Note to Dick: In addition to adding "in his official capacity" in the third line of our opinion, consider a footnote keyed to the end of the first paragraph on page 1:

We consider only the scope of a President's immunity in a civil suit seeking to impose a damages liability for an official act claimed to have violated the statutory or constitutional rights of a person. We are not concerned, as one might infer from language in the dissenting opinion, with violation of criminal laws by a President or with tortuous conduct not within the scope of a President's authority.
The dissent argues that the "scope of immunity is determined by function, not office". Ante, at 19, et seq. The distinction between "function" and "office" can be relevant - indeed controlling in many situations. We long have recognized, however, that the distinction does not exist where certain officers act within the scope of their authority. For example, the "office" all that is required for a judicial officer to be protected by absolute immunity when he performs a judicial act. He is immune without regard to whether he "knows his conduct violates a statute or tramples on the constitutional rights of those who are injured." (see dissenting opinion, at 1). Writing for the Court in Stumpf v. Sparkman, 435 U.S. 349, 355, 356, Justice White quoted with approval the often cited language from Bradley v. Fisher, 13 Wall 335, 351 (1872) that judges "are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly". Similarly, the absolute
immunity of a prosecuting attorney is not forfeited even when he institutes a prosecution for political purposes, and the result is imprisonment of an innocent person.

(Cite Imbler) Again, a member of Congress, who by virtue of his office introduces legislation for the purpose of destroying the reputation of a private citizen, retains absolute immunity. A President, vested by the Constitution with "the executive power" of the United States, likewise should be absolutely immune from civil damage liability for executive action taken within the scope of his authority.
In a consistent line of decisions, this Court has recognized that when governmental officials are sued for damages arising from alleged violations of constitutional rights, they are entitled to some form of immunity in order to shield them from undue interference with their duties and excessive exposure to liability. In Tenney v. Brandhove, 341 U.S. 367 (1951), the Court held that the passage of 42 U.S.C. § 1983 had not abrogated the common-law privilege accorded to state legislators for acts within their legislative roles. The decision in Pierson v. Ray, 386 U.S. 547 (1967), involving a constitutional suit against a state judge, recognized the continued validity of the absolute immunity accorded to judges at common law for acts within the judicial role. Pierson also held that police officers possess a qualified immunity protecting them from suits when their official acts are performed in good faith. Id., at 556. This qualified immunity was extended to state executive officials in Scheuer v. Rhodes, 416 U.S. 232 (1974), where
we held that the immunity varied in scope, "the variation
being dependent upon the scope of discretion and
responsibilities of the office and all the circumstances
as they reasonably appeared at the time of the action on
which liability is sought to be based," id., at 237.

The functional approach adopted in Scheuer led to
differing results when the Court held that school-board
officials possess only qualified immunity, Wood v.
Strickland, 420 U.S. 308 (1975), but state prosecutors
possess absolute immunity with respect to the initiation
and pursuit of prosecutions, Imbler v. Pachtman, 424 U.S.
409 (1976). See also O'Connor v. Donaldson, 422 U.S. 563
(1975) (qualified immunity accorded to state hospital
superintendent); Procunier v. Navarette, 434 U.S. 555
(1978) (prison administrators accorded qualified
immunity); Supreme Court of Virginia v. Consumers Union,
___ U.S. ___ (1980) (in suit for declaratory relief
involving rules governing lawyers, state supreme court
held immune from suit for legislative actions, but not
immune from challenges to enforcement activities); Dennis
v. Sparks, ___ U.S. ___ (1980) (no immunity accorded to
private parties who conspire with an immune judge to deprive others of civil rights).

