

Under IC(2)(a)(vi) of the "Terms and Conditions", the Secretary may identify "other Federal lands" for CIRI's in-region pool only with the State and CIRI's concurrence. The State's concurrence will be required until the State's public purpose veto takes effect. "Other Federal lands" does not include lands which have been selected by or confirmed to the State under the Statehood Act.

Under IC(2)(C) the State can prevent the inclusion of 1,500 acres of abandoned or unperfected public land entries and cancelled or revoked power sites into CIRI's in-region pool. The State can also require the Secretary to consult with the Joint Federal-State Land Use Planning Commission to determine whether private ownership of a given piece of property is incompatible with reasonable land management principles. The Joint Federal-State Land Use Planning Commission is no longer in existence and this provision has become ineffective.

8. Section 12(b)(8)(i)(D). This provision states under which circumstances CIRI may obtain property of the Alaska Railroad. If the Alaska Railroad is transferred to the State, CIRI cannot obtain railroad land without the State's prior consent. If the transfer does not take place, the State can continue to withhold its consent if the State or one of its municipalities requires the land for a public purpose. The State's "public purpose" veto goes into affect immediately if the railroad is not transferred to the State. This provision is not independent authority for transfer of railroad land to CIRI.

9. Section 12(b)(8)(ii). CIRI and the Federal Government have disagreed on the interpretation of IC(2)(a)(v) of the terms and conditions which authorizes the Secretary to review Federal installations to determine if there is land which is not needed by the installation which could be made available to CIRI. BLM believes that the review should be limited to lands withdrawn by section 11 of ANCSA. CIRI believes that the review should take place throughout the CIRI region. In the amendments the review is authorized throughout the region unless CIRI and the Secretary enter into an agreement to limit the review. CIRI has agreed to enter into a side agreement with the Secretary limiting the review to the following properties:

- (a) FAA:
  - (1) Homer VOR;
  - (2) Kenal VOR and airport (including PLO 2585 and ANS No. 11);
  - (3) Talkeetna VOR, NDB and airport;
  - (4) Fire Island VOR;
  - (5) Skwetna NDB.
- (b) Coast Guard:
  - (1) Fire Island Race Pt.;
  - (2) Fire Island West Pt.;
  - (3) Kalgin Island;
  - (4) Two undeveloped lots on Government Hill, Anchorage.
- (c) FERC:
  - (1) Power project 395 (Chackachama), provided, however, that the review is to be limited to T. 12 and 13 N., R. 15 W., Seward Meridian, and that a two hundred foot (200') right-of-way corridor for transmission lines and road access may be reserved to the State at a location to be specified by the State at a subsequent time not to exceed twenty years from receipt of conveyance by CIRI.

(d) Alaska Railroad properties, in the event such properties become available for selection pursuant to subsection 12(b)(8)(i)(D) of the CIRI Alaska Railroad Waiver Amendments.

10. Section 12(b)(8)(iii). Section IC(2)(b) of the "Terms and Conditions" authorizes the Secretary to place lands into the in-

region pool from outside the region which are in the same categories as lands listed at IC(2)(a) (e.g. abandoned or unperfected public land entries, surplus property, revoked Federal reserves, cancelled or revoked power sites, ANCSA 3(e) lands) if the State concurs. Under this amendment the State will not withhold its concurrence unless the State or one of its municipalities needs the land for a public purpose.

11. Section 12(b)(8)(iv). This provision extends the deadline for CIRI's selection of its out-of-region entitlement for two years until April 15, 1985.

12. Section 12(b)(8)(v). This provision provides for a review by Congress in January 1985, to determine whether CIRI's entitlement is being fulfilled pursuant to the "Terms and Conditions" and the implementing legislation.

