



TO: American Civil Liberties Union
FROM: The Mellman Group
DATE: October 15, 2007
RE: Voters Vigorously Oppose Warrantless Wiretaps, Blanket Warrants, And Telecom Amnesty

This analysis represents the findings of a national survey of 1000 likely 2008 general election voters. Interviews were conducted by telephone October 11 to October 14, 2007. To insure an unbiased sample, random-digit-dialing techniques were used and respondents screened for being likely voters. The margin of error for this survey is +/-3.1% at the 95% level of confidence. The margin of error is higher for subgroups.

While Americans surely want to protect the country from terrorism, they also insist on protecting our constitutional rights, and will not punish Members of Congress who vote to require individual wiretap warrants for American citizens. In fact, voters overwhelmingly oppose key elements of the Bush Administration's FISA agenda--voters oppose warrantless wiretaps, oppose blanket warrants, and oppose amnesty for telecommunication companies that may have broken the law. Large majorities across almost every demographic subgroup of American voters oppose all three of these proposals. Moreover, voters do not trust President Bush either on protecting the country from terrorism or on protecting our constitutional rights. As a result, Members who stand in defense of constitutional rights have little to fear from their constituents.

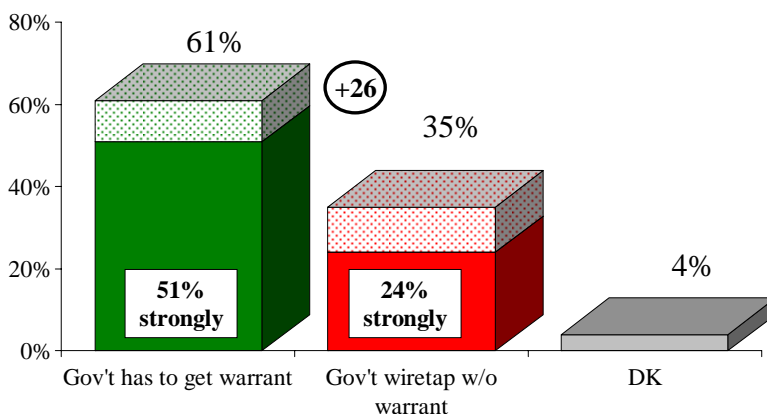
VOTERS STRONGLY SUPPORT REQUIRING THE GOVERNMENT TO GET WARRANTS BEFORE WIRETAPPING CONVERSATIONS U.S. CITIZENS HAVE WITH PEOPLE ABROAD

A Majority Of Voters Strongly Support Requiring The Government To Get A Warrant Before Wiretapping Americans' International Calls

Should the U.S. government have to get a warrant from a court before wiretapping the conversations U.S. citizens have with people in other countries?

OR

Should the government be able to wiretap such conversations without a warrant from a court?



Sixty-one percent (61%) of voters favor requiring the government to get a warrant from a court before wiretapping the conversations U.S. citizens have with people in other countries, with an outright majority of voters (51%) "strongly" supporting the requirement for warrants. Just over 1-in-3 (35%) support warrantless wiretaps of Americans' international conversations, with fewer than 1-in-4 (24%) strongly supporting warrantless wiretaps.

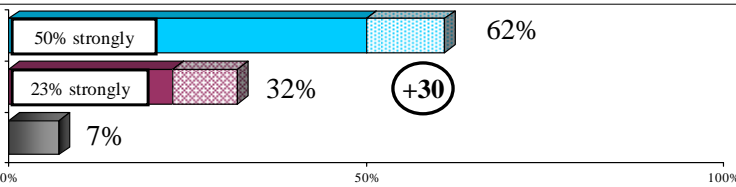
Support for this constitutional right is both deep and wide, cutting across every demographic segment. Whether they are old or young (age 60+ 53% warrants required, age 50-59 60%, age 40-49 64%, age 18-39 65%), more or less educated (post-grads 59% warrants required, college grads 61%, some college 63%, high school or less 60%), black or white (black 72% warrants required, whites 58%), upper class or lower (upper/upper-middle 62% warrants required, middle 57%, working/lower 68%) voters favor requiring warrants for government wiretaps of Americans' international conversations. Indeed, there is no segment of the electorate other than Republicans and conservatives among whom support for requiring warrants is less than 53%. Seventy-four percent (74%) of Democrats, 60% of independents, and even 46% of the President's own Republicans oppose tapping Americans' international conversations without a warrant.

