

>> ALL RISE.

>> THE SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
PLEASE BE SEATED.

>> THE NEXT CASE FOR THE DAY IS
JACKSON V. STATE OF FLORIDA.
YOU MAY PROCEED.

>> YOUR HONORS, MAY IT PLEASE
THE COURT, I AM CHRIS ANDERSON,
COUNSEL FOR THE APPELLANT,
MICHAEL JACKSON.

IF GIVEN MY CHOICE, I'D PREFER
TO DISCUSS THE SECOND ISSUE IN
MY BRIEF, THE INFLAMMATORY --
[INAUDIBLE]

I WOULD LIKE TO START WITH THE
SECOND ISSUE IN MY BRIEF, THE
INFLAMMATORY JAIL CONVERSATION
THAT THE APPELLANT HAD WITH HIS
MOTHER.

THAT'S ISSUE NUMBER TWO IN MY
BRIEFS.

I BEGIN BY POINTING OUT THAT
ALTHOUGH THERE WAS A SUPPRESSION
MOTION FILED IN THE TRIAL COURT,
THAT SUPPRESSION MOTION WAS
ABOUT FOUR LINES LONG WITH
REGARD TO THE JAIL PHONE
CONVERSATION AND REALLY
MENTIONED ONLY THE FACT THAT
SOUTH CAROLINA JAIL POLICY
PROHIBITS THE POLICE FROM
ACQUIRING RECORDED JAIL
CONVERSATIONS WITHOUT A WARRANT.
AND THAT'S EXACTLY WHAT HAPPENED
IN THIS CASE.

THE RECORDED CONVERSATION WAS
REQUIRED WITHOUT A WARRANT.
THE MOST GLARING PROBLEM IN THIS
CASE IS THE FACT THAT IN THIS
CONVERSATION IN WHICH DEFENDANT
MICHAEL JACKSON WAS SPEAKING TO
HIS MOTHER, AND IT'S BEEN QUOTED
VERBATIM IN BOTH THE BRIEFS ON
BOTH SIDES OF THIS CASE, MICHAEL
JACKSON USED THE WORD, THE
F-WORD 26 OR 27 TIMES IN
SPEAKING TO HIS MOTHER.
IN ADDITION TO THE EXPLETIVES
"MF," "SH" AND ALL THE OTHERS.

I WANT TO MAINTAIN DECORUM OF
THE COURT, NOT SAY THEM FULLY.

>> WE HAVE THEM, THAT'S ALL
RIGHT.

YOU DON'T HAVE TO.

>> YES, SIR.

THE DIFFICULT THING TO
UNDERSTAND IS WHY HIS LAWYERS
FAILED TO DO A MOTION TO AT
LEAST REDACT THE PROFANITY.
THIS CASE WAS TRIED IN
JACKSONVILLE, FLORIDA, WHICH
REALLY IS A PLACE WITH THE SAME
CONSERVATIVE MORALE, THE SAME
TRADITIONAL VALUES THAT
TALLAHASSEE, FLORIDA, HAS.
AND THERE CAN JUST BE NO DOUBT
WHATSOEVER THAT THAT --

>> SO WHAT, LET'S -- EVEN IF THE
DEFENSE ATTORNEY SHOULD HAVE
OBJECTED OR MOVED TO REDACT THIS
INFORMATION, WHAT IS THE
PREJUDICE THAT'S HERE?

>> WELL, IT'S TWOFOLD.
FIRST AND FOREMOST, IT
INFURIATES THE JURORS.

>> I'M SORRY, WHAT?

>> IT INFURIATES THE JURORS.
IT BIASES THEM AGAINST THE
DEFENDANT.

>> WELL, YOU KNOW, IT'S REALLY
INTERESTING.

IS THERE CASE LAW THAT SAYS THAT
YOU HAVE TO HIDE WHAT THE TRUTH
IS?

I MEAN, THERE'S ONE THING WHEN
YOU PANDER, AND IT'S QUITE
ANOTHER WHEN THEY'RE JUST SPOKEN
WORDS.

