

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.

So working as the public body in the public interest, we reasoned, after these hearings, that there ought to be a transition to change over, to certainly not penalize established free broadcasts in America—it is not a gift, if you please, but, on the contrary, we need to get them to switch from analog to digital and then we'll take the one that they relinquished and auction it. Nobody is getting anything free. It is necessary to bring about that particular switch from the analog to the high-definition television that will truly benefit consumers.

Chairman Sikes, a Republican chairman of the Federal Communications Commission, enunciated this policy. We had 2 years of hearings in our Commerce Committee. We, in a bipartisan fashion, got the movement going with respect to the broadcasters. You have to sort of sell this idea to move them along.

We are trying now to get the criteria for high-definition television agreed upon by all the technical entities that are interested in this particular move. And the Federal Communications Commission is having hearings to determine the technology that should be used. Once that is done this spring, we hope to move forward and, as best we can, accelerate this improved television viewing for the American public.

And now this thing about balancing the budget, this crowd is running up \$1 billion a day in interest costs. You raise spending \$1 billion a day while we are talking that you do not want to pay for. I put in a value-added tax bill to pay for it, but nobody else around here wants to pay for it—talking about paying the bills and balancing the budget. But right is right and fair is fair.

The broadcasters have not been going around soliciting or asking for a giveaway of billions of dollars or whatever it is. We have to maintain free over-the-air broadcasting. They used to have almost 100 percent of the broadcast audience. They are down to 60 percent. Cable television and direct broadcast satellites are taking over and everything of that kind. In a very real sense, we are very careful about the regular analog stations that you and I watch every day and every evening.

So the air should be clear. You can have 100 hearings. You can go back on it. You can come up with the sale and make a lot of money, but the American public is not going to be served. Auctioning the second channel would only disadvantage the American consumer. You should not reverse a well-studied and well-thought-out policy by a Republican administration and a Democratic administration, a Republican committee and a Democratic committee. We should stick with the FCC plan—it is the best way to ensure free over-the-air television and the taxpayer will benefit when the original channel is auctioned.

This peripheral attack about I am Horatio at the bridge here and I am

standing up and I am protecting the public, and we want to pay the bills and we want to balance the budget, is all hogwash. If you want to pay bills, then I say to the Senator, it is in your Finance Committee. Pull it out of the Finance Committee and let's vote up and down, because you cannot balance the budget without increasing taxes.

I will make my challenge one more time. I make it time and again. I would be delighted to jump off the Capitol dome if you can give me a 7-year balanced budget without increasing taxes. You cannot do it. I gave that to the distinguished chairman of the Budget Committee, and he did not do it. That was over a year ago. And I am still ready to jump.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah has 15 minutes.

Mr. FORD. Mr. President, I ask unanimous consent I might have 2 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The Senator from Kentucky has 2 minutes.

Mr. FORD. I thank the Chair, and I thank my friend from Utah.

#### GAGGING OF A SENATOR

Mr. FORD. Mr. President, yesterday the Senator from North Dakota was prevented from speaking on the Senate floor. They recessed the Senate in order to prevent him from speaking. I know the majority leader has certain privileges that other Senators do not have—leader's time, recognized first, and all that. But I think the majority leader made a mistake in trying to gag a colleague yesterday.

We are here, expecting to vote every 30 minutes, on an amendment or reconsideration—recommittal on this terrorism bill, and the majority leader comes in, as is his right—I do not say he did not have the right—but we talk about telecommunications and we talk about Bosnia. Yet, the Senator from North Dakota could not talk about Social Security and balancing the budget.

So, I want the Senate to know that some of us observe that. I believe the majority leader made a mistake. I think he realized he made a mistake. And we should not attempt to gag anyone here on the Senate floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

#### TERRORISM PREVENTION ACT— CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. HATCH. Mr. President, for my friend from New York, I will just move to table this amendment. But I think, because he approaches things in such a scholarly manner, I should take just a few minutes to explain why we cannot accept his amendment and why I will move to table.

Mr. President, I think that part of the disagreement we have with respect

to the appropriate standard of review in habeas petitions involves differing visions as to the proper role of habeas review.

Federal habeas review takes place only after there has been a trial, direct review by a State appellate court, a second review by a State supreme court, and then a petition to the U.S. Supreme Court. Thus we have a trial and at least three levels of appellate review. In a capital case, the petitioner often files a clemency petition, so the State executive branch also has an opportunity to review the case.

But that is not the end. In virtually every State, a postconviction collateral proceeding exists. In other words, the prisoner can file a habeas corpus petition in State court. That petition is routinely subject to appellate review by an intermediate court and the State supreme court. The prisoner may then file a second petition in the U.S. Supreme Court, and may also, of course, seek a second review by the Governor.

So, after conviction, we have at least six levels of review by State courts and two rounds of review—at least in capital cases—by the State executive. Contrary to the impression that may be left by some of my colleagues, Federal habeas review does not take place until well after conviction and numerous rounds of direct and collateral review.

The Supreme Court has clearly held that habeas review is not an essential prerequisite to conviction. Indeed, this very term, the Supreme Court reaffirmed the principle that the Constitution does not even require direct review as a prerequisite for a valid conviction.

Now that we have set the proper context for this debate, let us just look at the proposed standard. Under the standard contained in the bill, Federal courts would be required to defer to the determinations of State courts unless the State court's decision was "contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court . . . ."

This is a wholly appropriate standard. It enables the Federal court to overturn State court decisions that clearly contravene Federal law. Indeed, this standard essentially gives the Federal court the authority to review, de novo, whether the State court decided the claim in contravention of Federal law.

Moreover, the review standard proposed allows the Federal courts to review State court decisions that improperly apply clearly established Federal law. In other words, if the State court unreasonably applied Federal laws, its determination is subject to review by the Federal courts.

What does this mean? It means that if the State court reasonably applied Federal law, its decision must be upheld. Why is this a problematic standard? After all, Federal habeas review exists to correct fundamental defects in the law. After the State court