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## **The 2008 Candidates and Civil Liberties — A New Path or More of the Same?**

*by Glenn Greenwald*

*The following is a transcript of a speech given at The Future of Freedom Foundation's June 2008 conference, "Restoring the Republic: Foreign Policy & Civil Liberties" held in Reston, Virginia.*

**Jacob Hornberger:** Glenn Greenwald is a former constitutional lawyer and a contributing editor at Salon. And in my opinion he writes the absolutely best political blog on the Internet. I mean it's one that... <Applause> In fact, I was asking him before we started this evening whether that's all he does is just write his blog all day. So I told him we had this picture — this mental image of him in a penthouse apartment just sitting there writing his blog all day, you know, living the good life. He's the author of two *New York Times* best-selling books: *How Would a Patriot Act?* and *A Tragic Legacy*. His third book, *Great American Hypocrites*, was just released by Crown Books. The title of Glenn's talk tonight is "The 2008 Candidates and Civil Liberties: A New Path or More of the Same?" Please welcome Glenn Greenwald.

**Glenn Greenwald:** Good evening and thanks for being here and coming and listening. And thanks to Jacob for those very nice introductory remarks. I mean, I have to talk to Salon about that penthouse that you're envisioning me in 'cause I haven't quite had that arrangement with them yet. But I'll definitely pursue that. I'm really pleased to be here at this conference. I was really thrilled when I received the invitation and was able to accept it, and even more pleased once I saw the list of participants who were going to be here, which is really composed of so many, I think, of the most effective and passionate advocates of civil liberties and constitutional rights over the past seven or eight years. And it's really great to be a part of a conference filled with so many writers and advocates whose work I really respect and admire.

A couple of weeks ago I was reading some of the promotional materials talking about what this conference would be and reading some of the things that people were writing about online in anticipation of this conference. And typically people would refer to what they would call the ideologically disparate range of speakers or the ideologically diverse group of people who were participating here. And they would say things like, there's libertarians and classical libertarians on the right, and would list a few examples, and people who are liberals, or on the left, and would list a few examples. And I'd typically be included in that latter group.

And, you know, I think to some extent there is some truth in the fact that there is this ideological difference between libertarianism and liberals or people on the left. There are certainly some views that are different on important policy questions. But I think in a much more important and profound sense, those differences have really substantially diminished over the past seven or eight years as a result of the radicalism of our government, and in some cases have eroded almost completely.

And it's interesting, if you look at the issues that defined the political spectrum in the 1990s, where one fell in the political spectrum would be determined by things like your views on abortion, or gay rights, or gun control, or affirmative action, or welfare reform, sort of these hot button domestic policy disputes. And it's certainly the case that many of those issues retain a lot of importance to many people, understandably so.

But to a large extent those issues have really receded into the background of our political culture over the last seven years and have been replaced by issues such as, do you believe that the president of the United States has the power to act without limitations of any kind in all matters regarding foreign policy, national security, or more. Or do you believe the government should be spying on American citizens without warrants. Or do you believe the president can literally break the law in how he implements these policies, and should we be attacking and occupying other countries that aren't threatening to attack us and haven't attacked us in any way. And those really now are the issues that I think have reshaped the political spectrum in a very substantial way.

What's interesting is, sometimes on various political matters, factions that have fundamentally different views end up almost by happenstance on the same side of a political debate. That's where politics makes strange bedfellows comes from-- from that idea that sometimes just coincidentally two very disparate groups just happen to end up, for completely different reasons, taking completely different paths on the same side of an important political dispute. I don't think, with regard to all of those critical issues that have been at the forefront of our political debates and will continue to be, that's the case for the convergence of opinion among liberals and libertarians. By which I mean I don't think that it's the case

that liberals are people on the left and libertarians have opposed the radicalism and these Bush policies of the last seven years by accident, because there are different premises and rationales and beliefs that have coincidentally led those two groups to be on the same side of those issues.

Quite the contrary. I think that to a large extent, and in some cases almost completely, there's a real identity of rationales and premises and beliefs on these fundamental questions, so that much of the time you can read a libertarian writer or writer on the left who is opposing warrantless wire tapping or imperialistic foreign policy or torture or detention of individuals without due process. And you could read their article, and if you weren't aware of the ideological affiliation of the writer, you would have no idea whether they're a libertarian or a leftist or a liberal from the 1990s, because so many of the premises are shared between those two factions. And I think that's really engendering a substantial-- an important political realignment, the effects of which we're only starting to see right now.

I'll just highlight a little anecdote from the last 48 hours that I think illustrates that realignment pretty vividly. I was at the University of Florida yesterday for a conference of educators. And it's an annual conference that's held there, and these professors of education come in order to hear people speak on civil liberties and constitutional questions and some of the pending debates of the day. And it's my third consecutive year that I've attended, and the last two years one of the other speakers was Congressman Bob Barr. He wasn't there this year, but he was there last year and the year before. And I was talking to the conference director about the fact that I was coming here after being there, and we had a discussion about the relationship between people on the left and libertarians.

And the story that she told me was this: she said, yeah, last year when Congressman Barr was at this conference giving a seminar, one of the professors who was there asked a question afterwards. And the question was, with regard to all these issues that you're talking about-- civil liberties, constitutional rights, the assault on our basic political values-- who would you identify as an officeholder in Washington, a prominent officeholder, who you think is particularly admirable in terms of their commitment to our constitutional liberties? And without thinking, without any time going by, he immediately singled out Russ Feingold and heaped all of this lavish praise on Senator Feingold for being so stalwart in opposing the Patriot Act back in 2001, when no one else in the Senate was willing to do so, and continuing throughout all these years to be a real steady opponent, even without there being political benefits, to so much of the Bush policies that have assaulted our civil liberties.

And after he had sung the praises of Russ Feingold, the person followed up and said, well what about somebody in your own party, in the Republican Party? Obviously there are people like Ron Paul, but they're sort of stigmatized and treated as pariahs by the party leadership. Who would you say in the

party leadership, a prominent national Republican, would be worthy of similar praise with regard to their commitment to these issues?

And there was this dead silence for about, you know, 30 seconds, and he would start and stop and start and stop, trying to find some name that he could offer up. And finally in a sort of halfhearted way he said, well, I guess I would say Jim Gilmore-- who was the one-time governor of Virginia for four years. And no disrespect to him, but he's not exactly a figure of great national prominence and influence within the national Republican Party.

And I just found that anecdote so striking because to a 1990s liberal Bob Barr was essentially the equivalent of, I guess you could say, Satan. I mean, he was really the embodiment of everything that liberals recoiled from in horror and revulsion, and that reaction was quite mutual. I mean, Bob Barr was one of the great crusaders and warriors against liberalism in the 1990s, and yet here he is just a few years later, when asked to identify a national political figure whom he finds particularly worthy of commendation and respect on the issues-- not that are obscure, but to which he's devoting the bulk of this political energies-- and he identifies one of the most putatively liberal members of the United States Senate as being so admirable in that regard, and struggles to find somebody within the Republican Party of national significance, meaning someone accepted by the party hierarchy, who is similarly worthy of respect.

And I think that's illustrative of a very profound political realignment that's reflected in the lineup of speakers here and in so many other ways. And I think that's beneficial and something that ought to be encouraged. And any assessment of the 2008 election, and what can be done about civil liberties, I think, has to be analyzed within that context.

Beyond what I think is that political realignment, I think there's an equally important, perhaps even more important, and very dramatic shift in the political landscape with regard to civil liberties issues and constitutional questions, whereby viewpoints that not all that long ago were considered to be quite fringe and discredited and not even within the realm of debate are now extremely mainstream and accepted by our political [adversaries]. And conversely, positions that were once so mainstream that they were hardly subject to debate are now considered fringe and radical and almost inherently discredited.

And I think there's few things that reflect that shift, that dramatic shift in the political landscape more vividly than the debate that has been taking place over the last couple of years with regard to the government's ability to eavesdrop on American citizens without warrants, and whether we ought to amend or expand or do away with the FISA court. If you look at the current debate over government

eavesdropping on Americans, there are basically two positions that you're allowed to articulate within the political mainstream. You're allowed to say that you think that FISA is an excellent and almost perfect framework for regulating government eavesdropping, that it keeps us safe, and it protects our civil liberties, and we shouldn't change it. And you're allowed to say that. If you say that, it probably means that you're someone on the far left, or what Joe Klein of *Time* magazine calls a civil liberties extremist. But you're allowed to at least make that argument.

Or you're allowed to make the argument that FISA is a horrific restriction on government power. It prevents the government from doing all of the necessary eavesdropping that it needs to do in order to keep us safe. And that option is basically the prevailing orthodoxy in our political class. Most political pundits who are in television and who write in major media outlets believe that, to the extent that they think about that issue at all. That's what they think. Certainly the leaders of both political parties in Washington by and large subscribe to that viewpoint.

And yet if you look at the debate that took place prior to the enactment of FISA and the creation of the FISA court in 1977 and 1978, it's actually quite extraordinary what you find, because the FISA court itself is a remarkable tribunal for American political culture. And the debate that took place recognized that back then, 30 years ago.-- I mean, if you look at what the FISA court is, it is and it was considered at the time to be remarkable: not remarkable because it was so restrictive of government power, but remarkable because it was so permissive of government power and it was such an infringement on civil liberties in the way in which it was constituted.

For one thing, the FISA court is a completely secret court. You know, in general in our judicial system we don't have secret courts. You can go and sit in on any judicial proceeding you want, watch a criminal trial, watch people suing each other, go and watch appellant arguments. We have an open court system. Decisions by judicial tribunals are, with rare exception, made a part of the public record; anybody can see them.

The FISA court is the exact opposite. It's completely closed off to the public. No member of the media has ever been able or permitted to attend. And not just the proceedings themselves are secret, but so too are the decisions that the court issues. So, if the court makes a factual decision about whether someone should be eavesdropped on, if the government makes arguments about why you should be eavesdropped on or why you should be considered suspicious as an enemy of the state or as an agent of a foreign government or in cahoots with a terrorist organization, those things stay secret, as do the decisions of the court itself, which are presumptively classified, not even accessible by members of Congress, by the media, by United States citizens.

So we have a court that's issuing rulings, factual rulings, legal decisions, and all of that is presumptively and criminally secret, which is an extraordinary development in how our government functions, to have essentially a star chamber that operates in secret. Not only is it secret, but it also has only one side present. I mean, most court proceedings, the nature of a court proceeding is you have one side making an argument. If the government wants to put you in jail and convict you of a crime, the government shows up, you show up, each side presents its arguments, and then there's a decision. Not at the FISA court. The only side that's allowed to appear before the FISA court is the government. No other side is ever presented. The court itself is not even really a court. It's actually a room within the Justice Department. It's almost an arm of the executive branch.

And then beyond that, when FISA was enacted, the probable cause requirement for warrants was diluted so that probable cause need not be demonstrated any longer. And then, not just in its structure but in practice, the FISA court has been about the most pro-government tribunal that ever could be imagined. Since 1978, when the FISA court began, until 2001, when George Bush ordered eavesdropping outside of the FISA framework in violation of the law, the government made something like 22,000 applications to obtain warrants to spy on American citizens. And in each and every single last case the government won. The court decided in favor of the government and said that the government had proven its case, which typically is what happens when only one side is present, and they were entitled to eavesdrop on American citizens.

Since 2001, another 7,000 to 8,000 warrants have been requested. And a grand total of four times, one, two, three, four, the court ruled against the government, said that they hadn't met the standard. In most of those cases the government went back and reapplied and eventually obtained what they wanted, which was permission to spy on American citizens. So this is a court that in every single possible sense is extraordinary in how it enables government spying on American citizens and gives the government everything that it wants by design.