I MEAN, THESE ARE WORDS THAT
THIS DEFENDANT CAME FROM HIS
LIPS IN A DISCUSSION THAT HE
KNEW WAS BEING MONITORED, AND
I'M, YOU KNOW, I'M STRUGGLING
WITH TRYING TO FIND A CASE THAT
SAYS WE HAVE TO SANITIZE --
BECAUSE ALL THESE CASES CONTAIN
BAD STUFF.

I MEAN, TERRIBLE STUFF.

>> YES, SIR.

AND IT IS A CASE OF FIRST
IMPRESSION.

I WAS UNABLE --

>> OKAY.

>> I WAS UNABLE TO FIND A CASE
WHERE A SON SPOKE TO HIS MOTHER
WITH THIS LANGUAGE.

BUT --

>> HIS GRANDMOTHER, RIGHT?

>> WELL, HIS GRANDMOTHER ENDED
UP GETTING CUSTODY OF HIM AND
RAISING HIM, AND HE CALLS HIS
GRANDMOTHER "MOM."

SO THAT'S WHY I USE THE
EXPRESSION.

BUT OUR JURORS WILL NOT TOLERATE
A SON TALKING TO HIS MOTHER IN
THAT FASHION.

MY CONCERN IS NOT ONLY DID IT
INFURIATE THE JURORS AND
PREJUDICE THEM AGAINST THIS
YOUNG MAN, MICHAEL JACKSON WAS
23 AT THE TIME, BUT IT MUST HAVE
FUNCTIONED AS A NONSTATUTORY
AGGRAVATING CIRCUMSTANCE OF --

>> IT MUST?

WHY MUST IT?

BECAUSE SOMEONE CURSED?

THAT'S A STATUTORY AGGRAVATOR?

>> WELL, IT'S NOT A STATUTORY
AGGRAVATOR, THAT'S THE POINT.

>> I MEAN, THAT'S WHAT YOU'RE
SAYING.

I MEAN, THAT IT HAS TO BE
INTERPRETED AS AN AGGRAVATOR
BECAUSE SOMEONE USES FOUL
LANGUAGE?

>> WELL, FOR A SON TO TALK TO
HIS MOTHER IN THAT LANGUAGE IS
LITERALLY AGGRAVATING.

AND I WOULD SUBMIT TO THE COURT
THAT IT'S DIFFICULT TO IMAGINE
THE JURORS BACK IN THE JURY
DELIBERATION ROOM NOT DISCUSSING
IT AND NOT BEING SWAYED AGAINST
THE LIFE SENTENCE BECAUSE OF IT.

>> WELL, BUT AGAIN, I'D LIKE TO
ASK THE SAME QUESTION THAT
JUSTICE QUINCE ASKED ABOUT THE
PREJUDICE.

I -- NOT EVEN CONCEDED THAT THERE WAS DEFICIENCY. BUT IF THERE WAS, WHEN YOU LOOK AT ALL OF THIS IN THE CONTEXT OF THESE CRIMES AND EVERYTHING ELSE THAT WAS PRESENTED TO THE JURY, THIS IS LIKE NOTHING. I DON'T UNDERSTAND HOW IT COULD POSSIBLY SHAKE OUR CONFIDENCE IN THE RESULT IN THIS TRIAL.

>> YES, JUSTICE CANADY, AND I RECOGNIZE AND I ACKNOWLEDGE NOW THAT THIS IS A CASE IN WHICH THE DEFENDANT PROHIBITED HIS LAWYERS FROM PUTTING ON ANY MITIGATION, THOUGH THE SENTENCING JUDGE DID CONSIDER A PSI REPORT AND DID CONSIDER SOME COMPARATIVE CULPABILITY ARGUMENTS IN MITIGATION.

UM, THIS IS A CASE IN WHICH MY CLIENT PROHIBITED ME FROM RAISING ANY GUILT ISSUES. ANYTHING INCONSISTENT WITH HIM BEING FOUND GUILTY OF THESE CRIMES --

>> BECAUSE HE ENDED UP CONFESSING, DIDN'T HE? AT THE EVIDENTIARY HEARING?

