

record, including police perjury, was so rank that the Justice Department has begun investigating possible civil rights violations.

In the last 20 years, 54 Americans under sentence of death have been released from prison because of evidence of their innocence. In an important pending case, a U.S. Court of Appeals has scheduled a hearing for Paris Carriger, an Arizona death row inmate who some usually skeptical criminologists believe is probably innocent.

Congress is now preparing to deal with the fact that innocent men and women are occasionally sentenced to death in this country. Congress's answer is: Execute them anyway, guilty or innocent.

That result will follow, inevitably, from legislation that is heading for the floor of the House and has already passed the Senate. It would limit Federal habeas corpus, the legal procedure by which state prisoners can go to Federal courts to argue that they were unconstitutionally convicted or sentenced.

Federal habeas corpus has played a crucial part in saving wrongly convicted men and women from execution. One reason is that state judges, most of them elected, want to look strongly in favor of capital punishment. For example, Alabama judges have rejected 47 jury recommendations for life sentences, imposing death instead, while reducing jury death sentences to life only 5 times.

The habeas corpus restrictions moving through Congress would increase the chance of an innocent person being executed in two main ways.

The first deals with the right to bring in newly discovered evidence of innocence in a fresh habeas corpus petition. There are legal rules against successive petitions, but there is an escape hatch for genuine evidence of innocence.

Today a prisoner is entitled to a habeas corpus hearing, despite the rules against repeated petitions, if his new evidence makes it "more likely than not that no reasonable juror would have convicted him." The pending legislation would change the "more likely" standard to the far more demanding one of "clear and convincing evidence."

Second, the legislation as passed by the Senate raises a new obstacle. Federal courts would be forbidden to grant habeas corpus if a claim had been decided by state courts—unless the state decision was "an arbitrary or unreasonable" interpretation of established Federal constitutional law.

Apparently, a Federal judge could not free a probably innocent state prisoner if he had been convicted as the result of a state court constitutional ruling that was merely wrong. It would have to be "unreasonably" wrong—a remarkable new concept.

Why would members of Congress want to increase the chances of innocent men and women being gassed or electrocuted or given lethal injections? Perhaps I am naive, but I find that difficult to understand.

The country's agitated mood about crime, fed by demagogic politicians, makes Congress—and Presidents—want to look tough on crime. One result is zeal for the death penalty.

But that cannot explain a zeal to cut off newly discovered evidence of a prisoner's likely innocence and execute him, guilty or innocent. Can our political leaders really be so cynical that they put the tactical advantage of looking tough on crime ahead of an innocent human life?

It is a question for, among others, Senator Orrin Hatch and Representative Henry Hyde, chairmen of the Senate and House Judiciary Committees. Whatever their political outlook, I have never thought them indifferent to claims of humanity.

President Clinton must also face the reality of what this legislation would do. Last

May he wrote Senator Bob Dole that he favored habeas corpus reform so long as it preserved "the historic right to meaningful Federal review." He opposed adding a habeas corpus provision to counterterrorism legislation—but a few days later he abandoned that position.

In the House the clampdown on habeas corpus is going to be part of a counterterrorism bill coming out of the Judiciary Committee. The bill has many other problems, of fairness and free speech. But the attack on habeas corpus is a question of life and death.

[From the New York Times, Apr. 15, 1996]

STAND UP FOR LIBERTY

(By Anthony Lewis)

WASHINGTON.—In one significant respect, Bill Clinton's Presidency has been a surprising disappointment and a grievous one. That is in his record on civil liberties.

This week Congress is likely to finish work on legislation gutting Federal habeas corpus, the historic power of Federal courts to look into the constitutionality of state criminal proceedings. Innocent men and women, convicted of murder in flawed trials, will be executed if that protection is gone.

And President Clinton made it possible. With a nod and a wink, he allowed the habeas corpus measure to be attached to a counterterrorism bill that he wanted—a bill that has nothing to do with state prosecutions.

House and Senate conferees are likely to finish work on the terrorism bill this week, and both houses to act on it. Last week Attorney General Janet Reno sent a long letter to the conferees. Reading it, one is struck by how insensitive the Clinton Administration is to one after another long-established principle of civil liberties.

