

NATIONAL PEARL HARBOR
REMEMBRANCE DAY

Mr. AKAKA. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 395, which was submitted earlier today.

The ACTING PRESIDENT pro tempore. The clerk will report the resolution by title.

A resolution (S. Res. 395) expressing the sense of the Senate regarding National Pearl Harbor Remembrance Day.

There being no objection, the Senate proceeded to consider the resolution.

Mr. AKAKA. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table, en bloc; that any statements relating thereto be printed at the appropriate place in the RECORD as if read.

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

The resolution (S. Res. 395) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 395

Whereas on December 7, 1941, the Imperial Japanese Navy Air Force attacked the sovereign territory of the United States at Pearl Harbor, Hawaii;

Whereas more than 2,400 United States service members and civilians were killed in the attack on Pearl Harbor;

Whereas there are more than 4,900 members of the Pearl Harbor Survivors Association;

Whereas the 66th anniversary of the attack on Pearl Harbor will be December 7, 2007;

Whereas on August 23, 1994, Public Law 103-308 was enacted, designating December 7 of each year as National Pearl Harbor Remembrance Day; and

Whereas section 129(b) of title 36, United States Code, requests that the President issue each year a proclamation calling on the people of the United States to observe National Pearl Harbor Remembrance Day with appropriate ceremonies and activities, and all departments, agencies, and instrumentalities of the Federal Government, and interested organizations, groups, and individuals, to fly the flag of the United States at half-staff each December 7 in honor of the individuals who died as a result of their service at Pearl Harbor: Now, therefore, be it

Resolved, That the Senate, on the occasion of the 66th anniversary of the December 7, 1941, attack on Pearl Harbor, Hawaii, pays tribute to—

(1) the United States service members and civilians who died in the attack; and

(2) the members of the Pearl Harbor Survivors Association.

Mr. AKAKA. Mr. President, I rise today in honor of National Pearl Harbor Remembrance day. Earlier today, my good friend and colleague Senator INHOFE and I introduced a Senate Resolution expressing the sense of the Senate regarding National Pearl Harbor Remembrance day and paying tribute to those servicemembers and civilians who died in the attack on Pearl Harbor on December 7, 1941, as well as the current members of the Pearl Harbor Survivor Association.

Today is the 66th anniversary of the attack on Pearl Harbor. Memorial ceremonies are taking place at the Naval Station Pearl Harbor to commemorate the 66th anniversary of the attack. Later, the dedication ceremony for the new USS Oklahoma Memorial will also take place on Ford Island at Pearl Harbor. The battleship *Oklahoma* was anchored along Ford Island on December 7, 1941, and suffered the second greatest loss of life during the attack after the USS *Arizona*. It is the last ship to have been destroyed that fateful day to get its own memorial. Clearly, this memorial is long overdue. Prayers, reflections, and tributes will be offered during each of these ceremonies to honor the service and sacrifice of the men and women who fought and died in the defense of our great country.

This 66th anniversary of the attack on Pearl Harbor also marks the beginning of a new commemoration for all of our Nation's fallen, called Old Glory's Journey of Remembrance. The journey begins today with Old Glory being flown over the USS Arizona Memorial. The flag will then be taken to, and flown over, 24 other military memorial sites around the country. The journey culminates in observance of the National Moment of Remembrance on Memorial Day at 3 p.m. local time with Old Glory being flown above the U.S. Capitol.

Mr. President, the resolution that I and Senator INHOFE introduced requests that all of my Senate colleagues join together with our fellow Americans in Hawaii and across the Nation to remember and honor the more than 2,400 courageous American sailors, soldiers, and marines who were killed in the raid on Pearl Harbor, as well as to honor those who survived the attack.

For those too young to remember 1941, the attack on Pearl Harbor is something learned in history books. But to those in Hawaii who, like myself, witnessed the attack, the events of December 7 are a painful, vivid memory, and a personal experience that can never be forgotten. While the Japanese surprise attack was a calamity that forever changed the course of history, our country fought back in the name of justice to preserve our Nation's sacred freedoms. I urge the citizens of this Nation to remember that it was the sacrifices made by ordinary men and women who rallied in defense of freedom, liberty, and the great promise of our democracy that preserved our Nation's freedom and liberty. Their sacrifices represent the greatest heroism and patriotism in the service of our country.

