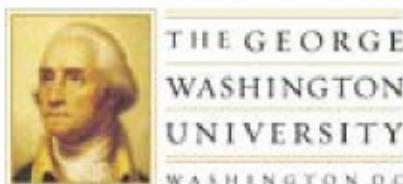


# The Burger Court Opinion Writing Database

*United States v. Ramsey*

431 U.S. 606 (1977)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

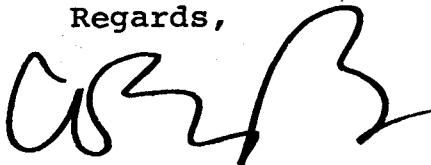
June 1, 1977

Re: 76-167 - United States v. Ramsey and Kelly

Dear Bill:

I join.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

May 19, 1977

RE: No. 76-167 United States v. Ramsey & Kelly

Dear John:

Please join me in your dissent.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 21, 1977

76-167, United States v. Ramsey

Dear Bill,

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

Sincerely yours,

-P.S.,

Mr. Justice Rehnquist

Copies to the Conference

April 26, 1977

Re: No. 76-167 - United States v. Ramsey and Kelly

Dear Bill:

I read your proposed opinion with interest. I am undoubtedly with you, but I raise the following for your consideration:

1. I would feel happier if mention were made somewhere in the opinion -- even in a footnote -- of the fact that until 1971 letter mail was not opened by customs officials acting without consent of the addressee. See Brief for the United States 21. It seems to me that this is a point which the respondents deserve to have answered. It certainly is answerable. I just do not want the respondents in a position to say that the Court either ignored or strong-armed the fact.

2. It strikes me that the weight of the letters was an important factor in the Inspector's evaluation. Would it then be advisable to strengthen the sentence on page 5 that begins five lines from the bottom to read as follows:

"Inspector Kallnischkies, before he opened the letters, knew they were from Thailand, were bulky, were many times the weight of a normal airmail letter, and 'felt like there was something in there.'"

3. I think the fact that inspectors by regulation are forbidden to read mail is important in the response to the First Amendment claim. Would it therefore be advisable to change the second line on page 15 to read "area in the absence of the existing statutory and regulatory protection."

4. I had the impression when I first read it that the paragraph beginning at the bottom of page 12 is a little rough on the Court of Appeals. Would Judge McGowan be offended by it? Perhaps I was weary when I first read the paragraph, but I entertain the same reaction when I reread it in the light of the day.

OK

OK

5. I am somewhat amused by the fact that the name of Inspector Kallnischkies is mentioned no less than ten times in parts I and II of the opinion, that is, the first six pages plus three lines. It is, to be sure, a fascinating name. It reminds me of a letter I once reviewed for a Mayo physician. He liked to address people by name, and in two pages referred to his correspondent-patient, a Mrs. Stufflebean, no less than ten times. I was overwhelmed with Stufflebeans by the time I finished reading and approving the letter for him. OK

Sincerely,

HAB

Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

3 ✓  
April 28, 1977

Re: No. 76-167 - United States v. Ramsey and Kelly

Dear Bill:

Please join me in your recirculation of April 27.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

✓

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 31, 1977

No. 76-167 United States v. Ramsey and Kelly

Dear Bill:

I have sent to the printer today a two paragraph statement concurring in the judgment and your opinion.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

From: Mr. Justice Powell

Circulated: MAY 31 1977

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-167

United States, Petitioner, *v.* Charles W. Ramsey and James W. Kelly, } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June —, 1977]

MR. JUSTICE POWELL, concurring.

The statute at issue expressly authorizes customs officials to "search any . . . envelope" at the border where there is "reasonable cause to suspect" the importation of contraband. 19 U. S. C. § 482. In view of the necessarily enhanced power of the Federal Government to enforce customs laws at the border, I have no doubt that this statute—requiring as a precondition to the opening of mail "reasonable cause to suspect" a violation of law—adequately protects both First and Fourth Amendment rights.\*

I therefore join in the judgment of the Court. On the understanding that the precedential effect of today's decision does not go beyond the validity of mail searches at the border pursuant to the statute, I also join the opinion of the Court.

\*As the Court notes, *ante*, at 14, postal regulations flatly prohibit the reading of "any correspondence contained in sealed letter mail of foreign origin unless a search warrant has been obtained . . ." 19 CFR § 145.3 (1976).

