Ga. obscenity case.


2. Obscene nature of film. Grossly obscene on basis of
   pictures & description

   One may convicted on obscene or
   "actual knowledge" of the
   "had knowledge of facts which
   would put a reasonable
   and prudent person on notice as to
   the suspect nature of the
   material."

If statute had provide that
"constructive notice"

support of obscene nature
of material could be proved by
circumstantial evidence,
then would satisfy Ginsberg
requirements.

But under Ga. statute proof
of constructive notice - not of
obscene nature but of "suspect
nature of material" is sufficient.
This is one step removed from requisite
Clutter (Pet)

Knowledge must be "actual" — not "constructive".

Relies on reasoning of Smith v. California & on Hamlin — but conceder no case expressly supports position on to "constructive" knowledge.

Rhodes (Cost Sol Gen. of Ga)

Under Ga law, jury verdicts must be unanimous.

Ga. law now requires 6 jurors.
The Chief Justice agreed— or Reverse on jury issue
Conceded that film is obscene.
Statutory language that is troublesome
is not in operative part of statute (but it was
in instruction to jury); Hamling controls.
Nothing to 5-person jury issue.

After discussion C. J. expressed
WELLERMAN to join on 6 man jury.

Mr. Justice Brennan Reverse

In an obscenity case, there must be
a jury representative of community.
Thus 5 member jury is invalid.
Also reverse on dissent in WELLERMAN.

Mr. Justice Stewart Reverse

On all issues—
including jury issue.
Jury instruction back.
Mr. Justice White: Reverse

5 man jury is not representative of community in any criminal case.

- But would prefer to say a 6 man jury is necessary in all criminal cases.

Mr. Justice Marshall: Reverse

Jury invalid.

Instruction also bad.

Mr. Justice Blackmun: Affirm: The court agreed to a 6 man jury.

Read Williams as controlling.

- But much can be said against extending its rationale.

= Nothing to other issues.
Mr. Justice Powell  

Revenue

I assumed Williams was controlling - but would join four others in holding that six in a minimum number where a Delta is entitled to a jury.

I also would reverse on the instruction.

Other issues are frivolous.

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Mr. Justice Rehnquist  

Affirm

But could join an appeal requiring a writ of mandamus.

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Mr. Justice Stevens  

Revenue

Would hold a 6 men jury in required & not reach other issues.
RE: No. 76-761 Ballew v. Georgia

Dear Harry:

I'm not persuaded that we should reach the retroactivity question but if there were a Court to do so my present view is that our decision should be held retroactive. It seems to me that the entire premise of the invalidity of the five man jury is that it does not assure appropriate fact finding.

Sincerely,

Mr. Justice Blackmun

cc: The Conference
February 13, 1978

Re: 76-761 - Ballew v. Georgia

Dear Harry:

My tentative preference is for your third choice, namely, to do nothing and wait for the next case.

If only short sentences are involved in five-man jury convictions, there would seem to be a possibility that litigation delays would solve the problem without requiring us to hear another argued case.

Respectfully,

[Signature]

Mr. Justice Blackmun

Copies to the Conference