The Evolving Law of Federal Official Immunity

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Outline

EVOLVING LAW OF FEDERAL OFFICIAL IMMUNITY

I. **Why Immunize Government Officials?**
II. **Qualified Immunity**
   - **The Fountainhead**: *Harlow* v. *Fitzgerald* (1982)
   - **What Counts as "Established"?**: *Redding* (2009)
   - **The Order of Battle**: From *Saucier* to *Pearson*
   - **The Growing (Libertarian) Critique**
III. **Absolute Immunity**
   - **What's Settled…**
   - **What Isn't…**

Gregoire v. *Biddle* (2d Cir. 1949)

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- "The justification for [denying recovery] is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. . . . In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." (**L. Hand, J.**)

Harlow v. *Fitzgerald* (1982)

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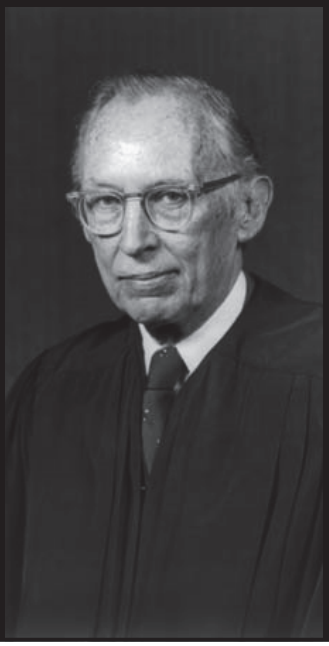
- **Issue**: In a suit seeking damages arising out of official misconduct, what is the appropriate standard for a qualified immunity defense?
- **Holding**: Justice Powell holds for the Court that qualified immunity should be an entirely objective inquiry, at least largely to allow for the resolution of what he views as "insubstantial" claims without resort to trial.



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