The Burger Court Opinion Writing Database

United States v. Raddatz

447 U.S. 667 (1980)

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

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: MAY 23 1980

Recirculated: _____

FIRST DRAFT

No. 79-8 - United States v. Raddatz

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve the constitutionality of a provision of the Federal Magistrates Act, 28 U.S.C. § 636(b)(1)(B), which permits a district court to refer to a magistrate a motion to suppress evidence and authorizes the district court to determine and decide such motion based on the record developed before a magistrate, including the magistrate's proposed findings of fact and recommendations.

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

CHAMBERS OF
THE CHIEF JUSTICE

May 28, 1980

RE: 79-8 - United States v. Raddatz

MEMORANDUM TO THE CONFERENCE:

Enclosed is a print draft of the above. I contemplate adding as a footnote, the following, probably note 5a at page 10:

"Nothing in the Magistrate's Act or other statute precludes renewal at trial of a motion to suppress evidence even though such motion was denied before trial. A district court's authority to consider anew a suppression motion previously denied is within its sound judicial discretion. See generally Gouled v. United States, 255 U.S. 298, 312 (1921); Rouse v. United States, 359 F.2d 1014 (CADC 1966)."

Regards,

WEB

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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: _____

Recirculated: MAY 29 1980

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-8

United States, Petitioner, *v.* Herman Raddatz. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1980]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve the constitutionality of a provision of the Federal Magistrates Act, 28 U. S. C. § 636 (b)(1)(B), which permits a district court to refer to a magistrate a motion to suppress evidence and authorizes the district court to determine and decide such motion based on the record developed before a magistrate, including the magistrate's proposed findings of fact and recommendations.

I

Respondent Raddatz was indicted on March 1, 1977, in the Northern District of Illinois for unlawfully receiving a firearm in violation of 18 U. S. C. § 922 (h). Prior to trial, respondent moved to suppress certain incriminating statements he had made to police officers and to agents of the Bureau of Alcohol, Tobacco, and Firearms. Over his objections, the District Court referred the motion to a Magistrate for an evidentiary hearing pursuant to the Federal Magistrates Act, 28 U. S. C. § 636 (b)(1)(B).

The evidence received at the suppression hearing disclosed that on August 8, 1976, two police officers responded to a report of a crime in progress. When they arrived at the scene, they observed respondent standing next to one Jimmy Baston, who was lying on the street, bleeding from the head.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 1980

RE: 79-8 - United States v. Raddatz

MEMORANDUM TO THE CONFERENCE

I will modify the First Print Draft as follows: strike full paragraph at end of page 12 with three final lines on page 13 and substitute the following as footnote 7, page 12:

> "Neither the statute nor its legislative history reveals any specific consideration of the situation where a district judge after reviewing the record in the process of making a de novo 'determination' has doubts concerning the credibility findings of the magistrate. The issue is not before us, but we assume it is unlikely that a district judge would reject a magistrate's proposed findings on credibility when those findings are dispositive and substitute the judge's own appraisal; to do so without seeing and hearing the witness or witnesses whose credibility is in question could well give rise to serious questions which we do not reach."

Regards,

WEB/pw

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHANGES AS MARKED: 10, 12-13

From: The Chief Justice

Circulated: _____

Recirculated: JUN 17 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79–8

United States, Petitioner, v. Herman Raddatz. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1980]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to resolve the constitutionality of a provision of the Federal Magistrates Act, 28 U. S. C. § 636 (b)(1)(B), which permits a district court to refer to a magistrate a motion to suppress evidence and authorizes the district court to determine and decide such motion based on the record developed before a magistrate, including the magistrate's proposed findings of fact and recommendations.

I

Respondent Raddatz was indicted on March 1, 1977, in the Northern District of Illinois for unlawfully receiving a firearm in violation of 18 U. S. C. § 922 (h). Prior to trial, respondent moved to suppress certain incriminating statements he had made to police officers and to agents of the Bureau of Alcohol, Tobacco, and Firearms. Over his objections, the District Court referred the motion to a magistrate for an evidentiary hearing pursuant to the Federal Magistrates Act, 28 U. S. C. § 636 (b)(1)(B).

The evidence received at the suppression hearing disclosed that on August 8, 1976, two police officers responded to a report of a crime in progress. When they arrived at the scene, they observed respondent standing next to one Jimmy Baston, who was lying on the street, bleeding from the head.

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HAB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 24, 1980

MEMORANDUM TO THE CONFERENCE

RE: Cases held for No. 79-8 - United States v. Raddatz

Two cases have been held for Raddatz:
No. 79-375 - Whitmire v. United States I WILL DENY.
No. 79-6128 - Smith v. Hartman I WILL DENY.