13. Section 12(b)(9). A new provision is added to the Act to protect third-party rights from encroachment by the "Terms and Conditions" as modified by these amendments. CIRI's waiver of an interest in lands within the Point Woronzof, Point Campbell, Goose Lake and Campbell Tracts in Anchorage is reaffirmed. Native selections under ANCSA are protected. The ANILCA 1425 Agreement among the State, the Municipality of Anchorage and Eklutna, Inc. is protected. Subsection 12(b)(9) prohibits the Secretary from identifying for CIRI's selection lands which have been selected by or confirmed to the State under the Statehood Act unless the State and CIRI reach an agreement concerning such a conveyance pursuant to Subsection 12(b)(11).

14. Section 12(b)(10). This provision amends paragraph IC(1) of the "Terms and Conditions" by expanding the out-of-region lands which CIRI can nominate for selection to include ANCSA 17(d)(2) lands as well as ANCSA 17(d)(1) lands and lands formally withdrawn by both provisions.

15. Section 12(b)(11)(i). This provision authorizes the State to enter into agreements to convey tentatively approved and patented State land to CIRI to fulfill CIRI's out-of-region entitlement. The State would then be entitled to make additional selections under the Statehood Act.

16. Section 12(b)(11)(i). This provision authorizes the Secretary to convey to CIRI land selected by the State prior to July 18, 1975 or pursuant to sections 2 and 5 of the State Federal agreement of September 1, 1972 if the State agrees to the conveyance to fulfill CIRI's out-of-region entitlement. The State would then be entitled to make new selections under the Statehood Act.

17. Section 12(b)(11)(i). This provision authorizes the State to convey to land directly to CIRI pursuant to an agreement with CIRI and the Secretary to implement sections 12(b)(11) (i) and (ii). The State would be entitled to make new selections under the Statehood Act if it conveys land to CIRI pursuant to this provision.

## MESSAGES FROM THE HOUSE

### ENROLLED BILLS SIGNED

At 8:05 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2330. An act to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 281 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes;

H.R. 2520. An act for the relief of Emanuel F. Lenkersdorf;

H.R. 5238. An act to amend the Federal Food, Drug, and Cosmetic Act to facilitate the development of drugs for rare disease and conditions, and for other purposes;

H.R. 5858. An act for the relief of Mocatta & Goldsmid Ltd., Sharps, Pixley & Co., Ltd., and Primary Metal and Mineral Corp.;

H.R. 6120. An act to reauthorize the Deep Seabed Hard Mineral Resources Act for fiscal years 1983 and 1984;

H.R. 6254. An act to amend title 3, United States Code, to clarify the function of the U.S. Secret Service Uniformed Division with respect to certain foreign diplomatic missions in the United States, and for other purposes;

H.R. 6904. An act to provide subsistence allowances for members of the Coast Guard officer candidate program, and for other purposes; and

H.R. 7356. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1983, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. THURMOND).

## HOUSE JOINT RESOLUTION REFERRED

The following joint resolution, previously received from the House of Representatives, was read the first and second times, and referred to the Committee on Rules and Administration:

H.R. Res. 636. Joint resolution directing the completion of the Vietnam Veterans Memorial in West Potomac Park in the District of Columbia.

## HOUSE CONCURRENT RESOLUTIONS REFERRED

The following concurrent resolutions, previously received from the House of Representatives, were read and referred as indicated:

H. Con. Res. 236. A concurrent resolution to declare March 1, 1983, as "National Day of the Seal"; to the Committee on the Judiciary.

H. Con. Res. 437. A concurrent resolution expressing the sense of the Congress concerning the completion of the Vietnam Veterans Memorial in West Potomac Park in the District of Columbia.

## ENROLLED BILLS PRESENTED

The Secretary reported that on December 22, 1982, he had presented to the President of the United States the following enrolled bills and joint resolutions:

S. 625. An act to revise the boundary of Voyageurs National Park in the State of Minnesota;

S. 717. An act for the relief of Carole Joy Maxfield-Raynor and Bruce Sherlock Maxfield-Raynor, wife and husband, and their children Charlton Bruce Maxfield-Raynor and Maxine Anne Maxfield-Raynor;

S. 835. An act for the relief of Jerry L. Crow and Ralph D. and Connie V. Hubbell.

S. 1364. An act for the relief of Jose Ramon Beltron Alivenda Ostler;

S. 1501. An act entitled the "Educational Mining Act of 1982";

S. 1833. An act for the relief of Cesar Noel Jump;

S. 1965. An act to designate certain lands in the Mark Twain National Forest in Mis-

Cook Inlet Settlement Agreement ratified therein.

