

ever capture the money back. We capture some but not near enough. If we put this model in place, it stops the fraud before it happens.

S. 2128—the Prevent Health Care Fraud Act of 2009—would put this predictive modeling system in. The Federal Government would have to go out and hire folks to do it. We would have a competitively bid process. It is no different than what we do in other parts of the government. In the Defense Department, we go through a bunch of checks before there is an acquisition for the Defense Department. Why can't we put this predictive modeling system over in health care to use real-time data to stop these fraudulent transactions before they happen?

According to Harvard University Professor Malcom Sparrow, the credit card industry establishes benchmarks for acceptable business risk and their threshold is one-tenth of 1 percent. By contrast, fraud losses in the health care business run from 3 to 14 percent. That is 100 times the acceptable business risk.

Another thing this bill does is it requires background checks for all health care providers. If you are supposedly providing health care, whether you are providing a wheelchair or a doctor providing actual health care services—someone who is a physician's assistant or whoever it may be—if those folks are being reimbursed by the Federal Government, getting paid for the health care they are providing, they should not be criminals. You might think that right now we are doing background checks on all these health care providers, but we are not.

I know this, specifically, because Florida, unfortunately, is ground zero for health care fraud. We have tremendous problems in Florida, especially the southeast part of Florida, where I am from—Fort Lauderdale, Miami-Dade County—with health care fraud.

Let me cite some examples.

Mr. President, "60 Minutes," last week, aired a special on this. They talked about the rampant fraud in south Florida. One of the perpetrators was responsible for \$20 million of health care fraud alone, and he said: We get a Medicare book of codes and our bidder tells us which ones to use and we run the codes. So they get one wheelchair and they sell it a thousand times and get reimbursed a thousand times for it. There is no computer modeling system that puts the red flag up, such as there would be on your credit card, that says: Stop that; wait a minute; after the third wheelchair is sold in 60 seconds, maybe we should not pay this guy's claim.

It has gotten so easy to steal money from the Federal Government that organized crime has gotten involved. There have been stories of a Russian-Armenian organized crime ring that defrauded Medicare by \$20 million, and they said it was easier than trying to be involved in the illicit drug business because there was no one going after them.

I wish to take a moment to applaud my colleague from Delaware, Senator KAUFMAN, who just introduced some legislation called the Health Care Fraud Enforcement Act of 2009 to increase the penalties for health care fraud.

I think that is great. We should be doing that. But in combination with that, we should do what we propose in S. 2128, which is to stop the fraud before it happens. These instances of fraud across the country are rampant.

I will give you another example. South Florida is home to 8 percent of the Nation's AIDS patients, but 72 percent of Federal AIDS medication payments are paid in South Florida. That is 72 percent, when we only have 8 percent of the patients. Why is this happening? These medications for AIDS are extremely expensive. Some bad guy runs the code all day and says: I have given this many injections of AIDS medication at \$2,500 a pop; runs 1,000 codes and we pay them. We pay them.

It makes no sense to me. So we have had big disagreements about how we are going to solve health care, how we are going to provide more affordable health care to our people in this country, how we are going to provide more access to health care.

But we certainly can agree we should run whatever program we have efficiently and effectively. We can certainly agree we should not have waste, fraud, and abuse. If we can reduce the \$60 billion to more than \$200 billion in fraud a year by simply putting somebody in charge of health care fraud prevention, put predictive modeling in such as we have in the credit card industry, and not let people be health care providers unless they have a background check and, if they are a criminal, not let them provide health care, we can save billions of dollars.

Those dollars can go back into Medicare, which is running at deficits. As I said when I opened my remarks today, it is very much in vogue in Washington to propose brandnew plans. I understand that. But we need to be focused and have as much zeal about brandnew plans as running the programs we have efficiently and effectively.

I hope my colleagues will join me in supporting this piece of legislation, S. 2128, the Prevent Health Care Fraud Act of 2009.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### FAILURE IN THE JUSTICE SYSTEM

Mr. SESSIONS. Mr. President, I rise to discuss a serious failure in our jus-

tice system, something we are going to need to talk and think about. It has been talked about before, but the matter drives home the issue in a specific way.

Ali Saleh Kahlah al-Marri—al-Marri, as he is now usually referred to—is a terrorist who entered the country under the instructions of 9/11 mastermind Khalid Shaikh Mohammed. While here, he researched hazardous chemicals and his potential targets included dams and reservoirs. He was apprehended in 2001. In 2003, he was held as an enemy combatant under the orders of the Bush administration. He was seen at that time as an individual at war with the United States since he was associated with al-Qaida and al-Qaida had declared war on the United States.

The Nation made a firm decision that these kinds of cases should not be handled in the normal course of prosecutions of crimes but should be treated under the historic and well-established rules of war for these individuals.

