

led the world in the past, a nation whose word is its bond, and we stand ready to match our words with our actions.

I thank the Chair. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. CARNAHAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

THE ANTITERRORISM PACKAGE

Mr. SPECTER. Madam President, I have sought recognition to express my concern about what is happening on the antiterrorism package. Two weeks ago Attorney General John Ashcroft met with Members in an adjacent room, 211, down the hall, and asked for legislation that week. I responded we could not do it instantly but we could do it briefly.

Since that time, we have only had one hearing in the Senate Judiciary Committee, a week ago yesterday, where we heard from Attorney General Ashcroft for about 75 minutes. Most of the members of the committee did not have a chance to question him. I did.

We really have a serious issue of prompt action by the Congress. But it has to be deliberative. We have to be sure of what is in the legislation. When Attorney General Ashcroft testified, he said on the detention of aliens, the only ones they wanted to detain were those who were subject to deportation proceedings. My response to that was that I thought they had the authority now, but the bill was much broader. It authorized detention of aliens without any showing of cause at the discretion of the Attorney General, and we could give the Attorney General and law enforcement the additional authority. But it had to be carefully drawn.

Similarly, on the use of electronic surveillance, the Attorney General said he wanted to have the availability of electronic surveillance on content only on a showing of probable cause, but the amendments to the Foreign Intelligence Surveillance Act were broader.

Here again, I think we can give the Department of Justice and law enforcement what they need, but we have to carefully craft the bill. We have not had any hearings since. There is a meeting scheduled later today with all Republican Senators, with our ranking member, Senator HATCH, to have what I understand will be compromise legislation which has been worked out. But the difficulty is that the Supreme Court of the United States has, in a series of decisions, struck down acts of Congress when there has been an insufficient record showing a deliberative process and showing reasons for why the Congress has done what the legislation seeks to accomplish. In the area of law enforcement and civil liberties,

there is, perhaps, more of a balancing test than in any other field.

What we need to do is to have a record. If the Department of Justice can show that there is a need for electronic surveillance which more closely approximates the standards of the Foreign Intelligence Surveillance Act than the traditional standards of probable cause—a really pressing need with factual matters—that is something which the Judiciary Committee ought to consider. If there are pressing matters about the detention of aliens—I understand the House has a bill which would allow for detention for 7 days, which is a protracted period of time—there has to be a showing as to what is involved. That can be accomplished only through the hearing process. Perhaps we need closed hearings. But I am very concerned, and I have communicated my concern that something may happen in the intervening time which might be attributable to our failure to act.

I hope we will let the Judiciary Committee undertake its activities. We have a lot of seasoned people there who have prosecutorial and governmental experience, who have things to add to really understand exactly what the specific needs are and to structure legislation which will meet those specific needs and which, under a balancing test that the courts have imposed, will survive constitutional muster.

But we are on notice and we are on warning that the Court will strike down legislation if there is not a sufficient deliberative record as to why the legislation is needed.

It was my hope that we could have had a markup early this week, and we still could with dispatch. There is no reason that the Senate can't have hearings on Fridays, or on Saturdays, when we are not going to be in session, to have markups and sit down with Department of Justice people to get the details as what they need perhaps in closed session and move ahead to get this legislation completed.

I think we can accommodate the interests of law enforcement, a field in which I have had some experience, and also the civil liberties and constitutional rights, a field again that I have had some familiarity with.

I thank my distinguished colleague from New Hampshire for letting me speak at this time.

THE FUTURE OF THE AIRLINE INDUSTRY

Mr. WYDEN. Madam President, less than 2 weeks ago, legislation providing \$15 billion to the airline industry flew through the Congress like a runaway express. The legislation moved so quickly that I am of the view that additional steps are needed to impose accountability on the airlines for this unprecedented infusion of taxpayer money.

One-third of the \$15 billion is already on its way out the door of the U.S. Treasury and will be given to the car-

riers according to a formula that they sought. Saturday is the deadline for deciding the basic process and rules for apportioning the remaining \$10 billion in loans and loan guarantees. The way this staggering sum of money is allocated will shape the structure of the airline industry for years to come.

