

The Burger Court Opinion Writing Database

Malley v. Briggs

475 U.S. 335 (1986)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

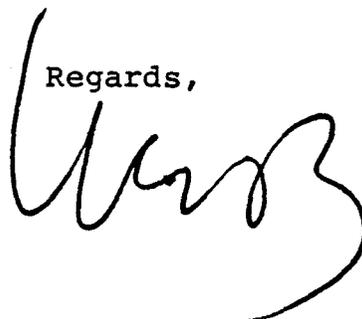
February 24, 1986

RE: 84-1586 - MALLEY v. BRIGGS

Dear Byron:

I join.

Regards,



Justice White

Copies to Conference

SR ELI SE D...

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13

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 11, 1985

No. 84-1586

Malley, et al. v. Briggs, et al.

Dear Byron,

I agree. Should the remand be
"consistent with" rather than "not
inconsistent with"?

Cheers,



Justice White

Copies to the Conference

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

From: **Justice White**

Circulated: DEC 11 1985

Recirculated: _____

Handwritten initials and scribbles

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1586

**EDWARD MALLEY AND RHODE ISLAND, PETITIONERS
v. JAMES R. BRIGGS AND LOUISA BRIGGS**

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

[December —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question of the degree of immunity accorded a defendant police officer in a damages action under 42 U. S. C. § 1983 when it is alleged that the officer caused the plaintiffs to be unconstitutionally arrested by presenting a judge with a complaint and a supporting affidavit which failed to establish probable cause.

I

In December of 1980, the Rhode Island State Police were conducting a court-authorized wiretap on the telephone of one Paul Driscoll, an acquaintance of the respondents' daughter. On December 20, the police intercepted a call to Driscoll from an unknown individual who identified himself as "Dr. Shogun." The police log sheet summarizes the call as follows: "General conversation re. a party they went to last night—caller says I can't believe I was token [sic] in front of Jimmy Briggs—caller states he passed it to Louisa . . . Paul says Nancy was sitting in his lap rolling her thing."

Petitioner Edward Malley was the Rhode Island State Trooper in charge of the investigation of Driscoll. After reviewing the log sheet for December 20, Petitioner decided that the call from "Dr. Shogun" was incriminating, because in drug parlance "taking" means smoking marijuana and "rolling her thing" refers to rolling a marijuana cigarette. Peti-

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

From: **Justice White**

Circulated: _____

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p. 8

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1586

EDWARD MALLEY AND RHODE ISLAND, PETITIONERS
v. JAMES R. BRIGGS AND LOUISA BRIGGS

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

[December —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

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I

In December of 1980, the Rhode Island State Police were conducting a court-authorized wiretap on the telephone of one Paul Driscoll, an acquaintance of the respondents' daughter. On December 20, the police intercepted a call to Driscoll from an unknown individual who identified himself as "Dr. Shogun." The police log sheet summarizes the call as follows: "General conversation re. a party they went to last night—caller says I can't believe I was token [sic] in front of Jimmy Briggs—caller states he passed it to Louisa . . . Paul says Nancy was sitting in his lap rolling her thing."

Petitioner Edward Malley was the Rhode Island State Trooper in charge of the investigation of Driscoll. After reviewing the log sheet for December 20, Petitioner decided that the call from "Dr. Shogun" was incriminating, because in drug parlance "toking" means smoking marijuana and "rolling her thing" refers to rolling a marijuana cigarette. Peti-

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

From: **Justice White**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1586

EDWARD MALLEY AND RHODE ISLAND, PETITIONERS
v. JAMES R. BRIGGS AND LOUISA BRIGGS

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

[December —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question of the degree of immunity accorded a defendant police officer in a damages action under 42 U. S. C. § 1983 when it is alleged that the officer caused the plaintiffs to be unconstitutionally arrested by presenting a judge with a complaint and a supporting affidavit which failed to establish probable cause.

I

In December 1980, the Rhode Island State Police were conducting a court-authorized wiretap on the telephone of one Paul Driscoll, an acquaintance of the respondents' daughter. On December 20, the police intercepted a call to Driscoll from an unknown individual who identified himself as "Dr. Shogun." The police logsheet summarizes the call as follows: "General conversation re. a party they went to last night—caller says I can't believe I was token [sic] in front of Jimmy Briggs—caller states he passed it to Louisa . . . Paul says Nancy was sitting in his lap rolling her thing." App. 73.

