Answer Keys

Handout A: Department of Justice Summary of the Patriot Act

As they annotate their copies of this document, students may list constitutional principles and goals of government including republicanism, separation of powers, protection against unreasonable search and seizure, protection of free speech, justice, providing for the common defense, and promoting the general welfare.

Handout B: Preamble and Fourth Amendment

1. Answers will vary, but may include the following points:
   - Protection against unreasonable searches and seizures was clearly one of the “blessings of liberty” that the Framers of the Constitution and Bill of Rights had in mind.
   - The requirement of specific warrants issued by judges supports the goal of establishing justice.
   - Complaint against the British crown’s use of writs of assistance and general warrants was a well-known colonial grievance, perhaps most famously highlighted by James Otis. Protection against such procedures was essential to form a more perfect union, insure domestic tranquility, and promote the general welfare of the people.
   - Additional constitutional principles suggested by both documents are liberty, limited government, rule of law, natural rights, due process, and representative government.

2. It may seem easier to provide for the common defense if authorities are not bound by due process. However, can the government provide for the common defense if it alienates the very people whose support it needs?

Handout C: Senator Rand Paul’s Letter of Opposition to the Patriot Act

February 15, 2011

Passage 1

1. Writs of assistance were general warrants that were issued by British soldiers in colonial America without judicial review and that did not name the subject or items to be searched. Otis objected to these writs of assistance because they “placed the liberty of every man in the hands of every petty officer.”

2. “Fundamental principles” might include liberty, natural rights, limited government, due process (including freedom from unreasonable search and seizure), separation of powers, rule of law, justice, freedom of speech, and others

Passage 2

1. National Security Letters, or NSLs, from FBI agents took the place of warrants issued by judges. The FBI might use them in order to save time in urgent situations, or they might represent a pretext for abuse of power in some other situations. NSLs are very similar to writs of assistance because they remove any check on the officer conducting the search. They allow “fishing expeditions” where
officers can make up their own rules for the search, and violate the principles of liberty, limited government, separation of powers, rule of law and due process. It would seem that NSLs are simply a modern version of general warrants.

2. The Court’s (7-2) decision in *Carroll v. United States* (1925) upholding the requirement of probable cause for a search of a vehicle repudiates the reasoning behind modern NSLs. Principles of government include limited government, rule of law, due process, freedom from unreasonable search and seizure, and others.

Passage 3

1. Under a sunset provision, the following provisions of the Patriot Act were to expire unless reauthorized by Congress and the President.

   • Section 215 allowing the government to obtain records, “any tangible thing,” from a person or entity by making only the minimal showing of “relevance” to an international terrorism or espionage investigation.

   • Section 206, the “roving wiretap” provision of the Patriot Act

   • Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004, or the so-called “Lone Wolf” provision (Note—this one is not mentioned in the passage, but this is the third provision to which Senator Paul refers.)

2. Senator Paul suggested that the real reason behind the Patriot Act was to carry out a “long-standing wish list of power grabs like warrantless searches and roving wiretaps.”

3. Constitutional principles that may be threatened by Section 215 are freedom from unreasonable search and seizure, freedom of speech (gag rule), due process, and others.

Passage 4

1. Senator Paul explained that other provisions (National Security Letters and Suspicious Activity Reports) allow the government to gather a great deal of sensitive personal information without judicial oversight, leading to abuse. He described several reports documenting examples of abuse, for example, situations in which the FBI did not follow its own rules.

2. NSL abuse involves violating the NSL statutes, Attorney General guidelines, or FBI internal policies, as well as the collection of data on U.S. citizens or legal aliens. The Electronic Frontier Foundation (“EFF”) estimates that, “based on the proportion of violations reported to the Intelligence Oversight Board and the FBI’s own statements regarding NSL violations, the actual number of violations that may have occurred [from 2001 – 2008] could approach 40,000 violations of law, executive order, and other regulations.” Students should be able to explain which example of abuse they consider the most troubling, and why. They may list constitutional principles such as freedom from unreasonable search and seizure, rule of law, due process, limited government, liberty, free speech, and others.