The letter demands, for example, that the Government be given power to deport aliens as suspected terrorists without letting them see the evidence against them—arguing for even harsher secrecy provisions than ones the House struck from the bill last month. It says there is no constitutional right to see the evidence in deportation proceedings, though the Supreme Court has held that there is.

Ms. Reno denounces the House for rejecting a Clinton proposal that the Attorney General be allowed to convert an ordinary crime into "terrorism" by certifying that it transcended national boundaries and was intended to coerce a government. Instead, in the House bill, the Government would have to prove those charges to a judge and jury—a burden the Clinton Administration does not want to bear.

The Reno letter objects to "terrorists" being given rights. But that assumes guilt. The whole idea of our constitutional system is that people should have a fair chance to answer charges before they are convicted. Does Janet Reno think we should ignore the Fourth and Fifth and Sixth Amendments because they protect "criminals"? Does Bill Clinton?

Even before the terrorism bill, with its habeas corpus and numerous other repressive provisions, the Administration had shown a cavalier disregard for civil liberties. The Clinton record is bleak, for example, in the area of privacy.

President Clinton supported the F.B.I.'s demands for legislation requiring that new digital telephone technology be shaped to assure easy access for government eavesdroppers. That legislation passed, and then the Administration asked for broader wiretap authority in the counterterrorism bill. (That is one proposal Congress seems unwilling to swallow.)

The President also supported intrusive F.B.I. demands for ways to penetrate meth-

ods used by businesses and individuals to assure the privacy of their communications. He called for all encryption methods to have a decoder key to which law-enforcement officials would have access.

Recently Mr. Clinton issued an executive order authorizing physical searches without a court order to get suspected foreign intelligence information. That is an extraordinary assertion of power, without legislation, to override the Constitution's protection of individuals' privacy.

He has also called for a national identity card, which people would have to provide on seeking a job to prove they are not illegal aliens. That idea is opposed by many conservatives and liberals as a step toward an authoritarian state.

Beyond the particular issues, Mr. Clinton has failed as an educator. He has utterly failed to articulate the reasons why Americans should care about civil liberties: the reasons of history and of our deepest values. This country was born, after all, in a struggle for those liberties.

His record is so disappointing because he knows better. Why has he been so insensitive to the claims of liberty?

The answer is politics: politics of a narrow and dubious kind. The President wants to look tough on terrorism and aliens and crime. So he demands action where there is no need or public demand. Without his push, the excesses of the terrorism bill would have no meaningful constituency.

He would do better for himself, as for the country, if he stood up for our liberties. And there is history. Does Bill Clinton really want to be remembered as the President who sold out habeas corpus?

EXCERPT FROM STATEMENT OF ADMINISTRATION POLICY

Finally, H.R. 2703 contains provisions to reform Federal habeas corpus procedures. The Administration has consistently and strongly supported habeas corpus reform in order to assure that criminal offenders receive swift and certain punishment. Indeed, the Administration believes that the bill could be improved to provide additional guarantees that offenders have only "one bite at the apple" and complete the process even more expeditiously. These further limitations should be accompanied by necessary changes in the scope of review afforded to such petitions. H.R. 2703 would establish a standard of review for Federal courts on constitutional issues that is excessively narrow and subject to potentially meritorious constitutional challenges. To achieve the twin goals of finality and fairness, H.R. 2703 should shorten the duration and reduce the number of reviews for each criminal conviction while preserving the full scope of habeas review so that it can continue to serve its historic function as the last protection against wrongful conviction. The Administration hopes to work with the House and the conferees to achieve these ends.

Mr. DOLE. Mr. President, is leader time reserved?

The PRESIDING OFFICER. Yes.

BROADCAST BLACKOUT

Mr. DOLE. Mr. President, TV broadcasters have broken their trust with the American people. For more than 40 years, the American people have generously lent TV station owners our Nation's airwaves for free. Now some broadcasters want more and will stop at nothing to get it. They are bullying Congress and running a multimillion-

dollar scare campaign to mislead the public.

