

60 votes when the majority should be able to go forward on policies that have been set in the Senate all year. The Senate has passed ANWR. The Senate has passed Katrina- and Rita-related supplemental appropriations. The Senate always passes the Department of Defense appropriations. It would be unthinkable not to be able to do that before we leave for the year, to fulfill our responsibility. I hope we can come together at a time when we should show our country this unity.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COBURN). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. COLLINS. Mr. President, I ask unanimous consent to speak in morning business for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Maine is recognized.

The remarks of Ms. COLLINS pertaining to the introduction of S. 2145 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The minority leader.

#### USA PATRIOT ACT

Mr. REID. Mr. President, the issue before this body in the waning days and hours of this first session of the Congress is whether the PATRIOT Act should be extended.

Why are people concerned about the PATRIOT Act? Let me read an interview that took place, which is a condensation of a long story that appeared in the Washington Post about Las Vegas, NV. Barton Gellman was the writer of the article, and here is what he said:

At the end of 2003 there was an . . . alert. One of the reasons was a fragmentary report. . . . [At the end of 2003] they tried [the Federal Government] for the first time ever to create an instant real-time moving census of every tourist and visitor in the city during its most visited period of the year.

Forty-four million, 50 million people come to Las Vegas every year.

Continuing the statement of Mr. Gellman:

They sifted through about a million people who were considered potential suspects to see if they could find any match with any other indicator in their big database of the terrorist universe. So they used grand jury subpoenas, they used national security letters and they got every hotel guest, every air passenger, every person who rented a car or a truck or a storage space, and they made a giant database out of that and started sifting [through] it.

In the parlance of the intelligence community, the whole thing washed out. They had

no suspects. There was no attack. They had an undeniably important motivation here, but one of the prices that the country has paid for that is that on the order of a million people are now in government databases and are staying there. So if you got a Las Vegas hotel room and maybe if you were there with someone you ought not to have been there with, what happened in Las Vegas did not stay in Las Vegas.

The question was asked:

How can it be that four years into the Patriot Act the national security letters have not been challenged in court as, you know, a blatant intrusion of privacy?

Mr. Gellman continues:

Well, there have recently been two court cases. We know of only two cases ever in which they were challenged. The plaintiffs are not officially known to the public. I discovered one of them. In the Connecticut library case that was the lead of my story, the librarian who received a national security letter was afraid to call a lawyer because the letter said that he shall not disclose to any person that he'd received it. But the reason there hasn't been much public debate until now is because no one had any idea what scale they were being used on. And crucially, people did not know, even in Congress, that the great majority of these letters asked for information about ordinary Americans and U.S. visitors who are not suspected of any wrongdoing.

We do not know the exact number of these letters. And "letters" is a word that is not appropriate. These "demands." We know there are 30,000. Could be more, may be less, but tens of thousands of Americans, just like what happened New Year's Eve in Las Vegas. That is why people are concerned, on a bipartisan basis, about the PATRIOT Act.

The President and the Republican leadership should stop playing politics with the PATRIOT Act. They should join the bipartisan group of Senators who agree the Government can fight terrorists and protect the privacy and freedom of innocent Americans.

Americans want both liberty and security. These two terms are not contradictory. We do not have to sacrifice our basic liberties in the course of strengthening national security.

Democrats voted to support the PATRIOT Act. We voted for the original act in 2001. It passed with all but one Democratic vote. We voted unanimously for an extension of the bill in July of this year. Virtually every Senate Democrat has cosponsored Senator SUNUNU's—a Republican—bill to extend the act for 3 months while negotiations on a longer term extension continue.

We support the act, but we want to improve it. That is what this is all about.

Now, the President in his press conference today, of course, directed his attention to me, among others. The President, I think, talked about trust and credibility. So I am willing to take that at face value: trust and credibility. I think it should be based on liberty and security, but he wants to do it on trust and credibility.

Let's take a look at this. On 9/11, we had a terrible calamity in this country.

We responded quickly and passed the PATRIOT Act. We were wise, though, in setting certain sunsets; that is, if they were not renewed, they would expire. We did that. That was the right thing to do.

We are now back, and the time has come to look at how the PATRIOT Act has worked. I read to the Senate what has happened with New Year's Eve in Las Vegas.

Trust and credibility: The President told us there were weapons of mass destruction in Iraq, that there were secret meetings in Europe, al-Qaida training in Iraq. The Secretary of State still talks about the aluminum tubes. She talked about them then—yellowcake, things that were supposedly there so they could develop these weapons of mass destruction.

Every one of these the administration either knew or should have known was absolutely not true. We were told that we would invade Iraq, and as we proceeded up these boulevards, they would be throwing bouquets. Well, there are 2,200 dead Americans, 17,000 wounded Americans, a third of them grievously wounded, missing arms and legs and blind and head injuries, costing the American people \$2 billion a week.

