SUPREME COURT OF THE UNITED STATES

No. 91–1160

A. J. ARAVE, WARDEN, PETITIONER *v.* THOMAS E. CREECH

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

[March 30, 1993]

JUSTICE O'CONNOR delivered the opinion of the Court.

In 1981 Thomas Eugene Creech beat and kicked to death a fellow inmate at the Idaho State Penitentiary. He pleaded guilty to first-degree murder and was sentenced to death. The sentence was based in part on the statutory aggravating circumstance that "[b]y the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life." Idaho Code §19–2515(g)(6) (1987). The sole question we must decide is whether the "utter disregard" circumstance, as interpreted by the Idaho Supreme Court, adequately channels sentencing discretion as required by the Eighth and Fourteenth Amendments.

The facts underlying this case could not be more chilling. Thomas Creech has admitted to killing or participating in the killing of at least 26 people. The bodies of 11 of his victims—who were shot, stabbed, beaten, or strangled to death—have been recovered in seven States. Creech has said repeatedly that, unless he is completely isolated from humanity, he likely will continue killing. And he has identified by name three people outside prison walls he intends to kill if given the opportunity.

Creech's most recent victim was David Dale Jensen, a fellow inmate in the maximum security unit of the Idaho State Penitentiary. When he killed Jensen, Creech was already serving life sentences for other first-degree murders. Jensen, about seven years Creech's junior, was a nonviolent car thief. He was also physically handicapped. Part of Jensen's brain had been removed prior to his incarceration, and he had a plastic plate in his skull.

The circumstances surrounding Jensen's death remain unclear, primarily because Creech has given conflicting accounts of them. In one version, Creech killed Jensen in self defense. In another—the version that Creech gave at his sentencing hearing—other inmates offered to pay Creech or help him escape if he killed Jensen. Creech, through an intermediary, provided Jensen with makeshift weapons and then arranged for Jensen to attack him, in order to create an excuse for the killing. Whichever of these accounts (if either) is true, the Idaho Supreme Court found that the record supported the following facts:

> "Jensen approached Creech and swung a weapon at him which consisted of a sock containing batteries. Creech took the weapon away from Jensen, who returned to his cell but emerged with a toothbrush to which had been taped a razor blade. When the two men again met, Jensen made some movement toward Creech, who then struck Jensen between the eyes with the battery laden sock, knocking Jensen to the floor. The fight continued, according to Creech's version, with Jensen swinging the razor blade at Creech and Creech hitting Jensen with the battery filled sock. The plate imbedded in Jensen's skull shattered, and blood from Jensen's skull was splashed on the floor and walls. Finally, the sock broke and the batteries fell out, and by that time Jensen was helpless. Creech then commenced kicking Jensen about the throat and head.

> Sometime later a guard noticed blood, and Jensen was taken to the hospital, where he died the same day." *State* v. *Creech*, 105 Idaho 362, 364, 670 P. 2d 463, 465 (1983), cert. denied, 465 U. S. 1051 (1984).

Creech pleaded guilty to first-degree murder. The trial judge held a sentencing hearing in accordance with Idaho Code §19–2515(d) (1987). After the hearing, the judge issued written findings in the format prescribed by Rule 33.1 of the Idaho Criminal Rules. Under the heading "Facts and Argument Found in Mitigation," he listed that Creech "did not instigate the fight with the victim, but the victim, without provocation, attacked him. [Creech] was initially justified in protecting himself." App. 32. Under the heading "Facts and Argumen[t] Found in Aggravation," the judge stated:

> "[T]he victim, once the attack commenced, was under the complete domination and control of the defendant. The murder itself was extremely gruesome evidencing an excessive violent rage. With the victim's attack as an excuse, the . . . murder then took on many aspects of an assassination. These violent actions . . . went well beyond self-defense.
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> . . . . .
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> ". . . The murder, once commenced, appears to have been an intentional, calculated act." *Id.*, at 32–33.