>> YES. YES, YOUR HONOR, HE DID. HE ADMITTED HIS --

>> I MEAN, HE'D ALREADY BEEN FOUND GUILTY, BUT HE ENDS UP SAYING, YES, I AM GUILTY.

>> YES, YOUR HONOR, HE DID.

>> I GUESS I'M JUST HAVING -- [INAUDIBLE]

THE ONE STATEMENT WHEN HE TELLS HIS MOTHER, "I AM FREAKING THE F -- OUT BECAUSE BRUCE TOLD THESE PEOPLE WHERE IT'S AT, THE BODIES.

GOING TO GIVE ALAN YOUR NUMBER, AND I'M GOING TO GIVE TIFFANY YOUR NUMBER, OKAY?

LISTEN, WE ALL HAVE TO HAVE THE SAME F--ING STORY HERE."

I THINK THAT'S A PRETTY STRONG CONFESSION.

YOU THINK BY REMOVING THE
"F --," THE JURY IS GOING TO
SOMEHOW THINK LESS OF IT?
>> YES, AND HERE IS WHY:
NUMBER ONE, I HAVE AN OBLIGATION
TO REPRESENT MY CLIENT --
>> WE DON'T, WE'RE NOT TRYING TO
SHOOT THE MESSENGER, BUT YOU'RE
GOING TO HAVE TO HAVE THESE
QUESTIONS AS PART OF THIS CASE.
>> AND, YES, YOUR HONOR, AND I
APPRECIATE THAT.
AND I TAKE THE COURT'S TIME
SERIOUSLY AS WELL, AND THAT'S
WHAT I'M TRYING TO CONVEY HERE.
INTERESTINGLY, THE JURY FOUND,
RECOMMENDED DEATH BY A VOTE OF
8-4 FOR MICHAEL JACKSON.
THEY RECOMMENDED DEATH FOR
TIFFANY COLE BY A VOTE OF 9-3
AND ALAN WADE BY 11-1.
SO MICHAEL JACKSON CAME WITHIN
JUST TWO VOTES OF GETTING LIFE.
UM, WHICH IS AMAZING CONSIDERING
THAT THESE VICTIMS WERE BURIED
ALIVE.
SO WHEN YOU VIEW IT FROM THAT
PERSPECTIVE, IT COULD WELL BE
THAT THE INFLAMMATORY,
DISRESPECTFUL WAY THAT MICHAEL
JACKSON TALKED TO HIS MOTHER
RESULTED IN HIM RECEIVING A
DEATH RECOMMENDATION --
>> I THINK THAT'S WHERE IT JUST,
YOU -- ON THIS PARTICULAR POINT,
AND I'M LOOKING AT THE WHOLE
COLLOQUY, SO I'M GATHERING
YOU'RE NOT SAYING THAT HE SHOULD
HAVE MOVED TO SUPPRESS IT UNDER
IT BEING VIOLATION OF SOUTH
CAROLINA LAW.
YOU'RE NOT ALLEGING THAT HERE?
YOU'RE JUST SAYING THERE SHOULD
HAVE BEEN A MOTION IN LIMINE TO
TAKE OUT ALL THE "F-INGS" IN
THE STATEMENT?
THAT'S WHAT THE ARGUMENT IS?
>> I'M MAKING BOTH ARGUMENTS,
JUSTICE PARIENTE.
MY STRONGEST ARGUMENT, I THINK,

IS THAT IT SHOULD HAVE BEEN
REDACTED BECAUSE IT WAS
INFLAMMATORY --

>> EVERY SINGLE LAST ONE OF
THEM?

I MEAN, OR THE ONE THAT, WHERE
THERE'S THE CONFESSION?

I MEAN, I GUESS IT'S JUST --
EVERY PLACE WHERE THERE WOULD BE
THAT WORD IT COMES OUT?

AND I DON'T KNOW THAT WE HAVE
SOME KIND OF RULE THAT SAYS
BECAUSE YOU USE HARSH LANGUAGE
THAT THAT'S THE TYPE OF
PREJUDICE WHEN YOU'RE ACTUALLY
SAYING IT THAT REQUIRES THAT --
YOU'RE ASSUMING THAT THE JUDGE
WOULD FIND A PREJUDICE, THAT WAY
THE PROBATIVE VALUE OF IT,
RIGHT?

YOU HAVE TO MAKE THE BALANCING
TEST ON THAT ONE, RIGHT?

>> YES.

YES, UNDER 90.403.

>> AND WOULD YOU SAY THAT EVERY
PLACE THAT IT WAS USED THERE
SHOULD HAVE JUST BEEN AN
EXPLETIVE DELETED OR --

>> EXACTLY.

>> AND WHAT DO YOU THINK THE
JURY WAS GOING TO THINK WAS THAT
SPACE?

[LAUGHTER]

>> WELL --

>> I MEAN, IF YOU READ A
STATEMENT LIKE THAT, YOU TAKE
OUT ALL OF THOSE WORDS, THE JURY
IS GOING TO BE THINKING HE HAS
SAID A BAD WORD.

AND THEY'RE GOING TO PUT THEIR
OWN BAD WORD IN THERE.

I REALLY AM HAVING A HARD TIME
WITH THIS ISSUE.

>> AND THE BEST WAY I CAN ANSWER
THAT, JUSTICE QUINCE, IS AS
FOLLOWS: SURE, THEY MIGHT HAVE
FILLED IN THE BLANKS, BUT THAT'S
NOT -- I THINK THE JURY WILL
RECOGNIZE THAT THIS YOUNG MAN
HAD BASICALLY BEEN CAUGHT IN A

MURDER, AND HE WAS SCARED, AND HE WAS PANICKING.

AND IT'S, IF THERE'D BEEN A FEW CUSS WORDS, EVEN A SON SPEAKING TO HIS MOTHER, THAT'S FORGIVABLE.

BUT THIS MACHINE GUN BARRAGE OF PROFANITY, IT IS JUST OFFENSIVE TO THE RESPECTFUL, POLITE WAY OF FAMILY MEMBERS RELATING TO EACH OTHER IN THIS PART OF THE COUNTRY.

AND SO, YES, I --

>> THIS WAS NOT A RESPECTFUL, POLITE YOUNG MAN INVOLVED IN BURYING TWO PEOPLE ALIVE.

AND SO, YOU KNOW, I JUST DON'T SEE HOW WE COULD EVER FIND THAT THIS WAS INEFFECTIVE ASSISTANCE OF COUNSEL UNDER THE CIRCUMSTANCES OF THIS CASE.

>> AND, AND THIS IS WHY I HAVE MULTIPLE JUSTICES HERE DECIDING THIS.

I RESPECT THE COURT'S --

>> IS THAT YOUR BEST, IS THIS YOUR BEST POINT?

>> IT -- YES, IT REALLY IS, IN THIS APPEAL.

AND I THINK IT'S A REAL POINT. THIS COURT HAS COME UP WITH THE FOSTER CASE, THE BROOKS CASE POINTING OUT THAT, CERTAINLY, WITH REGARD TO CLOSING ARGUMENTS IN JURY CASES THINGS THAT ARE INFLAMMATORY ARE NOT ALLOWED.

>> WELL, YOU SAID THIS WAS IN THE GUILT PHASE, BUT YOU'RE NOT ATTACKING THE GUILT.

SO DID THE PROSECUTOR USE THIS STATEMENT AND SAY THAT, TO RIDICULE THE DEFENDANT THAT HE WAS, IF HE TRIED TO ARGUE HE HAD A RELATIONSHIP WITH HIS MOTHER? DID THEY USE IT IN THE PENALTY PHASE IN ANY WAY?

>> NO, NO.

>> SO THEN IT'S REALLY SPECULATIVE IF SOMEHOW WHEN THE JURY -- I MEAN, WHEN I READ

THIS, MY MAIN THING AS I WAS
LOOKING AT IT WAS, GOD, WHAT
KIND OF GRANDMOTHER IS THIS THAT
IT SORT OF LOOKS LIKE SHE'S
COMMISERATING WITH HIM.

