BORDER SEARCH EXCEPTION HELD INAPPLICABLE TO INTERNATIONAL LETTER MAIL

United States v. Ramsey, 538 F.2d 415 (D.C. Cir. 1976)

Holding that customs officials cannot search international letter mail[1] without a warrant,[2] the Court of Appeals for the District of Columbia has created a sharp split among the circuits concerning the proper scope of the border search exception.[3]

A customs inspector suspected that several envelopes contained narcotics because they were bulky, unusually heavy, and from Thailand, a known source of heroin.[4] Acting without a warrant, the inspector opened the letters and found heroin.[5] He then resealed the envelopes and sent them to Washington, D.C., for controlled delivery to the defendants, who were arrested with the letters in their possession.[6] The trial court found the warrantless search constitutional and denied defendants' motion to suppress.[7] Defendants were convicted of illegal importation and possession of heroin.[8] The Court of Appeals for the District of Columbia reversed and *held*: The first and fourth amendments prohibit warrantless searches of international letter mail.[9]

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1. The court gave no precise definition of "international letter mail." Postal regulations currently limit "international letter class mail" to pieces weighing not more than four pounds and not exceeding specified dimensions. 39 C.F.R. §§ 22.1(b), (c)(1) (1975), *quoted in* United States v. Ramsey, 538 F.2d 415, 419 n.6 (D.C. Cir.), *cert. granted*, 97 S. Ct. 56 (1976). The court recognized that some portion of this category might be "packages" for fourth amendment purposes, but assigned to the Government the responsibility for precise definition. 538 F.2d at 419 n.6. In close cases a warrant should be obtained. *Id.*

2. United States v. Ramsey, 538 F.2d 415 (D.C. Cir.), *cert. granted*, 97 S. Ct. 56 (1976).

3. United States v. Barclift, 514 F.2d 1073, 1074-75 (9th Cir.) (per curiam), *cert. denied*, 423 U.S. 842 (1975); United States v. Bolin, 514 F.2d 554, 557 (7th Cir. 1975); United States v. Odland, 502 F.2d 148, 151 (7th Cir.), *cert. denied*, 419 U.S. 1088 (1974). *See also* United States v. Francis, 487 F.2d 968 (5th Cir. 1973), *cert. denied*, 416 U.S. 908 (1974).

4. United States v. Ramsey, 538 F.2d 415, 417 (D.C. Cir.), *cert. granted*, 97 S. Ct. 56 (1976).

5. *Id.*

6. *Id.*

7. Petitioner's Brief for Certiorari at 4, United States v. Ramsey, 97 S. Ct. 56 (1976).

8. 538 F.2d at 416.

9. *Id.* at 421.

The fourth amendment of the United States Constitution[10] protects all persons in the United States[11] from "unreasonable" searches by government officials, and permits a neutral magistrate[12] to issue a search warrant only on a showing of "probable cause."[13] Warrantless searches are "per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions."[14] Evidence obtained in violation of the fourth amendment is inadmissible in criminal prosecutions against the victim of the unreasonable search.[15]

One well-delineated exception to the warrant requirement is a border search by a customs officer.[16] The original authority for this practice, a 1789 statute[17] authorizing customs officials to search "mobile subjects" without a warrant,[18] predates the fourth amendment. Although the enactment of the fourth amendment had been prompted by the indiscriminate searches of British officials enforcing the customs,[19]

10. U.S. CONST. amend. IV provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

11. The fourth amendment protects both American citizens and aliens residing in the United States and, in certain situations, aliens residing abroad. *See* United States v. Toscanino, 500 F.2d 267, 280 (2d Cir. 1974), *noted in* 88 HARV. L. REV. 813 (1975) *and* 10 TULSA L.J. 479 (1975).

12. *See* Wong Sun v. United States, 371 U.S. 471, 481-82 (1963); Johnson v. United States, 333 U.S. 10, 14 (1943).

