

VOL 28 ISS 1 ART 3 | VIII | PROSECUTORIAL IMMUNITY FROM LIABILITY FOR DAMAGES: IMBLER V. PACHTMAN

The Supreme Court's recent decision in Imbler v. Pachtman¹³⁵ granting prosecutorial immunity from liability for damages under section 1983 relied on Tenney v. Brandhove,¹³⁶ Pierson v. Ray¹³⁷ and later cases involving the immunity of various governmental officials.¹³⁸ In Imbler, the plaintiff sued a state prosecutor for allegedly knowingly using perjured testimony and suppressing material evidence at plaintiff's trial which resulted in his conviction for murder. The matter at issue was "whether a state prosecuting attorney who acted within the scope of his duties in initiating and pursuing a criminal prosecution is amenable to suit under 42 U.S.C. § 1983 for alleged deprivations of the defendant's constitutional rights."¹³⁹ The Court held the prosecutor absolutely immune.

The Court first canvassed its earlier decisions on immunities under 1983, saying that Tenney "established that § 1983 is to be read in harmony with general principles of tort immunities and defenses rather than in derogation of them."¹⁴⁰ It then generalized by observing that "each [earlier decision on 1983 immunities] was predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it."¹⁴¹ Using this approach, the Court next asserted that at common law prosecutors were absolutely immune from tort liability with respect to their decisions to initiate and conduct prosecutions¹⁴² for at least two reasons:

- (1) harassment by unfounded litigation which would divert attention from their duties; and
- (2) the effect of litigation on their independence in making decisions.

Finally, in concluding that for the same reasons this should be the 1983 immunity rule as well, the Court mentioned the following additional considerations: the danger to the honest prosecutor from those suits which would survive a pleadings challenge; the virtual retrial of criminal offenses in a new forum, with the resolution of technical cases by the jury; the adverse effect on the criminal justice system because often the finders of fact would be denied relevant evidence; and the availability to the convicted defendant of various post-trial procedures, and to the public of criminal prosecution and professional discipline.

Imbler is expressly limited to those activities of a prosecutor which are "intimately associated with the judicial phase of the criminal process, and thus were functions to which the reasons for absolute immunity apply with full force."¹⁴³ The Court left open the question of whether Imbler's rationale would also apply to "those aspects of the prosecutor's responsibility that cast him in the role of an administrator or investigative officer rather than that of advocate."¹⁴⁴ It did, however, note that a prosecutor in his role as advocate frequently acts outside of the courtroom as well as in it,¹⁴⁵ thereby suggesting that this role is quite broad and is protected in its entirety by absolute immunity.

The Court also rejected the distinction suggested in the concurring opinion between a prosecutor's knowing use of perjured testimony-to which immunity should attach-and his knowing suppression of evidence-to which the three concurring Justices argued it should not.¹⁴⁶ Further, the Court hinted that a public defender and perhaps even court appointed defense counsel likewise share in absolute immunity when it stated: "Attaining the system's goal of accurately determining guilt or innocence requires that both the prosecution and the defense have wide discretion in the conduct of the trial and the presentation of evidence."¹⁴⁷

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Footnotes

¹³⁵. 424 U.S. 409 (1976).

¹³⁶. 341 U.S. 367 (1951).

¹³⁷. 386 U.S. 547 (1967).

¹³⁸. Scheuer v. Rhodes, 416 U.S. 232 (1974) (executives) and Wood v. Strickland, 420 U.S. 308 (1975) (school board officials exercising quasi-judicial functions).

¹³⁹. 424 U.S. 409, 410 (1976).

¹⁴⁰. *Id.* at 418.

¹⁴¹. *id.* at 421.

¹⁴². Judge Learned Hand wrote of prosecutorial immunity in the much cited case of Gregoire v. Biddle, 177 F.2d 579, 581 (2d Cir. 1949), cert. denied, 339 U.S. 949 (1950) as follows:



As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. 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.

¹⁴³. 424 U.S. 409, 430 (1976).

¹⁴⁴. *Id.* at 430-31.

¹⁴⁵. *Id.* at 431 n.33. Included in the prosecutor's role as advocate, according to the Court, are the following: deciding whether to present a case to a grand jury or to file an information, deciding whether and whom to prosecute, deciding what evidence and witnesses to present, and obtaining, reviewing and evaluating evidence in connection with all the above.

¹⁴⁶. Justices White, Brennan and Marshall, concurring in the judgment, reasoned that absolute immunity should not extend to claims of unconstitutional suppression of evidence because to do so would discourage the disclosure of evidence by prosecutors and thereby injure the judicial process as well as the defendant in a criminal case. However, the majority rejected this approach in part because it believed that a claim of using perjured testimony could easily be converted into a claim of suppressing evidence. *Id.* at 432-33.

¹⁴⁷. *Id.* at 426 (emphasis added).