

# 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).

## Texas Kills Trial Judge's Attempt to Challenge Death Penalty

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Across the country, a lot of attention has been given to **Kevin Fine, a trial court judge setting in Houston over a state criminal court**. Texas has lots of criminal courts, and Houston's Harris County has a number of folk presiding over the criminal bench -- but **Judge Fine has become somewhat famous** from that number because he had the temerity to take on the powers that be when he granted a single defense request for an evidentiary hearing in a pending murder case. (Actually, Judge Fine had first turned heads when he issued a ruling in the Green matter that the death penalty was unconstitutional, but he later nixed that decision and went forward on the hearing request.)

*That single order, allowing a hearing to proceed, has been big news for awhile now. Why?*

**Judge Fine was going to allow the defense attorneys for John E. Green, Jr., to present evidence that capital punishment – as it is applied in Texas today – is unconstitutional.** In fact, Judge Fine actually began presiding over that hearing before being stopped in his tracks by a higher court: the Texas Court of Criminal Appeals. Seems that the prosecution had seen fit to request the appellate court's intervention in the proceedings, and the district attorney's request was granted.

For a time, all eyes moved from Houston to Austin, where the highest criminal court in the state would decide on whether or not John Green's challenge to the death penalty request made in his case was constitutionally valid.

It was a big opportunity to address the realities of the death penalty in a state where **Cameron Todd Willingham was executed** (almost everyone agrees now that this was an innocent man who died) and where more executions occur annually than any other state in the nation. A **number of legal notables** thought the Green petition provided such a window of opportunity that they filed an amicus brief in support of the state's capital punishment review. People like former Texas governor Mark White and former Indiana governor Joe Kernan.

**This month, the Texas Court of Criminal Appeals ruled.** In an opinion written by Justice Cathy Cochran, the **state's highest criminal court** ruled that Judge Fine had no legal right to proceed, and the district attorney's petition was conditionally granted. **From the January 12, 2011 opinion(s)**(Cause Nos. AP-76,470 & AP-76,471):

Because there is no basis under Texas law to conduct a pretrial evidentiary hearing to determine the "as applied" constitutionality of a state penal or criminal procedural statute, we conclude that the trial judge does not have legal authority to conduct any such pretrial evidentiary hearing and make any such pretrial declaratory judgment. He is acting beyond the scope of his lawful authority. Therefore, the State has demonstrated a clear right to relief. We conditionally grant mandamus and prohibition relief and, if he does not do so himself, will order the trial judge to dismiss Mr. Green's "Amended Motion to Declare Article 37.071, § 2 of the Texas Code of Criminal Procedure Unconstitutional As Applied" as requesting an unauthorized declaratory judgment.

**John Green will now proceed to trial with the possibility of a death sentence.**

And, those who are concerned about the justice found in Texas' current system of capital punishment must look for another battlefield. Perhaps that new front lies in appellate review of Mr. Green's case, should he be convicted and

sentenced to death: an opportunity that many – including Mr. Green and his defense counsel – hope does not present itself.

One must wonder how the pending appellate challenge to the system that Green's case might provide is impacting the prosecution's strategy right now .... Surely they must be concerned about winning the battle and ultimately losing the war?