

**Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President**

bilities of utmost discretion and sensitivity,”<sup>811</sup> and diversion of his energies by concerns with private lawsuits would “raise unique risks to the effective functioning of government.”<sup>812</sup> Moreover, the presidential privilege is rooted in the separation-of-powers doctrine, counseling courts to tread carefully before intruding. Some interests are important enough to require judicial action; “merely private suit[s] for damages based on a President’s official acts” do not serve this “broad public interest” necessitating the courts to act.<sup>813</sup> Finally, qualified immunity would not adequately protect the President, because judicial inquiry into a functional analysis of his actions would bring with it the evil immunity was to prevent; absolute immunity was required.<sup>814</sup>

**Unofficial Conduct**

In *Clinton v. Jones*,<sup>815</sup> the Court, in a case of first impression, held that the President did not have qualified immunity from civil suit for conduct alleged to have taken place prior to his election, and therefore denied the President’s request to delay both the trial and discovery. The Court held that its precedents affording the President immunity from suit for his official conduct—primarily on the basis that he should be enabled to perform his duties effectively without fear that a particular decision might give rise to personal liability—were inapplicable in this kind of case. Moreover, the separation-of-powers doctrine did not require a stay of all private actions against the President. Separation of powers is preserved by guarding against the encroachment or aggrandizement of one of the coequal branches of the government at the expense of another. However, a federal trial court tending to a civil suit in which the President is a party performs only its judicial function, not a function of another branch. No decision by a trial court could curtail the scope of the President’s powers. The trial court, the Supreme Court observed, had sufficient powers to accommodate the President’s schedule and his workload, so as not to impede the President’s performance of his duties. Finally, the Court stated its belief that allowing such suits to proceed would not generate a large volume of politi-

---

<sup>811</sup> 457 U.S. at 750.

<sup>812</sup> 457 U.S. at 751.

<sup>813</sup> 457 U.S. at 754.

<sup>814</sup> 457 U.S. at 755–57. Justices White, Brennan, Marshall, and Blackmun dissented. The Court reserved decision whether Congress could expressly create a damages action against the President and abrogate the immunity, *id.* at 748–49 n.27, thus appearing to disclaim that the decision is mandated by the Constitution; Chief Justice Burger disagreed with the implication of this footnote, *id.* at 763–64 n.7 (concurring opinion), and the dissenters noted their agreement on this point with the Chief Justice. *Id.* at 770 & n.4.

<sup>815</sup> 520 U.S. 681 (1997).