

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

say that. Let's reform the way you say it so that what you say is legally and technically true. Wednesday night, here is what the President said:

Nothing in this plan will require you or your employer to change the coverage or the doctor you have.

Then he repeated that. Well, nobody ever said there was anything in the bills that required you or your employer to change. We simply read the bills and observed that, as a result of the legislative language, they would change because their plans would no longer exist. Naturally, if your plans no longer exist or if your employer said: I am not going to cover you anymore because it is cheaper to go to the public option, then you would lose your coverage. So the President changed the language to be technically correct, leaving the impression that what he said before is still true when, in fact, it is not. Both the CBO and the Lewin Group—a totally objective analysis—demonstrate that for two separate reasons, it is still true if you like your insurance, you are not going to be able to keep it. Most people are not.

The Lewin Group notes that of the over 100 million Americans—probably close to 120 million Americans—who will go to the public option or government-run plan, as the President proposed, 88 million of those will lose their employer-sponsored insurance because it is cheaper for the employer to drop their coverage, pay the fine, and allow them to enroll in the government program—88 million.

For senior citizens—and this is especially important in my State of Arizona—7 million seniors, according to CBO, will lose their private Medicare plan coverage, and that is because the President's plan, these bills, drastically reduces the support that is provided to insurance plans called Medicare Advantage, where their primary purpose is to serve people in more rural and less populated areas, but they exist in urban areas as well.

Over 10 million seniors are enrolled in Medicare Advantage plans. In my State, we have one of the highest rates of enrollment, with about 39 percent of Medicare beneficiaries in the Medicare Advantage plans.

The President and the Democrats who have written this legislation would like to do away with those Medicare Advantage plans. As a result of the language of the bills, according to the CBO, at least 7 million seniors will be moved off Medicare Advantage because those plans will no longer be available.

The point being that while, of course, the President is correct that nothing in the plan requires you to leave your coverage if you like it, the reality is that over 88 million people who have insurance through their employer and 7 million seniors who have Medicare Advantage plans will lose their coverage because of the provisions of the bill.

The fact remains it is still not true, if you like your insurance, you are

going to be able to keep it—at least for almost 100 million; to be totally accurate, about 95 million Americans.

The President made another argument. He said: I know you Republicans have been interested in medical malpractice reform, so I am going to do something about that.

I have to characterize it as a very disingenuous proposal. Everybody knows there is a huge amount of money that could be saved in health care delivery if we did something to reform this jackpot-justice system that requires physicians to pay, by one estimate, about 10 cents of every health care dollar spent for their premiums for malpractice insurance.

Another study demonstrated that over \$100 billion a year is wasted in physicians and hospitals practicing defensive medicine in order to protect themselves from these liability suits, these malpractice suits.

We have been pushing for malpractice reform for years. What was the President's response? He is going to ask the Secretary of HHS, Kathleen Sebelius, to look into an idea that the Bush administration was promoting after the Senate rejected, on almost partisan lines, medical malpractice reform proposed by Republicans.

Secretary Sebelius was the director of the Kansas Trial Lawyers Association from 1978 to 1986. Some kind of encouragement to the States to develop some kind of alternative dispute resolution mechanism is hardly tort reform.

Given the fact that this is a huge problem, a lot of money could be saved if we have meaningful tort reform. We believe it would be better to develop real tort reform and include it in the legislation rather than simply direct the Secretary to look into something I think is bound to result in virtually nothing.

A third point I think is highly misleading—and this received a lot of publicity because of the unfortunate comments by a Member of Congress in a very uncourteous comment to the President—the President said:

The reforms I am proposing would not apply to those who are here illegally.

In one sense, that is a true statement because there is not a provision that says we are going to cover illegal immigrants. By the same token, on repeated occasions when Members of the House of Representatives sought to ensure that illegal immigrants would not be covered, amendments to ensure eligibility requirements and confirmation of eligibility by assuring only U.S. citizens would receive the benefits of the program, those amendments were defeated.

So it has been proposed that maybe we can just resolve this question of who is right by agreeing to a simple amendment that says illegal immigrants will not have the benefits of this program, and there is going to be enough confirmation of their eligibility or noneligibility to ensure that

is the case. That is how we could resolve it.

