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Justices Back State Court Convictions Without Unanimous Verdicts by Juries

9-3 Decision Upheld in a Louisiana Case

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WASHINGTON, May 22 — The Supreme Court held 5 to 4 today that unanimous jury verdicts are not required for convictions in state criminal courts.

The ruling, together with another decision today that broadened the power of prosecutors to compel witnesses to testify, demonstrated the conservative impact of President Nixon's four nominees.

The five-Justice majority in favor of upholding less-than-unanimous juries was composed of Byron R. White, a prosecution-minded holdover from the Warren Court, and Mr. Nixon's four nominees — Chief Justice Warren E. Burger and Justices Harry A. Blackmun, Lewis F. Powell Jr and William H. Rehnquist.

At issue were cases in which convictions were upheld on votes of 9 to 3 and 10 to 2. The dissenters protested that the majority's ruling "cuts the heart out" of the Constitution's jury trial guarantee and the due process requirement of proof of guilt beyond a reasonable doubt.

The New York Times
Justice Byron R. White, wrote court's decision.

Studies conducted by law professors in Oregon and Louisiana, the two states that now permit less than unanimous jury verdicts in felony trials, have shown that such a system results in more convictions and fewer deadlocked juries.

A few other states do not require unanimity in misdemeanor trials. Today's ruling, which frees the states to change their laws, is expected to prompt other state legislatures to adopt the less than unanimous jury rule.

Nixon's Nominees Join White in Majority

However, the Federal Government will apparently be precluded from adopting the same rule by the position taken by Justice Powell, who held the crucial fifth vote.

Justice Powell agreed that the due process clause of the 14th amendment does not require unanimous verdicts in state trials. But he insisted that the frmers of the Sixth Amendment, which requires a "speedy and public trial by an impartial jury," intended to require Federal courts to employ the unanimous 12-member jury of the English common law.

As written, the Sixth Amendment applied only to the Federal Government, but the Supreme Court has ruled that the due process clause of the 14th Amendment requires that the "fundamental" safeguards in it are also binding on the states.

The four dissenters, Justice William O. Douglas, William J. Brennan Jr., Potter Stewart and Thurgood Marshall, all insisted upon unanimity in all

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criminal trials. Thus, Justice Powell's position created a five-Justice majority against less than unanimous juries in Federal court.

The decision today arose out of convictions from Louisiana, where 9-to-3 votes can convict defendants, and Oregon, where 10-to-2 votes are valid.

Frank Johnson, a New Orleans man who had been given a 35-year sentence for armed robbery on a 9-to-3 vote, and three Oregon men who had been convicted of various offenses on votes of 10 to 2, asked the Supreme Court to hold that unanimous verdicts are required by the Constitution.

They argued that a defendant cannot be proved guilty beyond a reasonable doubt when three of nine jurors vote to acquit him. Also, they asserted that the essence of a trial by a jury of the defendant's peers is undercut when three jurors who may represent the race or class of the defendant by be ignored.

Smaller Juries Allowed

Writing for the majority, Justice White noted that under a 1970 Supreme Court decision, convictions by juries of less than 12 members are constitutional. He concluded that when a "heavy majority" of jurors votes for conviction, as in the cases today, it is similar to a unanimous vote by a smaller jury.

He also said that the framers of the Sixth Amendment deliberately left out a unanimity requirement and that the Constitution does not give minority groups "the right to block convictions" but only to be on the jury and to "be heard."

Justice Douglas charged in his dissent that the majority had succumbed to a "law and order judicial mood" to make a "radical departure from American traditions."

He and the other dissenters argued that the ruling would upset the dynamics of jury decision-making that require the panel to go slow, consider every juror's view and sometimes compromise on the severity of the conviction in order to reach a verdict.

Race Seen Ignored

Justice Stewart said that under today's ruling "nine jurors can simply ignore the views of their fellow panel members of a different race or class." This will weaken the jury as a bulwark between the citizen and the prosecutorial power of the state, the dissenters asserted.

Justice Blackmun, a member of the majority, said that he would have "great difficulty" in upholding a system employing a 7-to-5 standard.

Justice Douglas said that this leaves many prickly questions to be answered — such as the validity of an 8-to-4 vote, and whether juries of less than 12 members must be unanimous.

Also left unanswered was whether unanimous verdicts will be required in capital cases and how the Court will justify invalidating convictions if it is confronted, as Justice Douglas put it, with votes of "3 to 2 or even 2 to 1?"

Richard A. Buckley of New Orleans argued for Johnson. Richard B. Sobol of Washington argued for the Oregon defendants. Mrs. Louise Korns, an assistant district attorney in New Orleans, represented Louisiana. Jacob B. Tanzer of Salem argued for Oregon.