AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 10: The Reagan Era – Criminal Justice/Search and Seizure

**Malley v. Briggs, 475 U.S. 335** (1986)

*In December 1980, the Rhode Island state police were monitoring a legal wiretap on the phone of Paul Driscoll, a suspected drug dealer. They believed that they heard evidence of possible drug use at a party that Driscoll attended with prominent real estate developer James Briggs. On the basis of the wiretap, a state judge issued felony warrants for several individuals, including Briggs. In a predawn raid, Briggs and his wife were arrested, booked, and released. A grand jury refused to bring an indictment against Briggs and his wife.*

*Briggs filed suit in federal district court against the state trooper under 42 U.S.C. §1983 arguing that his federal constitutional rights had been violated because the state police should have known that the conversation that they overheard was not sufficient to provide probable cause for a warrant. The district court issued a directed verdict in favor of the officer on the grounds that the officer enjoyed immunity from suit when acting under the objectively reasonable belief that his actions were lawful. The circuit court reversed, and on appeal the U.S. Supreme Court affirmed the circuit court. The justices all agreed that the police officer was not entitled to absolute immunity when submitting an affidavit for a warrant, but two justices dissented on whether it was an open question as to whether a reasonable officer could have known that his actions were unlawful under a lower qualified immunity standard.*

JUSTICE WHITE delivered the opinion of the Court.

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Our general approach to questions of immunity under §1983 is by now well established. Although the statute on its face admits of no immunities, we have read it "in harmony with general principles of tort immunities and defenses rather than in derogation of them." . . . .

Our cases also make plain that "[f]or executive officers in general, . . . qualified immunity represents the norm." *Harlow v. Fitzgerald* (1982). Like federal officers, state officers who "seek absolute exemption from personal liability for unconstitutional conduct must bear the burden of showing that public policy requires an exemption of that scope." *Butz v. Economou* (1978).

Although we have previously held that police officers sued under §1983 for false arrest are qualifiedly immune, *Pierson v. Ray* (1967), petitioner urges that he should be absolutely immune because his function in seeking an arrest warrant was similar to that of a complaining witness. The difficulty with this submission is that complaining witnesses were not absolutely immune at common law. In 1871, the generally accepted rule was that one who procured the issuance of an arrest warrant by submitting a complaint could be held liable if the complaint was made maliciously and without probable cause. . . .

Nor are we moved by petitioner's argument that policy considerations require absolute immunity for the officer applying for a warrant. As the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law. . . . The *Harlow* standard is specifically designed to "avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment," and we believe it sufficiently serves this goal. Defendants will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that a warrant should issue; but if officers of reasonable competence could disagree on this issue, immunity should be recognized.

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Even were we to overlook the fact that petitioner is inviting us to expand what was a qualified immunity at common law into an absolute immunity, we would find his analogy between himself and a prosecutor untenable. We have interpreted §1983 to give absolute immunity to functions "intimately associated with the *judicial* phase of the criminal process," not from an exaggerated esteem for those who perform these functions, and certainly not from a desire to shield abuses of office, but because any lesser degree of immunity could impair the judicial process itself. We intend no disrespect to the officer applying for a warrant by observing that his action, while a vital part of the administration of criminal justice, is further removed from the judicial phase of criminal proceedings than the act of a prosecutor in seeking an indictment. . . .

In the case of the officer applying for a warrant, it is our judgment that the judicial process will on the whole benefit from a rule of qualified rather than absolute immunity. We do not believe that the *Harlow* standard, which gives ample room for mistaken judgments, will frequently deter an officer from submitting an affidavit when probable cause to make an arrest is present. True, an officer who knows that objectively unreasonable decisions will be actionable may be motivated to reflect, before submitting a request for a warrant, upon whether he has a reasonable basis for believing that his affidavit establishes probable cause. But such reflection is desirable, because it reduces the likelihood that the officer's request for a warrant will be premature. Premature requests for warrants are at best a waste of judicial resources; at worst, they lead to premature arrests, which may injure the innocent or, by giving the basis for a suppression motion, benefit the guilty.

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Accordingly, we hold that the same standard of objective reasonableness that we applied in the context of a suppression hearing in *United States v. Leon* (1984) defines the qualified immunity accorded an officer whose request for a warrant allegedly caused an unconstitutional arrest. Only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable will the shield of immunity be lost.

We also reject petitioner's argument that if an officer is entitled to only qualified immunity in cases like this, he is nevertheless shielded from damages liability because the act of applying for a warrant is *per se* objectively reasonable, provided that the officer believes that the facts alleged in his affidavit are true. Petitioner insists that he is entitled to rely on the judgment of a judicial officer in finding that probable cause exists and hence issuing the warrant. This view of objective reasonableness is at odds with our development of that concept in *Harlow* and *Leon.* In *Leon,* we stated that "our good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization." he analogous question in this case is whether a reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant. If such was the case, the officer's application for a warrant was not objectively reasonable, because it created the unnecessary danger of an unlawful arrest. It is true that in an ideal system an unreasonable request for a warrant would be harmless, because no judge would approve it. But ours is not an ideal system, and it is possible that a magistrate, working under docket pressures, will fail to perform as a magistrate should. We find it reasonable to require the officer applying for the warrant to minimize this danger by exercising reasonable professional judgment.

*Affirmed*.

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins, concurring in part and dissenting in part.

I agree with the Court's decision that petitioner was not entitled to absolute immunity, and that the *Harlow* standard of qualified immunity — objective reasonableness — properly applies. In *Harlow,* however, the Court held that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Putting it differently, we also stated that a claim for qualified immunity "would be defeated [only] if an official `*knew or reasonably should have known* that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff].'"

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. . . . In my view, in the light of the logs of the duly authorized wiretap, a reasonably competent officer could have believed that a warrant should issue.

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We have affirmed that the arrest warrant "should represent both the efforts of the officer to gather evidence of wrongful acts and the judgment of the magistrate that the collected evidence is sufficient to justify [issuance of a warrant]." This Court also has recognized that "the informed and deliberate determinations of magistrates . . . are to be preferred over the hurried actions of officers." Judicial evaluation of probable cause by a magistrate is the essential "checkpoint between the Government and the citizen." . . .

The police, where they have reason to believe probable cause exists, should be encouraged to submit affidavits to judicial officers. I therefore believe that in a suit such as this, the Court should expressly hold that the decision by the magistrate is entitled to substantial evidentiary weight. A more restrictive standard will discourage police officers from seeking warrants out of fear of litigation and possible personal liability. The specter of personal liability for a mistake in judgment may cause a prudent police officer to close his eyes to facts that should at least be brought to the attention of the judicial officer authorized to make the decision whether a warrant should issue. Law enforcement is ill-served by this *in terrorem* restraint.

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I agree with the judgment declining to accord absolute immunity to the officer seeking a warrant, but I do not join the Court's opinion, and I dissent from the decision to remand this case for trial on the immunity issue.