

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

because I have entered it so many times in the computer trying to get gifts for my family and my children. So I am very aware of my credit card this time of year.

I have spent some time this year in the Senate looking at the issue of credit cards, and as we all are wringing our hands and gnashing our teeth over the subprime mortgage mess, I think we all need to begin to wring our hands and gnash our teeth about some of the credit card practices in this country. We have allowed the credit card industry to play a little fast and loose with fairness.

I certainly fundamentally understand that people's obligations in terms of their credit, their unsecured credit on a credit card, are primarily their responsibility and it is important that people be responsible when they enter into debt, and it does not matter what kind of debt it is, whether it is credit card debt or any other kind of debt. On the other hand, I have spent some time trying to read through the fine print on some of these credit card agreements. Frankly, I have been trained as a lawyer, I have worked as a lawyer for most of my adult life, I have been a State legislator, I have now worked at the Federal level legislating, and I can't understand a lot of the fine print on some of these credit card statements. If I can't understand the fine print on a lot of these credit card statements, what shot does someone who has not spent as much time around the law as I have?

If you look at what is going on with the unsecured credit card industry in terms of some of the fast-and-loose play with the rules, the kinds of tricks that are being played—I will give you a great example. We now know your interest rate can go up if you get near your credit limit. We now know you can call and get an authorization to charge money on your credit card, and they will let you do it even if you go over your credit limit, and then they are going to charge you every month an extra fee because you went over your credit limit, which they said was okay for you to do. You never know this.

Imagine my interest when I learned in a hearing this year that they can raise your interest rate on your credit card just by getting more credit cards. So if you are going into a department store and they say: Hey, you can get 15 percent off today if you open a credit card, you can get 10 percent off today if you open a credit card, the act of opening those credit card accounts can increase your interest on another credit card. Now, who would have thunk that? No one ever explains that to the American consumer. No one ever explains that getting at or near your credit limit on a number of credit cards could require your interest rates to go up even if you are paying your bills on time, even if you have always paid exactly what you are supposed to pay on time every month.

It is very important that we get a handle on this. This is a great example. A member of my staff who knows I have been very interested in this brought this in to me this week. We just had a hearing where we learned that if you get to your credit limit, it is possible they will raise your interest rate even if you paid everything on time. Well, what is this? This staff member of mine had several thousand dollars left in available credit on one of his credit cards. So what happens? He gets checks in the mail from his credit card company, and the first one is made out. Guess how much it is made out for. It is made out for an amount that will get him very close to his credit limit. So the idea here is if you fill them all out, guess what. Bingo. You are over your credit limit, and then all the fees and the extra interest rates start.

Well, I have to tell you—by the way, there is nothing on this that says: If you go over your credit limit, not only will we charge you fees, but we are probably going to raise your interest rate. That is never explained to the American consumer. That is not fair play.

Make it very clear to your credit card customer exactly what they are going to pay for and when. Fifty percent of the people who have credit cards in this country right now are paying minimum balances only, and they don't understand they are in a hole they can't dig out of.

The credit card companies say: We have not had that much increase in defaults. Well, I will tell you, here is what is different: A lot of the credit card debt in this country—hundreds of billions of dollars of the credit card debt in this country—has been rolled into home equity lines of credit because of this housing boom we were on, and everyone was combining their credit cards, and a lot of that debt has been transferred to mortgage debt.

This is stuff that needs to get fixed, it needs to be fair, and the rules need to be clear to anyone because I will tell you, if we don't get it fixed, we are going to be wringing our hands and worrying about the next big problem in our economy, and that is all this unsecured credit that goes unpaid.

I think the credit card is a wonderful tool for Americans. It has allowed our country to consume at great levels, has kept our economy pumping. But at the end of the day, if we don't require the credit card companies to make full disclosure in a way that everyone can understand exactly what they are charging for this very expensive form of credit, we are going to regret it.

There are two pieces of legislation. First, Senator LEVIN and I have introduced a Stop Unfair Credit Card Practices Act which prohibits some of the most egregious examples I have talked about that unfairly deepen or prolong credit card debt held by consumers.

The other piece of legislation is one I am cosponsoring with Senator KOHL

that deals with college students. Nothing strikes more fear in the heart of a parent who has two children in college than the idea that someone wants to send them credit cards right now.

I love my two children in college very much. I think they are smart and wonderful people. But, believe me, neither one of them has the resources to handle a credit card right now. The only resources they have to handle a credit card right now are mine. If they want to send me the credit card, that is fine, and if I want to help my kids, that is fine, but the idea that we are now selling lists of college students to credit card companies so they can send them—by the way, one of these credit card officials actually had the nerve to say in a hearing that he found college students to be a very good risk. Well, yes, because their parents pay it off because they do want not want them to have had credit when they get out of college. But college students do not have the wherewithal to take on unsecured debt. They are having a hard enough time just getting to class and getting everything done, much less taking on unsecured debt.

We need to stop some of these practices that are victimizing the American consumer. We can do it. We can do it in the Senate. I look forward to working with my colleagues in the new year to see if we can't make it a better year for middle-class America that is buried under credit card debt without the playbook to show them how to get out.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I relinquish my right to be recognized at this moment as I have another commitment.

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. BENNETT. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BENNETT. I ask unanimous consent to speak as in morning business for up to 10 minutes.

The PRESIDING OFFICER. The Senator is recognized.

#### FEC VACANCIES

Mr. BENNETT. Mr. President, I rise to note with some sadness that we are reaching a point at the end of this session where it appears we will adjourn without acting on any of the nominees for the Federal Election Commission. The effect of this will be to leave the Federal Election Commission with only two functioning commissioners, when the law calls for six. It is worse than that. The law insists that no action can be taken by the commission without the votes of at least four. So by having only two left, we will leave