3. Senator Paul noted that the Patriot Act makes abuses like NSLs and SARs permanent. Students may note additional issues.
Passage 5

1. Senator Paul wrote that legislators are bound by their oath to the Constitution to re-evaluate the Patriot Act because he believes that many of its provisions, and the bureaucracy that developed to administer them, violate constitutional principles. Examples may include principles of liberty, limited government, separation of powers, rule of law, justice, due process, freedom of speech, and freedom from unreasonable search and seizure.

2. Students should be prepared to share and justify their assessment of the most important or most powerful portions of the entire document.

Handout D: Remarks from President Barack Obama, August 9, 2013

Passage 1

1. Student responses will reflect their background knowledge, which may include the following examples. Specific incidents in which government use of surveillance has abused the rights of citizens might include writs of assistance in colonial America, the U.S. Sedition Acts of 1798 and 1918, use of Stasi informants in Nazi Germany; law enforcement use of informants in the former Soviet Union; U.S. use of illegal surveillance of Vietnam War protesters during the Johnson and Nixon administrations, and North Korea’s web of political informants.

Passage 2

1. President Obama describes the following steps:

   First, Have Congress pursue appropriate reforms to Section 215 of the Patriot Act—the program that collects telephone records. Reforms might include greater oversight, greater transparency, and constraints on the use of this authority.

   Second, additional changes to the FISC taking steps to make sure civil liberties are protected by ensuring that the government’s position is challenged by an adversary.

   Third, we can, and must, be more transparent: The Department of Justice will make public the legal rationale for the government’s collection activities under Section 215 of the Patriot Act. The NSA is taking steps to put in place a full-time civil liberties and privacy officer. And finally, the intelligence community is creating a website that will serve as a hub for further transparency.

   Fourth, the federal government is forming a high-level group of outside experts to review our entire intelligence and communications technologies. This independent group will make sure that there is absolutely no abuse in the use of surveillance technologies. Finally, they will provide an interim report in 60 days and a final report by the end of the year (2013), so that we can move forward with a better understanding of how these programs impact security, privacy, and foreign policy.

2. President Obama agreed with Edward Snowden’s position in that safeguards must be imposed to prevent abuses of people’s liberties and hold government to the rule of law even during wartime.

3. Student research would include a review of relevant steps since 2013 and should include current events.
Passage 3

1. Student responses will reflect their background knowledge. Specific examples of other governments throwing their own citizens in prison for what they say online might include the following:
   - In Iran, posting illegal content or accessing blocked Internet content is punishable by long terms in jail.
   - In China, nearly 100 journalists and citizens are in prison because of their Internet activity. For example, cyber dissident Hu Jia was imprisoned for 3 ½ years and continues under house arrest.
   - Also in China, new users of micro-blogging sites are required to register with their name and telephone number, thus increasing the government’s ability to track and potentially imprison them.
   - In Tibet, Buddhist monks are routinely under surveillance, and government authorities are prepared to raid monasteries at any given time. While no clear information exists regarding the arrest of any of the monks, computers, documents, photographs, and DVDs have been seized.
   - Additional likely countries to research: Turkmenistan, Saudi Arabia, Bahrain
   - Reporters Without Borders report, “Enemies of the Internet” suggests these additional countries and agencies as sources as potential abuse.
     - Belarus - the Operations and Analysis Centre conducts surveillance on its citizens.
     - India - the Centre for Development of Telematics
     - United Kingdom – the Government Communications Headquarters (GCHQ)
     - United States – the National Security Agency (NSA)

2. Specific constitutional principles might include liberty, limited government, separation of powers, rule of law, justice, due process (including freedom from unreasonable search and seizure), and freedom of speech. Virtues might include vigilance by citizens, justice, respect, responsibility, initiative, courage, honor, moderation, perseverance, resourcefulness, etc.

Extension Activities

Remarks from Senator Feingold on October 25th, 2001

1. Students should refer to any 3 of these:
   - with a warrant the FBI should be able to seize voice mail messages as well as tap a phone.
   - to update the federal criminal offense relating to possession and use of biological weapons.
   - to make sure that phone conversations carried over cables would not have more protection from surveillance than conversations carried over phone lines.
   - to stiffen penalties and lengthen or eliminate statutes of limitation for certain terrorist crimes.
   - to assist the victims of crime,
   - to streamline the application process for public safety officers benefits and increase those benefits,
• to provide more funds to strengthen immigration controls at our borders
• to expedite the hiring of translators at the FBI, and many other such provisions.

2. Note to teachers: This is a key question to understanding the debate over the Patriot Act. Extending the new criminal procedure regulations to any federal criminal prosecution will result in significant reductions in due process protections for anyone accused of a federal crime.

3. The longstanding practice under the Fourth Amendment of serving a warrant prior to executing a search could be easily avoided in virtually every case, because the government would simply have to show that it had "reasonable cause to believe" that providing notice "may" seriously jeopardize an investigation." Notice is a key element of Fourth Amendment protections. It allows a person to point out mistakes in a warrant and to make sure that a search is limited to the terms of a warrant.

4. Law enforcement agencies might support "sneak and peak" searches because they could make searches more efficient and safer for the officers conducting the searches.

5. Senator Feingold predicted an abuse of power that might result from making it easier for owners of computers, such as employers, to give police permission to monitor communications from those computers. For example, an employer might use procedures aimed at terrorist activity trying to catch an employee violating the workplace rules regarding personal use of the computer. Feingold writes, "With this one provision, fourth amendment protections are potentially eliminated for a broad spectrum of electronic communications."

6. Law enforcement powers would be expanded because officers could use powers originally intended to conduct surveillance in foreign intelligence investigations in almost any domestic investigation of federal crime. The government would not have to meet the rigorous probable cause standard under the Fourth Amendment—as long as the government shows that intelligence is a "significant purpose" of the investigation—not the primary purpose as under previous law. It seems obvious that with this lower standard, the FBI would try to use FISA as much as it can. (Note Section 215.)

7. Students should be prepared to share and justify their assessment of the most important or most powerful portions of the entire document.

Remarks from Attorney General John Ashcroft, February 10, 2003

1. “Paradigm of prevention” refers to a new focus adopted by the U.S. and other freedom-loving countries. “We are working to bridge the gaps in our domestic law enforcement and security activities with greater cooperation and information sharing. We have broken down some of the artificial barriers separating needlessly our law enforcement and intelligence communities. Federal, state, and local law enforcement agencies have united in unprecedented cooperation, committed to a common goal.” The goal is to stop terrorism before it happens, not just prosecute and punish the guilty after the fact.

2. The shared values include the following
   • rule of law
   • progress and pluralism
   • tolerance and freedom
3. Answers will vary; accept reasoned responses.

4. Answers will vary, but may refer to Ashcroft’s desire to demonstrate that the U.S. is not alone in its opposition to terrorism. He emphasized the common ground shared by nations that value freedom and the international threat of terrorism.

5. Answers will vary, but Ashcroft explained that we have a better chance of preventing terrorism if we work with other countries to share information.

6. Answers will vary, but may refer to the international effort to stop the spread of communism during the Cold War as a historical example of successful cooperation among countries.

7. Ashcroft referred to “rule of law” at least 8 times in the document. Rule of law means that the laws of a country apply equally to everyone and are made by an open, fair, and predictable process. No one is above the law and the government must follow its own rules. Answers will vary regarding why Ashcroft emphasized the principle so much and how enhanced law enforcement powers might endanger the principle. Students might suggest that if law enforcement powers are enhanced, it becomes easier for officials to abuse the rights of the people. Accept well-reasoned responses.

8. Students should be prepared to share and justify their assessment of the most important or most powerful portions of the entire document.