Ronald Reagan said: Trust but verify. And that is what this is all about, verifying what has gone on in the last 4 years with this PATRIOT Act.

I supported the first PATRIOT Act. I do not regret my vote. I supported the bill that came out of the Senate Judiciary Committee unanimously. I supported the bill that came out of the Senate unanimously. But I, with other Senators, believe the PATRIOT Act as presently designed is not good for America.

Mr. DURBIN. Will the Senator yield for a question?

Mr. REID. I am happy to yield.

Mr. DURBIN. Is the Senator from Nevada aware of the fact that the President said today, at his press conference:

In a war on terror, we cannot afford to be without this law [the PATRIOT Act] for a single moment.

I ask the Senator from Nevada: Did the Senator from Nevada not ask unanimous consent to extend the PATRIOT Act as written for 3 months, and is it not true that when you made that request a few days ago, the Republican leader of the Senate objected to extending the PATRIOT Act for 3 months, after the revision of the law was held up here on the Senate floor?

Mr. REID. Mr. President, I asked unanimous consent that a bipartisan piece of legislation extending this bill for 3 months be made operative. It was objected to by the Republican leader.

The President wants to talk about trust and credibility. I think we need to look at that statement: Not for a single minute, not for a single hour should the PATRIOT Act not be in effect. Well, the burden of it not being in effect is solely on the shoulders of the

President without any question. All he would have to do is pick up the phone, call his Republican leader in the Senate, say go ahead, 3 months, maybe you guys can work something out.

This is a bipartisan piece of legislation. We support the act. We want to improve it. That is what this is all about. Let's be clear who is killing the PATRIOT Act. Yes, we killed the conference report on a bipartisan basis. We did the right thing for America because we believe that liberty and security should be part of this Government. Twice last week a bipartisan group of Senators tried to move forward on a 3-month extension but instead of joining us, the President and the Republican leadership decided that they would rather see the bill expire.

Maybe the President has trouble getting away from being "campaigner in chief," maybe not wanting to be as badly the Commander in Chief as he wants to be "campaigner in chief." Maybe he thinks this gives him a political advantage. The responsibility of this bill going up or down is his and no one else's. It is time for the President to put politics aside and national security first. The President and the Republican leadership should join us in supporting the PATRIOT Act and protecting Americans. It would be irresponsible and a dereliction of duty for the administration to allow these provisions to expire.

Nobody seriously believes that the expiring provisions of the PATRIOT Act should be allowed to lapse while this debate continues. Senator SPECTER and Senator LEAHY can work this out. Democrats are not the only ones who believe we should improve the PATRIOT Act. Senators SUNUNU, CRAIG, HAGEL, and MURKOWSKI voted not to terminate debate last week. All four of these Republican Senators have cosponsored the bill to extend the act for 3 months. I have had Senators from the other side of the aisle come and say: That was a very close call. That was a hard vote for me.

There is a bipartisan coalition of Senators wanting a 3-month extension of the PATRIOT Act in its current form so that we can pass a better bill that will have the confidence of the American people.

RUSS FEINGOLD, the Senator from Wisconsin, one of the finest Members of Congress I have ever served under, a person who I believe is one of the consciences of the Congress, someone with an impeccable record of academics, a Rhodes scholar, Harvard law, he was the only person to vote against the PATRIOT Act the first time. He took this on during a campaign for reelection. Millions and millions of dollars were spent to try to exploit this by his Republican opponent, and it didn't work. He won overwhelmingly. He said at a press conference this morning:

It is the President who wants to play chicken here. He wants to have the risk taken that this would expire. All he has to do is be just a little reasonable, [allow] the

will of the Senate. The law will be extended permanently, other than certain sunset provisions. I think it's clear that the president is the one who is playing politics with this.

So says RUSS FEINGOLD. Just as Senator JOHN MCCAIN called the President's bluff on torture not being part of what America does—rather than calling bluffs, he persuaded the President that we needed to check potential excesses in interrogation tactics—we also need to ensure that we put in place checks on the Government's power to trample on the privacy of innocent Americans.

I would hope the President would put down his campaign hat and put on his hat that is the President of the United States, Commander in Chief, and recognize that legislation is the art of compromise.

I want to first ask unanimous consent—

Mr. GREGG. Will the Senator yield for a question?

Mr. REID. I am happy to yield for a question to my friend.

Mr. GREGG. If the majority or even a few Members beyond the two who voted for cloture had voted with the Republicans for cloture on the PATRIOT Act, isn't it true that the PATRIOT Act would have been on the floor?