The judge then found beyond a reasonable doubt five statutory aggravating circumstances, including that Creech, "[b]y the murder, or circumstances surrounding its commission, . . . exhibited utter disregard for human life." *Id.*, at 34. He observed in this context that "[a]fter the victim was helpless [Creech] killed him." *Ibid.* Next, the judge concluded that the mitigating circumstances did not outweigh the aggravating circumstances. Reiterating that Creech "intentionally destroyed another human being

at a time when he was completely helpless," *ibid.*, the judge sentenced Creech to death.

After temporarily remanding for the trial judge to impose sentence in open court in Creech's presence, the Idaho Supreme Court affirmed. The court rejected Creech's argument that the "utter disregard" circumstance is unconstitutionally vague, reaffirming the limiting construction it had placed on the statutory language in *State* v. *Osborn*, 102 Idaho 405, 631 P. 2d 187 (1981):

> "`A . . . limiting construction must be placed upon the aggravating circumstances in I.C. §19–2515[g](6), that "[b]y the murder, or the circumstances surrounding its commission, the defendant exhibited utter disregard for human life." To properly define this circumstance, it is important to note the other aggravating circumstances with which this provision overlaps. The second aggravating circumstance, I.C. §19–2515[g](2), that the defendant committed another murder at the time this murder was committed, obviously could show an utter disregard for human life, as could the third aggravating circumstance, I.C. §19–2515[g](3), that the defendant knowingly created a great risk of death to many persons. The same can be said for the fourth aggravating circumstance, I.C. §19–2515[g](4), that the murder was committed for remuneration. Since we will not presume that the legislative intent was to duplicate any already enumerated circumstance, thus making [the "utter disregard" circumstance] mere surplusage, we hold that the phrase "utter disregard" must be viewed in reference to acts other than those set forth in I.C. §§19–2515[g](2), (3), and (4). We conclude instead that the phrase is meant to be reflective of acts or circumstances surrounding the crime which exhibit the highest, the utmost, callous disregard for human life, i.e., the cold-

> blooded, pitiless slayer.'" *Creech*, *supra*, at 370, 670 P. 2d, at 471 (quoting *Osborn*, *supra*, at 418–419, 631 P. 2d, at 200–201) (citation omitted).

After independently reviewing the record, the Idaho Supreme Court also held that the evidence clearly supported the trial judge's findings of aggravating and mitigating circumstances, including the finding that Creech had exhibited "utter disregard for human life." 105 Idaho, at 369, 670 P. 2d, at 470. Then, as required by Idaho law, see Idaho Code §19–2827(c)(3) (1987), the court compared Creech's case to similar cases in order to determine whether his sentence was excessive or disproportionate. The court emphatically concluded that it was not: "We have examined cases dating back more than 50 years and our examination fails to disclose that any such remorseless, calculating, cold-blooded multiple murderer has . . . ever been before this Court." 105 Idaho, at 375, 670 P. 2d, at 476 (footnote omitted).

Creech filed a petition for writ of habeas corpus in the United States District Court for the District of Idaho. The District Court denied relief. See *Creech* v. *Arave*, No. 86–1042 (June 18, 1986). The Court of Appeals for the Ninth Circuit, however, agreed with Creech that the "utter disregard" circumstance is unconstitutionally vague. 947 F. 2d 873 (1991). The court first considered the statutory language itself and concluded that the phrase "utter disregard" does not adequately channel sentencing discretion. *Id.*, at 882–883. The court then considered the *Osborn* narrowing construction and found it unsatisfactory as well. Explaining what "utter disregard" does not mean, the Court of Appeals reasoned, does not give the phrase content. 947 F. 2d, at 883, n. 12. Nor do the words "`the highest, the utmost, callous disregard for human life'" clarify the statutory language; they merely emphasize it. *Id.*, at 883–884 (citing *Maynard* v. *Cartwright*, 486 U. S. 356, 364 (1988)). The phrase "cold-blooded,

pitiless slayer" also was deemed inadequate. The Court of Appeals construed our precedents, including *Walton* v. *Arizona*, 497 U. S. 639 (1990), to require that a limiting construction "defin[e] the terms of the statutory aggravating circumstance through objective standards." 947 F. 2d, at 884. "[C]old-blooded, pitiless slayer" fails, the court said, because it calls for a "subjective determination." *Ibid.* The court found further evidence of the *Osborn* construction's infirmity in its application to this case. In the Court of Appeals' view, the trial judge's findings that Jensen attacked Creech "without provocation" and that the murder "`evidenc[ed] an excessive violent rage'" could not be reconciled with the conclusion that Creech was a "cold-blooded, pitiless" killer. *Ibid.* The Court of Appeals therefore found the "utter disregard" circumstance facially invalid. *Id.*, at 884–885.