And yet, in 2005, in December of 2005, when the *New York Times* revealed that the Bush administration for the last four years had been spying on American citizens without even bothering to go to the FISA court and get warrants, even though doing that is a felony under our system of laws, the president the next day went on television and he didn't bother to deny that he had done these things to the country. He looked into the camera and he proudly admitted that what the *New York Times* said he was doing is exactly what he was doing. And he said that not only had he been doing that, but that he would continue to do that. And he actually looked into the camera and with a straight face said that the reason why he thought it was necessary to eavesdrop without going to the FISA court is because the FISA court was too restrictive, it was too much of an impediment in terms of enabling government spying. And that

argument really did become, as I indicated just a couple of seconds ago, the prevailing orthodox view among our political and media class with regard to government spying.

And the fact that a court like that could be considered to be too restrictive or too much of an impediment with regard to government power, I think, is quite illustrative of how the spectrum has shifted over the last several years. And I just want to read one of my favorite quotes that illustrate the same thing. It's from about six months or about seven months ago, and the Fox News anchor, Bill O'Reilly, was giving a monologue about why John Edwards, the Democratic presidential candidate, was far too much to the left to ever be elected president of the United States. He was a far-left extremist, said Bill O'Reilly. And the reasons that he gave to prove this to be the case were this, and I'm quoting him exactly: in arguing that John Edwards is way too far to the left, he said, "Remember what an Edwards presidency would bring: no coerced interrogation, civilian lawyers in courts for captured overseas terrorists, no branding of the Iranian guard as terrorist, and no phone surveillance without a specific warrant."

These are the things that now are the mainstream political values in our culture. And if you believe in things like search warrants, a very un-American and radical instrument, or if you believe that before we imprison people for life they ought to be charged with some sort of a crime and be given the opportunity to prove that they're not guilty, or if you believe that we shouldn't be taking people in our custody and stripping them naked and tying them to the floor and beating them or mock executing them in freezing temperatures, then it means essentially that you are a far leftist or a civil liberties extremist.

And the fact that those ideas, which were always so at the core of American political values for decades and centuries, since our founding, have now become things that, if you advocate them, essentially place you on the margins of our political debate, is I think quite illustrative of how dramatically the political spectrum has shifted with regard to constitutional values and civil liberties.

And any assessment of what the 2008 election might bring and how these candidates might change the nature of these debates, I think, has to be grounded in the realization that we're not talking about some civil liberties revolution, even in the best of all of our dreams. What we're talking about is a mild restoration of some of the most fundamental and basic precepts that just a short time ago weren't even really subject to debate and yet now are under, not just assault, but almost a complete elimination. And I think that whatever we talk about in terms of change needs to be based on that realization.

To talk about what the specific candidates think about these issues is very difficult for one simple reason, despite the centrality of all of these issues to most of the political controversies of the last seven years. I mean, if you look at the political controversies of the last seven years, from torture to warrantless

eavesdropping to detention without any cause to provocations of our country attacking other countries with no good reason, what you find at the heart of that are the theories of presidential power that the Bush administration adopted in September and October of 2001 that basically vest the president with the type of monarchical power that this country was founded in order to avoid.

And so you would think if you were a minimally rational person that as we attempt to decide who the next president would be, that we would be interested in knowing what those candidates thought about those theories of presidential power and those policies that have created such a tumultuous change in our political landscape. And yet I defy any of you to go and find a television show where these presidential candidates have appeared, where they're asked about what they believe about the scope of presidential powers, or whether the growing surveillance state ought to be curbed in any way. It simply is invisible by and large in our political landscape.

And so I can stand before you as someone who reads about these issues and writes about them all the time. And my understanding of what the presidential candidates think about these issues is extremely sketchy because they never really are compelled to describe what it is that they believe in any way at all. So it's a difficult endeavor to do much other than speculate about what a John McCain presidency or a Barack Obama presidency would mean in terms of so many of these issues.

There are some metrics though that you can evaluate in order to try and have some sense for what the answer to those questions might be. The easiest metric is probably also the most worthless and most unreliable, and that is what do the candidates themselves say about what they think about these things and what they intend to do. I mean, I guess you can look at that and sort of figure it out. But I think any person who observes our political culture wouldn't place much faith in that. But let's do that just briefly.

There are a few commentators and journalists, some of whom are here as part of this conference, a small handful in America, who do write about these issues and have written about how radical and extreme and consequential these policies have been. And one of them is named Charlie Savage. And he was a reporter at the *Boston Globe* until last month, when he went to the *New York Times*. And in January, or December, rather, of 2007, Charlie Savage, while he was at the *Boston Globe*, he had just won a Pulitzer Prize for exposing the president's use of signing statements as an instrument for evading the law, for placing himself above the law. And he wrote a questionnaire that had 10 questions and distributed them to all of the presidential candidates. There were something like 25 of them at the time. And it asked what their views are on things like warrantless eavesdropping, and the Yoo memorandum, and the theory of the unitary executive, and what the president's war powers are in terms of what he does and doesn't need in terms of congressional approval to start wars and deploy the military and the like.

And most of the Republican field simply refused to answer. But John McCain did answer. And interestingly, in a lot of ways McCain's answers were at odds with many of the Bush theories of executive power that have predominated over the last seven years. McCain, for instance, said that he would never under any circumstances issue a signing statement for any reason, which is actually a fairly extreme view. I mean, even critics of the Bush administration think that signing statements have some role to play or at least are legitimate for some purposes. But he said he would never issue signing statements. He said that the president never in any circumstance has the power to violate a statute. So that if the Congress passes a law saying that warrantless eavesdropping is criminal, the president actually is compelled to abide by that law, said McCain in this questionnaire.

Over the last few weeks, however, the position of McCain on a lot of these issues has generated some controversy among the sort of authoritarian, far right contingent of the Republican Party that has supported the Bush administration with regard to these policies. A couple of weeks ago a surrogate of the McCain campaign was at a conference and was asked about McCain's view on the pending FISA debate, and whether or not the telecoms that enabled spying on their customers in violation of the law ought to be held accountable in a court of law or whether they ought to be immunized from all liability. And the surrogate who was there to represent the McCain campaign said that McCain actually opposes telecom immunity in the absence of two conditions: one, that there be very probing hearings to find out what actually occurred in terms of these spying programs, things that we still are in the dark about almost completely; and two, that the telecoms acknowledge that what they did was illegal and apologize for and vow never to do that again. That's what the McCain campaign surrogates said would be necessary in order for McCain to support the idea that telecoms should be immunized from liability.

That was a very odd thing to say, because only two months earlier John McCain in the Senate had voted for the FISA bill that was written jointly by Jay Rockefeller, the Democratic senator and chairman of the Intelligence Committee, and Dick Cheney, and that FISA bill vastly expanded warrantless eavesdropping powers for the president and also provided unconditional immunity to the telecoms. And McCain not only voted for that bill, but he voted specifically for an amendment to keep telecom immunity in that bill without any of the conditions that his surrogate said would be necessary. And so this created this sort of mini-controversy at places like *National Review* and *Weekly Standard* and the sort of neoconservative journals that support limitless government power and have done so for the last seven years. And they sort of started protesting in the petulant, the sort of shrill and relentless way that characterizes that movement. And finally, the McCain campaign responded and they wrote a memo to *National Review*.

And in it they said-- John McCain said, in essence-- that he thinks the telecoms and the Bush administration did absolutely nothing wrong when they spied on Americans without warrants of any kind. And then as president he also, just like the Bush administration, would invoke his Article 2 powers in order to defend the country, which is code for the president can violate the law when it comes to national security. And said that he fully and unconditionally favors telecom amnesty. It was a full-fledged embrace of the very theories-- of radical theories of executive power that only six months ago, when he was in the middle of a primary and trying to maintain his maverick credentials, he said that he rejected.

So even with regard to the easiest metric, which is what did they say about what they believe about these issues, with regard to John McCain I just simply can't tell you, because what he said this week literally is the diametric opposite of what he said six months ago. It's possible that he has no beliefs on these issues, and it's possible that he's willing to shift with regard to those matters whenever doing so is politically expedient.

Barack Obama is a somewhat different case, in that by and large he has paid lip service to the idea that things like the rule of law mean the president can't act in violation of the law. He has voted against and spoken out on things like warrantless eavesdropping, telecom immunity, the Military Commissions Act, all of which John McCain supported and voted for. But at the same time, the rhetorical record of Obama is not really matched by very much in the way of meaningful action. He's never taken any role in the Senate to do things like restoring habeas corpus or eliminating some of these draconian spying provisions or curbing the surveillance state in any way. And so while his record rhetorically is much cleaner and more consistent and more encouraging, I suppose one could say, than McCain's is, there isn't very much action to suggest that there's any authenticity or passion behind those convictions. And so I think there too there's a big question mark with regard to what a Barack Obama administration would mean for any of these civil liberties and constitutional questions.

And then, of course, there's third party candidates or alternative candidates such as Congressman Barr, who we talked about earlier, whose record matches his rhetoric in many ways, in that he was one of the earliest proponents of trying to put as many limits as possible in the Patriot Act. He was one of the most eloquent and outspoken opponents of the illegal spying program almost from the very beginning. In early 2006, when Democratic leaders were afraid to go on television and say that the president broke the law, Bob Barr was very outspoken in the fact that he had done so and that our democracy couldn't tolerate a lawless surveillance state. And so you could look at his record and be a little more encouraged, though the prospects that there will be a Bob Barr administration are, of course, quite slim.

The final point that I want to underscore and put all of this in the context of, is that when I first began writing about these issues and really had reached the conclusion that there was a radicalism and an extremism unleashed in our federal government that was really threatening to undermine our constitutional framework in an unprecedented way-- certainly there's been all sorts of violations before 2001, but the fundamental assault that we've seen over the last seven years is unprecedented.

And when I first began writing about that, I would always write about it in the terms of these are things that are being done by the Bush administration. These are Bush/Cheney policies. And the reason for that is because I think that at first that was actually true. Most of these programs were things that were conceived and implemented in secret with very little consultation or knowledge by anybody else. Whether it be the method of interrogating or rendering people to foreign countries to be tortured, or spying on Americans with no warrants, or adopting these theories in the Justice Department that the president was literally above the law, these were things that were very distinctly Bush/Cheney policies because they were doing them behind a wall of secrecy without any oversight, without any check. The citizenry, the media, the Congress really knew very little if anything about it.

That is really no longer true. Over the past couple of years we have learned more and more and more and more about what our government has been doing in our name, and yet we've done very little about it. We've done very little meaningfully to actually stop that. And, in fact, quite the contrary has occurred. When the Supreme Court in 2006 ruled that the military commissions at Guantanamo violated our constitutional liberties and were contrary to the law, rather than taking action to stop it, the Congress got together in a very bipartisan way and overwhelmingly voted to legalize that very program, and in the process authorize these detention methods and abolish habeas corpus. Similarly, when we learned about the fact that the president was spying on us without warrants, our Congress got together and rather than sanction him or put an end to that, they did the opposite and passed the Protect America Act, again by bipartisan consensus that legalized that warrantless eavesdropping program in many respects.

We've continuously passed laws to immunize people who have committed war crimes or who have broken our laws at the highest levels of government, sending the signal that not only don't we object to these things, but we endorse them and encourage them and sanction them. And so what began as Bush/Cheney policies conceived of in the dark and without very much participation, the responsibility for those has really expanded and become much more collective. They've become a bipartisan consensus in so many ways. The Democratic leadership has been aware of so much of what is going on, even back in 2002, and has largely endorsed it and sanctioned it. The media have essentially been invisible in terms of alerting the citizenry to how radical and how dangerous and how consequential so many of these policies have been. The courts have imposed some mild limitations on some of these policies, but by and large

have either turned the other way and refused to hear challenges to so many of these policies, or in many cases have endorsed some of the most extremist aspects of what the government has done.

And then over the past two, three years the approval that our political class has expressed for these policies has become much more overt. So that now we've debated these things out in the open, they're no longer secret policies, they're things that we're aware of and have expressed through our representatives that we want to legalize and authorize and continue. And we've now created the legislative schemes that have taken these most radical Bush/Cheney policies, these assaults on our constitutional framework, and given them the stamp of approval by legislating them and authorizing them and putting them into action.

And so these Bush/Cheney policies are no longer Bush/Cheney policies, they've really become American policies. And I think that's such a vital and fundamental distinction because the premises of all of these things have permeated our political class to such an extent that it's no longer, as I indicated before, really much in debate whether or not these policies ought to be uprooted. And so it's going to take much, much more than simply electing a president who along the way in the campaign is paying nice rhetorical tribute to the ideas that some of this needs to be undone. It's become systemic and institutional. And even a president with the will to reverse so many of these things would have an extremely difficult time doing so, let alone a president who is simply checking off the right boxes on the way to pandering and trolling for votes.

And so, I think that what really is required, if many of these things are going to be reversed and we're going to start to restore the basic constitutional principles that citizens' polls show overwhelmingly believe in, is not just electing new leaders who say nice things, but really a public mobilization demanding that these policies that are so distinctly un-American be reversed and be eliminated and be abolished, and that we return our constitutional framework to the form that it was always intended to be in.

And that brings me back to the first point that I talked about, which is this political realignment that I think is so significant. It isn't reflected in the media, in our dominant media narrative, that this president has become unpopular to a historic degree. It isn't just the numbers alone; it's the duration of the unpopularity and the intensity of that unpopularity. And not only is he unpopular, but his political party is in shambles. The brand is as sullied as a political brand can be. And then the defining policies of this president, the war in Iraq, and much of the trust that he claimed for so long, have disappeared almost completely as well. And the extent of the dissatisfaction among the citizenry is unlike anything that modern polling has ever discovered before. Something like 8 out of 10 Americans believe that the government is fundamentally or radically off course. And so, there is extreme dissatisfaction among the citizenry with how our government is functioning. <Applause>.

And so when I talk about the need to have political mobilization against these policies, that electing a leader is insufficient in and of itself, a new leader-- actually it sounds daunting, but I'm optimistic about the prospects for doing so. And the realignment that I described earlier is one of the principal reasons why that's the case. George Bush didn't become historically unpopular because liberals decided that they didn't like him. Liberals didn't like George Bush from the very beginning. What changed was that so many people who are not liberals have turned against the Iraq war, have turned against the defining policies of how our government is functioning. And for that reason the numbers that approve of this president and his policies have diminished to really a constant fringe, the sort of neoconservatives represented by journals like the *National Review* and *Weekly Standard*, that John McCain has to pander to in order to have any hope of maintaining an electoral base in order to win, which is why he's now paying homage to the very theories that he previously repudiated.

And so, I think those are very encouraging signs. And the realignment I think that we've seen between libertarians and liberals and many, many people who are unaffiliated with either group, who are sort of non-ideological and independent but know that our country has gone very awry, that our government is fundamentally departing from what have always been our defining values, I think is really the key to facilitating the types of changes that are needed in order to change the landscape of civil liberties and constitutional rights, much more so than who the next president will be in January of 2009. So, with that sort of optimistic note, I will conclude, and I thank you very much for listening this evening. <Applause>

**Moderator:** We have just a few minutes for questions.

**Man 1:** Thank you for that talk; it was very enlightening. The constitutional protections for our liberties that you've described were put in place by a fairly small band of ragtag guys who by the skin of their teeth and with a lot of help from the French had just managed to beat the world's only superpower and were in a very, very fragile state. So, given their origin, how does the idea that we can't afford them any more because we face an existential threat from the terrorists even past the sniff test?

**Glenn Greenwald:** Well it-- of course, it doesn't, as your question suggests. I mean, the idea that the founders didn't anticipate that there would be threats to our country is one of the most ludicrous propositions ever advanced, for the reason that you've just said, which is that our country was born of an extraordinarily risky war against the greatest empire on the earth, where they risked extinction in order to defend those very values, those very rights and guarantees. So the idea that they would want to sacrifice those guarantees whenever there was a risk to security is just inherently absurd. Not only that, they've explicitly written on numerous occasions that the threat to those liberties would come from government's

manufacturing real or exaggerating real or manufacturing artificial threats, and particularly when the government was emphasizing the need to sacrifice liberties in the name of security; particularly then was it vital to be vigilant about safeguarding those liberties. So there just is no exception to war or security threats written into the Constitution. And I think that speaks volumes for the fact that there is no such exception in our constitutional framework. <Applause>

**Man 2:** Thanks, Glenn, for that talk. Why do you think the Democrats and the media, after opposing for so long, you know, some of these radical policies from the Bush administration, rolled over like lap dogs at the precise moment that they had the chance to change some of these policies when they swept into Congress with the majority in 2006? It seems-- is someone else making these decisions for us?

**Glenn Greenwald:** Well, I think that it's hard to talk about Democrats monolithically because there are several hundred of them in Congress and they're motivated by different considerations. But I think if you look at the leadership and what they've done, the most likely explanation is that it was just the craven political calculation, which is as follows: as long as things continue to go poorly, we the Democrats will thrive. That's what happened in 2006. People were contemptuous of the war and of the government, and the Democrats had one of their most significant victories ever. And so I think they calculated that they were content to allow things to continue on the course that they were on, as destructive as they might be, because that was the optimal prospect for enabling the Democrats to succeed politically. I mean, to say that about them is to attribute to them extraordinarily corrupt motives, which I'm aware of. But... <Applause>

**Moderator:** We have time for one more question.

**Glenn Greenwald:** Okay.

**Man 3:** First I wanted to thank you for a wonderful talk. That was a very good job. I do read a lot of your articles. Lew Rockwell posts them, and so I've read a number of them. Got a question on a totally different aside. We've been talking a lot about issues of privacy and the like, and people on the left are very good at that, and yet people on the left also are very much in opposition to private property rights. Can, in fact, we defend these things without private property rights, or are they simply just off the table?

**Glenn Greenwald:** Well, that's a hard question to answer, and I say that for this reason. I actually think that the main reason why there's been a political realignment over the last seven years, as I talked about, is because I think that the left has changed and been changed to a significant extent by what has happened in this country. And I think that those changes are all for the good. In particular, I think that

people on the left have become much more skeptical about government leaders, about pronouncements from political officials, and about the wisdom of granting political power to the federal government.

Now, it's very possible that there will be some people on the left who will suddenly lose that skepticism the minute that there's a liberal- or Democratic-controlled government in the White House. But I think that by and large the changes over the last seven years have been so profound that that skepticism will endure, and that people do see the threat that government can pose, and not have faith that when we vest power in the government, that good things will happen. Now at the same time I don't want to underplay the fact that there are ideological differences, particularly in the realm of economic policy, and libertarians are going to believe that less government intervention is desirable, and people on the left will probably continue to believe that more government regulation is desirable. And so it isn't that the two movements have merged completely and all differences are eliminated, but I think that some of the changes from these national security and civil liberties disputes have soured liberals on the left on the idea that there's virtue in government power as a general principle. And my hope is, and my belief is, that that will seep somewhat into other realms, and that this idea that within government power lies our solutions is an idea that will lose currency generally among the left, and not just with regard to things like the surveillance state and civil liberties. <Applause>

**Jacob Hornberger:** Thank you very much.