THEY MUST HAVE A PRETTY GOOD
RELATIONSHIP.

I WASN'T EVEN FOCUSING ON THE
WORDS.

SO HOW DO WE -- WHY DO YOU KNOW
THAT THOSE, THAT THAT WAS GOING
TO SO PREJUDICE THE JURY THAT
THEY WERE NOT GOING TO BE ABLE
TO DECIDE THE AGGRAVATING AND
MITIGATING CIRCUMSTANCES WITHOUT
THIS COLLOQUY THERE?

>> WELL --

>> IN THE GUILT PHASE?

>> THE BEST I CAN ANSWER THAT IS
GIVEN THAT THERE WAS NO
MITIGATION PRESENTED, AS A JUROR
I WOULD BE -- AND AS LAWYERS WE
HAVE TO TRY TO PUT OURSELVES IN
THE PLACE OF JURORS AND TRY TO
IMAGINE WHAT THEY WOULD THINK.
AND --

>> SO YOU THINK THE RISK IS, AND
THIS IS WHAT, AGAIN, YOU MAKE
THE ARGUMENT THAT THE RISK WAS
THE JURY VOTED FOR DEATH BECAUSE
THEY SAW HIM NOT AS SOMEBODY
THAT WAS THE MASTERMIND OF
HAVING BURIED TWO ELDERLY PEOPLE
ALIVE, BUT BECAUSE HE WAS
DISRESPECTFUL TO HIS MOTHER OR
GRANDMOTHER?

I MEAN, DO YOU REALLY -- EVEN
SAYING IT, DO YOU REALIZE THAT
THERE IS A, SOMETHING ABOUT THAT
THAT JUST DOESN'T RING TRUE AS
FAR AS THE THEORY IN TRYING TO
COMPARE IT WITH CLOSING
ARGUMENTS LIKE BROOKS AND GORE
AND ALL THOSE WHERE THE
PROSECUTOR IS ABUSING THE SYSTEM
BY MAKING OUTRAGEOUS COMMENTS?

>> I SEE WHAT YOU'RE SAYING,
JUSTICE PARIENTE.

I CANNOT IMAGINE HOW MICHAEL
JACKSON, GIVEN THE GRUESOME

CIRCUMSTANCES OF THESE MURDERS,
MANAGED TO GET EVEN HIS --
EXCUSE ME, THE FOUR JUROR LIFE
VOTES.

BUT IT HAPPENED.

AND NOW I HAVE TO LOOK AT THE
CASE AND SAY WHAT MIGHT HAVE
TILTED THE SCALE --

>> WELL, HE WASN'T PRESENT AT
THE SCENE, RIGHT?

HE DID NOT, LIKE WADE, HE DIDN'T
PHYSICALLY BURY --

>> THERE'S CONFLICTING EVIDENCE
ABOUT THAT, YOUR HONOR.

>> OKAY.

SO THE JURY COULD HAVE BEEN
THINKING, WELL, WE KNOW HE
WANTED TO TAKE THESE PEOPLE, BUT
MAYBE HE DIDN'T REALLY WANT THEM
BURIED ALIVE.

I MEAN, THAT'S THE MOST LOGICAL
REASON THAT THEY MIGHT HAVE
VOTED, YOU KNOW, FOUR PEOPLE
VOTED FOR LIFE.

BUT, I MEAN, THAT'S -- BUT I
DON'T THINK -- BUT SAYING IF
KNOWING, WELL, HE WAS MORE
RESPECTFUL, THEN MORE PEOPLE
WOULD HAVE VOTED FOR LIFE SEEMS
TO BE SOMEWHAT A STRETCH.

>> WELL, IF YOU CONSIDER THE
FACT THAT TIFFANY COLE IS THE
PERSON THAT CAME UP WITH THE
JOB.

SHE KNEW THE VICTIMS, THE
SUMNERS, IN SOUTH CAROLINA.
AND SHE WAS THE PERSON THAT
LEARNED THEY'D SOLD THE HOUSE
AND HAD \$90,000 CASH.

