

>> THE COURT WILL NOW MOVE TO THE SECOND CASE ON TODAY'S DOCKET, ERIC KURT PATRICK VERSUS THE STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT. LISA-MARIE LERNER ON BEHALF OF MISTER PATRICK.

WE CONSIDER WHETHER OR NOT TRIAL COUNSEL EXERCISED A REASONABLE STRATEGY IN KEEPING AND ACTUALLY BIASED JUROR ON MISTER PATRICK'S JURY.

AFTER THAT EVIDENTIARY HEARING THE TRIAL COURT FOUND THERE WAS A REASONABLE STRATEGY AND I WOULD STATE THE TRIAL COURT WAS INCORRECT WAS THE ENTIRETY OF THE RECORD DOES NOT SUPPORT AN OBJECTIVELY REASONABLE STRATEGY. TRIAL COUNSEL OFFERED HIS REASON FOR KEEPING THIS JUROR, NOT BIASED TOWARD MISTER PATRICK. THE REASONING WAS MISTER PATRICK WAS NOT A HOMOSEXUAL AND THE BIAS DID NOT EXTEND TO HIM. AS THIS COURT KNOWS THIS COURT HAS REJECTED THAT REASONING. THIS COURT FOUND BEFORE REMAND THE JUROR MARTIN WAS AND ACTUALLY BIASED JUROR. THAT EXTENDED TO MISTER PATRICK AS WELL AS EXTENDING --

>> SORRY TO INTERRUPT YOU. THAT WAS THE RATIONALE WE REJECTED WHEN WE FOUND THE BIASED JURORS WERE ESTABLISHED IN THE LAST CASE, THE RATIONALE FOR KEEPING THIS JUROR WAS COULD LEAD TO A LIFE VERSUS DEATH AND THE JUROR'S FEELINGS ABOUT HOMOSEXUALITY COULD HELP THE DEFENDANT, THE BEHAVIOR THAT LED THE KILLING TO BE SO OFFENSIVE TO HIM THAT YOU COULD SYMPATHIZE WITH THE DEFENDANT. I THOUGHT WE WERE BEYOND THE DISTINCTION WHETHER THE DEFENDANT HIMSELF WAS HOMOSEXUAL.

>> IN THE SENSE THE TRIAL

COUNSEL ACTUALLY SAID WHAT THE COURT REJECTED.

HIS INITIAL RESPONSE, HIS INITIAL STRATEGY WAS MY CLIENT WAS NOT HOMOSEXUAL.

THIS WAS FAVORABLE TO HIM.

THE COURT SAID IT WAS NOT FAVORABLE.

>> I THOUGHT WE SAID THAT COULD NOT BE DETERMINED WITHOUT AN EVIDENTIARY HEARING.

>> YOU STATED THERE MAY BE STRATEGY REASONS.

THE VERY INITIAL REASON, I WANT TO GET TO THE SECOND SUGGESTION COUNSEL MADE AS WELL.

>> AS A SUMMARY DEAN I'LL IN THE FIRST INSTANCE AND ARGUMENTS WERE MADE SIMILAR TO WHAT COUNSEL TESTIFIED TO, THIS WOULD MAKE SENSE TO LEAD THIS NEURON FOR THESE REASONS BASED ON THE RECORD AND I UNDERSTOOD THE FIRST OPINION IS TO BE SAYING IT IS NOT A DETERMINATION YOU CAN MAKE WITHOUT AN EVIDENTIARY HEARING.

YOU CAN'T ASSUME REASONABLE STRATEGY EVEN THOUGH IT COULD BE SHOWN FROM THE RECORD BECAUSE THE KIND OF THING THAT REQUIRES AN EVIDENTIARY HEARING.

>> WE WENT BACK FOR THE EVIDENTIARY HEARING.

WHAT I'M STATING IS HIS INITIAL REACTION WAS WHAT THE COURT REJECTED AND THAT WAS THE STATE'S REASONING IN THE LAST ARGUMENT THAT THIS WAS REASONABLE BECAUSE THIS JUROR WAS NOT BIASED TOWARD THE DEFENDANT.

THIS COURT REJECTED THAT REASONING.

>> THE FINDING YOU COULD MAKE AS A MATTER OF LAW BASED ON A COLD RECORD BUT WE SENT IT BACK FOR AN EVIDENTIARY HEARING WHICH SORT OF ASSUMES IT COULD BE ESTABLISHED AS A MATTER OF FACT.

