# The Burger Court Opinion Writing Database

## *Nix v. Williams*

467 U.S. 431 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University




To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: MAR 15 1984

Recirculated: _____



1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 82–1651

CRISPUS NIX, WARDEN, PETITIONER *v.*
ROBERT ANTHONY WILLIAMS

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

[March ——, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether, at respondent Williams' second murder trial in state court, evidence pertaining to the discovery and condition of the victim's body was properly admitted on the ground that it would ultimately or inevitably have been discovered even if no violation of any constitutional or statutory provision had taken place.

## I

### A

On December 24, 1968, 10-year-old Pamela Powers disappeared from a YMCA building in Des Moines, Iowa, where she had accompanied her parents to watch an athletic contest. Shortly after she disappeared, Williams was seen leaving the YMCA carrying a large bundle wrapped in a blanket; a 14-year-old boy who helped Williams open his car door reported that he had seen "two small legs in it and they were skinny and white."

Williams' car was found the next day 160 miles east of Des Moines in Davenport, Iowa. Later several items of clothing belonging to the child, some of Williams' clothing, and an army blanket like the one used to wrap the bundle that Williams carried out of the YMCA were found at a rest stop on

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

CHAMBERS OF
THE CHIEF JUSTICE

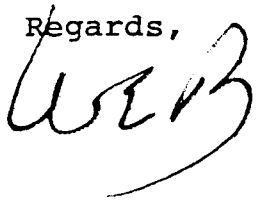
March 22, 1984

MEMORANDUM TO THE CONFERENCE

Re: 82-1651 - Nix v. Williams

I have some "tightening" changes in the first draft and will try to have them around in a week.

Regards,



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: APR 06 1984

STYLISTIC CHANGES and f.f. 9-11, 13-15

**2nd DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 82–1651

CRISPUS NIX, WARDEN, PETITIONER *v.*
ROBERT ANTHONY WILLIAMS

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

[April ——, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether, at respondent Williams' second murder trial in state court, evidence pertaining to the discovery and condition of the victim's body was properly admitted on the ground that it would ultimately or inevitably have been discovered even if no violation of any constitutional or statutory provision had taken place.

## I

### A

On December 24, 1968, 10-year-old Pamela Powers disappeared from a YMCA building in Des Moines, Iowa, where she had accompanied her parents to watch an athletic contest. Shortly after she disappeared, Williams was seen leaving the YMCA carrying a large bundle wrapped in a blanket; a 14-year-old boy who helped Williams open his car door reported that he had seen "two small legs in it and they were skinny and white."

Williams' car was found the next day 160 miles east of Des Moines in Davenport, Iowa. Later several items of clothing belonging to the child, some of Williams' clothing, and an army blanket like the one used to wrap the bundle that Williams carried out of the YMCA were found at a rest stop on

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

CHAMBERS OF
THE CHIEF JUSTICE

April 12, 1984

Re: 82-1651 - Nix v. Williams

Dear Lewis:

Thank you for your "join" and your separate note which gives me no trouble at all.

You are quite wrong that I would "overrule" the Exclusionary Rule; I would just "trim" it, as I set out in a 1960 lecture and in my Bivens dissent. I agree that there will be a media attack and it will be abetted by the campaign from July to November and there is no point in "stirring the horses" unnecessarily.

There will still be problems on this case from Sandra, who, I think would go beyond what either of us would go. However, I will wait on the Cardozo passage until the returns are in.

Regards,

Justice Powell

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: APR 23 1984

CHANGES AS MARKED: fp. 4, 9-14



3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 82–1651

CRISPUS NIX, WARDEN, PETITIONER *v.*
ROBERT ANTHONY WILLIAMS

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

[April ——, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether, at respondent Williams' second murder trial in state court, evidence pertaining to the discovery and condition of the victim's body was properly admitted on the ground that it would ultimately or inevitably have been discovered even if no violation of any constitutional or statutory provision had taken place.

## I

### A

On December 24, 1968, 10-year-old Pamela Powers disappeared from a YMCA building in Des Moines, Iowa, where she had accompanied her parents to watch an athletic contest. Shortly after she disappeared, Williams was seen leaving the YMCA carrying a large bundle wrapped in a blanket; a 14-year-old boy who helped Williams open his car door reported that he had seen "two small legs in it and they were skinny and white."

