

The Burger Court Opinion Writing Database

Caldwell v. Mississippi

472 U.S. 320 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 30, 1985

Re: No. 83-6607 - Caldwell v. Mississippi

Dear Bill:

I join your May 23 dissent.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written over the typed word 'Regards,'.

Justice Rehnquist

Copies to the Conference

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May 30 1985

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 2, 1984

No. 83-6607

Caldwell v. Mississippi

Dear Thurgood,

Please join me in your dissent from
denial of cert in the above.

Sincerely,



Justice Marshall

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200

M

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 28, 1985

No. 83-6607

Caldwell v. Mississippi

Dear Chief,

Thurgood has agreed to try his hand
at the opinion for the Court in the
above.

Sincerely,

Bell

The Chief Justice

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 26, 1985

No. 83-6607

Caldwell v. Mississippi

Dear Thurgood,

I agree.

Sincerely,

Bill

Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 22, 1985

83-6607 - Caldwell v. Mississippi

Dear Thurgood,

As you may have surmised, I await the
dissent in this case.

Sincerely,



Justice Marshall

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.84 MAR 53 6 57 11

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 28, 1985

83-6607 - Caldwell v. Mississippi

Dear Bill,

Please add my name to your dissent.

Sincerely yours,



Justice Rehnquist
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P.7

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: SEP 28 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

BOBBY CALDWELL v. MISSISSIPPI

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSISSIPPI

No. 83-6607. Decided October —, 1984

JUSTICE MARSHALL dissenting from denial of certiorari.

This case presents an important issue of federal death penalty law: Whether a prosecutor and trial judge may constitutionally minimize the jury's feeling of moral responsibility for imposing the death penalty by, to use JUSTICE STEVENS' words, "implying that the verdict was merely a threshold determination that would be corrected by the appellate courts if it were not the proper sentence for the offender." *Maggio v. Williams*, — U. S. —, —, 104 S. Ct. 311, 315 (1983) (STEVENS, J., concurring in judgment).¹ Because the state courts' acceptance of this practice contradicts this Court's basic presumptions concerning a capital sentencer's consideration of its task, and because the issue is properly presented in this case, I would grant the petition to review this death sentence.²

¹The issue was previously noted in JUSTICE STEVENS' opinion concurring in the judgment in *Maggio v. Williams*, — U. S. —, —, 104 S. Ct. 311, 315 (1983). But review was there denied, in part, because the issue had not been preserved. There had been no contemporaneous objection to the prosecutor's comments. In this case, Caldwell's counsel did object and the objection was denied by the trial court. The Mississippi Supreme Court reviewed the issue and upheld the trial court's decision on the merits.

²I continue to adhere to my view that the death penalty is in all circumstances cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments. See *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting); *Furman v. Georgia*, 408 U. S. 238, 314 (1972) (MARSHALL, J., concurring). The issue in this case, however, is such that I would grant review of the sentence even if I accepted the prevailing view that the death penalty may be constitutionally imposed under certain circumstances.

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To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

BOBBY CALDWELL *v.* MISSISSIPPI

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSISSIPPI

No. 83-6607. Decided October —, 1984

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,
dissenting from denial of certiorari.

This case presents an important issue of federal death penalty law: Whether a prosecutor and trial judge may constitutionally minimize the jury's feeling of moral responsibility for imposing the death penalty by, to use JUSTICE STEVENS' words, "implying that the verdict was merely a threshold determination that would be corrected by the appellate courts if it were not the proper sentence for the offender." *Maggio v. Williams*, — U. S. —, —, 104 S. Ct. 311, 315 (1983) (STEVENS, J., concurring in judgment).¹ Because the state courts' acceptance of this practice contradicts this Court's basic presumptions concerning a capital sentencer's consideration of its task, and because the issue is properly presented in this case, I would grant the petition to review this death sentence.²

¹The issue was previously noted in JUSTICE STEVENS' opinion concurring in the judgment in *Maggio v. Williams*, — U. S. —, —, 104 S. Ct. 311, 315 (1983). But review was there denied, in part, because the issue had not been preserved. There had been no contemporaneous objection to the prosecutor's comments. In this case, Caldwell's counsel did object and the objection was denied by the trial court. The Mississippi Supreme Court reviewed the issue and upheld the trial court's decision on the merits.

