



The Presidency on Trial: Assessing the Limits of Presidential Power

Purpose: As they framed the Constitution, many of the Founding Fathers were wary of a powerful chief executive who might overshadow the legislative branch. By constructing the separation of powers within the federal government with a system of checks and balances, the Framers sought to limit the power of the president. Students will investigate not only the formal checks as laid out in the Constitution, but also explore the informal checks on presidential power that have emerged in the modern era.

Objectives:

1. Students will interpret and analyze song lyrics and relate them to attempts to limit presidential power.
2. Students will identify and evaluate formal constitutional limits as well as informal checks on presidential power.
3. Students will analyze historical examples and identify related formal and informal checks on presidential power.
4. Students will analyze hypothetical presidential decisions and apply their knowledge of formal and informal powers of POTUS.
5. Students will interpret and analyze several political cartoons.

Key Words:

“advice and consent”
impeachment
partisan politics

checks and balances
informal checks
political satire

formal checks
judicial review
public opinion

Materials:

1. Student handout: *Dixie Chicks Bio*.
2. Overhead/Student handout: *Not Ready to Make Nice* lyrics.
3. Student handout: *Not Ready to Make Nice?: The Dixie Chicks and George W. Bush*.
4. Student handout: *Formal Checks on Presidential Powers*.
5. Teacher resource: *Formal Checks on Presidential Powers* answer key.
6. Student handout: *Informal Checks on Presidential Power*.
7. Teacher resource: *Informal Checks on Presidential Power* answer key.
8. Student handout: *Making Connections: The President in Check*.
9. Graphic organizer: *Making Connections: The President in Check*.
10. Teacher resource: *Making Connections: The President in Check* answer key.
11. Overhead: *Political Cartoons*.



12. Student handout: *The President's Authorization of NSA Warrantless Surveillance Program: Is George W. Bush Going Too Far? An Open Forum.*
13. Student handout: *Foreign Intelligence Surveillance Act Frequently Asked Questions (and Answers).*
14. Article: *Administration Paper Defends Spy Program.*
15. Article: *Vital Presidential Power.*
16. Article: *No Checks, Many Imbalances.*
17. Article: *Gore Says Bush Broke the Law With Spying.*
18. Graphic Organizer: *Open Forum Article Analysis.*

Procedure:

1. Warm up: School of Rock – First, ask students what they know about the comment made by the Dixie Chicks about President Bush just prior to when the U.S. military operations began in Iraq in 2003. To help students place the song and the pre-war controversy regarding the Dixie Chicks in context, have students digest the *Dixie Chicks Bio* handout. Then display via overhead or pass out the lyrics and play the song *Not Ready to Make Nice* (2006) by the Dixie Chicks. **(NOTE: YLI strives to create thoughtful, engaging ways to present political concepts. The lyrics to this song may not be appropriate for all classrooms but that decision is left to the educator.)** You can download the music video on <http://www.dixiechicks.com>. Ask students to respond to the following questions:
 - What do you think this song is about i.e. what's going on? (Hint: you may incorporate background information into your answer).
 - What do you think is the overall message of the songwriter?
 - In your opinion, did the Dixie Chicks have a right to criticize the president? Do country music stations and fans have a right to boycott Dixie Chicks' music? Defend your answer.
 - How does this song, or other actions made by entertainers, the media, etc. serve as a check on presidential power?
2. Formal Checks on Presidential Power: Pass out the graphic organizer *Formal Checks on Presidential powers*.
 - Long Version:
 - Divide the class into four teams: 1) Checks by Congress, 2) Article II Limits, 3) Checks by the Judiciary, 4) Constitutional Amendments
 - Using their textbooks and online sources like <http://www.usconstitution.net/const.html>, ask students to brainstorm checks on presidential powers.
 - Then divide class again into at least 4 groups with one member of the original teams in each new group. Students will then teach the other group members the powers of the president and examples.
 - Short Version:
 - Project the PowerPoint "Limits on Presidential Powers" and have students discuss the information and fill in their graphic organizer.



3. Think-Pair-Share: Pass out the handout *Informal Checks on Presidential Powers* and ask students to work with a partner to brainstorm examples of how each can help limit the power of the president. Then bring students back together for class discussion.

Questions for Discussion:

- Evaluate the effectiveness of these informal checks on limiting presidential power.
- How important are informal checks on a president compared to the constitutional checks and balanced?
- Since FDR's administration in the 1930's and 40's, the power of the American Presidency has greatly expanded. Do you see this trend as a positive or negative development? Explain your answer.

Note: To save time you could project informal checks via the companion PowerPoint.

4. Making Connections: The President in Check – Pass out both the handout and graphic organizer for *Making Connections: The President in Check*. Applying their knowledge of formal and informal checks on presidential power, students are asked to evaluate historical examples. Divide students into small groups, and have them discuss the scenarios and record their answers on the graphic organizer. They will then share their findings with rest of the class.
5. Wrap-up: Political Satire – Ask students to define *political satire*. What forms does political satire take (cartoons, parodies, comedy skits ex: *Saturday Night Live*)? Project the political cartoons/pictures via overhead or PowerPoint. Ask students to interpret each cartoon:
 - Describe what's going on in the political cartoon. (Who? What? When? Where?)
 - Identify any symbols (ex: an elephant to represent the Republican Party). portrayed in the cartoon and analyze what they represent.
 - What is the artist's message in the cartoon? What do you think is its purpose?
 - Do you agree or disagree with the cartoonist's message? Explain your answer.
 - What formal and/or informal checks on presidential power are portrayed in this cartoon?

Appendix: PowerPoint Resource

Extension Activity

1. Open Forum: Domestic Spying – This activity requires students to research and then debate the limits of presidential power in the context of a controversial action of the Bush administration regarding alleged "domestic spying." Pass out the student handout *The President's Authorization of NSA Warrantless Surveillance Program – Is George W. Bush Going Too Far?* and divide the class into two teams, one pro and one con.



Team A's Position: President Bush did not exceed his constitutional authority and acted within the law when he authorized the NSA warrant less surveillance program, a.k.a. Terrorist Surveillance Program.

Team B's Position: President Bush's action to authorize the NSA warrant less searches was both unconstitutional and violated the FISA law.

A. Stage 1: Research Stage

- 1) Students will quickly review the constitutional war powers of the president.
- 2) Students will read and discuss either in small groups or with the class as a whole the student handout *Foreign Intelligence Surveillance Act Frequently Asked Questions (and Answers)*.

