

## Sec. 2—Powers, Duties of the President    Cl. 2—Treaties and Appointment of Officers

only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will. . . ."

"The result of what we now have said is this: Whether the power of the President to remove an officer shall prevail over the authority of Congress to condition the power by fixing a definite term and precluding a removal except for cause, will depend upon the character of the office; the *Myers* decision, affirming the power of the President alone to make the removal, is confined to purely executive officers; and as to officers of the kind here under consideration, we hold that no removal can be made during the prescribed term for which the officer is appointed, except for one or more of the causes named in the applicable statute."<sup>560</sup>

**The Wiener Case.**—Curtailement of the President's power of removal, so liberally delineated in the *Myers* decision, was not to end with the *Humphrey* case. Unresolved by the latter was the question whether the President, absent a provision expressly delimiting his authority in the statute creating an agency endowed with quasi-judicial functions, remained competent to remove members serving thereon. To this query the Court supplied a negative answer in *Wiener v. United States*.<sup>561</sup> Emphasizing that the duties of the War Claims Commission were wholly adjudicatory and its determinations, final and exempt from review by any other official or judicial body, the Court unanimously concluded that inasmuch as the President was unable to supervise its activities, he lacked the power, independently of statutory authorization, to remove a commissioner whose term expired with the life of that agency.

**The Watergate Controversy.**—A dispute arose regarding the discharge of the Special Prosecutor appointed to investigate and prosecute violations of law in the Watergate matter. Congress vested in the Attorney General the power to conduct the criminal litigation of the Federal Government,<sup>562</sup> and it further authorized him to appoint subordinate officers to assist him in the discharge of his duties.<sup>563</sup> Pursuant to presidential direction, the Attorney General designated a Watergate Special Prosecutor with broad power to investigate

<sup>560</sup> 295 U.S. at 627–29, 631–32. Justice Sutherland's statement, quoted above, that a Federal Trade Commissioner "occupies no place in the executive department" was not necessary to the decision of the case, was altogether out of line with the same Justice's reasoning in *Springer v. Philippine Islands*, 277 U.S. 189, 201–202 (1928), and seems later to have caused the author of it much perplexity. See R. CUSHMAN, *THE INDEPENDENT REGULATORY COMMISSION* 447–48 (1941). As Professor Cushman adds: "Every officer and agency created by Congress to carry laws into effect is an arm of Congress. . . . The term may be a synonym; it is not an argument." *Id.* at 451.

<sup>561</sup> 357 U.S. 349 (1958).

<sup>562</sup> 28 U.S.C. § 516.

<sup>563</sup> 28 U.S.C. §§ 509, 510, 515, 533.