"Christian Burial Speech" in *Brewer v. Williams*

Keywords

Brewer v. Williams, Christian burial speech, exclusionary rule, interrogation, right to counsel, Robert Anthony Williams

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Introduction

Reading a modern legal casebook, with more than 1000 pages of snippets quoted from many landmark cases, is a mind-numbing, dizzying array of legal rules and citations to cases. Arguments by experienced attorneys and judges are similarly terse and difficult to remember. For example, consider the following citation in a recent opinion by a U.S. Court of Appeals:

> See *Brewer v. Williams,* 430 U.S. 387, 399, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977) (holding detective's religious-based statements to suspect were tantamount to interrogation despite absence of direct questioning).

U.S. v. DeMarce, 564 F.3d 989, 995 (8thCir. 2009).

To someone who is unfamiliar with landmark cases in criminal law, such a citation is too terse to be understandable. However, specialists in criminal law will easily understand such a citation, because they are familiar with *Brewer.* The key to remembering the rule of law in *Brewer* is to take time to read the entire majority opinion issued by the U.S. Supreme Court in this case, and remember the factual story, which includes the infamous "Christian burial speech" by a detective.

I originally began this essay to illustrate a point about legal education: there is not enough time in law school for students to read entire judicial opinions. Reading entire opinions is desirable, so that the student can connect a factual story to the rule(s) of law contained in that opinion and understand the *reason* for the rule(s) of law. As I wrote this essay, it evolved into an exercise for students in high school or undergraduate college to apply facts to reach legal conclusions. Later, this essay evolved further into critical analysis of a case for inconsistencies and missing facts.

Facts

Robert Anthony Williams was confined for three years in a mental hospital in Missouri, but escaped in July 1968.[1] On the day before Christmas, 24 Dec 1968 — according to prosecutors — Williams sexually assaulted[2] and murdered a ten-year old girl in a YMCA washroom in Des Moines, Iowa. Williams fled in an automobile with her corpse wrapped in a YMCA blanket. On 26 Dec, Williams called attorney McKnight in Des Moines and Williams agreed to surrender to police in Davenport, Iowa. Attorney McKnight spoke with the chief of police and Detective Captain Leaming in Des Moines, and they agreed not to interrogate Williams while police transported Williams from Davenport to Des Moines on 26 Dec 1968. However, during the

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[1] *Williams v. Brewer,* 375 F.Supp. 170, 173-174 (S.D.Iowa 1974) (Finding of Fact 13); *Williams v. Nix,* 700 F.2d 1164, 1166 (8thCir. 1983) ("three years").

[2] *Williams v. Brewer,* 509 F.2d 227, 237, n.3 (8thCir. 1974) (Webster, J., dissenting) ("The medical examiner testified that he found positive evidence of seminal fluid in the mouth, rectum and vagina of the body of the ten-year-old child. Death was by suffocation."); *Iowa v. Williams,* 285 N.W.2d 248, 268 (Iowa 1979) ("victim had been sexually molested"); *Williams v. Nix,* 751 F.2d 956, 958 (8thCir. 1985) ("The victim had been sexually assaulted ...."). Williams was only charged with first-degree murder, probably for reasons explained at page 18, below.

transport, Detective Leaming gave what is now called the "Christian burial speech" to Williams. During the transport, Williams showed the detective the location of the victim's body.

In the following text, notice how each court tells the factual story of transporting Williams from Davenport to Des Moines.

Iowa Supreme Court

The Iowa Supreme Court fails to tell the factual story of transporting Williams from Davenport to Des Moines in the Court's discussion of the facts of this case:

> On the morning of December 26 at about 8:45 A.M. Mr. McKnight, a well-known Des Moines attorney, came to Detective Leaming's office at the Des Moines police station and informed the officers present that Williams was going to surrender and there would be a telephone conversation with him at Davenport around 9 A.M. A call was received about that time from the Davenport police advising that Williams had turned himself in and, at Williams' request, he was permitted to talk to Mr. McKnight, who allegedly then told Williams not to talk until he arrived back in Des Moines and saw McKnight. Contending the officers heard that admonishment and agreed not to interrogate Williams before they arrived back in Des Moines, McKnight assured Williams he would be in the custody of good officers and would be safe. Captain Leaming and Detective Nelson were then dispatched to Davenport to bring Williams to Des Moines. On the return trip Williams made statements and revelations which became the subject of defendant's motion to suppress and the waiver issues involved herein.

Iowa v. Williams, 182 N.W.2d 396, 399 (Iowa 1970).

Instead, the Iowa Supreme Court tersely mentions the facts in the middle of its application of the law to the facts of this case, and in between various conclusions of law.

> **[Cite as: 182 N.W.2d at 402]**
>
> In the deferred ruling on defendant's motion to suppress, the trial court found (1) that the return trip from Davenport was a critical stage in the proceedings and the defendant could have had the assistance of counsel before making statements if he had made such a request. (2) that there was an agreement between defense counsel and police officials to the effect that defendant was not to be questioned on the trip to Des Moines, but that he would talk to police in the presence of his attorney when they arrived, (3) that even if that agreement were violated, it would not require suppression here, but did serve the purpose of establishing defendant's state of mind in deciding whether to give some information to the officers before they reached Des Moines, and (4) that under all the evidence produced at the hearing the court found as a fact that the defendant did freely and voluntarily give such information to the officers.
>
> Under this record we are also satisfied that defendant was adequately advised of his rights and understood them well, that evidence of the time element involved on the trip, the general circumstances of it, and the absence of any request or expressed desire for the aid of counsel before or at the time of giving information, were sufficient to sustain a conclusion that defendant did waive his constitutional rights as alleged. It seems clear no statements or demonstrations which would connect defendant with this crime were made during the trip from Davenport to Grinnell, a distance of some 130 miles consuming two hours of time and that as they approached the Grinnell exit the defendant suddenly, spontaneously, voluntarily, and with no prompting, asked the officers if the child's shoes had been found, and then told

where he put them when he stopped for gas on his way to Davenport. Even if defendant had chosen to remain silent at first, he was free to change his mind about talking to the officers and, as a matter of fact under the circumstances revealed, we think he did so as he approached Grinnell. We are satisfied that at this time he intelligently and informedly waived his right to the presence of his counsel, and we agree with the trial court that 'These findings are made beyond a reasonable doubt.'

....

[Cite as: 182 N.W.2d at 403]

It is also undisputed that defendant made no statements or revelations to the officers prior to their approach to the Grinnell exit of the freeway about 130 miles from Davenport, and that shortly after leaving Davenport Captain Leaming told defendant Williams that he did not want him to answer but he wanted him to think when they were driving down the road. He asked Williams to observe the weather. It was then raining, sleeting and freezing, and visibility was very poor. He told Williams they were predicting snow that night and said, 'I think that we're going to be going right past where the body is, and if we should stop and find out where it is on the way in, her parents are going to be able to have a good Christian burial[3] for their little daughter. If we don't and it does snow and if you're the only person that knows where this is and if you have only been there once, it's very possible that with snow on the ground you might not be able to find it.' It also appears Williams had been told by his attorney something to the effect that he would have to tell the officers where the body was.

It is undisputed that no threats of any nature were made to Williams, that both counsel consulted by Williams prior to the trip told him not to talk until in McKnight's presence in Des Moines, and that there was no counsel available in the automobile on the return trip to Des Moines.

It is also undisputed that Williams was an escapee from a mental institute in Missouri, but his conduct and associations for several months had not indicated anything but normal behavior, and that the court ordered an examination at an Iowa Mental Health Institute, which did not find him incompetent or insane at this time.

The principal dispute is whether Officer Leaming attempted to interrogate Williams in the automobile during the trip to Des Moines. Williams said Leaming questioned him periodically concerning where the body was, not in rapid succession but every few miles. He recalled specifically a statement by Captain Leaming while they were drinking coffee at the Grinnell service station that 'You might as well tell us where the body is, we have an idea it's near Mitchellville, and when we get back to Des Moines, your attorney and you will accompany us back here and show us where the body is', a suggestion which conformed with the information already given him by his attorney. He also said Captain Leaming told him his attorney McKnight was ill with a heart ailment and it would be bad to make him go out at night to hunt for the body. On the other hand, Captain Leaming and Officer Nelson denied any interrogation of Williams and said the conversation, except for Leaming's first statement, did not relate to the crime charged but related to religion and what people thought of Williams in Des Moines. Captain Leaming further denied any promise to Williams or his attorneys that

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[3] Note by Standler: this is the only mention of the "Christian burial speech" in the majority opinion of the Iowa Supreme Court.

> he would not attempt to question Williams on the trip or that he made any reference to McKnight's health at that time.
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> There is also a dispute as to whether this officer had an agreement with Attorney McKnight that there would be no interrogation of Williams until they arrived in Des Moines when all questions would be **[Cite as: 182 N.W.2d at 404]** answered, and that they were to come straight back to Des Moines. Captain Leaming denied such an agreement, but there was testimony from other officers and the defendant which would support a finding that was counsel's understanding of the agreement.
>
> On the other hand, Captain Leaming testified that as their automobile approached the Grinnell interchange Williams said to him, 'Did you ever find her shoes?' and when Leaming said he didn't know but understood some things had been found at the rest area west of Grinnell, Williams replied, 'No, I didn't put them with the rest of the clothing' and indicated with a nod of his head northward toward a Skelly station saying, 'I put the shoes right up there, that filling station * * * I bought $2.00 worth of gas' and 'I went around behind the building and dropped the shoes into an empty cardboard box.' He further described the shoes or boots made of brown leather. A search for them did not reveal the shoes, but the station attendant recognized Williams as the party that stopped there on Christmas eve. Captain Leaming further testified that Williams told of leaving some clothes and a blanket at the rest area west of Grinnell and that when they approached the Mitchellville turn-off, he said, 'I am going to show you where the body is' and proceeded to do so, although he missed the correct back road the first try. Officer Nelson corroborated this testimony, and other officers in contact with Captain Leaming aided in the search and recovery of the body.
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> Whether the officers questioned Williams on the trip to Des Moines and whether they had agreed to come straight back to Des Moines with the defendant without any stops, were questions of fact, and in this so-called swearing contest the fact finder must resolve the questions. We find there is substantial evidence to support the trial court's finding of fact, and as to the jury's determination of which version was correct there can be no doubt. It is only in an extreme case, where the findings are without substantial support or the record is clearly against the weight of the evidence, that we will interfere with the fact-finding of the court or jury. *State v. Everett,* Iowa, 157 N.W.2d 144 (1968); *State v. Hardesty,* 261 Iowa 382, 394, 153 N.W.2d 464, 472 (1967); *Greenwald v. Wisconsin,* supra, 390 U.S. 519, 88 S.Ct. 1152, 20 L.Ed.2d 77. Therefore, unless the trial court erred by failure to consider all necessary circumstances to resolve the questions of waiver, the judgment rendered herein must be affirmed. We find no such failure evident in these proceedings.

Iowa v. Williams, 182 N.W.2d 396, 402-404 (Iowa 1970).

Why would the Iowa Supreme Court be so terse with the critical facts? My answer is that the majority of judges had no doubt that Williams brutally murdered the girl and they wanted to punish Williams for that murder. Genuine legal issues about a fair trial (i.e., the admissibility in court of certain facts) were shoved aside by Iowa courts.

After the affirmance of the trial court by the Iowa Supreme Court, Williams petitioned the U.S. District Court for a writ of habeas corpus.

U.S. District Court

The U.S. District Court tells the factual story of transporting Williams from Davenport to Des Moines in its Findings of Facts:

[Cite as: 375 F.Supp. at 173]

11. Before Detective Leaming left for Des Moines with the Petitioner, Mr. Kelly asked Detective Leaming that he be permitted to ride along in the police car to Des Moines. This request was refused by Detective Leaming. 182 N.W.2d at 406; R. at 183.

12. On several occasions during the trip to Des Moines, and after the aforementioned *Miranda* warnings were given in Davenport, Petitioner told Detective Leaming that he would talk to him *after* he returned to Des Moines and consulted with his attorney, Mr. McKnight. 182 N.W.2d at 406; R. at 27-28, 30, 33. The *Miranda* warnings were never repeated during the trip itself. R. at 133.

13. The Petitioner had been a patient at the State Mental Hospital at Fulton, **[Cite as: 375 F.Supp. at 174]** Missouri for three years prior to his escape on July 6, 1968. Petitioner also was a person of a deeply religious nature. These facts were known to the Des Moines police, including Detective Leaming, at the time the Petitioner returned to Des Moines from Davenport with Detective Leaming. 182 N.W.2d at 406; R. at 67, 119, 133, 148.

14. Following the giving of *Miranda* warnings by Detective Leaming, Petitioner did not state that he wished to waive his *Miranda* rights. In fact, as noted in Paragraph 12, supra, Petitioner indicated that he did not wish to talk on the trip by stating that he would talk *after* he got to Des Moines and spoke with Mr. McKnight. Nevertheless, while Detective Nelson drove, Detective Leaming carried on a conversation with Petitioner during the trip concerning religion, Petitioner's reputation, and various other topics, including Petitioner's friends, Petitioner's Reverend, a Mr. Searcy, whether the police had checked for fingerprints in Petitioner's room, the intelligence of other people, police procedures, organizing youth groups, singing, playing a piano, playing an organ, 'and this sort of thing.' 182 N.W.2d at 406-407; R. at 119. At about this time, Detective Leaming also testified that he told Petitioner that he did not hate him or wish to kill him; that 'I myself had had religious training and background as a child, and that I would probably come more near praying for him than I would to abuse him or strike him'; and that he was a good police officer and would protect Petitioner and not allow anyone to molest or abuse him. R. at 118-19; T. at 222.

15. According to Detective Leaming's own testimony, the specific purpose of this conversation was to obtain statements and information from the Petitioner concerning the missing girl. In this regard, the following testimony by Detective Leaming on cross-examination during pre-trial proceedings in the Polk County District Court is particularly relevant:

Q. Now, when you left, just before you left, do you remember we had parted greetings and didn't you say, 'I'll go get him and bring him right back here to Des Moines'? A. Yes, sir.

Q. You said that to me, didn't you? A. Yes, sir.

Q. Knowing that you were dealing with a person from a mental hospital, did you say to him, you don't have to tell me this information, did you say that to him out there on the highway? A. What information?

Q. The information that he gave you, the defendant gave you, you didn't say that to him, did you? A. No, sir.

Q. In fact, Captain, whether he was a mental patient or not, you were trying to get all the information you could before he got to his lawyer, weren't you? A. I was sure hoping to find out where that little girl was, yes, sir.

Q. Well, I'll put it this way: You were hoping to get all the information you could before Williams got back to McKnight, weren't you? A. Yes, Sir.

R. at 136-37. See also, R. at 133-34, 135.

16. Detective Leaming specifically appealed to Petitioner's known religious nature in order to obtain statements from him concerning the whereabouts of the missing girl. The following testimony by Detective Leaming himself, describing what he said to the Petitioner, clearly sets out the approach which he used:

Eventually, as we were traveling along there, I said to Mr. Williams that, 'I want to give you something to think about while we're traveling down the road.' I said, 'Number one, I want you to observe the weather conditions, it's raining, it's sleeting, it's freezing, driving is very treacherous, visibility is poor, it's going to be dark early this evening. They are **[Cite as: 375 F.Supp. at 175]** predicting several inches of snow for tonight, and I feel that you yourself are the only person that knows where this little girl's body is, that you yourself have only been there once, and if you get a snow on top of it you yourself may be unable to find it. And, since we will be going right past the area on the way into Des Moines, I feel that we could stop and locate the body, that the parents of this little girl should be entitled to a Christian burial for the little girl who was snatched away from them on Christmas Eve and murdered. And I feel we should stop and locate it on the way in rather than waiting until morning and trying to come back out after a snow storm and possibly not being able to find it at all.'

R. at 120.

17. Following this statement, Petitioner asked why Detective Leaming felt that they were going past the body, and Detective Leaming told Petitioner that he knew the body was somewhere in the area of Mitchellville, a town near Interstate 80. Detective Leaming then stated, 'I do not want you to answer me. I don't want to discuss it further. Just think about it as we're riding down the road.' R. at 120-21.

18. In fact, Detective Leaming did not know that the body was near Mitchellville, and he made the statement to Petitioner specifically to induce Petitioner to tell him where the body was. R. at 135.

19. At some point east of Grinnell, Iowa, and after the conversation outlined in Paragraphs 14 and 17, supra, Petitioner asked if the police had found the victim's shoes. Without any further constitutional warnings, Detective Leaming discussed with Petitioner what evidence had been found, where Petitioner had put the shoes, and what the shoes looked like. A stop at a gas station where the shoes were supposed to be produced no results. 182 N.W.2d at 404; R. at 121-22.

20. Following this incident, there was some further discussion of a blanket; a stop at a rest area disclosed that the blanket already had been found. 182 N.W.2d at 404; R. at 122-23.

21. After the stop at the rest area, there was further discussion about 'people and religion and intelligence and friends of (Petitioner's), and what people's opinion was of him and so forth.' Then, 'some distance still east of the Mitchellville turnoff,' Petitioner stated that he would show the detectives where the body was. 182 N.W.2d at 404, 407; R. at 123.

22. Following Petitioner's statement, the police, including Detective Leaming, drove to a place indicated by Petitioner, where they located the body of Pamela Powers. 182 N.W.2d at 404; R. at 124-25, 145-47.

23. Although Detective Leaming's automobile was not equipped with a radio capable of reaching Des Moines during most of the trip, a state car which was following at all times was equipped with such a radio. This radio was in fact utilized to keep in touch with Chief Nichols. Chief Nichols was informed of the side trip to Mitchellville, but did not relay this information to Mr. McKnight. R. at 12-13, 150 (11, 20-23).

Williams v. Brewer, 375 F.Supp. 170, 173-175 (S.D.Iowa 1974).

U.S. Court of Appeals

The U.S. Court of Appeals tells the factual story of transporting Williams from Davenport to Des Moines:

[Cite as: 509 F.2d at 229]

The following facts are unchallenged by either party:

....

After arriving in Davenport and before departing for Des Moines, Detective Leaming advised the appellee of his *Miranda* rights. These rights were not repeated during the trip to Des Moines.

On the trip from Davenport to Des Moines, Detective Leaming and the appellee sat in the rear seat of the car with Detective Nelson driving. Leaming and the appellee engaged in conversation. They discussed religion, appellee's reputation, appellee's friends, police procedures, **[Cite as: 509 F.2d at 230]** aspects of the police investigation into this matter, and various other topics.

At this time Detective Leaming knew that the appellee had been a patient in the state mental hospital at Fulton, Missouri, for a period of about three years and that he was an escapee therefrom.

On several occasions during the return trip to Des Moines appellee told Detective Leaming that he would tell him the whole story after he returned to Des Moines and consulted with his attorney, Mr. McKnight.

According to Detective Leaming's own testimony, the specific purpose of his conversation with appellee was to obtain statements and information from appellee concerning the missing girl before the appellee could consult with Mr. McKnight.

The following testimony by Detective Leaming during the hearing on the motion to suppress describes a portion of his conversation with the appellee.

> Eventually, as we were traveling along there, I said to Mr. Williams that, 'I want to give you something to think about while we're traveling down the road.' I said, 'Number one, I want you to observe the weather conditions, it's raining, it's sleeting, it's freezing, driving is very treacherous, visibility is poor, it's going to be dark early this evening. They

> are predicting several inches of snow for tonight, and I feel that you yourself are the only person that knows where this little girl's body is, that you yourself have only been there once, and if you get a snow on top of it you yourself may be unable to find it. And, since we will be going right past the area on the way to Des Moines, I feel that we could stop and locate the body, that the parents of this little girl should be entitled to a Christian burial for the little girl who was snatched away from them on Christmas Eve and murdered. And I feel we should stop and locate it on the way in rather than waiting until morning and trying to come back out after a snow storm and possibly not being able to find it at all.'
>
> In response to an inquiry by appellee, Leaming told the appellee that he knew the body was somewhere in the area of Mitchellville, a town 15 miles from Des Moines and along the freeway between Davenport and Des Moines. Leaming later testified that he did not, in fact, know that the body was near Mitchellville.
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> Shortly before reaching the Mitchellville turnoff, the appellee told Leaming that he would show him where the body was located. Accompanied by other police officers who were following them, they drove to a location designated by the appellee; the body of Pamela Powers was found in a ditch alongside the highway.
>
> Appellee's statements and other evidence obtained pursuant to such statements were admitted into evidence at trial, and over the objections of appellee's attorney.

Williams v. Brewer, 509 F.2d 227, 229-230 (8thCir. 1974).

The state of Iowa challenged some facts found by the U.S. District Court:

> The District Court specifically found that Mr. Kelly, appellee's Davenport attorney, had advised Detective Leaming prior to his departure from Davenport with the appellee that the appellee was not to be questioned until he got to Des Moines and that Mr. Kelly had asked Leaming that he be permitted to accompany the appellee to Des Moines and that Leaming denied the request.
>
> The District Court also found that Leaming knew that the appellee was a deeply religious person and that he used that knowledge to elicit incriminating statements from the appellee.
>
> The District Court also found that the misstatement by Leaming that he knew the whereabouts of the body of Pamela Powers had a compelling influence on the appellee to make incriminating statements.
>
> A review by this court of the record of the state proceedings reveals certain discrepancies between the testimony of Mr. Kelly and Detective Leaming and certain ambiguities in some of the testimony upon which the District Court relied in making its findings. The record also indicates with regard to the facts challenged here that the state court did not resolve 'the merits of the factual disputes.' Accordingly, where neither party has requested an evidentiary hearing, the federal court is not constrained in its fact findings by the presumption of correctness to be given findings of the state court. 28 U.S.C. § 2254(d)(1).
>
> This court therefore finds that the District Court correctly applied 28 U.S.C. § 2254 in its resolution of the disputed evidentiary facts, and that the facts as found by the District Court had substantial basis in the record.

Williams v. Brewer, 509 F.2d 227, 231 (8thCir. 1974).

Note that the rule of law about presumption of correctness of a state court's findings of facts may have changed in *Miller v. Fenton,* 474 U.S. 104, 108, n.3, 112-115 (1985). See *Perri,* 817 F.2d 448, 450-451 (7thCir. 1987) and *Fields v. Murray,* 49 F.3d 1024, 1032, n.9 (4thCir. 1995).

U.S. Supreme Court

The U.S. Supreme Court tells the factual story of transporting Williams from Davenport to Des Moines:

[Cite As: 430 U.S. at 391]

Detective Leaming and his fellow officer arrived in Davenport about noon to pick up Williams and return him to Des Moines. Soon after their arrival they met with Williams and Kelly [Williams'[4] attorney in Davenport], who, they understood, was acting as Williams' lawyer. Detective Leaming repeated the *Miranda* warnings, and told Williams:

> "(W)e both know that you're being represented here by Mr. Kelly and you're being represented by Mr. McKnight in Des Moines, and . . . I want you to remember this because we'll be visiting between here and Des Moines."

Williams then conferred again with Kelly alone, and after this conference Kelly reiterated to Detective Leaming that **[Cite As: 430 U.S. at 392]** Williams was not to be questioned about the disappearance of Pamela Powers until after he had consulted with McKnight back in Des Moines. When Leaming expressed some reservations, Kelly firmly stated that the agreement with McKnight was to be carried out that there was to be no interrogation of Williams during the automobile journey to Des Moines. Kelly was denied permission to ride in the police car back to Des Moines with Williams and the two officers.

The two detectives, with Williams in their charge, then set out on the 160-mile drive. At no time during the trip did Williams express a willingness to be interrogated in the absence of an attorney. Instead, he stated several times that "(w)hen I get to Des Moines and see Mr. McKnight, I am going to tell you the whole story." Detective Leaming knew that Williams was a former mental patient, and knew also that he was deeply religious.

The detective and his prisoner soon embarked on a wide-ranging conversation covering a variety of topics, including the subject of religion. Then, not long after leaving Davenport and reaching the interstate highway, Detective Leaming delivered what has been referred to in the briefs and oral arguments as the "Christian burial speech." Addressing Williams as "Reverend," the detective said:

> "I want to give you something to think about while we're traveling down the road. . . . Number one, I want you to observe the weather conditions, it's raining, it's sleeting, it's freezing, driving is very treacherous, visibility is poor, it's going to be dark early this evening. They are predicting several inches of snow for tonight, and I feel that you yourself are the only person that knows where this little girl's body is, that you yourself have only been there once, and if you get a snow on top of it you yourself may be unable to find it. And, since we will be going right past the area on the way into **[Cite As: 430 U.S. at 393]** Des Moines, I feel that we could stop and locate the body, that the parents of this little girl should be entitled to a Christian burial for the little girl who was

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[4] The possessive case of "Williams" is properly formed by adding only an apostrophe. However, the Iowa Supreme Court — 285 N.W.2d 248, 253, 260 (Iowa 1979) — uses "Williams's".