We could do the same thing with regard to funding of abortions. There is an argument, are they or are they not? There is a very simple answer. Instead of rejecting the Hatch amendment, which was done in committee, adopt the Hatch amendment that simply says no funding of abortions.

I think we are going to know pretty clearly if there is an intent to deceive, to have the language seem to prevent illegal immigrants or funding for abortions but in reality it ends up that they get the coverage or that abortions are funded.

There is a very simple solution: adopt the Republican language that makes it very clear. But, no, that has not been done, and we will see whether it will be done.

I thought one of the most unfortunate phrases the President used was, in speaking to America's seniors:

Not a dollar of the Medicare trust fund will be used to pay for this plan.

The President acknowledged in his speech that about half of the cost of the almost \$1 trillion expense of this plan will be by virtue of cuts in Medicare. I think he used the word "savings" in Medicare. The question is, what exactly are those cuts? What is that savings? What the President said was, "Not a dollar of the Medicare trust fund will be used to pay for this plan," as if that answers the questions and seniors should not be worried.

First of all, nobody said the trust fund is going to be used. Does anybody know how much money is in the trust fund? I will tell you. Zip. The trust fund is broke. Medicare is in big financial trouble. There isn't any money in the trust fund to pay for anything. Nobody ever suggested that was the problem.

Here is the problem, twofold: One, they are going to get somewhere a little less than \$200 billion by reducing the allocations to the plans that provide Medicare Advantage. I talked about that earlier. They don't like Medicare Advantage because it is a private alternative, so they want to get seniors off Medicare Advantage. That is why seniors who like Medicare Advantage are out of luck because they reduce the support for those plans by almost \$200 billion. That is where part of it comes from. The rest of it, \$300 billion or so, comes from getting rid of waste, fraud, and abuse. That is when I heard some laughter in the Chamber because we have been trying to get rid of waste, fraud, and abuse for years, and it is very hard to do.

The President provided absolutely no specifics. None of the bills have any specifics about this point. Nobody knows how this is going to be done. It is very unrealistic to expect it will occur in any way except what some have acknowledged, which is that the payments to providers—that is to say, doctors, hospitals, nurses, and others—will be reduced. That is how we will

“save” that money. Bear in mind, these are providers who today receive on the order of 70 percent of reimbursement from Medicare, 70 percent of what it costs them to provide the services. That is why those who buy private insurance have to pay more than 100 percent. They have to subsidize the other 30 percent or thereabouts that Medicare does not cover.

What happens when that is reduced even further, when that is cut down to 60 percent, let's say, or 50 percent? It is going to raise the premiums of everyone else who has to increase their subsidy for the government program, and it ends up reducing the care available for seniors. There are not as many doctors, the waiting lines get longer, the care that is available decreases, and we end up with rationing. That is what seniors are concerned about.

This is not a wild charge. This is not a falsity. It is in the bills. The President attempts to distract attention from it by saying we are not going to spend any money in the trust fund to pay for this. So what. There isn't any money in the trust fund.

The question is, are you going to hurt seniors' care by cutting physician and hospital payments under Medicare and eliminating the support for Medicare Advantage bills? That is what is in the two bills. That is what is going to hurt seniors.

There are a lot of arguments that do not really match up to the claims made. They set up a straw man and knock down the straw man, but still standing is the fact that the bills that are in the Congress will give the government a much greater role in our health care decisions, will increase premiums for millions of people, will result in rationing of care, and will put the government in charge of decisions with respect to treatment. All of these are concerns people expressed during the month of August and some before that need to be addressed.

Instead of simply doubling down, as some folks said, and saying: It is going to be my way or else we will call out those who disagree with us—I think we ought to listen to the American people. What I hear they have said is the following: First of all, rather than taking on a massive new spending program of close to \$1 trillion, adding several trillion to the debt over the next couple of decades, rather than increasing our debt, rather than having another government takeover following all those that have occurred so far, let's focus on the most pressing problems facing Americans, and that is putting America back to work, getting the economy going again, reducing our debt, and making sure we don't have new taxes. That is what we would like to have you focus on.

To the extent there are specific problems with health care, deal with those as well, but you can do that on a step-by-step basis in a way that targets specific solutions to specific problems.

