

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.

[Timothy O'Reilly Trial Hits Penalty Phase This Week in Michigan's Federal Death Penalty Trial](#)

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[News coverage of Timothy O'Reilly's murder trial this week](#) is providing an example of what occurs during the penalty phase of a death penalty case, specifically one in the federal system, as the Detroit federal courtroom hears testimony from both prosecution and defense in the Timothy O'Reilly case.

A jury has just returned a guilty verdict in the matter, finding that Timothy O'Reilly committed the crime of murdering Norman Stephens, 30, during an armed robbery of the Dearborn Federal Credit Union in Dearborn, Michigan. This week, the penalty phase began.

Aggravating Factors - Prosecution's Argument to the Jury that O'Reilly Should Get Death Penalty

It's reported that many have cried as [the victim's wife, daughter, niece and nephews](#) testified about the slain armored car guard. The victim's family spoke today about the loss they have experienced in the eight years since their loved one died. The prosecution's remaining aggravated evidence is from tape-recorded [jailhouse conversations](#) between O'Reilly, his family, and other prisoners.

Mitigators - Defense's Evidence to the Jurors Against O'Reilly Receiving Capital Punishment

Tomorrow, [O'Reilly's defense team is expected to give mitigating evidence to the jury](#) that will include evidence on abnormalities in Mr. O'Reilly's brain function as well as the troubled childhood that he suffered. They will ask the jury to forego the penalty of death, and opt for a life sentence in the case.

Mitigation evidence should take the rest of this week, with jurors making their [decision as soon as next week](#), after formal deliberations begin. And, these Michigan men and women will need to have some time to consider everything they've heard as they decide whether or not they will be merciful. The federal death penalty decision must be a unanimous one.

What is the Penalty Phase in a Trial?

As we've discussed here before, during the trial phase of any capital punishment case it is guilt that is at issue. Judgment is the focus. If the defendant is adjudged guilty, as O'Reilly has been found, then mercy takes the place of judgment for the decision-maker.

First, the prosecution provides evidence of factors it believes supports its request for death as the appropriate punishment for this man. Afterwards, the defense produces evidence of mitigating circumstances that argue against the ultimate price for the adjudicated crime.

Michigan? Yes, The O'Reilly Case is a Death Penalty Case Out of Michigan.

[We've posted about this case earlier](#), since it is [very unusual](#) to be discussing a capital punishment case coming out of Michigan. The State of Michigan removed the death

penalty from its books over a hundred years ago (1846).

However, [Tim O'Reilly was charged and is being tried under federal law](#), in federal court -- and of course, the death penalty is still an option under federal law. Occasionally, the federal death penalty will come into play: [recent examples include the Oklahoma trial of Timothy McVeigh and the recent Florida trial in the Turnpike killings](#).

And the truth remains: had this man been charged under state law instead of federal, he would have been tried in a state courtroom close to the district court in which his fate resides, with jurors theoretically chosen out of the same population as sets in the federal trial today. Death? If he were in the Michigan courthouse, of course, it wouldn't be on the table.