Mr. REID. I am sorry. Say that again.

Mr. GREGG. If we had been allowed to go forward without cloture, isn't it true that the PATRIOT Act would have been on the floor, if the Democratic membership had voted for cloture?

Mr. REID. The PATRIOT Act is still on the floor. Cloture was not invoked, so the PATRIOT Act is still in order.

Mr. GREGG. But wouldn't we be able to complete the business of the PATRIOT Act if cloture had been invoked?

Mr. REID. As I explained, and it has been talked about for some time, the PATRIOT Act in its present form is not something that can muster the parliamentary procedure to get through the Senate. As has been indicated, cloture was not invoked on this bill. The bill is still before the Senate. The reason being, a bipartisan group of Senators believes the bill is bad. I have given a number of reasons it is bad. These should be corrected. The bill in its present form is not good. The law that is now in effect, we have agreed that there should be a 3-month extension on it. It is a bipartisan group of Senators who have agreed to that. So I say to my friend from New Hampshire, it is the considered opinion of this Senator that if this goes down, based on what the President said this morning, if this bill is not in effect for one day, the country can't afford that and, therefore, I think if he believes what he said, then he should agree to the 3-month extension.

Mr. GREGG. If the Senator will yield for an additional question.

Mr. REID. I am happy to yield.

Mr. GREGG. My point was, if there had been a vote which had invoked clo-

ture so that we could have completed the business of the PATRIOT Act, we would have a vote on final passage of the PATRIOT Act, and it would have been put into law because a majority of Members were for it. So since the Democratic leader basically led the opposition to cloture, therefore led the opposition to the ability to get to a final vote on the PATRIOT Act, it does seem to me that you are a little bit in the position right now like the person about 50 years ago in New Hampshire who shot his parents and then, when he was brought before the court on the murder charge, threw himself on the mercy of the court because he claimed he was an orphan. Are you an orphan?

Mr. REID. I say to my friend, who usually is very analytical and concise, that example is pretty bad. I would also say that we could stand out here and say the reason we haven't finished the Defense appropriations bill is because there is extraneous matter put in the bill. If that had not been in the bill, we would be home wrapping our Christmas presents now. There are a lot of hypotheticals. That hypothetical doesn't apply. We are here in the real world. The real world is that cloture was defeated on the effort to cut off debate by a bipartisan group of Senators. There is legislation now pending that would take a matter of a minute to approve; that is, to approve a 3-month extension.

UNANIMOUS CONSENT REQUEST—S. 2082

Therefore, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 2082, the 3-month extension of the PATRIOT Act; that the Senate proceed to its immediate consideration; the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, I object.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the PATRIOT Act, as reported by the Judiciary Committee, S. 1389, Calendar No. 171; that the committee substitute be agreed to, the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Reserving the right to object, would the minority leader stand for a question?

Mr. REID. Of course.

Mr. KYL. In the Philadelphia Inquirer, a reporter by the name of James Kuhnenn has quoted the distinguished minority leader, and this has been out on the airwaves. I don't want people to be quoted inaccurately. This was according to a report of December 17, 2005, and this comment is attributed to the Senator from Nevada: "We killed the PATRIOT Act."

I ask my friend, the distinguished minority leader, whether that is an accurate quotation of what the Senator said.

Mr. REID. Mr. President, I stated earlier in my remarks a few minutes ago that it is absolutely true that the conference report on this bill was killed. Cloture was not invoked. I say to my friend, the Senator from Arizona, that is a fact. Maybe the term was the wrong term. Maybe I should have said defeated or whatever. But that quote is accurate, sure.

Mr. KYL. I will explain why I ask the question. It was reported to me that in the remarks the distinguished Senator made, he said, "Let's be clear about who is killing the PATRIOT Act." I just wanted it to be clear that the action taken to prevent us from getting a vote on the PATRIOT Act was an action, a filibuster, or not invoking cloture, and that action has prevented us from completing action on the PATRIOT Act, which means we were not able to take a final vote on it and therefore to reauthorize it.

Mr. REID. Reclaiming my time, Mr. President, I appreciate the example—

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Objection, Mr. President.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Reclaiming my time, the example given by my friend, the distinguished Senator from New Hampshire, about killing a parent and claiming to be an orphan, and my friend from Arizona talking about our having killed the PATRIOT Act—look, everyone knows Senate procedure. The conference report was defeated. The ability to extend the conference report was made minutes after that, saying—in fact, it is no secret. I told the majority leader on the morning before that vote:

You don't have enough votes to invoke cloture. Why don't you extend it for 3 months?

That wasn't done then. We offered to do that immediately after cloture was defeated. We offered it again today. Not only did we offer to extend it for 3 months, we offered to take up the bill that passed the Judiciary Committee and the Senate unanimously and pass it in the Senate unanimously.