No. 79-375 - Whitmire v. United States. Two customs officials on patrol saw petitioners' vessel speeding away from the ocean on a Fla. inland waterway. The vessel was riding low in the water and throwing excessive wake. Based on their experience, the officers suspected the boat might contain marijuana. They caught up with the boat only after it had docked. When petitioners failed to produce proper identification, one officer boarded the vessel, smelled marijuana, and discovered a thousand pounds of marijuana in the hold. Petitioners' motion to suppress the evidence was referred to a magistrate, who recommended that the motion be denied. Without a further hearing, the DC denied the motion to suppress.

The CA's resolution of the referral issue is in accordance with this Court's decision in Raddatz. Moreover, petitioners concede that there was no direct confrontation on the facts; credibility was not crucial to the outcome of the suppression hearing. The case also raises several issues about whether customs officers must have probable cause or just reasonable suspicion to board a docked vessel. For me the fact situation here does not present those issues clearly enough for resolution. I will vote to deny.

No. 79-6128 - Smith v. Hartman. Petitioner brought an action in federal court under § 1983 charging that respondents, the local sheriff and the jail doctor, refused to provide him with necessary medical treatment. A magistrate held an evidentiary hearing and recommended that judgment be entered for respondents. Without holding an evidentiary hearing, the DC entered judgment in favor of respondents.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 4, 1980

Re: No. 79-8 United States v. Raddatz

Dear Potter:

Thurgood, Lewis, you and I are in dissent in the above. Would you be willing to undertake the dissent?

Sincerely,

Bill

Mr. Justice Stewart

cc: Mr. Justice Marshall
Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 10, 1980

RE: No. 79-8 United States v. Raddatz

Dear Potter:

Please join me in your dissent in the above.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1980

RE: No. 79-8 United States v. Raddatz

Dear Thurgood:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 4, 1980

Re: 7908 - United States v. Raddatz

Dear Bill:

I shall be glad to undertake a dissenting opinion in this case although, as you will remember, my view was based, at least tentatively, upon the language of the statute rather than upon the Constitution.

Sincerely yours,

P.S.

Mr. Justice Brennan

cc - Mr. Justice Marshall
Mr. Justice Powell

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 23, 1980

Re: 79-8 - United States v. Raddatz

Dear Chief:

I shall in due course circulate a dissenting opinion.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: Mr. Justice Stewart

Circulated: 4 JUN 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-8

United States, Petitioner, v. Herman Raddatz.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1980]

MR. JUSTICE STEWART, dissenting.

A federal indictment was returned charging the respondent, who had previously been convicted of a felony, with unlawfully receiving a firearm in violation of 18 U. S. C. § 922 (h)(1). Before the trial, the respondent filed in the District Court a motion to suppress various incriminating statements he had made to agents of the Federal Bureau of Alcohol, Tobacco and Firearms.[1] Pursuant to the Federal Magistrates Act (the Act), 28 U. S. C. § 636 (b)(1),[2] the District Judge

[1] The respondent also moved to suppress certain statements the Government claimed he had made to Chicago police officers shortly after his arrest. At the suppression hearing, the respondent denied having ever made such remarks. A Chicago police officer testified to the contrary, making the issue one for determination at trial by the trier of fact.

[2] Title 28 U. S. C. § 636 (b)(1) provides:

"Notwithstanding any provision of law to the contrary—

"(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

"(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 2, 6

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

From: Mr. Justice Stewart

Circulated: _____

2nd DRAFT

Recirculated: 18 JUN 1980

SUPREME COURT OF THE UNITED STATES

No. 79-8

United States, Petitioner, v. Herman Raddatz. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1980]

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

A federal indictment was returned charging the respondent, who had previously been convicted of a felony, with unlawfully receiving a firearm in violation of 18 U. S. C. § 922 (h)(1). Before the trial, the respondent filed in the District Court a motion to suppress various incriminating statements he had made to agents of the Federal Bureau of Alcohol, Tobacco and Firearms.[1] Pursuant to the Federal Magistrates Act (the Act), 28 U. S. C. § 636 (b)(1),[2] the District Judge

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 30, 1980

Re: 79-8 United States v. Raddatz

Dear Chief,

Please join me in your circulating opinion in this case. I am not particularly impressed, however, by the footnote you propose to add on page 10. But I would not object if it is clear that the accused does not have a right to another hearing during a trial.

Sincerely yours,

Byron

The Chief Justice

Copies to the Conference

cmc

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

No. 79-8 11 JUN 1980

United States v. Raddatz

MR. JUSTICE MARSHALL, dissenting.