B. Stage 2: Article Analysis

- 1) In producing arguments to be used during the open forum, each team member should read and analyze the articles below:

Administration Paper Defends Spy Program
Vital Presidential Power
No Checks, Many Imbalances
Gore Says Bush Broke the Law With Spying

C. Stage 3: Forum Debriefing

- 1) Students are now asked to step back from their role in the debate and engage in a full class discussion:
 - What do you see are the strengths of the "pro side," President Bush was constitutionally, legally and morally correct in authorizing the Terrorist Surveillance Program to conduct warrant less searches?
 - Identify the strengths of the "con side," President Bush went too far in authorizing the Terrorist Surveillance Program.
 - How does President Bush actions in this situation compare to those of other presidents (examples: Lincoln, Wilson, FDR, Nixon)?
 - What do you predict will be the outcome of this debate? (Hint: Consider the Supreme Court, Congress, the media, public opinion.)
 - In your view, what should happen regarding the Terrorist Surveillance Program?



Dixie Chicks Bio

Political Controversy

A couple of weeks later, on March 10, 2003, during the run-up to the invasion of Iraq (which would take place on March 20), Natalie Maines (a native of Lubbock, Texas) said between songs during a concert at the Shepherd's Bush Empire theatre in London:

"Just so you know, we're ashamed the President of the United States is from Texas." [1]

Once The Guardian's review of this concert was picked up by U.S. media, controversy erupted. [2] The remark sparked intense criticism from many Americans, on three different grounds: that Maines shouldn't be criticizing the nation's head of state while on foreign territory; that Maines shouldn't be criticizing the military's commander-in-chief while the country was on the verge of war; and that Maines shouldn't be making political statements that would offend the Dixie Chicks' culturally conservative audience base.

Following the uproar and the start of a boycott of their music, the singer attempted to clarify matters on March 12 with the statement "I feel the President is ignoring the opinions of many in the U.S. and alienating the rest of the world."

This statement failed to quiet her critics, and on March 14 she issued an apology stating "As a concerned American citizen, I apologize to President Bush because my remark was disrespectful. I feel that whoever holds that office should be treated with the utmost respect. We are currently in Europe and witnessing a huge anti-American sentiment as a result of the perceived rush to war. While war may remain a viable option, as a mother, I just want to see every possible alternative exhausted before children and American soldiers' lives are lost. I love my country. I am a proud American."

Some fans remained angry and pressed on with a boycott of Dixie Chick music, stations that played their music, and their sponsor Lipton, while other fans were disappointed that she apologized. In one display of anti-Dixie-Chick publicity, former Dixie Chick fans were encouraged to bring their Dixie Chicks CDs so that they could be crushed by a bulldozer. The extent of the backlash resulted in the artists being concerned about their personal safety and that of their families. Bruce Springsteen and Madonna were among those who came out in support of the right of the women to express their opinion. Not one to back down from controversy, even Madonna herself was pressured to cancel the release of her anti-war video "American Life" which featured a Bush-double being murdered by a hand-grenade.

On April 24, the Dixie Chicks launched a publicity campaign to explain their position. During a prime-time interview with TV personality Diane Sawyer, Maines said she remained proud of her original statement. The band also appeared naked (with private parts strategically covered) on the May 2, 2003 cover of Entertainment Weekly magazine with slogans such as "Traitors," "Saddam's Angels," "Dixie Sluts," "Proud Americans," "Hero," "Free Speech," and "Brave" printed on their bodies.

President Bush responded to the controversy surrounding the Dixie Chicks in an interview with Tom Brokaw on April 24:

"[T]he Dixie Chicks are free to speak their mind. They can say what they want to say...[T]hey shouldn't have their feelings hurt just because some people don't want to buy their records when they speak out...[F]reedom is a two-way street...I...don't really care what the Dixie Chicks said. I want to do what I think is right for the American people, and if some singers or Hollywood stars feel like speaking out, that's fine. That's the great thing about America. It stands in stark contrast to Iraq..." [3]



At the first concert of their nation-wide Top of the World Tour the Dixie Chicks received a very positive reception. The concert was held in Greenville, South Carolina on May 1 and was attended by a sell-out crowd of 15,000. The women had come prepared to face up to opposition — and Natalie Maines invited those who had come to boo to do so — but the crowd erupted in cheers. (Tickets for their concert tour had gone on sale well before the controversy erupted, meaning that a cross-section of all their fans was at the concert.)

Nevertheless, the band remained controversial. On May 6, a Colorado radio station suspended two of its disc jockeys for playing music by the Dixie Chicks in violation of a ban on their music. On May 22 at the Academy of Country Music (ACM) awards ceremony in Las Vegas there were boos when the group's nomination for entertainer of the year awards was announced. However, the broadcast's host, Vince Gill, reminded the audience that everyone is entitled to freedom of speech. The Academy made the award to Toby Keith, an outspoken critic of the group. By the time of their August 3 Atlanta show, Natalie remarked they had not heard any boos for a couple shows, but heard some that night, but that was okay, as the Dixie Chicks were all about freedom of speech.

In the fall of 2003 the Dixie Chicks starred in a broadcast TV commercial for Lipton Original Iced Tea which made a tongue-in-cheek reference to the corporate blacklisting and the grassroots backlash: in the tea spot, the Chicks are about to give a stadium concert when the electricity suddenly goes out - but they manage to electrify the stadium all by themselves, belting out a rousing a capella version of "Cowboy Take Me Away" to the raving cheers of the fans.

In a September 2003 interview, Maguire told Der Spiegel magazine: "We don't feel a part of the country scene any longer; it can't be our home any more." She noted a lack of support from country stars, and being shunned at the 2003 ACM awards. "Instead, we won three Grammys against much stronger competition. So we now consider ourselves part of the big rock 'n' roll family." However, in an open letter to fans on the Chicks' website, Maines said that Maguire had been misquoted.

In October 2004, the Dixie Chicks joined the "Vote for Change" tour, playing a series of concerts in American swing states. These concerts were organized by MoveOn.org with the general goal of mobilizing people to vote for John Kerry and against Bush in that year's Presidential campaign. The Dixie Chicks' appearances were joint performances with James Taylor. This effort was unsuccessful in getting Kerry elected, and while the artistic collaboration with Taylor went very well (sharing the stage on many numbers), during the concerts Maines' stage remarks revealed a certain amount of nervousness over what the Dixie Chicks' future career path would be.

As of late 2005, CMT (though not CMT Canada) and country music radio in the United States still seemed to shy away from playing Dixie Chicks songs, but the group had not had any significant promotion or new material out since the controversy, so it was difficult to assess the lasting impact of these events.

Not Ready to Make Nice: The Chicks Return

In September 2005 the Dixie Chicks debuted their song "I Hope" on the Shelter from the Storm: A Concert for the Gulf Coast telethon following Hurricane Katrina, and subsequently made it available as a digital download single with proceeds to benefit hurricane relief.

In January 2006, Entertainment Weekly reported that the Dixie Chicks were going to release their new album in the coming spring. According to the magazine, the Dixie Chicks did not expect that country radio would play their music. Their upcoming album, titled "Taking the Long Way," is now to be released on May 23, 2006. The album was produced by Rick Rubin (who has worked with Red Hot Chili Peppers,



Johnny Cash, System of a Down, Neil Diamond, Beastie Boys, among others) and is publicized to be more rock-intensive than country-oriented.

