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## House of Representatives

The House was not in session today. Its next meeting will be held on Monday, September 14, at 12:30 p.m.

## Senate

FRIDAY, SEPTEMBER 11, 2009

The Senate met at 9:30 a.m. and was called to order by the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia.

### PRAYER

The Assistant Chaplain, Dr. Alan Keiran, offered the following prayer:

God of justice and righteousness, teach our lawmakers to mobilize our national might for Your glory. May their labors bring deliverance to captives, sight to the ethically and morally blind, and comfort to those who are bruised by life's thorns. Give them a spiritual vitality that will enable their faith to survive life's trials and tribulations. In deep humility of spirit, may they seek to know Your will and demonstrate the courage to choose Your way and purpose. When the choice is between honor and self-interest, may they never hesitate to do right.

O God, we pause this day to remember all the victims of 9/11, their families and the firefighters and police officers whose lives were sacrificed in heroic efforts to rescue those in need. Bless our Nation with renewed commitment to face today's challenges with tenacity and vigilance.

We pray in Your powerful Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable MARK R. WARNER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, September 11, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. WARNER thereupon assumed the chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

### MOMENT OF SILENCE IN REMEMBRANCE OF 9/11

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a moment of silence. (Moment of Silence.)

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. REID. Mr. President, following leader remarks, there will be a period of morning business. It is my understanding that the distinguished Republican whip wishes to have control of the first half hour and that the second half hour would be controlled by the Democrats.

Following that morning business, which will last for 1 hour, the Senate will resume consideration of H.R. 3288, the Transportation and HUD appropriations bill. As previously announced, there will be no rollcall votes during today's session of the Senate.

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to a period of morning business until 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Arizona is recognized.

### PROGRESS MADE SINCE 9/11

Mr. KYL. Mr. President, following this moment of silence, I think all of us on this morning are reflecting on where we were and what we were doing on the morning of September 11, 2001. In this body, we are reflecting on the things that occurred thereafter that enabled us to respond to that heinous terrorist attack.

I wanted to read some comments I wrote for the Arizona Republic that were printed this morning:

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Eight years have passed since al Qaeda terrorists attacked the United States. Today, we remember the thousands who lost their lives and are reminded of the brutality and evil of our enemy.

Terrorists have not struck on our soil since 9/11 because we gained useful intelligence and have been able to thwart attacks. This is due in part to intelligence improvements implemented after a bipartisan commission investigated the terrorist attacks and provided recommendations to protect against future attacks. Known as the 9/11 Commission, it described in detail a lack of cooperation among the Justice Department and members of the intelligence community prior to 9/11 that made the United States more vulnerable to attack. It also described how second guessing of intelligence operations had caused intelligence agents to be risk-averse and overly cautious in carrying out their duties.

Following the release of the commission's report, Congress and government agencies made critical changes to improve intergovernmental cooperation and pushed the agencies to be bold in acting to protect the American people. The result was an intelligence community that was aggressive in tracking, capturing, and interrogating terrorists, and devising other technical means of gathering key intelligence.

The interrogation techniques employed during the post-9/11 period produced information that saved lives. For example, interrogations of Khalid Sheik Mohammed, the mastermind of the September 11 attacks and the man the CIA has called its "preeminent source" on al Qaeda, revealed plans to carry out a September 11-type attack on the West Coast and attack landmarks in New York, such as the Brooklyn Bridge.

But, the passage of time since 9/11 seems to have dimmed memories of important lessons learned, as demonstrated by Attorney General Eric Holder's recent decision to appoint a prosecutor to reopen a previously closed investigation into the techniques intelligence officers used to interrogate terrorists. There is little doubt that this step, which could lead to criminal charges against intelligence officers, will drive a wedge between the Justice Department and the intelligence community and discourage the intelligence community from acting aggressively.

Intelligence officers will not be able to focus on their critical responsibility if they are worried that actions they take today will be subject to legal recriminations when the political winds shift. Indeed, CIA director Leon Panetta has sounded a similar warning—that he's become increasingly concerned that this focus on what happened in the past will distract intelligence officers from their core mission of protecting America. It will also spur distrust between the Justice Department and the intelligence community and return us to the days when a virtual "wall" separated government agencies charged with fighting terrorism.