Williams' car was found the next day 160 miles east of Des Moines in Davenport, Iowa. Later several items of clothing belonging to the child, some of Williams' clothing, and an army blanket like the one used to wrap the bundle that Williams carried out of the YMCA were found at a rest stop on

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

CHAMBERS OF
THE CHIEF JUSTICE

June 4, 1984



MEMORANDUM TO THE CONFERENCE:

Re: 82-1651 - Nix v. Williams

I will add the following to footnote 5:

"Williams argues that the preponderance of the evidence standard used by the Iowa courts is inconsistent with United States v. Wade, 388 U.S. 218 (1967). In requiring clear and convincing evidence of an independent source for an in-court identification, the Court gave weight to the effect an uncounseled pre-trial identification has in "crystalliz[ing] the witnesses' identification of the defendant for the future reference." Id., at 240. The Court noted as well that possible unfairness at the lineup "may be the sole means of attack upon the unequivocal courtroom identification," ibid., and recognized the difficulty of determining whether an in-court identification was based on independent recollection unaided by the lineup identification, id., at 240-241. By contrast, inevitable discovery involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment and does not require a departure from the usual burden of proof at suppression hearings."

Regards,

STYLISTIC CHANGES and ftn. 11-12

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: 6/5/84

~~3rd~~ 4th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 82–1651

CRISPUS NIX, WARDEN, PETITIONER *v.*
ROBERT ANTHONY WILLIAMS

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

[June ——, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether, at respondent Williams' second murder trial in state court, evidence pertaining to the discovery and condition of the victim's body was properly admitted on the ground that it would ultimately or inevitably have been discovered even if no violation of any constitutional or statutory provision had taken place.

## I

### A

On December 24, 1968, 10-year-old Pamela Powers disappeared from a YMCA building in Des Moines, Iowa, where she had accompanied her parents to watch an athletic contest. Shortly after she disappeared, Williams was seen leaving the YMCA carrying a large bundle wrapped in a blanket; a 14-year-old boy who helped Williams open his car door reported that he had seen "two legs in it and they were skinny and white."

Williams' car was found the next day 160 miles east of Des Moines in Davenport, Iowa. Later several items of clothing belonging to the child, some of Williams' clothing, and an army blanket like the one used to wrap the bundle that Williams carried out of the YMCA were found at a rest stop on

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

SUPREME COURT
JUSTICE

January 23, 1984

'84 JAN 23 A11:12

No. 82-1651

Nix v. Williams

Dear Thurgood,

You and I are in dissent in the above. I'll try my hand at the dissent.

Sincerely,

Bill

Justice Marshall

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: 6/4/84

Recirculated: _____



**1st DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 82-1651

CRISPUS NIX, WARDEN *v.* ROBERT ANTHONY WILLIAMS

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

[June ——, 1984]

JUSTICE BRENNAN, dissenting.

In *Brewer* v. *Williams*, 430 U. S. 387 (1977), we held that the respondent's state conviction for first-degree murder had to be set aside because it was based in part on statements obtained from the respondent in violation of his right to the assistance of counsel guaranteed by the Sixth and Fourteenth Amendments. At the same time, we noted that, "[w]hile neither Williams' incriminating statements themselves nor any testimony describing his having led the police to the victim's body can constitutionally be admitted into evidence, evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event." *Id.*, at 406, n. 12.

To the extent that today's decision adopts this "inevitable discovery" exception to the exclusionary rule, it simply acknowledges a doctrine that is akin to the "independent source" exception first recognized by the Court in *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385, 392 (1920). See *United States* v. *Wade*, 388 U. S. 218, 242 (1967); *Wong Sun* v. *United States*, 371 U. S. 471, 487 (1963). In particular, the Court concludes that unconstitutionally obtained evidence may be admitted at trial if it inevitably would have been discovered in the same condition by an independent line of investigation that was already being pursued when the constitutional violation occurred. As has every federal

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 10, 1984

Re: 82-1651 - Nix v. Williams

---

Dear Chief,

Please join me.

Sincerely yours,

Byron

The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1984

Re: 82-1651 - Nix v. Williams

Dear John,

I have sent the following brief statement to the printer in this case:

JUSTICE WHITE, concurring.

