

# The Burger Court Opinion Writing Database

*United States v. Jacobs*

436 U.S. 31 (1978)

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

January 12, 1978

PERSONAL

Dear Lewis:

Re: 76-1193 U.S. v. Jacobs

I regret that I cannot agree with your suggested disposition in this case. It would leave on the book a holding you seem to concede is contrary to our decisions and in an important area. *No - not particularly stamps.*

The most I would think justifiable (without the "most stringent dissent" from me!) would be to DIG, thus casting some shadow over the terribly wrong holding. I hope you will reconsider.

In all events I find it difficult to see how this "by-passing" of Harry could be justified.

Regards,

*W. B.*

Mr. Justice Powell:

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

From: The Chief Justice

Circulated: APR 27 1978

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-1193

United States, Petitioner,  
*v.*  
Estelle Jacobs aka "Mrs. Kramer." } On Writ of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

[May —, 1978]

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 24, 1978

Re: Case heretofore held for No. 76-1193 - United States  
v. Jacobs

MEMORANDUM TO THE CONFERENCE:

No. 76-1309 - United States v.  
Caceres

I will vote to grant.

Caceres attempted to bribe IRS agent Yee. Twice Yee called Caceres and proposed meetings. Each time Caceres agreed to meet the next day. At both meetings, Caceres offered bribes and Yee recorded the conversations with a hidden recording device. IRS regulations require that, except in emergency situations, advance approval from the Attorney General be obtained for monitoring non-telephonic conversations with the consent of one of the parties. Yee obtained IRS approval each time he monitored Caceres' conversations but there was no request for Justice Department approval on either occasion.

CA 9 affirmed the DC's order suppressing the tape recordings of the conversations because the recordings had not been obtained in compliance with IRS regulations. It is not entirely clear whether the CA applied the exclusionary rule as a remedy for a due process violation or as an exercise of supervisory power. The cases which the CA found controlling held that the IRS's failure to follow its own regulations violated due process. But the CA hinted at an exercise of supervisory power when it said that the suppression of evidence without any showing of a constitutional violation was questionable.

The United States contends that the exclusionary rule should not be applied here because the evidence is relevant and admissible, the IRS regulation is only an internal restraint on the use of a permissible investigative technique, and the regulation conferred no due process rights on Caceres. I doubt that our cases require the application of the exclusionary rule to enforce such a regulation. Therefore, I will vote to grant.

Regards,

URB

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 27, 1978

RE: No. 76-1193 United States v. Jacobs

Dear Chief:

I agree with the Per Curiam you have  
prepared in the above.

Sincerely,

*Bill*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 27, 1978

Re: No. 76-1193, U.S. v. Jacobs

Dear Chief,

I agree with this Per Curiam.

Sincerely yours,

P.S.  
P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 24, 1978

Re: #76-1193 - United States v. Jacobs

Dear John:

I am considering writing in this case but have not yet made up my mind. Thank you for putting the case over.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R WHITE

April 27, 1978

Re: 76-1193 - U.S. v. Jacobs

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Dear Chief,

I have looked at this case again  
and have lost any enthusiasm I might  
have had for dissenting from dismissal.  
I shall remain quiet.

Sincerely yours,



The Chief Justice  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 27, 1978

Re: No. 76-1193 - United States v. Jacobs

Dear Chief:

I agree with your Per Curiam.

Sincerely,

*JM.*

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 27, 1978

Re: No. 76-1193 - United States v. Jacobs

Dear John:

I shall await what writing Byron may have in this  
case.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 27, 1978

Re: No. 76-1193 - United States v. Jacobs

Dear Chief:

With Byron not writing, I shall go along with the proposed  
dismissal.

Sincerely,

*Harry*

The Chief Justice

cc: The Conference

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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

January 12, 1978

No. 76-1193 U.S. v. Jacobs

Dear Chief:

This is one of the cases referred to in your memorandum of January 10 in which the vote, in Harry's absence, was 4 to 4.

I have no enthusiasm whatever for having this case reargued. Indeed, I would have preferred not to take it. Accordingly, unless Harry decides to participate on the basis of the taped arguments, I will change my vote to affirm. This would provide five votes for that result, and I would hope we could dispose of the case in a brief *Per Curiam* opinion.

I continue to think that CA2 probably had no authority to exclude testimony on the ground that the Strike Force attorney had failed to follow CA2 policy requiring that "putative defendants" be warned before giving grand jury testimony. Yet, I would not think this situation is likely to arise with any frequency. If I am correct in this respect, our decision in this case - however it goes - will have little precedential effect.

There also is something to be said, I think, for not appearing to reprimand a Court of Appeals for acting, as it believed, within its supervisory powers unless the error is likely to have serious consequences.

Sincerely,

*L Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 27, 1978

No. 76-1193 United States v. Jacobs

Dear Chief:

I agree.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 27, 1978

Re: No. 76-1193 United States v. Jacobs

Dear Chief:

I agree with the Per Curiam you have prepared  
in the above.

Sincerely,

*WR*

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 24, 1978

MEMORANDUM TO THE CONFERENCE

Re: 76-1193 - United States v. Jacobs

Because I understood Byron to indicate that he plans to write, I did not include an order dismissing this case as improvidently granted on the list for Monday. I trust this reflects the sense of the Conference.

Respectfully,



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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 26, 1978

MEMORANDUM TO THE CONFERENCE

Re: 76-1193 - United States v. Jacobs

To be sure we don't lose track of this case,  
I propose the entry of the following order:

"The case is dismissed as improvidently  
granted."

Respectfully,



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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 27, 1978

Re: 76-1193 - United States v. Jacobs

Dear Chief:

Please join me.

Respectfully,

  
The Chief Justice  
Copies to the Conference