I mentioned the problem of defensive medicine costs, over \$100 billion a year

in money we should not be spending but doctors force us to spend it, in fact, to protect themselves from this jackpot-justice system.

All right, the way to resolve that is with real medical malpractice reform. We do not need a demonstration project. I will give you a couple—Texas and Arizona. By passing modest malpractice reforms in those two States, significant progress has been made in reducing medical costs, reducing premiums, and attracting doctors. I am told that something like 7,000 doctors have moved into Texas in the last 4 years pretty much as a direct result of the more benign climate in which they can practice medicine as a result of this malpractice reform. Premiums have been cut to—I forget precisely—I think it is 21 or 23 percent.

We know what works. Let's target a specific solution to a specific problem. We don't have to worry about taking over the whole private sector system of health care delivery, putting at risk the insurance people already have that serves them well.

Finally, I note that there is some discrepancy between what the President said about his plan and the bills that are pending in Congress. My colleague, Senator CORKER, has written to the President and asked if we could get a copy of his bill because some of the things he described are not in either the House or Senate bill. At least they do not accurately describe those two bills.

I will give one example. He said:

I will not sign a plan that adds one dime to our deficits—either now or in the future. Period.

That is great. Unfortunately, the House and Senate bills, according to the CBO, add to the deficit: the HELP Committee in the Senate about \$750 billion worth, and in the House committee about \$239 billion worth. Clearly, these two bills are not what the President is talking about. Obviously, he has something else in mind. If he is going to be selling that to the American people, we need to see it. So I encourage the White House to send up the legislation they have so we can see what it is they are talking about that is different from these other two bills.

I said finally, but one final point. The President did not talk about how he was going to pay for it except for Medicare cuts. He did not mention the taxes on small businesses, the taxes on jobs, the taxes on employers, the penalties individuals would have to pay if they do not buy insurance as mandated here, even a tax on the chronically ill. Senator BAUCUS is proposing to limit flexible spending account contributions to \$2,000, which would raise about \$18 billion. What it would do is penalize those who have significant illnesses and would like to make larger contributions to their flexible spending accounts.

Americans have a right to be concerned about the cost of this, the way it is paid for, the effect on their health

care, and the effect on their family's future. I think we need to debate it in an honest and forthright way. I am not pulling any punches this morning, but I am hoping we can bring people together to recognize what the American people are asking for is a step-by-step approach that targets solutions to specific problems and does not try to do it in the kind of comprehensive way that results in a 1,300-page bill that, frankly, nobody will read except some staffers, and we won't know what is in it until well after the fact and which is very hard for Congress to get right.

The unintended consequences of that kind of legislation are always enormous. The costs are always far greater than anybody predicted, and the impact on the American people can be very deleterious.

So my hope is that we will listen to the American people on this, take our time to do it right, do it in a step-by-step approach, target our solutions, get away from this massive government intrusion—which is reflected in both of the bills that have been considered by the House and Senate—and, most importantly, focus first and foremost on what is most on the minds of the American people domestically; that is, the economic situation here that will be made worse if we impose new taxes on small businesses, for example. It will be made worse if we take on massive new debt. We need to focus on putting people back to work, not spending as much money, not adding to our debt, and then decide what kinds of solutions we can afford with respect to health care. If we do that, I think we will have complied with the request of our constituents, which, after all, is what we are here to do. We will have done something good for the American people, and we will not have violated that first principle of medicine, which is, of course, to first do no harm. I think the American people were pretty clear over the month of August that they wanted us to start with that proposition, and it would be a good place for us to start in the so-called health reform we are about to take up over the next several weeks.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

SURGE THE AFGHAN ARMY

Mr. LEVIN. Mr. President, today we mark a solemn anniversary. Eight years ago this morning, our Nation was attacked by terrorist extremists motivated by hatred and bent on destruction. It is always appropriate to reflect on the shock of that day, the innocent lives lost, and the efforts our Nation has made since that day to ensure that Afghanistan, the nation that hosted those terrorists, cannot again become a safe haven for terrorists seeking to attack us. But today is an especially appropriate occasion to take stock of those efforts and consider how best to continue them.