CASENOTE

Form Over Substance? Qualified Immunity in *Groh v. Ramirez*

In *Groh v. Ramirez*,[1] the United States Supreme Court held in a 5-4 decision that a search warrant may be so facially defective that the executing officers cannot reasonably presume it to be valid.[2] The Court reasoned that the warrant deficiency in this case, revolving around the particularity requirement, flows directly from the text of the Fourth Amendment,[3] and thus, no reasonable officer could believe a warrant that obviously did not comply with this standard was valid.[4] The Court proceeded to deny the executing officer qualified immunity by holding that reliance upon this facially defective warrant was objectively unreasonable.[5] This decision represents a restriction of the Court's application of the objective reasonableness standard with respect to qualified immunity by precluding examination of an officer's mistake of

1. 124 S. Ct. 1284 (2004).
2. *Id.* at 1294.
3. U.S. CONST. amend. IV. The Fourth Amendment states that "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." *Id.*
4. *Groh*, 124 S. Ct. at 1293.
5. *Id.* at 1294.

fact when executing a search based on probable cause and approved by a neutral detached magistrate.

I. FACTUAL BACKGROUND

Petitioner Officer Groh, an eight year veteran of the Bureau of Alcohol, Tobacco, and Firearms ("ATF") at the time of the incident in dispute, received information from a concerned citizen that respondents, Joseph Ramirez and members of his family, had stockpiles of illegal weapons on their ranch in Butte-Silver Bow County, Montana. Petitioner proceeded to prepare a detailed warrant application and affidavit particularly describing the search items sought including: automatic firearms, grenades, grenade launchers, rocket launchers, and any receipts representing evidence of purchase of the above items. Petitioner also prepared a warrant form based on the detailed affidavit and warrant application. However, under the section of the warrant form requiring a description of the items included in the search, petitioner inadvertently described the place (home) of respondents rather than the search items listed in the warrant application and affidavit. Petitioner presented all three documents to the magistrate, who in turn signed the warrant form and the warrant application. Petitioner then led a team of federal and local law enforcement officials in a search of respondents' ranch. The search yielded no contraband, and no charges were filed against respondents.[6]

Respondents brought an action against petitioner and other officers based on *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*[7] and 42 U.S.C. § 1983[8] for violation of their Fourth Amendment rights.[9] The United States District Court of Montana entered summary judgment on all claims for all defendants.[10] The district court found no Fourth Amendment violation and further stated that, even if a constitutional violation existed, the officers were entitled to qualified immunity because of the mere "typographical" nature of the error in the warrant.[11]

The Ninth Circuit Court of Appeals affirmed the entire decision of the district court except for the Fourth Amendment (*Bivens*) claim against petitioner reasoning that the utter failure to particularly describe the items in the warrant violated the Fourth Amendment.[12] Defendants

6. *Id.* at 1287-88.
7. 403 U.S. 388 (1971).
8. 42 U.S.C. § 1983 (2000).
9. U.S. CONST. amend. IV.
10. Groh v. Ramirez, 124 S. Ct. 1284, 1289 (2004).
11. *Id.* at 1289.
12. *Id.*

other than Groh were entitled to qualified immunity.[13] With respect to Groh, however, the court held that as leader of the search, he was not entitled to qualified immunity because he failed to "'read the warrant and satisfy [himself] that [he understood] its scope and limitations, and that it [was] not defective in some obvious way.'"[14] The United States Supreme Court granted certiorari.[15]

II. LEGAL BACKGROUND

The civil action that exists in *Groh v. Ramirez* is based on petitioner's alleged violation of respondents' Fourth Amendment rights. In *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*,[16] the Supreme Court held that persons suffering Fourth Amendment violations are entitled to recover money damages in a civil action.[17] Subsequent to the *Bivens* decision, the Court in *Butz v. Economou*[18] addressed the issue of personal immunity for federal officials of the executive branch in civil actions concerning the violation of constitutional rights.[19] The Court emphasized the gravity of this question because of the dual importance of the immunity doctrine for the vindication of individual constitutional rights as well as to facilitate the efficiency of the operation of government.[20] Denying the federal officials' claim for absolute immunity, the Court in *Butz* held that federal executive officials exercising discretion are entitled to qualified immunity, subject to exceptions that may require the extension of absolute immunity based on the centrality of the function to public business.[21] The Court in *Butz* also concluded that the qualified immunity standard established in *Scheuer v. Rhodes*[22] would control in the federal context at issue before

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13. *Id.*

14. *Id.* (quoting Ramirez v. Butte-Silver Bow County, 298 F.3d 1022, 1027 (9th Cir. 2002)).