The Obama administration has moved him into a civilian justice system and decided they would try him for this offense as a crime. He ended up pleading guilty, which seemed dubious as a plea by the Department of Justice, but they chose to allow him to plead guilty to the charge of conspiring to support terrorists. He was sentenced yesterday. How much time will this terrorist be spending in jail? How long before he is released and then could re-assume his mission of waging jihad against America? Five years. That is right, 5 years. The judge in Peoria, IL, sentenced him to only 8 years and gave him credit for time served in military prisons, apparently, and he is expected to be released in 5 years. This is an outrage. Our brave soldiers and intelligence agents risk their lives every day to find and capture these terrorists.

I received a phone call from a friend I have known for a number of years whose son is in Iraq now as a marine. He wants to talk about what we are doing there. We have American soldiers, some of the finest people this country has ever produced, at risk at this moment fighting against these kinds of terrorists who are committed to attacking us. In recent days, we have seen plot after plot, fortunately being frustrated by good investigative agents. We have investigators and our military out there at risk today. We capture terrorists. What do we do? Do we put them in jail a few years and then let them go?

Not only did the Justice Department pursue a lesser charge against al-Marri, but the judge only sentenced him to 8 of the possible 15 years he could have served on that charge.

Without doubt, as a former Federal prosecutor—and the Presiding Officer is a former U.S. attorney—there are real procedures every American is provided under our legal system for trials in Federal courts. We are proud of

those, and we adhere to them. But there is a danger of trying people who are at war with us, who want to destroy us and the government this Nation possesses, in civilian courts. They are not common criminals; they are members of global terror networks, bent on waging war against America, its allies, and our vital interests. Yet the administration has announced plans to begin trying more and more terrorists and enemy combatants through our normal Federal criminal justice system.

Our court system was never designed to prosecute terrorists and enemy combatants and soldiers attacking this country. Such trials turn the courthouse and the jury system into targets. They rely on evidence that may not be admissible, evidence seized by the military in defending the country. That evidence may not be admissible in court under our normal rules of evidence. They risk bringing confidential information to public light, including the identity of informants or even undercover agents. And it means, ultimately, that more terrorists bent on taking innocent American lives will be released to return to the battlefield—abroad or right here in cities and towns across America. I ask, is this a risk we can afford? Is it a risk we are required to take under our laws and Constitution?

The proper setting for these prosecutions is military commissions, military tribunals. These terrorists are the most violent and dangerous killers in the world. They are not criminals; they are on an unswerving mission to spill American blood. I wish it were not so. Overwhelmingly, the Muslim community does not believe in this kind of activity. It is only a small group, but it is a very effective group because they have learned how to utilize modern capabilities, such as airplanes and poisons and explosives, to wreak untold damage, especially when they are prepared to martyr themselves.

We need to use all lawful resources at our disposal to combat and dismantle this threat. We cannot and we must not allow more enemy combatants like Ali Kahlah to use our justice system against us. We cannot and we must not be naive and think our good will and kindness will shield us from these kinds of forces, this kind of evil in the world. We cannot and we must not forget the danger we face or the imperative to use every last resource at our disposal to keep this country, its liberties, and its people safe.

There was an article in the Washington Post of today that raises an important issue about sentencing. It quotes Kirk Lippold, the commander of the USS *Cole*, where 17 of our sailors were murdered by an Islamic attack in the Persian Gulf in Yemen in the harbor in the year 2000. This is what he said about the verdict: The sentence was “appalling” and “grossly inadequate.” He said that if prosecutors move other defendants from the mili-

tary prison at Guantanamo Bay, Cuba, for trials in regular U.S. Federal courts, it could “create an era of unacceptable compromise to our national security.”

I have a vivid memory from several years ago, maybe 5 or 6, 7 years ago, of being at the commissioning of the *Ronald Reagan* aircraft carrier at Newport News as a member of the Armed Services Committee, walking out of that ceremony, not too long after the *Cole* was attacked and those sailors killed. And a sailor screamed out—and the hair still stands on my neck when I think about it—“Remember the *Cole*.”

The United States has a responsibility to defend our men and women abroad. U.S. warships ought to be able to move in peaceful commerce around the world and not be subject to attack. When they are attacked, it is the responsibility of this Nation to act against it. Commander Lippold has expressed some concern in times past about how that has been handled.

They also quote Robert Chesney, a law professor at the University of Texas at Austin who studies sentencing in terrorism cases. He said that the Marri sentence “probably comes with the territory in switching somebody out of military detention and into the criminal justice system.” It comes with the territory. That is exactly right. That is what a number of us have been saying for some time, why this is not a wise policy.

The article goes on to say:

The case is one of the few concrete examples, Chesney said, of the ongoing debate over whether the U.S. criminal justice system is “up to the task” of trying and convicting terrorist suspects.