13. *See* note 10 *supra.*

14. Katz v. United States, 389 U.S. 347, 357 (1967). *See* Stoner v. California, 376 U.S. 483, 486 (1963); Rios v. United States, 364 U.S. 253, 261 (1960); Jones v. United States, 357 U.S. 493, 499 (1958).

15. Mapp v. Ohio, 367 U.S. 643 (1961); Weeks v. United States, 232 U.S. 383 (1914); Boyd v. United States, 116 U.S. 616 (1886).

16. *See, e.g.*, Carroll v. United States, 267 U.S. 132, 150 (1925); Boyd v. United States, 116 U.S. 616, 623 (1886); United States v. Glaziou, 402 F.2d 8, 12 (2d Cir. 1968), *cert. denied*, 393 U.S. 1121 (1969); King v. United States, 348 F.2d 814, 817-18 (9th Cir.), *cert. denied*, 382 U.S. 926 (1965); Note, *In Search of the Border: Searches Conducted By Federal Customs and Immigration Officers*, 5 N.Y.U.J. INT'L L. & POL. 93 (1972); Note, *Search and Seizure at the Border—The Border Search*, 21 RUTGERS L. REV. 513, 514-16 (1967).

17. Act of July 31, 1789, ch. 5, § 24, 1 Stat. 29, 43.

18. The statute described "mobile subjects" as "any goods, wares, or merchandize subject to duty" located on a "ship or vessel." A search of a permanent structure still required a warrant. The statute described a permanent structure as a "dwelling-house, store, building or other place." *Id.*

19. *See* Stanford v. Texas, 379 U.S. 476, 481-82 (1965); Boyd v. United States, 116 U.S. 616, 624-25 (1886); Note, *Search and Seizure at the Border—The Border Search, supra* note 17.

Congress continued to authorize border searches subsequent to adoption of the Bill of Rights.[20] An 1866 statute expanded the power of customs officials to conduct border searches,[21] authorizing inspection for dutiable merchandise of "any trunk or envelope" found on or about a mobile subject.[22] The statute currently in force[23] employs the same language.[24]

Courts have offered five rationales for the border search exception to the warrant requirement. First, Congress has historically permitted warrantless customs searches.[25] Second, international travelers expect that they will be required to disclose their identity and the contents of their belongings at the border.[26] Third, the government's interest in controlling traffic across its borders outweighs an individual's privacy interests.[27] Fourth, obtaining a search warrant for the huge volume of traffic across the border would be impractical;[28] and finally, it would often be impossible to obtain a search warrant before a mobile subject flees.[29]

The border search exception has undergone continual expansion,[30] and has recently been applied unanimously to packages in international mail.[31] This extension rests on several grounds: the volume of pack-

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20. *E.g.*, Act of March 3, 1815, ch. 94, § 2, 3 Stat. 231, 232.
21. Act of July 18, 1866, ch. 201, § 3, 14 Stat. 178.
22. *Id.*
23. 19 U.S.C. § 482 (1970).
24. *See* Act of July 18, 1866, ch. 201, § 3, 14 Stat. 178.
25. *See* materials cited in note 16 *supra.*
26. *E.g.*, United States v. Sohnen, 298 F. Supp. 51, 55 (E.D.N.Y. 1969); *see* Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (discussing a two-part test for reasonable expectation).
27. *See* Carroll v. United States, 267 U.S. 132, 154 (1925) (governmental interest in national security); United States v. Mitchell, 525 F.2d 1275, 1279 (5th Cir. 1976) (governmental interest in national security); Alexander v. United States, 352 F.2d 379, 382 (9th Cir.), *cert. denied*, 385 U.S. 977 (1966) (governmental interest in contraband control). *See also* Boyd v. United States, 116 U.S. 616, 623 (1886) (governmental interest in collection of import tax revenues); United States v. Odland, 502 F.2d 148, 150 (7th Cir.), *cert. denied*, 419 U.S. 1088 (1974) (governmental interest in collection of import tax revenues); The Atlantic, 68 F.2d 8, 10 (2d Cir. 1933) (governmental interest in contraband control).
28. *See, e.g.*, Morales v. United States, 378 F.2d 187, 190 (5th Cir. 1967); King v. United States, 348 F.2d 814, 818 (9th Cir. 1965); United States v. Rodriguez, 195 F. Supp. 513, 516 (S.D. Tex. 1960), *aff'd*, 292 F.2d 709 (5th Cir. 1961).
29. Carroll v. United States, 267 U.S. 132, 153 (1925).
30. *See, e.g.*, United States v. McDaniel, 463 F.2d 129 (5th Cir. 1972), *cert. denied*, 413 U.S. 919 (1973); United States v. DeLeon, 462 F.2d 170 (5th Cir. 1972); United States v. Glaziou, 402 F.2d 8 (2d Cir. 1968), *cert. denied*, 393 U.S. 1121 (1969).
31. *See* United States v. Doe, 472 F.2d 982, 984 (2d Cir.), *cert. denied*, 411 U.S.

ages potentially containing contraband precludes requiring a search warrant for every package;[32] the search of a package crossing a border is indistinguishable from a search of an international traveler and his baggage;[33] and, several Treasury regulations specifically authorize these searches.[34] Some courts hold international letter mail the legal equivalent of packages and permit a warrantless search of an envelope;[35] others carefully distinguish the two.[36]

First class mail implicates two first amendment interests in addition to the more general fourth amendment interest in privacy. The first amendment obviously protects the right of self-expression.[37] The Supreme Court has also found a constitutional right to receive information.[38] Both of these interests are threatened when a person is aware that his correspondence may be subjected to indiscriminate search; discouraging self-expression also impedes information acquisition.[39]

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969 (1973); United States v. Galvez, 465 F.2d 681, 687 (10th Cir. 1972); United States v. Beckley, 335 F.2d 86, 88-89 (6th Cir. 1964), *cert. denied*, 380 U.S. 922 (1965); United States v. Carpenter, 403 F. Supp. 361 (D. Mass. 1975); United States v. Swede, 326 F. Supp. 533, 535-36 (S.D.N.Y. 1971); United States v. Sohnen, 298 F. Supp. 51, 54-55 (E.D.N.Y. 1969); People v. Schatz, 66 Misc. 2d 381, 321 N.Y.S.2d 186 (Sup. Ct. 1971).

32. *See* United States v. Doe, 472 F.2d 982, 984 (2d Cir.), *cert. denied*, 411 U.S. 969 (1973); United States v. Sohnen, 298 F. Supp. 51, 54 (E.D.N.Y. 1969).

33. *See* United States v. Beckley, 335 F.2d 86, 89 (6th Cir. 1964), *cert. denied*, 380 U.S. 922 (1965); Note, *The Customs Authority To Search Foreign Mail*, 6 INT. L. & POL. 91, 97 (1973).

34. 19 C.F.R. § 145.2 (1975), *amending* 19 C.F.R. § 145.2 (1973) (mail subject to customs examination); 39 C.F.R. § 61.1 (1972) (what is subject to examination).

35. United States v. Doe, 472 F.2d 982 (2d Cir.), *cert. denied*, 411 U.S. 969 (1973); United States v. Beckley, 335 F.2d 86 (6th Cir. 1964), *cert. denied*, 380 U.S. 922 (1965).

36. *See* United States v. Swede, 326 F. Supp. 533 (S.D.N.Y. 1971), in which the court said:

> Inasmuch as the evidence adduced . . . undisputedly demonstrated that the envelope contained a quantity of powder . . . and no evidence has been produced which even suggests that a letter or written communication was ever placed or found inside the envelope, the Court must conclude . . . that the envelope addressed to the movant was a "package."