>> THAT WAS ONE OF THE REASONS THE STATE SUGGESTED. THE STATE SUGGESTED THIS JUROR MAY HAVE BEEN MORE FAVORABLE FOR THE PENALTY PHASE AND THAT WAS THE SECOND REASON TRIAL COUNSEL GAVE, HE ALSO SUGGESTED -- MY ARGUMENT IS THE COURT REJECTED HIS SUGGESTION OF STRATEGY, THIS DEFENDANT WAS SOMEHOW NOT THIS FAVORABLE TO MISTER PATRICK BUT THE SECOND SUGGESTION THAT THIS JUROR, HE KEPT THIS JUROR ON BECAUSE HE WAS MORE FAVORABLE TO THE PENALTY PHASE REFUTED BY THE RECORD.

THE FACT OF THE MATTER IS --  
>> ONE QUESTION ABOUT THE FACT OF THE CASE.

MISTER PATRICK GAVE A STATEMENT UPON HIS ARREST. SOMEWHERE, I AM TRYING TO DETERMINE IF THE JURY HEARD THIS IF IT HURT IT AT ALL.

THE FACTS ARE MISTER PATRICK ADMITTED ON PRIOR OCCASIONS LONG BEFORE THIS HAPPENED ON A PRIOR OCCASION HE PICKED UP MEN AT GAY BARS AND ALLOWED THEM TO PERFORM SEXUAL ACTS, THAT IS LONG BEFORE THIS HAPPENED.

DID THE JURY HEAR THAT?

>> THAT IS PART OF WHAT HIS STATEMENT WAS TO THE POLICE AND THE STATEMENT WAS PLAYED AT TRIAL AT THE GUILT PHASE FOR THE JURY.

>> IF A STRATEGY, I WANT TO KEEP THIS ON THE JURY BECAUSE HE IS GOING TO BE SO OFFENDED OR SO TAKEN ABACK BY THE FACT THE VICTIM IN THIS CASE MADE A MOVE THAT THE DEFENDANT DIDN'T LIKE AND THAT WOULDN'T FALL VERY WELL IF THE JURY HEARD THAT A FEW WEEKS BEFORE, HE WAS PICKING UP THE RELATIONSHIPS.

>> THAT WAS PART OF WHY THE COURT REJECTED THAT NOTION THAT THIS JUROR WASN'T BIASED TOWARD

MISTER PATRICK.

MISTER PATRICK ENGAGED IN  
HOMOSEXUAL RELATIONSHIPS PRIOR,  
HE WAS ENGAGING IN A SEXUAL  
RELATIONSHIP WITH THE VICTIM IN  
THIS CASE.

IN FACT THE STATEMENT THIS JUROR  
WAS FAVORABLE IS UNDERMINED BY  
THE TRIAL RECORD.

HE WAS ARGUING AT TRIAL IN  
OPENING AND CLOSING ARGUMENT, HE  
MADE STATEMENTS THIS  
RELATIONSHIP WAS SIMILAR TO A  
HETEROSEXUAL RELATIONSHIP, BUT  
IT WAS NO DIFFERENT AND THEY  
SHOULDN'T LOOK AT IT DIFFERENTLY  
BECAUSE THIS WAS TWO MEN.  
THAT CUTS AGAINST WHAT HE  
ASSERTED AT THE EVIDENTIARY  
HEARING.

>> THAT IS NOT THE TENOR OF WHAT  
THE DEFENSE WAS.

THE DEFENSE WAS THE DEFENDANT  
DESERVED LESS THAN PREMEDITATED  
MURDER BECAUSE THIS WAS  
IMMEDIATE RESPONSE TO BEING  
PROPOSITIONED BY THE VICTIM IN  
THIS CASE, SOMETHING DIFFERENT  
FROM WHAT HAPPENED EARLIER, THAT  
SETS THE DEFENDANT OFF.  
THAT WAS THE DEFENSE.

>> THE DEFENSE WAS FOR THE  
LESSER.

>> BASED ON WHAT I JUST  
ARTICULATED.

>> ENGAGING IN A HOMOSEXUAL  
RELATIONSHIP --

>> SOME SEX ACTS, THERE WAS AN  
EXCHANGE OF A LIVING  
ARRANGEMENT, THE VICTIM WANTED  
TO TAKE A STEP FURTHER, WOULD  
SET THE DEFENDANT OFF RESULTING  
IN THE MURDER.