Taken together, these deferments, waivers and agreements by the Region amount to a substantial reordering of the Region's prior rights. This package of amendments and the associated agreements have been developed in consultation with Cook Inlet Region, Inc. and it has consented to the waiver of these rights to property and the conversion of these rights to the mechanisms established under this legislation and associated agreement. These rights are in exchange for valuable property rights previously established and reduce a national obligation. As a consequence the fulfillment of the obligations of the Cook Inlet Settlement must be administratively recognized as the equivalent of a sale or other disposition which produces revenue for the federal government and reduces the national debt. If such recognition is not given to transactions consummated pursuant to these authorities, Cook Inlet Region, Inc. may be the subject of discriminatory treatment in negotiations and the existence of opportunities to fulfill its entitlement. This should not be the case for these fair market value property sales and that administrative steps should be taken to assure that incentives for the fulfillment of these obligations exist including full accounting credit for such transaction in evaluating the efforts of federal agencies as coordinated by the President's Property Review Board.

Cook Inlet Region, Inc., by letter to Senator Stevens dated November 29, 1982, has indicated an intention to enhance the receipt of lands within its Region in order to expeditiously fulfill the redefined and adjusted "out-of-region" pool. This intention to take in-Region properties as the means of fulfilling its entitlement, would be formalized in an agreement which establishes an obligation of Cook Inlet Region, Inc. to take certain properties within its Region. I ask unanimous consent to print the attached detailed description of House amendments to assist administrators in interpretation of these provisions.

The material follows:

#### CIRI ALASKA RAILROAD AMENDMENTS

The CIRI Alaska Railroad Amendments modify the rights and obligations of Cook Inlet Region, Inc., the State of Alaska and the Federal Government under the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area." House Report No. 94-739 accompanying the bill which ratified the "Terms and Conditions" described the background of that Agreement at follows:

"From the outset of the implementation of the Settlement Act, there have been extreme difficulties encountered in adequately fulfilling the land entitlements of the Cook Inlet Regional Corporation under section 12(c) of the Settlement Act. Under the Statehood Act, the State had already obtained patents to much of the low-lying lands in the region, except for lands within the Kenai National Moose Range. In addition, the Secretary, in an agreement with the State of Alaska in 1972, committed additional lands to the State even though there had not yet been withdrawn sufficient lands for Cook Inlet Region. The subsequent efforts of the Secretary to fulfill his statutory obligation to Cook Inlet has yielded, for the region, selections largely comprised of mountains and glaciers, hardly the settlement contemplated by the Congress. Since early 1972, the Region has been attempting to resolve these issues by litigation, negotiation, and now by legislation.

"In the last eight months, a series of intense discussions with the Secretary, the

State, and various other interested groups (including local government, mining interests, and environmental groups) has resulted in a negotiated settlement entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area." The document harmonizes conflicting interests, seeking to adjust an equitable settlement for Cook Inlet Region consistent with the needs of Alaska and the public at large. As such, it is more than a Cook Inlet Region, Inc. settlement. It seeks to resolve harmful jurisdictional conflicts and arbitrary ownership patterns within the Cook Inlet region. It opens for development lands that should be in private ownership and conserve for public use lands that should have that status."