Public demand for requiring warrants for government wiretaps of Americans' international conversations also cuts across geography. Large majorities in every part of the country favor requiring warrants: 66% in the West, 61% in the Northeast, 60% in the Midwest, and 58% in the South.

Support For Requiring Warrants Increases After Hearing A Strong Argument For Warrantless Wiretaps

- Some people say Congress should not give the president the legal power to wiretap the phone calls and emails of Americans without first getting court approval for a warrant. The President is only one part of a system of checks and balances and this President, along with others, have proven that they cannot always be trusted to follow the law when it comes to spying on Americans. Congress and the courts must be involved to make sure that Americans' constitutional rights to privacy are protected. Protecting Americans from terrorism is vitally important, but we do not have to ignore the Constitution to protect our country.
- Other people say the U.S. Congress should give the President the legal power to wiretap the international phone calls and emails of American citizens without a warrant from a court. We are in a global war on terror against enemies who have vowed to destroy us. This is no time to tie the president's hands with a lot of legal red tape. We cannot limit our ability to collect the intelligence that keeps us a step ahead of the terrorists and keeps us safe. And if an American is talking to a suspected terrorist, we should want to know why right away and not have to wait for the courts to act. In a time of war, Congress should not try to restrict the president's power to wiretap those who want to attack us.

Should the U.S. government have to get a warrant from a court before wiretapping the international conversations U.S. citizens have? OR Should the government be able to wiretap such conversations without a warrant from a court?



ahead of terrorists. Even in the face of these powerful arguments, 62% say the government should have to get a warrant from a court before wiretapping Americans' international conversations, while just about half as many (32%) support the President's position. Thus, when presented with arguments on both sides, opposition to warrantless wiretapping increases by a net of 4 points.

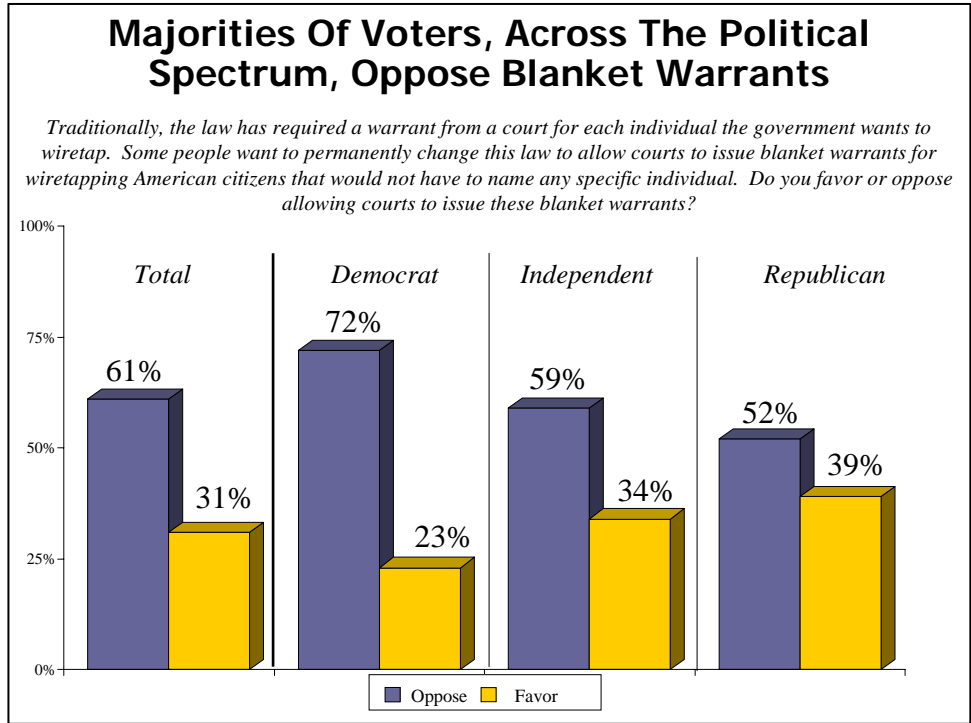
Voters' views on this issue are quite robust, impervious to even the strongest arguments coming out of the White House. Voters were given the argument against warrantless wiretaps and heard a strong statement from supporters, incorporating language used by the President and Vice President. The message argued that while we are in a war on terror against ruthless enemies who have vowed our destruction, the President's hands should not be tied with red tape that prevents him from keeping us safe and staying a step

OPPOSITION TO BLANKET WARRANTS IS STRONG AND ROBUST

Sixty-one percent (61%) of voters oppose allowing courts to issue blanket warrants for wiretapping American citizens that would not have to name any specific individual, with a near majority (49%) “strongly” opposing blanket warrants. Fewer than 1-in-3 (31%) support blanket warrants.