THAT IS THE DEFENSE.

>> THE VICTIM WANTED TO MOVE  
THINGS FURTHER ALONG.

>> WAS THAT THE DEFENSE?

>> THE DEFENSE WAS FOR THE  
LESSER BECAUSE IT SETS THE  
DEFENDANT --

>> CONSIDER THE ARGUMENTS OF  
DEFENSE COUNSEL.  
>> BECAUSE HE WANTED SOMETHING  
DIFFERENT THAN PREVIOUSLY GOING  
ON.  
>> HE TRIED TO DO ADDITIONAL  
SEXUAL ACTS BUT YOU HAVE TO LOOK  
AT WHAT WAS ARGUED BY DEFENSE  
COUNSEL.  
>> HOW IS IT UNREASONABLE AT THE  
TIME FOR A JUROR WHO SAYS I AM  
BIASED AGAINST HOMOSEXUALS AND  
THINK BADLY OF THEM THAT THE  
VICTIM ACTED CONSISTENT WITH  
THAT BIAS?  
HOW IS THAT AN IRRATIONAL  
THOUGHT BY COUNSEL IN THIS CASE  
OR NOT STRATEGIC THOUGHT?  
>> IF YOU COULD THE OPINION  
PREVIOUSLY ALL 7 JUSTICES  
REJECTED THAT.  
>> PUT ASIDE THE PRIOR --  
>> TRIAL COUNSEL, EVERY OTHER  
JUROR WHO EXPRESSED A BIAS  
AGAINST HOMOSEXUALS WAS STRUCK  
FROM THIS JURY AND COUNSEL  
AGREES --  
>> NONE OF THOSE DOORS LIKE THIS  
ONE ALSO STATED THEY HAD SUCH A  
FAVORABLE VIEW OF IMPOSING LIFE  
AS OPPOSED TO DEATH.  
>> I CAN TALK ABOUT THAT TOO.  
>> AM I CORRECT THIS IS THE ONLY  
JURY THAT HAD BOTH?  
>> I BELIEVE JUROR:-- KO EH AND  
EXPRESSED BIAS TOWARD  
HOMOSEXUALS, I DON'T BELIEVE HE  
FELT ONE WAY OR THE OTHER IN  
TERMS OF THE PENALTY PHASE.  
>> THE JURY HERE WAS VERY  
SPECIFIC ABOUT THE PENALTY PHASE  
THAT HE HAD SUCH AN AWAKENING  
ABOUT THE DEATH PENALTY, HE WAS  
REFLECTING HIS OWN VIEWS ON IT.  
>> UNDER THESE CIRCUMSTANCES  
WHICH I SUGGEST THE LOWER COURT  
DID NOT DO IT WAS UNREASONABLE  
TO KEEP A BIASED JUROR IN THAT  
SCENARIO TOO.  
THE FACT THIS JUROR WAS MORE

INCLINED TO A LIFE SENTENCE DOES NOT GET RID OF THE BIAS.

THIS JUROR WAS STILL IMPARTIAL.

>> FAR TO INTERRUPT.

JUST FOR THE BASELINE.

MY UNDERSTANDING OF THE PRIOR OPINION WAS IT LEFT OPEN THE POSSIBILITY, IT IS REASONABLE TO KEEP A BIASED JUROR ON THE PANEL.

MY UNDERSTANDING IS WE ACCEPTED THE PREMISE THAT PREJUDICE HAD BEEN ESTABLISHED IN THE SENSE OF HAVING A BIASED JUROR ON THE PANEL BUT IF THERE IS A SORT OF COMPLICATED THOUGHT PROCESS THAT YES, THIS JUROR IS BIASED AGAINST HOMOSEXUALS BUT THIS BIAS COULD COMBINE WITH THE PENALTY PHASE THAT LED TO THAT SIDE.

IT COULD BE OBJECTIVELY REASONABLE FOR COUNSEL TO HAVE ALLOWED THIS PERSON TO BE ON THE JURY.

THAT IS WHAT I THOUGHT THE EVIDENTIARY AIR REHEARING --

>> IT WOULD BE A COMPLICATED THOUGHT PROCESS THAT TRIAL COUNSEL WOULD HAVE TO CONSIDER.

>> ISN'T THAT THE PURPOSE OF THE REMAINS?