The first single from their new album, entitled "Not Ready to Make Nice", debuted exclusively on MSN Music on March 16, 2006. [4] [5] It was co-written by all three members (as are all 14 album tracks), alongside Dan Wilson, and is about the political controversy that has surrounded the group. The lyrics include: "I'm not ready to make nice/I'm not ready to back down/I'm still mad as hell and I don't have time to go round and round and round/It's too late to make it right/I probably wouldn't if I could/'Cause I'm mad as hell/Can't bring myself to do what it is you think I should" and, in criticism of the death threats the women (particularly Maines) received, " It's a sad sad story when a mother will teach her daughter that she ought to hate a perfect stranger/And how in the world can the words that I said/Send somebody so over the edge that they'd write me a letter sayin' that I better shut up and sing or my life will be over." In a press release, Robison said, "The stakes were definitely higher on that song. We knew it was special because it was so autobiographical, and we had to get it right. And once we had that song done, it freed us up to do the rest of the album without that burden."

On March 23, 2006, Fox News reported that "according to Billboard's Radio Monitor, the single 'Not Ready to Make Nice' jumped from 54 to 36 in one week, with 3,703 'spins' on country radio alone. The single is also listed as a 94 percent probable success on the Hit Predictor chart." [6] A March 27 Associated Press story indicated that country radio reaction was so far mixed, with some major stations playing it, a few avoiding it, and others adopting a wait-and-see attitude. [7]. By April, the song was a hit on country radio and on country and Hot AC video television in Canada. American radio proved less receptive. However, due to digital sales, the single hit the Billboard Hot 100 at number 28, the week's highest new entry for the week ending May 6, 2006. The following week it nudged up to #23.

Notes

1. Clarke, Betty (2003). "The Dixie Chicks" Guardian Unlimited (accessed April 13, 2006)
2. Campbell, Duncan (2003). "'Dixie sluts' fight on with naked defiance" Guardian Unlimited (accessed April 13, 2006)
3. (2003). <http://www.nytimes.com/2003/04/25/international/worldspecial/25BUSH-TEXT.html?pagewanted=all> (accessed April 13, 2006)
4. Barger, Al (2006). "Single Review: Dixie Chicks - 'Not Ready to Make Nice'" Blogcritics.com (accessed April 13, 2006)
5. (2006). "Dixie Chicks: 'Taking the Long Way'" MSN.com (accessed April 13, 2006)
6. Friedman, Roger (2006). "Dixie Chicks Address Death Threats" Fox News (accessed April 13, 2006)
7. AP (2006). "Radio still uneasy with Dixie Chicks"

Source: http://en.wikipedia.org/wiki/Dixie_chicks

Not Ready to Make Nice

Recorded by the Dixie Chicks, 2006

(written by Natalie Maines, Emily Robison, Martie Maguire, Dan Wilson)



Forgive, sounds good.
Forget, I'm not sure I could.
They say time heals everything,
But I'm still waiting

I'm through, with doubt,
There's nothing left for me to figure out,
I've paid a price, and I'll keep paying

I'm not ready to make nice,
I'm not ready to back down,
I'm still mad as hell
And I don't have time
To go round and round and round
It's too late to make it right
I probably wouldn't if I could
Cause I'm mad as hell
Can't bring myself to do what it is
You think I should

I know you said
Why can't you just get over it,
It turned my whole world around
and I kind of like it

I made by bed, and I sleep like a baby,
With no regrets and I don't mind saying,
It's a sad, sad story
That a mother will teach her daughter that she
ought to hate a perfect stranger.

And how in the world
Can the words that I said
Send somebody so over the edge
That they'd write me a letter
Saying that I better shut up and sing
Or my life will be over

I'm not ready to make nice,
I'm not ready to back down,
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And I don't have time
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Can't bring myself to do what it is
You think I should

Forgive, sounds good.
Forget, I'm not sure I could.
They say time heals everything,
But I'm still waiting

Not Ready to Make Nice? The Dixie Chicks and George W. Bush

1. Just ten days before the start of the War in Iraq in March, 2003, Natalie Maines, lead singer of the Dixie Chicks told an audience in London:

"Just so you know, we're ashamed the President of the United States is from Texas."

- a. In your opinion, did the Dixie Chicks have a right to criticize the president in a time of war?

 - b. Do country music stations and fans have a right to boycott Dixie Chicks' music? Defend your answer.
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2. After listening to the Dixie Chicks' song *Not Ready to Make Nice* and reading the lyrics, what do you think this song is about i.e. what's going on? (Hint: You may incorporate background information from the bio into your answer.)

 3. What do you think is the overall message of the songwriter?

 4. How does this song, or other actions made by entertainers and the media serve as a check on presidential power?



FORMAL CHECKS ON PRESIDENTIAL POWERS

Directions: Using the original constitution as well as amendments, identify limits or checks on presidential power, and provide examples.

Checks by Congress (Article I):

Limits on Presidential Power (Article II):

Checks by the Judiciary (Articles I & III):

Constitutional Amendments Limiting Presidential Power:

FORMAL CHECKS ON PRESIDENTIAL POWERS

Directions: Using the original constitution as well as amendments, identify limits or checks on presidential power, and provide examples.

Online Resource: <http://www.usconstitution.net/const.html>

Checks by Congress (Article I):

- Make laws (ex: War Powers Resolution)
- Impeachment power (House)
- Impeachment trial (Senate)
- Override presidential vetoes
- Power to declare war
- Power of the purse (taxes and funding)
- Make Rules for the Government and Regulation of the land and naval Forces

Limits on Presidential Power (Article II):

- President elected indirectly by the People through the Electoral College
- Selection of President (House) in case of no majority of electoral vote
- Senate approves department appointments
- “advice and consent” of judges of the Supreme Court (Senate)
- Senate approves treaties and ambassadors
- President must deliver State of the Union address

Checks by the Judiciary (Articles I & III):

- Judicial review (*Marbury v. Madison*)
- Chief Justice presides over Presidential impeachment trial (Article I)

Constitutional Amendments Limiting Presidential Power:

- 12th – Choosing President & Vice-President on separate ballots
- 20th – Jan. 20 set as end of term; Presidential succession
- 22nd – Presidential term limits (2 terms; 10 years total)
- 25th – Presidential disability and succession



INFORMAL CHECKS ON PRESIDENTIAL POWER

Directions: Explain how each provides a check on presidential power and provide at least two examples for each.

1. Public Opinion

2. The Media

3. Partisan Politics

4. Investigative Role of Congress (hold hearings)

5. Interest Groups and Non-Government Organizations

INFORMAL CHECKS ON PRESIDENTIAL POWER

Directions: Explain how each provides a check on presidential power, and provide examples (historical or current) to illustrate your generalizations.

1. Public Opinion

Informal Check: The ultimate check of public opinion is at the ballot box. Informally, White House staffs and independent news agencies poll Americans regarding the President's job performance, stand on issues, etc. which often forces presidents to change course in policy.

Examples:

- 1) *LBJ chooses not to run for re-election after public opinion turns against him and the Vietnam War following the Tet Offensive in 1968.*
- 2) *Jimmy Carter lost the 1980 election in part due to his failure to secure the release of Americans hostages in Iran which led directly to deteriorating public support for his presidency.*
- 3) *President George H.W. Bush loses re-election in 1992 due in part to low public opinion of his handling of the economy.*
- 4) *George W. Bush's first nominee to replace retiring Supreme Court justice Sandra Day O'Connor, Harriet Meyers, withdrew her name from consideration largely due to negative public opinion against her nomination.*

2. The Media

Informal Check: The press wields considerable influence over public opinion by choosing what stories to cover, reporting the facts, and expressing opinions.

Examples:

- 1) *Woodward and Bernstein expose the Watergate cover up which ultimately led to Nixon's resignation.*
- 2) *The media reported President Ford's gaffs (ski accidents, falling down steps of Air Force I) which contributed to Ford's image as a bungler.*
- 3) *The press widely reported Bill Clinton's "indiscretions" with Monica Lewinsky and attempt to "spin" the scandal without admitting responsibility.*

3. Partisan Politics

Informal Check: The opposition party scrutinizes and criticizes the policies and decisions of a president and his administration.

Examples:

- 1) *Speaker of the House Newt Gingrich, a republican, clashed with President Clinton over the federal budget in 1995 resulting in a government shutdown.*



2) *Chairman of the Democratic National Committee, Howard Dean, criticizes President Bush over the war in Iraq.*

4. Investigative Role of Congress (hold hearings)

Informal Check: In the age of television, public investigations carried out by Congressional Committees serve to check the president. These investigations support Congress's constitutional role of oversight of the executive branch.

Examples:

- 1) *Congressional investigation of the Iran Contra Affair (Reagan administration), White Water Scandal (Clinton).*
- 2) *Congressional committees investigated intelligence failures after 9-11;*

5. Interest Groups and Non-Government Organizations

Informal Check: These groups attempt to influence and check the president's power through monitoring the President's programs and policy, endorsing or opposing presidential candidates, contributing money to campaigns, etc.

Examples:

- 1) *The ACLU has been very critical of the Bush administration's treatment of detainees at Guantanamo.*
- 2) *The National Right to Life Counsel and other pro-life interest groups opposed President Clinton's veto of the ban on partial birth abortion.*
- 3) *The National Debt Awareness Campaign weekly updates the amount of the national debt incurred by the Bush administration and the Congress.*

Making Connections: The President in Check

Directions: In this activity, your team will discuss the examples below, and analyze who and by what means the president's power is checked. Please consider both formal and informal checks. There may be multiple checks involved. Record your answers on the graphic organizer provided.

1. In 1987, President Reagan nominated conservative federal appeals judge Robert Bork to the U.S. Supreme Court. A hotly contested Senate debate ensued fueled by strong opposition from civil and women's rights groups worried that Bork would vote to reverse key Supreme Court decisions like *Roe v. Wade*. TV ads sponsored by pro-choice interest groups like the National Organization for Women, coupled with intense media exposure aided in the failure of Bork's confirmation in the Senate.
2. In a series of in depth reports, Washington Post reporters Woodward and Bernstein exposed the Nixon White House's involvement in the Watergate break-in and cover-up. After an intensive bipartisan investigation and hearings, the House Judiciary Committee voted to recommend several articles of impeachment against President Nixon. With support in his own party weakening and public opinion against him, Nixon resigned the presidency on August 9, 1974.
3. With public opinion sagging to a new low following the Tet Offensive, President Johnson announced he would not seek re-election in 1968.
4. Republican leaders in the Senate opposed and successfully thwarted President Wilson's efforts to gain ratification of the Treaty of Versailles and America's entrance into the League of Nations after World War I.
5. George Washington established the precedent of serving no more than two terms in office, a tradition broken by FDR when he won his third term in 1940. Concerned that the president could become a "benevolent dictator," threatening the separation of powers, Congress proposed an amendment in 1947 that would limit the president to 2 terms or 10 years. Presidents Eisenhower, Reagan, Clinton and now George W. Bush have been affected by these term limits.
6. Responding to both separation of powers concerns within the legislature and public discontent with how Presidents Johnson and Nixon prosecuted the war in Vietnam, Congress passed the War Powers Resolution in 1973. The WPR attempted to limit the President's ability to wage war without the consent of Congress. The House and Senate were able to override President Nixon's veto by a 2/3 majority. Since its passage in 1973, presidents have reported to Congress 118 instances under the War Powers Resolution. Congress has thus far given its consent to the president 100% of the time.



7. In 1952, the Supreme Court ruled that President Truman did not have the authority to seize steel mines during the Korean War.
8. In 1993, President Clinton proposed a comprehensive health care reform package including universal health care, an effort spearheaded by First Lady, Hillary Clinton. With a Democratic majority in both houses of Congress, passage initially seemed likely. The plan received significant opposition from interest groups (ex: insurance companies, the American Medical Association, National Taxpayers Union), powerful corporations (ex: General Electric, General Motors), and influential members of the Republican party like Newt Gingrich who helped to turn public opinion against the reform. Clinton's plan ultimately died in Congress.
9. Riding the wave of public opinion to curb federal spending, Congress passed the Line Item Veto Act in 1996 that allowed President Clinton and his successors to "cancel" or "nullify" certain provisions of appropriations bills. However, the Supreme Court declared the law unconstitutional because it violated the separation of powers.
10. In 2002, organizations like the Center for Constitutional Rights challenged in court the Bush administration's policy of detaining those identified as enemy combatants (i.e. those captured in Afghanistan, etc. believed to be members of the Taliban or Al Qaeda) indefinitely without access to a lawyer or a trial. In *Rasul v. Bush* (2004), the Supreme Court ruled that those held at Guantanamo Bay, Cuba may have access to the U.S. Court system to challenge their detentions.



Making Connections: The President in Check

Name(s):

Scenario	Formal Check(s)/Rationale	Informal Check(s)/Rationale
#1 Bork Nomination		
#2 Nixon & Watergate		
#3 LBJ Re-election		
#4 Wilson & Treaty of Versailles		
#5 Term Limits		



Scenario	Formal Check(s)/Rationale	Informal Check(s)/Rationale
#6 War Powers Resolution		
#7 Truman & Steel Mills		
#8 Clinton Health Care Reform		
#9 Line Item Veto		
#10 GWB & Detainees		



Making Connections: The President in Check

Teacher resource
Answer key

Scenario	Formal Check(s)/Rationale	Informal Check(s)/Rationale
#1 Bork Nomination	<ul style="list-style-type: none"> Art. II - "advice and consent" of judges of the Supreme Court (Senate) 	<ul style="list-style-type: none"> Interest group influence – TV ads, protests Media – intense coverage of Bork Hearings, etc. Partisan Politics – Democratic majority in Senate thwarted President Reagan ® nomination of Bork to the Court Public opinion ran against Bork as too extreme
#2 Nixon & Watergate	<ul style="list-style-type: none"> Art. I – impeachment power of the House 	<ul style="list-style-type: none"> Media – watchdog role exposing Watergate break in & cover up; TV coverage of hearings Investigative role of Congress – House Judiciary committee investigation Public opinion against Nixon
#3 LBJ Re-election	<ul style="list-style-type: none"> Art. II & 12th Amendment– President elected by Electoral College; indirectly by the People 22nd – Presidential term limits (2 terms; 10 years total) 	<ul style="list-style-type: none"> Public opinion turned against LBJ Media – coverage of Vietnam; Walter Cronkite's opposition to war after Tet Offensive
#4 Wilson & Treaty of Versailles	<ul style="list-style-type: none"> Art. II – Senate must ratify treaties 	<ul style="list-style-type: none"> Partisan Politics – Republican leaders in the Senate (Henry Cabot Lodge, Robert La Follette) worked to defeat Wilson and the Treaty
#5 Term Limits	<ul style="list-style-type: none"> Art. I – primary function of Congress to make laws (proposed Constitutional Amendment) 22nd Amendment - Presidential term limits (2 terms; 10 years total) 	
#6 War Powers Resolution	<ul style="list-style-type: none"> Art. I – power of Congress to make laws Art. I – Congress's power to declare war Art. I – override presidential vetoes 	<ul style="list-style-type: none"> Public opinion opposed to Johnson and Nixon's handling of the war in Vietnam
#7 Truman & Steel Mills	<ul style="list-style-type: none"> Art. III/<i>Marbury v. Madison</i> – judicial review by the Supreme Court 	
#8 Clinton Health Care Reform	<ul style="list-style-type: none"> Art. I – primary function of Congress to make laws even if President proposes it Art. I – Congress's power of the purse to fund programs or not 	<ul style="list-style-type: none"> Interest group influence – significant impact on failure to pass health care plan Partisan Politics – key Republican leaders successfully led the charge against the reform as being too expensive and bordering on socialism Public opinion turned against the plan
#9 Line Item Veto	<ul style="list-style-type: none"> Art. III/<i>Marbury v. Madison</i> – judicial review by the Supreme Court 	
#10 GWB & Detainees	<ul style="list-style-type: none"> Art. III/<i>Marbury v. Madison</i> – judicial review by the Supreme Court 	<ul style="list-style-type: none"> Interest group influence – Center for Constitutional Rights brought the lawsuit on behalf of a detainee

Political Cartoon #1

Title: "Bill Clinton's Christmas present from the U.S. House."



Artist: John Pritchett

Date: unknown

Source: <http://www.pritchettcartoons.com/gift.htm>

1. Describe what's going on in the political cartoon. (Who? What? When? Where?)
2. Identify any symbols (ex: an elephant to represent the Republican Party) portrayed in the cartoon and analyze what they represent.
3. What is the artist's message in the cartoon? What do you think is its purpose?
4. Do you agree or disagree with the cartoonist's message? Explain your answer.
5. What formal and/or informal checks on presidential power are portrayed in this cartoon?

Political Cartoon #2
Title: The Madness of King George



Artist: Drew Sheneman, *The Newark Star Ledger*

Date: December, 2005

Source: <http://www.cagle.com/news/DomesticSpying/1.asp>

1. Describe what's going on in the political cartoon (Who? What? When? Where?)
2. Identify any symbols (ex: an elephant to represent the Republican Party) portrayed in the cartoon and analyze what they represent.
3. What is the artist's message in the cartoon? What do you think is its purpose?
4. Do you agree or disagree with the cartoonist's message? Explain your answer.
5. What formal and/or informal checks on presidential power are portrayed in this cartoon?



THE PRESIDENT’S AUTHORIZATION OF NSA WARRANTLESS SURVEILLANCE PROGRAM: IS GEORGE W. BUSH GOING TOO FAR? An Open Forum

Purpose: This lesson requires students to research and then debate the limits of presidential power in the context of a controversial action of the Bush administration regarding alleged "domestic spying."

Background: Since the attacks of September 11, 2001, the Bush administration, sometimes claiming broad constitutional authority, has taken a number of steps to combat terrorism. To monitor communications traffic between possible terrorist inside or outside the US, the president authorized the National Security Agency to conduct warrant less surveillance of telecommunications of possible terrorists at least partially within the United States. In December, 2005, *The New York Times* made public this program which created a public firestorm. The controversy seems to stem from two main issues:

1. Does the president’s action violate a law passed by Congress in 1978, the Foreign Intelligence Surveillance Act?
2. Did President Bush exceed his constitutional authority in doing so?
3. Given the extenuating circumstances of the threat of terrorist attacks on U.S. soil, did the president do the right thing?

For the purpose of the debate, our class will be divided into two groups, each taking a different stand on the issue:

Team A's position: President Bush did not exceed his constitutional authority and acted within the law when he authorized the NSA warrant less surveillance program a.k.a. Terrorist Surveillance Program.

Team B's position: President Bush’s action to authorize the NSA warrant less searches was both unconstitutional and violated the FISA law.

Stage 1: Research Stage

1. Presidential War Powers Review – Students will quickly review the constitutional war powers of the president.
2. Investigating FISA – Students will read and discuss either in small groups or with the class as a whole the student handout *Foreign Intelligence Surveillance Act Frequently Asked Questions (and Answers)*.
3. Article Analysis - in producing arguments to be used during the open forum, each team member should read and analyze the articles below:
 - “Administration Paper Defends Spy Program”
 - “Vital Presidential Power”
 - “No Checks, Many Imbalances”



- “Gore Says Bush Broke the Law With Spying”

Stage 2: Open Forum

Each side will be allowed to up to four members on the panel to argue its case.

- I. Opening Statement (each side will have up to 5 minutes)
- II. Rebuttal (3 minutes)
- III. Open Forum (involves entire class)

Stage 3: Forum Debriefing

Students are now asked to step back from their role in the debate and engage in a full class discussion:

- What do you see are the strengths of the pro side, which states that President Bush was constitutionally, legally and morally correct in authorizing the Terrorist Surveillance Program to conduct warrant less searches?
- Identify the strengths of the “con-side,” President Bush went too far in authorizing g the Terrorist Surveillance Program.
- How does President Bush actions in this situation compare to those of other presidents (examples: Lincoln, Wilson, FDR, Nixon)?
- What do you predict will be the outcome of this debate? (Hint: consider the Supreme Court, Congress, the media, public opinion)
- In your view, what should happen regarding the Terrorist Surveillance Program?

Foreign Intelligence Surveillance Act

Frequently Asked Questions (and Answers)

Prepared by Lee Tien, Electronic Frontier Foundation Senior Counsel, Sep. 27, 2001

1. What is FISA?

FISA is the Foreign Intelligence Surveillance Act, which establishes a legal regime for "foreign intelligence" surveillance separate from ordinary law enforcement surveillance.

2. What is the purpose of FISA?

FISA is aimed at regulating the collection of "foreign intelligence" information in furtherance of U.S. counterintelligence, whether or not any laws were or will be broken. *See* 50 U.S.C. § 401(a)(3) (defining "counterintelligence" as information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities). Department of Defense (DOD) guidelines state that the purpose of counterintelligence collection is to detect espionage, sabotage, terrorism, and related hostile intelligence activities to "deter, to neutralize, or to exploit them."

In short, counterintelligence and criminal prosecution are different.

3. Is there really a secret FISA court?

Yes. FISA established a special court, composed of seven federal district court judges appointed by the Chief Justice for staggered terms and are from different circuits. *See* 50 U.S.C.A. § 1803. Individual judges of the FISC review the Attorney General's applications for authorization of electronic surveillance aimed at obtaining foreign intelligence information. The proceedings are nonadversarial and are based solely on the DOJ's presentations through its Office of Intelligence Policy and Review.

The records and files of the cases are sealed and may not be revealed even to persons whose prosecutions are based on evidence obtained under FISA warrants, except to a limited degree set by district judges' rulings on motions to suppress. 50 U.S.C. §1803(c). There is no provision for the return of each executed warrant to the FISC, much less with an inventory of items taken, nor for certification that the surveillance was conducted according to the warrant and its "minimization" requirements.

The FISC meets two days monthly, and two of the judges are routinely available in the Washington, D.C. area on other days.

4. What kind of surveillance can be authorized under FISA?

Originally, FISA was limited to electronic eavesdropping and wiretapping. In 1994 it was expanded to permit covert physical entries in connection with "security" investigations. In



1998, it was amended to permit pen/trap orders. FISA can also be used to obtain certain business records. §§ 1861-62.

5. What is the basic "trigger" for permitting FISA surveillance?

Under FISA, surveillance is generally permitted based on a finding of probable cause that the surveillance target is a foreign power or an agent of a foreign power -- not whether criminality is in any way involved.

6. So FISA doesn't treat aliens and U.S. citizens equally?

If the target is a "U.S. person," which includes permanent resident aliens and associations and corporations substantially composed of U.S. citizens or permanent resident aliens, there must be probable cause to believe that the U.S. person's activities "may" or "are about to" involve a violation of the criminal statutes of the United States: a) knowingly engages in activities in preparation for sabotage or "international terrorism" on behalf of a foreign power; b) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States; c) knowingly assumes a false or fraudulent identity for or on behalf of a foreign power. A "United States person" may not be determined to be an agent of a foreign power "solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

7. How does FISA work?

Under FISA, requests for counterintelligence warrants are funneled through the Justice Department, which reviews applications by the CIA as well as other agencies before submitting them to the FISA court. Each application to the FISA court must first be personally approved by the Attorney General.

For U.S. persons, the FISC judge must find probable cause that one of four conditions has been met: (1) the target knowingly engages in clandestine intelligence activities on behalf of a foreign power which "may involve" a criminal law violation; (2) the target knowingly engages in other secret intelligence activities on behalf of a foreign power pursuant to the direction of an intelligence network and his activities involve or are about to involve criminal violations; (3) the target knowingly engages in sabotage or international terrorism or is preparing for such activities; or (4) the target knowingly aids or abets another who acts in one of the above ways.

Courts have attached conditions to the executive's use of warrantless surveillance, including the requirement that the President or Attorney General authorize the search, the search targets a foreign power or its agents, and the primary purpose of the search is to gather foreign intelligence information.

An order of the FISC may approve electronic surveillance of an agent of a foreign power for ninety days and of a foreign power for a year. Extensions may be granted on the same terms, except that targets who are foreign powers may be subject to surveillance for an additional



year if there is probable cause to believe that no communication of any U.S. person will be acquired.

8. Does FISA authorize surveillance without a court order?

Yes. In general, the Justice Department may engage in electronic surveillance to collect FII without a court order for periods up to one year. Such electronic surveillance must be certified by the Attorney General and then noticed to the Senate and House intelligence committees. In emergencies, the Attorney General may authorize immediate surveillance but must "as soon as practicable, but not more than twenty-four hours" later, seek judicial review of the emergency application.

Adapted Source: http://www.eff.org/Censorship/Terrorism_militias/fisa_faq.html

Questions for Discussion

1. Identify the key elements or important facts regarding the Foreign Intelligence Surveillance Act.
2. What are the strengths of FISA in terms of our democracy?
3. What inherent weaknesses do you see with the law after 9-11?
4. What changes, if any, should be made to the current law?

Administration Paper Defends Spy Program

Detailed Argument Cites War Powers

By Carol D. Leonnig, Washington Post Staff Writer

Friday, January 20, 2006; A01

The Bush administration argued yesterday that the president has inherent war powers under the Constitution to order warrantless eavesdropping on the international calls and e-mails of U.S. citizens and others in this country, offering the administration's most detailed legal defense to date of its surveillance program.

The Justice Department's lengthy legal analysis also says that if a 1978 law that requires court warrants for domestic eavesdropping is interpreted as blocking the president's powers to protect the country in a time of war, its constitutionality is doubtful and the president's authority supersedes it.

Many experts on intelligence and national security law have concluded that the president overstepped his authority, and that the 1978 Foreign Intelligence Surveillance Act specifically prohibits such domestic surveillance without a warrant.

The legal justifications were laid out in a 42-page white paper sent to Congress yesterday by Attorney General Alberto R. Gonzales. The administration has offered many of the same arguments orally in defending the program since its existence was disclosed last month.

For example, Gonzales asserted that the president's power to protect the country with surveillance was reaffirmed when Congress passed a resolution in October 2001 that authorized the president to use military force against al Qaeda and to deter future terrorist attacks.

"The program was designed to be protective of civil liberties," Steven G. Bradbury, acting assistant attorney general for the department's Office of Legal Counsel, said yesterday in a briefing with reporters. "It's not a blank check that says the president can do whatever he wants." Bradbury said the president has a special role -- and duty -- to take whatever military action is needed to counter attacks on the United States, and those actions necessarily include intercepting telecommunications and e-mail.

"When it comes to responding to external threats to the country . . . the government would like to have a single executive who could act nimbly and agilely," Bradbury said.

The Justice Department document was issued as the administration continued to contend with criticism of the eavesdropping program, which is operated by the National Security Agency. Democratic members of Congress plan hearings starting today on the classified program, which began shortly after the Sept. 11, 2001, attacks. Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) has also announced plans for hearings.