The attorney general's decision to reopen this investigation will have serious repercussions—and it is wholly unnecessary. When he announced the appointment of the prosecutor, the attorney general failed to acknowledge that the Justice Department has already investigated the alleged interrogation abuses that are the subject of this new probe. One individual was prosecuted and convicted for abuses. Three former attorneys general and numerous career prosecutors have examined the evidence and determined that it does not support further prosecution of intelligence officials.

The president himself has repeatedly said that he wants to look forward, not backward on this issue. But, the actions of his administration (over which he has control) are in-

consistent with his stated intent. I believe the nation would be better served if the administration focused more on supporting the intelligence community as it continues every day to do the hard work of intelligence gathering, rather than distracting it from its duties and chilling its activities.

#### REFLECTIONS ON THE PRESIDENT'S ADDRESS

Mr. KYL. Mr. President, I wish to reflect on the speech President Obama gave on Wednesday evening. We have had time to reflect on its meaning, time to have the pundits give their views on it, time to see some reaction by the American people, and time to visit with colleagues about their reaction to answer the question of whether it moved us further along to a bipartisan solution to the health care challenges that we all acknowledge face our Nation.

I must report this morning, with some disappointment, I do not believe it achieved that purpose. During the month of August, when we were back home talking with our constituents, they spoke to us about their concerns and their fears about the plans that have been put forth by the House of Representatives and Senate committees, and we brought those ideas back to Washington. I had hoped, with the thought that there could be a readjustment—a pressing of the restart button, as it were—to have these bills in the House and Senate more accurately reflect the will of the American people.

The public opinion surveys are virtually unanimous that public opinion does not favor the plans that have been presented to the Congress. In fact, by roughly 52 to 42, the surveys say the American people disagree with or disapprove of those proposed solutions. But rather than reflecting on what the public has been saying, which the President did not do on Wednesday evening, it seemed he simply recharged the same program he has been pushing for all these many months now and criticized those who disagreed with him and effectively threw down the gauntlet and said it is going to be this way or no way.

I don't think that is the way to reach a bipartisan consensus or reflect the will of the American people. I am especially disappointed because, in the President's comments, there seems to be no room for honest disagreement. I must tell you, after working with colleagues on both sides of the aisle for months, there are honest disagreements and some honest disputes about some of the facts. There has to be room for that honest debate, rather than simply calling each other by pejorative names or condemning anything they say.

Let me quote some of the words the President used: "partisan spectacle." The opposition's "unyielding ideological camps"—trying to "score short-term political points." He talked about the "bogus claims spread by those whose only agenda is to kill reform at

any cost." Maybe some people believe that, but that is not the people in this body or in the other body.

In order to reach out to those with whom there are disagreements, I think the President has to use a different phraseology than suggesting the only reason people disagree with him is to "kill reform at any cost." He talked about lies from prominent politicians and arguments that were false and said: "To my Republican friends, I say that rather than making wild claims about a government takeover of health care, we should work together. . . ." And so on.

Well, I talked to my constituents, and they are very concerned about the role of government in their health care decisions and the decisions of their families and their doctors. When you read the legislation, I don't think they are wild claims to say the role of government would be much greater than it is today and, to many people, to an extent that causes great fear and concern.

The President talked about the "demagoguery and distortion" and said: "So don't pay attention to those scary stories." Of course, he had some pretty scary stories in his speech. There is nothing wrong with pointing out serious problems in order to spur people to action. But if it is OK for one side to do that, it ought to be OK for the other side—for those who disagree with him.

Finally, he said he is not going to "waste time with those who have made the calculation that it's better politics to kill this plan than improve it." Certainly, that isn't the motivation of the people in the other body or this body with whom we disagree. He also said: "If you misrepresent what's in the plan, we will call you out." That is a threat and the kind of Chicago-style politics that I don't think has a place in the presentation in the House of Representatives, where I have heard five Presidents give speeches. Far and away, this was the most political. Therefore, I think it was the least effective in bringing people together for a bipartisan solution.

Also, the most disappointing thing was what I would say is an inability to confront honest differences of opinion and have an honest debate about those disagreements. The President is very good at what I have called setting up a straw man. He sets up an argument that nobody has made and then knocks it down and declares success. That is a disingenuous way to make an argument.

I will illustrate this with maybe five different points he covered in his speech. You have heard the President say for months that if you like your insurance, you get to keep it. How many times have you heard that? The problem is, it is not true—under either the House or the Senate bills. I will explain why in a moment. But it is not true. Eventually, I think the President's advisers must have told him you cannot