SO SHE WAS THE IDEA PERSON.
AND THEN THE YOUNGEST RECRUIT --

>> WHAT WAS INVOLVED IN
TIFFANY'S CASE?

>> I'M SORRY, YOUR HONOR?

>> HOW DID THE JURY VOTE IN
TIFFANY'S CASE?

WAS IT UNANIMOUS?

>> 9-3.

>> 9-3?

>> YES.

>> SO SHE GOT THREE VOTES, AND SHE WAS --
>> NO, NO, I'M SORRY.
SHE WAS -- YES, 9-3.
>> SHE GOT THREE VOTES, AND YET SHE WAS, AS YOU SAID, MAYBE THE RINGLEADER.
>> YES.
SHE APPARENTLY WAS THE IDEA PERSON.
AND THEN NIXON, THE YOUNGEST PERSON THAT --
>> -- WAS HER BOYFRIEND.
>> THERE'S -- THIS COURT'S --
[INAUDIBLE]
MENTIONED THEY HAD A RELATIONSHIP.
I DIDN'T EXPLORE THAT.
>> NIXON WAS HER BOYFRIEND.
>> NIXON WAS THE YOUNGEST PERSON.
>> JACKSON, THIS IS --
>> I'M SORRY, JACKSON.
>> -- WAS COLE'S BOYFRIEND.
>> YES.
>> AND JACKSON RECRUITED THESE OTHER TWO MINORS TO PARTICIPATE. DID HE NOT?
>> NO, SIR.
>> ISN'T THAT THE EVIDENCE?
>> NO, SIR.
ALAN WADE RECRUITED YOUNG NIXON. ALAN WADE DID.
>> WELL, HE RECRUITED THE OTHER ONE.
ONE OF THEM HE RECRUITED.
AND ISN'T THE EVIDENCE THE ONLY ONE THAT STAYED OUT BY THE STREET WAS THE LADY?
ALL THE MALES WERE OVER THERE BURYING THESE FOLKS ALIVE.
ISN'T THAT THE EVIDENCE?
>> I KNOW THERE WAS EVIDENCE ON THAT POINT THAT SHE WAITED UP WITH THE OTHER CAR WHILE THE REMAINING --
>> WHILE THE MEN WENT DOWN AND THEN BURIED -- YEAH.
AND HE DUG THE HOLE THE NIGHT BEFORE.

JACKSON.

>> I BELIEVE THAT'S TRUE.

>> THAT'S WHAT THE EVIDENCE SAYS.

>> BUT IT ALSO WAS, NIXON ALSO WAS THE PERSON THAT WENT OUT AND STOLE THE SHOVELS USED TO DIG THE GRAVE.

SO IT LOOKS TO ME LIKE THE JURORS MAY HAVE TAKEN SOME PAUSE AND MAY HAVE BEEN OFFENDED BY THE OTHER CO-CONSPIRATORS' EFFORTS TO BLAME IT ALL ON MICHAEL JACKSON.

WHO DOES HAVE RATHER YOUTHFUL --

>> WELL, IT COULD BE ANOTHER EXPLANATION TO THE OTHER FOUR VOTES AS OPPOSED TO HE'S NOT A POLITE PERSON.

I DON'T SEE HOW THAT EVEN PLAYS INTO YOUR IDEA THAT THERE WAS INEFFECTIVE ASSISTANCE.

BECAUSE THE ENTIRE CONVERSATION CAME IN VERSUS A REDACTED PORTION.

>> WELL, AS A LAWYER WORKING WITH A CLIENT SCENARIO I CAN IMAGINE, YOUR HONOR, IS THIS: NUMBER ONE, I CANNOT IMAGINE ANY COMPETENT LAWYER TELLING MICHAEL JACKSON ANYTHING OTHER THAN YOU'RE GOING TO LOSE THIS TRIAL. YOU'RE GOING TO LOSE.

THE EVIDENCE AGAINST HIM WAS OVERWHELMING.

BUT THEN ON TOP OF THAT TO GO TO TRIAL AND THEN HAVE THIS HORRIBLE, DISRESPECTFUL CONVERSATION WITH HIS MOTHER WHERE EVERY OTHER WORD IS "F," IT CERTAINLY IS WEIGHT ON THE SCALE IN FAVOR OF THE DEATH PENALTY.

