

GINSBURG, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 09–587

KELLY HARRINGTON, WARDEN, PETITIONER *v.*
JOSHUA RICHTER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[January 19, 2011]

JUSTICE GINSBURG, concurring in the judgment.

In failing even to consult blood experts in preparation for the murder trial, Richter’s counsel, I agree with the Court of Appeals, “was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland v. Washington*, 466 U. S. 668, 687 (1984). The strong force of the prosecution’s case, however, was not significantly reduced by the affidavits offered in support of Richter’s habeas petition. I would therefore not rank counsel’s lapse “so serious as to deprive [Richter] of a fair trial, a trial whose result is reliable.” *Ibid.* For that reason, I concur in the Court’s judgment.