

Cheney's Law Teacher's Guide

www.pbs.org/frontline/teach/cheney

ABOUT THE FILM:

For three decades Vice President Dick Cheney conducted a secretive, behind-closed-doors campaign to give the president virtually unlimited wartime power. Finally, in the aftermath of 9/11, the Justice Department and the White House made a number of controversial legal decisions. Orchestrated by Cheney and his lawyer David Addington, the department interpreted executive power in an expansive and extraordinary way, granting President George W. Bush the power to detain, interrogate, torture, wiretap and spy -- without congressional approval or judicial review.

WATCHING THE FILM:

Teachers can either assign the film for viewing as homework or show the film in class. Suggested discussion questions are provided. The lessons and activities in this guide can be used in the classroom without having viewed the film.

A NOTE TO TEACHERS:

This lesson guide is intended for classes in social studies, civics and government, language arts, current events and history; Grade Level 9–12. The guide examines the wide range of viewpoints on Vice President Cheney's role in the aftermath of the 9/11 attacks. It is constructed in modules, allowing teachers to use it either in its entirety or to select individual activities. The featured lesson is based on a video clip from the film.

POST-VIEWING ACTIVITY AND DISCUSSION QUESTIONS:

After viewing *Cheney's Law*, students will examine a range of viewer comments and share their own thoughts. Plus, a list of questions to discuss after viewing the film.

FEATURED LESSON PLAN:

Signing Statements: The Expansion of Presidential Power

Lesson Objectives:

Students will:

- Understand the constitutional powers granted to Congress and the president in a time of national crisis
- Understand how the president has attached signing statements to congressional acts he feels might infringe on his constitutional powers as commander in chief
- Develop a policy for conducting domestic surveillance or interrogation of enemy combatants that adheres to the priorities of either Congress or the executive branch
- Participate in discussions to reconcile possible differences in the policies of the two branches.

ADDITIONAL LESSON IDEAS:

Differing Viewpoints

Students will read and consider the comments from each of the interviewees on the *Cheney's Law* Web site, looking for variations in interpretation of presidential powers.

Presidential Power in Times of Crisis -- A History

As students construct a presentation on the history of presidents' actions in times of crisis, they will discover that many presidents from the early days of the republic have expanded their powers without the consent of Congress.

Developing Your Own "Themes & Analysis"

Students develop their own "Themes and Analysis" section similar to the FRONTLINE feature on the *Cheney's Law* Web site.

ADDITIONAL RESOURCES:

An annotated list of relevant Web sites

PURCHASING THE FILM

Cheney's Law can be purchased from **Shop PBS for Teachers**.

[<http://teacher.shop.pbs.org/product/index.jsp?productId=2872527&cp&keywords=cheney%27s+law&y=0&searchId=22234617674&x=0&parentPage=search>] Also, teachers and students can watch the film streamed in its entirety on FRONTLINE's Web site: <http://www.pbs.org/frontline/cheney>

CREDITS:

This teacher's guide was developed by Simone Bloom Nathan of Media Education Consultants. It was written by Greg Timmons, curriculum writer and educational consultant. Advisers were Ellen Greenblatt of The Bay School, San Francisco, and Debra Plafker Gutt, Stuyvesant High School, New York.

POST-VIEWING ACTIVITY

After viewing the program, but before engaging in the Discussion Questions below, have students go to the "**Join the Discussion**" [www.pbs.org/frontline/chene/talk] page on the *Cheney's Law* Web site to post their comments using the following guide:

- Review several of the comments already submitted.
- Select two or three that express a wide range of views on the subject and program.
- Write an entry to "Join the Discussion" by going to the Web page and clicking the "Share your Thoughts" link.
- Briefly comment on whether you agree or disagree with the views you selected and state your own view of the subject and program.
- Identify the section of the program you thought was most important and explain why.

Students should also hand in a copy of their letter to the teacher. Assess this activity in the same way you would assess a student's Letter to the Editor, checking for coverage of required areas and quality of writing.

DISCUSSION QUESTIONS

After viewing *Cheney's Law*, discuss the following questions with students:

1. What events during the Ford, Reagan, and George H.W. Bush administrations shaped Dick Cheney's views of executive branch powers?
2. David Addington and Dick Cheney have worked together for two decades and share similar views on executive power. Explain these views.
3. What did Vice President Cheney hope to accomplish by expanding presidential power after the attacks of Sept. 11?
4. What role did the Justice Department under Attorney General John Ashcroft play in deterring the Bush administration's policies on interrogation and intelligence gathering?
5. What is a signing statement? How does a signing statement affect a congressional law? What effect does a signing statement have on the checks and balances between Congress and the executive branch?
6. In what areas discussed in the program (torture, domestic wiretapping, redefining presidential authority and the use of signing statements) do you feel the president and vice president are justified in their actions? Why or why not?