ANY CHANCE --

>> BUT, AGAIN, I GO BACK TO THE PERCEPTIVE POINT THAT WAS MADE EARLIER IF IT'S GOING TO BE REDACTED, THEY'RE GOING TO -- THE JURY IS GOING TO THINK THE SAME THING, AND YOU CAN'T TAKE

THE POSITION THAT IT SOMEHOW
WOULD BE JUST TRANSFORMED INTO A
FORM THAT IS WITHOUT THE
REDACTIONS BEING INDICATED.
THAT WOULDN'T BE FEASIBLE, WOULD
IT?

>> I THINK THAT IT SHOULD HAVE
BEEN DONE FOR THIS REASON, IT'S
ONE --

>> YOU MEAN IT SHOULD HAVE BEEN
JUST BEEN SANITIZED WITHOUT THE
REDACTIONS BEING SHOWN?
IS THAT WHAT YOU'RE SAYING?

>> NO.

I THINK JUSTICE QUINCE IS RIGHT.
I THINK YOU'D HAVE TO JUST LEAVE
THE WORD OUT, BECAUSE YOU CAN'T
REALLY ALTER THE MEANING --

>> THERE'D BE A BLANK.

>> A BLANK OR A BLACK LINE --

>> UNDERLINED SPACE INDICATING
THAT A WORD HAD BEEN REDACTED.

>> YES, YOUR HONOR.

A BEEP LIKE ON THE OLD
TELEVISION SHOWS.

BECAUSE IT'S ONE THING TO READ
AND LOOK INTO SOMETHING AND
THINK TO YOURSELF I KNOW WHAT HE
WAS SAYING.

BUT IT'S ANOTHER THING TO JUST
SAY THAT WORD OVER AND OVER AND
OVER AGAIN.

>> I'M NOT SURE IF YOU GOT A
TRANSCRIPT THAT HAS GOT ONE
THING AFTER ANOTHER REDACTED, I
THINK THE INFERENCE IS GOING TO
BE HE IS POURING OUT A STREAM OF
PROFANITY, AS HE WAS.

I DON'T KNOW HOW ANY RATIONAL
JUROR WOULD THINK ANYTHING OTHER
THAN THAT.

>> IT JUST IS NOT SO IN YOUR
FACE, YOUR HONOR.

I MEAN, FOR EXAMPLE, I'M
UNCOMFORTABLE SAYING THESE WORDS
IN THIS COURT.

I REFER TO THEM AS THE "F-WORD"
OR THE "MF-WORD."

IT'S JUST, IT'S JUST OFFENSIVE
TO OUR CONSERVATIVE SOUTHERN

MENTALITY AND OUR VALUES TO HAVE
THIS SPEWING OF VULGAR
PROFANITIES IN YOUR FACE.
THAT'S THE ARGUMENT.

>> BUT THAT'S WHAT HE SAID.

I MEAN, THE SO-CALLED
SENSIBILITIES --

[INAUDIBLE]

I MEAN, PRESENTING HIM IN LIGHT
OF WHO HE REALLY IS IF WE WERE
TO REDACT THEM, WOULD WE NOT?

>> JUSTICE PERRY, I DON'T REALLY
THINK THAT WAS WHO HE WAS.

>> OH, YOU DON'T --

>> I THINK HE WAS A YOUNG MAN --

>> DOESN'T HE KNOW HE WAS BEING
RECORDED?

>> YES.

HE RECEIVED AN ANNOUNCEMENT THAT
SAID HE WAS BEING RECORDED.

THERE'S NO DOUBT ABOUT THAT.

>> WOULDN'T THAT GIVE YOU PAUSE,
WELL, I'M BEING RECORDED, I'M
GOING TO GO AHEAD AND SPEW ON
OUT?

WE SHOULD REDACT HIM TO SHOW
THAT YOU'RE A BETTER PERSON
THAN --

>> WELL, MICHAEL JACKSON IS NOT
A PERSON WITH GOOD JUDGMENT.