>> THE COURT LED THAT OPEN.

>> NOT JUST LEAVE IT OPEN BUT THE REASON FOR THE RAIN AND.

>> WHAT I'M STATING IS IF THAT COMPLICATED THOUGHT PROCESS IT TAKEN PLACE THERE IS NO EVIDENCE IN THIS RECORD THAT TRIAL COUNSEL ENGAGED IN ANYTHING.

TRIAL COUNSEL HAD NO INDEPENDENT RECOLLECTION OF ANY OF THE OTHER JURORS.

>> HE DID TESTIFY TO HIS GENERAL STRATEGY OR HAVE A SPECIFIC RECORD ELECTION BUT TESTIFIED AS TO WHAT HE WOULD HAVE BEEN THINKING BASED ON WHAT HE KNOWS ABOUT HOW TO TRY A CASE.

THAT IS THE KIND OF TESTIMONY WE

FOUND SUFFICIENT TO SUPPORT A FINDING.

>> ONLY AFTER BEING SHOWN THE RECORD HE THEN SAID THIS JUROR WAS INCLINED FOR A LIFE SENTENCE.

HE DIDN'T REMEMBER THAT TO BEGIN WITH.

>> IT REFRESHES RECOLLECTION BUT THIS IS AN INDIVIDUAL WHO TRIED 22 OR 23 CAPITAL CASES.

NOT AN INDIVIDUAL WHO HAD ONLY TRIED ONE CAPITAL CASE.

IT IS AN INDIVIDUAL WHO HAD EXPERIENCE AND WHEN HIS RECOLLECTION WAS REFRESHED, HE SAID THAT WAS A PERSON FAVORABLE FOR THE DEFENSE BECAUSE HE PREFERRED A LIFE SENTENCE OVER A DEATH SENTENCE.

>> HE SAID I SEE THAT IN THE TRANSCRIPT BUT I HAVE NO INDEPENDENT RECOLLECTION OF THIS AT ALL.

AS AN EXPERIENCED TRIAL ATTORNEY HE WAS OBLIGATED TO WEIGH THESE STATEMENTS AGAINST EACH OTHER AND THERE IS NO EVIDENCE THAT WAS DONE AT THE TIME OF TRIAL. HIS NOTES DON'T REFLECT THE BIASED STATEMENT SURE MARTIN MADE.

IT IS NOT THERE AND ALSO AS ANOTHER ASIDE HE DIDN'T INCLUDE NOTES THAT JUROR MARTIN SAID HE WOULD HAVE LOOKED AT IF THEY WERE USING DRUGS THEY WOULD BE LESS CREDIBLE.

EITHER OF THOSE THINGS, TWO IMPORTANT RELEVANT INFORMATION FROM THIS JUROR THAT SHOULD HAVE BEEN CONSIDERED AT THE TIME OF TRIAL AND THERE IS NO INFORMATION THAT IT HAPPENED. THE OTHER THING THAT INDICATES THAT IS HIS REASONS FOR KEEPING THIS JUROR ON THE JURY ARE OPPOSING VANTAGE POINTS.