FEATURED LESSON PLAN

Signing Statements: The Expansion of Presidential Power

LESSON OBJECTIVES:

Students will:

- Understand the constitutional powers granted to Congress and the president in a time of national crisis
- Understand how the president has attached signing statements to congressional acts he feels might infringe on his constitutional powers as commander in chief
- Develop a policy for conducting domestic surveillance or interrogation of enemy combatants that adheres to the priorities of either Congress or the executive branch
- Participate in discussions to reconcile possible differences in the policies of the two branches

MATERIALS NEEDED:

- Internet access or printout of Web-based materials
- Copy of the FRONTLINE documentary *Cheney's Law*
- *Cheney's Law* Teacher's Guide and student handouts

TIME NEEDED:

- Background and Context -- 10-15 minutes
- Focus on the Signing Statements -- 75-100 minutes

PROCEDURE:

Step 1: Background and Context

1. Have students refer to the Constitution's delegation of powers to the legislative branch (Article I, Sections 1 and 8) and the executive branch (Article II, Section 2).
2. Discuss with students the roles and responsibilities of each branch in matters of national security. Discuss the language of the Constitution and its specificity, or lack thereof, in describing the powers of the two branches.
3. Point out to students that national security responsibilities can involve military, diplomatic, and economic actions.

Step 2: Focus on the Signing Statements

1. Review with students the film's definition of a signing statement: "A signing statement is a technical, legal document that a president enters into the *Federal Register* on the day he signs a bill into law. It consists of instructions to the executive branch about how they are to implement this law now that it's on the books."
2. Distribute the Viewing Questions handout to students and instruct them to answer the questions on the handout after they view the film clip.
3. Show Chapter 6 "Battle of the Lawyers" from the film at: www.pbs.org/frontline/cheney/view/main.html. You can show the entire eight-minute clip,

or begin at 3:48 with the visual of a motorcade and the narrator's statement: "By this time, the vice president found himself engaged in a new struggle with Congress..." The clip ends with: "I'm not going to obey all your laws." A copy of the transcript is at:

www.pbs.org/frontline/cheneyletc/script.html

4. After viewing the clip, and having students complete their handout questions, discuss the questions as a large group.
5. Divide the class into two large groups and assign one group Scenario A and the other Scenario B from the "What To Do?" student handouts.
6. Distribute the appropriate student handouts for Scenarios A and B to each group.
7. Then have each group divide again into two groups: one will play the role of the executive branch and the other will play the role of Congress.
8. Review the directions with all groups. Make sure they understand their mission is to develop a policy that addresses the scenario they've been assigned according to the needs and desires of the branch they represent. Also review the "Questions to Consider" and the "Procedure for Meeting with the Other Branch" on the handouts.
9. Have students meet in their own branch first to develop their policy to address the scenario they've been assigned.
10. After students have developed their policy, have them meet with their counterpart branch and follow the directions in their handout to discuss each side's position and come to an agreement on the policy. It's possible that they may not be able to agree, but they should keep in mind that the only other way to find resolution would be to ask the courts to settle the issue.
11. Acting as a moderator, have each of the group pairs representing the executive branch and Congress present their agreement or disagreements to the class. Anyone can ask questions or make comments during this discussion.

Assessment Recommendations

1. Assess student involvement in the discussion questions and activities.
2. Evaluate the students' participation in the background and context discussion.
3. Evaluate students' participation in their role-playing groups and presentation of their policy statement.

Viewing Questions -- Student Handout I
Video Chapter: "The Battle of the Lawyers"

After viewing Chapter 6 of *Cheney's Law*, respond to the following questions:

1. How did the Abu Ghraib incident affect Congress in the terms of prisoner interrogation policy?

2. What action did Congress take?

3. What was the vice president's reaction to Congress's action? How did he justify his reaction?

4. Why did the president's veto threat fail and how did the administration reconcile with Congress?

5. What effect did the president's signing statement on the torture ban have on the law itself? How did the signing statement affect the balance of power between the executive branch and Congress?

What To Do? -- Student Handout II(a)
Scenario A -- Interrogation of Enemy Combatants

Directions:

1. Divide your group into two: one representing the executive branch and one representing Congress.
2. Review the scenario below and follow the instructions related to your group to develop your policy.
3. When completed, meet with the other branch to present your policy.

