

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.

Jared Loughner Facing Federal and State Death Penalty Charges: Indigent Defense Appointments Made for Death Qualified Counsel

POSTED ON JANUARY 11, 2011 BY **TERRY LENAMON**

Jared Loughner is accused of violating federal laws that carry with them the death penalty, and he's already been charged with capital murder in a Phoenix federal courtroom. ([Read the federal indictment here.](#)) Arizona law has also been violated in this horrific crime, and the [State of Arizona is planning its own separate prosecution of Loughner](#) for capital crimes in violation of state law.

It's not two bites at the apple.

No, it's not double jeopardy because there are separate crimes, in separate jurisdictions. The fact that lots of money is going to be spent in this media-intense case in two systems as efforts are made to sentence this man to death seems to be acceptable to both prosecutors. Two bites at the apple arguments aren't legally valid here.

Meanwhile, while [lots of media attention is being given](#) to the attempted murder of **Congresswoman Giffords**, the [assassination of federal judge John Roll](#) should not be

discounted. It's not often that federal judges are killed in the line of duty, and federal prosecutors will be fierce in their efforts here.

However, given the state of capital punishment today it may well be that Arizona has a better possibility of a death sentence for Loughner under Arizona law, where he undoubtedly will be tried for the death of a 9-year-old child. This may be the stronger death case, from a prosecution perspective.

Death Penalty Sought By US Attorney and Arizona Prosecutor Is a Given

In fact, it is so immediately clear that the death penalty will be sought by the U.S. Attorney that the federal public defender already moved the court to appoint death-qualified indigent defense counsel to the case.

High Profile Death Qualified Defense Counsel Appointed

His request was that these defense attorneys be appointed from outside of Arizona, not only because the public defender's office was not available to take the appointment but also because every other death-qualified Arizona defense attorney either had a conflict of interest in representing Loughner or they turned down the representation. Accordingly, the federal PD moved for the appointment of California defense attorneys **Judy Clarke** and **Mark Fleming** to be appointed by the judge.

Clarke has already appeared in court for Loughner. She is a litigator experienced with this level of trial-by-media case having already represented **Ted Kaczynski**, the Unibomber; and **Susan Smith**, the South Carolina mother who committed filicide, killing her two small boys by driving her car into a lake. None of her high-profile clients (see the USA Today list) has been given the death penalty.

And while the Arizona process is a step behind the federal system (as the state systems always are), it is to be expected that Jared Loughner will soon appear in a Phoenix courtroom again, this time for a state proceeding where it's likely that indigent appointments will once again be for his current defense counsel to

represent him in the state proceedings.

There's no one better than Judy Clarke -- good luck to her in this massive undertaking.