

# 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](http://deathpenaltyblog.com) and Florida Capital Resource Center ([floridacapitalresourcecenter.org](http://floridacapitalresourcecenter.org)), and can be reached at [terry@lenamonlaw.com](mailto:terry@lenamonlaw.com).

## Cheshire Connecticut Home Invasion Trial Penalty Phase – Demonstration of How Mitigation Factors Play Out Under Connecticut Law

POSTED ON OCTOBER 19, 2010 BY **TERRY LENAMON**

Coming as no surprise to anyone following this case, **Steven J. Hayes** has been found guilty of capital murder in the Cheshire Connecticut home invasion case where Jennifer Hawke-Petit and her two daughters, Michaela and Hayley, died leaving only surviving spouse and father Dr. William Petit to testify. (For details on this particular case, [check out our post on the trial itself](#) as well as the [early media coverage](#) which began long before jury selection.)

### Whether or Not Steven Hayes Will Be Given the Death Penalty is Now the Issue

The job of the criminal defense team sitting at Mr. Hayes' table at this point is to fight against the death penalty. To do that, they must present admissible evidence in support of one or more of the mitigating factors as they are defined by the Connecticut Legislature.

The [New York Times reports](#) that defense counsel are expected to take around 10 days to present their arguments during this

second phase of the capital murder trial.

In the penalty phase, the state is allowed to present its case for capital punishment first. In this well-known case of a Cheshire suburban home invasion gone very wrong, the prosecutors put on only one witness – relying on the evidence already presented during the guilt phase for the majority of their arguments that they had met their burden (see the list of the aggravating factors under Connecticut law, below).

The [New York Times](#) and the [Hartford Courant](#) are both following the trial, presumably each bit of the second phase of the trial will also be [tweeted](#), and each day there are media reports summarizing the defense team's work – witnesses presented, arguments made.

### **Defense Strategy Slowly Being Revealed as Penalty Phase Progresses**

It has already become apparent that part of the fight will be to explain Hayes as the bumbling follower of his co-defendant, who defense witnesses – including law enforcement officials – describe as controlling and indeed, the evil mastermind of the tragedy. For instance, just this morning Judge Jon C. Blue granted the defense request to admit into evidence (over the state's objection) both [\(1\) diary excerpts and \(2\) certain statements made by Joshua Komisarjevsky](#) which will support the defense's contention, as they build their case for life and not death in the sentencing of Steven Hayes.

Connecticut Law Controls Evidence Presented by State and by the Defense  
The defense attorneys are controlled not only by evidence law – what will, and what won't, be presented to the jury, but also by the specific, defined arguments allowed by state law to be urged in a fight against the imposition of the death penalty.

In Connecticut, [the mitigation factors control the defense's presentation](#) just as the defined aggravating circumstances (below) controlled the state's case. After the evidence is presented by both sides, the case will then go to the jury for

consideration. Here are the mitigating and aggravating factors that control the case under Connecticut law:

### **Hayes' Defense: the Connecticut Mitigation Factors (Connecticut Code Section 53a-46a(h))**

The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict, as provided in subsection (e), that at the time of the offense:

- (1) the defendant was under the age of eighteen years, or
- (2) the defendant was a person with mental retardation, as defined in section 1-1g, or
- (3) the defendant's mental capacity was significantly impaired or the defendant's ability to conform the defendant's conduct to the requirements of law was significantly impaired but not so impaired in either case as to constitute a defense to prosecution, or
- (4) the defendant was criminally liable under sections 53a-8, 53a-9 and 53a-10 for the offense, which was committed by another, but the defendant's participation in such offense was relatively minor, although not so minor as to constitute a defense to prosecution, or
- (5) the defendant could not reasonably have foreseen that the defendant's conduct in the course of commission of the offense of which the defendant was convicted would cause, or would create a grave risk of causing, death to another person.

### **Aggravating Factors – Connecticut Prosecution's Legal Arguments**

The prosecution has already presented the factual support for its request for capital punishment. Their case was control by legislation, as well, and the

Connecticut prosecution in the penalty phase was **bound by the parameters of the following statutory language:**

(1)The murder was especially heinous, atrocious, cruel, or depraved (or involved torture)

(2) The capital offense was committed during the commission of, attempt of, or escape from a specified felony (such as robbery, kidnapping, rape, sodomy, arson, oral copulation, train wrecking, carjacking, criminal gang activity, drug dealing, or aircraft piracy)

(3) The defendant knowingly created a grave risk of death for one or more persons in addition to the victim of the offense

(4)The defendant committed the offense with an assault weapon

(5) The defendant caused or directed another to commit murder, or the defendant procured the commission of the offense by payment, promise of payment, or anything of pecuniary value

(6) The defendant has been convicted of, or committed, a prior murder, a felony involving violence, or other serious felony

(7)The defendant committed the murder to avoid arrest for a criminal act or prevent detection of a criminal act or to hamper or prevent the victim from carrying out any act within the scope of the victim's official duties or to retaliate against the victim for the performance of the victim's official duties

(8)Murder of a person under 16 years of age

(9) Murders, while the victim was acting within the scope of his duties, a police officer, Division of Criminal Justice inspector, state marshal exercising his statutory authority, judicial marshal performing his duties, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the environmental protection commissioner, Department of Correction (DOC) employee or service provider acting within the scope of his employment in a correctional facility and the perpetrator is an inmate, or firefighter.