Note: It's likely that your policy and that of the other branch will not be the same and a workable solution will have to be developed. Each group would like to avoid a public battle over the issue, as that would distract from the more important task at hand, national security. But both groups feel that the actions of the other branch have evoked a potential constitutional crisis. If the two branches cannot come to some sort of workable agreement it might have to be settled in the courts. This is not a direction either branch would like to go in; the court might make an unfavorable ruling, so it's important to try and reach a resolution.

Scenario A -- Interrogation of Enemy Combatants

U.S. military personnel operating outside the United States have captured several hundred enemy combatants considered high-value terrorists. These individuals are suspected of possessing crucial information on enemy operations and future attacks both abroad and at home. It is important that this information be obtained to reduce future attacks, destroy enemy operations and provide safety and security for people in the United States, the region and the world. The Defense Department has written guidelines for interrogation that allows prisoners to be questioned away from U.S. soil using methods that fall short of causing organ failure or death.

Executive Branch Role: You are a member of the executive branch and along with the president, you have dedicated your career to being tough on terrorists and doing whatever is necessary to eliminate their threat to the United States and the world. You believe this is a different kind of war, with an elusive enemy that is not part of any nation-state and can harbor itself anywhere in or out of the country. New rules of engagement must be devised to eliminate this threat. As members of the executive branch, you work in concert with the commander in chief to execute the constitutional duties of the presidency.

You believe the powers of the executive branch are broad and allow the president to take EXTRA-ordinary measures in extraordinary times. Speed and a high level of secrecy are essential tools in this endeavor. In many cases there is no time for deliberation or debate. As a matter of common practice, the president can and will issue a signing statement that provides instructions to members of the executive branch on how they are to implement a law according to the constitutional duties of the executive branch. This can mean that the signing statement nullifies the law because the Constitution doesn't permit the legislative branch to pass a law usurping presidential power.

Congressional Role: You are a member of Congress. You are committed to successfully waging the War on Terror. Within your group are people in both parties who have supported the

president's past actions in the War on Terror and feel that generally the policies have been sound. Others in the group, though initially supportive, have become concerned and even critical of the president's actions and policies in conducting the war. Many feel the progress of the war is waning or misdirected, the American people are no safer than when the war started, and world opinion of the United States has degraded.

Many members of Congress feel it is imperative that the executive branch works with Congress, not against it. The opposing political party is now in the majority in Congress and feels it's time to once again be a major player in matters of national security. Some feel the actions of the president have taken on a character dangerously close to unconstitutional. Many members of the minority political party, though still supportive, are also concerned that the president has taken some questionable actions. Members of both parties have begun hearing of some new policies for the War on Terror proposed by the executive branch that might violate national and international laws.

Questions to consider for discussion within your group:

- What is your group's overall goal?
- What policy do you propose for the scenario you reviewed?
- What constitutional powers do you claim to take the action you propose?
- What further action are you prepared to take if the other branch resists or circumvents your action?

Procedure for meeting with the other branch of government:

When you meet with the other branch, each side should review the first three bullet points from the above questions. Then identify differences in your policy or positions. Try to come to some sort of agreement on what the policy will say, how it will be created, and how it will be implemented.

What To Do? -- Student Handout II(b)

Scenario B -- Domestic Surveillance

Directions:

1. Divide your group into two: one representing the executive branch and one representing Congress.
2. Review the scenario below and follow the instructions related to your group to develop your policy.
3. When completed, meet with the other branch to present your policy.

Note: It's likely that your policy and that of the other branch will not be the same and a workable solution will have to be developed. Each group would like to avoid a public battle over the issue, as that would distract from the more important task at hand, national security. But both groups feel that the actions of the other branch have evoked a potential constitutional crisis. If the two branches cannot come to some sort of workable agreement it might have to be settled in the courts. This is not a direction either branch would like to go in; the court might make an unfavorable ruling, so it's important to try and reach a resolution.

Scenario B -- Domestic Surveillance

In the effort to thwart another attack at home, it is necessary to gather intelligence information from many different sources. The National Security Agency secretly has been authorized by the president to conduct eavesdropping inside the United States without a court warrant. Since 1978 the process of obtaining information has been overseen by a special security court, known as the Foreign Intelligence Surveillance Court, or the FISA Court, which would quickly grant warrants. But in 2002, Justice Department attorneys wrote the official legal opinions justifying the NSA eavesdropping program and contending that the Constitution gives the president expanded powers in wartime to order warrantless surveillance and that the administration didn't have to go through the FISA Court. When they became public in 2005, these actions raised concerns about potential violations of the Fourth Amendment protections against unreasonable searches and seizures.