15. *Id.*

16. 403 U.S. 388 (1971).

17. *Id.* at 397.

18. 438 U.S. 478 (1978).

19. *Id.* at 480.

20. *Id.* at 480-81. These competing interests require a delicate balancing of the immunity doctrine by the Court to ensure the proper protection of individual rights as well as maintaining efficient government functioning. *Id.*

21. *Id.* at 507. The Court mandated that if absolute immunity was essential for the particular executive position to conduct the public's business then an exception to qualified immunity would be necessary. *Id.*

22. 416 U.S. 232 (1974). In *Scheuer* estates of deceased students involved in the infamous Kent State University incident brought suit, and the Court held, *inter alia*, that the state officials involved were allowed qualified immunity depending upon the scope of their responsibilities and discretion in the circumstances present. *Id.* at 247.

the Court.[23] The Court mandated that federal officials would not "be liable for mere mistakes in judgment, whether the mistake is one of fact or one of law."[24]

Four years after *Butz*, the Court continued to craft the doctrine of qualified immunity in *Harlow v. Fitzgerald*.[25] The Court in *Harlow* reasoned that within the analytical framework established in *Butz*—giving weight to both individual constitutional rights and the need for government efficiency—the qualified immunity standard needed modification to restrict accusations of malice against federal officials that courts might view as questions of fact, thus eviscerating the officer's immunity from trial with the ensuing factual inquiry.[26] Therefore, the Court held that government officials in discretionary roles are immune from civil damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[27] Accordingly, this rule would limit the liability exposure of government officials by disposing of insubstantial cases through rigorous application of summary judgment.[28]

The evolution of the Court's qualified immunity doctrine converged with the Court's Fourth Amendment exclusionary rule doctrine subsequent to *Harlow*. The exclusionary rule in the criminal law evidence suppression context requires application of an objective reasonableness test of the acting officer's conduct to determine whether the evidence will be excluded due to an unconstitutional search. In *Malley v. Briggs*,[29] the Court held that the standard of objective reasonableness utilized in *United States v. Leon*[30] in the criminal law exclusionary rule context defines the qualified immunity accorded an officer accused of a constitutional violation in a civil proceeding.[31] In *Malley* two citizens brought a civil action against an officer based on lack of probable cause in applying for the warrant.[32] The Court rejected the officer's claim for absolute immunity in applying for a warrant and

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23. *Butz*, 438 U.S. at 507.
24. *Id.*
25. 457 U.S. 800 (1982).
26. *Id.* at 817-18.
27. *Id.* at 818.
28. *Id.* This "clearly established statutory or constitutional rights" standard would allow the Court to dispose of weak cases at the summary judgment stage and protect government officials from costly discovery and trials. *Id.*
29. 475 U.S. 335 (1986).
30. 468 U.S. 897 (1984).
31. *Malley*, 475 U.S. at 344-45.
32. *Id.* at 338.

established congruence between the exclusionary criminal context and the civil context.[33]

In *Leon* the Court concluded that a "good faith" exception to the general exclusionary rule of the Fourth Amendment was warranted.[34] The Court held that evidence obtained by an officer who acted in an objectively reasonable manner in obtaining a search warrant and acted within the warrant's scope during execution will not be barred by the exclusionary rule.[35] The Court's decision was premised on the underlying purposes of the Fourth Amendment exclusionary rule.[36] Deterrence of police misconduct represents the preeminent purpose of the exclusionary rule.[37] Thus, in light of the substantial social costs imposed by application of the exclusionary rule in suppressing probative evidence, the Court restricted the rule to those situations when suppression of evidence actually deters police misconduct.[38] Notably, the Court rejected delineation of bright line rules, deeming this as "speculative," and instead imposed an analytical framework relying on a case-by-case examination and the imposition of the exclusionary rule only when it will further the purposes of the exclusionary rule.[39]