AT ONE POINT DURING THE EVIDENTIARY AIR REHEARING, A

BETTER JUROR FOR THE PENALTY  
PHASE FOR ME.  
THAT IS NOT WHAT HE SAID.  
WHAT HE SAID IN THE BEGINNING IS  
THIS USER WASN'T BIASED TOWARDS  
MY CLIENT.  
HE WAS FAVORABLE TOWARD MY  
CLIENT.  
THOSE ARE TWO OPPOSING VANTAGE  
POINTS.  
EITHER HE CONDUCTED THAT  
COMPLICATED WEIGHING PROCESS AND  
DETERMINED DESPITE THE BIAS I  
FIND HIS COMMENTS ABOUT THE  
GRAVITY OF MAKING THIS DECISION  
HE WOULD BE MORE INCLINED TO  
LIFE THAT OUTWEIGHED THEM.  
>> WHY ARE THOSE INCONSISTENT.  
WHY COULDN'T HE HAVE DETERMINED  
THE BIAS WOULD HAVE WEIGHED IN  
FAVOR OF HIS CLIENT AS TO HIS.  
GUILT AND THE JUROR ALSO WOULD  
HAVE BEEN FAVORABLE FOR THE  
PENALTY PHASE.  
WHY ARE THOSE INCONSISTENT?  
>> IT WAS HIS COMMENTS AT THE  
EVIDENTIARY HEARING SAYING --  
>> HOW LONG AGO WAS THE TRIAL?  
>> THE TRIAL WAS IN 2005, THE  
CRIME MAY HAVE BEEN 2005.  
IT WAS 2009.  
I UNDERSTAND IT WAS A WHILE BACK  
AND THAT IS PART OF THE PROBLEM  
THAT HE WAS SPECULATING, LOOKING  
AT A RECORD AND COMING UP WITH  
RATIONALIZATION WHY HE KEPT THIS  
BIASED JUROR ON.  
THAT PROCESS DID NOT HAPPEN IN  
THE REASON THOSE ARE OPPOSING  
VANTAGE POINTS, IF HE STAYED  
CONSISTENT THROUGH THE  
EVIDENTIARY HEARING HE WASN'T  
BIASED TOWARD MY CLIENT AND ALSO  
WAS FAVORABLE FOR A LIFE  
SENTENCE THAT IS WHY I KEPT HIM.  
HE WAS A WINNER ALL AROUND FOR  
MY CLIENT.  
THAT'S NOT WHAT HE SAID.  
HE SWITCHED VIEWS AND MAYBE HE  
WASN'T GOOD FOR THE GUILT PHASE

BUT LOOKS LIKE HE WAS GOOD FOR THE PENALTY PHASE.

>> YOU ARE IN YOUR REBUTTAL TIME.

>> I WILL SAVE THE REMAINING AMOUNT OF TIME.

>> MAY IT PLEASE THE COURT, LISA-MARIE LERNER WITH THE ATTORNEY GENERAL'S OFFICE FOR THE STATE OF FLORIDA.

GIVEN THE OVERWHELMING EVIDENCE OF GUILT IN THIS CASE, TRIAL COUNSEL DECIDED TO FOCUS ON THE PENALTY PHASE AS THE PRIMARY TEST FOR POTENTIAL JURORS.

WHILE ALSO NOT NEGLECTING THE GUILT ASPECT OF THE TRIAL AS WELL.

JUROR MARTIN WAS AN EXCELLENT PENALTY PHASE JUROR.

BOTH TRIAL COUNSEL WAREZ AND TRIAL COUNSEL FERRARO SAID THAT. LOOKED AT THOSE STATEMENTS, THEY TRIED TO REFRESH YOUR RECOLLECTION.

SHE SAID IT DIDN'T REFRESH HER RECOLLECTION BUT VERY MIDDLE OF THE ROAD, NOT PRO-DEATH JUROR AND THAT IS THE TYPE OF JURY THEY ARE LOOKING FOR.

>> THERE IS INDEPENDENT EVIDENCE OF TESTIMONY TO SUPPORT THIS. THE NOTES THAT WERE SUBMITTED INTO EVIDENCE.

>> THE NOTES FROM JURY SELECTION AND HAD A NOTE ABOUT SOMETHING THAT WAS CROSSED OUT.

>> YES.

>> THERE WAS TESTIMONY FROM A LIKELY THAT THE DEFENDANT WAS EXTENSIVELY CONSULTED ABOUT JURY SELECTION.

>> THAT IS THE ONE FACT THAT MISS FERRARO RECALLED, MISTER PATRICK WAS ACTIVELY ENGAGED IN DISCUSSING THE JURORS WITH THE TRIAL COUNSEL AND IN DECIDING WHO REMAINED ON THE JURY.

IF PATRICK WANTED SOMEONE ON THE JURY AND TRIAL COUNSEL DIDN'T,

THEY COULDN'T CHANGE HIS MIND  
THEY KEPT THAT PERSON.

>> IS THE POINT THERE WAS  
DISCUSSION THAT HAPPENED BETWEEN  
COUNSEL REGARDING THIS VERY  
JUROR BECAUSE THERE WAS  
SKEPTICISM THAT WAS CROSSED OFF  
TO DISCUSS WHY THIS IS OR WOULD  
BE A GOOD JUROR?

DOESN'T THAT EXACTLY SUPPORT  
WHAT THE TRIAL COURT FOUND IN  
THIS CASE?

>> YES.

