White House knows, if they open it, it becomes public domain. So secrecy is what this administration lives by.

This is a blatant example of where they want to keep secret an illegal program. I don't think we should be complicit. I don't think we should enable them to avoid the constitutional scrutiny of our Federal courts. We can't sacrifice—we can't—the truth for convenient expediency. It is not American. We have a system of government that is built not only on our Constitution but on the notion of checks and balances. The Federal courts are doing their job by checking this administration's broad exercise of Executive power. That is why I will be supporting other amendments that will be coming up that deal with this matter.

Last week, Chief Judge Walker, of the Northern District of California, issued an opinion rejecting this administration's claim to have ''inherent authority'' to eavesdrop on Americans outside of statutory law. What does this Senate want to do? A lot of the leaders you hear speaking on this want to make it possible to give retroactively to this administration the inherent authority to eavesdrop on Americans outside the law. In the future, we are fixing it. Good, I am glad. I am happy. But you can't then say, but we are going to look back and change the law. It is not right.

Listen to what Judge Walker wrote:

> Congress appears clearly to have intended to establish the exclusive means for foreign intelligence activities to be conducted. Whatever power the executive might otherwise have had in this regard, FISA limits the power of the executive branch to conduct such activities and it limits the executive branch's authority to assert the State secrets privilege in response to challenges to the legality of its foreign intelligence surveillance activities.

So we, Congress, limited the power of the executive. We said: You can't assert the state secrets privilege in response to challenges to the legality of its foreign intelligence activities. And here we are rolling over with bravado to say to this administration—and by the way, I would feel the same way whoever was the President, this administration or any administration—oh, you are the absolute ruler, the King. You can do whatever you want. You can roll over. You can do all of that.

We need to protect this country from terrorists. We must. I voted to go to war against bin Laden, and I will not rest until he is gone and we break the back of al-Qaida. Unfortunately, that has gone awry. I will be very willing to have our Government listen in on conversations of the bad actors out there, but I don't want good people being spied on. That was the whole reason FISA came into being in the first place. People seem to forget the original FISA was to protect the people from being spied on, ordinary people. Suddenly, it has been turned on its head. I believe the current process works. Our system of government works. The Federal courts are exercising their constitutional duty to review Executive power.

So why in this bill are we seeking to stop that process? Why are we attempting to tie the capable hands of the Federal courts and deny our citizens their day in court? Covering up the truth is not the way to gain or regain the trust of the American people. The truth is the basis of the American ideal.

I always marveled, as a little girl and as a young woman, growing up, watching as the truth came out about America. I remember my dad, who loved this country so much, saying to me: Honey, you just watch this country. We are not afraid to admit a mistake. We are not fearful of giving people rights. We will stand up and tell the truth, even when we make the biggest mistakes.

Covering up the truth is not the way to gain the trust of the American people. Since learning, in late 2005, that the President violated the trust of our people by spying on our citizens, Congress and the American people have struggled to find out what happened. Last week, we celebrated the day we adopted the Declaration of Independence, Independence Day, July 4. In that historic document is the following phrase:

> To secure these rights, governments are instituted among men deriving their just powers from the consent of the governed.

''The consent of the governed,'' that means the law has to be behind you when you undertake to do something such as this administration did. They didn't care about the consent of the governed. They didn't care about the law that was in place. Truth is the centerpiece of justice. I don't see how we ever get to the truth if we grant this immunity. I don't. It is not, to me, about the punishment.

As I said, I will be happy to have substitution, to have the Government step in. That is not the issue. We need to get to the truth, and we all know how that happens in our country. The immunity provision in this bill sweeps the warrantless program under the carpet. It hides the truth. The people deserve better from us.

I will close with a quote by former Supreme Court Justice Sandra Day O'Connor:

> It is during our most challenging and uncertain moments that our nation's commitment to due process is severely tested. It is in those times we must preserve our commitment at home to the principles for which we fight abroad.

I hope we will support the Dodd amendment to strike the immunity provision.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I understand we are coming up on a hard break, as they say in television, for the party lunches.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. BOND. Mr. President, I note only before we go into that break that the Senator from Pennsylvania has made a number of comments on time for the supporters of the bill that actually deserve a response.

One clear point that needs to be made in response to the Senator from Pennsylvania and the Senator from California is that Judge Walker's actions will not be dismissed if retroactive liability protection is accorded carriers. It is a case against the United States, not a case against the telephone companies.

Furthermore, I would say that the dictum in Judge Walker's opinion is contrary to higher, more authoritative courts. So Judge Walker was not correct, and I believe should his case go up on appeal, he will be found not to be accurate. But that does not go, as my colleague from West Virginia has said, to the issue of whether carriers deserve retroactive liability protection. So I will reserve my comments, and I will ask to be recognized when—when will the Senate return to session?

The ACTING PRESIDENT pro tempore. At 2:15 p.m.

Mr. BOND. Mr. President, I ask unanimous consent that I be recognized for what remains of time on this side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

FOREIGN INTELLIGENCE SURVEILLANCE AMENDMENTS ACT OF 2008—Continued

The PRESIDING OFFICER. Under the previous order, the Senator from Missouri is recognized for 29 minutes.

Mr. BOND. Thank you, Mr. President. I appreciate the recognition.

To begin, to clarify for the floor and our colleagues the arrangement the chairman and I have on this bill, I ask unanimous consent that Senator ROCKEFELLER manage the time in opposition to the Specter amendment and that I manage the time in opposition to the Dodd and Bingaman amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BOND. Mr. President, as I mentioned earlier today, the Senate is poised to wrap up consideration of the Foreign Intelligence Surveillance Amendments Act of 2008 in the form of H.R. 6304. Now, most of my colleagues know this legislation has had a way of hanging around for quite awhile, being caught up in the congressional process. Many, including myself, believe we should have passed it well before now, but it appears that we are on about the