Executive Branch Role: You are a member of the executive branch and along with the president, you have dedicated your career to being tough on terrorists and doing whatever is necessary to eliminate their threat to the United States and the world. You believe this is a different kind of war, with an elusive enemy that is not part of any nation-state and can harbor itself anywhere in or out of the country. New rules of engagement must be devised to eliminate this threat. As members of the executive branch, you work in concert with the commander in chief to execute the constitutional duties of the presidency.

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ADDITIONAL LESSON IDEAS:

Differing Viewpoints

Review the Constitution's delegation of powers from Step One of the *Cheney's Law* featured lesson plan, then read the "**True Believers**" page of FRONTLINE's companion Web site at: www.pbs.org/frontline/cheney/themes/believers.html. Drawn from interviews for the program, it explains the attitudes, experiences and convictions driving the Bush administration's views on the Constitution and the role of the president. Students should summarize each interviewee's views on the Constitution and the president's role in matters of national security, and decide whose position is most in line with their own.

For another viewpoint, students can read an interview with former Deputy Assistant Attorney General John Yoo, who devised many of the administration's controversial legal policies, on the Web site for FRONTLINE's May 2007 film *Spying on the Home Front* at: <http://www.pbs.org/frontline/homefront/interviews/yoo.html>. Students should consider whether they agree with Yoo's arguments about the balance of powers during wartime.

Developing Your Own "Themes and Analysis" Feature

On its Web site, FRONTLINE regularly features a "Themes and Analysis" section drawing from interviews conducted for the film. (See Themes & Analysis from *Cheney's Law* at: www.pbs.org/frontline/cheney/themes/.) Students can create their own themes from the program or the lesson activities. Suggested themes include: the balance of power among the branches, the impact of 9/11 and the War on Terror, Attorney General Alberto Gonzales and actions of Congress. Students can construct their Themes & Analysis as a Web page, PowerPoint, or other kind of presentation. Extended interviews from the film can be found at: <http://www.pbs.org/frontline/cheney/interviews>.

Presidential Power in Times of Crisis – A History

Expanding the power of the executive branch during times of crisis is not new. Claiming powers "inherent" to the Constitution, presidents have taken expeditious action to address many crises facing the nation. Have students construct a presentation on the history of such actions by reviewing articles such as, "**Who Can Check the President?**"

[http://www.nytimes.com/2006/01/08/magazine/08court.html?_r=1&oref=slogin] and "**Stretching Executive Power**"

[<http://campaigningforhistory.blogs.nytimes.com/2007/05/27/stretching-executive-power-in-wartime/>] or other sources from the Internet and library. Be sure the students' reports include background information on the featured president, the crisis he faced, reaction by Congress or the public, and the resolution of any confrontation between the branches or the public.

ADDITIONAL RESOURCES

A Note about Internet Resources

Students need to be aware that Web sites sometimes only present one view of an issue. Encourage them to think about Web sites even as they are reading. Guiding questions as they review Web sites are: What did you learn from this site? What didn't you learn from this site? Who sponsors this site? What bias might the sponsor have? How current is the site?

FRONTLINE: *Cheney's Law*

<http://www.pbs.org/frontline/cheney/>

The companion Web site to the documentary features extended interviews, on-demand video streaming of the full program, themes and analysis and annotated links.

The Torture Question: Teacher's Guide

<http://www.pbs.org/frontline/teach/torture/>

Use this teacher's guide, a companion to FRONTLINE's 2005 film *The Torture Question*, to find more information and lesson plans on the subject of torture and the Bush administration's policies.

The Enemy Within

<http://www.pbs.org/frontline/teach/enemywithin/>

The teacher's guide for FRONTLINE's 2006 film *The Enemy Within* provides opportunities for students to explore domestic counterterrorism initiatives.

***Boston Globe* Articles on Presidential Signing Statements**

http://www.boston.com/news/specials/savage_signing_statements/

Boston Globe reporter Charlie Savage received the 2007 Pulitzer Prize for this series of articles uncovering President Bush's extensive use of signing statements to bypass provisions in Congressional law.

Reinterpreting Torture: Presidential Signing Statements and the Circumvention of U.S. and International Law

<http://www.wcl.american.edu/hrbrief/14/1palmer.pdf?rd=1>

This is an academic article by Erin Louise Palmer, J.D./M.A. candidate at the American University Washington College of Law and School of International Service, printed in the Jan. 11, 2007 *Human Rights Brief*. It covers the history of signing statements, dating all the way back to President James Monroe, explains the constitutional justification for the use of signing statements, and critically analyzes President Bush's use of signing statements.