> snatched away from them on Christmas (E)ve and murdered. And I feel we should stop and locate it on the way in rather than waiting until morning and trying to come back out after a snow storm and possibly not being able to find it at all."
>
> Williams asked Detective Leaming why he thought their route to Des Moines would be taking them past the girl's body, and Leaming responded that he knew the body was in the area of Mitchellville a town they would be passing on the way to Des Moines.**FN1** Leaming then stated: "I do not want you to answer me. I don't want to discuss it any further. Just think about it as we're riding down the road."
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> **FN1**. The fact of the matter, of course, was that Detective Leaming possessed no such knowledge.
>
> As the car approached Grinnell, a town approximately 100 miles west of Davenport, Williams asked whether the police had found the victim's shoes. When Detective Leaming replied that he was unsure, Williams directed the officers to a service station where he said he had left the shoes; a search for them proved unsuccessful. As they continued towards Des Moines, Williams asked whether the police had found the blanket, and directed the officers to a rest area where he said he had disposed of the blanket. Nothing was found. The car continued towards Des Moines, and as it approached Mitchellville, Williams said that he would show the officers where the body was. He then directed the police to the body of Pamela Powers.

Brewer v. Williams, 430 U.S. 387, 391-393 (1977).

In learning how to read a case, law students learn always to ask themselves who is suing whom and why? After you read the lengthy facts of the case — which do **not** mention Brewer — you may wonder who is Brewer in the title of the U.S. Supreme Court case, *Brewer v. Williams.* Brewer was the warden of the Iowa prison where Williams was a prisoner. In federal court, this was a habeas corpus proceeding under 28 U.S.C. § 2254, in which the plaintiff (i.e., the incarcerated criminal) sues the warden of the prison. Because the state of Iowa lost in the U.S. Court of Appeals, Brewer was the named appellant in the case at the U.S. Supreme Court, and thus his name appears first in the title of the case at the U.S. Supreme Court.

History of the Case

Of course, Williams revealing the location of the body was essentially a confession, since only the person who dumped her body would possess such knowledge. Is this confession admissible in court? Iowa state courts admitted the confession and sentenced Williams to life in prison. *Iowa v. Williams,* 182 N.W.2d 396 (Iowa 1970). Attorney McKnight represented Williams in the first trial and appeal.

Williams then filed a habeas corpus petition in federal court and all three federal courts agreed that Williams' rights had been violated. *Williams v. Brewer,* 375 F.Supp. 170 (S.D.Iowa 1974), *aff'd,* 509 F.2d 227 (8thCir. 1974), *aff'd,* 430 U.S. 387 (1977). Attorney Robert Bartels, a law

professor at the University of Iowa, represented Williams in these proceedings in federal courts and also in the second appeal to the Iowa Supreme Court.

On remand, Williams was tried again, this time without using Williams' statements during the trip to Des Moines. A jury convicted Williams and the Iowa Supreme Court affirmed. *Iowa v. Williams,* 285 N.W.2d 248 (Iowa 1979), *cert. den.,* 446 U.S. 921 (1980).

Williams then filed a second habeas petition, which was unsuccessful. *Williams v. Nix,* 528 F.Supp. 664 (S.D. Iowa 1981), *rev'd,* 700 F.2d 1164 (8thCir. 1983), *rev'd,* 467 U.S. 431 (1984), *on remand,* 751 F.2d 956 (8thCir. 1985), *cert. den.,* 471 U.S. 1138 (1985). Williams was arrested in Dec 1968, and his case will still in the courts in 1985, 17 years later.

The dismissal of the habeas petition was affirmed. *Williams v. Thalacker,* 1997 WL 14771 (8thCir. 1997), *cert. den.,* 522 U.S. 837 (1997).

Although not relevant to the murder, Williams has filed litigation against prison officials, alleging violations of Williams' civil rights when they disciplined Williams for violating prison rules. *Williams v. Nix,* 1 F.3d 712 (8thCir. 1993); *Williams v. Manternach,* 192 F.Supp.2d 980 (N.D.Iowa 2002). In these cases, Williams is said to give legal advice to inmates ("jailhouse lawyer"), which may show Williams as having above average intelligence.

Questions

- The police promised Williams' attorneys not to interrogate Williams, but was this an interrogation? Williams initially wanted to remain silent and tell police nothing, but he apparently changed his mind during the trip and arguably waived his legal right to remain silent. Williams — arguably voluntarily — told Detective Leaming the location of the body. Note that in the "Christian burial speech", Detective Leaming explicitly told Williams *not* to answer.[5]

- Was Detective Leaming's "Christian burial speech" the equivalent of coercion?

- Is the timing of events — the grieving parents deprived of their daughter the day after Christmas — relevant to the legal issues?

- Detective Leaming addressed Williams as "Reverend". Does this have any relevance to the legal issues?

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[5] *Iowa v. Williams,* 182 N.W.2d 396, 403 (Iowa 1970) ("Leaming told defendant Williams that he did not want him to answer but he wanted him to think when they were driving down the road."). *Brewer v. Williams,* 430 U.S. 387, 393 (1977) (Leaming: "I do not want you to answer me. I don't want to discuss it any further. Just think about it as we're riding down the road.").

- Is the future snow concealing Pamela's body relevant to the legal issues?

- Was the [past?] mental illness of Williams relevant to his mental capacity to voluntarily waive his legal rights?

- Was the refusal of the Des Moines police to allow Williams' attorney (either Kelly or McKnight) to ride in the car with Williams an indication that the police planned to interrogate Williams during the trip?

- Detective Leaming said to Williams "we'll be visiting between here and Des Moines."[6] Does that mention of "visiting" indicate that police planned to interrogate Williams during the trip?

- Why would police in Des Moines send a high-ranking Captain of Detectives (Leaming) on a routine, 160-mile (one-way) prisoner transport mission, unless Captain Leaming intended to interrogate Williams?

- Why did the police fail to record the conversation between Leaming and Williams on magnetic tape?[7]

- Are all of these questions about details just a distraction from what *should* be the real rule — after an agreement not to interrogate Williams, the policemen should have been completely silent during the entire trip from Davenport to Des Moines?

- Williams told Detective Leaming that Williams intended to "tell you the whole story" *after* Williams arrived in Des Moines and consulted with attorney McKnight. As Chief Justice Warren Burger said in his dissenting opinion, "The Court then goes on to hold, in effect, that Williams could not change his mind until he reached Des Moines." *Brewer,* 430 U.S. 387, 419, n.3 (1977). In this context, note that Williams had voluntarily surrendered to police.

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[6] *Brewer v. Williams,* 430 U.S. at 391.

[7] Yale Kamisar, "Foreword: *Brewer v. Williams* — A Hard Look at a Discomfiting Record," 66 Georgetown Law Journal 209, 238-243 (Dec 1977).

- The exclusionary rule considers the egregiousness of the police misconduct. Should the rule also consider the egregiousness of the defendant's alleged conduct?[8] Obviously, a more dangerous defendant poses a higher risk to society if not convicted.

- Williams was black,[9] and the victim of sexual assault and murder was a 10 y old white[10] girl. What effect did race have on the two juries who convicted Williams? Remember that racial attitudes around 1970 were different from today.

- The attorney for the state of Iowa acknowledged that the " 'Christian burial speech' was tantamount to interrogation". *Brewer v. Williams,* 430 U.S. at 399, n.6. If the burial speech really was interrogation, why didn't the Court decide the case under the Fifth Amendment (e.g., *Miranda v. Arizona,* 384 U.S. 436 (1966))? In fact, the majority opinion cites *Miranda* only in the context of repeated warnings that were given to Williams by police and by a judge in Davenport. The Court decided *Brewer v. Williams* on a violation of the Sixth Amendment right to counsel. So — given that the burial speech is interrogation — why did the U.S. Supreme Court not find a violation of Williams' rights under the Fifth Amendment?

- Would the police have inevitably discovered the body of the victim? (inevitable discovery exception to the exclusionary rule) Detective Leaming's "Christian burial speech" asserts that snow will soon cover the body, preventing discovery of her body during the next three months. The search had been discontinued on the afternoon of 26 Dec and it is not clear when (or if) the search would have resumed.[11] Snow would not have entirely covered the victim's body until April 1969, because

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[8] *Williams v. Brewer,* 509 F.2d 227, 237 (8thCir. 1974) (Webster, J., dissenting) ("This was a brutal crime. The evidence of Williams' guilt was overwhelming. No challenge is made to the reliability of the fact-finding process;...."). Similarly, the three dissenting opinions at the U.S. Supreme Court: *Brewer v. Williams,* 430 U.S. 387, 416 (1977) (Burger, C.J., dissenting) ("Williams is guilty of the savage murder of a small child;...."), 430 U.S. at 437 (White, J., dissenting) ("A mentally disturbed killer whose guilt is not in question may be released."), 430 U.S. at 441 (Blackmun, J., dissenting) ("This was a brutal, tragic, and heinous crime inflicted upon a young girl on the afternoon of the day before Christmas.").

[9] *Williams v. Nix,* 700 F.2d 1164, 1166 (8thCir. 1983) ("... a black man known as 'Reverend' ....").

[10] *Iowa v. Williams,* 182 N.W.2d 396, 399 (Iowa 1970) (Witness described bundle that Williams put in car: "saw two legs in it and they were skinny and white.").

[11] *Iowa v. Williams,* 285 N.W.2d 248, 261-262 (Iowa 1979) ("The search was called off at 3:00 p.m. [on 26 Dec] .... It is not entirely clear, as defendant points out, when the search would have been reinitiated.").

> In addition, the left leg of the body was poised in midair, where it would not have been readily covered by a subsequent snowfall. .... Her body was frozen to the side of a cement culvert. It would have been nearly impossible for anyone who came down into the ditch to look into the culvert, as the searchers were doing, to fail to see the child's body.

Williams, 285 N.W.2d at 262. Of course, Leaming did not know about the position of her body until after the body was discovered. *If* the body had been discovered *after* April 1969, decomposition would have prevented some forensic analysis, so a late discovery of her body is *not* equivalent to a prompt discovery.

All of these little questions lead to the central issues in *Brewer:* Was Williams deprived of effective assistance of counsel, a right guaranteed in the Sixth Amendment to the U.S. Constitution? Was the interrogation in violation of Williams' right not to incriminate himself, a right guaranteed in the Fifth Amendment to the U.S. Constitution?

This is *not* an easy case to decide: the justices on the Iowa Supreme Court in 1970 were split 5 to 4, the judges on the U.S. Court of Appeals in 1974 were split 2 to 1, and the justices of the U.S. Supreme Court in 1977 were split 5 to 4 in this case. Unlike physics and mathematics, there is often not a unique correct answer to legal cases that satisfy all of the competing values of society. We want to punish murderers and rapists, but we also want to respect the legal right against self-incrimination and the legal right to have an attorney present during custodial interrogation by police.

My Opinion

When I first read *Brewer v. Williams,* I was appalled that the police violated their do-not-interrogate agreement with Williams' attorneys. Fourteen years later, my opinion has changed: as explained in the next paragraph, I now conclude there was an inadequate mental examination of Williams. *If* Williams was of normal intelligence and free from serious mental disease, then the Christian burial speech could be good policework, which elicited a confession from Williams. There is nothing wrong with a guilty conscience motivating a criminal to cooperate with police, including confessing to the crime.

missing facts

Given that Williams was involuntarily confined in a mental hospital for three years during 1965-68, I wonder about the mental examination given to Williams in 1969 that found him sane and mentally competent.[12] The Iowa Supreme Court — in its terse, one-sentence mention of his mental state — mentioned *neither* the reason *nor* diagnosis that put Williams in a mental hospital for three years. Other judicial opinions in this case ignore Williams' mental illness. After the

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[12] *Iowa v. Williams,* 182 N.W.2d at 403 (Iowa 1970).

finding of sanity and competency — probably by a psychiatrist employed by the state of Iowa — Williams' mental status was not challenged during 17 years of litigation. In my view, whether the "Christian burial speech" is coercive depends on the intelligence, religion, sanity, mental illness, etc. of Williams at that time. In my opinion, this issue of Williams' mental status did not receive the attention that it deserved, because of inadequate facts. Before the first trial, there should have been a psychiatric examination of Williams conducted by a psychiatrist chosen by the defense attorney. In a later case involving a different criminal, the U.S. Supreme Court seems to agree.[13]

I think Judge Webster was correct to call for an evidentiary hearing[14] in U.S. District Court, instead of relying only on facts from the trial transcript in Iowa state court. At the habeas corpus proceeding in U.S. District Court in 1974, it was already too late for any psychiatrist to determine Williams' mental state during the crime in December 1968. However, at least a psychiatrist could explain *why* Williams had been confined to a mental hospital for three years, and could explain whether Williams had any continuing mental disease in 1974.