Petitioner Edward Malley was the Rhode Island state trooper in charge of the investigation of Driscoll. After reviewing the logsheet for December 20, Petitioner decided that the call from "Dr. Shogun" was incriminating, because in drug parlance "toking" means smoking marihuana and "rolling her thing" refers to rolling a marihuana cigarette. Peti-

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

From: **Justice White**

Circulated: _____

Recirculated: _____ 1986

p. 10

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1586

EDWARD MALLEY AND RHODE ISLAND, PETITIONERS
v. JAMES R. BRIGGS AND LOUISA BRIGGS

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

[January —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question of the degree of immunity accorded a defendant police officer in a damages action under 42 U. S. C. § 1983 when it is alleged that the officer caused the plaintiffs to be unconstitutionally arrested by presenting a judge with a complaint and a supporting affidavit which failed to establish probable cause.

I

In December 1980, the Rhode Island State Police were conducting a court-authorized wiretap on the telephone of one Paul Driscoll, an acquaintance of the respondents' daughter. On December 20, the police intercepted a call to Driscoll from an unknown individual who identified himself as "Dr. Shogun." The police logsheet summarizes the call as follows: "General conversation re. a party they went to last night—caller says I can't believe I was token [sic] in front of Jimmy Briggs—caller states he passed it to Louisa . . . Paul says Nancy was sitting in his lap rolling her thing." App. 73.

Petitioner Edward Malley was the Rhode Island state trooper in charge of the investigation of Driscoll. After reviewing the logsheet for December 20, Petitioner decided that the call from "Dr. Shogun" was incriminating, because in drug parlance "toking" means smoking marihuana and "rolling her thing" refers to rolling a marihuana cigarette. Peti-

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

From: Justice White

Circulated: February 5, 1986

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Pp 9-10

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1586

**EDWARD MALLEY AND RHODE ISLAND, PETITIONERS
v. JAMES R. BRIGGS AND LOUISA BRIGGS**

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

[February —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question of the degree of immunity accorded a defendant police officer in a damages action under 42 U. S. C. § 1983 when it is alleged that the officer caused the plaintiffs to be unconstitutionally arrested by presenting a judge with a complaint and a supporting affidavit which failed to establish probable cause.

I

In December 1980, the Rhode Island State Police were conducting a court-authorized wiretap on the telephone of one Paul Driscoll, an acquaintance of the respondents' daughter. On December 20, the police intercepted a call to Driscoll from an unknown individual who identified himself as "Dr. Shogun." The police logsheet summarizes the call as follows: "General conversation re. a party they went to last night—caller says I can't believe I was token [sic] in front of Jimmy Briggs—caller states he passed it to Louisa . . . Paul says Nancy was sitting in his lap rolling her thing." App. 73.

Petitioner Edward Malley was the Rhode Island state trooper in charge of the investigation of Driscoll. After reviewing the logsheet for December 20, Petitioner decided that the call from "Dr. Shogun" was incriminating, because in drug parlance "toking" means smoking marihuana and "rolling her thing" refers to rolling a marihuana cigarette. Peti-

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

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


CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 11, 1985

Re: No. 84-1586-Malley and Rhode Island v. Briggs
and Briggs

Dear Byron:

Please join me.

Sincerely,

Jm.

T.M.

Justice White

cc: The Conference

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

December 16, 1985

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Re: No. 84-1586, Malley v. Briggs

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 17, 1985

84-1586, Malley v. Briggs

Dear Byron:

I agree that the issuance of a warrant by a magistrate or other judicial officer does not, in and of itself, immunize the arresting officer from possible liability. There is no evidence, however, that the judge here was a "rubber stamp" or failed to exercise independent judgment. While the action of a judicial officer would not necessarily immunize the policeman seeking the warrant, the judicial officer's approval of the warrant is evidence relevant to the objective reasonableness of the policeman's actions. It is probably true that in most instances magistrates are either better educated or more experienced (or both) than the average police officer, and in many instances, the judicial officer has legal training. The basic assumption of our system, as I have understood it, is that the detached judgment of the magistrate or judge normally is to be respected.

I am not at rest in this case, and will probably write separately, if only to suggest that the independent finding of probable cause by a judge should have been considered as evidence of the reasonableness of Officer Malley's decision to request a warrant.

Sincerely,

L.F.P./c³

LFP/cc

cc: The Conference

.82 1586 5031

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 17, 1986

84-1586 Malley v. Briggs

Dear Byron:

As you probably know from my note of December 17, I have substantial disagreements with major portions of your opinion for the Court. I do agree that the Harlow standard should apply.

