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Admitting the Inevitable--The
Exclusionary Rule after
Nix v. Williams

On June 11, 1984 the U.S. Supreme Court decided the case of Nix v. Williams (35 CrL 3119) and handed to law enforcement officers a long needed exception to the application of the Exclusionary Rule.

The facts and issues in the case may be summarized as follows:

The defendant Williams had been convicted of the murder of a 10-year old girl in December 1968. At the time of his arrest Williams had asked to speak with a lawyer and after doing so invoked the right to remain silent. While transporting Williams from one town to another and being fully aware of Williams' desire not to speak, a detective named Leaming delivered a speech (since known as the "Christian Burial" speech) to Williams which had the result of causing the defendant to tell police the location of the child's body. Williams, appealed his murder conviction all the way to the United States Supreme Court and in 1977 that court held that Williams' statement to the police concerning the location of the body was obtained in violation of his Sixth Amendment Right to Counsel. (Brewer v. Williams, 430 U.S. 387). The case was returned to the state court where it was retried without introducing evidence of the body which had been obtained from Williams. Instead, the prosecution proceeded to prove its case against Williams by introducing evidence of the condition of the body when it was found, articles and photographs of the dead child's clothing and the results of chemical and medical

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tests which had been performed on the body. It should be noted however, that, at this second trial, no evidence whatsoever was introduced of Williams' statements to the police or of the fact that he had led police to the body. A conviction for the murder was again obtained and Williams appealed.

Williams' appeal of the second conviction rested on the basis that the State should not be allowed to introduce any evidence of the body or its condition at trial because such evidence was "Fruit of the poisonous

tree". In other words, Williams claimed that any evidence which the State could produce would be the result of the state-ment which Williams had provided Detective Leaming and since Leaming's conduct had violated Williams' right to counsel in com-pelling him to speak any "fruit," or pro-duct of Leaming's conduct would have to be suppressed. In short, Williams argued that evidence of the body or its condition should not be admitted under any theory of evidence.

On his second trip to the U.S. Supreme Court, however, Williams found the majority of the court disagreed with his argument. The court held that there exists an ex-ception to the application of the Exclu-sionary Rule which is known as the "In-avoidable Discovery" doctrine.

Noting that, at the time of Williams' statement to Leaming concerning the lo-cation of the body, there were 200 volun-teers conducting a systematic search of the area where the body was found and that, even if Williams had not made a statement to Leaming, the body would have been found inevitably within three to five hours later, the Supreme Court proceeded to lay out the exception to the Exclusionary Rule.

The court recognized that the underlying purpose of the rule is to deter unlawful police conduct, but noted also that once the illegal police conduct is removed from the case the effect must not be to also take from the State evidence which was found independent of the police misconduct or which would have inevitably been found. As the court stated:

"It is clear that the cases implementing the Exclusionary Rule 'begin with the pre-mise that the challenged evidence is in some sense the product of illegal govern-ment activity' United States v. Crews, 445 U.S. 463, 471 (1980) (emphasis added). Of course this does not end the inquiry. If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means--here

the volunteer's search--then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience and common sense." (Id. at 35 CrL 3123, emphasis in original).

Rejecting Williams' contention that such an exception would create a tendency to rationalize police conduct, after the fact, the Supreme Court emphasizes that just the opposite result is likely to occur.

"A police officer who is faced with the opportunity to obtain evidence illegally will rarely, if ever, be in a position to calculate whether the evidence sought would inevitably be discovered. Cf. U.S. v. Ceccolini, 435 U.S. 268, 283 (1978):

[T]he concept of effective deterrence assumes that the police officer consciously realizes the probable consequences of a presumably impermissible course of conduct."
(Opinion concurring in judgment.)

On the other hand, when an officer is aware that the evidence will inevitably be discovered, he will try to avoid engaging in any questionable practice. In that situation, there will be little to gain from taking any dubious "shortcuts" to obtain the evidence. Significant disincentives to obtaining evidence illegally--including the possibility of departmental discipline and civil liability--also lessen the likelihood that the ultimate or inevitable discovery exception will promote police misconduct. See Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 397 (1971) (35 CrL 123, emphasis supplied).

Thus, the U.S. Supreme Court recognizes that even where police misconduct results in unlawfully obtained evidence, that evidence may nonetheless be admitted upon a showing that it would have inevitably been discovered by lawful means.

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