This approach was reviewed in detail in *Butz v. Economou*, 438 U.S. 478 (1978), where we considered for the first time the kind of immunity possessed by federal executive officials who, like petitioners here, are sued for constitutional violations. In *Butz*, the Court rejected an argument, based on several decisions involving federal officials charged with common-law torts, that all high federal officials should be accorded absolute immunity from constitutional damage suits. In so holding, we concluded that such a blanket grant of absolute immunity would be anomalous in light of the qualified-immunity standard applied to state officials, 438 U.S., at 504, and "would seriously erode the protection provided by basic constitutional guarantees." Id., at 505. Nevertheless, we noted that under our decisions some

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officials, notably judges and prosecutors, have "special functions requiring a full exemption from liability." Id., at 508. We therefore recognized that some federal officials may show that "public policy requires an exemption from liability." Id., at 508.

This case now presents the claim that the President of the United States falls into the category of federal officials who should be accorded absolute immunity from damage suits based on constitutional violations.

IV

Our decision in Scheuer, supra, discussing the qualified immunity possessed by state executive officials, recognized that the extent of protection afforded an official may vary with the responsibilities and discretion of his office. 416 U.S., at 247. We explained that the "range of decisions and choices" required of a high executive official is "virtually infinite," yet such an official often must act quickly lest "action deferred will be futile or constitute virtual abdication of office." Id., at 246. In addition, these officials must "rely on traditional sources for the factual information on which
they decide and act," ibid., and, in times of emergency, 
may make decisions in an "atmosphere of confusion, 
ambiguity, and swiftly moving events," id., at 247. "In 
short," we concluded, "since the options which a chief 
executive and his principal subordinates must consider are 
far broader and far more subtle than those made by 
officials with less responsibility, the range of 
discretion must be comparably broad." Ibid. In the Butz 
decision applying qualified immunity to high federal 
executive officials, we noted that, as compared with the 
opportunities for abuses by lower federal employees, the 
"greater power of such officials affords a greater 
potential for a regime of lawless conduct." 433 U.S., at 
506. We did not, however, reject Scheuer's perception 
that such higher officials will receive greater protection 
under a good-faith standard because of their broader range 
of responsibilities and choices. Indeed, the Butz opinion 
applied the "governing principles," id., at 503, of 
Scheuer to federal officials, and recognized that the 
special functions of some officials require absolute 
immunity,, id., at 508-517.3

Footnote(s) 3 will appear on following pages.
When applied to the office of President of the United States, these principles require due consideration of the characteristics of that unique office. Our prior decisions require a protective shield around presidential decision-making that is commensurate with the unequalled breadth and gravity of the President's duties. We cannot ignore the fact that he is the official required by the Constitution to play a major role in nearly all aspects of the governance of the Nation, and is called upon daily to make critical decisions, some of which implicate the very survival of the Nation. In performing these functions, the President does not work solely through formal procedural avenues, such as the lawmaking process. instead, he is entrusted with responsibility for the

3Four basic rationales support immunity for public officials. First, the prospect of damages liability may render officials unduly cautious in the discharge of their public responsibilities. See Gregoire v. Biddle, 177 F. 2d 579, 581 (CA2 1949), cert. denied, 339 U.S. 949 (1950). Second, competent and responsible individuals may be deterred from entering public service in the first place. Third, public servants may be distracted from their duties by the need to defend frequent lawsuits. Finally, as this case illustrates, there is a danger of unfairness when officials face personal liability for decisions made in areas of legal uncertainty that are reviewed by courts years later, under evolving legal standards. See generally Freed, Executive Official Immunity for Constitutional Violations: An Analysis and a Critique, 72 NW. L. REV. 526, 529-530 (1977).
various informal aspects of governing - with discretion to act on his own when the national interest requires a result that cannot be legislated or adjudicated. In short, the President is responsible for a vast array of "executive" functions which he cannot avoid but which expose him to countless potential damage suits. Moreover, as the natural focal point for so many of the perceived grievances against the Federal Government, he is unlikely to be overlooked as a potential defendant. 4

