Majority Verdicts Allowed

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Court Holds Juries Needn't Be Unanimous

By John P. MacKenzie
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The Supreme Court ruled 5 to 4 yesterday that a man on trial in a state court may be found guilty by a less than unanimous jury.

Breaking sharply with tradition and its own precedents of the past decade, the court held that the Constitution is satisfied when only a "substantial" or "heavy" majority of jurors is convinced of the guilt of the accused.

The decision, which might have gone the other way if the justices had been able to settle the issue a year ago, was reached on the votes of the four appointees of President Nixon, who joined with Justice Byron R. White in sustaining conviction by 9 to 3, 10 to 2 and 11 to 1 in Louisiana and Oregon.

The unanimity rule, which dates from the 14th century in Anglo-American judicial history but was discarded by Britain in 1967, remains in force in federal courts because one of the swing justices, Lewis F. Powell Jr., alone declared that the Sixth Amendment demands it for federal but not state courts.

Thus, for the first time since the Warren Court constitutional "revolution" began a decade ago, a provision of the Bill of Rights was applied with less than full force to the states, although only one member of the court favored the distinction.

No lower limits were established, but concurring Justice Harry A. Blackmun warned that a bare majority rule, such as 7 to 5, "would afford me great difficulty."

Dissenters argued that nothing in the court's reasoning precluded such a narrow majority, or even a 3 to 2 or 2 to 1 jury vote, since the high court ruled in 1970 that a jury of fewer than 12 members is permissible under the same Sixth Amendment.

White, author of both the 1968 opinion extending jury trial rights to the states and the 1970 opinion on jury size, said the origins of the unanimity rule were obscured in the Middle Ages but were no more a 20th Century requirement than the 12-member jury.

He said the purpose of a jury—the placement of a defendant's peers between him and an overzealous prosecutor or a biased judge—was equally well served with or without unanimity.

He denied that the decision would produce verdicts based on a lower standard of proof than the current command that juries be persuaded "be-

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yond a reasonable doubt" for conviction.

Also rejected was the argument that minority groups, which have battled for generations to win even nominal representation on juries, could be wiped out because the majority could simply ignore the views of the minority without fear of a hung jury.

The state's interest in efficient "administration of justice" is served by a procedure that helps to avoid hung juries and retrials, White said. He indicated that the unanimity rule might still hold firm for capital cases.

Under the majority rules of Louisiana, Oregon and a few other states, a defendant could be acquitted by a majority vote which otherwise would produce a hung jury.

If the majority-rule principle spreads to more states, one result could be strengthened bargaining power in the hands of prosecutors as defense counsel weigh the realization that there may be fewer hung juries.

Joining with White, Powell and Blackmun were Chief Justice Warren E. Burger and Justice William H. Rehnquist. The late Justice Hugo L. Black, who was replaced by Powell, often spoke sharply against a "watered down" application of the Bill of Rights to the states. The late Justice John Marshall Harlan, who was replaced by Rehnquist, dissented sharply from the 1970 ruling on jury size.

The cases were heard last year but were set for reargument, which was held only after Powell and Rehnquist took their seats.

Justices William O. Douglas, William J. Brennan Jr., Potter Stewart and Thurgood Marshall each filed long and strongly worded dissenting opinions.

"Until today," said Stewart, "it has been universally understood that a unanimous verdict is an essential element of a Sixth Amendment jury trial. . . . The court has never before been so impervious to reality in this area."

Marshall argued that the doubts of a single juror should be sufficient to show that a prosecutor has failed to carry his burden of proof. Douglas said the decision sprang from "a 'law and order' judicial mood."

Supreme Court Upholds Limited Immunity

By John P. MacKenzie
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The Supreme Court yesterday upheld the power of federal and state prosecutors to compel incriminating testimony from a balky witness without granting a total immunity from prosecution.

By a 5 to 2 vote the court upheld the constitutionality of a major section of the 1970 federal organized crime control act and a similar New Jersey state law against claims that they violated the Fifth Amendment.