Under the "Terms and Conditions" CIRI agreed to shift most of its statutory entitlement away from the populated Cook Inlet area into other regions in the State. Under IC(2) of the "Terms and Conditions" the Secretary was to attempt to place certain categories of land (e.g. abandoned or unperfected public land entries, surplus property, revoked Federal reserves, cancelled or revoked power sites, ANCSA 3(e) lands) located in the Cook Inlet region into an "in-region pool" for CIRI's selection. The goal was to make 138,240 acres (6 townships) available to CIRI by January 15, 1978. Under IC(1) of the "Terms and Conditions" CIRI could select the remainder of its 29.66 townships entitlement outside of the Cook Inlet region. The deadlines in the Act have been extended by Congress. The latest extension of the in-region deadline expired on July 15, 1982. In 1980 the "Terms and Conditions" was amended by Congress to allow CIRI to purchase Federal surplus property throughout the United States with a money value given to its in-region entitlement.

The present amendments, like the original "Terms and Conditions", were agreed upon by Cook Inlet Region, Inc., the State of Alaska and the Federal Government after a series of lengthy discussions, and represent resolution of conflicting interests and a fair settlement for the parties. The amendments have been drafted to ensure that CIRI's entitlement is fulfilled and the Federal Government's obligation to Cook Inlet satisfied without further intervention by Congress. The following is a brief analysis of the various provisions of the amendments:

Section 12(b)(7). The amendments to subparagraph 7 give CIRI the opportunity to obtain Federal excess property. Excess property is property which is excess to the needs of the Federal agency which has been using the property. The term "excess property" is defined at 40 U.S.C. 472(d) and (e) and does not include property which is capable of being returned to the public domain. Before declaring excess property surplus to the needs of the Federal Government, GSA determines whether the property can be used by another Federal agency. If no other agency can make use of the property, GSA declares the property surplus to the needs of the Federal Government. Under existing law CIRI can obtain Federal surplus property by direct negotiation or by bidding for the property at a Federal surplus property sale. CIRI has had difficulty obtaining notice that Federal property was surplus. This amendment gives CIRI an opportunity to obtain Federal property at the excess stage before it becomes surplus property.

2. 12(b)(7)(II)(A). This provision requires the Administrator of General Services to notify CIRI when he is reviewing Federal excess property for use by other Federal agencies. CIRI must notify the Administrator within fifteen days that it is interested in the property. The statute does not require the Administrator to convey the prop-

erty to CIRI; the decision is discretionary. If the Administrator decides to convey the property to CIRI, the terms of the sale are negotiated between the parties. CIRI pays for the property from its entitlement bank account which is described in paragraph 4, below.

3. Section 12(b)(7)(II)(B). This provision requires GSA to give notice to affected states and local governments that it is considering conveying excess property to CIRI and requires GSA to give the states and local governments such opportunity to obtain the property as is recognized in Title 40 of the United States Code. Title 40 has various provisions which give the Administrator of GSA and the Secretary of Health, Education and Welfare the discretion to convey certain kinds of Federal property to states and local governments. The Administrator's discretion to make such conveyances to states and local governments is protected by this provision.

4. Section 12(b)(7)(III) and (iv). These provisions increase CIRI's "bank account" for purchasing excess and surplus property. CIRI is given a bank account for paying for surplus property consisting of a money value given to its remaining in-region entitlement of \$500 an acre (\$500 x approximately 130,000 acres). These amendments also add to CIRI's bank account by giving it a value of \$250 an acre for thirteen townships of its twenty-three township out-of-region entitlement which it can utilize for purchasing excess and surplus property after the in-region "bank account" is exhausted. If CIRI obtains land in Alaska from either the in-region or out-of-region pool, its bank account is reduced. If it expends money in its bank account, its land entitlement is thereby reduced.

5. Section 12(b)(8)(I)(A). The Secretary's obligation to place certain categories of land (e.g. abandoned or unperfected public land entries, surplus property, revoked Federal reserves, cancelled or revoked power sites, ANCSA 3(e) lands) into the in-region pool under IC(2)(a) of the Cook Inlet "Terms and Conditions" terminates on the first day after July 15, 1984 that the sum of the acres or acre/ equivalents identified for the in-region pool and the acres or acre/ equivalents used by CIRI in purchasing excess or surplus property under Section 7 of the Act reaches 138,240 acres or acre/ equivalent. (If a parcel of land is worth more than \$500, each increment of \$500 or portion of \$500 is considered an acre/ equivalent. For example, if one acre identified for the pool is worth \$1,750, it will be considered 3 1/2-acre/ equivalents.)

