

# 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).

## [Troy Davis Loses; Federal Judge Moore Takes 172 Pages to Tell Us Why - Look for an Appeal](#)

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

Troy Davis has the [eyes of the world](#) on his situation, as he sits on Georgia's Death Row proclaiming his innocence. [We've posted before](#) about the [variety of celebrities and notables](#) who have actively worked toward freeing a man that they believe is innocent. People like the Pope. Former US President Jimmy Carter. Bishop Desmond Tutu.

It's rare for a Federal District Court Judge to undertake this type of review. So, when the United States Supreme Court - in a rare, rare decision - sent Troy Davis's case back down the federal court ladder and [ordered Federal District Judge William Moore](#) to take a gander at Davis' claims of new evidence, it had to be a tad bit intimidating for the federal judge.

It's not every matter that comes before a judge, even a federal district judge, that has the eyes of the Pope watching and waiting to grade his papers. Much less the American public.

Perhaps that's why it took Judge Moore almost half a ream of paper to explain why he was coming down against Troy Davis. In fact, the Judge's Order is so long that the Southern District of Georgia's website breaks it down into two downloads: [pages 1 - 62](#) and [pages 63 - 172](#). (Click on the page numbers here to read the Judge's opinion for yourself, word by word.)

### Judge Moore Rules Against Troy Davis - Why?

Simply put, the judge didn't believe that there was new evidence brought before him that substantiated Troy Davis's innocence.

### Clear and Convincing Standard

He set a high hurdle at the outset. First things first, Judge Moore set the legal standard for the evidence at "clear and convincing" -- that's a very high standard to meet. As in, Davis had to "show by clear and convincing evidence that no reasonable juror would have convicted him in light of the new evidence."

Then, he opined that should this burden be met, then he would hold it to be unconstitutional to execute Mr. Davis, upon "...a truly persuasive demonstration of innocence." Overstated, Smoke and Mirrors - Holds Clear and Convincing Standard Not Met From Judge Moore's Order:

His Footnote 108: "After careful consideration and an in-depth review of twenty years of evidence, the Court is left with the firm conviction that while the State's case may not be ironclad, most reasonable jurors would again vote to convict Mr. Davis of Officer MacPhail's murder. A federal court simply cannot interpose itself and set aside the jury verdict in this case absent a truly persuasive showing of innocence. To act contrarily would wreck complete havoc on the criminal justice system. See

Herrera, 506 U.S. at 417.”

from pp. 170-171: “Ultimately, while Mr. Davis’s new evidence casts some additional, minimal doubt on his conviction, it is largely smoke and mirrors. The vast majority of the evidence at trial remains intact, and the new evidence is largely not credible or lacking in probative value. After careful consideration, the Court finds that Mr. Davis has failed to make a showing of actual innocence that would entitle him to habeas relief in federal court. Accordingly, the Petition for a Writ of Habeas Corpus is DENIED.”

From the [Pattern Jury Instructions from the Eleventh Circuit](#) (emphasis added):

p. 20: “The Government’s burden of proof is heavy, but it doesn’t have to prove a Defendant’s guilt beyond all possible doubt. The Government’s proof only has to exclude any “reasonable doubt” concerning the Defendant’s guilt. A “reasonable doubt” is a real doubt, based on your reason and common sense after you’ve carefully and impartially considered all the evidence in the case.

“Proof beyond a reasonable doubt” is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.”

p. 80 : “Clear and convincing evidence is evidence sufficient to persuade you that the Defendant’s claim is highly probable. It is a higher standard of proof than a preponderance of the evidence but less exacting than proof beyond a reasonable doubt.” [From instruction on insanity.]