Yesterday the Wall Street Journal reported that the larger and financially healthier airlines have attempted to impose their terms for the \$10 billion in loan guarantees on the smaller and the weaker carriers. If the Office of Management and Budget acquiesces to the demands of the larger carriers, it could crush the smaller airlines in the short term and squash significantly the hopes of competition and consumer choice in the long run.

On the horizon of the aviation industry there may be only two or three carriers dominating routes, dictating prices, and reducing service to small and usually rural markets. It is for this reason that I come to the floor today, and I intend to outline several principles that I believe the Congress should insist upon in order to keep an eye on shaping the future of this industry so that there is real competition, affordable prices for consumers, and adequate service across this country.

It is obviously critically important to focus on the short-term needs of getting people traveling again on those near empty planes and restoring consumer confidence. But it is just as important to put in place policies that protect the long-term interests of the flying public and the taxpayer.

The \$10 billion package of loans and loan guarantees is going to dramatically reshape the industry for years to come. On the question of competition, on whether flights are affordable, and whether rural areas are turned into economic sacrifice zones, the decisions that are going to be made in the next few weeks will have a dramatic impact.

The entire Senate understands that there is a national airline rescue effort underway. Since September 11, Congress has heard much from the airline industry about what the industry believes needs to be done. Congress has responded. It is time now for the Congress to set out what the American people have a right to expect from the airline industry. Fortunately, this job is going to be easier because the Comptroller General, David Walker, and the Department of Transportation Inspector General, Ken Mead, are in place in order to provide a crucial reality check. Already Mr. Walker has performed an important service of pulling together a General Accounting Office team, getting me and other Members of the Senate a sense of what the industry's loss projections are, and particularly an analysis of their short-term needs. This type of independent third-party review is going to be essential in the weeks and months ahead.

Let me give the Senate just a few examples of the important questions that the public has a right to have debated

now, in order to know to what the end product of this debate involving the \$15 billion is going to lead. For example, suppose that the \$10 billion in loan guarantees is allocated in a way that favors a few large carriers, which is something that is being sought by some in the industry. The end result could be consolidation to just a couple of airlines, precisely the result the Government was trying to avoid when it blocked the proposed United-US Airways merger. Or suppose carriers use loan guarantees to strengthen their operations in "fortress hubs" while pulling back elsewhere. The end result for many consumers would be a monopolistic environment with little competition and few choices.

Of course, there is the risk that taxpayer dollars will be wasted on airlines that may not survive in any case or on airlines that really do not need the help. Care has to be taken to ensure that these dollars are used to get the maximum for the American public.

Responsibility for avoiding these pitfalls lies, in the first instance, with the Air Transportation Stabilization Board. The Board has the authority to decide who will receive loan guarantee assistance and subject to what terms and conditions. The Congress, unfortunately, has not provided this Board with a lot of guidance. The legislation provides only general criteria, such as the requirement that the loan in question be prudently incurred. Congress has not told the Board where to place its priorities or what the goals should be. Therefore, I believe some guiding principles are needed with respect to how that \$15 billion is allocated. I propose the following principles this morning:

First, Government assistance must be allocated in ways that are going to promote and not hinder competition between the airlines. This must be a primary goal because without competition the entire premise of the deregulated industry relying on market forces makes no sense. The Government cannot afford to focus narrowly on each individual loan guarantee application while ignoring the big picture issue of how the overall assistance package affects the balance of competition in the industry.

Second, companies receiving assistance need to be monitored closely to make sure they are using the money responsibly. Are the taxpayer funds being used to subsidize dividends to the shareholders, lucrative compensation for top executives, or increased lobbying? The legislation does contain some provisions with respect to executive compensation, but the additional issues I am raising could send a message, at a time when America is hurting, that some of the powerful may be profiting.

Third, companies receiving assistance and their major stakeholders should be required to demonstrate that they are doing everything in their power to improve the situation. Com-

panies would have to show that they have a plan for returning to profitability and that the plan is actually being followed. Top managers should take salary reductions and debtholders and employees should make sacrifices as well. Taxpayers who are funding that \$15 billion legislative package should know that all of the company's stakeholders are helping to shoulder the burden.

