

# The Burger Court Opinion Writing Database

## *United States v. Jacobsen*

466 U.S. 109 (1984)

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

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SUPREME COURT OF THE U.S.  
JUSTICE STEVENS

February 1, 1984

'84 JAN 33 A10:07

Re: 82-1167 - United States v. Jacobsen, et ux.

Dear John:

I join.

Regards,



Justice Stevens

Copies to the Conference

WJB  
John

RECEIVED  
SUPREME COURT U.S.  
JUSTICE

'84 MAR 28 P1:17

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Brennan

MAR 28 1984

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1167

UNITED STATES, PETITIONER *v.* BRADLEY  
THOMAS JACOBSEN AND DONNA  
MARIE JACOBSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

[March —, 1984]

JUSTICE BRENNAN, dissenting.

This case presents two questions: first whether law enforcement officers may conduct a warrantless search of the contents of a container merely because a private party has previously examined the container's contents and informed the officers of its suspicious nature; and second, whether law enforcement officers may conduct a chemical field test of a substance once the officers have legitimately located the substance. Because I disagree with the Court's treatment of each of these issues, I respectfully dissent.

I

I agree entirely with JUSTICE WHITE that the Court has expanded the reach of the private-search doctrine far beyond its logical bounds. *Ante*, at 2-7. It is difficult to understand how respondents can be said to have no expectation of privacy in a closed container simply because a private party had previously opened the container and viewed its contents. I also agree with JUSTICE WHITE, however, that if the private party presents the contents of a container to a law enforcement officer in such a manner that the contents are plainly visible, the officer's visual inspection of the contents does not constitute a "search" within the meaning of the Fourth Amendment. Because the record in this case is un-

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To: The Chief Justice  
Justice Brennan  
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Justice O'Connor

From: Justice White

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SUPREME COURT OF U.S.  
JUSTICE WHITE

'84 MAR -8 P1:01

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-1167

UNITED STATES, PETITIONER *v.* BRADLEY  
THOMAS JACOBSEN AND MARIE JACOBSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

[March —, 1984]

JUSTICE WHITE, concurring in part and concurring in the  
judgment.

It is relatively easy for me to concur in the judgment in this case, since in my view the case should be judged on the basis of the Magistrate's finding that, when the first DEA agent arrived, the "tube was in plain view in the box and the bags of white powder were visible from the end of the tube." App. to Pet. for Cert. 18a. Although this finding was challenged before the District Court, that court found it unnecessary to pass on the issue. *Id.*, at 12a-13a. As I understand its opinion, however, the Court of Appeals accepted the Magistrate's finding: the Federal Express manager "placed the bags back in the tube, leaving them visible from the tube's end, and placed the tube back in the box"; he later gave the box to the DEA agent, who "removed the tube from the open box, took the bags out of the tube, and extracted a sample of powder." 683 F. 2d 296, 297 (CA8 1982). At the very least, the Court of Appeals assumed that the contraband was in plain view. The Court of Appeals then proceeded to consider whether the federal agent's field test was an illegal extension of the private search, and it invalidated the field test solely for that reason.

Particularly since respondents argue here that whether or not the contraband was in plain view when the federal agent

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 30, 1984

Re: No. 82-1167-U.S. v. Jacobsen

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

120  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

RECEIVED  
SUPREME COURT U.S.  
JUSTICE M. THALL

January 23, 1984

'84 JAN 23 A9:52

Re: No. 82-1167 - United States v. Jacobsen

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

January 23, 1984

81-1167 United States v. Jacobsen

Dear John:

Although I will join your opinion, I would appreciate your considering one clarification.

As probable cause is conceded in this case, I would not think it necessary to restate the applicable standard as is done on pp. 10-11 of your opinion. In any event, the sentence that begins on the bottom of page 10 may be read as implying that at least probable cause is a necessary predicate to any valid seizure. In Sandra's recent decision in Place we held that some seizures may be justified by an articulable suspicion of criminal activity. Of course, you do cite Place in footnote 21, as well as at other points in the opinion.

With respect to the reasonableness of an expectation of privacy, addressed on page 3, I have a Court for the judgment in the open-fields cases. If they should come down before your decision in this case, you may wish to add them to the citations in footnote 4 on page 3.

Sincerely,

Justice Stevens

lfp/ss



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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JUSTICE MARSHALL

'84 JAN 30 P3:35

January 30, 1984

82-1167 United States v. Jacobsen

Dear John:

Please join me.