Mr. President, I hope that my Senate colleagues will join me today in prayer and remembrance for those courageous men and women who died in Pearl Harbor on that infamous day.

Mr. INHOFE. Mr. President, every American owes a debt of gratitude to the men and women who lost their lives during the attack on Pearl Har-

bor. They gave all they had in selfless service to the Nation. We recognize the contributions and sacrifice of the survivors of the attack who went on to secure our freedom and our cherished way of life. In the face of seemingly insurmountable challenges and countless unknowns, they never demanded praise, they never presumed eminence. They taught future generations the importance of recognizing and remaining vigilant against tyranny in all forms. We also remember the families of the fallen service members. They bore the greatest burden and bravely perpetuated the dignity and the memories of the heroes taken from us on that infamous day.

Mr. DOMENICI. Mr. President, I would like to speak for a moment in remembrance of the 66th anniversary of the attack on Pearl Harbor and pay tribute to all the Americans who lost their lives that day.

On December 7, 1941, our Nation was brutally attacked at Pearl Harbor, and over 2,400 Americans were killed. Though surprised and overwhelmed by wave after wave of Japanese planes, the members of our armed forces valiantly defended their ships, the naval base and the surrounding army air fields.

I believe Pearl Harbor will all always hold a prominent place in the history of the United States, not only for the destruction that day which triggered our entry into the Second World War, but as a shining example of American heroism and courage in the face of adversity. I know Americans will never forget the American servicemen and women who were at Pearl Harbor 66 years ago today.

One of those servicemen was John Anderson of Roswell, NM. John had only recently been assigned to the USS *Arizona* along with his twin brother Jake when the Japanese attacked on December 7. Though burned himself, John worked to rescue other survivors from the badly damaged and sinking *Arizona* until the small boat he and other servicemen were using to pull drowning men from the water of the harbor was also sunk. Terribly, 1,177 sailors from the *Arizona*, including John's brother Jake, did not survive.

John went on to serve 35 years in the Navy, marry his wife, Carolyn, have three sons and later become the long time weatherman for KBIM-TV in Roswell. I would like to thank John for his brave service and would like to personally honor all the New Mexicans like Jake Anderson who fought and lost their lives that day.

Pearl Harbor, of course, was just the beginning of several long years of war during which millions of Americans would answer the call of duty. I would like to take this opportunity to mention the service and sacrifice of two such groups of individuals.

One of these groups is the Navajo Code Talkers, many of whom were from my home State. The Code Talkers were marines who used their native language to quickly transmit messages

across the battlefields of the Pacific Theater and served in every Marine division from 1942 to the end of the war. Though the Japanese were able to break many American codes during the war, they were never able to decipher the system used by the Code Talkers. Their contribution to victory cannot be underestimated. There is no doubt that their efforts saved countless American lives, and it has even been said that without the Code Talkers the battle of Iwo Jima could not have been won.

I would also like to talk about the soldiers of the 200th and 515th Coastal Artillery units of the New Mexico National Guard, also known as the New Mexico Brigade, who soon after the attack on Pearl Harbor played a prominent and heroic role in the fierce fighting in the Philippines. For 4 months the men of the New Mexico Brigade helped hold off the Japanese only to be defeated by disease, starvation and a lack of ammunition. Sadly, the survivors of the Battle of Bataan from the New Mexico Brigade were subjected to the horrors and atrocities of the 65 mile "Death March," as well as years of hardship and forced labor in Japanese prisoner of war camps. Tragically, of the 1,800 men of the New Mexico Brigade more than 900 never returned home.

In closing, I hope New Mexicans will take a moment to honor the individuals who fought so gallantly 66 years ago today as well as all those who served throughout the Second World War, and remember those who paid the ultimate price for our Nation.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

MORNING BUSINESS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each, and that I recognized for 15 minutes.

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

The Senator is recognized for 15 minutes.

FOREIGN INTELLIGENCE SURVEILLANCE ACT

Mr. WHITEHOUSE. Mr. President, let me first say how moved I am to be on the Senate floor after the remarks of the very distinguished Senator from Hawaii commemorating this day. But I rise to discuss a different question, a question that involves the Foreign Intelligence Surveillance Act.