Three judges dissented from an order denying rehearing en banc. The dissenters argued that the panel had misconstrued both the "utter disregard" factor and this Court's prior decisions. Whether a defendant is a "cold-blooded, pitiless slayer," they said, is not a subjective inquiry; it is an evidentiary question to be determined from facts and circumstances. *Id.*, at 890 (Trott, J., dissenting). The dissenters found the *Osborn* limiting construction indistinguishable from the construction this Court approved in *Walton*. 947 F. 2d, at 890. We granted certiorari, limited to the narrow question whether the "utter disregard" circumstance, as interpreted by the Idaho Supreme Court in *Osborn*, is unconstitutionally vague. See 504 U. S. ___ (1992).

This case is governed by the standards we articulated in *Walton*, *supra*, and *Lewis* v. *Jeffers*, 497 U. S. 764 (1990). In *Jeffers* we reaffirmed the fundamental principle that, to satisfy the Eighth and

Fourteenth Amendments, a capital sentencing scheme must "`suitably direc[t] and limi[t]'" the sentencer's discretion "`so as to minimize the risk of wholly arbitrary and capricious action.'" *Id.*, at 774 (quoting *Gregg* v. *Georgia*, 428 U. S. 153, 189 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.)). The State must "`channel the sentencer's discretion by clear and objective standards that provide specific and detailed guidance, and that make rationally reviewable the process for imposing a sentence of death.'" 497 U. S., at 774 (quoting *Godfrey* v. *Georgia*, 446 U. S. 420, 428 (1980) (plurality opinion) (internal quotation marks omitted)).

In *Walton* we set forth the inquiry that a federal court must undertake when asked to decide whether a
particular aggravating circumstance meets these standards:

> "[T]he federal court . . . must first determine whether the statutory language defining the circumstance is itself too vague to provide any guidance to the sentencer. If so, then the federal court must attempt to determine whether the state courts have further defined the vague terms and if they have done so, whether those definitions are constitutionally sufficient, *i.e.*, whether they provide *some* guidance to the sentencer." 497 U. S., at 654 (emphasis in original).

Where, as in Idaho, the sentencer is a judge rather than a jury, the federal court must presume that the judge knew and applied any existing narrowing construction. *Id.*, at 653.

Unlike the Court of Appeals, we do not believe it is necessary to decide whether the statutory phrase "utter disregard for human life" itself passes constitutional muster. The Idaho Supreme Court has adopted a limiting construction, and we believe that construction meets constitutional requirements.

Contrary to the dissent's assertions, see *post*, at 3–7, the phrase "cold-blooded, pitiless slayer" is not without content. Webster's Dictionary defines "pitiless" to mean devoid of, or unmoved by, mercy or compassion. Webster's Third New International Dictionary 1726 (1986). The lead entry for "cold-blooded" gives coordinate definitions. One, "marked by absence of warm feelings: without consideration, compunction, or clemency," *id.*, at 442, mirrors the definition of "pitiless." The other defines "cold-blooded" to mean "matter of fact, emotionless." *Ibid.* It is true that "cold-blooded" is sometimes also used to describe "premedita[tion]," Black's Law Dictionary 260 (6th ed. 1990)—a mental state that may coincide with, but is distinct from, a lack of feeling or compassion. But premeditation is clearly not the sense in which the Idaho Supreme Court used the word "cold-blooded" in *Osborn*. Other terms in the limiting construction —"callous" and "pitiless"—indicate that the court used the word "cold-blooded" in its first sense. "Premedita[tion]," moreover, is specifically addressed elsewhere in the Idaho homicide statutes, Idaho Code §18–4003(a) (1987 (amended version at Supp. 1992)); had the *Osborn* court meant premeditation, it likely would have used the statutory language.