Strikingly, majorities across partisan and ideological lines oppose blanket warrants. Seventy-two percent (72%) of Democrats,

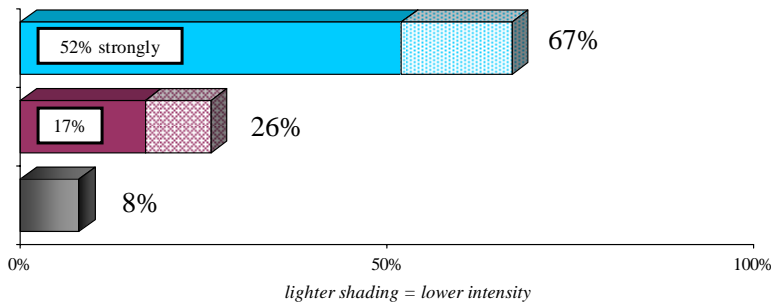
59% of independents and 52% of Republicans join 71% of liberals, 57% of moderates and 58% of conservatives in opposing blanket warrants (also known as “basket warrants”), demanding instead that warrants be individual. Majorities in every region of the country concur : (West: 65% oppose, 28% favor; Midwest: 60% oppose, 32% favor; Northeast: 69% oppose, 28% favor; South: 56% oppose, 35% favor).



After Hearing A Strong Argument For Blanket Warrants, Support For Individual Warrants Increases

- Some say Congress should keep the traditional requirement that the government get an individual warrant for each American citizen whose phone calls or emails they want to wiretap instead of getting warrants to spy on whole groups of Americans at once. They say the Fourth Amendment requires the government to get a warrant in each case by proving probable cause to an independent judge. But the blanket warrant allows the government to spy on whole groups of American citizens with no judicial review of the individual circumstances in each case.
- Others say Congress should set up a system that allows the government to get a blanket warrant for a year to conduct crucial wiretaps on terrorists communicating with individuals in the United States. They say that the courts will still be involved and that giving the government this authority is critical to keeping America safe. They say Congress should not bog down intelligence agencies with administrative burdens by giving terrorists rights.

Do you favor or oppose keeping the traditional requirement that the government get an individual warrant for each American citizen whose phone calls or emails they want to wiretap?



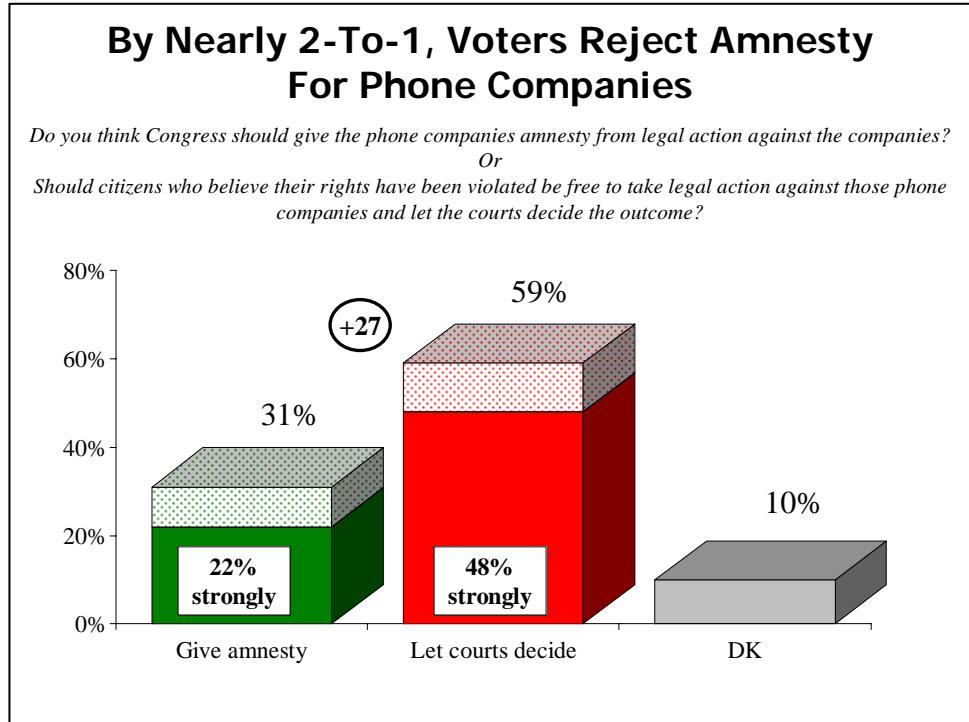
After presenting voters with arguments on both sides of this issue, opposition to blanket warrants also increases. Respondents heard a strong statement from supporters of blanket warrants, arguing that they are critical to keeping Americans safe, that courts would still be involved, and that intelligence agencies should not be bogged down with burdens by giving terrorists rights. Even in the face of these powerful arguments, over two-thirds (67%) still oppose the elimination of the traditional requirement that warrants for