²I continue to adhere to my view that the death penalty is in all circumstances cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments. See *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting); *Furman v. Georgia*, 408 U. S. 238, 314 (1972) (MARSHALL, J., concurring). The issue in this case, however, is such that I would grant review of the sentence even if I accepted the prevailing view

Pp. 1, 5, 10

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6607

BOBBY CALDWELL, PETITIONER v. MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MISSISSIPPI

[April —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the issue whether a capital sentence is valid when the sentencing jury is led to believe that responsibility for determining the appropriateness of a death sentence rests not with the jury but with the appellate court which later reviews the case. In this case, a prosecutor urged the jury not to view itself as determining whether the defendant would die, because a death sentence would be reviewed for correctness by the State Supreme Court. We granted certiorari, — U. S. — (1984), to consider petitioner's contention that the prosecutor's argument rendered the capital sentencing proceeding inconsistent with the Eighth Amendment's heightened "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (plurality opinion). Agreeing with the contention, we vacate the sentence.¹

¹Petitioner also raises a challenge to his conviction, arguing that there was constitutional infirmity in the trial court's refusal to appoint various experts and investigators to assist him. Mississippi law provides a mechanism for state appointment of expert assistance, and in this case the State did provide expert psychiatric assistance to Caldwell state expense. But petitioner also requested appointment of a criminal investigator, a fingerprint expert, and a ballistics expert, and those requests were denied. The State Supreme Court affirmed the denials because the requests were accompanied by no showing as to their reasonableness. For example, the defendant's request for a ballistics expert included little more than "the

(i)

(at)

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STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: _____

Recirculated: APR 29 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6607

BOBBY CALDWELL, PETITIONER *v.* MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MISSISSIPPI

[April —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the issue whether a capital sentence is valid when the sentencing jury is led to believe that responsibility for determining the appropriateness of a death sentence rests not with the jury but with the appellate court which later reviews the case. In this case, a prosecutor urged the jury not to view itself as determining whether the defendant would die, because a death sentence would be reviewed for correctness by the State Supreme Court. We granted certiorari, — U. S. — (1984), to consider petitioner's contention that the prosecutor's argument rendered the capital sentencing proceeding inconsistent with the Eighth Amendment's heightened "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (plurality opinion). Agreeing with the contention, we vacate the sentence.¹

¹ Petitioner also raises a challenge to his conviction, arguing that there was constitutional infirmity in the trial court's refusal to appoint various experts and investigators to assist him. Mississippi law provides a mechanism for state appointment of expert assistance, and in this case the State did provide expert psychiatric assistance to Caldwell at state expense. But petitioner also requested appointment of a criminal investigator, a fingerprint expert, and a ballistics expert, and those requests were denied. The State Supreme Court affirmed the denials because the requests were accompanied by no showing as to their reasonableness. For example, the defendant's request for a ballistics expert included little more than "the

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STYLISTIC CHANGES THROUGHOUT f
PP. 11-12

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6607

BOBBY CALDWELL, PETITIONER v. MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MISSISSIPPI

[May —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the issue whether a capital sentence is valid when the sentencing jury is led to believe that responsibility for determining the appropriateness of a death sentence rests not with the jury but with the appellate court which later reviews the case. In this case, a prosecutor urged the jury not to view itself as determining whether the defendant would die, because a death sentence would be reviewed for correctness by the State Supreme Court. We granted certiorari, 469 U. S. — (1984), to consider petitioner's contention that the prosecutor's argument rendered the capital sentencing proceeding inconsistent with the Eighth Amendment's heightened "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (plurality opinion). Agreeing with the contention, we vacate the sentence.¹

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PP. 18-19

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: _____

Recirculated: MAY 31 1985

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6607

BOBBY CALDWELL, PETITIONER v. MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MISSISSIPPI

[June —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the issue whether a capital sentence is valid when the sentencing jury is led to believe that responsibility for determining the appropriateness of a death sentence rests not with the jury but with the appellate court which later reviews the case. In this case, a prosecutor urged the jury not to view itself as determining whether the defendant would die, because a death sentence would be reviewed for correctness by the State Supreme Court. We granted certiorari, 469 U. S. — (1984), to consider petitioner's contention that the prosecutor's argument rendered the capital sentencing proceeding inconsistent with the Eighth Amendment's heightened "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (plurality opinion). Agreeing with the contention, we vacate the sentence.¹

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PP. 1, 19

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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SUPREME COURT OF THE UNITED STATES

No. 83-6607

BOBBY CALDWELL, PETITIONER *v.* MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MISSISSIPPI

[June 11, 1985]

JUSTICE MARSHALL delivered the opinion of the Court, except as to Part IV-A.