6. Section 12(b)(8)(I)(B). The Secretary's authority to place land in certain categories from out-of-region into the in-region pool terminates on July 15, 1984 if the Secretary has fulfilled his obligation under IC(2)(a) as described in paragraph 5 or on July 15, 1987 even if the obligation is not fulfilled.

7. Section 12(b)(8)(I)(C). Under this provision the State of Alaska may prevent the Secretary from making land available to CIRI from the in-region pool if the State or a municipality requires the land for a public purpose. The State's "public purpose" veto takes effect on military land on January 1, 1985 and on all other lands when the Secretary's obligation under IC(2)(a) of the "Terms and Conditions" is fulfilled or on July 16, 1987, whichever occurs first. Until the State's public purpose veto takes effect, the State retains the authority it has under existing law to prevent the Secretary from making land available for selection by CIRI under IC(2)(a)(vi) and (c) of the "Terms and Conditions".

souri, which comprise approximately 6,888 acres, and which are generally depicted on a map entitled "Paddy Creek Wilderness Area" as a component of the National Wilderness Preservation System;

S. 1986. An act to provide for the use and distribution of funds awarded to the Blackfeet and Gros Ventre Tribes of Indians and the Assiniboine Tribe of Fort Belknap Indian Community in certain dockets of the U.S. Court of Claims and of funds awarded to the Papago Tribe of Arizona in dockets numbered 345 and 102 of the Indian Claims Commission, and for other purposes;

S. 2059. An act to change the coverage of officials and the standards for the appointment of a special prosecutor in the special prosecutor provisions of the Ethics in Government Act of 1978, and for other purposes;

S. 2355. An act to amend the Communications Act of 1934 to provide reasonable access to telephone service for persons with impaired hearing and to enable telephone companies to accommodate persons with other physical disabilities;

S. 2636. An act to amend and extend the Tribally Controlled Community College Assistance Act of 1978, and for other purposes;

S. 2955. An act to establish the Cheaha Wilderness in Talladega National Forest, Ala.;

S. 3103. An act to amend section 1304(e) of title 5, United States Code; and

S.J. Res. 270. Joint resolution to designate 1983 as the "Bicentennial of Air and Space Flight."

#### NOTE

The RECORD of December 21, 1982, under "Reports of Committees," the conference report on H.R. 6211, the Surface Transportation Act of 1982, is shown as being filed for printing as Senate report No. 97-692. The conference report is printed in the House proceedings of December 21, 1982, so the conference report will not be printed as a Senate report.

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PERCY (for himself, Mr. PELL, Mr. DIXON and Mr. RANDOLPH):

S.J. Res. 272. A joint resolution to provide interim appropriation of the revenue for the support of the government; to the Committee on Appropriations.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BAKER:

S. Res. 526. A resolution appointing a committee to notify the President concerning the proposed adjournment of the session; considered and agreed to.

By Mr. ROBERT C. BYRD:

S. Res. 527. A resolution authorizing the President of the Senate and the President of the Senate pro tempore to make certain appointments after the sine die adjournment of the present session; considered and agreed to.

By Mr. BAKER:

S. Res. 528. Resolution authorizing the President of the Senate and the President pro tempore of the Senate to sign duly enrolled bills; considered and agreed to;

S. Res. 529. Resolution tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. ROBERT C. BYRD:

S. Res. 530. Resolution tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. THURMOND:

S. Res. 531. Resolution to commend the exemplary conduct of the distinguished majority leader; considered and agreed to;

S. Res. 532. Resolution to commend the extraordinary cooperative conduct of the distinguished minority leader; considered and agreed to.

#### ADDITIONAL STATEMENTS

##### SENATOR JOHN P. EAST

● Mr. DENTON. Mr. President, during the short time he has been in the Senate, Senator JOHN P. EAST of North Carolina has distinguished himself as one of its most courageous, articulate, scholarly, and effective Members.