I think the appropriate thing to do would be to have the 3-month extension. Obviously, this business doesn't mean as much to the President as he said to the American public in his statement because it is up to him.

The PATRIOT Act does not expire until the 31st day of December of this year.

Mr. DURBIN. Will the Senator yield for a question?

Mr. REID. Yes.

Mr. DURBIN. I want to make the record clear. I was with the Democratic leader when he made the statement about the PATRIOT Act. I took it to mean that we defeated cloture on the conference report on the PATRIOT Act. That was the way I understood it. It has been twisted a little bit by some who want to read more into it. But it is accurate, I believe, to say that.

I will just ask the Senator from Nevada, at least once informally with

Senator FRIST, and now four different times on the floor of the Senate, we have tried to extend the PATRIOT Act for 3 additional months while we work out our differences—an extension which would not change the PATRIOT Act in any way whatsoever—so that for 90 days, at least, it could continue to be used and enforced without question. Now we have had the Senator from Arizona, Mr. KYL, object to extending the PATRIOT Act for 90 days.

One could reach the conclusion that the Senator from Arizona opposes the PATRIOT Act as currently written if he opposes extending it for 90 days, I might say. I am happy to allow the Senator to reply. If the Senator from Arizona supports the PATRIOT Act as currently written, why would the Senator object to extending the PATRIOT Act for 90 days?

Mr. REID. Reclaiming my time, Mr. President. Mr. President, maybe—

Mr. KYL. If I may ask the minority leader—

Mr. REID. Mr. President, maybe I didn't have the education of a lot of my friends. I was educated in a little school in Searchlight, NV. We didn't have English class. Maybe my choice of words wasn't perfect. Maybe I should have said we killed the conference report. But the fact is, that is what we had done. People can try to change the words and the meaning of it all they want, but that is what happened. I may not have the ability to express myself like the folks who were educated in all these private schools and fancy schools, but I understand the Senate rules. Everyone knows that cloture was defeated, killed, whatever you want to call it. That means that cloture was defeated and that bill is still before the Senate.

Any time the leader wants to bring it up again, he can do that. But the fact is, we have offered on numerous occasions to extend it for 3 months. If it is not extended past December 31, 2005—as the President said, we have to have it every minute of every day. He should understand that the brunt of it not being extended is on his shoulders. Even the only Senator who voted against it 4 years ago said it should be extended. That is RUSS FEINGOLD. We have I don't know how many cosponsors, but a significant number who believe that could be done.

But it appears to me that the White House and the Republican leadership in the House and Senate think they have a political issue. If they think the American people are that unable to understand, then they have a lot coming. The American people understand by virtue of this bipartisan vote that this extension should be done the right way. The right way is to extend it 3 months and see if the kinks can be worked out. Remember, the extension of the PATRIOT Act passed this body unanimously. It was changed in the House. They put a lot of things in it that should not be in it. It came back and Republicans and Democrats raised

their arms and said: You cannot do this.

So the fact is, if the PATRIOT Act is not extended, the whole burden is upon the White House and the Republican leadership in this Congress.

Mr. KYL. Mr. President, the minority leader has the time right now; is that correct?

Mr. REID. That is true.

The PRESIDING OFFICER. He has the floor, yes.

Mr. KYL. If the leader would like to relinquish the floor to me, I can respond to the Chair rather than going through the minority leader. Otherwise, I will go through the leader and respond to the Senator from Illinois that way.

Mr. REID. I yield the floor.

Mr. KYL. Mr. President, let me respond to the minority leader and to the question asked of me. The words that the minority leader used were "killed the PATRIOT Act." I don't suggest that this reflects his view that the PATRIOT Act should not exist. I want to be very clear about that, just as I am sure the question posed to me by the Senator from Illinois doesn't mean to suggest that my objecting to a 3-month extension means that I don't want the PATRIOT Act to exist. I have made it crystal clear in all of my comments before today that that is precisely what I want to see—if not the PATRIOT Act in its existing form, until December 31, in the modified form as developed in conference between the House and Senate. I think we can both agree that we understand that the PATRIOT Act is a good thing and indeed it is a good thing whether in the existing form or in the form that came out of conference committee.

Let me address that for a moment. As we know, in the Senate, we passed it out unanimously—unanimously—and it is difficult for me to see why Members of the other side of the Chamber are proud of having filibustered it so it cannot come up—don't use the word "killed it"—having prevented it from coming to a vote when, by everyone's agreement, about 80 percent of what the Senate passed unanimously ended up in the final version of the conference committee report. By 80 percent, I mean of the contentious issues. Most of the bill was not contentious. There were a few provisions that were. On those, the House of Representatives in the conference committee conceded most of the ground. So, in other words, the Senate mostly got its way in that discussion.