Subsequent to this merging of qualified immunity doctrine and exclusionary rule determination, the Court demonstrated the application of the "objective reasonableness" test. In *Massachusetts v. Sheppard*,[40] a companion case to *Leon*, the Court refused to exclude evidence uncovered during a search pursuant to a warrant that was thereafter deemed invalid.[41] In *Sheppard* law enforcement agents prepared a detailed affidavit that established probable cause.[42] However, the officer had difficulty in finding a proper warrant form and substituted a warrant form specifically used for narcotics cases. The officer presented the affidavit and defective warrant form to a neutral judge and informed the judge of the form abnormalities. The judge assured

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33. *Id.* at 345-46. Petitioner argued that as long as the warrant was applied for in good faith, absolute immunity should exist and the judicial officer's determination to issue a warrant should shield the Petitioner. The Court rejected this argument and mandated that officers would be subjected to the objective reasonableness standard at this juncture. *Id.* at 344.

34. *Leon*, 468 U.S. at 922.

35. *Id.* at 920-21.

36. *Id.* at 922.

37. *Id.* at 906.

38. *Id.* at 908.

39. *Id.* at 918.

40. 468 U.S. 981 (1984).

41. *Id.* at 990-91.

42. *Id.* at 989.

the officer of the adequacy of the affidavit and told the officer he would make the substantive corrections on the form. The judge signed the form but failed to make the promised substantive changes. Consequently, the officer searched for murder weapons and evidence using a warrant that described the items to be searched for as narcotics.[43] The Court held that while a Fourth Amendment violation may have existed, the officer in this case acted in an objectively reasonable manner.[44] The Court concluded that any constitutional error committed was the fault of the judge, not the officer.[45] Accordingly, the purpose of the application of the exclusionary rule would not be satisfied in the case, and therefore, the evidence was not excluded.[46] Significantly, the Court did not require the officer to read the signed warrant to determine the objectives of the search.[47] The Court reasoned that the same officer involved in the application stage also executed the warrant and the officer was assured by the judge that the appropriate changes had been made.[48]

In *Saucier v. Katz*,[49] the Court articulated a recent version of the objective reasonableness test, holding that a determination of qualified immunity requires an inquiry into whether a constitutional right was violated, and if so, "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."[50] In *Katz* the Court rejected a claim of excess force in arresting a citizen and held that no clearly established rule prohibited the officer's action; thus, he was entitled to qualified immunity.[51] It was with this analytical framework in mind that the Court in *Groh* confronted the issue at hand.

III. COURT'S RATIONALE

A. *Majority Opinion*

In *Groh v. Ramirez*,[52] the Supreme Court applied *United States v. Leon*[53] and its progeny in a civil context to determine whether the law

43. *Id.* at 984-87.
44. *Id.* at 990.
45. *Id.*
46. *Id.* at 990-91.
47. *Id.* at 990 n.6.
48. *Id.*
49. 533 U.S. 194 (2001).
50. *Id.* at 202.
51. *Id.* at 209.
52. 124 S. Ct. 1284 (2004).
53. 468 U.S. 897 (1984).

officer (petitioner) involved was entitled to qualified immunity. As is required in Fourth Amendment jurisprudence, the Court was confronted with the following questions: "(1) whether the search violated the Fourth Amendment, and (2) if so, whether petitioner nevertheless is entitled to qualified immunity."[54]

Addressing the threshold question regarding the existence of a Fourth Amendment violation, the Court held that the warrant was "plainly invalid" based on the textual wording of the Fourth Amendment.[55] The Court concluded that petitioner's case was flawed with respect to one of four requirements mandated by the text of the Fourth Amendment. The search warrant, despite being based on probable cause, supported by a detailed affidavit, and amply describing the place to be searched, utterly failed to describe the persons or things to be seized.[56]

