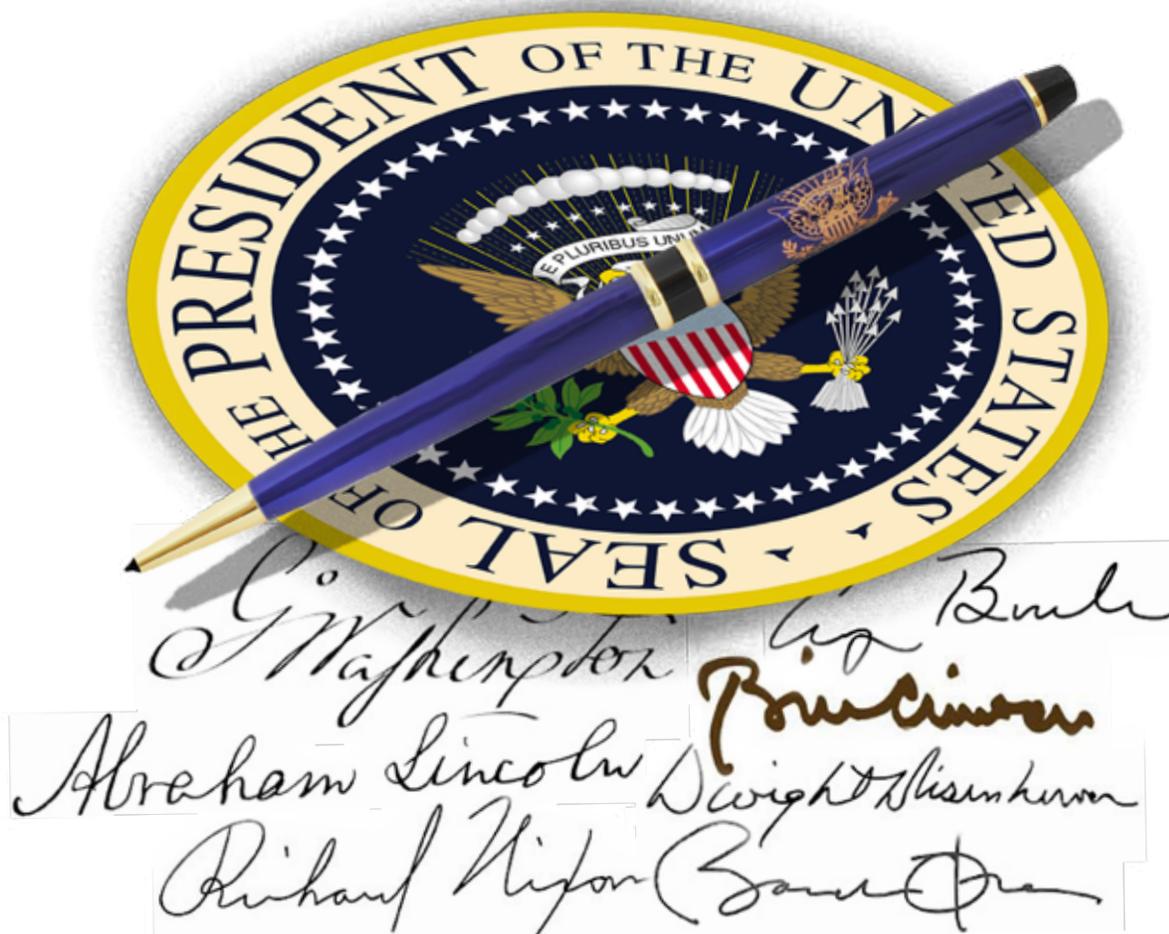


An Integrated Curriculum For The Washington Post Newspaper In Education Program

Executive Privilege



- Student Activity: What is Executive Privilege?
- e-Replica Activity: A Civil Duty | Media and Federal Officials
Honoring the Public Trust
- Teacher Resource: Who are All the President's Men?
- Student Activity: Is Investigative Reporting Alive in Today's Media?

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The Constitution of the United States grants powers and responsibilities to the president and the executive branch. Although Article II does not specifically use the term “executive privilege,” every president since George Washington has invoked the responsibility to “take Care that the Laws be faithfully executed” and other duties fulfilled. This includes refusal to share documents with Congress and the judiciary.



Washington refused to share documents related to a disastrous military expedition against Native Americans in

1791 (“refuse those the disclosure of which would injure the public”), diplomatic correspondence between the U.S. and France in 1794, and documents related to the Jay Treaty in 1796.

President Dwight Eisenhower was the first to use the term “executive privilege” when withholding documents — more than 40 times. It is considered a legitimate practice when it relates to national security, the public interest and investigations requiring secrecy.

Questions surround executive privilege: To what extent do the constitutional powers of the president include executive privilege? Who is right when secrecy needs of the executive clash with Congress’s oversight and investigative duties? When President Richard Nixon invoked executive privilege in order to maintain his ownership and control of access to White House documents and secret tapes, how was each succeeding presidency influenced? What actions of the national and state executive branches are legitimate uses of executive privilege?

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What Is Executive Privilege?

President George Washington refused to provide all of the documents related to negotiations surrounding the Jay Treaty of 1795. This is a precedent for what became known as executive privilege. Scholars believe President Dwight D. Eisenhower in 1954 was the first president to use the phrase “executive privilege.”

Define “executive privilege.”

President Richard M. Nixon Invokes Executive Privilege

1. On July 7, 1973, President Richard Nixon invoked executive privilege. He refused to testify before the Senate Watergate Committee. He would not provide access to White House documents.

For context, read “President Taped Talks, Phone Calls; Lawyer Ties Ehrlichman to Payments” by Lawrence Meyer, July 17, 1973.

http://www.washingtonpost.com/politics/president-taped-talks-phone-calls-lawyer-ties-ehrllichman-to-payments/2012/06/04/gJQAc9CCJV_story.html

2. July 23-26, 1973, President Nixon would not provide the Watergate special prosecutor or Senate Watergate Committee presidential documents nor the secret presidential tape recordings. He stated executive privilege is essential to maintaining the constitutional separation of powers between the executive and legislative branches of government.

Read and discuss “President Refuses to Turn Over Tapes; Ervin Committee, Cox Issue Subpoenas” by Carroll Kilpatrick, July 24, 1973. http://www.washingtonpost.com/politics/president-refuses-to-turn-over-tapes-ervin-committee-cox-issue-subpoenas/2012/06/04/gJQAWfG9IV_story.html

- Summarize the context in which the events of July 23-26 took place.
- Who presents different points of view on executive privilege in this *Washington Post* article?
- What are the different positions taken?

Explore Presidential Use of Executive Privilege

Research the stand that each of these American presidents took on executive privilege. Include in your report the incident(s) that elicited the president’s position, the arguments given and the result of the stance taken.

George W. Bush
Jimmy Carter
Grover Cleveland

Bill Clinton
Dwight David Eisenhower
Ronald Reagan

Executive Privilege for the Executive Branch and Governors

1. Read *The Washington Post*. Locate examples of the president, members of the executive branch or governors invoking executive privilege. Summarize the example. Be sure to include date, page reference or URL, headline and writer.
2. What do you think about this use of executive privilege?

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Inside e-Replica

A Civil Duty | *Media and Federal Officials Honoring the Public Trust*

Federal employees are expected to exercise ethical conduct and apply standards as they perform their official duties. Begin at the website of one of the three branches of the Federal Government.

Executive Branch: <http://www.whitehouse.gov/our-government/executive-branch>

Legislative Branch: <http://www.house.gov/> or <http://www.senate.gov/>

Judicial Branch: <http://www.supremecourt.gov/>

Select an individual currently working for that branch. Choose anyone you wish. Avoid choosing a government official who is so prominent that he or she is mentioned frequently in the news — the president, speaker of the house, majority or minority leader of the Senate or House. An ideal choice might be your own member of Congress, an agency head, a senior adviser to the president or a Supreme Court justice.

Once you have selected the person, research and answer the following questions:

1. Who is this person? Which of the three branches of government employs him or her? Did this individual have to take an oath prior to assuming office and, if so, what was the text of that oath? Provide a brief biography including where the person was born or resided prior to assuming office, where he or she was educated, and type of education he or she received. What other positions has this person held before assuming his or her current position?
2. When did the person take office? What are the individual's most significant actions or achievements to date?
3. How did the person obtain this position? Was the individual elected? If so, who elected him or her, and by what margin did the person defeat his or her opponent(s)? If appointed, who appointed this individual and did the appointment require approval or confirmation from one of the other branches of government?
4. Using the search feature in *The Washington Post* e-Replica edition and at least one other newspaper or news site, follow and report on the activities of the individual you have selected over a given period of time (a month, three months, the semester, the school year). Be careful to record the facts of what the person has done and not his or her opinion. What were, for example, the laws or regulations the person passed or helped pass? In a conclusion section, give your personal reaction to the person's actions and fulfillment of the oath of office and ethical standards.



Properly cite — publication, writer, date, headline and other required bibliographic information — when reporting on the various activities of the person you are following.

At the end of the assigned time period, you should have summaries of the person's public life and a section on conclusions regarding whether the person fulfilled the requirements of his or her job. Based on his or her actions in office, does the person seem to be honoring the oath he or she took? Why or why not? Having followed the activities of this individual, what is your opinion of a vigilant media?

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Who Are All the President's Men?

Bob Woodward and Carl Bernstein were not the only *Washington Post* staff to cover the Watergate story. Many other *Post* reporters, editors and researchers worked to get the facts and confirm the facts. Yet, Woodward and Bernstein are inextricably linked to Watergate. In part, this is due to their co-writing *All the President's Men* and *The Final Days*.

Readers get a sense of investigative journalism at the highest level when reading *All the President's Men*. There is an understanding of the importance of the First Amendment and the Constitution of the United States. Readers gain an insight into the tedium of careful information gathering and the tenacity of a president invoking his executive privilege.

Before reading *All the President's Men*, review the “Cast of Characters” at the beginning of the book. This may be supported with an online review of key players found at www.washingtonpost.com/watergate. Also take a tour of main locations found in the book. See “*All the President's Men* Virtual Tour” in this curriculum guide.

The Importance of a Title

After reading the true account, lead a discussion about the book's title. Explain that the title of the book is an allusion to the Humpty Dumpty nursery rhyme that was also used by author Robert Penn Warren when writing his novel *All the King's Men*, published in 1946. Students should be encouraged to re-read the nursery rhyme and read about Warren's novel. Discuss why Woodward and Bernstein chose this title for their nonfiction account of the Watergate story.

Questions would include:

- Who are some of the “President's Men” the title refers to?
- What were their duties? Students may refer to the “Cast of Characters” at the beginning of the book if they need a reminder.
- How important was loyalty to the president to them?

Woodward and Bernstein dedicate their book to “... the President's other men and women — in the White House and elsewhere — who took risks to provide us with confidential information. Without them there would have been no Watergate story told by *The Washington Post*.” Ask students to identify who from the “Cast of Characters” falls into the category of having taken such risks. Discuss the significance of their decisions.

The Meaning of Oaths of Office

The person elected to lead the Executive Branch of the United States government takes an oath of office as proscribed in the U.S. Constitution: “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.” (<http://americanhistory.si.edu/presidency/1b2.html>) Individuals working for the Executive Branch must take similar oaths (<http://www.law.cornell.edu/uscode/text/5/3331>). Discuss with students whether President Nixon and members of his administration — in addition to committing crimes — may have violated their oaths.

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Have students research the oaths that other employees of the Federal Government — whether elected or appointed — may have to take. How do they differ from one another? What do they have in common?

Do students think oaths are important or necessary? Why or why not? Have any of the students ever had to take an oath? What were the circumstances? If so, do they remember the text of the oath? Is it something they were uncomfortable doing? Did they “live up to” the oath they took?

Media’s Responsibility to Get It Right

As young, relatively inexperienced reporters working on such an important story, there was increased pressure on Woodward and Bernstein to get the facts of the story right. How can good editors help in this regard?

Who is the watchdog of the press? Who keeps the press accountable? The “Corrections” notice on A2 in *The Washington Post* is one way the press acknowledges it made a mistake — whether in spelling or identifying individuals, dates, names of organizations or job within groups or misattribution of quotations.

Look at the corrections in today’s *Washington Post*.

- How many corrections are given?
- Are these major or minor errors?
- How are bigger errors handled?
- How are online errors corrected?

What responsibility do readers have in this regard? Examine the Letters to the Editor and the Free for All just before the editorial pages in the back of the Main News Section of the Saturday *Washington Post*. How many of the errors highlighted are factual errors and how many are differences in point of view? Are any of those writing the subject of the story or op-ed they are referencing or experts in the subject of the story?

The Press Today as a Watchdog

Explore the role of the press in informing the public as to whether public officials are doing their jobs and honoring their commitments. Use print and online, television and radio sources for news.

- Find examples of each medium reporting on public officials.
- Discuss responsibilities of the press and application of the First Amendment.
- Relate today’s media role to the role of the press/media during the Watergate era.

The Press and Watergate

<http://ajrarchive.org/article.asp?id=3735>

Watergate Revisited

<http://www.columbia.edu/itc/journalism/j6075/edit/readings/watergate.html>

Watergate Case Study

<http://newseum.org/news/2012/06/break-in-at-the-watergate.html>

40 Years Ago in News History: Break-in at the Watergate

<http://newseum.org/digital-classroom/video/default.aspx>

Watergate

<http://www.npr.org/templates/story/story.php?storyId=4679745>

Veteran Watergate Reporters Looking for Respect

<http://www.history.com/topics/watergate>

Watergate Scandal

Is Investigative Reporting Alive in Today's Media?

A great deal has changed since the days of Watergate, but many things have remained the same. Advances in technology — in particular the advent of the Internet — have made it easier for investigative reporters to gather information. At the same time, the Internet has impacted the finances of news organizations. The proliferation of blogs and “citizen journalists” along with the 24-hour news cycle have made it harder for readers to discern what is truth and what is fiction or hearsay. Former *Washington Post* Executive Editor Len Downie lays out the contemporary challenges of investigative journalism while putting the Watergate story in historical perspective.

Read “Forty years after Watergate, investigative journalism is at risk” by Leonard Downie Jr. Downie is the Weil family professor of journalism at Arizona State University’s Walter Cronkite School of Journalism and Mass Communication and vice president at large of *The Washington Post* where he worked for 44 years. He was *The Post*’s executive editor from 1991 to 2008.

Answer the following questions.

1. What are some of the historical events Downie cites that helped investigative journalism flourish in the 60’s and 70’s?
2. What are some of the qualities of good investigative journalism employed by Woodward and Bernstein as noted by Downie?
3. Why is investigative journalism so much more expensive for news organizations than other types of journalism?
4. What are some of the factors that make investigative journalism more difficult today than it was for Woodward and Bernstein?
5. How has technology changed the way investigative journalism is practiced?
6. Are there examples of investigative journalism in today’s *Washington Post*? What are the stories about and what is the potential impact or change that may result from this reporting?