AS THE JUDGE IN HER ORDER  
POINTED OUT, JUROR MARTIN  
FOCUSED ON THE ENORMITY OF THE  
RESPONSIBILITY OF SENTENCING  
SOMEONE TO DEATH AND THAT ASPECT  
IS WHAT ATTORNEY WAREZ CALLED  
GOLDEN AND THE TYPE OF JUROR WHO  
WOULD SIT THERE AND RUMINATE IN  
FRONT OF THE REST OF THE JURY  
ABOUT THE SERIOUSNESS OF THE  
DECISION THEY ARE FORCED TO MAKE  
AND ALSO SAID THAT HE SAW THIS  
JUROR AS THE TYPE OF STRONG  
JUROR WHO COULD LEAD OTHER  
JURORS OVER –

>> DIDN'T THAT HAPPEN HERE?

>> YES.

GIVEN THE FACT THAT THIS IS A  
HEINOUS AND CRUEL DEATH, THEY  
GOT A 7-5 JURY VOTE.

>> THE SENTENCE WAS VACATED AS A  
RESULT.

>> YES.

FINALLY, WAREZ TESTIFIED IN OVER  
300 JURY TRIALS HE IS A VERY  
EXPERIENCED ATTORNEY, NEVER LEFT  
A JUROR ON WITHOUT A STRATEGIC  
REASON.

HE OUTLINED THOSE REASONS FOR  
THE TRIAL COURT, FOUND HIM  
CREDIBLE, BELIEVED HIM AND  
DENIED RELIEF.

THE STATE ASKED THIS COURT TO  
DENY THAT DENIAL OF RELIEF.

I WANT TO POINT OUT THE STRATEGY  
JUROR MARTIN WAS FAVORABLE  
TOWARD THE PENALTY PHASE WAS CUT

BY THE RECORD IN THIS CASE.  
MISTER RARE IS STRUCK TWO JURORS  
WHO EXPRESSED VERY LIKE-MINDED  
VIEWS ABOUT THE PENALTY PHASE,  
DID NOT EXPRESS THE BIASED SURE  
MARTIN EXPRESSED.

THEY WON -- HE INITIALLY MADE  
THE STATEMENTS ABOUT LIFE BEING  
A HARSHER PUNISHMENT THAN DEATH,  
DECISION THAT WOULD WEIGH UPON  
EVERYBODY AND AFTER SOME  
THOUGHT, VIZCARRA SAID HE WAS  
MIDDLE-OF-THE-ROAD AND COULD  
APPLY THE LAW.

>> THE DECISION TO STRIKE THIS?  
WHAT DOES THE RECORD SHOW ABOUT  
THE DECISION MADE TO STRIKE  
THOSE?

>> THEY WERE STRUCK  
PARENTERALLY.

>> DOES THE RECORD SHOW  
QUESTIONS ASKED ABOUT THAT?

>> FOR ALL WE KNOW THE DEFENDANT  
COULD SAY I FEEL BAD ABOUT THAT  
AND THAT -- IS THAT THE CASE?

>> I ASKED TRIAL COUNSEL ABOUT  
THAT ABOUT BOTH OF THOSE DOORS  
BUT HE HAD NO SPECIFIC  
RECOLLECTION ABOUT THOSE JURORS.  
HE DID ACKNOWLEDGE THOSE  
STATEMENTS IN THE RECORD ABOUT  
FAVORING A LIFE SENTENCE OVER A  
DEATH SENTENCE AND HE SAID  
THERE'S A MYRIAD OF REASONS WHY  
SOMEBODY COULD BE STRUCK BUT IF  
YOU LOOK AT THE RECORD IN THIS  
CASE THERE'S NOTHING GLARING AS  
TO WHY THESE JURORS WOULD BE  
REMOVED PARENTERALLY.

>> WASN'T SURE MARTIN'S  
STATEMENT DIFFERENT?

FOR ONE, THE STATEMENT ABOUT  
BIAS, COUNSEL WANTED THE BIASED  
JUROR IN THE UNIQUE DEFENSE OF  
THIS CASE AND THE WAY I  
UNDERSTAND IT THE COUNCIL ASKED  
MISTER MARTIN HOW DO YOU FEEL?  
HE SAID I AGREE AND WENT ON A  
COLLOQUY ABOUT A PERSONAL  
AWAKENING, A PERSONAL

REEVALUATION OF HIS VIEW WHICH WAS SUBSTANTIVELY DIFFERENT.

>> NOT SURE IT WAS PERSONAL, HE DEFINITELY SAID I AGREE. I DON'T KNOW IF THE WORDS HE USED.