Thereafter, the Court relied on *Massachusetts v. Sheppard*[57] to interject that case law established a uniformly applied rule that search warrants deficient in the particularity requirement are unconstitutional.[58] In fact the Court concluded that searches based on warrants that utterly fail to describe the items to be seized should be deemed "warrantless" searches.[59] Based on that proposition, the Court invoked the longstanding rule that absent exigent circumstances, a "warrantless" search of a home is presumptively unreasonable.[60]

The Court reasoned that the incorporation doctrine[61] was inapplicable because the supporting documents were not present at the search and no words of incorporation appeared on the warrant.[62] Further, by completely failing to describe the items to be searched, important purposes served by the warrant requirement were effectively undermined, such as demonstration of lawful authority of the executing officer, necessity of officer to search, and limitations of the search.[63] Therefore, without fulfillment of the particularity requirement, the "inescapable fact" was that the proper restraint exhibited by petitioner in execution of the search was provided by petitioner himself and not by a neutral

54. *Groh*, 124 S. Ct. at 1287.
55. *Id.* at 1289.
56. *Id.* at 1288-89.
57. 468 U.S. 981 (1984).
58. *Groh*, 124 S. Ct. at 1291.
59. *Id.* at 1290.
60. *Id.*
61. The "incorporation" doctrine recognized by many Federal Courts of Appeals allows a facially defective warrant to be righted by words of "incorporation" within the document that incorporates attached supporting documents deemed sufficiently detailed. *Id.*
62. *Id.*
63. *Id.* at 1292.

judicial officer as mandated by case precedent.[64] The Court distinguished this case from *Sheppard* because there the judge gave the executing officer verbal assurances that the warrant was satisfactory.[65] Nevertheless, perplexingly, in light of *Sheppard*, the Court stated that it would not have been reasonable to rely on such a patently deficient warrant even if the magistrate had been aware of the defect.[66] Here, the Court held that a Fourth Amendment violation did exist because the officer failed to ensure that the "search [was] lawfully authorized and lawfully conducted."[67] Hence, petitioner's failure to possess a warrant particularly describing the items to be seized was unreasonable, and thus, unconstitutional.[68]

The second question addressed by the Court was whether petitioner was entitled to qualified immunity despite the constitutional violation.[69] The standard enunciated by the Court was "whether the right that was violated was 'clearly established'"—that is, "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."[70]

The particularity requirement is explicitly written in the text of the Fourth Amendment. Therefore, the Court reasoned no officer could reasonably believe that a warrant containing such a defect with respect to the particularity requirement was valid.[71] The Court relied on *Harlow* to posit that if a right is clearly established, as it is here, qualified immunity will usually fail.[72] Moreover, in distinguishing *Sheppard*, the Court reasoned that petitioner could not rely on verbal assurances by the magistrate because here the petitioner prepared the warrant form.[73]

The Court emphasized that the petitioner should have been put on notice that execution of a defective warrant imposed liability notwith-

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64. *Id.*
65. *Id.* at 1292 n.4.
66. *Id.*
67. *Id.* at 1293.
68. *Id.*
69. *Id.* (quoting *Saucier*, 533 U.S. at 202).
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.* By way of contrast, in *Massachusetts v. Sheppard*, the officer gave the defective *form* to the magistrate who assured the officer that the appropriate description of items to be searched for would be completed by the magistrate. Interestingly, the Court in *Sheppard* stated that while an officer not involved in the warrant preparation process would normally read the issued warrant to determine the scope of the search, an officer extensively involved in the preparation (as here) might not need to do so. 468 U.S. at 989 n.6.

standing the approval by a magistrate, based upon the existence of internal agency regulations setting this standard forth.[74] Furthermore, while reiterating the centrality of *Sheppard* and *Leon* in determining the existence of qualified immunity, the Court rejected petitioner's argument that, although he might have been negligent, forfeiture of qualified immunity required a higher level of fault.[75] Therefore, the Court held that based upon *Leon*, "a warrant may be so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid."[76]