This case presents the issue whether a capital sentence is valid when the sentencing jury is led to believe that responsibility for determining the appropriateness of a death sentence rests not with the jury but with the appellate court which later reviews the case. In this case, a prosecutor urged the jury not to view itself as determining whether the defendant would die, because a death sentence would be reviewed for correctness by the State Supreme Court. We granted certiorari, 469 U. S. — (1984), to consider petitioner's contention that the prosecutor's argument rendered the capital sentencing proceeding inconsistent with the Eighth Amendment's heightened "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (plurality opinion). Agreeing with the contention, we vacate the sentence.¹

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1985

MEMORANDUM TO THE CONFERENCE

Re: Cases held pending our disposition of Caldwell v. Mississippi, No. 83-6607.

(1) Booker v. Mississippi, No. 84-5092. (Rehearing Petition.)

The prosecutor's statement to Booker's capital sentencing jury is similar to that in Caldwell. (Indeed, the two cases may involve the same prosecutor; in both cases the prosecutor is an "Assistant District Attorney Williams" and the cases come from adjoining Mississippi counties.)

In this case the prosecutor argued:

"Your decision is not a hard decision as [Defense Counsel] would have you believe. You're not sentencing this man to die and his [sic] going to be taken out of here for public execution. [Defense Counsel] knows that. Yours is not the final say. He mentioned the prolific appeals that follow. That's true. He mentioned the last execution in this State--1968. So your job is not to kill a person. Your job is to prescribe punishment, whether it is ever administered or not." 449 So. 2d 219 (1984).

Petitioner challenged this argument on the same basis as did Caldwell--that it was an unconstitutional effort to diminish the jury's sense of responsibility for its sentence. The Mississippi Supreme Court rejected this claim on the same two bases that it relied on in Caldwell--procedural bar and invited error. First, the court found that the petitioner was procedurally barred from objecting to the prosecutor's argument because his counsel had failed to raise a contemporaneous objection; second, the court discussed the merits of the claim, finding that the prosecutor's argument, if error, was invited.

The court's discussion of "invited error" focused on the fact that petitioner's lawyer was the first to mention appellate review. He had argued that a death sentence could lead to "indefinite appeals" and that "the families of both these parties" should not be made to wait through such a long period of ordeal. In light of this argument, the Mississippi Supreme Court cited Caldwell as its authority for rejecting Booker's claim on



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Supreme Court of the United States
Washington, D. C. 20543

April 29, 1985

Re: No. 83-6607, Caldwell v. Mississippi

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 26, 1985

83-6607 Caldwell v. Mississippi

Dear Thurgood:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Lewis

Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

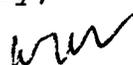
May 15, 1985

Re: 83-6607 - Caldwell v. Mississippi

Dear Thurgood:

I will circulate a dissent in this case, not merely
"in due course," but "shortly."

Sincerely,



Justice Marshall

cc: The Conference

84 WA 12 b1 SQ

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6607

BOBBY CALDWELL, PETITIONER v. MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MISSISSIPPI

[May —, 1985]

JUSTICE REHNQUIST, dissenting.

The Court holds that under the Eighth Amendment it is "constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for the appropriateness of the defendant's death rests elsewhere." *Ante*, at 7. Even if I were to agree with this proposition in the abstract, I do not believe that under the circumstances of this case it can properly be applied to justify the overturning of petitioner's death sentence.

Petitioner robbed a grocery and bait shop owned by a Mr. and Mrs. Faulkner. When Mrs. Faulkner screamed, petitioner shot her twice and fled with a bank bag taken from the counter. After a trial the jury found petitioner guilty of capital murder, and the case proceeded to the sentencing phase. At that point the prosecution sought to prove four aggravating factors under Mississippi law, including the facts that the offense was committed while petitioner was engaged in a robbery, and that petitioner had previously been convicted of four felonies involving the use of threat or violence to the person. With respect to the latter factor the prosecution introduced evidence that petitioner had been convicted of felonies four times since 1975—twice for armed robbery, once for attempted armed robbery, and one for aggravated assault. In mitigation petitioner introduced testimony from family and

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STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
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Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6607

BOBBY CALDWELL, PETITIONER v. MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MISSISSIPPI

[June —, 1985]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE WHITE join, dissenting.