Id. at 535-36; United States v. Sohnen, 298 F. Supp. 51 (E.D.N.Y. 1969).

37. *See generally* T. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 6-7 (1970); Sedler, Book Review, 80 YALE L.J. 1070, 1080 (1971).

38. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 96 S. Ct. 1817, 1823 (1976); Griswold v. Connecticut, 381 U.S. 479, 482 (1965); Lamont v. Postmaster General, 381 U.S. 301, 307 (1965); Martin v. City of Struthers, 319 U.S. 141, 143 (1943); Note, *supra* note 33 at 110. *See generally* Emerson, *Legal Foundations of the Right to Know*, 1976 WASH. U.L.Q. 1.

39. *See* Procunier v. Martinez, 416 U.S. 396, 423 (1972) (Marshall, J., concurring)

Moreover, the fourth amendment specifically prohibits unreasonable searches of citizens' "papers."[40] Compliance with the warrant requirement is particularly important when fourth amendment privacy interests coincide with first amendment expression interests.[41]

Without a warrant, government officials cannot open first class mail envelopes travelling within the United States[42] except to determine the address to which a letter may be delivered.[43] In light of the border search exception, however, some courts have refused to extend such protection to first class mail from abroad.[44] In *United States v. Odland*,[45] the Seventh Circuit held that the United States Customs Bureau may conduct warrantless searches of international letters. The court relied on a Treasury regulation subjecting international mail to customs inspection,[46] and reasoned that an envelope is indistinguishable from a person or good that may be legally searched upon entering the United States.[47] In the handful of cases that have followed *Odland*, courts have relied on similar reasoning,[48] any of several Treasury regulations subjecting international mail to customs examination,[49] a federal statute empowering customs officials to conduct warrantless border searches,[50] or a combination of the above.[51]

(prisoners' out-going mail); *cf.* Talley v. California, 362 U.S. 60, 65 (1960); NAACP v. Alabama, 357 U.S. 449, 462 (1958). *Contra*, Wolff v. McDonnell, 418 U.S. 539, 575-76 (1974) (prisoners' incoming mail can be searched without a warrant). *See generally* Note, *supra* note 33, at 111-12.

40. *See* note 10 *supra*.

41. *See, e.g.*, United States v. United States District Court, 407 U.S. 297, 313-14 (1972); Stanford v. Texas, 379 U.S. 476, 485 (1965), *cited in* 538 F.2d at 420.

42. *Ex parte* Jackson, 96 U.S. 727, 733 (1877).

43. 39 U.S.C. § 3623(d) (1970) authorizes the opening of "dead letters":

> No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee.

44. United States v. Beckley, 335 F.2d 86, 88 (6th Cir. 1964), *cert. denied*, 380 U.S. 922 (1965). *See* notes 45-51 *infra*.

45. 502 F.2d 148 (7th Cir.), *cert. denied*, 419 U.S. 1088 (1974).

46. The Treasury regulation provides: "All mail originating outside the customs territory of the United States is subject to customs examination except [certain mail addressed to diplomats, international organizations, and government officials]." 39 C.F.R. § 61.1 (1972).

47. 502 F.2d at 151.

48. *Id.* at 150-51.

49. 19 C.F.R. § 145.2 (1975), *amending* 19 C.F.R. § 145.2 (1973); 39 C.F.R. § 61.1 (1972) (*see* note 46 *supra*).

50. 19 U.S.C. § 482 (1970).

