

# SUPREME COURT OF LOUISIANA

*No. 94-KA-0025*  
STATE OF LOUISIANA

Versus

LAWSON EUGENE STRICKLAND

LEMMON, J., Joining the opinion and assigning additional reasons

Ineffective assistance of counsel is a perplexing problem in the penalty phase of a capital case. This court long ago suggested that trial judges appoint two attorneys in a capital case in order to insure some preparation and presentation of mitigating evidence in the penalty phase and of effective argument advocating the jury's choice to spare the client's life and emphasizing the awesome decisional responsibility of the jury. That procedure is generally followed at the present time.

When there is significant variation from the usual procedure in a penalty phase, such as defense counsel's waiving closing argument, there is little the prosecutor can do. It is up to the trial judge, in my view, to inquire, outside the presence of the jury, whether there is a strategic objective for the variation and to make a record of this strategic choice for later review, not of the wisdom of the strategy, but of its existence. The hearing ordered by this court substitutes for this lack of a contemporaneous record.