Many of Justice Stevens' remarks are beside the point when it is recalled that Brewer v. Williams was a 5-4 decision and that four members of the Court, including myself, were of the view that Officer Leaming had done nothing wrong at all, let alone anything unconstitutional. Three of us observed that "To anyone not lost in the intricacies of the prophylactic rules of Miranda v. Arizona, the result in this case seems utterly senseless ...." 430 U.S., at 438. It is thus an unjustified reflection on Officer Leaming to say that he "decided to dispense with the requirements of the law," ante, at ____, or that he decided "to take procedural shortcuts instead of complying with the law," ante, at ____. He was no doubt acting as many competent police officers would have done under similar circumstances and in light of the then-existing law. That five Justices later thought he was mistaken does not call for making him out to be a villain or for a lecture on deliberate police misconduct and its resulting costs to society.

Sincerely yours,

Byron cpm

Justice Stevens

Copies to the Conference

cpm

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: _____

Recirculated: _____

5/22/84

**1st DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 82–1651

CRISPUS NIX, WARDEN, PETITIONER *v.*
ROBERT ANTHONY WILLIAMS

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

[May ——, 1984]

JUSTICE WHITE, concurring.

Many of Justice Stevens' remarks are beside the point when it is recalled that *Brewer* v. *Williams* was a 5–4 decision and that four members of the Court, including myself, were of the view that Officer Leaming had done nothing wrong at all, let alone anything unconstitutional. Three of us observed that "To anyone not lost in the intricacies of the prophylactic rules of *Miranda* v. *Arizona*, the result in this case seems utterly senseless. . . ." 430 U. S., at 438. It is thus an unjustified reflection on Officer Leaming to say that he "decided to dispense with the requirements of the law," *ante*, at ——, or that he decided "to take procedural shortcuts instead of complying with the law," *ante*, at ——. He was no doubt acting as many competent police officers would have done under similar circumstances and in light of the then-existing law. That five Justices later thought he was mistaken does not call for making him out to be a villain or for a lecture on deliberate police misconduct and its resulting costs to society.

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: _____

Recirculated: MAY 23 1984



**2nd DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 82-1651

CRISPUS NIX, WARDEN, PETITIONER *v.*
ROBERT ANTHONY WILLIAMS

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

[May ——, 1984]

JUSTICE WHITE, concurring.

I join fully in the opinion of the Court. I write separately only to point out that many of Justice Stevens' remarks are beside the point when it is recalled that *Brewer* v. *Williams* was a 5–4 decision and that four members of the Court, including myself, were of the view that Officer Leaming had done nothing wrong at all, let alone anything unconstitutional. Three of us observed that: "To anyone not lost in the intricacies of the prophylactic rules of *Miranda* v. *Arizona*, the result in this case seems utterly senseless . . . ." 430 U. S., at 438. It is thus an unjustified reflection on Officer Leaming to say that he "decided to dispense with the requirements of the law," *ante*, at ——, or that he decided "to take procedural shortcuts instead of complying with the law," *ante*, at ——. He was no doubt acting as many competent police officers would have under similar circumstances and in light of the then-existing law. That five Justices later thought he was mistaken does not call for making him out to be a villain or for a lecture on deliberate police misconduct and its resulting costs to society.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1984

Re: No. 82-1651-Crispus Nix v. Williams

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

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



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 6, 1984

Re: No. 82-1651, Nix v. Williams

Dear Chief:

Please join me.

Sincerely,

HAB.

The Chief Justice

cc: The Conference

March 22, 1984

82-1651 Nix v. Williams

Dear Chief:

Although I am certainly with you in the result and also with much of what you have written, I do have problems with some of the language.

On pages 8-10, in which you rely in major part on Silverthorne and Wong Sun, it seems to me that the opinion does not sufficiently distinguish the "independent source" exception from the "inevitable discovery" exception. These are quite different.

The former was recognized many years ago in Silverthorne, and allows admission of evidence that has been discovered by means wholly independent of the constitutional violation. In this case, the constitutional violation was the direct and immediate source of the discovery of evidence. It therefore would have been excluded under Silverthorne. Your basic objective - and one with which I fully agree - is to have a strong precedent by this Court establishing the "inevitable discovery" exception to the exclusionary rule. In my view, the intermingling of this issue with the "independent source" doctrine weakens the opinion.

I also must say, Chief, that I believe your opinion would be clearer and stronger if much of your first draft on pages 13-15, inclusive, were omitted. For example, I do not understand the relevance of distinguishing primary and secondary evidence. Apart from definitional problems, I do not think the applicability of the inevitable discovery rule depends on this distinction. The issue is the admissibility of probative evidence - whatever it may be - that inevitably would have been discovered wholly without regard to the unlawful confession.

