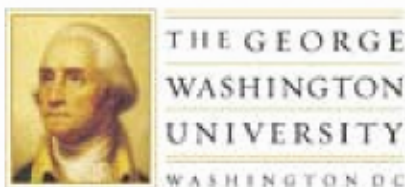


The Burger Court Opinion Writing Database

United States v. Kahn

415 U.S. 143 (1974)

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



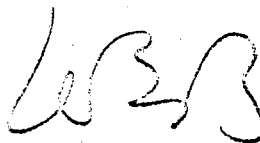
February 14, 1974

Re: 72-1328 - U. S. v. Kahn

Dear Potter:

Please join me.

Regards,



Mr. Justice Stewart

Copies to the Conference

SUPREME COURT OF THE UNITED STATES

No. 72-1328

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Irving Kahn and Minnie } Appeals for the Seventh
Kahn. } Circuit.

2/1/74

[January —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

As a result of our decision in *Berger v. New York*, 388 U. S. 41, a wiretap—long considered to be a special kind of a “search” and “seizure”—was brought under the reach of the Fourth Amendment.¹ The dominant feature of that Amendment was the command that “no warrants shall issue, but upon probable cause”—a requirement which Congress wrote into 18 U. S. C. § 2518.²

¹ Amendment IV: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

² 18 U. S. C. § 2518 provides in pertinent part.

“(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant’s authority to make such application. Each application shall include the following information:

“(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including . . . (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted.

SUPREME COURT OF THE UNITED STATES

No. 72-1328

United States. Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Irving Kahn and Minnie } Appeals for the Seventh
Kahn. } Circuit

[January —, 1973]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

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7th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1328

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Irving Kahn and Minnie } Appeals for the Seventh
Kahn. } Circuit.

[January —, 1973]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

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2-5

8th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1328

Circulate: _____

Recirculated: _____

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
Irving Kahn and Minnie } Appeals for the Seventh
Kahn } Circuit

[January —, 1973]

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. February 1, 1974

RE: No. 72-1328 United States v. Kahn

Dear Bill:

Please join me in your dissenting
opinion in the above.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1328

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Recirculated:

United States, Petitioner, } On Writ of Certiorari to the
v } United States Court of
Irving Kahn and Minnie } Appeals for the Seventh
Kahn } Circuit.

[February —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

On March 20, 1970, an attorney from the United States Department of Justice submitted an application for an order authorizing a wiretap interception pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1970, 18 U. S. C. §§ 2510-2520, to Judge William J. Campbell of the United States District Court for the Northern District of Illinois. The affidavit accompanying the application contained information indicating that the respondent, Irving Kahn, was a bookmaker who operated from his residence and used two home telephones to conduct his business.¹ The

¹ The affiant, a special agent of the Federal Bureau of Investigation, provided detailed information about Kahn's alleged gambling activities. This information was derived from the personal observations of three unnamed sources, whose past reliability in gambling investigations was described by the affiant. In addition, the information was corroborated by telephone company records showing calls on Kahn's telephones to and from a known gambling figure in another State.

The Government's application and the accompanying affidavit also claimed that one Jake Jacobs was using a telephone at his private residence to conduct an illegal gambling business. The sub-

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1328

Stewart

Recirculated: FEB 1 74

United States, Petitioner.	}	On Writ of Certiorari to the
v.		United States Court of
Irving Kahn and Minnie		Appeals for the Seventh
Kahn		Circuit.

[February —, 1974]

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The Government's application and the accompanying affidavit also claimed that one Jake Jacobs was using a telephone at his private residence to conduct an illegal gambling business. The sub-

January 31, 1974

Re: No. 72-1328 - United States v. Kahn

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

February 4, 1974

Re: No. 72-1328 -- United States v. Irving Kahn and
Minnie Kahn

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Mr. Justice Douglas

cc: The Conference

January 31, 1974

Dear Potter:

Re: No. 72-1328 - United States v. Kahn

I wonder if you would consider the following suggestions with respect to your opinion:

1. On page 5 Judge McMillen is mentioned by name. I have always hesitated to name a judge when he is being reversed as, in effect, is the case here. It may be that he is mentioned in order to indicate that it was not Judge Campbell who heard the motion to suppress. Nevertheless, I still would like to omit the name. *I need*

2. I would feel much better if the last sentence of footnote 8 on page 7 were omitted. If the Giordano - Chavez issue is in the case anyway, is not the statement unnecessary? Counsel for respondents are capable and well known specialists in criminal law in Chicago and will look after their clients' interests. *OK*

Sincerely,

HAB

Mr. Justice Stewart

January 31, 1974

Dear Potter:

Re: No. 72-1328 - United States v. Kahn

Please join me.

Sincerely,

H. G. B.

Mr. Justice Stewart

Copies to the Conference

January 30, 1974

No. 72-1328 United States v. Kahn

Dear Potter:

Please join me.

Sincerely,

Levin

Mr. Justice Stewart

lfpss

cc: The Conference

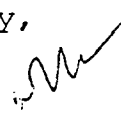
January 31, 1974

Re: No. 72-1328 - United States v. Kahn

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference