

The Burger Court Opinion Writing Database

United States v. Nobles

422 U.S. 225 (1975)

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

June 9, 1975

Re: 74-634 - United States v. Nobles

Dear Lewis:

I join you.

Regards,

WB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 1975

Re: 74-634- U. S. v. Nobles

Dear Lewis:

I agree with your proposed changes as per
your memo of June 13.

Regards,

LWB

Mr. Justice Powell

cc: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 3, 1975

RE: No. 74-634 United States v. Nobles

Dear Lewis:

I was the other way at conference but you have
persuaded me. I am happy to join.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 3, 1975

74-634 - United States v. Nobles

Dear Lewis,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

PS

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 13, 1975

No. 74-634, United States v. Nobles

Dear Lewis,

The revision you propose on p. 13
of your opinion is entirely satisfactory to me.

Sincerely yours,

P.S.
P.S.

Mr. Justice Powell

Copies to: The Chief Justice
Mr. Justice Brennan
Mr. Justice Blackmun

To: The Chief Justice
Mr. Justice Douglas
 Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: 6-17-75

No. 74-634

Recirculated: _____

United States,
Petitioner,
v.
Robert Lee Nobles. } On Writ of Certiorari to the United
States Court of Appeals for the
Ninth Circuit.

[June —, 1975]

MR. JUSTICE WHITE, concurring:

I concur in the judgment and in Parts II, III, and V of the opinion of the Court. I write only because of misgivings about the meaning of Part IV of the opinion. The Court appears to have held in Part IV of its opinion only that whatever protection the defense investigator's notes of his interviews with witnesses might otherwise have had, that protection would have been lost when the investigator testified about those interviews. With this I agree also. It seems to me more sensible, however, to decide what protection these notes had in the first place before reaching the "waiver" issue. Accordingly, and because I don't believe the work product doctrine of *Hickman v. Taylor*, 329 U. S. 495, can be extended wholesale from its historic role as limitation on the nonevidentiary material which may be the subject of pretrial discovery to an unprecedented role as a limitation on the trial judge's power to compel production of evidentiary matter at trial, I add the following.

¶

Up until now the work-product doctrine of *Hickman v. Taylor*, 329 U. S. 495, has been exclusively a limitation on the ability of a party to obtain pretrial discovery. It has never been viewed as a "limitation on the trial

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

159.10
June 18, 1975

Re: No. 74-634, United States v. Robert Lee Nobles

Dear Lewis:

Please join me.

Sincerely,

T. M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

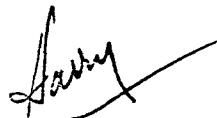
June 3, 1975

Re: No. 74-634 - United v. Nobles

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 13, 1975

✓

Re: No. 74-634 - United States v. Nobles

Dear Lewis:

The proposed revision on page 13 has my approval.

Sincerely,



Mr. Justice Powell

cc: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart

To: The Clerk of Court
Mr. Justice Brandeis
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Marshall~~
Mr. Justice Blackmun
Mr. Justice O'Connor

From: Powell, J.

Circulated: JUN 9 1975

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-634

United States,
Petitioner,
v.
Robert Lee Nobles. } On Writ of Certiorari to the United
States Court of Appeals for the
Ninth Circuit.

[June —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

In a criminal trial, defense counsel sought to impeach the credibility of key prosecution witnesses by testimony of a defense investigator regarding statements previously obtained from the witnesses by the investigator. The question presented here is whether in these circumstances the federal trial court may compel the defense to reveal the relevant portions of the investigator's report for the prosecution's use in cross-examining the investigator. The U. S. Court of Appeals for the Ninth Circuit concluded that it cannot. 510 F. 2d 146. We granted certiorari, 419 U. S. 1120 (1975), and now reverse.

1

Respondent was tried and convicted on charges arising from an armed robbery of a federally insured bank. The only significant evidence linking him to the crime was the identification testimony of two witnesses, a bank teller and a salesman who was in the bank during the robbery.³ Respondent offered an alibi but, as the

¹The only other evidence introduced against respondent was a statement made at the time of arrest in which he denied that he

June 13, 1976

No. 74-634 UNITED STATES v. NOBLES

Gentlemen:

I enclose page 13 of the opinion in the above case, with a rider attached that would revise somewhat the last two sentences in the full paragraph on that page.

This is prompted by a letter and memorandum which Byron has sent me. He would like to make clear that we are not indicating the scope of the work product doctrine at a criminal trial. As our decision in this case is based on waiver, Byron makes the point - correctly, I think - that it is unnecessary to go beyond that.

As Byron is away, I am not positive that this change will satisfy him although I think it will. He may file, in any event, a concurring opinion.

I would like to accommodate Byron to the extent of the rider attached to page 13, and will appreciate hearing from each of you.

Sincerely,

The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Blackmun

LFP/gg

stylistic changes throughout

13, 14, 16

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

From: Powell, J.

Circulated:

Recirculated: *JUN 15 1975*

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-634

United States,
Petitioner,
v.
Robert Lee Nobles. } On Writ of Certiorari to the United
States Court of Appeals for the
Ninth Circuit.

[June —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

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I

Respondent was tried and convicted on charges arising from an armed robbery of a federally insured bank. The only significant evidence linking him to the crime was the identification testimony of two witnesses, a bank teller and a salesman who was in the bank during the robbery.¹ Respondent offered an alibi but, as the

¹ The only other evidence introduced against respondent was a statement made at the time of arrest in which he denied that he

circulated?

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-634

United States,
Petitioner,
v.
Robert Lee Nobles. } On Writ of Certiorari to the United
States Court of Appeals for the
Ninth Circuit.

[June 23, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

In a criminal trial, defense counsel sought to impeach the credibility of key prosecution witnesses by testimony of a defense investigator regarding statements previously obtained from the witnesses by the investigator. The question presented here is whether in these circumstances a federal trial court may compel the defense to reveal the relevant portions of the investigator's report for the prosecution's use in cross-examining him. The U. S. Court of Appeals for the Ninth Circuit concluded that it cannot. 510 F. 2d 146. We granted certiorari, 419 U. S. 1120 (1975), and now reverse.

I

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¹ The only other evidence introduced against respondent was a statement made at the time of arrest in which he denied that he

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 18, 1975

Re: No. 74-634 - United States v. Nobles

Dear Byron:

Please join me in your concurring opinion.

Sincerely,

Wm

Mr. Justice White

Copies to the Conference