With the view to clarifying and shortening the discussion that begins with the second full paragraph on

page 13 and continues to the end of subpart A on page 15, I attach a revision that I believe makes your point quite clearly. At least so it seems to me. On the enclosed pages 13-15, I have indicated how the suggested language could fit into your opinion.

In sum, as so often happens to all of us, revisions in first drafts seem desirable. This is an important case, and my own conviction is that the strongest type of opinion here would be to confine our writing to the inevitable discovery rule, and the reasons why the rationale of the exclusionary rule does not apply.

If you prefer to remain with your draft, I will, of course, understand, and may write separately.

Sincerely,

The Chief Justice

lfp/ss

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

April 11, 1984

82-1651 Nix v. Williams

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

April 12, 1984

82-1651 Nix v. Williams

Dear Chief:

I have sent you separately a note joining your second draft.

It does occur to me that you may want to take a second look at the paragraph beginning at the bottom of page 4 in which you quote Justice Cardozo on the exclusionary rule.

As we have agreed, this has been a rough Term on the rule (Byron's opinions in Leon and Sheppard; WHR's opinions in Quarles and Delgado; my open fields cases; your opinion in Sidoti; and now Nix v. Williams). The news media and the law reviews - and the defense bar - will be highly critical of the Court. They will view this Term as foreshadowing the abandonment of the exclusionary rule.

I know that you would favor that, but it is now too deeply rooted in the jurisprudence of this Court for abandonment to be a realistic possibility. This Term's decisions will have put the rule in a proper balance. I simply wonder whether quoting Justice's Cardozo's 1926 views is useful at this time.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 11, 1984

Re: No. 82-1651 Nix v. Williams

Dear Chief:

Please join me.

Sincerely,

WHR

The Chief Justice

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: MAY 18 '84

Recirculated: _____



**1st DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 82-1651

CRISPUS NIX, WARDEN, PETITIONER *v.*
ROBERT ANTHONY WILLIAMS

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

[May ——, 1984]

JUSTICE STEVENS, concurring in the judgment.

This litigation is exceptional for at least three reasons. The facts are unusually tragic; it involves an unusually clear violation of constitutional rights; and it graphically illustrates the societal costs that may be incurred when police officers decide to dispense with the requirements of law. Because the Court does not adequately discuss any of these aspects of the case, I am unable to join its opinion.

I

In holding that respondent's first conviction had been unconstitutionally obtained, Justice Stewart, writing for the Court, correctly observed:

> "The pressures on state executive and judicial officers charged with the administration of the criminal law are great, especially when the crime is murder and the victim a small child. But it is precisely the predictability of those pressures that makes imperative a resolute loyalty to the guarantees that the Constitution extends to us all." *Brewer* v. *Williams*, 430 U. S. 387, 406 (1977) *(Williams I)*.

There can be no denying that the character of the crime may have an impact on the decisional process. As the Court was required to hold, however, that does not permit any

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 4 1984



**2nd DRAFT**

# SUPREME COURT OF THE UNITED STATES

No. 82–1651

CRISPUS NIX, WARDEN, PETITIONER *v.*
ROBERT ANTHONY WILLIAMS

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

[June ——, 1984]

JUSTICE STEVENS, concurring in the judgment.

This litigation is exceptional for at least three reasons. The facts are unusually tragic; it involves an unusually clear violation of constitutional rights; and it graphically illustrates the societal costs that may be incurred when police officers decide to dispense with the requirements of law. Because the Court does not adequately discuss any of these aspects of the case, I am unable to join its opinion.

I

In holding that respondent's first conviction had been unconstitutionally obtained, Justice Stewart, writing for the Court, correctly observed:

> "The pressures on state executive and judicial officers charged with the administration of the criminal law are great, especially when the crime is murder and the victim a small child. But it is precisely the predictability of those pressures that makes imperative a resolute loyalty to the guarantees that the Constitution extends to us all." *Brewer* v. *Williams*, 430 U. S. 387, 406 (1977) *(Williams I)*.

There can be no denying that the character of the crime may have an impact on the decisional process. As the Court was required to hold, however, that does not permit any

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 23, 1984

Re: No. 82-1651 Nix v. Williams

Dear Chief,

Please join me.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference