerinot or his co-counsel at all, Carty's petition states: 'The first time Johnson saw Guerinot was on his first day in court. Moreover, it was not

clear to Johnson he was facing the death penalty until his trial had started.' Johnson had a long, documented history of severe mental illness, which Guerinot failed to mention, along with the childhood sexual abuse he suffered in care homes. Earlier this year, Johnson's federal habeas appeal based on Guerinot's alleged shortcomings was rejected without being heard - not on its merits, but because, owing to a computer failure, his appellate lawyer had missed a filing deadline by one day.

In other cases, Carty says in her petition, Guerinot's work displayed a 'lack of investigation'. One case was that of Lorenzo Morris, who was accused of killing a man with a hammer. However, the victim died months after the attack from gangrene caused by a foot infection. Guerinot 'did not review any of the medical records', nor explore the possibility that Morris was not directly responsible for his death. In this case, Guerinot admitted he did no investigation into Morris's background, saying in a statement: 'I did not seek funds for any mental health professionals, social investigators or any other independent means of learning about his life.' Lorenzo Morris was executed in 2004.

Guerinot angrily rejects the criticisms of his record being made by Baker Botts. 'Let me tell you, it's a lot easier after the case to sit back and take a pot shot at somebody in that courtroom,' he says. 'These people over there filing writs, saying how ineffective this person is, that person is, they've never seen the inside of one of those criminal courtrooms and they've never sat there during a death penalty case, they've never prepared a death penalty case and they've never had the responsibility of trying it. Let that guy at Baker Botts go on down there if he thinks he's so great. But I don't care what they write,' he says. 'When you're grasping for something that says, "I don't want Linda Carty to be executed" you gotta say whatever you gotta say. I guess the bottom line would be this then: the only time you're not ineffective is when they don't get the death penalty.' This, he adds grimly, is just 'wrong, wrong'.

In his corner office on the 37th floor of One Shell Plaza, one of Houston's best addresses, with photos of his meetings with both George Bushes and other world leaders on the mantelpiece, Michael Goldberg begs to differ. 'Our argument is not a personal one: we are simply saying the defence was completely ineffective. There's no doubt in my mind that if her trial lawyers had taken the simple, basic steps in Linda's case - such as talking to the witnesses - she would not have been convicted of capital murder. What's so disappointing is that the state won't come back to court and accept this.' Most capital defendants, he adds, are never able to assemble the combined resources of Baker Botts, Reprieve and the Foreign Office on their side. Without them, he believes, 'Linda would surely be executed.'

In the outside world, life goes on. Jovelle already has a boy of three and is expecting another child soon. The long journey to Gatesville makes it hard to visit Linda at the moment: she and her husband plan to take the kids as soon as the new baby comes. 'I miss them,' says Carty. 'Sometimes I feel it, this sense of loss, when I see the walls and hear the gates clanging, and I think, I've already lost six years.'

She knows that even if her current claim succeeds, the state will probably appeal to the next tier up, the Federal Fifth Circuit Appeals Court. After that, it may well reach the Supreme Court. 'But I know it's going to happen,' says Carty. 'Eventually I'm going to win the right to a fair hearing, to dispel all that evidence. Right now, my life is at a standstill. I have to believe that one day it's going to get moving again.'