It seems to me that what the other side is basically arguing is, unless we get our way 100 percent, then we are not going to agree to this. The distinguished minority leader pointed out that everybody knows how the filibuster rules work. I think it is also clear everyone knows how the two Chambers work together. We pass our version of the bill, the House passes its version of the bill, there are a few items in disagreement, and those are

compromised. It is not that one Chamber gets its way and the other Chamber has to concede to everything.

What has been clear from the House of Representatives is that 3 months, 6 months, 1 year is not going to change anything. They have come to the conclusion that they have already conceded more than they should have. Frankly, from my position, I would be of that same view.

Mr. DURBIN. Will the Senator yield for a question?

Mr. KYL. It seems to me that were there to be additional concessions made, we would no longer have a PATRIOT Act that could easily be used by our law enforcement and intelligence people to protect us. It would make it more and more difficult. As a result, you do have to draw the line somewhere and say: Look, if you try to change this any more, it is not going to protect the American people; in fact, it is going to prevent law enforcement and intelligence people from doing their job of protecting the American people.

There does come a point in time when you have to say this is it. Either you are going to be for extending this or not, and that is the position we were in last week when the minority—a majority favored moving forward; I think it was 52, 53 votes. A minority said no, but that minority under our rules had the ability to prevent us from moving forward.

I will be happy to yield for a question.

Mr. DURBIN. I would like to ask the Senator from Arizona if he would consider two questions. The first question is this: Is it not true that the position we are arguing in the PATRIOT Act is the same position that the Senator from Arizona voted for in the Judiciary Committee and at least did not object to on the floor of the Senate? So to suggest it is a radical position—I would like to ask the Senator, has he changed his view on that?

Mr. KYL. Let me answer that question, and I will be happy to yield again.

I don't believe the Senator heard me use the words "radical position." I have not contended anything is a radical position. What I have said is it would not work. We do want something that will work to protect the American people.

Mr. DURBIN. If the Senator will yield, I believe it worked when I voted for it in the Judiciary Committee, as the Senator did, and agreed to in passing it unanimously on the floor. I think it still will work.

The second question I ask the Senator is this: Here is the choice we have. The PATRIOT Act can expire on December 31 of this year or it can be extended at least 90 days by a request being made on the floor. Does the Senator from Arizona think it is better for the PATRIOT Act to expire December 31 than to extend it 90 days?

Mr. KYL. Mr. President, let me answer the question this way: Since it is not at all clear, given the holidays and the fact the Senate is only in session at the very end of January, that we could

resolve heretofore unresolvable issues in 90 days, how about a 1-year extension? That way, we would make sure the PATRIOT Act did not expire, we would have it in force, and whatever time it took for us to try to reach agreement, there would at least not be uncertainty; we would know what the law was. If we were able to reach agreement in the meantime, then, of course, we could pass the bill and whatever changes that would be made were made. Let me answer the question that way and perhaps not pose a specific unanimous consent request but see what the response of the Senator from Illinois would be were I to do that.

Mr. DURBIN. I say through the Chair—and I am not sure of the exact parliamentary form we are using here—in a question to the Senator from Arizona, based on his experience working in both the House and Senate, is it not more likely that when you say 1 year, it will be 11 months, 3 weeks, and 6 days before we consider this seriously again? Has it not been his experience—it has been mine—that in this legislative body, if one says 90 days, it is more likely people will get serious within a few weeks and start talking about real change? Perhaps the Senator's experience is different from mine. Giving it a year means putting off the inevitable. Let's get this resolved and move forward.

Mr. KYL. The Senator from Illinois certainly makes the point that when you have a longer deadline, work tends to be put off. I make this point: The distinguished chairman of the Judiciary Committee is here. We have been working for the better part of a year on this reauthorization of the PATRIOT Act. The chairman can tell us when the Judiciary Committee took it up. There were a lot of sessions before that. For many months now, this issue of reauthorization has been well known to all of us. We have known what the deadline was, and we worked on it and worked on it hard.

I think people of good faith have reached the degree of compromise they believe they can reach at this point. Given the fact that most of the concessions were made by our House colleagues and that they have indicated they are not ready to make any additional concessions and that the President has made it clear he does not want to see the act degraded any further than the conference report presented to us, I suggest that at some point legislators need to make a decision either to vote yes or no and not to hide behind what is, in effect, a procedural vote—namely, a filibuster—and saying: We are really for it; that wasn't really a vote to kill it; we were just voting not to vote on it. When you filibuster a bill, when you vote not to vote on something, it is the same thing as voting against it in practical effect when the act expires on December 31.

