

Thereupon, the Senate, at 1:09 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now be in a period of morning business.

Who seeks recognition? The Senator from Missouri.

Mrs. MCCASKILL. Mr. President, I will happily yield to the chairman of the Judiciary Committee. I am going to speak for 10 minutes as in morning business.

#### FISA

Mr. LEAHY. Mr. President, I thank the Senator.

Mr. President, I strongly oppose the blanket grant of retroactive immunity in the Senate Intelligence Committee's bill to amend the Foreign Intelligence Surveillance Act. This administration violated FISA by conducting warrantless surveillance of Americans for more than 5 years. They got caught. If they had not gotten caught, they probably would still be doing it.

When the public found out about the President's illegal surveillance of Americans, this administration, and the telephone companies who may have assisted them, were sued by citizens who believed their privacy rights were violated. Now, this administration is trying to convince Congress to terminate those lawsuits, in order to avoid accountability. We should not allow that to happen.

The administration knows that these lawsuits may be the only way that it will ever be called to account for its illegal program of warrantless surveillance and its flagrant disrespect for the rule of law. In running its program of warrantless surveillance this administration relied on legal opinions, prepared in secret by a very small group of like-minded officials, who crafted those opinions to fit the administration's agenda. Jack Goldsmith, who came in briefly to head the Justice Department's Office of Legal Counsel, described the program as a "legal mess." The administration does not want a court to get a chance to look at that mess, and retroactive immunity would ensure that there is no court scrutiny of their actions.

Senator ROCKEFELLER and I have been consulting since this summer to find ways to obtain access to the information our members need to evaluate the administration's arguments for immunity. The administration has consistently refused to provide this information to the Judiciary Committee. In

fact, in light of the administration's stonewalling, Chairman SPECTER was prepared to subpoena this information from the telephone companies during the last Congress. Finally, we obtained access, not only for the chairman and ranking member, but for members of the Judiciary Committee. However, I believe all Senators should have access to this information, as well as those staff with the appropriate clearance.

Instead of conducting warrantless surveillance in violation of FISA, trying to cover it up, and then trying to justify the coverup, this administration should have come to Congress immediately and asked for the authority it is now claiming it needs.

I have drawn a different conclusion than Senator ROCKEFELLER about retroactive immunity. I oppose granting blanket retroactive immunity. I agree with Senator SPECTER and many others that blanket retroactive immunity, which would end ongoing lawsuits by legislative fiat, undermines accountability.

Immunity against future litigation is not the issue; the issue is retroactive immunity. If they followed the law, and FISA was not violated, the telephone companies would automatically have immunity and there would be no need for Congress to now duplicate that immunity.

I also would note that title I of the FISA law was changed during markup in the Senate Judiciary Committee. When we come back to this bill next year, it will be my intent to bring much of what we did in the Judiciary Committee before the Senate for a vote.

Again, I want our intelligence agencies to be able to intercept the communications of those people overseas who are trying to do harm to the United States. We all agree with that. But I want to make sure that Americans' communications cannot be acquired by the executive for just any reason. If the Government is going to listen to the communications of Americans it must abide by the legal system that has served us so well throughout the history of this country: court determination of the legality of surveillance before it begins, and court oversight throughout the process.

We hear from the administration and some of our colleagues that we must grant immunity or the telephone companies will no longer cooperate with the Government.

Senators should understand that if we do not grant retroactive immunity, telecommunications carriers will still have immunity for actions they take in the future. If they follow the law, they have immunity.

Instead, I will continue to work with Senator SPECTER, as well as with Senators FEINSTEIN and WHITEHOUSE to try to craft a more effective alternative to retroactive immunity. We are working with the legal concept of substitution to place the Government in the shoes of the private defendants that acted at

its behest, and to let it assume full responsibility for any illegal conduct.

I believe that requires reaching agreement that the lawsuits should be able to reach the merits rather than be short-circuited by Congress, and that the program be subject to judicial review so that its legality can be determined.

Again, this administration violated FISA by conducting warrantless surveillance for more than 5-years. They got caught and they got sued. The administration's insistence that those lawsuits be terminated by congressional action is designed to insulate itself from accountability.

Retroactive immunity would do more than let the carriers off the hook. It would shield this administration from any accountability for conducting surveillance outside the law. It would leave the lawsuits that are now working their way through the courts dead in their tracks and leave Americans whose privacy has been violated no chance to be made whole.

These lawsuits are perhaps the only avenue that exists for an outside review of the Government's actions. That kind of assessment is critical if our Government is to be held accountable. That is why I do not support legislation to terminate these legal challenges and I will vote to strike it.

The PRESIDING OFFICER. The Senator from Missouri has yielded earlier to the Senator from Vermont.

Mr. GREGG. Would the Senator yield so I may propound a unanimous consent request that I be recognized at the completion of her remarks?

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

The Senator from Missouri is recognized.

#### CREDIT CARD COMPANY DECEPTION

Mrs. MCCASKILL. Mr. President, I first want to comment on what a pleasure it was listening to several hours of tribute to Senator LOTT. I have not served with Senator LOTT for very long, but at the point in time that I, hopefully, would be allowed to decide to retire from the Senate, I could only hope I have such kind things said about me in so many different ways.

I was glad I got an opportunity to listen to 3 hours of Senators talking nicely about each other. It is an important thing to do this time of year, and I think, frankly, it is an important thing to do more often, and we do not do enough of it around here, particularly across the line.

I rise today to speak as in morning business for a few minutes about something that is on everybody's mind this time of year; that is, credit cards. Now, I know why it is on my mind, because my fingers are having to do the shopping because I cannot get home to Missouri, and so I am having to click, click, click on the Internet. I now know my credit card number by heart