B. Kennedy's Dissent (Joined by Chief Justice Rehnquist)

1. Fourth Amendment Violation. Justice Kennedy accepted the Court's rationale that the search conducted by petitioner represented a Fourth Amendment violation.[77] The literal text of the Fourth Amendment requires items that are to be searched and seized to be described with particularity in the warrant providing authorization for the search, which did not occur in this case.[78]

2. Qualified Immunity. With respect to the qualified immunity determination by the Court, Justice Kennedy wrote a strong dissent arguing that petitioner was entitled to qualified immunity.[79] Justice Kennedy acknowledged that the controlling test to be applied mirrored the objective reasonableness standard utilized in the "good faith" exclusionary rule cases as mandated in *Malley*.[80] Justice Kennedy concluded that the proper framing of the question in this case was "whether someone in the officer's position could reasonably but mistakenly conclude that his conduct complied with the Fourth Amendment."[81]

In confronting this question, Justice Kennedy posited that precedent allowed for mistakes of law, mistakes of fact, or mistakes of mixed

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74. *Groh*, 124 S. Ct. at 1293-94.
75. *Id.* at 1294.
76. *Id.* (quoting *Leon*, 468 U.S. at 923).
77. Groh v. Ramirez, 124 S. Ct. 1284, 1295 (2004).
78. *Id.* at 1295 (Rehnquist, C.J. & Kennedy, J., dissenting).
79. *Id.* (Rehnquist, C.J. & Kennedy, J., dissenting).
80. *Id.* (Rehnquist, C.J. & Kennedy, J., dissenting).
81. *Id.* (Rehnquist, C.J. & Kennedy, J., dissenting) (citing Anderson v. Creighton, 483 U.S. 635, 641 (1987)).

questions of law and fact in making a qualified immunity evaluation.[82] He argued that petitioner in the instant case made a simple mistake of fact.[83] Petitioner filled out the detailed affidavit and warrant application, and thereafter, when typing a description of the place to be searched he simply, and mistakenly, typed a description of the place to be searched rather than the items to be searched.[84] Petitioner, however, did not rely on the mistake in execution of the warrant.[85] Thereafter, Justice Kennedy chronicled the difficult steps, and often time-constrained circumstances, faced by an officer in fulfilling the warrant process requirements, that demand a certain degree of leniency.[86] Accordingly, Justice Kennedy concluded that clerical error within the context of a properly executed search could be a reasonable mistake of fact.[87]

Justice Kennedy stated that the Court failed to apply the proper analytical framework. In other words, the Court misconstrued petitioner's error as a mistake of law rather than the appropriate mistake of fact.[88] Justice Kennedy emphasized that the issue was "whether an officer can reasonably fail to recognize a clerical error, not whether an officer who recognizes a clerical error can reasonably conclude that a defective warrant is legally valid," as the majority framed the question.[89] He attacked the majority's reliance on the rule from *Leon* that "a warrant may be so facially deficient . . . that officers cannot reasonably presume it to be valid," as a contorted interpretation of the language in *Leon*.[90] Justice Kennedy concluded that the most appropriate interpretation of this language is that an officer could not reasonably rely on a facially deficient warrant, which did not occur here.[91] Therefore, Justice Kennedy declared that the Court's decision imposed an ascendancy of "form" over protection of "substantive" rights.[92]

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82. *Id.* (Rehnquist, C.J. & Kennedy, J., dissenting).
83. *Id.* (Rehnquist, C.J. & Kennedy, J., dissenting).
84. *Id.* (Rehnquist, C.J. & Kennedy, J., dissenting).
85. *Id.* at 1296 (Rehnquist, C.J. & Kennedy, J., dissenting). Justice Kennedy stated that, apparently, petitioner was not aware of the deficiency in the particularity requirement until the day after the search was conducted. Evidently, he led the search based on knowledge already accrued in preparing the affidavit and application. *Id.* at 1295-96.
86. *Id.* at 1296 (Rehnquist, C.J. & Kennedy, J., dissenting).
87. *Id.* (Rehnquist, C.J. & Kennedy, J., dissenting).
88. *Id.* (Rehnquist, C.J. & Kennedy, J., dissenting).
89. *Id.* (Rehnquist, C.J. & Kennedy, J., dissenting).
90. *Id.* at 1297 (Rehnquist, C.J. & Kennedy, J., dissenting).
91. *Id.* (Rehnquist, C.J. & Kennedy, J., dissenting).
92. *Id.* at 1298 (Rehnquist, C.J. & Kennedy, J., dissenting).