AND AS A LAWYER, YOU KNOW, WE'VE
GOT TO DO OUR BEST TO --

>> I UNDERSTAND.

I UNDERSTAND.

I UNDERSTAND YOU DO.

>> THANK YOU FOR YOUR ARGUMENTS.
YOUR TIME HAS EXPIRED.

>> THANK YOU.

>> GOOD MORNING.

MEREDITH CHARBULA, ASSISTANT
ATTORNEY GENERAL FOR THE
APPELLEE IN THIS CASE.

I WISH I WAS TALLER, BECAUSE I
THINK IT'S ILLUSTRATING, GOOD
ILLUSTRATION, CURSING/BURYING
ALIVE.

I THINK WHEN THE ARGUMENT IS
SIMPLY IT IS ABSURD TO BELIEVE
THAT THE JURY WOULD HAVE VOTED
FOR LIFE IF THE COUNSEL WOULD

HAVE MOVED TO REDACT, AND IT WOULD HAVE BEEN GRANTED. BUT I BELIEVE THAT YOU CAN'T TELL THE DIFFERENCE, BECAUSE ANY REASONABLE COUNSEL WOULD HAVE GROUNDS TO BELIEVE THAT SUCH A MOTION WOULD BE DENIED.

BECAUSE IF YOU LOOK AT MICHAEL JACKSON, AT THE TRANSCRIPT OF THE RECORDING, HIS VEHEMENCE OF HIS SHOCK AND DISMAY AT, UM, THE FACT THAT BRUCE TOOK THEM TO THIS "F-ING HOLE" IS RELEVANT TO HIS CONSCIOUSNESS OF GUILT AND HIS GUILT OF FIRST-DEGREE MURDER.

SO ANY REASONABLE, YOU KNOW, THAT'S THE STANDARD.

YOU HAVE TO LOOK WOULD ANY REASONABLE COUNSEL HAVE NOT MADE IT BECAUSE THEY BELIEVED IT WAS, WOULD BE DENIED?

YES.

CERTAINLY, ANY REASONABLE COUNSEL WOULD BELIEVE IT WOULD BE DENIED BECAUSE IT WAS RELEVANT TO HIS CONSCIOUSNESS OF GUILT.

AS AN ASIDE, OF COURSE, THE TRIAL COURT DID NOT RULE ON THIS ISSUE, AND THIS ISSUE'S NOT PRESERVED FOR APPEAL BECAUSE COUNSEL NEVER ASKED FOR A RULING ON THIS CLAIM.

UNFORTUNATELY, IT WAS OVERLOOKED IN THE JUDGE -- IN THE COLLATERAL COURT'S RULING.

BUT COLLATERAL COUNSEL NEVER ASKED FOR A RULING ON THIS, SO IT'S NOT PRESERVED FOR APPEAL. BUT EVEN IF YOU OVERLOOK THE PROCEDURAL BAR ON THE MERIT, IT'S CLEARLY WITHOUT MERIT SIMPLY BECAUSE, NUMBER ONE, HIS ENTIRE CONVERSATION WAS RELEVANT TO HIS CONSCIOUSNESS OF GUILT AND, TWO, THERE IS JUST NO REASONABLE POSSIBILITY THAT BUT FOR THIS STATEMENT, "BRUCE TOOK HIM TO THE, BEEP," AS COUNSEL

SAID, "HOLE."

IF "BEEPS" WOULD HAVE BEEN
SUBSTITUTED FOR "Fs," THERE'S
NO REASONABLE POSSIBILITY OF AN
OUTCOME SUFFICIENT TO UNDERMINE
THE CONFIDENCE OF THIS COURT IN
THE SENTENCES TO DEATH.

IF THIS COURT HAS NO OTHER
QUESTIONS, THEN WE'D ASK THIS
COURT TO AFFIRM THE
POSTCONVICTION COURT'S ORDER
DENYING POSTCONVICTION RELIEF
AND DENYING HABEAS CORPUS.
>> THANK YOU FOR YOUR ARGUMENTS.