I absolutely agree with that. It is not equipped to do it. The American criminal justice system assumes that a person commits some sort of crime. They give a certain sentence, and there is a reasonable prospect that they won't commit crimes again. But when we are dealing with people who are committed to martyrdom, if we are dealing with a person who has made a lifetime oath to fight to the death to destroy Americans and who has the capability to kill not only one person in some sort of assault or fight but thousands of Americans and who is at war with the United States, we need to utilize the great and historic principles of military commissions to try them as we always have. We didn't try German prisoners of war in Federal courts. We didn't try Japanese or North Vietnamese or North Koreans in Federal court when they were captured. They were treated as they were, as prisoners of war, and detained as long as they represented a threat to the United States. That is the way this should be. Military commissions are referred to in the Constitution.

In World War II, in the famous case of *Ex parte Quirin*—Franklin Roosevelt was President—a submarine appeared off the Atlantic Coast, and a group of people got out who were saboteurs. They were sent by Nazi Germany to

blow up places in the United States, kill Americans, and sabotage our war efforts.

That was a serious matter. They were caught. Were they tried as common criminals? No, they were not. How were they tried? They were tried by a military commission. They were tried under the laws of war that have been longstanding for quite a number of years. They were convicted within a matter of a few months, and they were executed because they were clearly in violation of the laws of warfare. They were not normal prisoners of war acting in uniform. They were acting contrary to the Geneva Conventions, contrary to the rules of warfare. They were acting in a way—they did not wear uniforms. They did not go openly about. They were targeting innocent civilians. So they violated the rules of war. They were tried and executed. The Supreme Court upheld that. This is what other nations do also. They do not try people with whom they are at war in civilian courts.

I am worried about this. I do not think it is a little bitty matter. I do not think this is the first time we are going to see this or the only time we are going to see it. I think we are going to see it more and more often. I call it to the attention of my colleagues.

One other thing I think we should point out: that unclassified declaration by Jeffrey N. Rapp, the Director of the Joint Intelligence Task Force for Combating Terrorism. This is what he said about this matter:

Multiple intelligence sources confirm that Al-Marri is an al Qaeda “sleeper” agent sent to the United States for the purpose of engaging in and facilitating terrorist activities subsequent to September 11, 2001, and exploring ways to hack into the computer systems of U.S. banks and otherwise disrupt the U.S. financial system. Prior to arriving in the United States on September 10, 2001—

Not the 11th: September 10, 2001—

Al-Marri was trained at an al-Qaida terror camp. He met personally with Osama bin Laden and other known al Qaeda members and volunteered for a martyr mission or to do anything else that al Qaeda requested. Al-Marri was assisted in his al Qaeda assignment to the United States by known al Qaeda members and traveled to the United States with money provided for him by al Qaeda. Al-Marri currently possesses information of high intelligence value, including information about personnel and activities of al Qaeda.

He goes on to say:

Al-Marri was trained by al Qaeda in the use of poisons. In the hard drive of Al-Marri's laptop, FBI agents discovered a folder entitled “chem,” which contained bookmarked Internet sites of industrial chemical distributors. Analysis revealed that Al-Marri had visited a number of sites related to the manufacture, use and procurement of hydrogen cyanide.

So I do not think this is an itty-bitty matter. We have normal drug dealers going to jail every day for 10, 12, 15 years. We have somebody who is plotting to kill American citizens, who came here the day before 9/11, is part of an al-Qaida plot—and he gets 5 years? I

think it is unacceptable, and it is also an indication to us in Congress we cannot proceed further with this idea that we are going to try terrorists in Federal criminal courts.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

#### THE ECONOMY

Mr. DORGAN. Mr. President, there is a lot going on in public policy in Washington, DC. However, today is Friday and the Senate is not voting, so there is not much happening on the Senate floor. But there remains a lot of work to do between now and the end of this year to try to put this country back on track and fix a number of things that are wrong.

If the coming weeks are like recent weeks, we will have very little cooperation in this Chamber, which is regrettable. You would think if ever there is a time for cooperation, it is when the country is in a very deep economic hole. This country saw, a year ago, its economy fall off a cliff. Unbelievable unemployment: Over 7.5 million Americans have lost their jobs, lost their homes, lost hope. This has been the deepest economic recession since the Great Depression in the 1930s.

I understand everybody can take and look at this and see things differently. Our colleague Senator BYRD used to tell about the caterpillar that would climb up on a clump of grass and look around and say: I see the world. And then a squirrel would alight on the same identical spot and say, after gazing around: I see the world. And an eagle, flying over the identical spot, taking a look, would say: I see the world. They all were in the same spot but all had a very different view—the caterpillar, the squirrel, and the eagle. Senator BYRD's point was, you can have a different view depending on exactly how you see things, and I understand that.