Sincerely,

Justice Stevens

lfp/ss

cc: The Conference

(3)

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

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SUPREME COURT U.S.  
JUSTICE WILLIAM H. REHNQUIST

January 23, 1984

'84 JAN 23 P2:23  
Re: No. 82-1167 United States v. Jacobsen

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

JAN 17 1984

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-1167

UNITED STATES, PETITIONER *v.* BRADLEY  
THOMAS JACOBSEN AND DONNA MARIE JACOBSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

[January —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

During their examination of a damaged package, the employees of a private freight carrier observed a white powdery substance, originally concealed within eight layers of wrappings. They summoned a federal agent, who removed a trace of the powder, subjected it to a chemical test and determined that it was cocaine. The question presented is whether the Fourth Amendment required the agent to obtain a warrant before he did so.

The relevant facts are not in dispute. Early in the morning of May 1, 1981, a supervisor at the Minneapolis-St. Paul airport Federal Express office asked the office manager to look at a package that had been damaged and torn by a forklift. They then opened the package in order to examine its contents pursuant to a written company policy regarding insurance claims.

The container was an ordinary cardboard box wrapped in brown paper. Inside the box five or six pieces of crumpled newspaper covered a tube about 10 inches long; the tube was made of the silver tape used on basement ducts. The supervisor and office manager cut open the tube, and found a series of four zip-lock plastic bags, the outermost enclosing the other three and the innermost containing about six and a half ounces of white powder. When they observed the white powder in the innermost bag, they notified the

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS



January 24, 1984

Re: 82-1167 - United States v. Jacobsen

Dear Lewis:

Thank you for your suggestions. I will certainly add a citation to the open field cases if they come down before this opinion does. Also, I think you are correct that the opinion might be read as implying that probable cause is a necessary predicate for any valid seizure. As Place holds, that would not be correct. I wonder, therefore, if this might be an adequate solution to the problem. After the single sentence now in footnote 20, add::

"Therefore we need not decide whether the agents could have seized the package based on something less than probable cause. Some seizures can be justified by an articulable suspicion of criminal activity. See United States v. Place, \_\_\_\_\_ U.S. \_\_\_\_\_ (1983)."

If you don't think that is adequate, please let me know and I'll try again.

Respectfully,

Justice Powell

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 10

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-1167

UNITED STATES, PETITIONER *v.* BRADLEY  
THOMAS JACOBSEN AND DONNA  
MARIE JACOBSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

[January —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

During their examination of a damaged package, the employees of a private freight carrier observed a white powdery substance, originally concealed within eight layers of wrappings. They summoned a federal agent, who removed a trace of the powder, subjected it to a chemical test and determined that it was cocaine. The question presented is whether the Fourth Amendment required the agent to obtain a warrant before he did so.

The relevant facts are not in dispute. Early in the morning of May 1, 1981, a supervisor at the Minneapolis-St. Paul airport Federal Express office asked the office manager to look at a package that had been damaged and torn by a fork-lift. They then opened the package in order to examine its contents pursuant to a written company policy regarding insurance claims.

The container was an ordinary cardboard box wrapped in brown paper. Inside the box five or six pieces of crumpled newspaper covered a tube about 10 inches long; the tube was made of the silver tape used on basement ducts. The supervisor and office manager cut open the tube, and found a series of four zip-lock plastic bags, the outermost enclosing the other three and the innermost containing about six and a half ounces of white powder. When they observed the white

*Wad*  
*11-11*

To: The Chief Justice  
Justice Brennan  
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Justice Rehnquist  
Justice O'Connor

7-10

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'84 JAN 30 A9:57

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1167

UNITED STATES, PETITIONER *v.* BRADLEY  
THOMAS JACOBSEN AND DONNA  
MARIE JACOBSEN

*Warrant*  
*1/30/84*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

[January —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

During their examination of a damaged package, the employees of a private freight carrier observed a white powdery substance, originally concealed within eight layers of wrappings. They summoned a federal agent, who removed a trace of the powder, subjected it to a chemical test and determined that it was cocaine. The question presented is whether the Fourth Amendment required the agent to obtain a warrant before he did so.

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4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-1167

UNITED STATES, PETITIONER *v.* BRADLEY  
THOMAS JACOBSEN AND DONNA  
MARIE JACOBSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT

[March —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 17, 1984

No. 82-1167 United States v. Jacobsen

Dear John,

Please join me.

Sincerely,



Justice Stevens

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