We will shortly consider making right the things that are wrong with the so-called Protect America Act, a second-rate piece of legislation passed in the stampede in August at the behest of the Bush administration. It is worth for a moment considering why making this right is so important.

President Bush pressed this legislation not only to establish how our Government can spy on foreign agents but how his administration can spy on Americans. Make no mistake, the legislation we passed in August is significantly about spying on Americans—a business this administration should not be allowed to get into except under the closest supervision.

We have a plain and tested device for keeping tabs on Americans. It is our Constitution. Our Constitution has as its most elemental provision the separation of governmental powers into three separate branches. When the Government feels it is necessary to spy on its own citizens, each branch has a role. The executive branch executes the laws and conducts surveillance. The legislative branch sets the boundaries that protect Americans from improper Government surveillance. The judicial branch oversees whether the Government has followed the Constitution and the laws that protect U.S. citizens from violations of their privacy and their civil rights.

It sounds basic, but even an elementary understanding of this balance of powers eludes the Bush administration. So now we have to repair this flawed and shoddy Protect America Act.

Why are we in Congress so concerned about this legislation? Why is it so vital that we energetically insert the role of Congress and the courts when the Bush administration seeks to determine the rules under which it will spy on Americans? Because look what the Bush administration does behind our backs when they think no one is looking.

For years, under the Bush administration, the Office of Legal Counsel within the Department of Justice has issued highly classified, secret legal opinions related to surveillance. This is an administration that hates answering to an American court, that wants to grade its own exams, and OLC is the inside place the administration goes to get legal support for its spying program.

As a member of the Senate Intelligence Committee, I was given access to those secret opinions and spent hours poring over them. Sitting in that secure room, as a lawyer, as a former U.S. attorney, legal counsel to Rhode Island's Governor, and State attorney general, I was increasingly dismayed and amazed as I read on.

To give an example of what I read, I have gotten three legal propositions from these secret OLC opinions declassified. Here they are, as accurately as my note-taking could reproduce them from the classified documents. Listen for yourself, Mr. President; I will read all three and then discuss each one.

One:

An Executive order cannot limit a President. There is no constitutional requirement for a President to issue a new Executive order whenever he wishes to depart from the terms of a previous Executive order. Rather than violate an Executive order, the President has instead modified or waived it.

No. 2:

The President, exercising his constitutional authority under article II, can determine whether an action is a lawful exercise of the President's authority under article II.

And 3:

The Department of Justice is bound by the President's legal determinations.

Let's start with No. 1. Bear in mind that the so-called Protect America Act that was stamped through this great body in August provides no—zero—statutory protections for Americans traveling abroad from Government wiretapping—none if you are a businesswoman traveling on business overseas; none if you are a father taking the kids on vacation to the Caribbean; none if you are visiting your aunts or uncles in Italy or Ireland; none even if you are a soldier of the United States of America in uniform serving overseas.

The Bush administration provided in that hastily passed law no statutory restrictions on their ability to wiretap you at will, to tap your cell phone, your e-mail—whatever—once you are outside the borders of the United States. The only restriction is an Executive order called 12333 which limits executive branch surveillance to Americans whom the Attorney General determines to be agents of a foreign power. That is what the Executive order says.

But what does this administration say about Executive orders?

An Executive order cannot limit a President. There is no constitutional requirement for a President to issue a new Executive order whenever he wishes to depart from the terms of a previous Executive order. Rather than violate an Executive order, the President has instead modified or waived it.

"Whenever [the President] wishes to depart from the terms of a previous Executive order," he may do so because "an Executive order cannot limit a President." And he does not even have to change the Executive order or give notice that he is violating it because by "depart[ing] from the Executive order," the President "has instead modified or waived it."

So unless Congress acts, here is what legally prevents this President from wiretapping Americans traveling abroad at will: nothing. Nothing. That was among the most egregious flaws in the bill passed during the August stampede orchestrated by the Bush administration, and this OLC opinion shows why we need to correct it.

Here is No. 2:

The President, exercising his constitutional authority under article II, can determine whether an action is a lawful exercise of the President's authority under article II.

That is right, the President, according to the George W. Bush Office of Legal Counsel, has article II power to determine the scope of his article II power. Never mind a little decision called *Marbury v. Madison* written by Chief Justice John Marshall in 1803 establishing the proposition that it is emphatically the province and the duty