51. United States v. Milroy, 538 F.2d 1033 (4th Cir.), *cert. denied*, — U.S. —

In *United States v. Ramsey*,[52] the Court of Appeals for the District of Columbia acknowledged that the border search exception applies to packages, but refused to extend it to international letter mail.[53] The majority rejected the Government's argument that the mobility and huge traffic in letters potentially containing contraband rendered the warrant requirement impractical.[54] First, letters have limited carrying capacity and are far less likely to contain contraband than packages, cars, or suitcases.[55] Second, screening techniques such as dogs,[56] x-rays,[57] or metal detectors,[58] which diminish the need for a physical search,[59] are more easily applied to letters than to persons or automo-

(1976); United States v. Bolin, 514 F.2d 554 (7th Cir. 1975); United States v. Barclift, 514 F.2d 1073 (9th Cir.) (per curiam), *cert. denied*, 423 U.S. 842 (1975); Hogan v. Nebraska, 402 F. Supp. 812 (D. Neb. 1975); United States v. Various Articles of Obscene Merchandise, 395 F. Supp. 791 (S.D.N.Y. 1975); State v. Jennings, 32 Conn. Supp. 15, 336 A.2d 237 (Super. Ct. 1974); People v. Tobiass, 69 Misc. 2d 700, 330 N.Y.S.2d 824 (Rockland County Ct. 1972). *See also* United States v. King, 517 F.2d 350 (5th Cir. 1975).

52. 538 F.2d 415 (D.C. Cir.), *cert. granted*, 97 S. Ct. 56 (1976).

53. *Id.* at 418-21.

54. *Id.* at 418. The *Ramsey* court also briefly considered and rejected two other rationales for excepting international mail from the warrant requirement. The court cited Camara v. Municipal Court, 387 U.S. 523 (1967), to reject the theory that a "well-established history of warrantless searches" justifies continuing the practice. 538 F.2d at 418 n.5. Judge Robb, in dissent, argued that *Camara* concerned administrative searches and was therefore inapplicable to the customs search in the instant case. 538 F.2d at 523 n.1. Assuming the validity of the distinction, however, the history of the border search exception establishes that warrantless searches of envelopes were only permissible when found on a mobile subject. *See* notes 19-24 *supra* and accompanying text. The *Ramsey* court also rejected the contention that warrants are not required because international travelers expect their privacy to be invaded. The court thought this argument largely circular, and in any event inapplicable to searches of letter class mail. 538 F.2d at 418 n.5.

55. 538 F.2d at 419. The court reasoned that only narcotics, small jewelry, precious metals and currency would fit into an envelope.

56. *Id.*, *citing* United States v. Mitchell, 525 F.2d 1275, 1277 (5th Cir. 1976), United States v. Fulero, 498 F.2d 748, 749 (D.C. Cir. 1974) (per curiam), *and* United States v. Feldman, 366 F. Supp. 356, 358 (D. Hawaii 1973). *See also* United States v. Milroy, 538 F.2d 1033 (4th Cir.), *cert. denied*, — U.S. — (1976). *Contra*, United States v. Solis, 393 F. Supp. 325, 327 (C.D. Cal. 1975). *See generally* Note, *Constitutional Limitations on the Use of Canines to Detect Evidence of Crime*, 44 FORDHAM L. REV. 973-90 (1975).

57. 538 F.2d at 419, *citing* United States v. Chiarito, 507 F.2d 1098, 1099 (5th Cir.) (per curiam), *cert. denied*, 423 U.S. 824 (1975), *and* United States v. Sohnen, 298 F. Supp. 51, 53 (E.D.N.Y. 1969). *See* State v. Gallant, 308 A.2d 274, 276 (Me. 1973).

58. 538 F.2d at 419. *See, e.g.*, United States v. Albarado, 495 F.2d 799, 805-06 (2d Cir. 1974); United States v. Epperson, 454 F.2d 769, 770-72 (4th Cir.), *cert. denied*, 406 U.S. 947 (1972).

