

# 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).

## Will Texas Trial Judge Get Chance to Rule Death Penalty Unconstitutional in Pending Murder Case?

POSTED ON DECEMBER 28, 2010 BY **TERRY LENAMON**

In Houston, Texas, a man named **John Edward Green** is on trial for the murder of a Houston woman and her sister during the commission of a robbery, and the State of Texas is seeking the death penalty. Presiding over this trial is state district judge **Kevin Fine**, and Judge Fine has become somewhat of a national celebrity in some circles as someone trying to rule on the constitutionality of the death penalty (which most think is an issue pretty well settled by the U.S. Supreme Court), opening the doors to appellate review, and reconsideration, by doing so. Judge Fine did make a ruling on the issue back in March (he declared the death penalty unconstitutional then) but he took that back (rescinded) and opted to schedule an evidentiary hearing on the matter. That hearing was scheduled to begin December 7, 2010.

Of course, he's been stopped. The **Texas Court of Criminal Appeals** shot him down under the standard been-there, done-that argument you would expect. (Officially, they heard the **Harris County District Attorney's Office** motion to stop the hearing, and two days into it, the appellate court halted the proceedings before Judge Fine until further notice.)

Then, the CCA reconsidered things, and on December 7, 2010 ordered ([read the Order here](#)) that they have decided to reconsider relator's motion for leave to file a petition for writ of prohibition and a petition for writ of mandamus and "... the Honorable Kevin Fine, Judge of the 177th District Court, and John Edward Green, Jr., the real party in interest, may wish to respond. Therefore, within 15 days of the date of this order, Judge Fine and Mr. Green, or his representative, shall file their respective responses in this Court. Proceedings in the trial court shall be stayed pending further order by this Court."

Now, [an amicus curiae has been filed](#) -- signed by over 60 friends of the highest criminal court in the state -- asking that it reconsider its ruling. A former Texas governor has signed this brief (Mark White). So have the former governors of Maryland (Parris Glendening) and Indiana (Joe Kernan), as well as lots of other impressive signatories that include former judges, district attorneys, and other prominent folk.

The eyes of the nation are on this Austin court now – as well as the world. The [New York Times](#), the [Wall Street Journal](#), [BBC News](#), and others are all watching to see what the Texas Court of Criminal Appeals will do now.

### **What's at Stake Here?**

[Judge Fine has told the media](#) that he is not personally vested in the issue of capital punishment, and that the hearing is focused only upon Mr. Green's case and is not to be considered as a method to bring the entirety issue of capital punishment up for appellate review. The [evidentiary hearing was set to allow defense counsel the ability](#) to present evidence dealing with how the State of Texas implements capital punishment, using forensic evidence and witness testimony to demonstrate constitutional error that would impact upon their client's case.

Be that as it may, here in Florida and elsewhere, [we can recall how Furman dealt with state implementation of the death penalty, and resulted in a four year](#)

national moratorium.

Avalanches can and do start from a single, small rock.