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# LEGAL LOG

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## QUALIFIED IMMUNITY IN ARREST WARRANT APPLICATIONS -- MALLEY v. BRIGGS

By: William C. Smith

The issue of civil liability is one which looms dark and foreboding in the daily lives of law enforcement officers across the United States. In conjunction with the ever apparent threat of being sued for alleged misconduct or negligence in the performance of duty there lingers a constant question of what protection is available to the individual officer. More specifically, what immunity does an officer retain for his or her acts in the duty setting?

On March 5, 1986, the United States Supreme Court, in the case of Malley v. Briggs, (38 CrL 3169) addressed the limited issue of immunity for officers in arrest warrant applications. The answer, albeit clear, is not a favorable one for law enforcement.

The factual setting of the case is as follows:

Rhode Island State Police conducted a court-authorized wiretap of the telephone of Paul Driscoll. During the course of monitoring Driscoll's telephone, the State Police intercepted telephone calls which indicated that a party had occurred at the Briggs' residence. From these calls, State Trooper Edward Malley concluded that Driscoll and the Respondents, James and Louisa Briggs, conspired to possess marijuana. Malley drew up felony

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complaints based on his conclusion and presented them to a State District Court Judge who issued warrants for the arrest of the Respondents and others. Ultimately the Rhode Island Grand Jury to which the charges were referred, refused to return an indictment and the charges were dropped. The Respondents had, however, as a result of the warrants, been arrested at their residence and taken to a local police department for booking and detention pending arraignment and release. As well, local and state-

wide newspapers published the fact that the Respondents had been arrested for drug possession.

After resolution of the criminal charges against them, the Respondents brought suit under 42 U.S.C. 1983 against Trooper Malley alleging that he had violated their constitutional rights under the Fourth and Fourteenth Amendments by applying for the warrants for their arrest. Trooper Malley filed a motion for a directed verdict at the conclusion of the Briggs' case in District Court. The District Court, in granting Malley's motion, found that no liability should be assessed against him because an officer submitting facts in an affidavit, which he or she believes to be true, to a neutral and detached magistrate should be entitled to immunity. The Court of Appeals, however, reversed the District Court and held that "... an officer who seeks an arrest warrant by submitting a complaint and supporting affidavit to a judge is not entitled to immunity unless the officer has an objectively reasonable basis for believing that the facts alleged in his affidavit are sufficient to establish probable cause." (Malley at 3170, emphasis supplied.) The United States Supreme Court on review affirmed the ruling of the Court of Appeals.

In analyzing the immunity available to law enforcement officers who are sued pursuant to 42 U.S.C. 1983, the court puts emphasis on the precarious perch occupied by law enforcement officers. Trooper Malley argued to the high court that his situation in applying for an arrest warrant was akin to that of a complaining witness who signs a warrant and that, therefore, he should have absolute immunity. In short fashion, the court notes that at common law, a complaining witness enjoyed no absolute immunity and that, likewise, Trooper Malley enjoyed no absolute immunity. Alternatively, Malley argued that his position was similar to that of a

prosecutor who asks the grand jury to return an indictment, and who enjoys absolute immunity for his or her actions. In discarding this argument as well, the court devotes itself to an analysis of the role of the affiant officer and the prosecutor, noting that the central role of the prosecutor dictates a rule of absolute immunity for the prosecutors, "... because any lesser immunity could impair the performance of a central actor in the judicial process." (Malley at 3171.) The court then pursues a balancing approach and concludes that:

"In the case of an officer applying for a warrant . . . the judicial process will on the whole benefit from a rule of qualified rather than absolute immunity." (Malley at 3171.)

Citing U. S. v. Leon (35 CrL 3273 -- See October 1984 Legal Log), the court holds that the standard of immunity applicable to a suppression hearing should have equal application to requests for warrants. In other words, in the context of an application for an arrest warrant, the rule for officers becomes:

"Only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable [citation omitted] will the shield of immunity be lost" (Malley at 3171) and the test for "objective reasonableness" is "... whether a reasonably well-trained officer ... would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant." (Malley at 3172.)

In Summary, the Supreme Court's overview of the protection afforded an officer making application for an arrest warrant may be thus stated:

An officer is entitled to qualified immunity from liability for his or her actions in applying for an arrest

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warrant. The qualified immunity is available to an officer whose application for the warrant is based on "objective reasonableness." If, however, the officer's belief as to the probable cause for the warrant is not objectively reasonable, qualified immunity is not available and the officer may be held civilly liable for his or her actions.

While the Supreme Court was not presented with the question of whether the

judge's approval of the officer's application should shield the officer from liability, the Court's comments in footnote seven of its opinion indicate that the court would not likely be persuaded by such an argument. As such, officers should not come to place reliance upon a judge's approval of a warrant as insulation from potential liability.

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