wiretaps be sought on an individual basis. In fact, a 52% majority continue to strongly support keeping

the requirement for individual warrants. Only about one-quarter (26%) support blanket warrants, even after exposure to the Bush Administration’s strongest arguments. Here too exposing voters to the arguments on both sides increases opposition to the Administration’s position by a net of 11-points.

A LARGE MAJORITY OPPOSE AMNESTY FOR THE TELECOM INDUSTRY

Fifty-nine percent (59%) of voters reject amnesty for phone companies that may have violated the law by selling customers’ private information to the government, preferring to let courts decide the outcome. Again intensity favors opponents of amnesty, with 48% “strongly” opposed. Fewer than 1-in-3 (31%) support amnesty for the phone companies, with just 1-in-5 (22%) strongly supporting amnesty¹.



Opposition to amnesty is also widespread, cutting across ideology and geography. Majorities of liberals, moderates, and conservatives agree that courts should decide the outcomes of these legal actions (liberals: 67% let courts decide, 28% give amnesty; moderates: 59% let courts decide, 28% give amnesty; conservatives: 52% let courts decide, 37% give amnesty). Large majorities in every part of the country also reject amnesty: 60% in the West (29% give amnesty), 61% in the Northeast (32% give amnesty), 59% in the Midwest (33% give amnesty), and 57% in the South (30% give amnesty). Seventy percent (70%) of Democrats and 61% of independents say let the courts decide. Republicans are evenly split (45% give amnesty, 44% let the courts decide) with equal intensity on both sides of the divide.

VOTERS DO NOT TRUST PRESIDENT BUSH TO PROTECT CIVIL LIBERTIES OR THE COUNTRY AND GIVE HIM POOR MARKS FOR HIS HANDLING OF THE WIRETAP ISSUE

Ninety-six percent (96%) of voters say that it is important to them personally that a political party protect our civil liberties, with most all (80%) saying it is “very important” to them. On this matter of vital

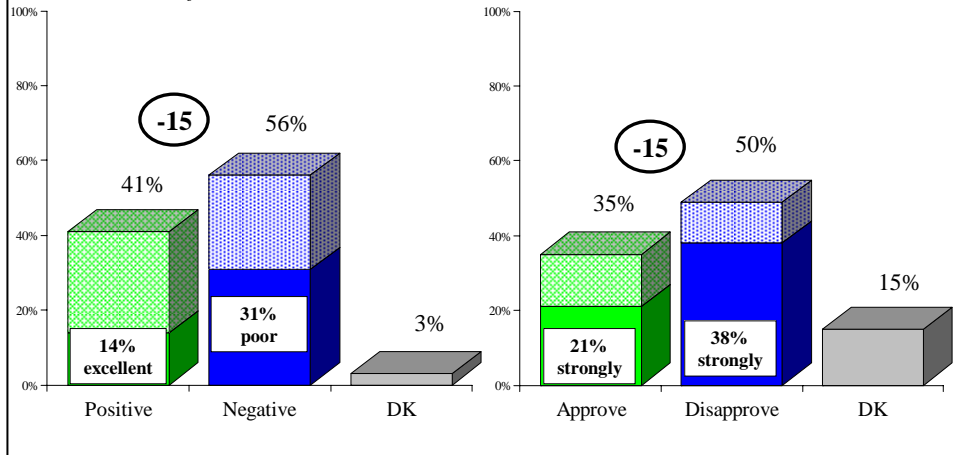
¹ Full question wording: “U.S. phone companies recently sold the private records of millions of their customers to the government because the government said it needed the private records to investigate terrorism. Some people say the telephone companies’ sale of customers’ private records is against the law. Congress is considering a bill that gives phone companies amnesty, preventing any legal action against them for selling those private records to the government. Do you think Congress should give the phone companies amnesty from legal action against the companies or should citizens who believe their rights have been violated be free to take legal action against those phone companies and let the courts decide the outcome?”

personal importance to the vast majority of the electorate, Democrats enjoy a 23-point margin over Republicans as the party voters trust.

Bush's Job Performance Ratings On Terror And Wiretaps Are Quite Negative

What kind of job do you think President George W. Bush is doing protecting the country from terrorism?

Do you approve or disapprove of the way the Bush Administration is handling warrantless wiretaps?



Voters' skepticism about the Republicans on these matters also extends to President Bush's handling of this issue as 50% disapprove, while just 35% approve, of the way he is handling surveillance issues.

Some have suggested that Americans see this issue in a national security context, arguing the electorate trusts the President in that sphere. While that used to be the case, it is no longer. By 56% to 41% voters give Bush negative marks for his performance on protecting the country

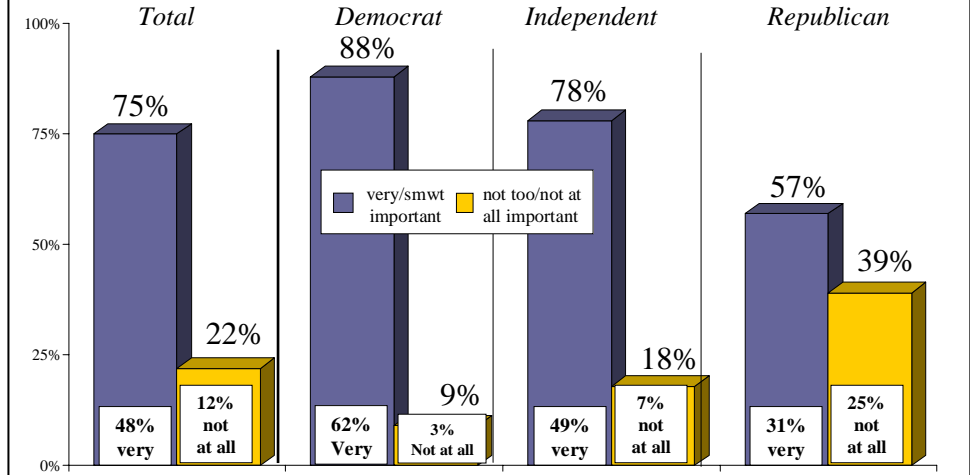
from terrorism.

OVERWHELMING MAJORITIES, ACROSS PARTY LINES, WANT CONGRESS TO TAKE ACTION NOW TO REQUIRE WARRANTS

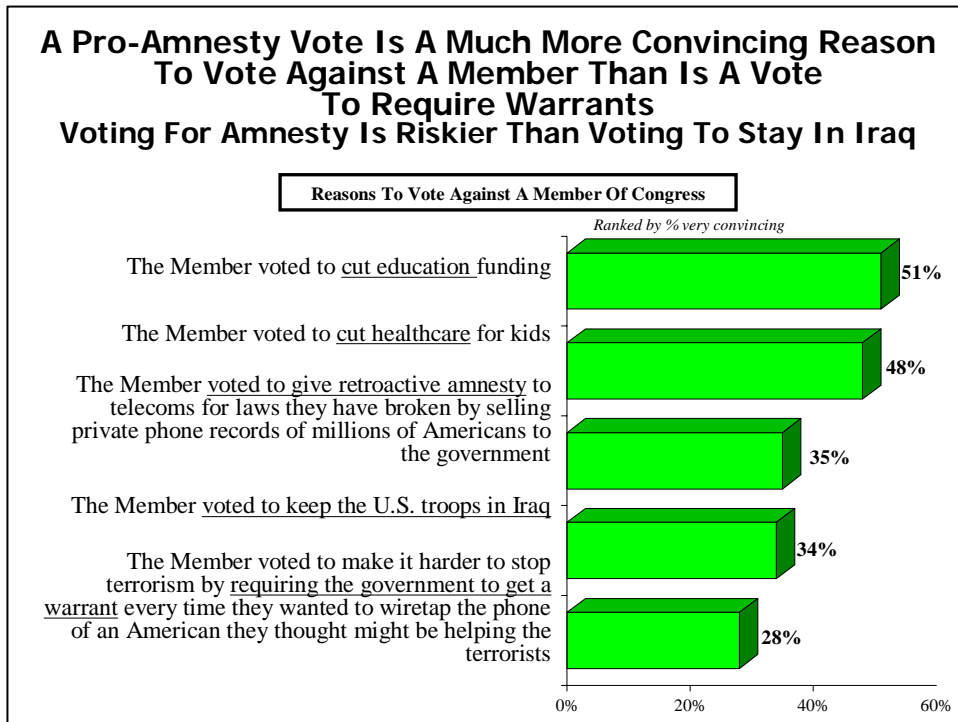
Three-quarters (75%) of voters say it is important for Congress to take action now to require the government to obtain a warrant before wiretapping the international phone calls and emails of American citizens, with a near majority of voters (48%) deeming such congressional action "very important". Only about a fifth (22%) say it is either "not too" or "not at all" important for Congress to take such action.