I agree with my Brother STEWART that the statutory provision for "a de novo determination of . . . specified proposed findings . . . to which objection has been made," 28 U.S.C. § 636 (b)(1), should be construed to require the district court to conduct an evidentiary hearing when there are case-dispositive issues of credibility that cannot be resolved on the basis of the record compiled before the magistrate. I write separately to express my view that unless the Act is construed in that fashion, its application in this case is impermissible under the Due Process Clause of the Fifth Amendment and under Art. III.

In my view, the Due Process Clause requires that a judicial officer entrusted with finding the facts in a criminal case must hear the testimony whenever a fair resolution of disputed issues cannot be made on the basis of a review of the cold record. Accordingly, if the Act permits the district judge not to hear the witnesses, but at the same time requires him to make a de novo determination of the facts, its application violates the Due Process Clause in any case that turns on issues of credibility that cannot be resolved on the written record. This infirmity cannot be avoided by interpreting the Act to allow the district judge to give final effect to the magistrate's findings on issues of credibility. Such an

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stylistic changes throughout
pp. 5, 6, 8-9, 20

17 JUN 1980

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-8

United States, Petitioner, v. Herman Raddatz. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —-, 1980]

MR. JUSTICE MARSHALL, dissenting.

I agree with my Brother STEWART that the statutory provision for "a de novo determination of . . . specified proposed findings . . . to which objection has been made," 28 U. S. C. § 636 (b)(1), should be construed to require the District Court to conduct an evidentiary hearing when there are case-dispositive issues of credibility that cannot be resolved on the basis of the record compiled before the magistrate. I write separately to express my view that unless the Act is construed in that fashion, its application in this case is impermissible under the Due Process Clause of the Fifth Amendment and under Art. III.

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20 JUN 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-8

United States, Petitioner, v. Herman Raddatz. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1980]

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

I agree with my Brother STEWART that the statutory provision for "a de novo determination of . . . specified proposed findings . . . to which objection has been made," 28 U. S. C. § 636 (b)(1), should be construed to require the District Court to conduct an evidentiary hearing when there are case-dispositive issues of credibility that cannot be resolved on the basis of the record compiled before the magistrate. I write separately to express my view that unless the Act is construed in that fashion, its application in this case is impermissible under the Due Process Clause of the Fifth Amendment and under Art. III.

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

From: Mr. Justice Blackmun

Circulated: JUN 16 1980

Recirculated: _____

No. 79-8 - United States v. Raddatz

MR. JUSTICE BLACKMUN, concurring.

I join the opinion of the Court, save for the final paragraph of section IV-A, ante, at 12-13. That paragraph seems to me to indicate that a district judge's rejection of a magistrate's credibility finding is subject to challenge solely for "abuse of discretion." It thus implies that the magistrate procedure would not violate due process even when a judge, on the basis of a cold record, takes a 180-degree turn from a credibility determination, favorable to the defense, of a magistrate who has observed the witnesses. I see no need to go that far here, especially since such a procedure, in my view, would raise a serious risk of error. See Mathews

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- New footnote 1, other footnotes renumbered, and pp. 1-2 and 4 -

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 17 JUN 1980

No. 79-8 - United States v. Raddatz

MR. JUSTICE BLACKMUN, concurring.

While I join the Court's opinion, my analysis of the due process issue differs somewhat from that set forth in the opinion of THE CHIEF JUSTICE, and I write separately to articulate it. The Court seems to focus on the diminished importance of pretrial suppression motions and the acceptability in some agency proceedings of decisionmaking without personal observation of witnesses. For me, these considerations are of less importance than the practical concern for accurate results that is the focus of the Due Process Clause. In testing the challenged procedure against that criterion, I would distinguish between instances where

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens
Mr. Justice O'Connor

From: Mr. Justice Blackmun

Circulated: JUN 16 1980

Recirculated: _____

3
p.

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-8

United States, Petitioner, v. Herman Raddatz. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1980]

MR. JUSTICE BLACKMUN, concurring.

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In the latter context, the judge accurately can be described as a "back-up" jurist whose review serves to enhance reliability and benefit the defendant. Respondent was afforded procedures by which a neutral decisionmaker, after seeing and hearing the witnesses, rendered a decision.[2] After that deci-

[1] This is not to say that a district court's rejection of a magistrate's recommendation in favor of a defendant will inevitably violate the Due Process Clause.