In due time, I will circulate an opinion joining in part and dissenting.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

JAN 21 1986

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

From: **Justice Powell**

Circulated: FEB 10 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1586

EDWARD MALLEY AND RHODE ISLAND, PETITIONERS
 v. JAMES R. BRIGGS AND LOUISA BRIGGS

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

[February —, 1986]

JUSTICE POWELL, concurring in part and dissenting in part.

Although I agree with much of the Court's opinion, I write separately to emphasize that substantial weight should be accorded the judge's finding of probable cause in determining whether petitioner will be personally liable for damages under § 1983. I also believe that summary judgment would have been appropriate here because respondents failed to show that petitioner's decision to request a warrant was not objectively reasonable.

I

At the outset, I supplement the facts stated by the Court. Petitioner was supervising a wiretap in a narcotics investigation pursuant to an order by the Rhode Island Superior Court. It appears from a logged conversation recorded on the wiretaps that a "Jimmy Briggs" and a "Luisa [*sic*] Briggs" attended a party where some of those present possessed and used marihuana. A marihuana cigarette was passed to Mrs. Briggs. The conversation also referred to a party that was going to be held at respondents' home and attended by some of these people. A fair inference from the log is that respondents were hosting a marihuana party similar to the earlier one.

On the basis of this conversation, petitioner and his partner decided to seek warrants against respondents for pos-

Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: Feb 14

Changes pp. 4, 5, 6, 8, 9

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1586

**EDWARD MALLEY AND RHODE ISLAND, PETITIONERS
v. JAMES R. BRIGGS AND LOUISA BRIGGS**

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

[February —, 1986]

JUSTICE POWELL, concurring in part and dissenting in part.

Although I agree with much of the Court's opinion, I write separately to emphasize that substantial weight should be accorded the judge's finding of probable cause in determining whether petitioner will be personally liable for damages under § 1983. I also believe that summary judgment would have been appropriate here because respondents failed to show that petitioner's decision to request a warrant was not objectively reasonable.

I

At the outset, I supplement the facts stated by the Court. Petitioner was supervising a wiretap in a narcotics investigation pursuant to an order by the Rhode Island Superior Court. It appears from a logged conversation recorded on the wiretaps that a "Jimmy Briggs" and a "Luisa [*sic*] Briggs" attended a party where some of those present possessed and used marihuana. A marihuana cigarette was passed to Mrs. Briggs. The conversation also referred to a party that was going to be held at respondents' home and attended by some of these people. A fair inference from the log is that respondents were hosting a marihuana party similar to the earlier one.

On the basis of this conversation, petitioner and his partner decided to seek warrants against respondents for pos-

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02/17

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

From: **Justice Powell**

Circulated: _____

Recirculated: FEB 18 1986

p.1

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1586

EDWARD MALLEY AND RHODE ISLAND, PETITIONERS *v.* JAMES R. BRIGGS AND LOUISA BRIGGS

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

[February —, 1986]

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

Although I agree with much of the Court's opinion, I write separately to emphasize that substantial weight should be accorded the judge's finding of probable cause in determining whether petitioner will be personally liable for damages under § 1983. I also believe that summary judgment would have been appropriate here because respondents failed to show that petitioner's decision to request a warrant was not objectively reasonable.

I

At the outset, I supplement the facts stated by the Court. Petitioner was supervising a wiretap in a narcotics investigation pursuant to an order by the Rhode Island Superior Court. It appears from a logged conversation recorded on the wiretaps that a "Jimmy Briggs" and a "Luisa [*sic*] Briggs" attended a party where some of those present possessed and used marihuana. A marihuana cigarette may have been passed to Mrs. Briggs. The conversation also referred to a party that was going to be held at respondents' home and attended by some of these people. A fair inference from the log is that respondents were hosting a marihuana party similar to the earlier one.

On the basis of this conversation, petitioner and his partner decided to seek warrants against respondents for pos-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 17, 1985

Re: 84-1586 - Malley v. Briggs

Dear Byron:

I voted to reverse in this case at conference. I must say the result you reach is at the very least plausible in the light of United States v. Leon; I may end up joining you, but I will at the very least wait and see what your response to Lewis' suggestion is, or what he has to say in any separate writing.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 14, 1986

Re: No. 84-1586 Malley v. Briggs

Dear Lewis,

Please join me in your opinion concurring in part and dissenting in part.

Sincerely,

Wm

Justice Powell

cc: The Conference

2

(17)

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 11, 1985

Re: 84-1586 - Malley v. Briggs

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference

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5

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 16, 1985

No. 84-1586 Malley v. Briggs

Dear Byron,

Please join me.

Sincerely,

Sandra

Justice White

Copies to the Conference

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