So my suggestion is that we roll up our sleeves, if you want a real deadline, instead of 3 months from now, we have another week. We are going to be here apparently until Friday. Let's conclude

our work, vote on it, have an up-or-down vote, and see whether people really are ready to go into the new year without an extension of the PATRIOT Act.

I am happy to yield the floor to the Senator from Pennsylvania.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I will pick up on comments made both by the Senator from Arizona and the Senator from Illinois.

When the Senator from Illinois says if you have a 1-year extension, nobody will get serious about it until 11 months, 3 weeks, and 6 days, I agree with that. But if you have a 3-month extension, nobody will get serious about it until 2 months, 3 weeks, and 6 days.

The Senator from Arizona has made the comment that we are going to be around here for a while. I usually like to agree with Senator KYL, but I hope he is wrong about Friday, or maybe, long about Thursday, I will hope he was right about Friday. We may be here longer than Friday. But we know we have a cloture vote on Wednesday. So that means we have 2 days, which is twice as long as the Senator from Illinois postulates if we have a 1-year extension. That is twice as long, 2 days, to work on it.

I do not know what the House of Representatives is going to do. I know that Chairman SENSENBRENNER has been very cooperative, but I don't know what his rejoinder would be. He is talking about an extension, or I have heard a rumor that there is talk in the House about an extension for 4 years. I do not know what the President is going to do. He said he will not sign an extension. I do not know what the majority leader is going to do. He said he is not going to bring it up. But I am ready, willing, and able to sit down with the Senator from Idaho, who is in the Chamber. I cosponsored his so-called SAFE Act. I am trying to work it out.

We passed a good bill out of the Senate. Everybody agrees with that because it was unanimous. We made certain changes because we have a bicameral system. I am ready to sit down at 2:10, 2 minutes from now, or right now, and see what people have in mind.

The distinguished ranking member at one time said that if we had a modification on the conclusive presumption about which he feels very strongly—it was the subject of a lot of floor debate—so that we did not have a bar that on representation by certain ranking officials, the national security interests or foreign diplomacy issues were conclusively presumed, there couldn't be disclosure, if there could be modification of that standard, I think we might work that out.

That is a big point. It would be great for the country if it were to be seen

that Republicans and Democrats get together on something, practically anything.

I yield to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I think in the closing moments prior to the cloture vote and following that the Senator was very open, and I appreciate his willingness to come together with the House to try to resolve it. What is most important—and I want to say it and I want to say it again—for those of us who offered the SAFE Act and stood together, our intent was not to kill the PATRIOT Act and it never has been. I would hope that this process does not end up in the PATRIOT Act expiring without modifications of it and the reauthorization of it. The chairman certainly has spent a good deal of time in that effort, as have I and many others. His willingness now to sit down and to attempt to work this out, all of that is doable and can be accomplished, especially if the time we are now involved in, in dealing with DOD conference and DOD reauthorization and the budget reconciliation conference is going to be protracted to the extent of the rules of the Senate, then we do have that time more than ever.

I would hope it is possible to come together. I do know the Justice Department has stated that all ongoing investigations would not be compromised during the period of time in which the PATRIOT Act might expire. That is not the point. The point is we ought to do it. We ought to do it appropriately, and I would hope that in the end the chairman would take us as close to the Senate version as we could possibly get because I think the work that came out of the Senate Judiciary Committee is what this Senate ought to vote on once again and what ought to become law.

I thank the chairman for yielding and I yield the floor.

Mr. DURBIN. Mr. President.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. Mr. President, I do not know if anybody is going to agree with the proposed change that was made on the conclusive presumption. It may be that it is not negotiable. I do not know. All I have to say is that there are a lot of people with a lot of diverse viewpoints, and I am prepared to sit down with anybody or everybody and see what those viewpoints are.

The Senator from Arizona has been very cooperative. He has views. The Senator from Illinois does, the Senator from Idaho does. I am trying to get it worked out. On the floor, I am not prepared to say what concessions would be made, but as long as we are going to be around here, there is no harm in talking.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am glad we are having this conversation. I

think it shows that there is some room for dialogue and, I hope, for progress to be made on this issue. I think it is unfortunate some of these statements made earlier today by the President suggesting that those who did not share his point of view on this issue were somehow not as sensitive to the threat of terrorism. I can assure the President and all listening to this debate there is sensitivity to that threat of terrorism on both sides of the aisle by people who were on both sides of that cloture vote on the PATRIOT Act.