C. Thomas Dissent (Joined by Scalia; and Chief Justice Rehnquist joins as to Part III)

1. Fourth Amendment. Justice Thomas rejected the majority's analysis with respect to the constitutionality of petitioner's conduct.[93] He construed that proper analysis required an examination into the reasonableness of petitioner's actions before concluding a Fourth Amendment violation existed.[94] Here, Justice Thomas did not accept the categorization of the warrant as "warrantless."[95] He posited that case precedent involving warrantless searches centered on searches that lacked the physical existence of a warrant rather than, as here, an existent warrant that was later declared invalid.[96] In making this categorization, the Court avoided the pivotal inquiry of whether warrants defective in the particularity requirement should be deemed presumptively unreasonable.[97]

Justice Thomas was also critical of the Court's interpretation of the "high function" served by a search warrant.[98] He stated that the "high function" served by a search warrant was not the mere "physical existence of the warrant and its typewritten contents."[99] Rather, the substantive process of establishing probable cause on the basis of the judgment of a neutral detached judicial officer underpins the "high function" served by a search warrant.[100] In the instant case, Justice Thomas concluded that the critical requirements of the substantive process were met.[101] Accordingly, the search was reasonable and constitutional.[102]

Justice Thomas also rejected the Court's articulation of the purposes, beyond the prevention of general searches, that a warrant fully describing the particularity of things to be searched would have protected.[103] He rejected this premise because neither the Federal Rules for Criminal Procedure[104] nor the text of the Fourth Amendment

93. Groh v. Ramirez, 124 S. Ct. 1284, 1299 (2004).
94. *Id.* at 1299 (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
95. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
96. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
97. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
98. *Id.* at 1300 (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
99. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
100. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
101. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
102. *Id.* at 1301 (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
103. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
104. FED. R. CRIM. P.

require an officer to present the warrant before the search.[105] Therefore, a search should not be deemed presumptively unreasonable for failing to provide documentation of lawful authority before the search ensued.[106]

2. Qualified Immunity. Justice Thomas concluded that, even if a constitutional violation existed, petitioner was entitled to qualified immunity based on the objective reasonableness of his actions.[107] He based this conclusion on the Court's application of the level of generality of the right in question and the relevant circumstances considered by the Court.[108] Justice Thomas stated that, under the present circumstances, the petitioner did not know the warrant was invalid when he carried out the search in question and certainly not that it was legally void.[109] He emphasized that the language relied upon by the majority in articulating that "a warrant *may* be so facially deficient . . . that the executing officers cannot reasonably presume it to be valid" demonstrates that this exception to the *Leon* good faith requirement is not mandatorily applied, rather it is a precatory application.[110] Here, the Court failed to explain why this exception applies and how petitioner's mistake was unreasonable.[111]

Justice Thomas reasoned that the critical inquiry was "whether petitioner's failure to notice the defect was objectively unreasonable."[112] He indicated that the Court failed to provide any precedent that declared a proofreading requirement necessary when the officer was fully apprised of the situation and scope of the search and conducted the search in that manner.[113] Furthermore, the Court did not establish a requirement that an officer who "both prepares and executes the invalid warrant . . . can never rely on the magistrate's assurance that the warrant is proper."[114] Indeed, the Court in *Sheppard* suggested that an officer who both prepares the affidavit and executes the warrant may not be required to proofread a warrant.[115] Therefore, in light of the

105. *Groh*, 124 S. Ct. at 1303 (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
106. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
107. *Id.* at 1301-02 (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
108. *Id.* at 1302 (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
109. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
110. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting) (quoting *Leon*, 468 U.S. at 923).
111. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
112. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
113. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
114. *Id.* (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
115. *Id.* at 1302-03 (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).