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

From: [unclear] 185

Circulated: APR 18 1977

Received: [unclear]

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 76-167**

United States, Petitioner,  
v.  
Charles W. Ramsey and  
James W. Kelly. } On Writ of Certiorari to the United  
States Court of Appeals for the  
District of Columbia Circuit.

[April —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.  
Customs officials, acting with "reasonable cause to suspect" a violation of customs laws, opened for inspection incoming international letter class mail without first obtaining a search warrant. A divided Court of Appeals for the District of Columbia Circuit held, contrary to every other Court of Appeals which has considered the matter,<sup>1</sup> that the Fourth Amendment forbade the opening of such mail without probable cause and a search warrant. 538 F. 2d 415. We granted the

<sup>1</sup> Several courts of appeals have held that international letter class mail may be opened, pursuant to a border search, without probable cause and without a warrant. *United States v. Milroy*, 530 F. 2d 1033 (CA4), cert. denied, 426 U. S. 924 (1976); *United States v. King*, 517 F. 2d 350 (CA5 1975); *United States v. Barclift*, 514 F. 2d 1073 (CA9), cert. denied, 423 U. S. 842 (1975); *United States v. Bolin*, 514 F. 2d 554 (CA7 1975); *United States v. Odland*, 502 F. 2d 148 (CA7), cert. denied, 419 U. S. 1088 (1974). Several other courts of appeals, in approving the warrantless opening of mailed packages crossing the borders, have indicated that the opening of international letter class mail should be governed by the same standards. *United States v. Doe*, 472 F. 2d 982 (CA2), cert. denied, 411 U. S. 969 (1973); *United States v. Beckley*, 335 F. 2d 86 (CA6 1964), cert. denied, 380 U. S. 922 (1965). The First Circuit has reserved the question of letters. *United States v. Emery*, 541 F. 2d 887, 888-889 (CA1 1976).

76-167

Supreme Court of the United States  
Memorandum 4-26-77, P.M.

Harry - re US v. Ramsey <sup>19</sup>  
I can & will account -  
do all of your suggestion  
in pars 1, 2, 3, & 5 of your tr.  
In so far as par 4 wants  
the opinion to be less "rough"  
on the Ct App, I don't think  
there is so any ad hominem  
aspect to it, & I think Ct  
deserves a verbal "stop on  
grist" for not paying attention  
to my prior cases. now

P. 34, 56, 15

✓ To: The Chief Justice  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: \_\_\_\_\_

Recirculated: APR 27 1977

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 76-167**

United States, Petitioner, | On Writ of Certiorari to the United  
v. | States Court of Appeals for the  
Charles W. Ramsey and | District of Columbia Circuit.  
James W. Kelly.

[April —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court. Customs officials, acting with "reasonable cause to suspect" a violation of customs laws, opened for inspection incoming international letter class mail without first obtaining a search warrant. A divided Court of Appeals for the District of Columbia Circuit held, contrary to every other Court of Appeals which has considered the matter,<sup>1</sup> that the Fourth Amendment forbade the opening of such mail without probable cause and a search warrant. 538 F. 2d 415. We granted the

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 18, 1977

MEMORANDUM TO THE CONFERENCE

Re: 76-167 - United States v. Ramsey & Kelly

In view of the backup at the printer, I am sending in this form the attached response to John Stevens' dissent, which will appear as an addition to footnote 8.

Sincerely,

WJR  
WJC

To. The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Stevens

PPS-8

From: Mr. Justice Rehnquist

Circulated:

Recirculated:

MAY 4 1977

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-167

United States, Petitioner,  
v.  
Charles W. Ramsey and  
James W. Kelly. } On Writ of Certiorari to the United  
States Court of Appeals for the  
District of Columbia Circuit,

[April —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court. Customs officials, acting with "reasonable cause to suspect" a violation of customs laws, opened for inspection incoming international letter class mail without first obtaining a search warrant. A divided Court of Appeals for the District of Columbia Circuit held, contrary to every other Court of Appeals which has considered the matter,<sup>1</sup> that the Fourth Amendment forbade the opening of such mail without probable cause and a search warrant. 538 F. 2d 415. We granted the