In ordinary usage, then, the phrase "cold-blooded, pitiless slayer" refers to a killer who kills without feeling or sympathy. We assume that legislators use words in their ordinary, everyday senses, see, *e.g.*, *INS* v. *Phinpathya*, 464 U. S. 183, 189 (1984), and there is no reason to suppose that judges do otherwise. The dissent questions our resort to dictionaries for the common meaning of the word "cold-blooded," *post*, at 4, but offers no persuasive authority to suggest that the word, in its present context, means anything else.

The Court of Appeals thought the *Osborn* limiting construction inadequate not because the phrase "cold-blooded, pitiless slayer" lacks meaning, but because it requires the sentencer to make a "subjective determination." We disagree. We are not faced with pejorative adjectives such as "especially heinous, atrocious, or cruel" or "outrageously or wantonly vile, horrible and inhuman"—terms that describe a crime as a whole and that this Court has held to be unconstitutionally vague. See, *e.g.*, *Shell* v. *Mississippi*, 498 U. S. 1 (1990) *(per curiam); Cartwright*, 486 U. S., at 363–364; *Godfrey*, *supra*, at 428–429. The terms "cold-blooded" and "pitiless" describe the defendant's state of mind: not his *mens rea*, but his attitude toward his conduct and his victim. The law has long recognized that a defendant's state of mind is not a "subjective" matter, but a *fact* to be inferred from the surrounding circumstances. See *United States Postal Service Bd. of Governors* v. *Aikens*, 460 U. S. 711, 716–717 (1983) ("`The state of a man's mind is as much a fact as the state of his digestion. It is true that it is very difficult to prove . . . , but if it can be ascertained it is as much a fact as anything else'" (quoting *Edgington* v. *Fitzmaurice*, 29 Ch. Div. 459, 483 (1885))).

Determining whether a capital defendant killed without feeling or sympathy is undoubtedly more difficult than, for example, determining whether he "was previously convicted of another murder," Idaho Code §19–2515(g)(1) (1987). But that does not mean that a State cannot, consistent with the Federal Constitution, authorize sentencing judges to make the inquiry and to take their findings into account when deciding whether capital punishment is warranted. This is the import of *Walton*. In that case we considered Arizona's "especially heinous, cruel, or depraved" circumstance. The Arizona Supreme Court had held that a crime is committed in a "depraved"

manner when the perpetrator "`relishes the murder, evidencing debasement or perversion,' or `shows an indifference to the suffering of the victim and evidences a sense of pleasure' in the killing." *Walton*, *supra*, at 655 (quoting *State* v. *Walton*, 159 Ariz. 571, 587, 769 P. 2d 1017, 1033 (1989)). We concluded that this construction adequately guided sentencing discretion, even though "the proper degree of definition of an aggravating factor of this nature is not susceptible of mathematical precision." 497 U. S., at 655; accord, *Jeffers*, 497 U. S., at 777; cf. *Proffitt* v. *Florida*, 428 U. S. 242, 260 (1976) (WHITE, J., concurring in judgment) (approving Florida statutory aggravating circumstances that, "although . . . not susceptible of mechanical application . . . are by no means so vague and overbroad as to leave the discretion of the sentencing authority unfettered").

The language at issue here is no less "clear and objective" than the language sustained in *Walton*. Whether a defendant "relishes" or derives "pleasure" from his crime arguably may be easier to determine than whether he acts without feeling or sympathy, since enjoyment is an affirmative mental state, whereas the cold-bloodedness inquiry in a sense requires the sentencer to find a
negative. But we do not think so subtle a distinction has constitutional significance. The *Osborn* limiting construction, like the one upheld in *Walton*, defines a state of mind that is ascertainable from surrounding facts. Accordingly, we decline to invalidate the "utter disregard" circumstance on the ground that the Idaho Supreme Court's limiting construction is insufficiently "objective."

Of course, it is not enough for an aggravating circumstance, as construed by the state courts, to be determinate. Our precedents make clear that a State's capital sentencing scheme also must "genuinely narrow the class of defendants eligible for the death penalty." *Zant* v. *Stephens*, 462 U. S. 862,

877 (1983). When the purpose of a statutory aggravating circumstance is to enable the sentencer to distinguish those who deserve capital punishment from those who do not, the circumstance must provide a principled basis for doing so. See *Jeffers*, *supra*, at 776; *Godfrey, supra,* at 433. If the sentencer fairly could conclude that an aggravating circumstance applies to *every* defendant eligible for the death penalty, the circumstance is constitutionally infirm. See *Cartwright*, 486 U. S., at 364 (invalidating aggravating circumstance that "an ordinary person could honestly believe" described every murder); *Godfrey,* 446 U. S., at 428–429 ("A person of ordinary sensibility could fairly characterize every murder as `outrageously or wantonly vile, horrible and inhuman'").

Although the question is close, we believe the *Osborn* construction satisfies this narrowing requirement. The class of murderers eligible for capital punishment under Idaho law is defined broadly to include all first-degree murderers. Idaho Code §18–4004 (1987). And the category of first-degree murderers is also broad. It includes premeditated murders and those carried out by means of poison, lying in wait, or certain kinds of torture. §18–4003(a). In addition, murders that otherwise would be classified as second degree, §18–4003(g)—including homicides committed without "considerable provocation" or under circumstances demonstrating "an abandoned and malignant heart" (a term of art that refers to unintentional homicide committed with extreme recklessness, see American Law Institute, Model Penal Code §210.2(1)(b) Comment, n. 4 (1980)), Idaho Code §§18–4001, 18–4002 (1987)—become first degree if they are accompanied by one of a number of enumerated circumstances. For example, murders are classified as first degree when the victim is a fellow prison inmate, §18–4003(e), or a law

enforcement or judicial officer performing official duties, §18–4003(b); when the defendant is already serving a sentence for murder, §18–4003(c); and when the murder occurs during a prison escape, §18–4003(f), or the commission or attempted commission of arson, rape, robbery, burglary, kidnapping, or mayhem, §18–4003(d). In other words, a sizable class of even those murderers who kill with some provocation or without specific intent may receive the death penalty under Idaho law.

We acknowledge that, even within these broad categories, the word "pitiless," standing alone, might not narrow the class of defendants eligible for the death penalty. A sentencing judge might conclude that every first-degree murderer is "pitiless," because it is difficult to imagine how a person with any mercy or compassion could kill another human being without justification. Given the statutory scheme, however, we believe that a sentencing judge reasonably could find that not all Idaho capital defendants are "cold-blooded." That is because some within the broad class of first-degree murderers *do* exhibit feeling. Some, for example, kill with anger, jealousy, revenge, or a variety of other emotions. In *Walton* we held that Arizona could treat capital defendants who take pleasure in killing as more deserving of the death penalty than those who do not. Idaho similarly has identified the subclass of defendants who kill without feeling or sympathy as more deserving of death. By doing so, it has narrowed in a meaningful way the category of defendants upon whom capital punishment may be imposed.

Creech argues that the Idaho courts have not applied the "utter disregard" circumstance consistently. He points out that the courts have found defendants to exhibit "utter disregard" in a wide range of cases. This, he claims, demonstrates

that the circumstance is nothing more than a catch-all. The dissent apparently agrees. See *post*, at 7–9. The State, in turn, offers its own review of the cases and contends that they are consistent. In essence, the parties and the dissent would have us determine the facial constitutionality of the "utter disregard" circumstance, as construed in *Osborn*, by examining applications of the circumstance in cases not before us.