Large Majorities Of Voters, Across Party Lines, Say It Is Important For Congress To Act Now To Require Warrants For Wiretaps Of Americans' International Communications

How important is it for the U.S. Congress to take action now to require the government to get a warrant before wiretapping the international phone calls and emails of American citizens—is it very important, somewhat important, not too important or not at all important?



THERE WILL BE LITTLE POLITICAL BACKLASH AGAINST THOSE WHO VOTE “NO” ON AMNESTY OR “YES” ON REQUIRING WARRANTS



To determine the impact of these votes on the electoral prospects of Members, we examined them the way we would test other lines of attack in a campaign context, asking voters how convincing a variety of actions would be as reasons to vote against a Member of Congress. Requiring the government to get a warrant each time they wanted to wiretap an American was the least compelling negative we tested, even when it was put in the context of “making it harder to stop terrorism.” Only 28% said this would be

a “very convincing” reason to vote against an incumbent. Votes to cut education (51% very convincing) and kids’ health care (48% very convincing) were the most damaging, followed by, “the Member voted to give retroactive amnesty to telecoms” (35% very convincing). Voting in favor of amnesty for telecoms is not only significantly more damaging to a Member politically than voting to require the government to get a warrant (28% very convincing), a pro-amnesty vote is as risky as “voting to keep the U.S. troops in Iraq” (34% very convincing).

Going deeper, we explored whether a vote requiring individual warrants would call into question a Member’s commitment to the war on terror. The answer was a resounding no. Just 36% said they would worry that a candidate who “took the view that wiretapping American citizens should require an individual warrant from a court... was not tough enough to deal with terrorism.” A 56% majority would not worry about a candidate’s ability to deal with terrorism as a result of such a position.

Similarly just 34% would worry about a candidate who took the “view that the phone companies should be held legally accountable to the law of the land and not be given amnesty for past wiretapping crimes” compared to 57% who would not be concerned.

PERSUASIVE MESSAGES FOCUS ON THE RIGHT TO A WARRANT BEFORE THE GOVERNMENT LISTENS IN ON YOU

Defenders of constitutional rights have compelling messages in favor of their position at their disposal. The two most effective were relatively short and simple, and appealed to the Constitution. The single most convincing argument (49% very convincing) stated, “*Americans have a constitutional right not to have the government listen to their phone calls or read their emails unless the government can*

prove to a judge that there is good cause to do so.” Equally powerful (48% very convincing) is the message, *“Protecting Americans from terrorism is vitally important, but we do not have to ignore the Constitution to protect our country.”*

Finally, another key to persuasive communication on this issue is to clearly distinguish opposition to *warrantless* wiretaps from opposition to *wiretaps* themselves. Opponents of warrantless wiretaps are not opponents of wiretaps; they are supporters of the Constitution and the American system of checks and balances, a system which works. Thus, the third most powerful argument we tested (47% very convincing) simply states, *“If Bush really has good reason to believe an American is talking to a terrorist, he will have no problem convincing a judge to give him a warrant.”* Warrants are not an obstacle to appropriate surveillance, they are a constitutional right to which every American is entitled.