<sup>1</sup> Several courts of appeals have held that international letter class mail may be opened, pursuant to a border search, without probable cause and without a warrant. *United States v. Milroy*, 530 F. 2d 1033 (CA4), cert. denied, 426 U. S. 924 (1976); *United States v. King*, 517 F. 2d 350 (CA5 1975); *United States v. Barclift*, 514 F. 2d 1073 (CA9), cert. denied, 423 U. S. 842 (1975); *United States v. Bolin*, 514 F. 2d 554 (CA7 1975); *United States v. Odland*, 502 F. 2d 148 (CA7), cert. denied, 419 U. S. 1088 (1974). Several other courts of appeals, in approving the warrantless opening of mailed packages crossing the borders, have indicated that the opening of international letter class mail should be governed by the same standards. *United States v. Doe*, 472 F. 2d 982 (CA2), cert. denied, 411 U. S. 969 (1973); *United States v. Beckley*, 335 F. 2d 86 (CA6 1964), cert. denied, 380 U. S. 922 (1965). The First Circuit has reserved the question of letters. *United States v. Emery*, 541 F. 2d 887, 888-889 (CA1 1976).

The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: 5/17/77

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-167

United States, Petitioner,  
v.  
Charles W. Ramsey and  
James W. Kelly. | On Writ of Certiorari to the United  
States Court of Appeals for the  
District of Columbia Circuit.

[May —, 1977]

MR. JUSTICE STEVENS, dissenting.

The decisive question in this case is whether Congress has granted Customs officials the authority to open and inspect personal letters entering the United States from abroad without the knowledge or consent of the sender or the addressee, and without probable cause to believe the mail contains contraband or dutiable merchandise.

In 1971 the Department of the Treasury and the Post Office Department first asserted that Congress had granted such authority in an awkwardly drafted statute enacted in 1866. Under the earlier practice, which had been consistently followed for 105 years, Customs officials were not allowed to open foreign mail except in the presence, and with the consent, of the addressees,<sup>1</sup> unless of course a warrant supported by probable cause had been first obtained. There are five reasons why I am convinced that Congress did not authorize the kind of secret searches of private mail that the executive here conducted.

First, throughout our history Congress has respected the individual's interest in private communication. The notion

<sup>1</sup> This was the procedure followed by the Customs officials in *Cotzhausen v. Nazro*, 107 U. S. 215, relied upon by petitioner here. For 100 years, from 1871 to 1971, Post Office Regulations allowed incoming international letter mail to be opened only in the presence, and with the consent, of the addressee. Petitioner Brief 20-21, nn. 12, 14 (citing Regulations).

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 19, 1977

Re: 76-167 - United States v. Ramsey & Kelly

MEMORANDUM TO THE CONFERENCE

In response to Bill's addition to footnote 8 of his opinion for the Court, I propose to make these two changes in my dissent:

1. At the end of footnote 2 add: "I do not, of course, imply that this incident is, in itself, sufficient to demonstrate congressional sensitivity to the individual interest in private communication. See ante, at n. 8. I cannot believe, however, that the Court seriously questions the validity of my assumption that Congress (in 1866 as well as today) was indeed concerned about such matters."
2. On page 6, I propose to add a new footnote 8 after the word "respect" in line 10:

"8/ An 1886 opinion of Acting Attorney General Jenks made reference to the practice followed in Cotzhausen v. Nazro, 107 U.S. 215, a case which involved the opening of package mail with the consent, and in the presence, of the addressee. See 18 Opn. Att. Gen. 457, 458. No opinion of any subsequent attorney general has construed the statute any more broadly."

Footnote 8 in the present draft will, of course, be renumbered.

Respectfully,

J.P.S.

pp. 1-2,6

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

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

2nd DRAFT

Recirculated MAY 20 1971

## SUPREME COURT OF THE UNITED STATES

No. 76-167

United States, Petitioner,  
 v.  
 Charles W. Ramsey and  
 James W. Kelly. } On Writ of Certiorari to the United  
 States Court of Appeals for the  
 District of Columbia Circuit.

[May —, 1977]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN  
 joins, dissenting.

The decisive question in this case is whether Congress has granted Customs officials the authority to open and inspect personal letters entering the United States from abroad without the knowledge or consent of the sender or the addressee, and without probable cause to believe the mail contains contraband or dutiable merchandise.

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<sup>1</sup> This was the procedure followed by the Customs officials in *Cotzhausen v. Nazro*, 107 U. S. 215, relied upon by petitioner here. For 100 years, from 1871 to 1971, Post Office Regulations allowed incoming international letter mail to be opened only in the presence, and with the consent, of the addressee. Petitioner Brief 20-21, nn. 12, 14 (citing Regulations).