The reason is simple: Why pay for something when you can get it for free? But there is one small problem. The airwaves are the Nation's most valuable natural resource and are worth billions and billions of dollars. They do not belong to the broadcasters. They do not belong to the phone companies. They do not belong to the newspapers. Each and every wave belongs to the American people, the American taxpayers. Our airwaves are just as much a national resource as our national parks.

Enter the TV broadcasters. Earlier this year, I blocked their legislative efforts to get spectrum for free. At my request, Congress is now holding open hearings on reforming our spectrum policies.

Apparently, the democratic process is not good enough for most broadcasters. So TV broadcasters are now running ads and so-called public service announcements, claiming that TV will die without this huge corporate welfare program, this billions and billions of dollars they want to take away from the American taxpayers. Of course, they do not call this giveaway welfare; they call it a tax. Imagine calling a giveaway a tax.

Also, I am aware that some broadcasters have asked Members of Congress to drop by their stations. In the midst of these friendly discussions, the broadcasters say, "I thought you might want to see the ad we are considering running in your district."

So much for subtlety.

It seems to me the broadcasters should be happy with the deal they already have. They have been getting free channels for years. In return, they fulfill public interest obligations, such as reporting news and information. Now they want more airwaves for free.

Newspapers also report the news, but Congress has never had to buy them off. It seems to me that giving broadcasters free spectrum is like giving newspapers free paper from our national forests.

Congress has never challenged whether broadcasters should be allowed to keep a channel. Instead, we are simply stating that if broadcasters want more channels, then they are going to pay the taxpayers for them. That does not kill television.

The broadcasters say they cannot afford to buy additional airwaves, which the Congressional Budget Office estimates is worth at least \$12 billion. Last time I checked, the American people cannot afford to give it to them free.

We are trying to balance a budget with tax cuts for families with children, reducing spending, and closing loopholes.

Broadcasters say that if they had to pay for the extra airwaves, it would be the end of so-called free, over-the-air television. The facts speak otherwise. According to the Washington Post, over the last 2 years broadcast deals in

the private sector amounted to a whopping \$31.3 billion. That is with a "b"—billion dollars.

Here is another fact. All TV broadcast licenses in America were originally given away for free, but only 6 percent are still in the hands of the original licensee. The other 94 percent have been bought and sold. My point is that broadcasters have a long history of paying top dollar for existing channels. Somehow they cannot afford any new ones unless the taxpayer picks up the tab.

UNFUNDED MANDATE ON CONSUMERS

Before Congress lets huge moneyed interests get their fingers on this national resource, we must be certain that the American taxpayer is fully protected. The policy broadcasters' want will not only force taxpayers to giveaway valuable airwaves, it will also force consumers to spend hundreds of billions of their own dollars on new equipment which is a point that I think has been overlooked. They have been trying to frighten everybody with television, and to get their way are going to have to have another television or some attachment.

The fact is that federally mandating a transition to digital broadcast will ultimately render all television sets in the country obsolete. You will not be able to use your television set.

Consumers will be forced to buy either new television sets or convertor boxes to receive so-called free, over-the-air broadcasts.

Last year we passed the unfunded mandates law. Perhaps some have forgotten, but that law applies to more than just State and local governments. It applies to the private sector and most importantly to individuals.

The impact of the broadcasters' plan would be dramatic. There are 222 million television sets in this country. At a Senate Budget Committee hearing last month, the broadcasters testified that the average digital television set's estimated cost is \$1,500, while the less expensive converter box will cost approximately \$500. Replacing every television set in America with a digital one would cost \$333 billion. Using the less expensive converter box would cost \$111 billion. No doubt about it, consumers will not be happy that Congress made this choice for them. That is precisely what we are going to do here unless we wake up and smell something.

The American people should have a say before Congress makes a decision on spectrum. After all, the airwaves are theirs and so are their TV sets. Neither belongs to the broadcasters.

NETWORK COVERAGE

Finally, TV broadcasters have rightly kept a watchful eye on a bloated Government. Whether it was \$600 toilet seats or \$7,000 coffee pots, they have always helped us quickly identify waste. But they have been strangely silent on this issue. In contrast, story after story, and editorial after editorial, protested this giveaway in the print media.

