

Terry Lenamon on the Death Penalty

Sidebar with a Board Certified Expert Criminal Trial Attorney



Terence M. Lenamon is a Florida Bar certified expert in the area of criminal trial law. With over 17 years experience he has built a reputation as one of Florida's most respected criminal defense lawyers. His defense has been sought by many high-profile clients and has led him through 20 first-degree murder trials and eight death penalty cases. That experience has brought him national recognition as a go-to commentator on death penalty issues. He is the force behind both deathpenaltyblog.com and Florida Capital Resource Center (floridacapitalresourcecenter.org), and can be reached at terry@lenamonlaw.com.

Dear Pavan -- My Letter to a British Student about the American Death Penalty

Posted on July 27, 2010 by [Terry Lenamon](#)

Recently, I received a very nice letter from a student in Great Britain who was studying capital punishment - specifically, the American Death Penalty. She asked my take on things, generally speaking, and I was honored by the query and proud to be able to reply. Having taken some of the language of my response from this blog, I thought it only fitting to share with its readers what I sent to Pavan last week.

Dear Pavan,

Thank you so much for writing me and asking my thoughts on the death penalty, as an American death penalty criminal defense attorney. I'm honored to be asked, and I hope that the following is helpful to you:

I've been practicing criminal law for a long time, and still I get asked on a weekly basis, why DO I defend what some call "the worst of the worst"? Just why is it that I defend those people that have been described on more than one occasion (and by more than one prosecutor) as the worst of the worst?

First, a word about what I do. I'm a private practice criminal defense attorney who focuses upon death penalty cases. In Florida, where I live and do most of my work, death penalty cases have two lawyers, known as first chair and second chair.

As first chair in a death penalty case, my job is concerned with the guilt finding of the defendant - the focus is *judgment*. As second chair, my job is to convince the jury to spare the life of the person if they are convicted - the focus is *mercy*. Here, arguing for mercy is legally known as "mitigation," a specialized area. Within that area, I have further specialized in mental health aspects of mitigation.

I represent young and old, the unknown and the infamous. Most recently, I was given extensive media coverage as the initial death-penalty qualified attorney in the Casey Anthony case. (I withdrew from the representation a long while back.)

“How can you represent those people?”

There are all the usual stock answers. “I am defending the Constitution.” “The death penalty is not a cost effective solution.” “There is no deterrent value.” “As for retribution, is a life in a cage worse than death?” “The system is not perfect, and innocent people have been sentenced to death.” “Death row is overwhelmingly populated by the poor and disadvantaged.”

And all of these answers are true, but they don’t tell you the whole story.

Fundamentally, I do this because I want to understand. Why did this happen? How did this person arrive at my figurative doorstep, accused of a horrendous crime? What are the factors, the background, the events that led this person here?

Every person has a story. There is always some underlying common humanity in even those convicted of the most brutal crimes. It is my job to bring these mitigating factors to the jury, to shed light on the darkest heart and most disturbed mind.

To help us all to understand WHY.

Recently, my law firm moved into new offices. I’ve got a nice ocean view, the kind that only Miami can provide. I set at my solid, wooden desk -- the one that started with me when I first started practicing law and like me, it’s a little banged up with the passage of time. (My wife wants me to get a new one. I like this old, trusty desk with not enough drawers.)

And looking out over the expanse outside these windows, I think about where I sit and where I live - in Florida, in the United States, and I’m humbled. I am continually humbled by the beauty of the horizon; by the enormity of our country and all that we stand for; and that I’ve been allowed to advocate not just for the accused, but for those who are facing a sentence of death if convicted of the crimes for which they have been charged. Can there be any greater duty for an attorney of law?

I’m privileged to serve as the advocate for these defendants, and I’m especially dedicated to serving those who are unknown and indigent (the legal term for poor), facing a justice system all too ready to kill them in name of punishment.

The realities of indigent defense today.

There are, of course, the realities of today’s economy that must be considered when pondering indigent defense representation. Last year, it was announced that one out of every six dollars that Americans receive comes from a government source. Governments (local, state, federal) accordingly must be extremely careful with their dollars, given the current economic situation. This includes the monies used to pay for court-appointed defense lawyers and the needs of a defense case (investigation, experts, etc.).

In 2009, Florida’s indigent defense statutory scheme was overhauled. The Florida Leg-

islatore undoubtedly was trying to be fiscally responsible to state taxpayers. There were significant budgetary cuts through legislation for state attorney offices and the state court system, as well as the indigent defense bar. The Legislature hasn't focused on just one segment of the judicial branch's expenditures.

Still, the Legislature created a true crisis in its attempts to save money. The situation remains grim.

Money became so tight that indigent defendants were being charged \$100 to cover their own prosecution costs. Think about that: an innocent man, poor and unable to make bail, being asked to pay \$100 to cover the expenses to prove himself not guilty of the charges asserted against him. Something is just plain wrong here.

There is no concrete solution to an exploding financial problem in this State, and elsewhere. The crisis in monies being available to meet the constitutional right to legal counsel – especially when the death penalty is being sought – remains one of the most serious crises in American law today.

The future of indigent defense.

Currently, a case is before the United States Supreme Court that may impact indigent defense funding in the future. In Cause No. 09-10715, Jamie R. Weis is petitioning our country's High Court to review a decision of the State of Georgia's Supreme Court, which voted (4-3) approval for its state prosecutors to seek the death penalty against Mr. Weis -- even though he has been incarcerated for two years without an attorney.

Mr. Weis' petition is based in part on an argument that he has been denied his right to a speedy trial. (A criminal defendant's right to a speedy trial is guaranteed to him/her under the Sixth Amendment, as well as various statutes such as the federal Speedy Trial Act.)

In an amicus curiae brief filed in May, several prominent members of the Georgia Bar presented their arguments to the U.S. Supreme Court, in support of Weis' petition. Among them: Norman Fletcher, former Chief Justice of the Georgia Supreme Court.

Tellingly, and importantly, the friends of the court argue that the Georgia state legislature made a "deliberate choice to not adequately fund indigent defense" -- and accordingly, defendants should not suffer -- and have their constitutional rights ignored -- because of a lack of funding.

In the court of public opinion, the New York Times columnist Adam Liptak has been following the case, and his work dovetails the amicus brief's overview of the current state of indigent defense within the State of Georgia with a discussion of the right to appointed counsel. Liptak's coverage includes the recent decision by the U.S. Supreme Court in *Vermont v. Brillon*, where they recognized the possibility of "a systemic breakdown in the public defender system," but failed to give any solutions to that situation.

Will the United States Supreme Court finally address the practical realities of imple-

menting the constitutional rights it has recognized with the correlated budgetary commitments it has created in its earlier opinions, which establish a constitutional right to court-appointed legal counsel?

It's too soon to tell, Pavan – but when you ask the future of death row inmate representation, it is unfortunately true that money is a key element in how effective and successful capital defense representation will be.

I hope that this writing will be of use to you. Good luck to you in your studies!