I have great respect for my colleagues who have different views. I would only say this: that when the country is in trouble, it seems to me there ought not to be two teams. There ought to be one team; that is, our team working to try to figure out: How do we get out of this? How do we restart the economic engine, get America moving again, and put people back to work again?

There is no social program in this Congress that we work on or that we create, no social program that is as important as a good job that pays well. That is what allows everyone to be able to make a living and take care of their families, and so on. So the question for us is, What is the agenda? We are where we find ourselves. So what is the agenda from here forward?

The President has described the agenda of saying that, obviously, the economy is very important, health care is very important, and energy and climate change are also very important.

That represents the agenda. My colleague Senator REID, the majority leader, is trying to move legislation that includes other things, including the appropriations bills that we are required to move. We have not gotten a bit of cooperation on anything, not even the noncontroversial issues do we get cooperation on. In each case, we are required to file cloture, wait 2 days for it to ripen, then have a vote, and then wait 30 hours postcloture while they object to anything else happening on the floor. So we are in a situation where there is no cooperation on anything, which I think is pretty remarkable and pretty disappointing. The majority leader is trying very hard in those circumstances to still move things and get things done.

My own view of the priorities is pretty simple. I think health care is important, and I think energy and climate change are important. In my judgment, both rank behind the issue of the economy and trying to restart the economic engine and putting people back to work. I think that is the most important priority for the Congress and the country. It makes everything else possible, and without it very little is possible. You cannot have millions of people out of work without understanding it is a priority to find a way to expand the economy and put them back on payroll. Last month, 263,000 Americans lost their jobs. Think of each case of someone coming home from work saying to their spouse or to a loved one or to a family member: I have lost my job today. No, it is not because I am a bad worker. It is not because I did not do a good job. I had sterling references and sterling performance appraisals. They just decided my job was going to be gone.

Yesterday, by the way—after last month, 263,000 people coming home to say: I have lost my job; and that adds up now to 7.5 million Americans who are unemployed—yesterday, we discovered that the economy grew by 3.5 percent in the third quarter. Well, that is good news. But it is news that is tempered with the understanding that we do not have just one economy, we have a couple of economies. We have an economy in which some are doing very well, with very high incomes, very large bonuses, and significant profits, mostly on Wall Street. I will talk about that in a moment. And then others are still struggling to figure out: Where can I find a job? How on Earth can I get back on a payroll to begin to provide for myself and my family?

Even as that was happening, I was on an airplane last week, and I sat next to a man, and I said: Where are you headed?

He said: Well, I am going to Thailand and Singapore and China.

I said: What are you going to do there?

He said: My company buys products from suppliers and we are trying to move our network of suppliers to Singapore and Thailand and China so

we can dramatically reduce the cost of products we buy.

I said: But that is moving those American jobs overseas, isn't it?

He said: Yeah. It is not something I like to do. It is something I think our company has to do. We decided we have to buy cheaper products, so we are going to look for the China price.

He was going to be gone 2 weeks. I assume by now he has been in Thailand and Singapore and China, arranging to have those who are now employed in this country have their jobs be shipped to another country where they pay a fraction of the wages. Maybe those workers don't know it yet. I assume they do not. But they probably will in a few weeks. That is part of the story, as well of what is happening in this economy.

As I said, I think health care is very important. It is 17 percent of this economy. I think it is important for us to try to figure out: What do you do about health care? How can you put the brakes on circumstances where health care—which, by the way, is not just some option, some luxury, but a necessity for most Americans—how can you put the brakes on a health care system that says to most American families, when they open the mail and find the bill by the insurance company: Oh, by the way, the coverage you have is now going to cost 10 percent more or 12 percent more or 18 percent more—year after year after year—and people say: Well, I can't afford that. I can't afford that coverage. How do you put the brakes on those kinds of cost increases? How do you expand coverage so more people can afford health care coverage?

There are a lot of priorities. But I have been at odds with the President and others, believing that the first priority—by far, the first priority—and the first exclusive priority ought to be to find a way to restart this economic engine. We have to get that done. I am not saying health care should not be done. I am saying, in my judgment, the ability to restart this economic engine and put people back on payrolls trumps everything else.

I want to talk about the issue of two economies because some people will say: Well, that has already started. I give the President credit. The fact is, he has proposed a series of things that have pumped some life into this economy. Without it, we probably would not see the kind of opportunities that are going to come from the bottoming out of the economy and then the beginning to rebuild opportunity. I give the President credit for that. But we have a long way to go.

We have two economies. One economy is doing very well, and one not so well. Let me describe the one that is not doing so well in the words of Will Rogers. Will Rogers, a long time ago, said:

The unemployed here ain't eating regular, but we'll get around to them as soon as everybody else gets fixed up OK.