59. 538 F.2d at 419.

biles. Finally, customs officials can detain letters more easily than people, and have time to obtain a warrant if probable cause exists.[60] The court rejected the contention that the warrant requirement would constitute an unreasonable threat to effective law enforcement, noting that officials in the District of Columbia obtained a search warrant under similar circumstances.[61]

The crux of the *Ramsey* opinion, however, lay in the majority's judgment that the need to protect the privacy and free expression interests inherent in first class mail outweigh the administrative inconvenience of acquiring a warrant.[62] Unlike packages or automobiles, letters are " 'as much a part of free speech as the right to use our tongues.' "[63] Routine inspection of such letters, the court reasoned, would seriously inhibit free expression. Consequently, the "especially strong" limits on search and seizure when first and fourth amendment values coincide[64] require a warrant to validate the search of international letter mail.

The majority noted three additional values served by application of the warrant requirement to international letter mail. First, subjecting search requests to the detached scrutiny of a neutral magistrate would limit unjustified intrusions.[65] Second, the record made at that time would ease the task of subsequent judicial review and reduce the likelihood of subsequent fabrication of "probable cause" based on the fruits of the search.[66] Finally, the warrant would assure that officials search only letters reasonably suspected of containing contraband rather than political or social beliefs with which the officers disagree.[67]

Judge Robb maintained in dissent that an envelope sent through the mail is indistinguishable from one personally carried through customs. Since the border search exception clearly permits a warrantless search in the latter situation, it should also apply to the former.[68] Moreover,

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60. *Id.*, *citing* United States v. Van Leeuwan, 397 U.S. 249 (1970). *Accord*, United States v. Swede, 326 F. Supp. 533, 536 (S.D.N.Y. 1971); State v. Gallant, 308 A.2d 274, 278 (Me. 1973).

61. 538 F.2d at 422.

62. *Id.* at 420.

63. *Id.*, *quoting* United States *ex rel.* Milwaukee Social Democratic Publishing Co. v. Burleson, 255 U.S. 407, 437 (1921) (Holmes, J., dissenting).

64. 538 F.2d at 420, *citing* United States v. United States District Court, 407 U.S. 297, 313-14 (1972), *and* Stanford v. Texas, 379 U.S. 476, 485 (1965).

65. 538 F.2d at 421.

66. *Id.*

67. *Id.* at 421-22.

68. *Id.* at 423 (Robb, J., dissenting).

even though packages might contain private writings, all courts agree that they may be searched without a warrant.[69]

The majority's refusal to extend the border search exception to international letter mail is commendable. Warrantless searches are the exception, not the rule.[70] Accordingly, the Government had the burden of proving the applicability of the border search exception to letter mail and justifying a rule conflicting with that applied to first class mail traveling within the United States. International letter mail implicates the same first amendment interests as domestic first class mail. An American citizen's interest in acquiring information from abroad is as important as his ability to correspond with domestic sources.[71] The argument that the sender's interests in self-expression and privacy should not be protected because he may not be an American citizen is unpersuasive.[72] The reasons underlying the border search exception are inapplicable to letters.[73]

To protect these individual interests, the Government need not forego its legitimate interest in excluding contraband from the country. Customs officials currently search less than one percent of all international letter mail,[74] which suggests they would not be seriously handicapped by the warrant requirement. Moreover, customs authorities have successfully employed the screening techniques suggested in *Ramsey* to obtain probable cause for a search warrant.[75] The inspector's suspicions

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69. *Id.*

70. *See* Chimel v. California, 395 U.S. 752, 763 (1968); Terry v. Ohio, 392 U.S. 1, 20 (1967); Zweibon v. Mitchell, 516 F.2d 594, 631 (D.C. Cir. 1975), *cert. denied*, 96 S. Ct. 1685 (1976); Appellant Ramsey's Supplemental Brief at 1, United States v. Ramsey, 538 F.2d 415 (D.C. Cir.), *cert. granted*, 97 S. Ct. 56 (1976). *See also* Coolidge v. New Hampshire, 403 U.S. 443, 481 (1970).

