

# The Burger Court Opinion Writing Database

*Scott v. United States*

436 U.S. 128 (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

April 7, 1978

Re: 76-6767 - Scott v. United States

Dear Bill:

I join.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

3  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 7, 1978

RE: No. 76-6767 Scott v. United States

Dear Thurgood:

You and I are in dissent in the above. I've already written to this issue in Scott II a couple Terms ago and will be glad to undertake the dissent here.

Sincerely,

*Wm. J. Brennan, Jr.*

Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

March 31, 1978

RE: No. 76-6767 Scott v. United States

Dear Bill:

In due course I shall circulate a dissent in the  
above.

Sincerely,

Mr. Justice Rehnquist

cc: The Conference

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Burger

April 28, 1978

From: Mr. Justice

Circulated: 4/26/78

Recirculated:

No. 76-6767- Scott v. United States

MR. JUSTICE BRENNAN, dissenting.

In 1968, Congress departed from the longstanding national policy forbidding surreptitious interception of wire communications,<sup>1/</sup> by enactment of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520 (1976). That Act, for the first time authorizing law enforcement personnel to monitor private telephone conversations, provided strict guidelines and limitations on the use of wiretaps as a barrier to Government infringement of individual privacy. One of the protections thought essential by Congress as a bulwark against unconstitutional governmental intrusion on private conversations is the "minimization requirement" of § 2518(5). The Court today eviscerates this congressionally mandated protection of individual privacy, marking the third decision in which the Court has disregarded or diluted

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1. Prior to the enactment of Title III, § 605 of the Communications Act of 1934, ch. 652, 48 Stat. 1064, 1103, provided that ". . . no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. . . ."

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackman  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

See p. 2

At: Mr. Justice I

Enclosed: \_\_\_\_\_

Re: \_\_\_\_\_

Printed  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-6767

Frank R. Scott, Etc. and Bernis L.  
Thurmon, Etc., Petitioners,  
v.  
United States.

On Writ of Certiorari to  
the United States  
Court of Appeals for  
the District of Colum-  
bia Circuit.

[May —, 1978]

MR. JUSTICE BRENNAN, dissenting.

In 1968, Congress departed from the longstanding national policy forbidding surreptitious interception of wire communications,<sup>1</sup> by enactment of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U. S. C. §§ 2510-2520 (1976). That Act, for the first time authorizing law enforcement personnel to monitor private telephone conversations, provided strict guidelines and limitations on the use of wiretaps as a barrier to Government infringement of individual privacy. One of the protections thought essential by Congress as a bulwark against unconstitutional governmental intrusion on private conversations is the "minimization requirement" of § 2518 (5). The Court today eviscerates this congressionally mandated protection of individual privacy, marking the third decision in which the Court has disregarded or diluted congressionally established safeguards<sup>2</sup> designed to prevent Gov-

<sup>1</sup> Prior to the enactment of Title III, § 605 of the Communications Act of 1934, ch. 652, 48 Stat. 1064, 1103, provided that ". . . no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. . . ."

<sup>2</sup> See *United States v. Donoran*, 429 U. S. 413, 445 (1977) (MARSHALL, J., dissenting in part); *United States v. Kahu*, 415 U. S. 143, 158 (1974) (Douglas, J., dissenting); see also *United States v. Chavez*, 416 U. S. 562, 580 (1974) (Douglas, J., dissenting).

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 6, 1978

Re: No. 76-6767, Scott v. United States

Dear Bill,

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

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 6, 1978

Re: 76-6767 - Scott v. U.S.

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Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Rehnquist  
Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 1, 1978

Re: No. 76-6767 - Scott v. United States

Dear Bill:

Please join me.

Sincerely,

*J.M.*

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 4, 1978

Re: No. 76-6767 - Scott v. United States

Dear Bill:

Please join me.

Sincerely,

*Ha B.*

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 5, 1978

No. 76-6767 Scott v. United States

Dear Bill:

Please join me.

Sincerely,

*Lew*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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: MAR 31 1978

## 1st DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 76-6767

Frank R. Scott, Etc. and Bernis L. Thurmon, Etc., Petitioners, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[April —, 1978]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In 1968, Congress enacted Title III of the Omnibus Crime and Control and Safe Streets Act of 1968, which deals with wiretapping and other forms of electronic surveillance. 18 U. S. C. §§ 2510-2520. In this Act Congress, after this Court's decisions in *Berger v. New York*, 388 U. S. 41 (1967), and *Katz v. United States*, 389 U. S. 347 (1967), set out to provide law enforcement officials with some of the tools thought necessary to combat crime without unnecessarily infringing upon the right of individual privacy. See generally S. Rep. No. 1097, 90th Cong., 2d Sess. (April 29, 1968). We have had occasion in the past, the most recent being just last Term, to consider exactly how the statute effectuates this balance.<sup>1</sup> This case requires us to construe the statutory requirement that wiretapping or electronic surveillance "be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter . . ." 18 U. S. C. § 2518 (5).

Pursuant to judicial authorization which required such

<sup>1</sup> See *United States v. Donovan*, 429 U. S. 413 (1977), which involved that part of the Act which requires the Government to identify the person, if known, whose conversations are to be intercepted.

✓ —  
STYLISTIC CHANGES

2nd DRAFT

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

**SUPREME COURT OF THE UNITED STATES** on: Mr. Justice REHNQUIST

No. 76-6767

Circulated: MAY

Recirculated: —

Frank R. Scott, Etc. and Bernis L. Thurmon, Etc., Petitioners, *v.* United States.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[April —, 1978]

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Pursuant to judicial authorization which required such

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 22, 1978

MEMORANDUM TO THE CONFERENCE

Re: Cases heretofore held for No. 76-6767 - Scott v.  
United States

Six cases are being held for No. 76-6767, Scott v. United States. 1/

1. No. 76-1826 - London v. United States. Acting pursuant to judicial authorization, FBI agents installed a microphone in the business office of petitioner London and later a telephone tap on the telephone of petitioner Hines. They monitored all conversations in London's office whenever physical surveillance revealed that any one of the three partners in the suspected gambling operation were present. Recordings were made of those conversations which dealt with gambling activities. Detailed logbooks were also maintained, which indicated the identities of persons known to be present, the nature of the conversation then occurring, and the use of the recording apparatus. Petitioners, all convicted for their involvement in this large-scale gambling operation, argue that the wiretap evidence used against them at trial should have been suppressed because the government did not demonstrate compliance with the minimization requirement. In particular, they complain of the recordation of all conversations when the three partners were present and of the government's use of a microphone instead of a telephone tap.

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1/ One of these cases, Lee v. United States, No. 77-5291, is also being held for Daviage v. United States, No. 76-6637, which is itself being held for Scott.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 3, 1978

Re: 76-6767 - Scott v. United States

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist  
Copies to the Conference