Fourth, there needs to be an upside for the taxpayer. In the Chrysler bailout legislation, the Treasury Department received stock options that eventually led to a substantial profit for the taxpayers. Similarly, this effort should be coupled with a mechanism for the public to recoup its investment when airlines return to profitability.

Fifth, service to small markets must not be a casualty of this crisis. As airlines cut flights or routes in response to the current predicament, their first instinct may be to eliminate small market service and turn small communities in Nebraska and Oregon and other rural States into sacrifice zones. Americans need an airline system that connects the entire country and not just the large hubs. Any program of Government assistance to the airlines must seek to encourage the airlines to maintain and indeed improve service in the small markets.

Sixth, companies should be rewarded for treating employees in a responsible manner. Approximately 100,000 airline workers have already been laid off—but there are significant differences from airline to airline in the type of severance arrangements offered, and also in the efforts the airlines make to rehire workers when conditions begin to improve again. When it comes to public assistance, companies with more responsible labor policies should have a significant leg up in those loans and loan guarantees.

Seventh, and finally, the current focus on the interests of the airlines should not come at the expense of efforts to protect the interests of consumers. The fact is, this is a concentrated industry in which consumers often face limited choices. There is a real risk that, if some air carriers fail, the competition situation may get worse before it gets better.

That makes consumer protection all the more important in a number of basic areas—areas where the Department of Transportation Inspector General has already said there is a serious problem, and that Members of this body have tried to address in passenger rights legislation.

There may be a need as this new effort goes forward for proconsumer rules in order to protect consumers.

Adhering to these seven core principles that I have laid out this morning is not going to be easy. There is no simple rule or formula that Congress should impose, or that the board could follow that would automatically achieve all of the objectives that I have laid out today.

It is critical, in my view, in order to make sure this job is done responsibly, for Congress to obtain on a weekly basis the information necessary to exercise responsible oversight over the airline industry. This information must be real-time data, including load factors, yields per mile, fares, type of aircraft, dividend payments, service to small markets, cancellations, workforce statistics and route information.

In the coming weeks, the Air Transportation Stabilization Board begins to implement the loan guarantee program. I am certain the Senate Commerce Committee under the leadership of Chairman HOLLINGS will be actively engaged. I am anxious to work with my colleagues to put in place the principles that I have outlined today, as well, I am sure, as other Members of the Senate who will propose what they believe should govern how this \$15 billion is allocated.

The airline industry has been heard from. Now the public has a right to ask the airline industry to support policies and to work with the U.S. Congress to ensure that this is true competition, affordable prices, and decent service.

In closing, I am of the strong view that the work of the Congress on that \$15 billion legislation began when the bill passed. I hope and trust that my colleagues will join with me in doing everything we can to ensure that at the end of the bailout process the American people are left with a more competitive airline industry, one that offers high-quality service to every area of the country and gives the public what they have a right to expect will be the end process of that unprecedented legislation that the Congress passed a little less than 2 weeks ago.

Madam President, I yield the floor.

MEMORIAL TRIBUTE TO D. MICHAEL HARVEY

Mr. BINGAMAN. Madam President, it is both with a sense of sorrow and with great admiration that I rise today to pay tribute to an exemplary public servant and a good friend, D. Michael Harvey, who died on August 31, 2001. Mike served the United States Senate and the Committee on Energy and Natural Resources with distinction for some 22 years. He often said that there was no higher calling than public service. Mike worked for and counseled some of the giants of the committee: Clifford Hansen of Wyoming; Lee Metcalf of Montana; Henry M. (Scoop) Jackson of Washington; Mark Hatfield of Oregon; Dale Bumpers of Arkansas; and J. Bennett Johnston of Louisiana. He served at the direction of the committee's leaders, but all the committee's members—Democrats and Republicans alike—had access to and benefit of his counsel.

Mike was born in Winnipeg, Manitoba, and raised in Rochester, NY. He received his B.A. from the University of Rochester in 1955. He joined Eastman Kodak Co., for 4 years, before moving to Washington.