Senator EAST has recently introduced the Judicial Reform Act of 1982. It is obviously the product of some of the most serious and painstaking background research which has ever been done in a bill of its kind. The proposal is a thorough, careful, probing analysis and prescription for facilitating a more healthy and constitutionally sound balance between the judiciary and the other coequal branches of our Government. I urge my colleagues to give it their most care consideration.

The Washington Times has discussed this legislation in three editorials in its issues of December 2, 8, and 15. Mr. President, I ask that these editorials be reprinted in the RECORD following my remarks.

The editorials follow:

[From the Washington Times, Dec. 2, 1982]

##### RESTORING THE CONSTITUTION

Sen. John East has fired the first resounding shot in what promises to be one of the most important congressional battles of the century. A few days before the election recess he introduced the Judicial Reform Act of 1982. This is no half-hearted attempt to redress this or that example of overreaching by the federal courts. The bill's 12 parts propose nothing less than to return the U.S. Constitution to its original "uninterpreted" state.

The several provisions would strip the federal judiciary of the legislative and executive authority it has usurped from Congress and the executive branch. It addresses every issue raised by the irrepressible judicial activism of the last several decades. The fight will be a glorious one.

The proper role of the federal judiciary has been one of the most intensely debated issues in this nation's history. Where, out of political cowardice, Congress has defaulted

on its responsibility to resolve difficult and controversial disputes, federal judges have stepped into the vacuum. The result has been that too much of the most important "legislation" of the 20th century has been written, not by elected representatives, but by appointed judges.

Although some parts of the bill overshoot the mark, the Judicial Reform Act gives Congress the opportunity to reassert its unquestioned, if little-used, powers to shape and control the jurisdiction of the federal courts. Led by the Supreme Court, federal judges have redrawn political boundaries taken over school boards, directly interfered in prison administration, punished police by excluding completely reliable evidence, taken religion out of the schools, and even told doctors when they may—and may not—perform abortions. It is the premise of the East bill that Congress could—and should—accept its legislative responsibility to debate and decide these issues itself.

But it is not only Congress that will benefit from once again having the constitutional power the bill would retrieve. State governments will find themselves freed of the large and onerous burden of federal judicial second-guessing which has been grafted onto the Constitution by ever-broader interpretations of the 26 amendments. The powers reserved by the Founding Fathers to the states and to the people will be theirs once more.

Sen. East's legislation also includes provisions which would greatly improve congressional oversight of the federal judiciary, which would make the Supreme Court's membership geographically representative—as it was at the beginning, and which would in other ways reduce the tremendous power of the federal courts.

The Senate Judiciary Subcommittee on Separation of Powers, chaired by Sen. East, will schedule hearings after the 98th Congress convenes in January. We'll have more to say before then.

[From the Washington Times, Dec. 8, 1982]

##### ABOLISH THE EXCLUSIONARY RULE

Sen. John East's Judicial Reform Act of 1982 proposes to abolish the so-called "exclusionary rule" of evidence. It's about time. The rule bars evidence against a defendant in a criminal trial if the police or the prosecutor violated any constitutional rule or any other law while gathering the evidence. Judges do not—because the Supreme Court has said they may not—consider the value of the evidence when they apply the rule.

As interpreted by the Supreme Court, the Constitution absolutely prohibits a judge from looking at the evidence to determine whether it would have any value for the jury. If the means used to obtain the evidence breached any constitutional rule, then the evidence must be treated as if it had never existed. Obviously guilty defendants have gone free in cases such as these:

Stopping a speeder, the trooper notices something suspicious about the driver's behavior, and demands that the trunk be opened. Inside, he finds a gun with the driver's fingerprints on it. The gun turns out to have been used to murder a bank teller. The court suppressed the gun, keeping its very existence from the jury, because the Constitution, as the Supreme Court reads it, demanded that the officer have more than a "suspicion" to justify searching the trunk.