4 The likelihood that Presidents will face large numbers of constitutional damage suits creates a risk that Presidential decisionmaking will be interfered with unduly. Presidents may be daunted by their exposure to huge damage recoveries, including some that are disproportionate responses to perceived grievances. Courts and juries, after all, may tend to judge emergency executive decisions harshly in the clear light of hindsight. Moreover, leaving aside the risk of substantial judgments, a sitting President may be diverted from the pressing duties of his office by the requirements of defending numerous lawsuits - including the answering of interrogatories and giving of testimony. The argument that frivolous lawsuits can be handled summarily has only limited force. Lawsuits involving a qualified-immunity standard generally require courts to inquire into the motives of the defendants, and such matters are difficult to resolve short of prolonged discovery or trial. This case itself has been in the courts since 1973. As Judge Gesell stated in his concurring opinion below:

"We should not close our eyes to the fact that with increasing frequency in this jurisdiction and throughout the country plaintiffs are filing suits seeking damage awards against high government officials in their personal capacities based on alleged constitutional torts. Each such suit almost invariably results in these officials and their colleagues being subjected to extensive discovery into traditionally protected areas.... Such discovery is wide-ranging, time-consuming, and Footnote continued on next page.
The unique nature of the presidential office, as established by our Constitution, requires a level of immunity higher than that of any other executive official. The President is the head of the Executive not without considerable cost to the officials involved. It is not difficult for ingenious plaintiff's counsel to create a material issue of fact on some element of the immunity defense where subtle questions of constitutional law and a decision maker's mental processes are involved.... In short, if these standards are those to be followed in these cases, trial judges will almost automatically have to send such cases to full trials on the merits." U.S. App. D.C., at ___, 606 F.2d, at 1214.

These dangers are significant even though there is no historical record of numerous suits against the President, since a right to sue federal officials for damages for constitutional violations was not even recognized until Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971).

"There are prudential reasons as well for rejecting a selective approach differentiating among various presidential functions. In many cases, it would be difficult to determine which area encompassed a particular action. In this sense, a President is quite different from a prosecutor, whose functions fall relatively easily into categories - investigation, initiation of a prosecution, presentation of a case, etc. Any similar line-drawing in the area of Presidential action would necessarily require an inquiry into the purpose of an action. Such an inquiry by a court would be nearly as intrusive as an inquiry into the possible malice of the President under a qualified-immunity standard. Indeed, it has been argued that even prosecutors should be given absolute immunity regardless of the particular function involved, because of the intrusiveness of an inquiry into intent. See Note, Delimiting the Scope of Prosecutorial Immunity from § 1983 Damage Suits, 52 N.Y.U.L. Rev. 173, 200 (1977).

For similar reasons, I would not adopt a rule granting absolute immunity only where the President has acted in order to further the national interest - i.e., except where he has acted to further purely personal interests. Such a rule also would require an inquiry into motive. Here, for example, it might require a remand for a determination whether the wiretap remained a matter of national security throughout its duration.
Branch in whom are invested all of the powers specified by Article II of the Constitution. As his status, duties, and responsibilities therefore are qualitatively different from other officials, it is proper to accord him absolute immunity from damage suit liability for all of his official acts.

Such a rule is mandated by our constitutional structure and is faithful to the assumptions that have prevailed since the founding of the Nation. The Constitution itself is silent on this question, while it exempts Members of Congress explicitly under the Speech or Debate Clause. U.S. Const. Art. I, §6. But there are historical reasons for the concern that prompted the adoption of Art. I, §6. The Founding Fathers were aware of the long struggle for parliamentary privilege in England. See e.g., United States v. Johnson, 383 U.S. 169, 177-182 (1966). A similar reason for concern did not exist with respect to the chief of state. Although the structure of the Constitution was carefully designed by

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6 U.S. Const., Art. II, § 1 ("The executive Power shall be vested in a President of the United States.").
the checks and balances of the separation of powers to prevent an imperial President, the importance of the role of the chief executive officer of the Nation was clearly recognized and preserved. Indeed, the Founders gave the President, as an individual official, a separate and equal footing with Congress and this Court as corporate bodies. The omission of an explicit exemption of the President from personal damages suits may be explained by a general understanding at the time that no explicit exemption was necessary.