71. Lamont v. Postmaster General, 381 U.S. 301 (1965) (holding unconstitutional routine interception of "communist political propaganda" from overseas unless addressee specifically requested that he receive it); Mandel v. Mitchell, 325 F. Supp. 620, 631 (E.D.N.Y. 1971), *rev'd on other grounds sub. nom.* Kleindienst v. Mandel, 408 U.S. 753 (1972) (right of American citizens to hear alien defend his views is "the essence of self-government"); Emerson, *Legal Foundations of the Right to Know*, 1976 WASH. U.L.Q. 1, 2-4, 7 (comprehensive theory of right to know necessary to vindicate these interests in all cases).

72. *See* United States v. Toscanino, 500 F.2d 267, 280 (2d Cir. 1974) (involving fourth amendment rights of an alien living abroad, applicable to first amendment rights).

73. *See* notes 54-60 *supra* and accompanying text.

74. Petitioner's Brief for Certiorari at 14, United States v. Ramsey, 97 S. Ct. 56 (1976).

75. *See* State v. Gallant, 308 A.2d 274 (Me. 1973).

in *Ramsey* doubtless constituted probable cause.[76] As the majority noted,[77] interposing a neutral magistrate's judgment is more likely to dissuade arbitrary official action than to interfere with legitimate searches.

The dissent's arguments are unpersuasive. A correspondent's expectation of privacy in a sealed envelope exceeds a traveler's at a port of entry; the latter knows his effects are subject to search. Moreover, the practical considerations that justify warrantless searches of the traveller are largely inapplicable to letter mail. The contention that packages may also contain writings protected by the first amendment fails to address the majority's argument: letters are far more likely to contain such material and less likely to contain contraband.[78]

One possible flaw in the court's first amendment analysis was its failure to discuss the legal categorization of intercepted "letters" that contain no writing. Some courts characterize such "letters" as "packages" and automatically apply the border search exception.[79] In the event that customs officials could determine the absence of writing by external examination, the *Ramsey* court's first amendment and privacy concerns would evaporate, and a warrantless search would arguably be permissible. Because the Government asserted that the border search exception justified all routine inspection of international letter mail, however, the court did not need to address this possibility.[80] In any event, a blanket rule requiring a warrant for letter mail is certainly the easiest rule to apply and enforce.

On a more fundamental level, many authorities believe the warrant procedure is futile because the "neutral magistrate" is in reality merely a puppet who rubber stamps all warrants.[81] Under this view of the warrant process, *Ramsey* will add only a time-consuming ceremony to customs inspections, without protecting a correspondent's first and fourth amendment interests. For obvious reasons courts have consistently rejected this gloomy view of the warrant requirement. It constitutes an attack upon the practical value of an explicit constitutional pro-

76. 538 F.2d at 421 n.8.

77. *Id.* at 421-22.

78. *See* notes 55, 63-64 *supra* and accompanying text.

79. *See* cases cited note 36 *supra.*

80. 538 F.2d at 418.

81. *See* W. LAFAVE, ARREST, THE DECISION TO TAKE A SUSPECT INTO CUSTODY, 15-16, 502-04 (1965); L. TIFFANY, D. MCINTYRE JR., & D. ROTENBERG, DETECTION OF CRIME 119-20 (1967).

vision, not its legal significance. If courts are at all faithful to the Constitution, they must assume the operative value of procedures explicitly required.

The well-reasoned opinion in *Ramsey* stands in marked contrast to the decisions of the Courts of Appeals for the Seventh and Ninth Circuits.[82] As a result of the split among the circuits, a customs official anticipating a prosecution in the District of Columbia must obtain a search warrant before opening the same letter that he might legally open if suit were expected in the Seventh or Ninth Circuits. The Supreme Court should grant the Government's petition for certiorari in *Ramsey*,[83] and resolve this conflict by affirming the superior opinion of the District of Columbia Circuit.

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82. *See* note 3 *supra.*

83. Petitioner's Brief for Certiorari, United States v. Ramsey, 97 S. Ct. 56 (1976). As this issue went to press, the Supreme Court did grant certiorari. 97 S. Ct. 56 (1976).