the Senate.[586] He may remove an officer of the army or navy at any time by nominating to the Senate the officer's successor, provided the Senate approves the nomination.[587] In 1940, the President was sustained in removing Dr. E. A. Morgan from the chairmanship of TVA for refusal to produce evidence in substantiation of charges which he had leveled at his fellow directors.[588] Although no such cause of removal by the President was stated in the act creating TVA, the President's action, being reasonably required to promote the smooth functioning of TVA, was held to be within his duty to "take Care that the Laws be faithfully executed." So interpreted, the removal did not violate the principle of administrative independence.

The Presidential Aegis: Demands for Papers

Presidents have more than once had occasion to stand in a protective relation to their subordinates, assuming their defense in litigation brought against them[589] or pressing litigation in their behalf,[590] refusing a congressional call for papers which might be used, in their absence from the seat of government, to their disadvantage,[591] challenging the constitutional validity of legislation deemed detrimental to their interests.[592] Presidents throughout our history have attempted to spread their own official immunity to their subordinates by resisting actions of the courts or of congressional committees to require subordinates to divulge communications from or to the President that Presidents choose to regard as confidential. Only recently, however, has the focus of the controversy shifted from protection of presidential or executive interests to protection of the President himself, and the locus of the dispute shifted to the courts.

Following years in which claims of executive privilege were resolved in primarily interbranch disputes on the basis of the political strengths of the parties, the issue finally became subject to judicial elaboration. The doctrine of executive privilege was at once recognized as existing and having a constitutional foundation while at the same time it was definitely bounded in its assertion by the principle of judicial review. Because of these cases, because of the intensified congressional-presidential dispute, and especially be-

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[586] Shurtleff v. United States, 189 U.S. 311 (1903).

[587] Blake v. United States, 103 U.S. 227 (1881); Quackenbush v. United States, 177 U.S. 20 (1900); Wallace v. United States, 257 U.S. 541 (1922).

[588] Morgan v. TVA, 28 F. Supp. 732 (E.D. Tenn. 1939), *aff'd*, 115 F.2d 990 (6th Cir. 1940), *cert. denied*, 312 U.S. 701 (1941).

[589] *E.g.*, 6 Ops. Atty. Gen. 220 (1853); *In re* Neagle, 135 U.S. 1 (1890).

[590] United States v. Lovett, 328 U.S. 303 (1946).

[591] *E.g.*, 2 J. Richardson, supra at 847.

[592] United States v. Lovett, 328 U.S. 303, 313 (1946).