One reflection of the prevailing historical assumption is the general reluctance on the part of the courts to exercise their power against the President personally. Although the President may, in some limited circumstances, be compelled by a court to produce materials subpoenaed for use in a criminal prosecution, United States v. Nixon, supra, this Court has never held that courts may compel the President himself to perform even ministerial executive functions, and statements from

7 Although this issue has not been faced squarely by the Court, there have been strong statements in previous Footnote continued on next page.
the early days of the Republic support such a limitation on judicial power.\(^8\) This reluctance to enjoin opinions asserting the immunity of the President from judicial orders. In Mississippi v. Johnson, 71 U.S. 475, 501 (1866), the Court stated: "we are fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties; and that no such bill ought to be received by us." And in Kendall v. United States, 12 Pet. 524, 610 (1838), it is stated: "The executive power is vested in a President; and as far as his powers are derived from the constitution, he is beyond the reach of any other department, except in the mode prescribed by the constitution through the impeaching power." But see National Treasury Employees Union v. Nixon, U.S. App. D.C., 492 F.2d 587, 616 (1974) (concluding that a court possesses the "authority to mandamus the President to perform the ministerial duty" of effectuating a pay raise).

Even in United States v. Nixon, the court held that Presidential conversations and correspondence enjoy a "presumptive privilege" that is "inextricably rooted in the separation of powers." 418 U.S., at 708. We suggested that this privilege may be more absolute when matters of diplomacy or national security are involved. Id., at 706, 710-711.

\(^8\)At the time of the first Congress, Vice President John Adams and Oliver Ellsworth, Senator from Connecticut, were reported as stating that "the President, personally, was not subject to any process whatever; could have no action, whatever, brought against him; and above the power of all judge, justices, etc." since otherwise a court could "stop the whole machinery of government." 2 W. Maclay, Sketches of Debate in the First Senate of the United States 152 (Harris ed. 1880). Justice Story offered a similar argument somewhat later: See 3 J. Story, Commentaries on the Constitution of the United States § 1563, at 418-519 (1st ed. 1833).

Few historical facts are clearer than Thomas Jefferson's view that the President was not subject to judicial process. When Chief Justice Marshall held in United States v. Burr, 25 Fed. Cas. 30 (1807), that a subpoena duces tecum can be issued to a President, Jefferson protested strongly, and stated his broader view of the proper relationship between the Judiciary and the President:

"The leading principle of our Constitution is the independence of the Legislature, executive and judiciary of each other, and none are more jealous of this than the judiciary. But would the executive be independent of the judiciary, if he were subject to the commands of the latter, & to imprisonment for disobedience; if the several courts could bandy him from pillar to post, keep him constantly trudging from north to south & east to west, and withdraw him entirely from his constitutional duties?" Footnote continued on next page.
Presidential action contrasts markedly with the ready acceptance of court orders compelling action on the part of other executive officials. A similar distinction between Presidents and their subordinates has been drawn by some commentators with respect to the possibility of criminal prosecutions while in office.

The threat of damages suits, along with the requirements of litigating such suits while in office, could have a significant effect on a President's performance in office. This fact is one of the reasons for providing such a remedy, as well as one of the major

The intention of the Constitution, that each branch should be independent of the others, is further manifested by the means it has furnished to each, to protect itself from enterprises of force attempted on them by the others, and to none has it given more effectual or diversified means than to the executive." 10 The Works of Thomas Jefferson 404n. (P. Ford ed. 1905) (quoting a letter from President Jefferson to a prosecutor at the Burr trial) (emphasis in the original). See also 5 D. Malone, Jefferson and His Time: Jefferson the President 320-325 (1974).

The statements quoted here concerning a President's amenability to process apply only to sitting Presidents, and may not accord with present views of judicial power, but they do indicate the historical recognition given to the President's special constitutional status.