In fact, I have a whole bookful here. In fact, this is loaded with editorials and comments about this giveaway. You do not see it on television.

There have been a few exceptions. I want to be fair. CNN, which is a cable network, has reported on this issue, while CBS made an attempt a month ago. So-called public interest obligations seem to have gone out the window when it is not in the broadcasters' self-interest.

If five Senators took a legitimate trip somewhere overseas to investigate something that might be costing the American people money, that is reported on the evening news as a junket costing thousands and thousands of dollars to the American taxpayer because the Senators were over there trying to see if they were spending too much on foreign aid maybe in Bosnia or maybe somewhere else. That would be news. Maybe it is news. Maybe it should be reported. But when it comes to billion dollar giveaways, to them "mum" is the word. You never hear about it on television. Dan Rather will not utter a word. Peter Jennings, Tom Brokaw—maybe they do not know about it. But I would say to the American taxpayers and the people with TV sets that somebody had better protect the American public.

I have even had a threatening letter, which I will not put in the file, that if I do not shape up and stop talking about this, this broadcaster is going to get his 700 employees to vote for someone else in November. That is intimidation.

I have no quarrel with the broadcasters. I have always thought they were my friends. But it seems to me that when we are trying to balance the budget and when we are asking everybody to make a sacrifice, then we ought to make certain that we do not give something away worth billions and billions and billions of dollars.

Maybe the broadcasters felt this issue was not newsworthy. But if that is the case, why did the National Association of Broadcasters vote to go on the offensive and launch a multi-million-dollar ad campaign to preserve, as they spin it, free, over-the-air broadcasting?

I have already indicated it is not going to be free. It is going to cost you \$500 for a converter box or \$1,500 for a new TV set. That is not free.

I did not realize that ad campaigns have replaced the evening news.

CONCLUSION

Mr. President, if the broadcasters have a case to make, Congress is prepared to hear them. We are having fair and open hearings. That is what democracy is all about. It is not about distorting the truth and making thinly veiled threats. The American people know this. And despite what some might think, we are not easily duped.

I hope that fairness will prevail. I do not know what the value should be. But we should find out. Maybe it is \$1. Maybe it is \$1 million. Maybe it is \$50

billion. But I never found anything wrong with having a hearing and asking the people that might be impacted, including the American consumer, to come to testify. I believe many broadcasters understand their responsibility. Maybe there are only a few out there leading this effort to mislead the American public and to walk away with billions of dollars in welfare from the Congress of the United States.

I know this is not a very popular thing to do—to get up and take on TV broadcasters or radio broadcasters because they have a lot of free access to the airwaves. But I believe, if we are serious about the budget and serious about the future, serious about the taxpayers, that it at least ought to be raised.

So I think they are all legitimate. But I think those broadcasters who have not been blinded by greed—and there are a lot of them out there that have not—will help shape the future of television.

Again, I must say that I know it does not get a lot of attention. But there are all kinds of columns here by different people, William Safire and others, page after page, hundreds of pages of stories about this giveaway.

I know the broadcasters are meeting in Las Vegas, and I think it is time to throw the dice and have a hearing. Maybe they can make their case. That is what Congress is all about.

But it seems to me that the President, I think, should have an interest in this. It is not a partisan issue. It is an issue of how we are going to pay the bills, how we are going to balance the budget, and what amount will properly be received in charging for spectrum.

Mr. MOYNIHAN. Mr. President, will the majority leader yield for a question?

Mr. DOLE. I am happy to yield.

Mr. MOYNIHAN. Does the leader have in mind to schedule hearings and to ask the administration officials to testify?

Mr. DOLE. In fact, I think we have had one. Senator PRESSLER, chairman of the Commerce Committee, had 1 day of hearings. There will be another day of hearings, I think, next week to be followed by additional hearings. So there is an effort to have everybody come in and testify and then make a judgment.

I see the Senator from South Dakota is on the floor now. That was part of the agreement on the telecommunications bill—that the bill would go forward, there would be hearings, and Congress would make a judgment for the American people. We are going to have to cough up the money on what we should do.

Mr. MOYNIHAN. I thank the Senator. It is none too soon.

