

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 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