HE DID TALK ABOUT THE WEIGHT AND THE GRAVITY OF HAVING TO SENTENCE SOMEBODY TO DEATH BUT GIVEN THE TOTALITY OF THE RECORD IN THIS CASE AND THE FACT HE WAS STILL FIGHTING --

>> I WANT TO READ IT FROM PAGE 665-666 FROM VOLUME 7 OF THE TRANSCRIPT ASKING IF HE AGREED, MISTER MARTIN SAID I DON'T THINK ANY OF US HERE WANT TO BEAR THAT BURDEN WHEN WE LEAVE HERE WHEN FOUND INNOCENT OR GUILTY OF THINKING I JUST SENT SOMEBODY TO BE EXECUTED AND LIFE IN PRISON HAS HIS WHOLE LIFE TO THINK ABOUT WHAT HE DID AND CLIMB THE WALLS.

I WOULD BE TORMENTING MYSELF PUTTING MYSELF IN THE SHOES THINKING WHAT HE MAY BE THINKING.

>> HE FELT THE GRAVITY OF THIS DECISION.

>> IS THAT DIFFERENT FROM WHAT MISTER VIZCARRA SAID?

>> IT GOES FURTHER IN RECOGNIZING THE GRAVITY OF THIS DECISION BUT AGAIN YOU HAVE THE BIAS OF THE JUROR MARTIN SO YOU HAVE TO LOOK AT THE BIAS.

IF WE LOOK AT THE OPINION OF THIS COURT BEFORE IT WAS THE STATE THAT SAID THIS WITH A VALID STRATEGY BECAUSE HE WAS FAVORABLE TO THE DEFENDANT BECAUSE THE DEFENDANT WAS NOT HOMOSEXUAL.

THIS WAS REJECTED BY 7 JUSTICES. IF YOU CONSIDER THEM PART NOW DELIVERS A LIFE SENTENCE AND VIZCARRA WAS GOING TO TAKE THE TASK AT HAND AND FOLLOW THE LAW AND HE WAS MIDDLE-OF-THE-ROAD

THAT IS IF YOU ARE GOING ON THE STRATEGY HE WAS LOOKING AT JURORS FAVORABLE FOR THE PENALTY PHASE THOSE TWO JURORS FIT THE BILL.

THOSE TWO JURORS WITHOUT ANY SORT OF BIAS INVOLVED FIT THAT STRATEGY AND HE STRUCK THEM PEREMPTORILY.

>> SO YOUR ARGUMENT IS BASED ON PRIOR OPINION THAT THAT OPINION SAYS THAT THIS CANNOT BE A REASONABLE STRATEGY AS A MATTER OF LAW?

>> IT SAYS -- THE STATE'S OPINION AND I THINK IT WAS SAYING THAT THERE MAY BE OTHER STRATEGY REASONS AND THAT'S WHY WE ARE REMANDING AND REJECTED THE NOTION THAT JUROR MARTIN'S BIAS, AGAIN, HE SAID THAT HOMOSEXUALS, MORALLY DEPRAVED, LIE, CHEAT, STEAL, KILL, THAT THAT IN ANY WAY HELPED THE DEFENDANT.

IT NOT ONLY EXTENDED TO THE VICTIM BUT EXTENDED TO THE DEFENDANT, SO IT WOULDN'T BE REASONABLE FOR COUNSEL TO SAY THAT HIS STRATEGY WAS TO SOMEHOW KEEP THIS BIAS JUROR ON AND DESPITE THE FACT THAT HE SAID --

>> COUNSEL, YOUR TIME HAS EXPIRED.

>> I WOULD SIMPLY SAY -- IT CUTS AGAINST HIS ANSWERS IN EVIDENTIARY HEARING, HE WAS FIGHTING AND REGARDLESS OF JUROR MARTIN'S OPINIONS ABOUT THE PENALTY PHASE HE WAS AN IMPARTIAL JUROR, THIS COURT FOUND HE WAS ACTUALLY BIAS AS SUCH IT WAS NOT REASONABLE STRATEGY TO LEAVE HIM ON MR. PATRICK'S JURY, THANK YOU.

>> WE THANK YOU BOTH FOR YOUR ARGUMENTS, THE COURT WILL NOW STAND IN RECESS FOR ABOUT 10 MINUTES.

>> ALL RISE.