The Court holds that under the Eighth Amendment it is "constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for the appropriateness of the defendant's death rests elsewhere." *Ante*, at 7. Even if I were to agree with this proposition in the abstract, I do not believe that under the circumstances of this case it can properly be applied to justify the overturning of petitioner's death sentence.

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CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Supreme Court of the United States
Washington, D. C. 20543

April 29, 1985

Re: 83-6607 - Caldwell v. Mississippi

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

Copies to the Conference

APR 30 1985

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

September 28, 1984

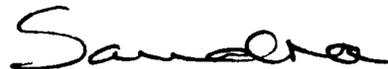
Re: 83-6607 Bobby Caldwell v. Mississippi

MEMORANDUM TO THE CONFERENCE

At Conference, I passed the voting on this petition for certiorari. Thurgood has now circulated an excellent dissent from denial of certiorari, pointing out some significant problems with the decision of the Mississippi Supreme Court. I agree with much of what Thurgood says, however, I believe the better course is to let this case go to federal habeas. The Mississippi Court did not really analyze the federal issues and it seems to me it is better to allow the lower federal courts an opportunity to deal with the issues first. They will have a handy blueprint by virtue of Thurgood's dissent.

My vote is to deny certiorari.

Sincerely,



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 4, 1985

No. 83-6607 Caldwell v. Mississippi

Dear Thurgood,

Please join me in all but Part IV A of your opinion and in the judgment. I will circulate something setting forth my view of the issues discussed in Part IV A.

Sincerely,

Sandra

Justice Marshall

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Wait for file

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6607

BOBBY CALDWELL, PETITIONER v. MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MISSISSIPPI

[June —, 1985]

JUSTICE O'CONNOR, concurring.

I join the judgment and the opinion of the Court, with the exception of Part IV A. I write separately to express my views about the Court's discussion of *California v. Ramos*, 463 U. S. 992 (1983), in Part IV A. I do not read *Ramos* to imply that the giving of *nonmisleading* and *accurate* information regarding the jury's role in the sentencing scheme is irrelevant to the sentencing decision.

The Court distinguishes the prosecutor's remarks regarding appellate review in this case from the Briggs instruction in *Ramos*, which informed the jury that the Governor could commute a life sentence without parole. The Court observes that the Briggs instruction in *Ramos* was "both accurate and relevant to a legitimate state penological interest—that interest being a concern for the future dangerousness of the defendant should he ever return to society." *Ante*, at 13. The statement here, the Court concludes, was neither accurate nor relevant. In my view, the prosecutor's remarks were impermissible because they were inaccurate and misleading in a manner that diminished the jury's sense of responsibility. I agree there can be no "valid state penological interest" in imparting inaccurate or misleading information that minimizes the importance of the jury's deliberations in a capital sentencing case. *Ante*, at 13.

The Court, however, seems generally to characterize information regarding appellate review as "wholly irrelevant to

Jun 5, 85

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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SUPREME COURT OF THE UNITED STATES

No. 83-6607

BOBBY CALDWELL, PETITIONER *v.* MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MISSISSIPPI

[June 11, 1985]

JUSTICE O'CONNOR, concurring in part and concurring in judgment.

I join the judgment and the opinion of the Court, with the exception of Part IV-A. I write separately to express my views about the Court's discussion of *California v. Ramos*, 463 U. S. 992 (1983), in Part IV-A. I do not read *Ramos* to imply that the giving of *nonmisleading* and *accurate* information regarding the jury's role in the sentencing scheme is irrelevant to the sentencing decision.

The Court distinguishes the prosecutor's remarks regarding appellate review in this case from the Briggs instruction in *Ramos*, which informed the jury that the Governor could commute a life sentence without parole. The Court observes that the Briggs instruction in *Ramos* was "both accurate and relevant to a legitimate state penological interest—that interest being a concern for the future dangerousness of the defendant should he ever return to society." *Ante*, at 13. The statement here, the Court concludes, was neither accurate nor relevant. In my view, the prosecutor's remarks were impermissible because they were inaccurate and misleading in a manner that diminished the jury's sense of responsibility. I agree there can be no "valid state penological interest" in imparting inaccurate or misleading information that minimizes the importance of the jury's deliberations in a capital sentencing case. *Ante*, at 13.

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