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Editors' Foreword

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SYMPOSIUM

OFFICIAL AND MUNICIPAL LIABILITY FOR CONSTITUTIONAL AND INTERNATIONAL TORTS TODAY: DOES THE ROBERTS COURT HAVE AN AGENDA?

Editors' Foreword

On April 8, 2011, the *Fordham Law Review* held a symposium entitled *Official and Municipal Liability for Constitutional and International Torts Today: Does the Roberts Court Have an Agenda?* This event was a continuation of the discussion held at the annual meeting of the Federal Courts Section of the Association of American Law Schools, chaired by Professor Thomas H. Lee, Leitner Family Professor of Law at Fordham University School of Law. More than twenty exceptional scholars and practitioners convened to examine the application of official immunity in suits in United States courts alleging misconduct by state officials and municipalities, federal officials, and foreign officials. The conference was organized into five panels, whose presentations and responses investigated the development and implications of the official and municipal liability doctrines adopted by the Roberts Court. The panels were organized as follows:

Panel 1. *The History and Policy of Officer Immunity in the United States.* Professors Donald L. Doernberg, Richard H. Fallon, Jr., Thomas H. Lee, and James E. Pfander explored the doctrine of official immunity from a historical perspective and asserted theories as to the viability of the doctrine in light of recent developments. The discussion focused on whether official immunity ought to be afforded in a modified version of its current structure, or comprehensively reformed to address modern complexities.

Panel 2. *Prosecutorial Misconduct and Immunity.* Professors Margaret Z. Johns and Daniel Richman joined Paul D. Clement, J. Gordon Cooney, Jr., and Joel B. Rudin to analyze the immunities for prosecutors in cases of alleged misconduct. The dialogue converged on the implications of *Connick v. Thompson*,¹ the recent Supreme Court decision that addressed municipal liability for failure to train prosecutors to turn over exculpatory

1. 131 S. Ct. 1350 (2011).

evidence—particularly in light of the Court’s prior holding that prosecutors enjoy absolute immunity for failure to turn over impeachment evidence.

Panel 3. *Suing Foreign Officials Under the Alien Tort Statute*. Professors Curtis Bradley, William R. Casto, Chimène I. Keitner, and Beth Stephens examined the liability of foreign officials for misconduct in U.S. courts under the Alien Tort Statute (ATS). The panel explored the policy of holding foreign officials liable in American courts and analyzed *Samantar v. Yousuf*,² a recent Supreme Court case that unanimously rejected the argument that the Foreign Sovereign Immunities Act afforded foreign officials immunity in ATS claims.

Panel 4. *The Repudiation of Saucier v. Katz and Its Consequences in the Courts*. The Honorable Pierre N. Leval, Professor John C. Jeffries, Jr., Professor Ted Sampsell-Jones, Michael T. Kirkpatrick, and Steven Shapiro examined the consequences of the Supreme Court’s analysis in *Pearson v. Callahan*,³ which held that plaintiffs’ claims need not make out a violation of a constitutional right to resolve official immunity claims, unanimously overruling *Saucier v. Katz*.⁴ The discussion included an empirical study of how courts have implemented the opinion and whether substantive rights are affected by the ruling.

Panel 5. *Liability and Remedies in Suits Against Municipalities*. Professor David Jacks Achtenberg, Professor Susan A. Bandes, and Celeste Koeleveld concluded the day by analyzing the history and policy of municipal liability. The conversation focused on the scope of the doctrine after *Los Angeles County v. Humphries*,⁵ in which the Court denied an immunity defense in a claim for declaratory relief.

The *Fordham Law Review* is honored to publish here the papers presented by many of the panelists, augmented and revised in light of the colloquy that followed each panel. The papers follow the order in which they were presented at the conference. We would like to thank Dean Michael M. Martin for his support, and the Office of Public Programming for their help in planning and administering this conference. For developing and moderating the panels, we are grateful to Professors Martin S. Flaherty, Thomas H. Lee, Paul Radvany, Aaron Saiger, and Benjamin C. Zipursky. We especially thank Professor Lee for serving as the lead organizer of the symposium.

2. 130 S. Ct. 2278 (2010).

3. 555 U.S. 223 (2009).

4. 533 U.S. 194 (2001).

5. 131 S. Ct. 447 (2010).