The decision was a major but expected victory for prosecutors and investigators, giving them more leeway in extracting evidence from persons who are unwilling to cooperate in part because of their associations with alleged criminality.

Critics of the Nixon administration have contended that the Justice Department has sought to use the contempt power—the authority to jail a reluctant witness until he or she talks—beyond the realm of organied crime for which it was primarily designed and into areas of political dissent.

Yesterday's cases, however, involved two draft-age men who refused to tell a federal grand jury about a dentist suspected of falsifying draftees' medical reports and Joseph A. Zicarelli, a reputed kingpin of New Jersey racketeering.

Witnesses in both cases refused to answer questions unless afforded a total "immunity bath" from prosecution involving matters discussed under compulsion. They relied on an 1892 Supreme Court decision which yesterday's majority said had been too broadly interpreted.

Justice Lewis F. Powell Jr., writing for the court, said the Fifth Amendment privilege against compulsory self-incrimination is not violated if the prosecutor promises the witness not to use either his testimony or leads from the testimony in building a criminal case against him.

If the witness is later prosecuted, Powell said, the government has "a heavy burden" of proving that its evidence came from an independent, legitimate source.

Powell was joined by Chief Justice Warren E. Burger and Justices Potter Stewart, Byron R. White and Harry A. Blackmun. Dissenters William O. Douglas and Thurgood Marshall said they considered the "heavy burden" principle impossible to enforce in practice.

Not participating were Justices William J. Brennan Jr., whose son was a rackets prosecutor in New Jersey, and Willian H. Rehnquist, who had been prepared to argue the Justice Department's case before his appointment to the court.

Powell's opinion stressed the view that the power of government to compel persons to furnish information to government agencies "is firmly established in Anglo-American jurisprudence" although subject to certain exceptions.

The majority opinion noted that the legal theory underlying the 1970 law was primarily the product of a congressionally created national commission on the reform of federal laws and Robert G. Dixon Jr., a law professor at George Washington University.

In other actions:

Searches

The court agreed to consider the constitutionality of a federal law that permits the Immigration and Naturalization Service's border patrol to conduct searches, without a warrant and without probable cause to suspect crime, anywhere within 100 miles of a United States border.

Set for argument next term was the case of Conrado Almedia-Sanchez, a resident alien from Mexico convicted of possessing marijuana turned up in such a search.

Habeus Corpus

The court broadened the authority of federal courts to review conscientious objector claims by military reservists.

The court ruled, 5 to 4, that a reservist is entitled to file his petition in a federal court in San Francisco, where he lives and where his C.O. claim was processed, rather than solely in the Indiana district where reserve officer records are kept, as the government argued.

Religious Funding

Last term the court struck down Pennsylvania's scheme of reimbursing parochial schools for educational "services" because of excessive "entanglement" between government and religion.

But, in December, a federal court in Philadelphia ruled that the decision banned only state expenditures for future school services and said the schools were entitled to payment for services rendered before the June 28, 1971 decision. The court agreed to review this action.

Environment

The court agreed to decide whether every federal agency which takes a major action on a project affecting the environment must at least consider an environmental impact statement. A divided 10th U.S. Circuit Court of Appeals held that the Commerce Department was not obliged to consider a Forest Service statement before approving a crucial $3.8 million grant for a road passing near a New Mexico wilderness area.

Antitrust

The court agreed to decide whether the Otter Tail Power Co. in Minnesota violated the Sherman Antitrust Act by refusing to carry power to municipally owned utilities and through other tactics aimed at retaining municipal customers.

Ex-Wm. & Mary Player Killed

DENVER, May 22 (AP)—Mike Mihalas, a 29-year-old former William and Mary College athlete, was found shot to death on a Denver street Sunday. Detectives said his wallet was empty and robbery was considered a possible motive.

Mihalas was shot once in the chest, apparently by a small-caliber weapon, police reported. A passerby found the body lying on a sidewalk. Mihalas of Norfolk, Va., was a starting guard on William and Mary's football team in his senior year in 1966.