I have looked at the online archives of Iowa newspapers, but the *Des Moines Register* and Iowa City *Press-Register* only go back to November 2002. Fortunately, Prof. McInnis read the old newspapers: Williams raped two girls, aged 6 and 8 y, and he was declared insane.[15]

I note in passing that some of the key facts in this case were first revealed in judicial opinions years after the Iowa Supreme Court in 1970 affirmed the first conviction of Williams.
My footnotes above to judicial opinions in this case show some of these belatedly mentioned facts.

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[13] *Ake v. Oklahoma,* 470 U.S. 68, 83 (1985) ("We therefore hold that when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense."). See also, *Granviel v. Texas,* 495 U.S. 963, 964-965 (1990) (Marshall, J., dissenting from denial of certiorari).

[14] *Williams v. Brewer,* 509 F.2d 227, 236 (8thCir. 1974) (Webster, J., dissenting) ("grave doubts").

[15] Tom N. McInnis, "*Nix v. Williams* and the Inevitable Discovery Exception: Creation of a Legal Safety Net," 28 St. Louis Univ. Public Law Review 397, 401 (2009) (citing Knight & Ney, *Des Moines Register,* pp. 1, 7 (26 Dec 1968)).

exclusionary rule

I have never liked the conventional explanation of the exclusionary rule,[16] in which improperly obtained evidence is sometimes excluded from trials, with the intent of deterring such improper conduct by police. I think a better explanation is to exclude evidence that *should* never have been gathered, such as either (1) a confession made under threat, brutal conduct by agents of the government, or torture; or (2) information that was obtained by violating someone's privacy, such as an illegal wiretap or unlawful eavesdropping. My explanation of the exclusionary rule effectively erases some of the harm to the victim of government misconduct, even if the victim actually committed a crime, because "bad people" still have constitutional rights. As for the handwringing about the exclusionary rule allegedly harming society by making it more difficult to convict criminals — it also harms society when fruits of unconstitutional or unlawful conduct by police are used in court. But my view of an automatic, mechanical application of the exclusionary rule is *not* the law in the USA.[17]

One might suggest that unconstitutional searches, seizures, and interrogations should be remedied under civil rights litigation against a government agency, or against individual policemen or other governmental employees.[18] However, such litigation would require that the information in the unconstitutional conduct be disclosed during a civil trial, thereby harming plaintiff's reputation in the community and/or embarrassing plaintiff. Furthermore, the attorney's fees would be prohibitive to most plaintiffs. There could also be criminal prosecution of policemen or their supervisors, such as an attorney general, who order unconstitutional conduct. But such criminal prosecutions generally require either appointment of an independent counsel or a federal prosecution of misconduct by state or local officials. Because the alternative ways of vindicating constitutional rights in this paragraph are rarely used, it becomes more important to automatically exclude any evidence that was gathered in an illegal or unconstitutional manner.

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[16] See, e.g., *Weeks v. United States,* 232 U.S. 383, 393-394 (1914); *Mapp v. Ohio,* 367 U.S. 643 (1961) (rule applicable to state criminal trials); *U.S. v. Janis,* 428 U.S. 433, 443-446 (1976); *Hudson v. Michigan,* 547 U.S. 586, 591-592 (2006).

[17] See, e.g., *Hudson v. Michigan,* 547 U.S. 586, 591-592 (2006) (quoting *Wong Sun v. United States,* 371 U.S. 471, 487-488 (1963) and *Segura v. United States,* 468 U.S. 796, 815 (1984)).

[18] See, e.g., *Bivens v. Six Unknown Federal Narcotics Agents,* 403 U.S. 388 (1971).

Did Williams murder Pamela Powers?

The facts are clear that Williams disposed of her body. But did Williams murder her? Some key facts relevant to the question of who committed the murder seem to have been discussed in a published judicial opinion for the first time in 1983, 15 years after the murder.

> The case then went to trial [in 1977], and the disputed evidence was introduced against defendant. The defense conceded that Williams had left the YMCA with the little girl's body, but claimed that someone else had killed her and placed her body in Williams's [sic] room in the hope that suspicion would focus on him. Williams, the theory went, then panicked, fled, and hid the body by the side of a road, until he came to his senses and gave himself up two days later. The theory is not so far-fetched as it sounds. The State contended that the murder was related to sexual abuse of the victim, and in fact acid phosphatase, a component of semen, was found in her body. But no traces of spermatozoa, living or dead, were found either in the body or on Pamela's clothing. One inference that could be drawn is that the victim was attacked by a sterile male. Williams is concededly not sterile.

Williams v. Nix, 700 F.2d 1164, 1168 (8thCir. 1983), *rev'd on other grounds,* 467 U.S. 431 (1984). This is strong evidence that another man (in addition to Williams) was involved in this crime. With two men involved, it is not known who murdered the victim. And the facts in this terse quotation may explain why Williams was *not* charged with sexual abuse: it was not his semen. Prof. McInnis has discussed[19] these facts in great detail.

I wonder if attorney McKnight was so angry with police for violating the do-not-interrogate agreement, that he put all of his effort into (1) excluding the statements of Williams and (2) excluding the discovery of the body. Attorney Bartels was later successful in excluding the statements of Williams, but the discovery of the body was allowed in evidence under the inevitable discovery exception to the exclusionary rule. Other important issues in this case (e.g., mental state of Williams, absence of sperm in semen on the victim) received little attention in appellate courts.

Because I was curious about this case after finding the above mentioned discrepancies and omissions, I went to a law library and searched for articles about *Brewer v. Williams.*

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[19] Tom N. McInnis, "*Nix v. Williams* and the Inevitable Discovery Exception: Creation of a Legal Safety Net," 28 St. Louis Univ. Public Law Review 397, 417-418, 420-421, 424, 426 (2009).

Major Commentators

I only read the published judicial opinions in this case. Prof. Yale Kamisar[20] also looked at the transcript of the proceedings in the Iowa trial court in 1969. Prof. Kamisar summarized the record of this case: "contradictory, bewildering, and at times nothing less than flabbergasting" and "incomplete, contradictory, and recalcitrant".[21] After reading Kamisar's two articles, I think the following points are particularly significant.

Both Williams and Leaming testified at an evidentiary hearing prior to trial, on defendant's motion to exclude some evidence. Williams said *nothing* about the "Christian burial speech". Incidentally, during cross-examination by attorney McKnight, Leaming first mentioned the speech.[22] This suggests to me that the speech was *not* important in Williams' decision to show police the location of the body.