What is at issue are some fundamental questions about our constitutional rights, our freedoms, and liberties in America. Each of us, when we assume the responsibility of Senator, swears to uphold the Constitution. There are so many important elements within that Constitution, but one might argue that the Bill of Rights is the most important because it is a guarantee of our individual rights and freedoms. So when we initially enacted the PATRIOT Act in the fear that was gripping this country after 9/11, there was a concern that perhaps we had gone too far; perhaps we had given the Government more authority over our privacy, more authority over our freedom, than was necessary.

In the bipartisan wisdom of those who wrote the act, we promised that 4 years afterwards we would revisit it and see if, in fact, it needed to be changed in any respect. That is what this debate is all about.

There may be some today who argue we should do away with the PATRIOT Act, but I cannot say who they might be. The only Senator who voted against it is supporting the reform that passed the Senate Judiciary Committee, so it is clear that he was prepared to vote for a PATRIOT Act with some modifications.

The Senator from Idaho, Mr. CRAIG, and I have been the lead cosponsors of the SAFE Act which, as he accurately described, was an attempt to modify the PATRIOT Act, not to abolish it, but to modify it, in certain respects, so as to protect our basic freedoms and liberties. We were happy at the end of the debate in the Senate when the bill came forward in the Judiciary Committee on a unanimous, bipartisan vote, which I hasten to add is a rare thing in the Judiciary Committee, if not the Senate. A unanimous, bipartisan vote on this measure brought it to the floor where it was enacted by a voice vote since there was no objection to it on the Senate floor. That is an amazing testimony to the fine work of the Senator from Pennsylvania as chairman of the committee and all the Members who compromised to reach that point.

It is worth noting for the record when that occurred. It occurred in July. It was in July that we finished our work on this and sent it over to the House of Representatives, understanding we were backing up against the deadline of December 31. It was not

until November 9 of this year that the House appointed their conferees. They waited 3 months or more before they appointed conferees and sat down to seriously debate this issue. Then a few weeks later, even with Thanksgiving intervening, they produced this conference report. So if it is a matter of timing, it does not take that long to try to work out differences.

That is why those of us who are proposing a 3-month extension believe it is entirely appropriate and possible that we would reach an agreement in that short period of time.

I would like to spend a moment reflecting on the substance of this debate. We have talked about the Senate procedure and timing and what words were spoken by Members and what they meant, but it is important to get down to the substance of the issue to understand that what we are talking about are some fairly fundamental issues.

The first is the question of Section 215. That is a section that will allow the Government to obtain medical records, financial records, library records and other sensitive personal information simply by showing, under the current PATRIOT Act, that the information might be relevant to an authorized investigation. That is as low a standard as I can imagine, and it basically means that the Government, without proof of any wrongdoing on the part of any individual or group of individuals, could secure a great deal of private personal information and cull through it simply by saying it may be relevant to an authorized investigation.

When we passed the Senate bill reauthorizing the PATRIOT Act, we said that it really should be a higher standard, not an impossible standard but a higher standard; that the person whose records are being sought has at least some connection to the kind of conduct we are trying to guard against. That is not a huge leap in terms of our legal standard in America. It is consistent with what we call due process.

The second concern with Section 215 is an equally important one. Assume that one is the custodian administrator of records, either at a business or at a hospital, and they receive a notice under section 215 of the PATRIOT Act, the Federal Government wants all of their records in their hospital on hundreds, if not thousands, of patients, and they believe that is an unwarranted intrusion into the privacy of their clients; what can one do if they believe the Government has gone too far?

Currently, under the PATRIOT Act, they are precluded from even arguing their case in court, arguing that the Government has gone too far. And section 215 has an automatic permanent gag that prevents any person from speaking out, even if he believes his rights have been violated. In my mind, that is a fundamental attack on a very basic freedom in America.

So when we wrote the revision of the PATRIOT Act in the Senate, which all

of the Senators voted for, Democrats and Republicans, we said we would give a person the right to go to court and to ask that this gag order be lifted so that they could argue the merits of the Government's activities. Those are two critical issues when it comes to the rights of the freedoms of Americans.

To argue that they are inconsequential, that they are not worthy of fight, is to ignore our basic responsibility. Many of us who are arguing to extend the PATRIOT Act also want to include in it some very fundamental protections of the rights of Americans. That is what this debate is about.

It is not about who can get the upper hand on the political debate on a day-to-day basis. I think most Americans are weary of that. I am. What we are trying to do is extend the PATRIOT Act for 90 days past December 31 and work out these differences, significant differences but differences we can address and address successfully.

It is interesting to note that this debate about the PATRIOT Act, which is going on on the floor of the Senate and in the President's press conference, is occurring at a moment in time which is freighted with significance in terms of the activities of this Government in relation to the privacy and the personal rights of its citizens.

