

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BUCKLEY v. FITZSIMMONS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 91-7849. Argued February 22, 1993—Decided June 24, 1993

Petitioner Buckley sought damages, under 42 U. S. C. §1983, from respondent prosecutors for fabricating evidence during the preliminary investigation of a highly publicized rape and murder in Illinois and making false statements at a press conference announcing the return of an indictment against him. He claimed that when three separate lab studies failed to make a reliable connection between a footprint at the murder site and his boots, respondents obtained a positive identification from one Robbins, who allegedly was known for her willingness to fabricate unreliable expert testimony. Thereafter, they convened a grand jury for the sole purpose of investigating the murder, and 10 months later, respondent Fitzsimmons, the State's Attorney, announced the indictment at the news conference. Buckley was arrested and, unable to meet the bond, held in jail. Robbins provided the principal evidence against him at trial, but the jury was unable to reach a verdict. When Robbins died before Buckley's retrial, all charges were dropped and he was released after three years of incarceration. In the §1983 action, the District Court held that respondents were entitled to absolute immunity for the fabricated evidence claim but not for the press conference claim. However, the Court of Appeals ruled that they had absolute immunity on both claims, theorizing that prosecutors are entitled to absolute immunity when out-of-court acts cause injury only to the extent a case proceeds in court, but are entitled only to qualified immunity if the constitutional wrong is complete before the case begins. On remand from this Court, it found that nothing in *Burns v. Reed*, 500 U. S. ___—in which the Court held that prosecutors had absolute immunity for their actions in participating in a probable-cause hearing but not in giving advice to the police—undermined its initial holding.

BUCKLEY v. FITZSIMMONS

Syllabus

Held: Respondents are not entitled to absolute immunity. Pp. 8-18.

(a) Certain immunities were so well established when §1983 was enacted that this Court presumes that Congress would have specifically so provided had it wished to abolish them. Most public officials are entitled only to qualified immunity. However, sometimes their actions fit within a common-law tradition of absolute immunity. Whether they do is determined by the nature of the function performed, not the identity of the actor who performed it, *Forrester v. White*, 484 U. S. 219, 229, and it is available for conduct of prosecutors that is "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U. S. 409, 430. Pp. 8-12.

(b) Acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity. However, in endeavoring to determine whether the bootprint had been made by Buckley, respondents were acting not as advocates but as investigators searching for clues and corroboration that might give them probable cause to recommend an arrest. Such activities were not immune from liability at common law. If performed by police officers and detectives, such actions would be entitled to only qualified immunity; the same immunity applies to prosecutors performing those actions. Convening a grand jury to consider the evidence their work produced does not retroactively transform that work from the administrative into the prosecutorial. Pp. 12-16.

(c) Fitzsimmons' statements to the media also are not entitled to absolute immunity. There was no common-law immunity for prosecutor's out-of-court statements to the press, and, under *Imbler*, such comments have no functional tie to the judicial process just because they are made by a prosecutor. Nor do policy considerations support extending absolute immunity to press statements, since this Court has no license to establish immunities from §1983 actions in the interests of what it judges to be sound public policy, and since the presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties. Pp. 16-18.

952 F. 2d 965, reversed and remanded.

STEVENS, J., delivered the opinion for a unanimous Court with respect to Parts I, II, III, and IV-B, and the opinion of the Court with respect to Parts IV-A and V, in which BLACKMUN, O'CONNOR, SCALIA, and THOMAS, JJ., joined. SCALIA, J., filed a concurring opinion.

BUCKLEY v. FITZSIMMONS

Syllabus

KENNEDY, J., filed an opinion concurring in part and dissenting in part, in which REHNQUIST, C. J., and WHITE and SOUTER, JJ., joined.