In the past two weeks, the nonpartisan Congressional Research Service has released two reports suggesting significant legal flaws in the president's program. One analysis concluded that the warrantless surveillance effort directly conflicts with Congress's intentions in passing the FISA



law. It also found that the rest of the administration's legal justifications were "not as well-grounded" as the administration asserted.

A second CRS report, released Tuesday, concluded that the administration appears to have violated a national security law by failing to brief the full House and Senate intelligence committees on the program in 2001. The administration limited its briefings instead to the two most senior members on each committee.

Also on Tuesday, two civil liberties groups filed separate lawsuits challenging the program. The American Civil Liberties Union and the Center for Constitutional Rights assert that President Bush exceeded his power, violated the privacy rights of U.S. citizens and broke the FISA law when he authorized the program in an effort to find out if secret al Qaeda cells were plotting inside the United States.

Yesterday, ranking Democrats on the Senate and House intelligence committees, Sen. John D. Rockefeller IV (W.Va.) and Rep. Jane Harman (Calif.), along with Senate Minority Leader Harry M. Reid (Nev.) and House Minority leader Nancy Pelosi (Calif.), sent a letter to Vice President Cheney demanding that the full committee be briefed on such intelligence activities in the future.

In its legal analysis, the Justice Department contends that "the broad language" of Congress's authorization to use force "affords the President, at a minimum, the discretion to employ the traditional incidents of the use of military force," including the warrantless surveillance program.

The Justice Department also argues that the inherent presidential powers in Article II of the Constitution -- to wage war -- cannot be abridged or impeded in the context of a global terrorism fight. Justice lawyers say they believe that the president's powers are consistent with FISA but that if there is any question of a conflict, the president's powers trump FISA.

But James Bamford, an expert on U.S. intelligence and the author of two books considered primers on the NSA, said the Justice Department's arguments are refuted by Congress's clear intent in 1978 to block warrantless surveillance and by its lack of intent to suggest such surveillance in October 2001.

"You could review the entire legislative history in the authorization to use military force and I guarantee you won't find one word about electronic surveillance," Bamford said. "If you review the legislative history of FISA, you will find Attorney General Griffin Bell testifying before the intelligence committee saying this was specifically passed to prevent a president from claiming inherent presidential powers to do this again."

Anthony D. Romero, ACLU executive director, said Bush and Gonzales are manufacturing legal justifications but the program remains in violation of the constitutional amendments protecting free speech and privacy.

Source: <http://www.washingtonpost.com/>

Vital Presidential Power

By William Kristol and Gary Schmitt
Tuesday, December 20, 2005; A31

A U.S. president has just received word that American counterterrorist operatives have captured a senior al Qaeda operative in Pakistan. Among his possessions are a couple of cell phones -- phones that contain several American phone numbers. In the wake of Sept. 11, 2001, what's a president to do?

If the president were taking the advice offered by some politicians and pundits in recent days, he would order the attorney general to go to the Foreign Intelligence Surveillance Court. The attorney general would ask that panel of federal judges for a warrant under the Foreign Intelligence Surveillance Act (FISA) to begin eavesdropping on those telephone numbers, to determine whether any individual associated with those numbers was involved in terrorist activities.

But the attorney general might have to tell the president he might well not be able to get that warrant. FISA requires the attorney general to convince the panel that there is "probable cause to believe" that the target of the surveillance is an agent of a foreign power or a terrorist. Yet where is the evidence to support such a finding? Who knows why the person seized in Pakistan was calling these people? Even terrorists make innocent calls and have relationships with folks who are not themselves terrorists.

The difficulty with FISA is the standard it imposes for obtaining a warrant aimed at a "U.S. person" -- a U.S. citizen or a legal alien: The standard suggests that, for all practical purposes, the Justice Department must already have in hand evidence that someone is a problem before they seek a warrant.

Consider the case of Zacarias Moussaoui, the French Moroccan who came to the FBI's attention before Sept. 11 because he had asked a Minnesota flight school for lessons on how to steer an airliner, but not on how to take off or land. Even with this report, and with information from French intelligence that Moussaoui had been associating with Chechen rebels, the Justice Department decided there was not sufficient evidence to get a FISA warrant to allow the inspection of his computer files. Had they opened his laptop, investigators might have begun to unwrap the Sept. 11 plot. But strange behavior and merely associating with dubious characters don't rise to the level of probable cause under FISA.

This is presumably one reason why President Bush decided that national security required that he not simply follow the strictures of the 1978 foreign intelligence act, and, indeed, it reveals why the issue of executive power and the law in our constitutional order is more complicated than the current debate would suggest. It is not easy to answer the question whether the president, acting in this gray area, is "breaking the law." It is not easy because the Founders intended the executive to have -- believed the executive needed to have -- some powers in the national security area that were extralegal but constitutional.

Following that logic, the Supreme Court has never ruled that the president does not ultimately have the authority to collect foreign intelligence -- here and abroad -- as he sees fit. Even as



federal courts have sought to balance Fourth Amendment rights with security imperatives, they have upheld a president's "inherent authority" under the Constitution to acquire necessary intelligence for national security purposes. (Using such information for criminal investigations is different, since a citizen's life and liberty are potentially at stake.) So Bush seems to have behaved as one would expect and want a president to behave. A key reason the Articles of Confederation were dumped in favor of the Constitution in 1787 was because the new Constitution -- our Constitution -- created a unitary chief executive. That chief executive could, in times of war or emergency, act with the decisiveness, dispatch and, yes, secrecy, needed to protect the country and its citizens.

That is why the president uniquely swears an oath -- prescribed in the Constitution -- to preserve, protect and defend the Constitution. Implicit in that oath is the Founders' recognition that, no matter how much we might wish it to be case, Congress cannot legislate for every contingency, and judges cannot supervise many national security decisions. This will be especially true in times of war.

This is not an argument for an unfettered executive prerogative. Under our system of separated powers, Congress has the right and the ability to judge whether President Bush has in fact used his executive discretion soundly, and to hold him responsible if he hasn't. But to engage in demagogic rhetoric about "imperial" presidents and "monarchic" pretensions, with no evidence that the president has abused his discretion, is foolish and irresponsible.

William Kristol is editor of the Weekly Standard. Gary Schmitt is a resident scholar at the American Enterprise Institute.

Source: <http://www.washingtonpost.com/>

No Checks, Many Imbalances

By George F. Will

Thursday, February 16, 2006; A27

The next time a president asks Congress to pass something akin to what Congress passed on Sept. 14, 2001 -- the Authorization for Use of Military Force (AUMF) -- the resulting legislation might be longer than Proust's "Remembrance of Things Past." Congress, remembering what is happening today, might stipulate all the statutes and constitutional understandings that it does *not* intend the act to repeal or supersede.

