David - Your note may be a bit too concise for full effect. Elaborate. It is good rebuttal and are wholly irrelevant. In

OWEN

INSERT H, Beginning of fn. 16a.

16/ The Court cites eight cases before 1871 ~~for~~ as "reiterat[ing]" the principle announced in Thayer while awarding damages against municipalities for good-faith torts. Three of those cases, ~~however,~~ involved the "special and peculiar" liability of New England towns for highway maintenance, Billings v. Worcester, 102 Mass. 329, 332-333 (1869), a liability that was established by statute. Horton v. Ipswich, 66 Mass. 488, 491 (1853) (trial court "read to the jury the provisions of the statutes prescribing the duties of towns to keep roads safe . . . and giving a remedy for injuries received from defects in highways"); Elliot v. Concord, 27 N.H. 204 (1853) (citing similar statute); see 2 J. Dillon, Commentaries on the Law of Municipal Corporations, § 1000, at 1013-1015 & n.2 (3d ed. 1881). Town Council of Akron v. McComb, 18 Ohio 229 (1849), concerned damages caused by street-grading, and was later expressly restricted to those facts. Western College of Homeopathic Medicine v. City of Cleveland, supra, 12 Ohio St., at 378-379. Two of the other cases cited by the Court involved the performance of ministerial acts, Lee v. Village of Sandy Hill, 40 N.Y. 442, 451 (1869) (liability for damage caused by street-opening when city was under a "duty" to open that street); Hurley v. Town of Texas, 20 Wis. 634 (1860) (improper tax collection), while another presented the

not clear which Mass. cases

malfeasance, or bad-faith acts, of the municipality's agents. Hawks v. Charlemont, 107 Mass. 414 (1871) (city took material from plaintiff's land to build dam). Thus, despite any discussion of Thayer in those opinions, seven of the eight decisions noted by the Court involved thoroughly unremarkable exceptions to municipal immunity as provided by statute or the common law. They do not buttress the Court's theory of strict liability.