Because they suspect a businessman in dealing in drugs, detectives get a court order authorizing them to tap his phone. One morning they overhear a telephone conversation between one of the businessman's visitors and someone else; they are discuss-

ing their plan to murder an informant. The prosecution of the two plotters for conspiracy to murder collapses when the judge prohibits the use of the tape recording because the court order authorizing the tap didn't mention either of the defendants or indicate that the tap might find evidence of murder plots.

There is nothing in the Constitution that says that improperly obtained evidence must not be used. The exclusionary rule has been developed by the courts in response to the complete failure of the government to prosecute policemen who violate the law in the course of their duties. There are and always have been laws prohibiting the police from using illegal methods of gathering evidence. Occasionally, overzealous police violated those laws in their desire to catch and convict criminals. Such police violations rarely were punished.

The exclusionary rule has been the judge's answer to the prosecutor's failure to discipline errant police. The courts are saying, "We're going to make it pointless for you to break the law; if you do something illegal to get the evidence, we won't let you use it. Period." Prosecutors don't indict wayward police because prosecutors have to work with the police day-in and day-out. And there are some prosecutors whose crusading enthusiasm sometimes leads them to condone or even encourage improper police tactics. Because no one else has taken on the task of making the police obey the law, the judges have imposed the exclusionary rule.

What is needed, obviously, is a way to preserve valuable evidence without giving the police any incentive to violate the law. Any solution must also accept the fact that some police will sometimes break the law and must be punished. The East bill provides such a solution. Under the bill, federal judges will have the power to punish, as a "contempt of the Constitution," government conduct that breaks constitutional rules. But regardless of whether the rules are broken, the East bill will let the jury see and hear the evidence. And guilty defendants will be convicted.

[From the Washington Times, Dec. 15, 1982]

#### TOO MUCH HABEAS CORPUS

When a state court convicts a murderer and he loses all his appeals, all the way to the U.S. Supreme Court, they throw him in jail and lose the key, right? Wrong. If he has any brains, or knows a fellow con with some, he heads for the prison library and reads law books while he waits for a federal judge to rule that the procedure used to convict him was incorrect. Then he files a habeas corpus petition in the nearest federal court, and starts the whole legal process all over.

These things happen because the federal courts have expanded the writ of habeas corpus far beyond what the framers of the Constitution intended. Ever since a 1963 Supreme Court decision, state prisoners have had all but unlimited access to the federal courts to air pretty much any complaint they have about the way they were convicted.

Too much of the workload Chief Justice Burger complains about comes from the federal courts' leniency in taking habeas corpus petitions from state prisoners. Too many hours of state lawyers' time are consumed in explaining and justifying the essential fairness of what happened. And sometimes—not often but often enough—fairly convicted prisoners go free because a federal judge second-guesses the way the state judge handled the case, substituting his view of justice for what the other judge did.

Time was when habeas corpus couldn't be invoked unless the state violated its own procedures. That a federal court had different procedures didn't matter. But the feds got impatient with the way some uppity states didn't immediately snap to attention when the federal judges found a new way of doing things. The solution the federal judges found was simple—they started taking habeas petitions as a way of giving federal rights to state prisoners.

What the federal courts seem to have forgotten is that states have rights, too. The court procedures and rules of evidence that Alabama likes may not be Ohio's cup of tea. Wyoming citizens know and understand their ways of doing things even if they're different from what happens in Missouri. The growth of federal habeas jurisdiction threatens to swamp state criminal law in nationally uniform federal rules.

The Judicial Reform Act of 1982, introduced by Sen. John East, will get the federal courts out of the state trial business. The bill proposes to return federal habeas rules to what they were for the first 150 or so years of our history—a way for unfairly convicted people to show that their own state broke its own rules when it convicted them. That's justice.

#### A DOCTOR OF FRONTIERS

● Mr. MOYNIHAN. Mr. President, I rise to call to the attention of the Senate a profile that appeared in Monday's New York Times of a wonderfully gifted pioneer of medicine—Dr. Chase N. Peterson.