[2] The magistrate, of course, makes only a recommendation, rather than a formal decision. But, at least in this context, I see no reason to believe that the process of "recommending" is more susceptible to error than "finally deciding." And even if we were to speculate that some additional

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 4, 1980

79-8 United States v. Raddatz

Dear Bill:

I am glad for Potter to try the dissent.

My vote was based on the due process clause, and I am still inclined to that view. But I do not foreclose the possibility of being persuaded by Potter.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: Mr. Justice Stewart
Mr. Justice Marshall

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 27, 1980

79-8 United States v. Raddatz

Dear Chief:

As I voted at Conference tentatively to affirm, I will await the dissents.

Sincerely,

L. Lewis

The Chief Justice

cc: The Conference

lfp/ss

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

No. 79-8, United States v. Raddatz

From: Mr. Justice Powell

Circulated: JUN 16 1980

Recirculated: _____

MR. JUSTICE POWELL, concurring in part and dissenting in part:

I agree with the Court's interpretation of the Federal Magistrates Act in Part III of its opinion. The terms and legislative record of § 636(b)(1) plainly indicate that Congress intended to vest broad discretion in the district courts to decide whether or not to rehear witnesses already heard by a magistrate in a suppression proceeding.

The Court recognizes that "serious questions" would be raised if a district judge rejected a magistrate's proposed findings on credibility. See ante, at 12-13. But the Court finds no error in this case, where the District Court accepted the Magistrate's judgment on credibility. I would reach a different conclusion. Under the standards set out in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), due process requires a District Court to rehear crucial witnesses when, as in this case, a suppression hearing turns only on credibility. As MR. JUSTICE MARSHALL points out in his dissenting opinion, the private interests at stake in a suppression hearing often are substantial. Moreover, the risk of erroneous deprivation of rights is real when a decider of fact has not heard and observed the crucial witnesses. The value of hearing and seeing those witnesses testify is undeniable. Finally, the government interest in limiting rehearing is not sufficient to outweigh these

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

pp. 1,2

1st PRINTED DRAFT

6-18-80

SUPREME COURT OF THE UNITED STATES

No. 79-8

United States, Petitioner, v. Herman Raddatz. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1980]

MR. JUSTICE POWELL, concurring in part and dissenting in part.

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The Court recognizes that "serious questions" would be raised if a district judge rejected a magistrate's proposed findings on credibility. See *ante*, at 13, n. 7. But the Court finds no error in this case, where the District Court accepted the Magistrate's judgment on credibility. I would reach a different conclusion. Under the standards set out in *Mathews* v. *Eldridge*, 424 U. S. 319, 335 (1976), due process requires a District Court to rehear crucial witnesses when, as in this case, a suppression hearing turns *only* on credibility. As MR. JUSTICE MARSHALL points out in his dissenting opinion, the private interests at stake in a suppression hearing often are substantial. Moreover, the risk of erroneous deprivation of rights is real when a decider of fact has not heard and observed the crucial witnesses. The value of hearing and seeing those witnesses testify is undeniable. Finally, the government interest in limiting rehearing is not sufficient to outweigh these considerations.

Thus, I agree with MR. JUSTICE MARSHALL's statement

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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

6-18-80

Circulated: _____

2nd DRAFT

Recirculated: JUN 18 1980

SUPREME COURT OF THE UNITED STATES

No. 79-8

United States, Petitioner, *v.* Herman Raddatz.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1980]

MR. JUSTICE POWELL, concurring in part and dissenting in part.

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The Court recognizes that "serious questions" would be raised if a district judge rejected a magistrate's proposed findings on credibility. See *ante*, at 13, n. 7. But the Court finds no error in this case, where the District Court accepted the Magistrate's judgment on credibility. I would reach a different conclusion. Under the standards set out in *Mathews* v. *Eldridge*, 424 U. S. 319, 335 (1976), due process requires a District Court to rehear crucial witnesses when, as in this case, a suppression hearing turns *only* on credibility. As MR. JUSTICE MARSHALL points out in his dissenting opinion, the private interests at stake in a suppression hearing often are substantial. Moreover, the risk of erroneous deprivation of rights is real when a decider of fact has not heard and observed the crucial witnesses. The value of hearing and seeing those witnesses testify is undeniable. Finally, the government interest in limiting rehearing is not sufficient to outweigh these considerations.

In sum, I agree with MR. JUSTICE MARSHALL's statement

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 29, 1980

Re: No. 79-8 United States v. Raddatz

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 9, 1980

Re: 79-8 - United States v. Raddatz

Dear Chief:

Although Potter has written a strong dissent on the "de novo" point--a point which has always given me some trouble in this case--on balance, I remain convinced that your reading is probably what Congress actually intended. I therefore ask you to join me in your opinion.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

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