It was disclosed in the New York Times and Washington Post and other major papers last week that for several years now our Government has been eavesdropping on American citizens through the National Security Agency. This, to me, is a dramatic departure from the basic rules and process we followed for over 30 years in America, where we have said that if you want to listen in on the conversation of my neighbor or someone in my family, you need to have a legal right to do so and that legal right will be established by going to court to establish why it is necessary for you to listen in on that conversation; to establish, for example, probable cause that a crime has been committed or probable cause or evidence that someone has engaged in unlawful activities. That is the American standard. It appears now, from what the President has said, that this administration for several years has rejected that standard. The President has assumed the power to eavesdrop on the conversations of innocent Americans on the possibility that they will come up with some evidence of wrongdoing. This is not only illegal, it borders if not crosses the border into a violation of criminal law. It is extremely significant.

In this holiday season with all the other things we are thinking about personally, with the rush of Congress to adjourn and go home and be with our families, I don't know if we are reflecting on the significance of what we have learned in the last several days. To think that any President of the United States believes he has the power as Commander in Chief to basically avoid, ignore, or violate the laws of the land is a significant charge.

I am encouraged that Senator SPENCER, the chairman of the Senate Judiciary Committee, a member of the President's own party, from Pennsylvania, has promised us a thorough investigation when we return in January as to what has been occurring in terms of the National Security Agency and this eavesdropping. But I raise this because our entire discussion of the PATRIOT Act is in the context of this consideration: Simply stated, have we gone too far in violating the basic rights and liberties and freedoms of Americans in our pursuit for security and safety? Can we strike a balance and be safe as a nation without endangering our basic freedoms and liberties? I think this question of eavesdropping on hundreds if not thousands of innocent Americans raises that question foursquare. But I also believe the extension of the PATRIOT Act does as well.

When the Democratic leader of the Senate comes before the body twice today, as he did last week, and asks for an extension of time so the PATRIOT Act will still be in force, can still be used for 90 days while we work out these significant questions, it is a good-faith offer. For his critics—whether in the executive branch or legislative branch—to suggest that he wants to do away with the PATRIOT Act or he is insensitive to the terrorist threat is not a fair characterization of his position nor the position of many of us. We believe the PATRIOT Act is important, but we believe some modifications will make it an act that is more consistent with our constitutional rights.

I hope the Republican leadership in the Senate will reconsider their position. I hope they will allow us to extend the PATRIOT Act for 90 days. We can go home for the holidays and return in January, which the Senate Judiciary Committee is going to do, anyway, and get down to business, rolling up our sleeves to work out this conference committee. Let's make sure the PATRIOT Act is not only reenacted but in a fashion that is consistent with our basic freedoms.

Mr. NELSON of Florida. Will the Senator yield for a question?

Mr. DURBIN. I am happy to yield for a question.

Mr. NELSON of Florida. I want to again commend the Senator for reminding the Senate of the substance of the issue. The substance of the issue is that Americans are quite concerned they are going to lose their civil liberties. They certainly want the Government of the United States to in fact prosecute the war against terrorists, but they don't want our society, because of our protection of civil liberties, to change into some other kind of society. Would the Senator agree that is the substantial majority opinion in this country, to protect our civil liberties?

Mr. DURBIN. It certainly is in my State of Illinois and I suspect nation-

wide. It is interesting to me, the passions that many of our colleagues bring to the fight of protecting a person's money—which is an important part of our job—but when it comes to protecting our freedoms, I don't see the same level of passionate commitment. I hope we will see that change during the course of this debate. But I think Americans value their freedoms very much.

I always recall, as a practicing attorney, how many people would be dismissive of criminal procedures to protect defendants until it was their teenage son or daughter who was arrested and then they came to their attorney and said, What can we do? What does the law provide to protect us?

I think we should all be sensitive to that fact.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, in a few moments—there are a few details being worked out in the next few seconds—we will be moving to hopefully get the clock started on the omnibus deficit reduction bill. As our colleagues know, as I outlined this morning, we have 10 hours to spend on that conference report. Then I know there are other discussions and comments that are wanted to be made about the PATRIOT Act. We plan on doing that using that time. A number of people have been waiting to speak on that.

At this juncture, while we work out the last few remaining details, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ORDER OF PROCEDURE

Mr. FRIST. Mr. President, our intention has been to go to the Omnibus deficit reduction bill, but apparently not all the papers are in order at this juncture; therefore, we will postpone that for a bit of time, although as soon as that paperwork is available I will be coming back to the floor in order to proceed to the consideration of the conference report, which is going to require a vote. That is for getting the clock started.

But, in the meantime, because we are sitting here with empty time, I ask unanimous consent that Senator KYL be permitted to speak, followed by Senator KERRY, in which case my intention is to come back and propound the unanimous consent request at that juncture.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Arizona.