Those who have followed the altogether heroic struggle of Dr. Barney D. Clark to become the first human to live with an artificial heart know that Dr. Peterson is the spokesman for Dr. Clark and his family and the vice president for health and sciences at the University of Utah.

He is also my former neighbor in Cambridge, Mass. The Petersons and the Moynihans shared many things, including an affiliation with Harvard and, appropriate for this season, a fondness for Christmas caroling through the neighborhood.

I would simply say of my dear friend that seldom has the force of events brought together a moment of history and a man better suited for that moment. Dr. Peterson is a doctor of frontiers—both of medicine and of his native Utah.

He will be best remembered, perhaps, for the events now transpiring in Salt Lake City. But he could be known, too, for his dedication to his profession; dedication that has often found him carried thousands of miles through the high country to tend to patients, or forced to transmit directions for an operation by shortwave radio to snowbound surgeons hundreds of miles away.

His frontier is different now for he is at the crest of a new wave in medical history. But his commitment is no different, and his achievement no less spectacular.

Mr. President, I ask that a profile of my cherished friend, from the New York Times of December 20, 1982, be placed at this point in the RECORD so

that my colleagues may better know this singularly distinguished man.

The profile follows:

[From the New York Times, Dec. 20, 1982]

#### WINDOW ON THE HEART PATIENT: CHASE NEBECKER PETERSON

(By Lawrence K. Altman)

SALT LAKE CITY, December 19.—For almost three weeks, Dr. Chase N. Peterson has been the voice of calm in periods of high excitement and repeated crises in the extraordinary story of Dr. Barney B. Clark's struggle to be the first human to live with a permanent artificial heart.

Dr. Peterson's is the articulate voice of a man who dresses in tweeds, wears logger's boots and travels the University of Utah campus by moped.

It is also the voice of a man who has taken on many roles for which his training as a physician gave him no preparation.

His moves from practitioner to administrator have taken him in and out of medicine over the last two decades. Although the challenges have been unusual for a physician, they reflect his heritage as a Mormon, a member of a religion that stresses voluntarism, Dr. Peterson said in an interview.

Dr. Peterson, who will be 53 years old next week, spent 11 years away from medicine, from 1967 to 1978, first as dean of admissions and scholarships at Harvard College, then as vice president of the college for alumni affairs and development.

#### FRUSTRATED MEDICAL TEACHER

Now, as vice president for health sciences of the University of Utah and coordinator of the artificial heart program, Dr. Peterson is the spokesman for Dr. Clark, his family, and the surgical team.

At a news conference last week, Dr. Peterson described himself as a "frustrated medical teacher" who viewed the artificial heart story as an opportunity to educate the public about medicine.

He has earned high marks from reporters and colleagues for his ability to find cogent analogies and simple terms to describe complicated medical problems, as well as to say "I don't know" when stumped.

For example, in answering questions after Dr. Clark suffered seizures Dec. 7, Dr. Peterson had to deal with complexities of biochemistry and the possibility that the seizures had been brought on when too much of some vital substance had been washed from Dr. Clark's body by speeding up his heart and giving him diuretics. Dr. Peterson described this possibility as a "leaching process."

"That description might not be acceptable for a medical textbook, but it gets the point across," he said.

#### AN OCCASIONAL FUMBLE

Dr. Peterson does often ramble in answering questions, and occasionally he has fumbled.

When asked about the nutrition that Dr. Clark was receiving by feeding tube, Dr. Peterson described it as chicken soup. When skeptical reporters asked him if he really meant chicken soup, he said yes.

The next day, a chagrined Dr. Peterson apologized publicly to the hospital's nutritionists, saying that he was using the soup as an analogy.

Whenever a medical team finds itself in the spotlight because of some outstanding achievement, it becomes vulnerable to charges of grandstanding from the outside. Perhaps as a reflection of those pressures, Dr. Peterson stunned reporters last Monday by saying he would curtail the information