

A Lawyer Known Best for Losing Capital Cases



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Sidebar

By ADAM LIPTAK MAY 17, 2010

WASHINGTON — A good way to end up on death row in Texas is to be accused of a capital crime and have Jerry Guerinot represent you.

Twenty of Mr. Guerinot's clients have been sentenced to death. That is more people than are awaiting execution in about half of the 35 states that have the death penalty.

"People who are well represented at trial do not get the death penalty," Justice Ruth Bader Ginsburg has said.

So what is Mr. Guerinot's secret?

It seems to boil down to a failure to conduct even rudimentary investigations, said David R. Dow, a law professor at the University of Houston and the litigation director of the Texas Defender Service, which represents death row inmates, including not a few of Mr. Guerinot's former clients.

"He doesn't even pick the low-hanging fruit which is hitting him in the head as he's walking under the tree," Mr. Dow said.

Mr. Guerinot did not respond to two messages seeking comment. In 2007, he told *The Observer*, a London newspaper, that judges gave him only tough cases.

"The easy ones, somehow, never came to me," he said. "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."

Two weeks ago, the Supreme Court turned down an opportunity to review Mr. Guerinot's work in the case of Linda Carty, a 51-year-old British woman. The case has gotten a lot of attention in Britain, where journalists and a documentary filmmaker, Steve Humphries, have been examining Mr. Guerinot's performance.

"It is no exaggeration to suggest that Mr. Guerinot has perhaps the worst record of any capital lawyer in the United States," Mr. Humphries said in a supporting brief urging the court to hear Ms. Carty's case.

Prosecutors said Ms. Carty had orchestrated a macabre plot to kidnap and murder Joana Rodriguez and claim Ms. Rodriguez's newborn son as her own. The evidence against Ms. Carty consisted mostly of testimony from four men said to be her accomplices, who were described by a prosecutor as "an armed robber, a dope dealer, a drive-by shooter and another armed robber."

Mr. Guerinot did not visit Ms. Carty for three months after he was appointed to represent her. Ms. Carty, in a video interview with Mr. Humphries, described her meeting with Mr. Guerinot just weeks before her trial: "I met this guy for less than 15 minutes. Once."

"Basically," she told The Observer, "he's an undertaker for the State of Texas."

Mr. Guerinot never interviewed Jose Corona, who was Ms. Carty's common-law husband but gave powerful testimony about a motive for her actions — that she desperately wanted a baby.

Mr. Corona later said he did not want to help the prosecution but believed he had no choice.

"It was never explained to me that there is a marital privilege, and under the privilege I had the right to refuse to testify," he said in a sworn statement.

Mr. Corona added that he would have appeared as a defense witness had he been asked. "I would have testified that Linda did not deserve the death penalty and that I do not believe she is an aggressive person or a threat to society," he said.

Mr. Guerinot also never contacted the British Consulate, which would have worked hard to help prevent one of its citizens from being executed. But Ms. Carty's government did not learn of her case until it was too late, and the expensive lawyers it has since hired for her have faced procedural barriers. In rejecting some of their claims, Judge Vanessa D. Gilmore, a federal trial judge in Houston, acknowledged that this was "a harsh result."

And Mr. Guerinot failed to interview Charlie Mathis, a Drug Enforcement Agency officer for whom Ms. Carty had worked as an informant.

"Had Linda's counsel approached me, I would have been willing to testify on Linda's behalf," Mr. Mathis said in a sworn statement. "I would have testified that she is not a violent person, let alone a cold-blooded murderer."

The lower courts were not impressed with Mr. Guerinot's work in Ms. Carty's case. But they let her death sentence stand.

Judge Gilmore, for instance, said Mr. Guerinot “made an imperfect attempt to avoid conviction and death.”

“But,” she added, “the Constitution does not require perfection in trial representation.”

The Supreme Court lately seems to be washing its hands of the Texas capital justice system. Last month, two weeks before it turned down Ms. Carty, the court refused to hear an appeal from Charles Dean Hood, who was sentenced to death by a judge who had been sleeping with the prosecutor.

Mr. Guerinot, for his part, has given up capital work and now handles more ordinary criminal cases, on a volume basis. An analysis in *The Houston Chronicle* last year found that he had represented 2,000 felony defendants in 2007 and 2008 — far above the caseload limits recommended by bar associations and other groups that take criminal defense work seriously.

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