9See Youngstown Sheet & Tile Co. v. Sawyer, 343 U.S. 579 (1952) (injunction directed to Secretary of Commerce); Kendall v. United States, supra (mandamus to enforce ministerial duty of the Postmaster General).

reasons for the creation of official immunities. In weighing the advantages and disadvantages of a damage remedy against the President himself, the unique constitutional status of this particular official, as recognized throughout our history becomes the determinative factor. It simply is inconsistent with our system to leave Presidents exposed to open-ended litigation by every disgruntled citizen and to potentially devastating liability in damages, imposed by order of a separate branch of government.

A rule of absolute immunity for the President will not leave the Nation without sufficient remedies for misconduct on the part of the chief executive.\textsuperscript{11} There remains, first of all, the remedy of impeachment.\textsuperscript{12} In addition, Presidents may be prosecuted criminally, at

\textsuperscript{11} The presence of alternative remedies has played an important role in our previous decisions in the area of official immunity. E.g., Imbler v. Pachtman, supra, at 428-429 ("We emphasize that the immunity of prosecutors from liability in suits under § 1983 does not leave the public powerless to deter misconduct or to punish that which occurs.")

\textsuperscript{12} The same remedy plays a central role with respect to the misconduct of federal judges, who also possess absolute immunity. See Kaufman, Chilling Judicial Independence, 88 Yale L.J. 681, 690-706 (1979) / Congressmen may be removed from office by a vote of their colleagues. U.S. Const., Art. I, § 5, cl. 2.
least after they leave office. The existence of these alternative remedies is not alone, determinative because they also apply to numerous executive officials who are accorded only qualified immunity under our decision in Butz v. Economou, supra. Yet the balance of competing considerations is different with respect to the President than it is for any other executive official. In addition, there are various less formal checks on Presidential misconduct that do not apply with equal force to other executive officials. The President is subjected constantly to intense public and congressional scrutiny. Such scrutiny may serve to deter Presidential misconduct, as well as to make the sanction of impeachment a real threat. The President has other incentives to avoid misconduct that result from his possible desire to seek re-election, his need to maintain his prestige and influence over other governmental officials, and his traditional concern for his place in history. All of these factors make clear that absolute Presidential immunity will not place the President "above the law."13
Instead, such a rule merely rejects a particular remedy of misconduct in order to further the broader public good. 14

13 As Judge Learned Hand wrote in Gregoire v. Biddle, 177 F.2d 579 581 (CA 2 1949), cert denied, 339 U.S. 949 (1950), "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."

14 The idea that some governmental officials should be shielded absolutely from liability in damages is hardly new or unusual. Under our decisions, absolute immunity from suit extends to judges, Pierson v. Ray, supra, prosecutors Imbler v. Pachtman, supra, and state legislators, Tenney v. Brandhove, supra. In addition, such immunity covers a large number of administrative officials under our decision in Butz v. Economou, supra. In Butz, we held that federal agency "officials who are responsible for the decision to initiate or continue [an administrative] proceeding subject to agency adjudication are entitled to absolute immunity from damages liability for their parts in that decision." 438 U.S., at 516. Butz also accorded absolute immunity to the lawyers who prosecute and the administrative law judges who hear them. Id., at 514-517. There are at least 30 federal agencies and departments with authority to initiate such proceedings. Although the number of immunized officials and lawyers is unknown, there were 1,146 law judges serving these agencies in 1980, Administrative Conference of the United States, Federal Administrative Law Judge Hearings: Statistical Report for 1976-1978, p. 21 (1980). Moreover, in 1978, 216843 new agency proceedings were begun, id, at 33, although these include cases that were not initiated by the government and thus cannot be viewed as "prosecutorial."

In granting this immunity to numerous administrative officials, we reasoned that they performed functions analogous to those of prosecutors and judges. But unlike judges, publicly appointed or elected prosecutors, and legislators, many of these officials are unknown and often may be difficult to identify. Many of the informal constraints applicable to highly visible judges, prosecutors and legislators are far less likely to apply to these individuals. Yet, it is argued here that the President of the United States should have less immunity.