But, then, perhaps no future president will ask for such congressional involvement in the gravest decision government makes -- going to war. Why would future presidents ask, if the present administration successfully asserts its current doctrine? It is that whenever the nation is at war, the other two branches of government have a radically diminished pertinence to governance, and the president determines what that pertinence shall be. This monarchical doctrine emerges from the administration's stance that warrant less surveillance by the National Security Agency targeting American citizens on American soil is a legal exercise of the president's inherent powers as commander in chief, even though it violates the clear language of the 1978 Foreign Intelligence Surveillance Act, which was written to regulate wartime surveillance.

Administration supporters incoherently argue that the AUMF also authorized the NSA surveillance -- and that if the administration had asked, Congress would have refused to authorize it. The first assertion is implausible: None of the 518 legislators who voted for the AUMF has said that he or she then thought it contained the permissiveness the administration discerns in it. Did the administration, until the program became known two months ago? Or was the AUMF then seized upon as a justification? Equally implausible is the idea that in the months after Sept. 11, Congress would have refused to revise the 1978 law in ways that would authorize, with some supervision, NSA surveillance that, even in today's more contentious climate, most serious people consider conducive to national security.

Anyway, the argument that the AUMF contained a completely unexpressed congressional intent to empower the president to disregard the FISA regime is risible coming from this administration. It famously opposes those who discover unstated meanings in the Constitution's text and do not strictly construe the language of statutes.

The administration's argument about the legality of the NSA program also has been discordant with its argument about the urgency of extending the USA Patriot Act. Many provisions of that act are superfluous if a president's wartime powers are as far-reaching as today's president says they are.

And if, as some administration supporters say, amending the 1978 act to meet today's exigencies would have given America's enemies dangerous information about our capabilities and intentions, surely FISA and the Patriot Act were both informative. Intelligence professionals reportedly say that the behavior of suspected terrorists has changed since Dec. 15, when the New York Times revealed the NSA surveillance. But surely America's enemies have assumed that our technologically sophisticated nation has been trying, in ways known and unknown, to eavesdrop



on them.

Besides, terrorism is not the only new danger of this era. Another is the administration's argument that because the president is commander in chief, he is the "sole organ for the nation in foreign affairs." That non sequitur is refuted by the Constitution's plain language, which empowers Congress to ratify treaties, declare war, fund and regulate military forces, *and make laws "necessary and proper" for the execution of all presidential powers* . Those powers do not include deciding that a law -- FISA, for example -- is somehow exempted from the presidential duty to "take care that the laws be faithfully executed."

The administration, in which mere obduracy sometimes serves as political philosophy, pushes the limits of assertion while disdaining collaboration. This faux toughness is folly, given that the Supreme Court, when rejecting President Harry S Truman's claim that his inherent powers as commander in chief allowed him to seize steel mills during the Korean War, held that presidential authority is weakest when it clashes with Congress.

Immediately after Sept. 11, the president rightly did what he thought the emergency required, and rightly thought that the 1978 law was inadequate to new threats posed by a new kind of enemy using new technologies of communication. Arguably he should have begun surveillance of domestic-to-domestic calls -- the kind the Sept. 11 terrorists made.

But 53 months later, Congress should make all necessary actions lawful by authorizing the president to take those actions, with suitable supervision. It should do so with language that does not stigmatize what he has been doing, but that implicitly refutes the doctrine that the authorization is superfluous.

georgewill@washpost.com

Source: <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/15/AR2006021502003.html>

Gore Says Bush Broke the Law With Spying

Warrantless Surveillance an Example of 'Indifference' to Constitution, He Charges

By Chris Cillizza

Special to The Washington Post

Tuesday, January 17, 2006; A03

Former vice president Al Gore accused President Bush of breaking the law by authorizing wiretaps on U.S. citizens without court warrants and called on Congress yesterday to reassert its oversight responsibilities on a "shameful exercise of power" by the White House.

"The president of the United States has been breaking the law repeatedly and insistently," Gore said in a speech at Constitution Hall in Washington. "A president who breaks the law is a threat to the very structure of our government."

To restore a system of checks and balances to government, Gore proposed appointing a special counsel to look into the domestic surveillance program, developing new whistle-blower protections and not extending the Patriot Act. He urged members of Congress, only one of whom -- Sen. Dianne Feinstein (D-CA.) -- was present, to "start acting like the independent and coequal branch of government you're supposed to be."

On the holiday marking the 77th birthday of the Rev. Martin Luther King Jr., Gore drew a parallel between the FBI's eavesdropping on the civil rights leader and the current eavesdropping by the National Security Agency on communications between Americans and what Bush has said are suspected terrorists.

He also sought to cast the domestic surveillance program as simply the latest extension of a "truly breathtaking expansion of executive power" by the Bush administration. Gore said this began when the White House used incorrect intelligence about whether Iraq possessed weapons of mass destruction to justify invading it and has continued through the Abu Grab prisoner-abuse scandal and the debate over whether torture may be used to extract information from detainees.

"The disrespect embodied in these apparent mass violations of the law is part of a larger pattern of seeming indifference to the Constitution that is deeply troubling to Americans in both political parties," Gore said. The Bush administration's actions have "brought our republic to the brink of a dangerous breach in the fabric of the Constitution," he added.

While Gore's denunciation of the administration's domestic surveillance program drew cheers from the crowd at the event, sponsored by the Liberty Coalition and the American Constitution Society, national public polling shows that Americans remain divided on the issue.

In the latest Washington Post-ABC News poll, 51 percent said that "wiretapping of telephone calls and e-mails without court approval" was an acceptable tool for the federal government to use when investigating terrorism. Forty-seven percent said it was unacceptable for the government to use those methods in order to catch suspected terrorists.

Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) has called Attorney General



Alberto R. Gonzales to testify at a hearing about the eavesdropping program. Specter said Sunday that if Bush broke the law in authorizing wiretaps without going through the Foreign Intelligence Surveillance Act court to get warrants, he could face impeachment.

"I'm not suggesting remotely that there's any basis" for impeachment, Specter told George Stephanopoulos on ABC's "This Week." "After impeachment, you could have a criminal prosecution, but the principal remedy, George, under our society is to pay a political price."

Tracey Schmitt, a spokeswoman for the Republican National Committee, dismissed Gore's speech as headline-hunting. "Al Gore's incessant need to insert himself in the headline of the day is almost as glaring as his lack of understanding of the threats facing America," Schmitt said.

Although Gore devoted the vast majority of his speech to the controversy over domestic spying, he did make time to advocate several policy initiatives he has championed, most notably on global warming and the corrosive influence of television on political discourse. He steered away from any discussion of his future national ambitions, offering only a wry smile in response to a "Gore '08" shout from a man in the crowd.

Cillizza is a staff writer for [washingtonpost.com](http://www.washingtonpost.com)

Source: <http://www.washingtonpost.com/>

Open Forum: Article Analysis

Name: _____

Article Title/Author/ Publication/Date	Author's Bias (ex: conservative? liberal? Pro-Bush? Anti-Bush?)	Points That Support Pro-Domestic Spying Position	Points That Support Con-Domestic Spying Position