

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.