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Of the Supreme Court's three 1983 absolute immunity cases, the one most worth pondering is Imbler v. Pachtan which extended absolute immunity to prosecutors. Legislators and judges are sui generis and both as a matter of historical background and 1983 policy, their absolute immunity is understandable. Furthermore, 1983 remains largely intact despite this absolute immunity. In Imbler, however, the Court seems to have embarked on a policy oriented approach to absolute immunity in which 1983 policy gets lost in the shuffle. This approach, though, downplays the "person" language of 1983 which must be broadly construed if 1983 liability is to have an effect on official conduct. Moreover, this "person" language indicates that Congress already made the policy determination that most individuals are "persons" for 1983 purposes. Furthermore, to the extent that the issue arises in the future, it may prove unworkable to draw a line around the prosecutor and stop there. As was seen, public defenders are the next likely candidates for absolute immunity protection, and there may be others.

On the other hand, the Court may ultimately limit the absolute immunity categories to state legislators, judges and prosecutors and public defenders involved in criminal trials. This would narrow the scope of 1983, but not significantly undercut it, because all other individuals not involved in legislating, judging, or trying criminal cases would still be considered "persons" for 1983 damages liability purposes. What the Supreme Court will in fact do remains to be seen.¹⁸⁹

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Footnotes

¹⁸⁹. As this Article went to print, the United States Supreme Court decided Lake County Estates v. Tahoe Regional Planning Agency, no. 7-1327 (U.S. Sup. Ct. 1979). Although the opinion has not been published, the Court held that absolute immunity under the Eleventh Amendment is applicable to local and regional legislatures. See notes 44-56 and accompanying text supra.