IRANIAN ARMS FOR BOSNIA

Mr. DOLE. Mr. President, since the report surfaced in the Los Angeles Times that President Clinton decided

to allow Iran to provide arms to the Bosnians, there has been little, if any, response from the other side of the aisle.

Had there been a Republican in the White House, no doubt, the Democrats would have been all over the President. But, that is not the real issue. I am not here to be all over the President. This is not about the conduct of partisan politics, but the conduct of our foreign policy. This is about American leadership, American credibility, and Congressional oversight. That is why I met today with the chairmen of the Foreign Relations, Intelligence, Armed Services, and Judiciary Committees to discuss this serious foreign policy matter. For nearly 3 years, this administration opposed congressional efforts to lift the unjust and illegal arms embargo on Bosnia and Herzegovina. We were told, and the American people were told, that the United States was bound by the U.N. embargo on the former Yugoslavia. We were told that if America violated this embargo, we would lose support from our allies for other embargoes, such as the one against Iraq. Finally, we were told that lifting the embargo and allowing the Bosnians to have arms while U.N. forces were deployed in Bosnia, would endanger the troops of our allies.

Some people are saying, well, you know that Iran was providing arms to the Bosnians. I would like to respond to that. While we read and heard reports that Iran was smuggling arms to the Bosnians, we did not know the President and his advisers made a conscious decision to give a green light for Iran to provide arms. Indeed, those of us who advocated lifting the arms embargo—Republicans and Democrats—argued that if America did not provide Bosnia with assistance, Iran would be Bosnia's only option. In my view, the role of the President and administration officials in this matter need to be examined—even if we do not receive cooperation from the White House and the Intelligence Oversight Board—which has been the case to date.

In the meeting I held with the four committee chairmen today, we decided on the approach we would take. The Intelligence Committee will investigate the matter of whether any administration officials were engaged in covert action. The Foreign Relations Committee will review administration policy as stated and as executed, as well as the ramifications of these revelations. Let me tell you why I believe this examination is important.

In short, this duplicitous policy has seriously damaged our credibility with our allies. It has also produced one of the most serious threats to our military forces in Bosnia and, according to the administration, the main obstacle to the arm and train program for the Bosnians—I am talking about the presence of Iranian military forces and intelligence officials in Bosnia.

As I have said many, many times on this floor, along with many of my col-

leagues on the other side, had we lifted the arms embargo and had we provided the weapons, the Bosnians could have defended themselves and chances are there would not have been any American troops there now, and we would have had a peace agreement sooner and on better terms for the Bosnians. And most likely, as I said, we would not have 20,000 Americans in Bosnia at this moment. And finally, had we lifted the arms embargo on Bosnia, the United States would have done the right thing for the right reason. We would have done it openly, and we would have done it honestly.

That is what this examination and these hearings will be about, because I think we owe it to the American people and we owe it to Members of Congress. As far as I know, no one knew about what was happening. We were told we just could not lift the arms embargo because of all the problems that would create with our allies and our credibility at the same time. Apparently some knew it was happening through the back door.

I yield back the remainder of my leader time.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Did the Senator want to comment on the Moynihan amendment?

Mr. HOLLINGS. I ask unanimous consent that I be given 10 minutes as if in morning business to respond to the majority leader on the issue of broadcast spectrum auctions.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from South Carolina is recognized.

Mr. HOLLINGS. I thank the distinguished leaders of this measure.

TELECOMMUNICATIONS

Mr. HOLLINGS. Mr. President, I must take exception with the statements by the distinguished majority leader. What really occurred 5 years ago is that hearings both in our Committee of Commerce, which I was chairing at the time, and the Federal Communications Commission as to how to bring about high-definition television, going from the analog signal to the high-definition digital television signal—similar to how we went earlier from AM radio to FM radio and we gave away the licenses, and now most of the radio audience predominates in FM.

On this particular score, there are all kinds of problems. First, there is a problem faced by the local broadcasters. To change over from their analog signal to a digital signal is going to be a cost of somewhere between \$2 and \$10 million. They are not going to put that \$2 to \$10 million in changing over unless and until there are digital TV sets. The people who are going to purchase the sets are not going to purchase them until the broadcasters bring about digital television.