As an initial matter, we do not think the fact that "all kinds of . . . factors," *post*, at 8, may demonstrate the requisite state of mind renders the *Osborn* construction facially invalid. That the Idaho courts may find first-degree murderers to be "cold-blooded" and "pitiless" in a wide range of circumstances is unsurprising. It also is irrelevant to the question before us. We did not undertake a comparative analysis of state court decisions in *Walton*. See 497 U. S., at 655 (construing the argument that the aggravating circumstance "has been applied in an arbitrary manner" as a challenge to the state court's proportionality review). And in *Jeffers* we stated clearly that the question whether state courts properly have applied an aggravating circumstance is separate from the question whether the circumstance, as narrowed, is facially valid. See 497 U. S., at 778–780. To be sure, we previously have examined other state decisions when the *construction* of an aggravating circumstance has been unclear. In *Sochor* v. *Florida*, 504 U. S. ___ (1992), for example, the argument was that the state courts had not adhered to a single limiting construction of Florida's "heinous, atrocious, or cruel" circumstance. *Id.*, at ___ (slip op., at 8–9); see also *Proffitt* v. *Florida*, 428 U. S., at 255, n. 12 (joint opinion of Stewart, Powell, and STEVENS, JJ.) (reviewing other cases to establish that the state courts had construed an aggravating circumstance consistently).

Under our
precedents, a federal court may consider state court *formulations* of a limiting construction to ensure that they are consistent. But our decisions do not authorize review of state court cases to determine whether a limiting construction has been *applied* consistently.

A comparative analysis of state court cases, moreover, would be particularly inappropriate here. The Idaho Supreme Court upheld Creech's death sentence in 1983—before it had applied *Osborn* to any other set of facts. None of the decisions on which the dissent relies, or upon which Creech asks us to invalidate his death sentence,
influenced either the trial judge who sentenced Creech or the appellate judges who upheld the sentence. And there is no question that Idaho's formulation of its limiting construction has been consistent. The Idaho Supreme Court has reaffirmed its original interpretation of "utter disregard" repeatedly, often reciting the definition given in *Osborn* verbatim. See, *e.g.*, *State* v. *Card*, 121 Idaho 425, 435–436, 825 P. 2d 1081, 1091–1092 (1991) (citing cases), cert. denied, 506 U. S. ___ (1992). It also has explained that "utter disregard" differs from Idaho's "heinous, atrocious or cruel" aggravating circumstance, Idaho Code §19–2515(g)(5) (1987), because the *Osborn* construction focuses on the defendant's state of mind. *State* v. *Fain*, 116 Idaho 82, 99, 774 P. 2d 252, 269 ("[T]he `utter disregard' factor refers not to the out-rageousness of the acts constituting the murder, but to the defendant's lack of conscientious scruples against killing another human being"), cert. denied, 493 U. S. 917 (1989). In light of the consistent narrowing definition given the "utter disregard" circumstance by the Idaho Supreme Court, we are satisfied that the circumstance, on its face, meets constitutional standards.

Creech argues alternatively that the "utter disregard" circumstance, even if facially valid, does not apply to him. He suggests—as did the Court of Appeals and as does the dissent, *post*, at 10–11—that the trial judge's findings that he was provoked and that he exhibited an "excessive violent rage" are irreconcilable with a finding of "utter disregard." The Idaho Supreme Court, Creech claims, did not cure the error on appeal. There also appears to be some question whether the other murders that Creech has committed, and the self-defense explanations he has offered for some of them, bear on the "utter disregard" determination. See Tr. of Oral Arg. 5–7, 18–21; cf. *post*, at 10, n. 15.

These are primarily questions of state law. As we said in *Jeffers*, a state court's application of a valid aggravating circumstance violates the Constitution only if "no reasonable sentencer" could find the circumstance to exist. 497 U. S., at 783. The Court of Appeals had no occasion to decide the *Jeffers* issue in this case, since it found the "utter disregard" circumstance facially vague. The posture of the case, moreover, makes it unnecessary for us to reach the remaining arguments. The Court of Appeals granted Creech relief on two other claims: that the trial judge improperly refused to allow him to present new mitigating evidence when he was resentenced in open court, and that the judge applied two aggravating
circumstances without making a finding required under state law. See 947 F. 2d, at 881–882. On the basis of the first claim, Creech is entitled to resentencing in state trial court. *Id.*, at 882. Accordingly, we hold today only that the "utter disregard" circumstance, as defined in *Osborn*, on its face meets constitutional requirements. The judgment of the Court of Appeals is therefore
reversed in part and the case remanded for

proceedings consistent with this opinion.

It is so ordered.