circumstances involved in the instant case in which petitioner correctly executed all aspects of the warrant process except reading back over the warrant, Justice Thomas concluded that the Court established a proofreading requirement that deprived petitioner of qualified immunity despite his objectively reasonable behavior.[116]

IV. IMPLICATIONS

The Court's application of the "objective reasonableness" test in *Groh* represents a constriction of past applications of that test and results in elevating "form" above "substance" in the warrant process. As the Court enunciated in *Butz*, the qualified immunity doctrine protects mistakes in judgment whether they revolve around mistakes of law, or fact, or both.[117] Thus, an application of the "objective reasonableness" test crafted in *Leon* would require due consideration of each of these distinct possibilities. As indicated in the dissents of Justices Thomas and Kennedy, the Court in *Groh* did not give ample consideration to the possible mistake of fact by petitioner. Therefore, the Court framed the question as a mistake of law and arguably imputed knowledge of the omission to petitioner, which significantly altered the analysis. This precedent established in *Groh* will inevitably lead to a proliferation of creative lawyering in attempts to frame qualified immunity questions as mistakes of law while ignoring any mistakes of fact by officers in the line of duty. This could lead to the awkward consequence of a technical "proofreading" requirement for all warrants regardless of their adherence to the substantive protections afforded by the warrant process.

Of course, any argument that elevation of form over substance is occurring demands definition of the boundaries of those concepts. A critical need within this inquiry would be clear delineation of the substantive purposes served by the warrant process. In *Groh* the Court gave credence to substantive purposes beyond prevention of general searches that included: (1) lawful authority of the officer, (2) necessity to search, and (3) the limits of the power to search.[118] As the Court indicated, pointed questions with respect to the right of a searchee to examine a search warrant prior to a search remain open. Substantial support (e.g., Federal Rules of Criminal Procedure) indicates this right may not exist for the searchee, which then demands Court definition of the hierarchy of the substantive purposes of the warrant process and

116. *Id.* at 1303 (Rehnquist, C.J., Scalia & Thomas, JJ., dissenting).
117. Butz v. Economou, 438 U.S. 478, 507 (1978).
118. Groh v. Ramirez, 124 S. Ct. 1284, 1292 (2004).

how these purposes should be evaluated in the context of qualified immunity and the exclusionary rule.

A further inquiry requiring Court elucidation centers on the exact relationship between the purposes of qualified immunity in comparison with the purposes of the exclusionary rule. The Court has mandated that the *Leon* test for objective reasonableness controls determination of the qualified immunity inquiry.[119] The Court has stressed the importance of the nexus between the purpose of the exclusionary rule (prevention of police misconduct) and its application. Therefore, if the *Leon* exclusionary test completely controls the contours of the qualified immunity doctrine, this question of the nexus between denial of qualified immunity and the prevention of police misconduct becomes an integral part of any qualified immunity analysis. In *Groh* the apparent honest mistake made by the officer would be difficult to frame as police misconduct by any standard. The Court could bring clarity to this analysis by commenting on the applicability of the police misconduct purpose of the exclusionary rule in the qualified immunity context.

In addition, the impact of *Groh* on the dual concerns driving the immunity doctrine—individual constitutional rights and the need for government law enforcement efficiency—should be reexamined. Arguably, the pivotal substantive purpose of the warrant process is the determination of probable cause by a neutral judicial officer, and a search that adhered in scope to that determination was satisfied in *Groh*. Nevertheless, the officer in *Groh* was exposed to civil liability despite demonstrating good faith throughout the warrant process. This result illustrates the possible negative impact on law enforcement efficiency that could surface in the wake of *Groh*. In the alternative, the Court could avoid many of the complexities raised here by reverting to the traditional analysis that allows "objectively reasonable" mistakes of fact, law, or both and gives the Court ample flexibility to address the infinite nuances of the Fourth Amendment.

LENARD F. HARRELSON, JR.

119. Malley v. Briggs, 475 U.S. 335, 344-45 (1986).