Leaming testified under oath four weeks apart to two "significantly different" versions of the Christian burial speech.[23] The appellate courts used the second version of the speech, although the U.S. Supreme Court added the word "Reverend" from the first version of the speech.

There is also a bizarre incident on 26 Dec 1968 in which attorney McKnight in Des Moines spoke by telephone with client Williams in Davenport, and McKnight *allowed* the chief of police and Detective Leaming to listen to McKnight's end of the conversation. That destroyed attorney-client confidentiality. Furthermore, McKnight told Leaming that Williams said the victim was dead.[24] That revelation was useful to Leaming in formulating the "Christian burial speech" instead of a "rescue the victim speech".

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[20] Yale Kamisar, "Foreword: *Brewer v. Williams* — A Hard Look at a Discomfiting Record," 66 Georgetown Law Journal 209 (Dec 1977); Yale Kamisar, "*Brewer v. Williams, Massiah,* and *Miranda:* What is 'Interrogation'? When Does It Matter?" 67 Georgetown Law Journal 1 (Oct 1978).

[21] Yale Kamisar, 66 Georgetown Law Journal at 209, 233.

[22] Yale Kamisar, 66 Georgetown Law Journal at 235.

[23] Yale Kamisar, 66 Georgetown Law Journal at 216-218, 221, 223, etc.

[24] Yale Kamisar, 66 Georgetown Law Journal at n. 88; Yale Kamisar, 67 Georgetown Law Journal at n. 70.

Prof. Tom McInnis, a political scientist, read the transcripts of both trials plus some of the newspaper articles at the time of crime.[25] He found more discrepancies than I care to mention here! Prof. McInnis argues persuasively that the inevitable discovery exception to the exclusionary rule was created to make it easier for prosecutors to keep Williams in prison.[26]

In concluding that Williams' constitutional rights had been violated, the majority opinion explicitly said:

> The crime of which Williams was convicted was senseless and brutal, calling for swift and energetic action by the police to apprehend the perpetrator and gather evidence with which he could be convicted.

Brewer v. Williams, 430 U.S. 387, 406 (1977). And then the majority opinion assists the prosecution in the forthcoming second trial of Williams by suggesting in a footnote that there is an inevitable discovery exception to the exclusionary rule. *Ibid.* at 406, n.12.

In a concurring opinion, Justice Marshall — a very liberal justice — is not worried that Williams may be freed on a legal technicality:

> ... given the ingenuity of Iowa prosecutors on retrial or in a civil commitment proceeding, I doubt very much that there is any chance a dangerous criminal will be loosed on the streets, ...

Brewer v. Williams, 430 U.S. at 408 (Marshall, J., concurring).

Chief Justice Burger, in his dissenting opinion, notes that all of the Justices agree that Williams is guilty of the murder:

> Williams is guilty of the savage murder of a small child; no member of the Court contends he is not.

Brewer v. Williams, 430 U.S. at 416 (Burger, J., dissenting). Likewise, Justice White says in his dissenting opinion:

> A mentally disturbed killer whose guilt is not in question may be released.

Brewer v. Williams, 430 U.S. at 437 (White, J., dissenting).

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[25] Tom N. McInnis, "*Nix v. Williams* and the Inevitable Discovery Exception: Creation of a Legal Safety Net," 28 St. Louis Univ. Public Law Review 397 (2009).

[26] Tom N. McInnis, "*Nix v. Williams* and the Inevitable Discovery Exception: Creation of a Legal Safety Net," 28 St. Louis Univ. Public Law Review 397, 398, 411-412, 442 (2009).

Mention of Williams' previous criminal history (including raping 6 and 8 y old girls in Missouri, which resulted in Williams being indefinitely confined in a mental hospital) was *not* admissible at trial. But the prosecution did not need to mention this prior criminal history at trial, because at least some of the jurors already knew it from reading the local newspapers. I have written a separate essay about how pretrial publicity prevents a fair trial.[27] Note that Williams' second trial was moved to Linn County (city of Cedar Rapids) to avoid effects of prejudicial pretrial publicity, however the jury was *not* sequestered during the trial.[28]

Conclusion

In March 2010, I did searches of Google for "Christian burial speech" and "*Brewer v. Williams*" but I found only copies of the U.S. Supreme Court opinion, or documents with terse mentions of the rule in *Brewer*. I am astounded that there no one has posted a discussion of the controversy in this case, or the glaring lack of facts about Williams' mental state. I hope my terse questions and comments, beginning at page 12 above, will inspire some critical thought about this case.

Reading the factual story behind the legal rule expressed in *Brewer* helps one to remember the rule. I do not personally practice criminal law, yet I still remember this case from my constitutional criminal law class in 1996, because the story about the victim's parents is so heartbreaking and the relevant issue (i.e., voluntarily waiving a legal right) is so complex and intellectually interesting.[29]

And this brings us to the original point of this essay. If a law student takes the time to read the full U.S. Supreme Court majority opinion in this case, then the student will probably always remember *Brewer* and its legal rule. If a law student also takes the time to read the three concurring opinions and the three dissenting opinions at the U.S. Supreme Court in 1977, plus the judicial opinions by courts below (i.e., Iowa Supreme Court, U.S. District Court, U.S. Court of Appeals),[30] then the student will have spent at least an entire day on this one case, and the student will then be behind in assigned reading for classes. So there is a conflict between *understanding* law and surviving law school.

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[27] Standler, Pretrial Publicity Prevents a Fair Trial in the USA, http://www.rbs2.com/pretrial.pdf , (Dec 2003).

[28] *Iowa v. Williams,* 285 N.W.2d 248, 266 (Iowa 1979).

[29] See my earlier essays: Doctrine of Unconstitutional Conditions in the USA, http://www.rbs2.com/duc.pdf at p. 32 (Mar 2005); Voluntary Consent in Prenuptial Contracts in the USA, http://www.rbs2.com/dcontract3.pdf , (Sep 2009).

[30] The opinions of the courts below give more facts than the opinion of the U.S. Supreme Court.

Sometimes it is difficult to understand a judicial opinion, but it is even more difficult to see what facts and analysis are *missing* in the opinion. I urge that the real goal of law school should *not* be memorization of rules, but — instead — learning to critically read judicial opinions and find what is missing in their analysis.

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